

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 300/MP/2018

Coram:

**Shri P.K.Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 20.3.2019

In the matter of

Petition under Section 79 (1) (b) and (f) of the Electricity Act, 2003 read with Regulation 14 (3) (ii) and Regulation 8 (3) (ii) of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2014 and read with statutory framework governing procurement of power through Competitive Bidding and Article 10 and 13 of the respective Power Purchase Agreements executed between GMR Kamalanga Energy Limited and its beneficiaries, seeking compensation on account of Change in Law events impacting revenues and costs during the Operating Period.

And

In the matter of

1. GMR Kamalanga Energy Limited
Skip House, 25/1 Museum Road,
Bangalore-560 025

2. GMR Energy Limited
Skip House, 25/1 Museum Road
Bengaluru - 560025
Karnataka

....Petitioners

Vs

1. Bihar State Power (Holding) Company Ltd.
First Floor, Vidyut Bhawan,
Bailey Road, Patna - 800 001

2. Uttar Haryana Bijli Vitran Nigam Ltd.
Vidyut Sadan, Plot No.: C16, Sector-6,
Panchkula, Haryana,

3. Dakshin Haryana Bijli Vitran Nigam Ltd.
Vidyut Sadan, Vidyut Nagar,
Hisar -12500S



4. Grid Corporation of Odisha
Regd. Office, Janpath,
Bhubaneswar - 751022

5. PTC India Ltd.
2nd Floor, NBCC Tower, 15
Bhikaji Cama Place, New Delhi - 110029

... Respondents

Parties Present:

Shri Venkatesh, Advocate, GMRKEL
Shri Sandeep Rajpurohit, Advocate, GMRKEL
Shri R.B. Sharma, Advocate, BSP (H)CL
Shri M.G. Ramachandran, Advocate, Haryana Discoms
Ms. Ranjeetha Ramachandran, Advocate, Haryana Discoms
Ms. Anushree Bardhan, Advocate, Haryana Discoms

INTERIM ORDER

The Petitioner, GMR Kamalanga Energy Limited (GKEL) (Petitioner No.1) and GMR Energy Limited (GEL) (Petitioner No. 2) (hereinafter referred to as 'the Petitioners') have filed this Petition seeking relief due to 'Change in Law' events during the 'Operation period' of the project.

2. GMR Kamalanga Energy Limited was incorporated as a Public limited company under the Companies Act, 1956 as a subsidiary of GMR Energy Limited to set up a 1400 MW Thermal Power Project (hereinafter referred to as 'the Project') at village Kamalanga, District Dhenkanal in the State of Odisha. The Project comprises of two stages - the first stage having three units of 350 MW each and the second stage having one unit of 350 MW. Stage 1 of the Power Project has been accorded Mega Power Project status by the Ministry of Power, Government of India on 1.2.2012.

3. The Petitioner No.1, GMR Kamalanga Energy Limited has entered into the following long-term PPAs for supply of power from the Project:



(a) Supply of 350 MW gross power (Stage 1: 262.5 MW and Stage 2: 87.5 MW) to Grid Corporation of Odisha Limited (GRIDCO) in terms of PPA dated 28.9.2006 (as amended on 4.1.2011 with delivery point as Odisha STU interconnection point). The supply of power in terms of the GRIDCO PPA commenced from 30.4.2013.

(b) Supply of 282 MW gross power (260 MW net of auxiliary consumption) to Bihar State Electricity Board in terms of PPA dated 9.11.2011, with delivery point as the Bihar STU interconnection point. The supply of power commenced from 1.9.2014.

(c) Supply of 350 MW gross power (300 MW net of transmission losses and auxiliary consumption) to Haryana Discoms based on the competitive bidding through back to back arrangements:

(i) The PPAs dated 7.8.2008 entered into between PTC India Limited and Haryana Discoms with delivery point as Haryana STU bus bar;

(ii) Back to back PPA dated 12.3.2009 between GMR Energy Limited (holding company of GKEL) and PTC India Limited.

