

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.159/MP/2012

In the matter of:

Petition under Section 79 of the Electricity Act, 2003 evolving a mechanism for Regulating including changing and-or revising tariff on account of frustration and-or of occurrence of force majeure (Article 12) and-or change in law (article 13) events under the PPAs due to change in circumstances for the allotment of domestic coal by GOI-CIL and enactment of new coal pricing Regulation by Indonesian Government.

Coram: Shri Gireesh B. Pradhan, Chairperson
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member
Shri A.K. Singhal, Member

Date of Hearing: 13.11.2013

Petitioner : Coastal Gujarat Power Limited

Respondents: Gujarat UrjaVikas Nigam Limited and Others.

Parties present: Shri Amit Kapur, Advocate for the petitioner
Shri Apoorva Misra, Advocate for the petitioner
Shri Abhishek Munot, Advocate for the petitioner
Shri Bijay Mohanty, CGPL
Shri Arun Srivastava, CGPL
Shri S.Chawla, CGPL
Shri B.K.Mohanty, CGPL
Shri Arun Srivastava, CGPL
Shri Asim Thakurta, CGPL
Shri M.G Ramchandran, Advocate for Gujarat, Rajasthan and Haryana
Shri Poorva Saighal, Advocate
Shri Samir Malik, Advocate, MSEDCL
Ms Swapna Seshadri, Advocate, PSPCL
Shri Padamjit Singh, PSPCL
Shri S.K.Kansal, PSPCL
Shri Salim Inamdar, Advocate for Mr.PushpendraSurana

Record of Proceedings

Learned counsel for MSEDCL filed its affidavit stating that it has not received comments from the State of Maharashtra and requested the Commission to grant additional time of 30 days to place on record its response/objections/comments on the Committee Report. After hearing learned counsel of MSEDCL, the Commission observed that time period of 4 weeks were given to all the respondents including MSEDCL in the ROP for 13.9.2013 to submit comments on the Committee Report. The Commission further observed that 8 weeks have expired and no comments have been received from MSEDCL. The Commission directed MSEDCL to file its reply to the Committee Report within two weeks with an advance copy to the petitioner, who may file its rejoinder if any, within one week from the receipt of the copy of the reply from MSEDCL.

2. Learned counsel for the Rajasthan, Haryana and GUVNL handed over additional written submissions on the scope of the compensatory tariff and submitted that 100% of the mining profits earned by Tata Power, holding company of the petitioner, should be shared with the procurers to reduce the burden of compensatory tariff. He further submitted that Assignment and Restatement Agreement dated 28.3.2011 has been executed after the Indonesian Regulations were promulgated and therefore, the petitioner should not get compensatory tariff for the quantum of coal covered under the Assignment and Restatement Agreement dated 28.3.2011. Learned counsel further submitted that the petitioner has stated in its Petition and subsequent affidavits that it is in a position to absorb escalation of upto 10.46% and therefore no compensatory tariff should be granted for escalation upto 10.46% in the price of coal. He further submitted that the compensation so worked out needs to be adjusted further by atleast 13 paise per unit as offered by the petitioner as reduction in Return on Equity to reduce the quantum of compensatory tariff.

3. Learned counsel for the petitioner commenced his submissions by explaining the difference in the present case and that of Adani. With regard to Rajasthan, Haryana and GUVNL submissions relating to mining profits, learned counsel for the petitioner submitted that this Commission has, in para 86 (a) of its order dated 15.4.2013, clearly held that the net profits have to be pro-rata corresponding to the quantity of coal supplied by the mining companies to the petitioner for its power plant situated at Mundra UMPP. Therefore, the argument of learned counsel regarding sharing of 100% of profit is contrary to the final order dated 15.4.2013 of this Commission.

4. With regard to Assignment and Restatement Agreement, learned counsel for the petitioner submitted that this was also previously raised by the respondents during the hearing prior to the final order dated 15.4.2013 and this Commission has clearly stated that the Assignment and Restatement Agreement was a mere ratification of the previous coal supply agreement (i.e. the coal supply agreement executed prior to the promulgation of the Indonesian Regulations) for allocation of specified quantity of coal by Tata Power to CGPL and the Indonesia was still

cheapest source of coal compared to other sources of coal in the international market.

5. With regard to learned counsel for Rajasthan, Haryana and GUVNL submissions regarding the ability of the petitioner to absorb escalation upto 10.46%, learned counsel for the petitioner read out the relevant paragraph of the petition, affidavits filed by the petitioner and the findings arrived at by this Commission in its final order dated 15.4.2013 and clarified that the said statement has to be read in reference with the working provided in the table below. From the bare reading, it is clear that the statement refers to the sensitivity analysis done at the time of preparing the bid and it clearly states that the escalation is only upto 7% and the historical escalation of 3.46% is subsumed in escalation of 7%. Learned counsel for the petitioner further submitted that the recommendations made in the Committee Report are merely recommendations made for this Commission to consider and are not binding on the Commission. However, the final order dated 15.4.2013 of this Commission has attained finality and cannot be modified or changed under the present proceedings. He further submitted that this Commission has to read the recommendations of the Committee in light of its order dated 15.4.2013 and use its independent mind and thereafter pass a final order with respect to the payment of compensatory tariff.

6. During the hearing, the Commission desired a confirmation as to whether the revised technical parameters considered by the Committee in its Report are in conformity with the CEA Technical Standards to ensure the reliability and availability of the power station. In response, learned counsel for the petitioner submitted that the petitioner will provide the necessary details as desired by this Commission. Learned counsel further suggested that the Commission may consider calling SBI Caps (Financial Consultants to the Committee) and the Technical Consultant to the Committee to clarify any query which the Commission may have with regard to the financial and technical aspects of the report.

7. After hearing, learned counsels for the parties present the Commission directed as under :

- (a) Learned counsel for the applicant for impleadment shall file his written submissions by 18.11.2013.
- (b) MSEDCL shall file its reply within two weeks and the petitioner shall file its rejoinder with one week thereafter.
- (c) The petitioner and the respondents shall file their written submissions within two weeks from 13.11.2013.

(d) The petitioner shall file an affidavit with following details/clarification within two weeks:

(i) Whether the plant and equipments comply with the CEA Technical Standard for Construction of Electrical Plants and Electric Lines Regulations, 2010.

(ii) Whether the coal procured/ received on the basis of 30% share of Tata Power in the Indonesian mining company is sufficient to generate 80% of the contracted capacity. Annual production of coal in the years 2011-12 and 2012-13 and the actual coal received from the Indonesian mines against the 30% share in the equity of the company.

(iii) Invoices of coal received and used in the generating station from the date of COD of first unit duly signed by statutory auditor.

(iv) Copy of coal stock ledger or Price Stores Ledger (PSL)/log book register of the generating station giving quantity of coal received and fired since COD of first unit along with other coal parameters.

(v) Share Holder Agreement of the petitioner with the coal company in Indonesia.

8. Subject to above, the Commission reserved order in the petition.

By order of the Commission

Sd/-

**(T. Rout)
Chief (Law)**