

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 327/MP/2018  
Alongwith IA No. 87/2018**

Subject : Petition under 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 2 x 300 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.

Date of Hearing : 28.5.2019

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

Parties present : Shri Sanjay Sen, Senior Advocate, DIL  
Ms. Divya Chaturvedi, Advocate, DIL  
Ms. Srishti Rai, Advocate, DIL  
Shri Bhaskar Ganguly, DIL  
Shri Aveek Chatterjee, DIL  
Shri Ashwin Ramanathan, Advocate, TANGEDCO  
Shri Anand K.Ganesan, Advocate, TANGEDCO  
Shri S. Vallinayaram, Advocate, TANGEDCO

**Record of Proceedings**

Learned counsel appearing on behalf of Shri R.S Awasthi submitted that Shri Awasthi has filed an IA for impleadment as a party to the Petition. Learned counsel submitted that UPERC vide its order dated 20.4.2016 had imposed a condition that the Petitioner will ensure that coal supply under the FSA would be first utilized for the supply of 170 MW. Learned counsel submitted that the Petitioner has filed similar Petition for approval of claims under change in law events before UPERC and the same cannot be allowed as the change in law claims of the Petitioner in the present Petition as it would significantly impact on the issues pending before UPERC.

2. Learned counsel for TANGEDCO submitted that the Petitioner is supplying power from its same unit to TANGEDCO (100 MW) and Noida Power Company Limited (170 MW). However, Noida Power Company Limited (NPCL) has not been impleaded as party to the present Petition. Learned counsel submitted that the Petitioner has filed a separate Petition i.e. Petition No. 1235 of 2017 seeking change in law compensation before

UPERC in respect of NPCL PPA. There cannot be two separate proceedings qua change in law and other aspects of tariff from the same generating station. Learned counsel, in support of his contention, relied on the Commission's order dated 6.6.2018 in Petition No.305/MP/2015 and submitted that the Commission in the said order had observed that where the generating company has the PPAs/arrangement to supply power from its project to more than one State including the home State where the plant is located, this Commission shall have the exclusive jurisdiction to regulate the tariff in terms of Section 79(1) (b) of the Electricity Act, 2003 (Act). Learned counsel submitted that the Hon'ble Supreme Court has laid down the law that when a generator is supplying power to more than one procurer and the procurers are situated in two different States, the Central Commission has jurisdiction to determine dispute between the generator and procurer.

3. Learned senior counsel for the Petitioner submitted as under:

(a) The Petitioner has entered into PPA dated 27.11.2013 read with PPA dated 20.12.2013 with TAGNEDCO for 100 MW pursuant to Case-I competitive bidding and PPA dated 26.9.2014 with NPCL for 170 MW under Section 62 of the Electricity Act, 2003.

(b) Uttar Pradesh Electricity Regulatory Commission vide its order dated 20.4.2016 approved the NPCL PPA. Subsequently, UPERC vide its order dated 5.2.2019 has determined the tariff for sale of 170 MW power and directed the Petitioner to file separate petition for claims regarding procurement of additional coal and Change in Law events.

(c) The above orders of UPERC dated 20.4.2016 and 5.2.2019 have been challenged by Shri R.S. Awasthi before the Appellate Tribunal as a consumer of Greater Noida in the State of Uttar Pradesh. Therefore, Shri Awasthi has no locus in the present proceedings since it is pertaining to change in law claims under the TANGEDCO PPA.

(d) The Petitioner has entered into FSA with South Eastern Coalfields Limited for supply of Annual Contracted Capacity to Unit-2, which has been allocated in proportion of the percentage of respective contracted capacities under NPCL PPA and TANGEDCO PPA by Addendum to the FSA.

(e) The jurisdiction of the State Commission under Section 64 (5) of the Act will not in the present case.

(e) Since TANGEDCO PPA has been entered into under Section 63 of the Act, Section 64 (5) of the Act is not applicable to it. In support of its contention, learned senior counsel relied upon the Commission's order dated 30.4.2019 in Petition No. 289/MP/2019.

(f) The Petitioner has filed IA No. 87/2018 inter alia for seeking direction to TANGEDCO to pay the outstanding dues on account of change in law events. Learned senior counsel requested the Commission to direct TANGEDCO to pay the outstanding dues immediately.

4. After hearing the learned senior counsel for the Petitioner and learned counsels for TAGNEDCO and Shri Awasthi, the Commission allowed Shri Awasthi to participate in the proceedings and to file its submissions by 7.6.2019, without being formally impleaded as a party to the Petition and the Petitioner was directed to share the petition with Shri Awasthi.

5. Subject to the above, the Commission reserved the order on maintainability of the Petition.

**By order of the Commission**  
**Sd/-**  
**(T. D Pant)**  
**Dy. Chief (Law)**