4. The Petitioners have submitted that the Ministry of Environment, Forests & Climate Change (MOEFCC), GOI, has notified the Environment (Protection) Amendment Rules, 2015 on 7.12.2015 ('the MOEFCC Notification') that mandatorily require all Thermal Power Projects commissioned till December, 2016 including the Project of the Petitioner, to comply with the new emission norms within a period of two years from the date of the MOEFCC Notification. The Petitioner has also submitted that in compliance with the said MOEFCC Notification, it is required to install various Emission Control Systems/Flue Gas De-sulfurization systems (ECS/FGD) at the Project. The Petitioner has further submitted that the time period for installation of ECS for compliance of the new emission norms has been extended up to 31.3.2021 vide directions dated 11.12.2017 issued by the Central Pollution Control Board. Accordingly, the Petitioner in this Petition has sought a declaration that the MOEFCC Notification dated 7.12.2015 is a Change in law event under Article 10 and Article 13 of the Bihar & Haryana PPA respectively executed



under Section 63 of the Electricity Act, 2003 (the 2003 Act) and the Tariff Regulations, 2014 in respect of the GRIDCO PPA executed under Section 62 of the said Act.

5. The Respondent No.1, Bihar State Power (Holding) Company Ltd vide its reply affidavit dated 5.1.2019 has raised the issue of 'maintainability' of the Petition on grounds namely, the (i) Jurisdiction of this Commission; and (ii) Procedure adopted by the Petitioners in filing the Petition, as stated below:

Jurisdictional Issue

6. As regards jurisdiction, the Respondent, BSPHCL has submitted that the question as to whether Section 79 or Section 64(5) of the 2003 Act would be applicable is required to be determined in the present case. It has also submitted that while the petitioner has presumed the jurisdiction of this Commission under Section 79 of the 2003 Act being a composite scheme for generation and sale of electricity in more than one State, the existence of Section 64(5) in the said Act has not been discussed. Referring to the judgment dated 11.4.2017 of the Hon'ble Supreme Court in Civil Appeal titled Energy Watchdog v CERC & ors (2017 (4) SCALE 580), the Respondent has submitted that the parties in the present case have consented to the jurisdiction of the State Commission in terms of section 64(5) of the 2003 Act. It has further submitted that the State Commission had vide its order dated 27.11.2012 in Case No. 6/2012 adopted the levellised tariff of Rs 3.69/kWh for a period of 25 years under Section 63 of the 2003 Act and also by Order dated 24.7.2014 in Case No. 14/2014 dealt with the matter pertaining to pre-ponement of supply of power from the Petitioner's generating station. Accordingly, the Respondent has submitted that the Commission may examine the issue of



jurisdiction in the light of Section 64(5) of the 2003 Act read with Article 14.1.1 of the PPA and the interpretation of the Hon'ble Supreme Court.

Procedural Issue

7. The Petitioner has further submitted that the procedural aspect to claim relief for Change in law is provided under Article 14 of the PPA under the head 'Governing law and Dispute Resolution'. Referring to Article 14.1.1 of the PPA, the Respondent has submitted that the said provision provides for the jurisdiction of the appropriate Courts in Patna, State of Bihar. The Respondent has pointed out that though the Petitioner had informed the Respondent BSPHCL of the change in law event by notice dated 10.5.2017, the said notice does not confirm if the Petitioner wishes to claim relief under change in law under Article 10 of the PPA as per requirements of Article 14 of the PPA. The Respondent has contended that the Petitioner has filed this Petition without following the prescribed procedure under Article 14 of the PPA. The Respondent has, however, submitted that 'issues on merit' may be taken up only after the question of maintainability is decided by the Commission.

