

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 213/MP/2018**

Subject : Petitioner under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 and Article 10 of the Power Purchase Agreement dated 1.11.2013 entered into between the Petitioner and the Respondent seeking approval of the cost to be incurred by the Petitioner on account of change in law for installation/retrofit of 'Electrostatic Precipitators' (ESP), installation of Flue Gas Desulphurisation (FGD), installation of low NOx burners, providing Over Fire Air (OFA) and any other measures for compliance of the Notification dated 7.12.2015 issued by the Ministry of Environment and Forest and Climate Change, Government of India in respect of Thermal Power Plants installed/commissioned after 1.1.2003; and for other claims on account of Change in Law under the Power Purchase Agreement.

Petitioner : DB Power Limited

Respondents : PTC India Limited and Others

Date of Hearing : 16.7.2019

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

Parties present : Shri Deepak Khurana, Advocate, DBPL  
Ms. Swapna Seshadri, Advocate, RUVNL

**Record of Proceedings**

Learned counsel for the Petitioner submitted that the present Petition has been filed pursuant to the Commission's order dated 19.12.2017 in Petition No.101/MP/2017 for approval of claims on account of change in law event pertaining to (i) revision/addition of components in assessing the Central Excise Duty, (ii) additional cost toward Fly Ash Transportation, (iii) levy of Evacuation Facility Charges, and (iv) carrying cost with requisite document in support of these claims. Learned counsel requested to allow these change in law claims.

2. Learned counsel for the Respondents, Rajasthan Discoms submitted that the Petitioner has failed to demonstrate as to how the Assistant Commissioner of GST, has any legal power to interpret the law. With regard to additional cost towards fly



Ash transportation, learned counsel submitted that as a matter of practice, cement companies as an industry do not participate in the competitive bidding process, they make their own arrangement for off-taking and transporting fly ash from plants like that of the Petitioner. Since, the Respondents have no wherewithal to comment on the cost being claimed by the Petitioner, the Commission may apply a strict prudence check on the basis of the information available from other similarly placed generators. With regard to levy of evacuation facility charges, learned counsel submitted that the Notification of Coal India Limited dated 19.12.2017 on which the claim of the Petitioner is based, does not qualify as change in Law in terms of the PPA as the supply of coal is a commercial activity. In fact, even the pricing of coal is de-regulated and it is only for the coal companies to set the price of coal from time to time.

3. After hearing the learned counsels for the parties, the Commission reserved the order in the Petition.

**By order of the Commission**

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

