

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 463/MP/2014
along with IA No. 40/2019**

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 for a direction to the Respondents to pay additional fixed charge of Rs.0.439/KWH for the balance period of PPA (Interlocutory Application for bringing on record additional documents).

Petitioner : GMR Vemagiri Power Generation Limited

Respondents : APEDCL & ors.

OP No. 70/2012

Subject : Petition for proposed amendments of GMR Vemagiri Power Generation Limited as per the APERC orders dated 5.12.2009 to the amended Agreement to the Power Purchase Agreement dated 2.5.2007 and 18.6.2003 and request for consent filed along with annexures and order passed by APERC dt 30.12.2006 in OP No.19 of 2006.

Petitioners : APEDCL & ors.

Respondent : GMR Vemagiri Power Generation Limited

OP No. 71/2012

Subject : Petition under Section 86(1)(b) of the Electricity Act, 2003 seeking consent of the Commission.

Petitioner : GMR Vemagiri Power Generation Limited

Respondents : APEDCL & ors.

OP No. 72/2012

Subject : Petition under Section 86 (1) (f) of the Electricity Act 2003 for a direction to the respondents to pay additional fixed charges of Rs. 0.439 Ps/KWH for the balance period of the PPA.

Petitioner : GMR Vemagiri Power Generation Limited

Respondents : APEDCL & ors.

Date of Hearing: **25.8.2022**

Coram : Shri I.S Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties present: Ms. Divya Chaturvedi, Advocate, GVPGL
Shri Sharansh Shaw, Advocate, GVPGL



Shri Ashwani Kumar Maini, GVPGL
Shri Sandeep Rajpurohit, GVPGL
Shri Basava P. Patil, Senior Advocate, Telangana Discoms
Shri Anand K. Ganesan, Advocate, Telangana Discoms
Ms. Swapna Seshadri, Advocate, Telangana Discoms
Shri Jai Dhanani, Advocate, Telangana Discoms
Ms. Ashabari Basu, Advocate, Telangana Discoms
Shri Geet Ahuja, Advocate, Telangana Discoms
Shri Sidhant Kumar, Advocate, AP Discoms
Ms. Manyaa Chandok, Advocate, AP Discoms

Record of Proceedings

These Petitions were called out for virtual hearing, as the issues involved in therein, are interdependent.

Petition No. 463/MP/2014

2. During the hearing, the learned Senior counsel for the Respondent, Telangana Discoms referred to its written submissions and made detailed oral submissions on the background of the matter. He also submitted that the present petition is not maintainable for the following reasons:

- (a) The petition is barred by the principle of *res judicata*, as the prayers (2) and (3) claimed by the Petitioner, in the petition, were already rejected by APERC in its order dated 27.8.2012 in O.P No. 72 of 2012 and the same had attained finality;
- (b) The claim of the Petitioner for Rs. 447 crore relates to the period from 16.9.2006 till 10.4.2009. The Petitioner had approached the APERC only on 9.4.2012. Therefore, the claim could be considered only if it falls within the period of limitation of 3 years prior to 9.4.2012, perhaps only for one day i.e. 10.4.2009;
- (c) The quantification of the amount of Rs 447 crores by the Petitioner, without the said quantum itself not being pressed for adjudication is misconceived and is therefore liable to be rejected;
- (d) The claim for Rs 275 crores up to March, 2008 was already taken into account while extending the term of the PPA for 8 more years, by the Amendment Agreement dated 02.05.2007;
- (e) An amount of Rs.115 crores received by the Petitioner towards capacity charges during the operation of the plant from 7.2.2008 to 22.4.2009, when the plant was operated by diversion of natural gas from the generating station of LANCO Kondapalli has not been adjusted by the Petitioner; In addition, the Petitioner also earned Rs. 16.08 crores from sale of excess energy of 17.625 MW during the period in issue, which has also not been considered;



(f) The claim for increase in fixed charges by Rs.0.439/kwh is misconceived and contrary to the terms of the PPA. The Article 5.2A of the PPA provides for the right to the Petitioner to claim loss of capacity charges beyond 1st April 2008, till the time the availability of natural gas does not reach 1.64 MMSCMD for one month, while also providing a manner in which the said loss can be recovered by the Petitioner, which is only by way of extension of the term of the PPA beyond 23 years. There is no scope for the tariff to be increased or varied.

(g) The contention of the Petitioner, by way of oral arguments, that the amount of Rs 447 crores needs to be paid directly by the Respondents and not by way of increase in fixed charges, is grossly misconceived.

(h) The oral argument of the Petitioner seeking interest is also grossly misconceived. The question of interest does not arise, wherein, the principal amount itself is not payable.

(i) O.P. No. 71 of 2012 filed by the Petitioner seeking grant of consent for amendments with the PPA was also admitted by APERC only to the limited extent of ascertaining the losses of the company, and not on the issue of considering the approval of the PPA Amendments itself. Similarly, O.P. No. 70 of 2012 filed by the Respondents was also admitted by APERC only to this limited extent and not for considering the proposals for amendments the PPA. As per APERC order, the parties had not reached any consensus on the PPA itself and there were differences between the parties on crucial aspects of the PPA.

3. The learned counsel for the Respondent AP discoms adopted the submissions of the Respondent Telengana Discoms.

4. In response, the learned counsel for the Petitioner submitted that the Petitioner may be granted three weeks' time to place on record, its response, to the fresh averments made by the Respondents in their written submissions. The request was accepted by the Commission.

5. Accordingly, the Petitioner is permitted to file its response to the written submissions of the Respondents, by **23.9.2022**, with copy to the Respondents.

O.P. No. 70/2012

6. The learned Senior counsel for the Respondent Telangana Discoms submitted that since the issues raised by the Respondents in this petition filed by them, is covered in O.P No.71/2012, the Respondents do not press for any relief in this petition.

7. Accordingly, O.P No. 70/2012 stands disposed of in terms of the above.

O.P. No. 71/2012 and O.P No. 72/2012

8. At the outset, the learned counsel for the Respondent Telangana Discoms submitted that in case the Petitioners are permitted to file their submissions in the matter, the Respondents may also be granted time to furnish their response to the same. The learned counsel for the Petitioner sought time to file its submissions, in these petitions.



9. The Commission after hearing the parties, permitted the Petitioner to file its written submissions, in these petitions, by **23.9.2022**, after serving copy to the Respondents, who may file their response, by **10.10.2022**. In case any fresh averments are made by the Respondents, the Petitioner is at liberty to file its response to the same, by **17.10.2022**.

10. Subject to the above, order in Petition No. 463/MP/2014, O.P.No.71/2012 and O.P. No. 72/2012 were reserved.

By order of the Commission

Sd/-
(B. Sreekumar)
Joint Chief (Law)