8. During the hearing on 17.1.2019, the learned counsel for the Respondent, BSPHCL objected to the maintainability of the Petition and reiterated the submissions made in its reply affidavit dated 5.1.2019. In response, the learned counsel for the Petitioner submitted that in terms of the judgment of the Hon'ble Supreme Court in Energy Watchdog case, Section 64(5) can be invoked only if both parties through joint application invoke the jurisdiction of the State Commission for determination of tariff. Since the parties in the present case had not invoked the jurisdiction of the State Commission jointly, the Appropriate Commission in



this case would be the 'Central Commission' which has the jurisdiction to deal with the present petition. The Commission after hearing the parties permitted the Petitioner to file its written submissions on 'maintainability' and reserved its order in the Petition. The Commission, however, clarified that the 'issue of procedure' may be raised by the Respondent BSPHCL after a decision is taken on the issue of jurisdiction.

9. In terms of the directions of the Commission, the Petitioner on 28.1.2019 has filed its written submissions and has contended that Section 64(5) of the 2003 Act can only be invoked by an application by the parties intending to submit to the jurisdiction of the State Commission. Since neither party has jointly invoked the jurisdiction of the State Commission, the reliance on Section 64(5) by the Respondent is highly misplaced. Referring to the judgment dated 11.4.2017 of the Hon'ble Supreme Court in Energy Watchdog case, the judgment dated 31.12.2018 of the Hon'ble High Court of Judicature for the State of Telengana & AP and the judgment dated 31.10.2018 of the Appellate Tribunal for Electricity (The Tribunal) in Appeal No. 230/2017 (KSKMPCL V APERC &ors), the Petitioner has contended that the generating station has a composite scheme for generation and sale of power in more than one State and hence the Petition filed by the petitioner falls within the exclusive jurisdiction of this Commission. It has also referred to this Commission's Order dated 7.4.2017 in Petition No. 112/MP/2015 (GMRKEL V BSPHCL &ors) and Order dated 21.2.2018 in Petition No. 131/MP/2016 (GMRKEL & GEL V DHBVNL &ors) and submitted that this Commission has the jurisdiction and the issue of jurisdiction is no more *res integra* between the parties. The Petitioner has submitted that since no appeals have been filed by the Bihar Discoms, these orders have attained finality. Accordingly, the Petitioner has prayed that the



submissions of the Respondent BSPHCL may be rejected.

10. Based on the contentions and submissions of the parties, we examine the objection of the Respondent, BSPHCL with regard to 'jurisdiction' of this Commission to entertain the Petition.

Analysis & decision

11. Section 79(1)(b) and (f) of the 2003 Act provides as under:

“79 (1) The Central Commission shall discharge the following functions, namely,

(a) xxxxxx

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

Xxxxx

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration”

As per the above provision, the Central Commission has the power to adjudicate the dispute involving a generating company covered under clause (b) of sub-section (1) of Section 79 of the Act i.e. a generating company having a composite scheme for generation and sale of electricity in more than one State.

12. The Petitioners have submitted that since it is supplying power to the States of Bihar, Haryana and Odisha it has a composite scheme for generation and sale of power to more than one State and hence the Commission has the jurisdiction to adjudicate the present matter under Section 79(1)(b) read with Section 79(1)(f) of the 2003 Act. *Per contra* the Respondent, BSPHCL has submitted that the Petition is not maintainable as the parties had earlier invoked the jurisdiction of the State Commission and filed petitions namely (a) Case No. 6/2012 for adoption of tariff by the State Commission which was decided by BERC vide its order dated 27.11.2012



and (b) Case No.14/2014-for pre-ponement of supply of power from the Project which was decided by BERC vide its order dated 24.7.2014. Accordingly, the Respondent has submitted that the presumption of jurisdiction of this Commission under Section 79 of the 2003 Act by the Petitioner is not maintainable.

