

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 105/MP/2017
alongwith I.A. No. 42/2017**

- Subject : Petition under Section 79 (1)(b) and (f) of the Electricity Act, 2003 read with Article 11.6 and 17 of the PPAs dated 7.8.2008 for recovery of unpaid dues towards fuel cost.
- Date of hearing : **29.8.2017**
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Petitioners : GMR Kamalanga Energy Limited & Another
- Respondents : Haryana Power Purchase Centre & Others.
- Parties present : Shri Amit Kapur, Advocate, GMRKEL
Shri Vishrov Mukherjee, Advocate, GMRKEL
Ms. Raveena Dhamija, Advocate, GMRKEL
Shri G. Umapathy, Advocate, HPPC
Shri Aditya Singh, Advocate, HPPC
Shri Ravi Juneja, HPPC
Shri Ravi Kishore, PTC

Record of Proceedings

Learned counsel for the petitioner submitted that the present petition has been filed for seeking recovery of an outstanding amount of Rs 130.04 crore from the respondents by way of supplementary bills as quantification of restitution for increased cost due to various Change in Law events allowed by the Commission in order dated 3.2.2016 in Petition No. 79/MP/2013. Learned counsel further submitted as under:

- (a) The Commission in said order dated 3.2.2016 had allowed the Petitioner to recover the additional cost incurred on use of coal from alternate sources due to shortage in linkage coal and had approved a formula for computing the Energy Charge Rate.
- (b) The said order has attained finality on the issue of compensation for shortfall of coal linkage is concerned. The said order further contemplates that Petitioner shall apportion the firm linkage coal as well as cost of coal from the alternate sources pro-rata as per energy scheduled to Haryana. The petitioner can procure imported, open market or tapering linkage coal in order to make up the short-fall in coal supplied under firm linkage.
- (c) The Petitioner has supplied all relevant information/ clarification sought by HPPC and has provided the audited Form-15 and auditor's report in support of the computation in the supplementary bills.



- (d) HPPC has arbitrarily and in flagrant disregard of the Commission's order dated 3.2.2016 refused to pay the bills raised by the Petitioner for the period from July, 2016 onwards. Rather than paying the dues, HPPC has claimed these amounts as part of Fuel Surcharge Adjustment.
- (e) The Petitioner is in severe financial distress on account of non-payment of outstanding dues by the respondents and is either service the interest amount to the lender nor purchase coal for supply of power. Learned counsel requested the Commission to clarify that the linkage coal is to be apportioned pro-rata for all the procurers of power from the project and to direct respondents to pay the supplementary bills raised by the Petitioner.

2. Learned counsel for HPPC submitted as under:

- (a) The Commission in order dated 3.2.2016 in Petition No. 79/MP/2013 had observed that Haryana Power Purchase Agreement (PPA) is under Fuel Supply Agreement (FSA) only. This implies that Haryana 324 MW (Ex Bus Generation) is from coal available under FSA of linkage fuel with Coal India Limited. It further implies that 60% of the coal is to be allocated to Haryana from 500 MW FSA and the rest is at the disposal of the Petitioner to adjust with other beneficiaries under PPA obligations.
- (b) As per the Commission's order, only shortfall in coal under linkage fuel is to be pass through i.e. shortfall under 500 MW of FSA with Coal India Limited, whereas, the Petitioner is not complying the directions given in the order and is misrepresenting by calculating the energy charge for balance capacity generation beyond FSA and loading the same on Haryana as shortfall in domestic fuel.
- (c) The Petitioner has wrongly claimed the shortfall in domestic coal under FSA and the calculation in this regard has been submitted based on two samples viz., taking 100% coal requirement as per FSA = 2.14 MT and calculation using 1.819 MTPA as per the order dated 3.2.2016. From the calculations submitted it is perceived that there is no shortfall in domestic coal under FSA and that the respondent is not liable to pay any compensation to the Petitioner under the shortfall in domestic coal.
- (d) HPPC has made payments for the supplementary bills raised for the period prior to July, 2016 based on certification from PTC.
- (e) The Petitioner has wrongly apportioned the coal between the Haryana Discoms, GRIDCO and Bihar Discoms.

3. In his rebuttal, learned counsel for the petitioner submitted as under:

- (a) In the approval by the Standing Linkage Committee for linkage coal (Page 31 of reply of HPPC dated 10.8.2017), status of the PPA against Sr. No. 12 has been shown as Orissa, Haryana and Bihar. Therefore, the allocation is meant for supply of power to all these States.
- (b) The computation regarding the supplementary invoices has been verified by the PTC and HPPC before the invoices were submitted.



- (c) Haryana Discoms in their petitions before HERC have claimed the amounts paid to the petitioner based on the Commission's order dated 3.2.2016 and HERC has approved the same as per fuel surcharge adjustment to be recovered from the consumers of Haryana Discoms.
- (d) Haryana discoms cannot on one hand claim amounts towards Change in Law events before HERC and recover the same from the consumers while on the other hand withhold payment of such amount payable to the petitioner.
- (e) HPPC has wrongly calculated the shortfall in linkage coal in its submissions date July, 2016 and August, 2016. The shortfall in linkage coal based on order dated 3.2.2016 and the actual coal supplied for these months is 59.42% and 53.61% respectively.
4. After hearing the learned counsel for the parties, the Commission directed the petitioner, HPPC and PTC to convene a joint meeting by 15.9.2017 to resolve the issue regarding recovery of unpaid dues towards fuel cost in terms of order dated 3.2.2016. The petitioner was directed to submit a report in this regard within two weeks thereafter.
5. The petition and IA shall be listed for hearing in due course for which intimation will be issued separately.

By order of the Commission

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

