

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 105/MP/2017 along with  
I.A. 30/2017**

Subject : Petition under Sections 79 (1) (b) and (f) of the Electricity Act, 2003 read with Article 11.6 and 17 of the Power Purchase Agreement (PPAs ) dated 7.8.2008 for recovery of unpaid dues towards fuel cost.

Date of hearing : 20.6.2017

Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member

Petitioner : GMR Kamalanga Energy Limited.

Respondents : Haryana Power Purchase Centre and Others.

Parties present : Shri Amit Kapur, Advocate, GMRKEL  
Shri Vishrov Mukherjee, Advocate, GMRKEL  
Ms. Raveena Dhamija, Advocate, GMRKEL  
Shri Ambrish Khare, GMRKEL  
Shri Gyan Prakash Gupta, GMRKEL

**Record of Proceedings**

Learned counsel for the petitioner submitted that the present petition has been filed for seeking directions to the respondents to make the payments against the invoices raised by the petitioner in accordance with the Commission's order dated 3.2.2016. Learned counsel further submitted as under:

(a) On 23.4.2013, the petitioner filed Petition No. 79/MP/2013 claiming compensation for change in law events in relation to the Haryana PPA including increase in cost of fuel due to shortfall of linkage coal on account of deviation from the New Coal Distribution Policy ("NCDP") and changes in the Fuel Supply Arrangements ("FSA"). The Commission vide order dated 3.2.2016 allowed the petitioner to recover the additional cost incurred on use of coal from alternate sources due to shortage in linkage coal. The Commission also devised a formula for computing the Energy Charge Rate ("ECR") in Paragraph 56 of the said order.

(b) Thereafter, the petitioner periodically raised Supplementary Bills on the respondents in terms of the order dated 3.2.2016 towards compensation against various Change in Law events approved by the Commission. The said invoices included, *inter alia*, amounts towards procurement of coal from alternate sources on account of shortage of firm linkage coal.

(c) Accordingly, the respondents had been paying the Supplementary Bills including payments towards coal cost incurred on account of shortfall of firm linkage coal and procurement of coal in terms of Step 2 of the formula prescribed in the order dated 3.2.2016. However, Haryana Power Purchase Centre (HPPC) has only made a payment of Rs.139.97 crore towards supplementary bills for the period till June, 2016.

(d) Subsequently, HPPC in its several letters to the petitioner and in meeting dated 25.1.2017 has disputed the supplementary bills dated 7.9.2016, 28.9.2016, 4.11.2016, 6.12.2016, 4.1.2017, 10.2.2017, 8.3.2017, 5.4.2017 and 5.5.2017 raised by the petitioner from July 2016 on the ground that the Commission's order envisages only coal cost pass through in respect of shortfall of domestic coal of linkage fuel only and the Commission has not clarified the shortfall in domestic coal and has not specified the source of coal used by the generator in lieu of the shortage in linkage fuel. As on date, around Rs. 106,62,42,264 comes in outstanding against the respondents

(e) HPPC is not making payments for Supplementary Bills for the period from December, 2016 to March, 2017. HPPC has neither disputed the price nor quantity of coal. HPPC has even not complied with the requirements under Article 11.6.2 of the Haryana PPA regarding bill disputes and has not issued a valid Bill Dispute Notice qua the said invoices. In terms of Article 11.6.1 of the Haryana PPA, the said Supplementary Bills for the period December, 2016 to March, 2017 ought to be treated as conclusive and HPPC should be directed to release the said amounts.

(f) The Commission's order dated 3.2.2016 has attained finality in as much as no appeal has been filed by the Haryana Discoms. Accordingly, Haryana Discoms are bound to implement the same and refusing to pay Supplementary Bills is a flagrant violation of the order dated 3.2.2016. If the outstanding dues are not cleared by the respondents, the project would be rendered as a Non Performing Asset, which will not be conducive to the development of the electricity sector.

2. Learned counsel for the petitioner submitted that the petitioner has also filed an IA for directions to the respondents to pay the outstanding amount raised by the

petitioner towards supplementary bills for the period from July 2016 to March 2017. Learned counsel requested the Commission that the respondents be directed to pay the outstanding amounts for which no dispute has been raised.

3. After hearing the learned counsel for the petitioner, the Commission admitted the petition and directed to issue notices to the respondents on the petition.

4. The Commission directed the petitioner to serve copy of the petition on the respondents immediately, if not served already. The respondents were directed to file their replies by 14.7.2016, with an advance copy to the petitioner, who may file its rejoinder, if any, by 28.7.2016. The Commission directed the parties that due date of filing the replies and rejoinder should be strictly complied with. No extension shall be granted on that account.

5. After considering the IA, the Commission directed the Haryana Discoms to pay the petitioner, the outstanding dues raised in the Supplementary Bills other than for shortfall in coal linkages which have been disputed by the respondents. Accordingly, the Commission disposed of the IA.

6. The petition shall be listed for hearing on 10.8.2017.

**By order of the Commission**

**Sd/-  
(T. Rout)  
Chief (Legal)**