

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 157/MP/2015

Subject : Petition under section 79 (1) (b) of the Electricity Act, 2003 read with Article 13.2(b) of the Power Purchase Agreement dated 22.4.2007(as amended from time to time) seeking adjustment of tariff for increase/ decrease in revenue/costs of Coastal Gujarat Power Limited due to Change in law during the operation period for the financial year 2011-12, 2012-13 and 2013-14.

Date of hearing : 15.10.2015

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

Petitioner : Coastal Gujarat Power Limited

Respondents : Gujarat Urja Vikas Nigam Limited and others

Parties present : Shri Amit Kapoor, Advocate, CGPL
Shri Kunal Kaur, Advocate, CGPL
Ms. Apoorva Mishra, Advocate, CGPL
Shri Bijay Mohanty, CGPL
Shri Anirban Das, CGPL
Shri M.G. Ramachandran, Advocate, GUVNL and Rajasthan
Shri Ranjitha Ramachandran, Advocate, GUVNL and Rajasthan
Ms. Superna Seshadri, Advocate, PSPCL

Record of Proceedings

Learned counsel for GUVNL and Rajasthan submitted as under:

(a) The Hon`ble High Court of Gujarat vide its judgment dated 21.1.2013 has set aside the levy of Green Cess imposed under the Gujarat Green Cess Act, 2011. Aggrieved the said judgment, GUVNL has filed a special Leave Petition before the Hon`ble Supreme Court which has been admitted for hearing. Therefore, the petitioner is not entitled to claim any adjustment for the Green Cess Levy at present.

(b) Condition imposed by Ministry of Environment and Forests for implementation of Corporation Social Responsibility (CSR) is not under change in law. There was a necessity to take an environment clearance at the time of submission of the bid. The environment authority was entitled to impose condition as considered appropriate for grant of the environment clearance. Therefore, it is not a part of cost/ revenue of generation of electricity.

(c) If the petitioner had not gone for enhancement in the generation capacity of the Mundra UMPP from 4000 MW to 4150 MW, there would not have been any requirement of CSR. CSR activities are not imposed by any law, but it is a condition in the environment approval for enhancing the capacity.

(d) There cannot be any increase due to increase in auxiliary consumption. Therefore, the increase in auxiliary consumption or expenditure of CSR of Rs. 72 crore or onetime payment of 14.4 crore are all related to capacity increase from 4000 MW to 4150 MW and no benefit has been given by the petitioner to the beneficiaries with such increase.

2. Learned counsel for PSPCL submitted that the petitioner is required to clarify as to how the amount claimed on account of increase in Gujarat Value Added Tax for Financial Year 2012-13 is ₹ 1.2 crore and for Financial Year 2013-14 is only ₹ 27 lakh. The petitioner has not submitted the correct calculations of the amounts to be passed on the beneficiaries. Learned counsel for PSPCL further submitted that the amount claimed should be on the basis of normative value because the petitioner has incurred much more during the stabilization period. Therefore, the burden should not be passed to end consumer.

3. Learned counsel for the petitioner submitted as under:

(a) With regard to item 1 to 6 i.e. levy of clean energy cess, change in basic custom duty, excise duty, change in central sales tax, change in Gujarat Value Added Tax and increase in rate of service tax, the only issue remaining is the quantification.

(b) The additional condition imposed by the Ministry of Environment and Forest vide letter dated 26.4.2011 is not in any manner linked to increase in generation capacity of the project from 4000 MW to 4150 MW. The increase in generation capacity is without any additional impact on environment and increase in net generation capacity. The additional power generated is consumed by auxiliaries. The additional condition is applicable on the entire project and its entire generation capacity. The enhancement in capacity has come due to change in boilers capacity of each unit and there is enhancement in auxiliary consumption as well. There is no change in contracted capacity.

(c) An amount of ₹ 72 crore was earmarked as one time capital cost for CSR programme and subsequently, ₹ 14.4 crore as a recurring expenditure was also earmarked for CSR activities.

(d) Gujarat Value Added Tax is not on normative but on actual. The petitioner's claim on account of increase in Service tax is based in prudently incurred expenditure.

4. After hearing the learned counsel for the parties, the Commission reserved the order in the petition.

By order of the Commission

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