

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 332/MP/2018

- Subject : Petitioner under Section 79 of the Electricity Act, 2003 read with the Article 13 (Change in Law) of the Power Purchase Agreements (PPAs) 6.2.2007 (Bid-1) and 2.2.2007 (Bid-2) executed between Gujarat Urja Vikas Nigam Limited and Adani Power (Mundra) Limited and the PPAs dated 7.8.2008 executed with Uttar Haryana Bijli Vitran Nigam Limited/Dakshin Haryana Bijli Vitran Nigam Limited in respect of mandatory installation of additional systems in compliance with the Environment (Protection) Amendment Rules, 2015 issued by the Ministry of Environment, Forest and Climate Change dated 7.12.2015 for thermal power stations.
- Petitioner : Adani Power (Mundra) Limited (APML)
- Respondents : Gujarat Urja Vikas Nigam Limited and Others
- Date of Hearing : 6.8.2019
- Coram : Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member
Shri I. S. Jha, Member
- Parties present : Shri Amit Kapur, Advocate, APML
Ms. Abiha Zaidi, Advocate, AMPL
Shri Mehul Rupera, APML
Ms. Anushree Bardhan, Advocate, GUVNL
Ms. Tanya Sareen, Advocate, Haryana Discoms

Record of Proceedings

At the outset, learned counsel for the Petitioner submitted that the present Petition has been filed by the Petitioner seeking in-principle approval of MoEF & CC Notification dated 7.12.2015 as an event of Change in Law under the provisions of the PPAs executed with GUVNL and Haryana Discoms. Learned counsel for the Petitioner mainly submitted as under:

(a) The MoEFCC Notification qualifies as change in law under Article 13 of the PPAs as no norms were prescribed by MOEFCC regarding SPM, SO₂ and NO_x emissions as on the cut-off dates under the PPAs and the condition to limit the aforesaid emissions was introduced for the first time by the notification of the amended Rules.

(b) The Commission in its order dated 17.9.2018 in Petition No. 77/MP/2016 has allowed notification of the Amended Rules as a Change



in Law event to CGPL. In this regard, learned counsel relied upon the directions of Ministry of Power (MoP) to the Commission to allow MoEFCC notification under change in law.

(c) The installation of FGD and SNCR will lead to increase in cost for the seller in the construction period as well as in operating period.

(d) At this stage, the Petitioner is only seeking a declaratory relief and will approach the Commission to seek relief based on the actual impact of the compliance towards revised environmental norms in due course.

2. Learned counsel for the Respondents mainly submitted as under:

(a) The Hon'ble Supreme Court has recently terminated Bid 02 PPA. Therefore, the Petitioner cannot claim change in law for Bid 02 PPA in the present Petition.

(b) Since, the compensation is payable under Article 13 only after the expenditure has been incurred, the present Petition is premature at this stage.

(c) The Petitioner was aware as on cut-off date that the project was required to obtain various consents and clearances and the Environment Authorities were entitled to impose conditions for such clearances and conditions. Accordingly, the Petitioner is required to produce all clearances and consents given to the project and specify the conditions/standards as applicable to the Petitioner prior to the Amendment Rules, 2015 to enable the Commission to consider the aspect of change in law.

(d) MoP vide letter dated 30.5.2018 has stated that there would not be a change in law if the measures were mandated or envisaged prior to the Amendments dated 7.12.2015. Therefore, if the equipment were envisaged in the consents and clearances prior to 7.12.2015, the same would not be a change in law.

(e) CGPL case does not have any application to the present case as it is a Case 2 PPA where the Commission has proceeded on the basis that the Procurers were required to obtain the Environment Clearance. In the present case, the obligation to obtain the requisite consents and permissions and comply with any environmental requirements is on the Petitioner.

(f) The FGD was already envisaged in the Environment Clearance on account of the conditions of space provision for FGD and fund allocation for implementation of environment measures. In this regard, learned counsel relied upon the Punjab State Electricity Regulatory Commission's order dated 21.12.2018 in Petition No. 44 of 2017 in the case of Talwandi Sabo Power Limited and APTEL's judgment in the case of M/s JSW



Energy Limited v. Maharashtra State Electricity Distribution Co. Ltd. and another dated 21.1.2013 in Appeal No. 105 of 2011.

3. Learned counsel for the Petitioner in his rebuttal submitted as under:

(a) The Petitioner is evaluating the implications of the Hon'ble Supreme Court's decision upholding the termination of the Gujarat Bid-02 PPA and seeking advice. In this context, the Petitioner craves leave to approach the Commission at a later stage regarding the change in law impact on the Gujarat Bid-02 PPA and to formulate a mechanism to compensate the Petitioner for incurring the financial cost towards implementing the change in law.

(b) The case of the Petitioner can be easily distinguished from the JSW case. The present case is similar to the FGD allowed under change in law for Unit 7, 8 & 9 of Mundra TPP where Environment Clearance was not available as on the cut-off date. Whereas, in case of JSW, the FGD was envisaged before the cut-off date. Learned counsel sought the liberty to submit a comparison of the present petition with JSW case.

4. After hearing the learned counsels for the parties, the Commission directed the Petitioner to submit the following information on affidavit by 16.8.2019:

(a) With regard to environment clearance dated 13.8.2007,

(i) Provide the item-wise breakup of funds allocated for implementation of environment protection measures and year-wise expenditure which was reported to the Ministry;

(ii) In view of the fact that environment clearance envisages that the cost shall be included as part of the project cost, the onus of proving that these item-wise costs were not factored at the time of bidding lies with the Petitioner. Accordingly, submit any relevant information to prove that the item-wise cost earmarked for environmental protection measures was not factored at the time of bidding of the project.

(b) With regard to environment clearance dated 21.10.2008, provide:

(i) Measures adopted to reduce the emission of SO₂

(ii) Measures adopted to ensure that at no point of time the ground level concentration of SO₂ in the impact zone exceed the prescribed limit;

(iii) Item-wise break-up of funds allocated for implementation of environment protection measure and year-wise expenditure which was reported to the Ministry of Power;



(iv) In view of the fact environment clearance envisages that the cost shall be included as part of the project cost, the onus of proving that these item-wise costs were not factored at the time of bidding lies with the Petitioner. Accordingly, submit any relevant information to prove that the item-wise cost earmarked for environmental protection measures was not factored at the time of bidding of the project;

(c) Breakup of the estimated cost submitted in Para 15 of the Petition and the methodology adopted to arrive at the estimated cost;

(d) Copy of CEA recommendations for the generating station in regard to Emission Control Technology to meet MOEF&CC norms, if any; and

(e) Comparison of the present case with JSW case.

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

By order of the Commission

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

