

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 13/SM/2017 (Suo Motu)

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri A. K. Singhal, Member
Shri A. S. Bakshi, Member
Dr. M. K. Iyer, Member**

Date of Order: 21st of August, 2017

In the matter of

Abolition of Clean Energy Cess and Introduction of Goods and Service Tax compensation cess

And

In the matter of

The Commission on its own motion

Vs

- 1) GMR-Kamalanga Energy Limited
New Shakti Bhawan, Building No. 302- New Uddan Bawan
Opposite Terminal- 3
Indira Gandhi International Airport
New Delhi- 110037
- 2) Adani Power Limited
"Adani House" II
Near Mithakhali Six Roads, Navarangpura
Ahmedabad-380009
- 3) EMCO Energy Limited/GMR Warora Energy Limited
701/704, 71h Floor, Naman Centre, A Wing
SKC (Sandra Kurla Complex)
Sandra, Mumbai 400051
- 4) Sasan Power Limited
Reliance Power Limited
3rd Floor, Reliance Energy Centre
Santa Cruz East, Mumbai
- 5) M.B.Power (Madhya Pradesh) Limited
239, Okhla Industrial Estate, Phase-III
New Delhi-110 020
- 6) Coastal Gujarat Power Limited
34, Sant Tuka Ram Road
Carnac Bunder, Mumbai-400 021
- 7) Dakshin Haryana Bijli Vitran Nigam Ltd
Vidyut Nagar, Hissar (Haryana)



- 8) Uttar Haryana Bijli Vitran Nigam Ltd
Vidyut Sadan, Plot No C/16,
Sector 6, Panchkula (Haryana)
- 9) Haryana Power Generation Corporation Ltd
Urja Bhawan, Sector 6, Panchkula (Haryana)
- 10) PTC India Ltd
2nd Floor, NBCC Tower, 15, Bhikaji Cama Place,
New Delhi
- 11) Bihar State Power (Holding) Company Ltd
Vidyut Bhawan, Bailey Road, Patna – 800001
- 12) Bihar State Power Generation Company Ltd
Vidyut Bhawan, Bailey Road, Patna – 800001
- 13) South Bihar Power Distribution Company Ltd
Vidyut Bhawan, Bailey Road, Patna – 800001
- 14) North Bihar Power Distribution Company Ltd
Vidyut Bhawan, Bailey Road, Patna – 800001
- 15) MP Power Management Company Limited
Shakti Bhawan , Jabalpur-482008
Madhya Pradesh
- 16) Paschimanchal Vidyut Vitran Nigam Limited
Victoria Park, Meerut-250001
Uttar Pradesh
- 17) Purvanchal Vidyut Vitran Nigam Limited
Hydel Colony, Bhikaripur Post-DLW,
Varanasi-221004
Uttar Pradesh
- 18) Madhyanchal Vidyut Vitran Nigam Limited
4A-Gokhale Marg, Lucknow-226001
Uttar Pradesh
- 19) Dakshinanchal Vidyut Vitran Nigam Limited
220 kV Vidyut Sub- Station
Mathura Agra By-pass Road
Sikandara, Agra-282007 (Uttar Pradesh)
- 20) Ajmer Vidyut Vitran Nigam Limited
Hathi Bhata, City Power House
Ajmer-305001, (Rajasthan)
- 21) Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan, Jaipur-302005
Rajasthan
- 22) Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area
Jodhpur-342003, (Rajasthan)
- 23) Tata Power Delhi Distribution Limited
Grid Sub- Station Building, Hudson Lines,
Kingsway Camp, New Delhi-110009



24) BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place
New Delhi-110019

25) BSES Yamuna Power Limited
Shakti Kiran Building, Karkardooma
Delhi-110096

26) Punjab State Power Corporation Limited
The Mall, Patiala-147001
Punjab

27) Maharashtra State Electricity Distribution Company Limited
Fifth Floor, Prakashgad, Plot No. G-9,
Anant Kanekar Marg, Sandra (East),
Mumbai- 400 051

28) Electricity Department,
Vidhyut Shavan, Opp. Secretariat,
Dadra and Nagar Haveli,
Silvassa, 396230

29) Gujarat Urja Vikas Nigam Ltd.,
Sardar Patel Vidyut Bhavan, Race Course
Vadodara-390007, (Gujarat)

30) Haryana Power Purchase Centre
Room No.239 Shakti Bhawan, Sector 6
Panchkula-134109, (Haryana)

31) Uttarakhand Power Corporation Limited
Urja Bhawan, Kanwali Road
Dehradun-248001 (Uttarakhand)

....Respondents

ORDER

In terms of Section 79 of the Electricity Act, 2003 ("the 2003 Act"), the Central Commission has been regulating the tariff of generating companies which are owned or controlled by the Central Government and those which have a composite scheme for generation and supply of electricity in more than one State. Regulation of tariff is being carried out in two ways, namely, determination of tariff under Section 62(1)(a) and adoption of tariff under Section 63 of the 2003 Act. The Hon'ble Supreme Court in its judgement dated 11.4.2017 in Appeal Nos. 5399-5400 (Energy Watchdog Vs Central Electricity Regulatory Commission & others) and related appeals has held that ".....the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating tariff".