13. The submissions have been considered. The Petitioner has entered into separate PPAs with the discoms of the three States (Haryana, Odisha and Bihar) for supply of power at different points in time and for different quantum. The PPA with GRIDCO for supply of 262.5 MW of power was initially executed by the Petitioner on 28.9.2006. Later, revised PPA was entered into on 4.1.2011 for supply of power from Stage II of the Project having capacity of 350 MW. PTC signed agreements dated 7.8.2008 with the Haryana utilities and also signed the PPA dated 12.3.2009 with the Petitioner as a back-to-back arrangement for supply of power. On 9.11.2011, the Petitioner entered into PPA with BSEB (Bihar PPA) for supply of 282 MW gross power at Bihar STU bus-bar interconnection point. The tariff agreed to under the said PPAs have been adopted by the respective State Electricity Regulatory Commissions (SERCs). Sub-section (b) of Section 79(1) of the 2003 Act provides that the Central Commission shall regulate the tariff of generating company, if such generating company enters into or otherwise have a 'composite scheme' for generation and sale of electricity in more than one State. The Hon'ble Supreme Court vide its judgment dated 11.4.2017 in Civil Appeals titled Energy Watchdog v CERC & ors (2017 (4) SCALE 580) while upholding the jurisdiction of this Commission for regulating the tariff of projects which meet the composite scheme, has explained the term 'composite scheme' as under:

"22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the



State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub-clause(c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.

Xxxx

26. Another important facet of dealing with this argument is that the tariff policy dated 6th June, 2006 is the statutory policy which is enunciated under Section 3 of the Electricity Act. The amendment of 28th January, 2016 throws considerable light on the expression “composite scheme”, which has been defined for the first time as follows:

“5.11 (j) Composite Scheme: Sub-section (b) of Section 79(1) of the Act provides that Central Commission shall regulate the tariff of generating company, if such generating company enters into or otherwise have a composite scheme for generation and sale of electricity in more than one State.

Explanation: The composite scheme as specific under section 79(1) of the Act shall mean a scheme by a generating company for generation and sale of electricity in more than one State, having signed long-term or medium-term PPA prior to the date of commercial operation of the project (the COD of the last unit of the project will be deemed to be the date of commercial operation of the project) for sale of at least 10% of the capacity of the project to a distribution licensee outside the State in which such project is located.

27. That this definition is an important aid to the construction of Section 79(1)(b) cannot be doubted and, according to us, correctly brings out the meaning of this expression as meaning nothing more than a scheme by a generating company for generation and sale of electricity in more than one State.”

14. Thus, the Hon’ble Supreme Court while interpreting the term ‘composite scheme’ under Section 79(1)(b) of the 2003 Act held that this Commission has the jurisdiction to regulate the tariff of generating stations having a composite scheme for generation and sale of power to more than one state, whose tariff has been



adopted under Section 63 of the 2003 Act. There can be no doubt that the Petitioner has a 'composite scheme' for generation and sale of electricity in more than one State and in terms of the above decision of the Hon'ble Supreme Court, the Commission has the jurisdiction to adjudicate the dispute/ claims of the Petitioner under Section 79(1)(b) read with Section 79(1)(f) of the 2003 Act. Merely because the State Commission (BERC) had adopted the tariff under Section 63 of the 2003 Act or approved the PPA between the Petitioner and BSEB, does not mean that the jurisdiction shall lie with BERC, since the Petitioner, besides the State of Bihar, is supplying power to two other states (Odisha & Haryana) and therefore satisfy the condition of composite scheme in terms of the Section 79 (1) (b) of the Act. The jurisdiction of this Commission having been affirmed by the Hon'ble Supreme Court in its judgment dated 11.4.2017, the Petition is therefore maintainable.

15. Another contention of the Respondent, BSPHCL is that the invocation of jurisdiction of this Commission by the Petitioner is not in accordance with Section 64(5) of the 2003 Act. The Respondent has referred to the findings of the Hon'ble Supreme Court in the Energy Watchdog case judgment and has contended that since the parties have consented to the jurisdiction of the State Commission (BERC) in accordance with Section 64(5) of the 2003 Act, the State Commission only has jurisdiction in the matter. *Per contra* the Petitioner has contended that the parties had not jointly approached the BERC for change in law petition. The Petitioner has argued that Section 64(5) of the 2003 Act is applicable only with respect to tariff determination under Section 62 and not for competitively bid tariff under Section 63 of the 2003 Act.



