

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 327/MP/2018
and IA No.87 of 2018**

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 for claiming compensation on account of occurrence of 'Change in Law' events as per Article 10.1.1 of the Case-1 long-term Power Purchase Agreement dated 27.11.2013 read with Addendum No. 1 dated 20.12.2013 entered into between Dhariwal Infrastructure Limited and Tamil Nadu Generation and Distribution Corporation Limited thereby resulting into additional recurring/non-recurring expenditure by Dhariwal Infrastructure Limited for supply of 100 MW Contracted Capacity from Unit 2 of its 2x300 MW coal based thermal generating station located at Tadali, Chandrapur in the State of Maharashtra to Tamil Nadu Generation and Distribution Corporation Limited.

Petitioner : Dhariwal Infrastructure Limited (DIL)

Respondent : Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO)

Date of Hearing : 25.2.2020

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

Parties present : Shri Sanjay Sen, Senior Advocate, DIL
Ms. Divya Chaturvedi, Advocate, DIL
Shri Saransh Shaw, Advocate, DIL
Ms. Srishthi Rai, Advocate, DIL
Shri Subir Saha, DIL
Shri Aveek Chatterjee, DIL
Shri S.Vallinayagam, Advocate, TANGEDCO
Ms. Swapna Seshadri, Advocate on behalf of
Shri Rama Shankar Awasthi, Objector
Ms. Ritu Apurva, Advocate on behalf of
Shri Rama Shankar Awasthi, Objector

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking compensation on account of various 'Change in Law' events in terms of Article 10.1.1 of the Power Purchase Agreement (PPA) dated 27.11.2013 read with Addendum dated 20.12.2013 executed between the Petitioner and the Respondent, TANGEDCO. Learned senior counsel for the Petitioner mainly submitted as under:

- (a) Apart from Surface Transportation Charges, Sizing & Crushing Charges, Coal Royalty and Niryat Kar, all the other Change in Law events as



claimed by the Petitioner are covered by the Commission's orders and judgments of the Appellate Tribunal for Electricity.

(b) As regards Niryat Kar, the Commission in its order dated 19.12.2017 and 27.4.2018 in Petition Nos. 229/MP/2016 and 126/MP/2016 respectively has granted the liberty to the Petitioners therein to approach the Commission with relevant details.

(c) As regards, Surface Transportation Charges and Sizing & Crushing Charges, the Commission has held that the increase therein is not a Change in Law event. However, the Petitioner is claiming the same as Change in Law since they are not part of the escalation indices as held by the Commission in its order dated 18.10.2019 in Petition No. 10/SM/2019. Accordingly the Petitioner needs to be compensated for any increase in this regard.

(d) The contention of the objector, Shri Awasthi that while claiming the shortage of coal by apportioning the coal received under Fuel Supply Agreement (FSA) on the basis of capacity tied up with Noida Power Company Limited (NPCL) and TANGEDCO, the Petitioner is violating the specific condition imposed by UPERC that entire coal available under FSA is to be used for supply of NPCL, is misconceived. FSA dated 8.3.2016 read with Addendum dated 30.6.2016, necessitates the utilization of the linkage coal for supply of power as per the allocated coal quantum based on their respective contracted capacities. The other contentions of Shri Awasthi on the aspect of jurisdiction have already been dealt with by the Commission in its order dated 1.7.2019.

(e) Contention of TANGEDCO that since various taxes, duties and levies being part of quoted energy charges get escalated as per the escalation indices, the Petitioner is not entitled for compensation on account of changes therein, the same has been rejected by the Commission in its earlier orders.

(f) Contention of TANGEDCO that the Petitioner has not furnished supporting documents and computation is also misconceived as the Petitioner has already given the detailed computation along with basis for the same in several notices issued to TANGEDCO.

2. Learned counsel for the Respondent, TANGEDCO referred the Commission's order 1.7.2019 and mainly submitted as under:

(a) In terms of the judgment of Hon'ble Supreme Court in the case of Energy Watchdog v. CERC and Ors., only this Commission has jurisdiction in respect of the generating companies having composite scheme for generation and sale of electricity in more than one State.

(b) Scope of Section 64(5) of the Electricity Act, 2003 is limited to the determination of tariff. However, as far as the adjudication of dispute is concerned, the same necessarily lies before this Commission as the Petitioner is involved in inter-State sale of power in more than one State. Accordingly, the Petitioner is required to implead NPCL as party to the present Petition. The adjudication of Change in Law disputes in respect of the both the PPAs i.e. NPCL PPA and TANGEDCO PPA has to be done together and cannot be agitated separately before two different forums.

(c) As far as various Change in Law events which stand already allowed by the Commission and APTEL, the Respondent has nothing to add thereon.



3. In its rebuttal, learned senior counsel for the Petitioner submitted that the Respondent is re-agitating the issue on maintainability of the Petition as already been decided by the Commission in its order dated 1.7.2019. Learned senior counsel further submitted that the Petitioner and NPCL had approached UPERC under Section 64(5) of the Act in respect of NPCL PPA, as per the direction of the UPERC and the exercise of jurisdiction under Section 64(5) of the Act by UPERC is already under challenge in appeal filed by objector, Shri Awasthi before APTEL.

4. Learned counsel appearing on behalf of the objector, Shri Awasthi, submitted that the objector has already filed its written submission pursuant to liberty granted by the Commission vide Record of Proceeding dated 10.1.2020 and requested to consider the same.

5. Based on the request of learned counsel for the Respondent, TANGEDCO, the Commission allowed the TANGEDCO to file its written submission by 6.3.2020 with copy to the Petitioner who may file its response thereof, on or before, 13.3.2020.

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

By order of the Commission

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

