

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 15/MP/2019

- Subject : Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 for declaration that any variation in the cost of fuel 'invoiced' to the Petitioner, owing to any increase in rate of taxes, levies, cess or duties which includes but is not limited to royalty, central excise duty, S.E.D. CST, energy cess, sizing charges, surface transportation and also enactment of new taxes/royalties on the coal cost which includes but is not limited to NMET, DMF, forest transit fee and PWD cess, imposed by the Central Government, State Government/Union Territory or any other Government, being a component of invoiced rate of coal, is a pass-through cost as per the terms of the PPA dated 7.8.2008.
- Date of Hearing : 11.11.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Jhajjar Power Limited (JPL)
- Respondents : Haryana Power Purchase Centre (HPPC) and Ors.
- Parties Present : Ms. Shikha Ohri, Advocate, JPL
Ms. Surabhi Pandey, Advocate, JPL
Shri Shubham Arya, Advocate, HPPC
Ms. Poorva Saigal, Advocate, HPPC
Ms. Bitika Kaur, JPL
Shri Vikas Kadian, HPPC

Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner submitted that the present Petition has been filed for seeking declaration that any variation in the cost of fuel 'invoiced' to the Petitioner, owing to any increase in rate of taxes, levies, cess or duties which includes but is not limited to royalty, central excise duty, S.E.D. CST, energy cess, sizing charges, surface transportation, and also enactment of new taxes/ royalties on the coal cost which includes but is not limited to NMET, DMF, forest transit fee and PWD cess, imposed by the Central Government, State Government/ Union Territory, or any other Government, being a component of invoiced rate of coal, is a pass-through cost in terms of the PPA dated 7.8.2008. The learned counsel further submitted that alternatively the Petitioner has also prayed that it may be allowed pass through of all the above mentioned taxes, duties and charges under Change in Law provisions of the PPA. The learned counsel submitted that the generating

station/ Project of the Petitioner falls under category of Case-2 bidding project, wherein the entire fuel cost is complete pass through to the Respondents under the PPA as is evident from the bare reading of the Article 11 read with Schedule 7 of the PPA. However, the Respondents had temporarily withheld its supplementary invoices in relation to the additional NMET and royalty on coal citing lack of clarity as to the applicability of Change in Law clause of the PPA and had further asked the Petitioner to approach the Commission for seeking confirmation on the reimbursement of the amount claimed on account of changes in the rates of taxes and duties and introduction of any new taxes, duties and levies. The learned counsel also added that the Respondents have not disputed the submissions of the Petitioner and are in fact making the payments of the invoices raised by the Petitioner to the above effect.

3. The learned counsel for the Respondent, HPPC submitted that to the extent the variation in the invoiced rate of coal supplied to the Petitioner on account of increase in taxes, levies and cess, etc. is in accordance with the terms of the PPA, namely, Schedule 7 read with Article 11, the same may be allowed as a pass through in tariff by the Commission subject to prudence check.

4. After hearing the submissions made by the learned counsel for the parties, the Commission reserved the matter for order.

By order of the Commission

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