16. Section 64(5) of the 2003 Act provides as under:

“64(5) Notwithstanding anything contained in Part X, the tariff for any inter-state supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor”.

17. This provision clarifies that the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity shall be the Appropriate Commission based on the application of the parties concerned even in cases involving inter-State supply. The Hon’ble Supreme Court in Energy Watchdog case while analyzing the expression ‘composite scheme’ under Section 79(1)(b) had also examined the Section 64(5) of the 2003 Act and upheld the jurisdiction of this Commission vide its judgment dated 11.4.2017. The relevant portion of the judgment is extracted as under:

“Section 64(5) has been relied upon by the Appellant as an indicator that the State Commission has jurisdiction even in cases where tariff for inter-State supply is involved. This provision begins with a non-obstante clause which would indicate that in all cases involving inter- State supply, transmission, or wheeling of electricity, the Central Commission alone has jurisdiction. In fact this further supports the case of the Respondents. Section 64(5) can only apply if, the jurisdiction otherwise being with the Central Commission alone, by application of the parties concerned, jurisdiction is to be given to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. We, therefore, hold that the Central Commission had the necessary jurisdiction to embark upon the issues raised in the present cases.”

18. In our view, the findings of the Hon’ble Supreme Court on Section 64(5) do not in any manner support the argument of the Respondent, BSPHCL that the State Commission (BERC) will have jurisdiction in matters relating to inter-State supply of power. The Hon’ble Supreme Court in the judgment has observed that the non-obstante clause in Section 64(5) clearly indicates that in case of inter-State supply, transmission and wheeling, the Central Commission alone has the jurisdiction. Notwithstanding the jurisdiction being with Central Commission, by application of



the parties concerned, the jurisdiction can be given under Section 64(5) to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. '*By application of the parties concerned*' would mean the parties to the inter-State supply in terms of Section 64(5) of the Act i.e. parties to the inter-State supply involving territories of two States. Further, the submission of the Respondent, BSPHCL that the parties had invoked the jurisdiction of the State Commission and hence the jurisdiction of the Central Commission is not in conformity with Section 64(5) is arbitrary and untenable. It is noticed that the Bihar State Power Companies had invoked the jurisdiction of the State Commission (BERC) and had filed Case No 6/2012 for adoption of tariff and Case No. 14/2014 for pre-ponement of supply of 260 MW power from the Project. By no stretch of imagination can these petitions be construed as a joint application by the parties invoking the jurisdiction of the State Commission under Section 64(5). Moreover, the issue of jurisdiction was neither raised by the said parties nor was decided by the State Commission in those petitions. In our considered view, Section 64(5) has no application in cases of tariff discovered under the competitive bidding process and adopted by the Commission under Section 63 of the 2003 Act. In the light of the judgment of the Hon'ble Supreme Court as quoted above, we reject the contentions of the Respondent, BSPHCL and hold that the Petition is maintainable.

19. On more contention of the Respondent, BSPHCL is that in terms of Article 14.1.1 of the PPA, any legal proceedings in respect of any matters, claims or disputes under the PPA shall be under the jurisdiction of the appropriate Courts in Patna, Bihar State. Article 14.1.1 of the PPA provides as under:



“This agreement shall be governed by and construed in accordance with the Laws in India. Any legal proceedings in respect of any matters, claims or disputes under the PPA shall be under the jurisdiction of the appropriate Courts in Patna, Bihar State”

20. It is however noticed that Article 14.3.1 provides for ‘Dispute Resolution by the Appropriate Commission’. Article 14.3.1.1 provides for the following:

“(a) Where CERC is the Appropriate Commission, any dispute arising from a claim made by any party for any change in or determination of tariff or any matter related to tariff or claims made by any party which partly or wholly relate to any change in the tariff or determination of any such claims could result in change in tariff, shall be submitted to adjudication by the Appropriate Commission.

