

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 179/MP/2019

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 13 of the Power Purchase Agreement dated 22.4.2007 seeking appropriate directions from this Commission for adequately compensating Coastal Gujarat Power Limited (by adjustment in tariff or by prescribing any other appropriate compensatory mechanism) on account of increased transportation cost of fuel due to occurrence of Change in Law events.

Petitioner : Coastal Gujarat Power Limited

Respondents : Gujarat Urja Vikas Nigam Limited and Onr.

Date of Hearing : 29.8.2019

Coram : Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member
Shri I. S. Jha, Member

Parties Present : Shri Amit Kapur, Advocate, CGPL
Shri Tushar Nagar, Advocate, CGPL
Shri Samikrith Rao, Advocate, CGPL
Shri Shubham Arya, Advocate, PSPCL
Ms. Poorva Saigal, Advocate, Haryana Discoms
Ms. Tanya Sareen, Advocate, GUVNL
Shri Anirban Das, Tata Power
Ms. Nandita Singh, Tata Power

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed seeking, *inter alia*, declaration that the Engineering Circular Nos. 1 of 2012 dated 30.1.2012 and 5 of 2018 dated 14.12.2018 issued by the Ministry of Shipping, Government of India leading to increased transportation cost of fuel and impacting revenue and/or costs of the Petitioner during the Operation Period are Change in Law events in terms of the PPA. Learned counsel submitted that India, being signatory to International Maritime Organization (IMO) Convention, has acceded to and ratified the Maritime Pollution (MARPOL) Convention and it has become binding obligation under the Articles 51(c) and 253 of the Constitution of India to implement the MARPOL convention. Annexure VI to the MARPOL Convention, which pertains to regulations for the prevention of air pollution from ships, was revised on 1.7.2010 and significantly strengthened requirements from the original Annexure. Regulation



14.1.3 of this Annexure provides that the sulphur content of any fuel oil used on board ships shall not exceed 0.50% m/mm on and after 1.1.2020. This Annexure VI was notified and accepted by India on 23.11.2011 and enforced with effect from 23.2.2012. As per the above Circulars, on and after 1.1.2020, all the ships coming into India are mandated by law to utilise fuel oil with a sulphur content not exceeding 0.50% m/m and the same will lead to an adverse financial impact on the Petitioner's transportation cost of fuel which is being shipped from Indonesia. Learned counsel further submitted that as on cut-off date i.e. 30.11.2006, there was no restriction on sulphur content in fuel used on board ships and the Circulars issued by the Ministry of Shipping, Government of India, having the force of law, qualify as Change in Law events in terms of PPA. Learned counsel requested the Commission to issue notice to the Respondents.

2. The Commission observed that the increase in transportation cost of fuel may be captured in the escalation rates notified by the Commission. In response, learned counsel sought permission to file detailed submissions in this regard.

3. Learned counsels for the Respondents, GUVNL and Haryana Discoms accepted the notice and requested for time to file reply to the Petition.

4. After hearing the learned counsels for the parties, the Commission admitted the Petition and directed to issue notice to the Respondents.

5. The Commission directed the Petitioner to serve copy of the Petition on the Respondents, if not already served. The Respondents were directed to file their reply by 20.9.2019 with an advance copy to the Petitioner, who may file its rejoinder, if any, by 30.9.2019. The Commission directed that due date of filing the replies and/or rejoinder should be strictly complied with. No extension shall be granted on that account.

6. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**sd/-
(T.D.Pant)
Deputy Chief (Law)**

