

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.189/MP/2016

Subject : Petition under Section 79(1) (b) and (f) of the Electricity Act, 2003 read with Article 10 of the PPAs dated 29.6.2012 and 23.8.2013 for seeking recovery of Additional Expenditure incurred due to the occurrence of various Change in Law events.

Petitioner : Jindal Power Limited

Respondent : Tamil Nadu Generation and Distribution Corporation Limited

Date of hearing : 28.8.2017

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

Parties present : Shri Venkatesh, Advocate, JPL
Shri Pratyush Singh, Advocate, JPL
Shri Shreshth Sharma, Advocate, JPL
Shri Siddharth Barik, JPL
Shri G. Umapathy, Advocate, TANGEDCO
Shri S. Vallinayagam, Advocate, TANGEDCO
Ms. M. Hemlata, TANGEDCO
Shri M.G. Ramachandran, Advocate, Prayas
Ms. Anushree Bardhan, Advocate, Prayas

Record of Proceedings

At the outset, learned counsel for the Petitioner submitted that the present petition has been filed under Section 79(1) (b) and (f) of the Electricity Act, 2003 read with Article 10 of the PPAs dated 29.6.2012 and 23.8.2013 for seeking recovery of additional expenditure incurred due to the occurrence of various Change in Law events. Learned counsel for the Petitioner further submitted as under:

(a) The Petitioner entered into a Medium term PPA with TANGEDCO on 29.6.2012 for supply of 200 MW power for the period 1.9.2012 to 31.8.2017. Subsequently, on 23.8.2013, the Petitioner entered into a Long term PPA with TANGEDCO for supply of 400 MW power for the period 1.2.2014 to 30.9.2028.

(b) The Commission vide its various orders has allowed Clean Energy Cess, Electricity Duty on auxiliary power consumption and Rate of Royalty payable on coal as change in law events.

(c) At the time of 'Cut-off date', the environment cess and development cess under Chhattisgarh Paryavaran Evam Vikas Upkar was Rs. 5/ton which was

subsequently increased to Rs.7.50/ton vide notification dated 16.6.2015 under Section 8 of Chhattisgarh Adhosanrachna Vikas Evam Paryavaran Upkar Adhiniyam, 2005.

(d) The Hon'ble Appellate Tribunal for Electricity vide its judgement dated 19.4.2017 in Appeal No. 161 of 2015 in *Sasan Power Limited V. CERC & Others* has allowed the Excise Duty, Entry Tax and Value Added Tax (VAT) as Change in Law events.

(e) With regard to Forest Tax, the Forest Department, Chhattisgarh State Government vide letter dated 31.10.2012 conveyed that levy of forest tax @Rs.7/ton under Chhattisgarh Transit (Forest Produce Rule) 2001 would be leviable on coal, mined and transported from South Eastern Coalfields Limited (SECL) mines located in forest area w.e.f. 1.11.2012 which was subsequently revised by SECL vide its Notification dated 16.9.2015 from Rs7/ton to Rs.15/ton w.e.f. 1.7.2015. As per Article 10.1.1 of PPA dated 29.6.2012, "Change in Law" means the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal in India, of any law, including rules and regulations framed pursuant to such law. Therefore, levy of Forest tax squarely falls under Article 10.1.1 as it has been levied through the notification.

(f) With regard to Service tax, under long-term PPA, at the time of 'Cut-off date', Service Tax was levied @ 12.36%. On 1.6.2015, the Ministry of Finance increased the Service Tax to 14% which was subsequently, increased to 14.50% by the Central Government after the inclusion of Swatch Bharat Cess vide Notification dated 6.11.2015. On 1.6.2016, Swatch Bharat Cess has been removed and the Central Government vide its Notification dated 26.5.2016 has introduced 1% of the Krishi Kalyan Cess making the applicable Service Tax to be 15%. However, Service Tax is not a part of Medium-term PPA.

2. On a specific query of the Commission as to why the Service Tax is not a part of Medium-term PPA, learned counsel for the Petitioner sought permission to file its submission in this regard which was allowed by the Commission.

3. Learned counsel for TANGEDCO submitted that Schedule 4 and Schedule 6 of the PPA dated 29.6.2012 provides for the Escalation Index specified by the Commission. Learned counsel for TANGEDCO further submitted that under long-term PPA, the variable cost and fixed cost was Rs.0.525/- and Rs.2.57/- respectively. In May 2014, variable cost was increased to Rs.1.310/-. However, fixed cost remained the same. Learned counsel for TANGEDCO submitted that he will file submission in this regard. Learned counsel for TANGEDCO further submitted as under:

(a) TANGEDCO was paying Rs.4.89/- to the Petitioner including variable and fixed cost under Medium-term PPA. Tamilnadu Electricity Regulatory Commission (TNERC) vide its order dated 31.7.2017 extended the Medium-term PPA with Jindal Power Limited and Adani Enterprises Limited for the period of two years i.e. from 1.9.2017 to 31.8.2019 at a revised rate of Rs.3.50/kwh at injection point comprising of non-escalable capacity charges i.e. Rs.1.50/kwh and escalable energy charges i.e. Rs.2.00/kwh.

(b) The Petitioner is supplying power to the State of Kerala from the same generating plant on the basis of Design, Build, Finance, Own and Operate (DBFOO) model at the escalation rate of Rs.3.84/kwh.

(c) As per the escalation index of the Commission, the Petitioner is receiving Rs.0.31 paise more since last four years. Therefore, no loss has been occurred to the Petitioner.

3. Learned counsel appearing on behalf of Prayas submitted that certain claims have already been decided by the Commission. Learned counsel for Prayas further submitted that change in rate of tax is a Change in Law event but change in assessable value is not a change in law. Therefore, it is not allowed.

4. After hearing the learned counsels for the parties, the Commission directed the TANGEDCO and Prayas to file their submissions/ written submissions by 15.9.2017 with an advance copy to the Petitioner, who may file its response, if any, on or before 29.9.2017. The Commission directed that due date of filing the submission and response should be strictly complied with. No extension shall be granted on that account.

5. Subject to the above, the Commission reserved order in the Petition.

By order of the Commission

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