(a) Where SERC is the Appropriate Commission, all disputes between the Procurer and the Seller shall be referred to SERC”

21. As stated, the generating station of the Petitioner has a composite scheme for supply of power in more than one State and in terms of Section 79(1)(b) of the 2003 Act, only the Central Commission has the jurisdiction. Hence, the ‘Appropriate Commission’ in terms of Article 14.3.1.1(a) of the PPA shall be the Central Commission to exclusively deal with and adjudicate any of the disputes/ claims raised by the Petitioner under the Bihar PPA dated 9.1.2011 in terms of Section 79(1)(f) of the 2003 Act and the State Commission (BERC) will not have any jurisdiction in the matter. The contention of the Respondent, BSPHCL is therefore rejected.

22. It is pertinent to note that the question as to (a) whether the supply of power by the Petitioners to the three states (Odisha, Haryana and Bihar) is under the composite scheme for generation and supply in more than one state and (b) whether this Commission has the jurisdiction to regulate the tariff of the generating station of the Petitioner under Section 79(1)(b) of the 2003 Act had been a subject matter for consideration of this Commission in various proceedings as narrated in the subsequent paragraphs and the Commission in its orders had



decided the jurisdiction in its favour, which had been affirmed by the higher courts.

(a) Petition Nos 79/MP/2013 & 81/MP/2013 were filed by the Petitioners before this Commission seeking compensation due to Force Majeure events and Change in law events in respect of Haryana PPAs dated 7.8.2009/12.3.2009 during the Operating period and Construction period respectively. By Order dated **16.12.2013**, the Commission decided the issue of jurisdiction in its favour as under:

“33. To sum up, it is held that supply of electricity by the petitioner to the States of Odisha, Haryana and Bihar is under the composite scheme for generation and sale of electricity in more than one State. Accordingly, this Commission has power to regulate the tariff of the generating station of the petitioner under clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003. As a corollary it follows that the powers of adjudication of the claims and disputes involving force majeure and Change in Law events under the PPAs is vested in this Commission.

34. In view of the above discussion, the petitions are maintainable”

(b) In Petition No. 77/GT/2013 filed by the Petitioner No.1 before this Commission for determination of tariff under Section 62 of the 2003 Act, in respect of supply of 262.5 MW (25% of 1050 MW) power to Respondent, GRIDCO for the period from 1.4.2013 to 31.3.2014, the issue of jurisdiction of the Central Commission was raised by GRIDCO. The Commission by interim order dated **3.1.2014** upheld the jurisdiction of the Commission as under:

“9. In view of the above findings, the present petition for determination of final tariff is amenable to the jurisdiction of the Commission and as such the petition is maintainable. The petition shall be taken up for hearing on 11.3.2014.....”

(c) Against the Commission’s orders dated 16.12.2013 and 3.1.2014 as above, the Respondents Haryana discoms and GRIDCO filed Appeal No. 44/2014 and Appeal No. 74/2014 respectively before the Tribunal on the issue of jurisdiction of the Commission. These appeals were clubbed by the Tribunal and vide judgment dated **7.4.2016** upheld the jurisdiction of the Central Commission as under:

“120. We have already answered Issue No.3 in the affirmative and held that supply of power to more than one State from the same generating station of a generating company ipso facto, qualifies as a “Composite Scheme” to attract the jurisdiction of the Central Commission under Section 79 of the said Act. It is an admitted position that both GMR Energy and Adani Power are selling electricity in more than one State from their respective generating stations. Hence, we hold that so far as Adani Power and GMR Energy are concerned, there exists a ‘Composite Scheme’ for generation and sale of electricity in more than one State by a generating station of a generating company within the



meaning of Section 79(1)(b) of the said Act for the Central Commission to exercise jurisdiction. Issue No.4 is accordingly answered in the affirmative.”

