

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 283/MP/2019

- Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 read with Clause 4.7 of the Competitive Bidding Guidelines and Article 13 of the Power Purchase Agreements dated 7.8.2008 and 20.1.2009 entered into by Jhajjar Power Limited with Uttar Haryana Bijli Vitran Nigam Limited, Dakshin Haryana Bijli Vitran Nigam Limited and Tata Power Trading Company Limited respectively in relation to seeking compensation for decrease in revenues and increase in costs as a result of 'Change in Law' event.
- Petitioner : Jhajjar Power Limited (JPL)
- Respondents : Uttar Haryana Bijli Vitran Nigam Limited and Ors.
- Date of Hearing : 5.5.2020
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
- Parties present : Shri Sajan Poovayya, Sr. Advocate, JPL
Shri Anuj Berry, Advocate, JPL
Shri Dnyanraj Desai, Advocate, JPL
Ms. Anusha Ramesh, Advocate, JPL
Ms. Suchita Saigal, JPL
Shri Deepto Roy, JPL
Shri Nitish Gupta, Advocate, TPDDL

Record of Proceedings

The matter was listed for hearing through the video conferencing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking compensation of costs due to incremental capital expenditure incurred and to be incurred by the Petitioner for modification, augmentation, retrofitting of the existing Flue Gas Desulphurization (FGD) units installed at its generating station along with other consequential reliefs for compliance with the Revised Emission Standards specified in Environment (Protection) Amendment Rules, 2015 dated 7.12.2015 that is a 'Change in Law' event in terms of Article 13 of the Power Purchase Agreements.

3. Learned senior counsel submitted that as per the then prevailing emission norms of SO₂, the Petitioner was not required to install FGD as on the cut-off date in respect of both the PPAs. Neither was it required to do so in terms of initial



Environment Clearance granted to the Project. However, taking into account of provisions of supply of domestic coal as well as imported coal by Central Coalfield Limited (CCL) under the Letter of Award issued by it and variability of sulphur content therein, the Petitioner decided to install FGD at initial capital expenditure of Rs. 299.02 crore and the same has not been claimed by the Petitioner in the present Petition. Learned senior counsel submitted that the existing FGD system cannot achieve the SO₂ emission level as set out in Revised Emission Standards on continuous basis and requires further augmentation/ retrofitting. Accordingly, the Petitioner is only seeking compensation on account of incremental capital expenditure incurred and to be incurred by the Petitioner for modification, augmentation, retrofitting of the existing FGD system and other consequential reliefs. Learned senior counsel requested to issue notice to the Respondents.

4. Learned counsel appearing for Tata Power Delhi Distribution Limited (TPDDL) requested to implead TPDDL as Party to the Petition. Learned counsel submitted that since on the basis of the Power Purchase Agreement dated 20.1.2009 between the Petitioner and Tata Power Trading Company Limited (TPTCL), TPTCL has entered into Power Sale Agreement (PSA) with TPDDL on back-to-back arrangement, any legal/contractual adjudication by the Commission in the present Petition will have direct impact on TPDDL. Learned counsel submitted that the Commission in its orders dated 18.4.2016 and 4.2.2020 in Petition No. 319/MP/2013 and Petition No. 114/MP/2018, respectively has already observed that the PPA executed between the Petitioner and TPTCL and the PSA executed between TPTCL and TPDDL are inextricably intertwined and there is a contractual relationship between the Petitioner and TPDDL. Accordingly, TPDDL is a necessary and proper party to the present proceedings.

5. In response, learned senior counsel for the Petitioner submitted that the Petitioner has Power Purchase Agreements with Uttar Haryana Bijli Vitran Nigam Limited, Dakshin Haryana Bijli Vitran Nigam Limited and Tata Power Trading Company Limited. Accordingly, the Petitioner has only made the above entities as party to the Petition.

6. In response to the specific query of the Commission as to whether the Petitioner had approached the Central Electricity Authority (CEA) for necessary guidance/ direction on the augmentation/ retrofitting of existing FGD system, learned senior counsel submitted that the Petitioner has already approached the CEA and the correspondence exchanged in this regard has been filed along with the Petition.

7. After hearing the learned senior counsel and learned counsel for the parties, the Commission admitted the Petition and directed to issue notice to the Respondents. The Commission also directed the Petitioner to implead TPDDL as party to the Petition and to file the revised memo of parties by 22.5.2020.

8. The Commission directed the Petitioner to serve copy of the Petition on the Respondents including TPDDL immediately, if not already served. The Respondents were directed to file their replies by 5.6.2020 with an advance copy to the Petitioner who may file its rejoinder, if any, by 26.6.2020.



9. After examination of CEA's letter dated 29.3.2019, the Commission observed that the Petitioner has not responded to specific observations of the CEA on feasibility report on installation of Emission Control Systems at the Petitioner's Plant and CEA further informed the Petitioner to refer to its Guidelines on the subject matter. However, CEA's Guidelines pertain to installation of new FGD system, whereas the Petitioner's case is peculiar as the Petitioner is already having FGD system and only requires augmentation/ modification in existing FGD system to meet the revised emission norms. Therefore, CEA's Guidelines may not be strictly applicable to the Petitioner's case. Accordingly, the Petitioner was directed to approach CEA for concurrence of its proposals with regard to 'Modifications to improve availability & reliability' and 'Retrofitting aimed at improving SO₂ removal efficiency' of existing FGD installed at its plant and associated estimated/ indicative costs for such proposals.

10. The Commission directed CEA to examine the aforesaid proposal of the Petitioner and furnish its comments as soon as possible.

11. The Commission directed that due date of filing of replies and/or rejoinder should be strictly complied with.

12. 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 (Legal)