2. In exercise of the power vested under Section 63 of the 2003 Act, Central Government has notified the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” vide notification dated 19.1.2005 which have been amended from time to time (Guidelines). In terms of the said Guidelines, the Distribution Companies have procured power from the generating companies and the tariff for such procurement of power is determined in accordance with the PPAs between the concerned generating station and distribution licensees. The PPAs provide for grant of relief in the form of adjustment of tariff either to the generating companies or to the distribution licensees on account of Change in Law. In terms of the PPAs, the Commission is required to determine the impact of various events of Change in Law on tariff and grant appropriate relief. Further, in terms of Section 79(1)(f) of the 2003 Act, Para 5.17 of the Guidelines and relevant provisions of the PPAs, this Commission has the power to adjudicate any dispute between the generating companies and concerned Procuring Distribution Licensees with regard to Change in Law.

3. This Commission in exercise of its power under Section 79(1)(f) of the 2003 Act read with Para 5.17 of the Guidelines and the relevant provisions of the PPAs has allowed various expenditures for Change in Law events in favour of generating companies and distribution licensees which have been arrayed as respondents in this order.

4. The Parliament has enacted the following Acts in order to introduce a unified indirect tax structure in the form of Goods and Services Tax (GST) which has replaced various Central and State level taxes:

- (a) Central Goods and Services Tax, Act, 2017
- (b) Integrated Goods and Services Tax Act, 2017
- (c) Union Territories Goods and Services Act, 2017
- (d) Goods and Services Tax (Compensation to States) Act, 2017

The respective State Legislatures have enacted the States Goods and Services Act, 2017.



5. These Acts have come into effect from 1st July 2017. Therefore, the taxes and duties which were admissible under Change in Law provisions of the PPAs have been replaced by either Central GST or State GST. In addition, certain existing taxes have been abolished and certain new taxes have been introduced.

6. In terms of the above Acts, the following taxes have been merged either in Central GST or State GST:

(A) Central GST

- (a) Central Excise Duty
- (b) Additional Duties of Customs (commonly known as CVD)
- (c) Special Additional Duty of Customs (SAD)
- (d) Service Tax
- (e) Central Surcharges and Cesses so far as they relate to supply of goods and services

(B) State GST

- (a) State VAT
- (b) Central Sales Tax
- (c) State Surcharges and Cesses so far as they relate to supply of goods and services

7. Certain taxes have been abolished through the Taxation Laws Amendment, Act, 2017.

The taxes which are relevant for the electricity sector are enumerated below:

- (a) Cess on coal introduced in terms of the Coal Mines (Conservation and Development) Act, 1974.
- (b) Education Cess on Excisable Goods introduced through the Finance (2) Act, 2004.
- (c) Secondary and Higher Education Cess on Excisable Goods introduced through the Finance Act, 2007.
- (d) Clean Energy Cess introduced through the Finance Act, 2010.
- (e) Swachh Bharat Cess introduced through the Finance Act, 2015.
- (f) Infrastructure Cess and Krishi Kalyan Cess introduced through the Finance Act, 2016.



8. The Goods and Services (Compensation to States) Act, 2017 (Compensation Act) provides for the mechanism for compensation to States for loss of their revenues. Section 8 of the Compensation Act provides for levying of cess on supplies of certain goods for the purpose of the said Act. Section 8 of the Compensation Act is extracted as under:

“8. (1) There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in Section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in Section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council:

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under Section 10 of the Central Goods and Services Tax Act.

(2) The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify:

Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under Section 15 of the Central Goods and Services Tax Act for all intra-State and inter-State supplies of goods or services or both:

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.”

As per Schedule (2) to the said Act, the compensation cess has been levied on the following in so far as the generation and supply of electricity is concerned:

S. No.	Description of supply of goods and services	Tariff item, heading, sub-heading, chapter, or supply of goods or services, as the case may be	The maximum rate at which goods and services tax compensation cess may be collected
(1)	(2)	(3)	(4)
3.	Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite, whether or not agglomerated, excluding jet, peat (including peat litter), whether or not agglomerated	2701, 2702 or 2703	Four hundred rupees per tonne



9. As per the Taxation Laws Amendment Act, 2017, Clean Energy Cess which stands at Rs. 400 per tonne has been abolished with effect from 1.7.2017. In accordance with the Goods and Services Tax (Compensation to States) Act, 2017, GST Compensation Cess @ ₹400 per metric tonne on coal and lignite has been introduced to be leviable from 1.7.2017. Both these Acts are in the nature of Change in Law as per the provisions of the PPAs, since they have been enacted and brought into force after the cut-off dates in respect of the PPAs where the Commission has determined the impact of Change in Law and these Acts have resulted in the change in the cost of or revenue from the business of selling electricity by the concerned generating companies to the Procurer States.

10. In order to facilitate the settlement of the dues arising on account of the aforesaid Changes in Law, the Commission proposes to hold a hearing with the participation of the generating companies and the distribution companies of the Procurer States which have been arrayed as respondents in this petition. Accordingly, the Petition shall be listed for hearing on 14.9.2017.

sd/-
(M. K. IYER)
MEMBER

sd/-
(A. S. BAKSHI)
MEMBER

sd/-
(A. K. SINGHAL)
MEMBER

sd/-
(GIREESH B. PRADHAN)
CHAIRPERSON