(d) The Petitioners filed Petition No.112/MP/2015 before this Commission claiming compensation due to Change in law impacting revenues and costs during the operating period in terms of the Bihar PPA. The Commission by order dated 7.4.2017 upheld the jurisdiction of the Commission as follows:

“.....In the light of the judgment of the Appellate Tribunal, we reiterate that this Commission has the jurisdiction to regulate the tariff of the power project of the Petitioners. It is pertinent to mention that GRIDCO and Haryana Utilities have filed Civil Appeal before the Supreme Court challenging the jurisdiction of the Commission to regulate the tariff of the Petitioners. Therefore, our decision in this order shall be subject to the final outcome of the Civil Appeals on the issue of jurisdiction.”

(e) The utilities of Haryana and GRIDCO filed Civil Appeals before the Hon’ble Supreme Court (Energy Watchdog V CERC & ors) and the Hon’ble Court vide its judgment dated 11.4.2017 upheld the jurisdiction of the Central Commission (as quoted in para 13 above).

(f) Appeal No. 45/2016 was filed by GRIDCO before the Tribunal challenging the Commission’s tariff order dated 12.11.2015 (in Petition No. 77/GT/2013) on various grounds, including the jurisdiction of this Commission. The Tribunal vide its judgment dated 1.8.2017 upheld the jurisdiction of this Commission as under:

“13.(b) On Question No. 6 (a) i.e. Whether the Central Commission had the jurisdiction to entertain a petition for determination of Tariff under Section 79(1) (b) of the Electricity Act in the present case?, we observe that the Appellant has submitted that on this issue the Appellant had filed Appeal No. 74 of 2014 before this Tribunal. This Tribunal has upheld the jurisdiction of the Central Commission under Section 79 (1) (b) of the Electricity Act, 2003 for determination of tariff of the Station of Respondent No. 1. Further, the Appellant filed Appeal No. 5415 of 2016 before the Hon’ble Supreme Court against the judgement of this Tribunal. The Hon’ble Supreme Court vide judgment dated 11.4.2017 in the said Appeal also upheld the jurisdiction of the Central Commission for determination of tariff of the Station of Respondent No. 1. Accordingly, this issue is decided against the Appellant”

23. As rightly pointed out by the Petitioners, it is evident from the orders of the Commission, the judgments of the Tribunal and the Hon’ble Supreme Court that the issue of jurisdiction of this Commission is no more *res integra* between the parties who have executed the PPAs with the Petitioner for supply of power. The Respondent, Bihar State Power Companies having been party respondents in the



said proceedings before this Commission were at liberty to challenge the findings of this Commission on jurisdiction before the superior courts, in case it was aggrieved, but had chosen not to do so. Thus, the jurisdiction over the Project of the Petitioner has been settled in favour of this Commission in terms of the above orders/judgments. This cannot be unsettled by the Respondent, BSPHCL by once again raising the issue of jurisdiction of this Commission, on extraneous grounds. In the light of the above discussions, we hold that this Commission has the jurisdiction to regulate the tariff of the Project of the Petitioner under Section 79 (1) (b) of the 2003 Act and to adjudicate the disputes raised by the Petitioner in this Petition, in terms of Section 79 (1) (f) of the 2003 Act.

24. Having rejected the objections of the Respondent, BSPHCL as above and held that the Petition is maintainable, we 'admit' the Petition and direct the matter to be heard on merits. Accordingly, we direct the Respondents to file their replies, on merits, on or before 10.4.2019, with copy to the Petitioners, who shall file its rejoinder, if any, by 20.4.2019. Petition shall be listed for hearing in due course for which separate notices shall be issued to the parties.

Sd/-
(Dr. M.K.Iyer)
Member

Sd/-
(P. K. Pujari)
Chairperson

