

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 157/MP/2015 along with IA No. 53/2021

Subject : Petition under Section 79(1)(b) of the Electricity Act, 2003 read with Article 13.2(b) of the Power Purchase Agreement dated 22.4.2007 (as amended from time to time) seeking adjustment of tariff for increase/decrease in revenue/costs of Coastal Gujarat Power Limited due to 'Change in Law' during the Operation Period for the Financial Year 2011-12, 2012-13 and 2013-14.

Petitioner : Coastal Gujarat Power Limited (CGPL)

Respondents : Gujarat Urja Vikas Nigam Limited (GUVNL) and 7 Ors.

Petition No. 121/MP/2017 along with IA No. 64/2021

Subject : Petition under Section 79(1)(b) of the Electricity Act, 2003 read with Article 13.2(b) of the Power Purchase Agreement dated 22.4.2007 and Clause 4.7 of the Competitive Bidding Guidelines, seeking adjustment of tariff for increase/decrease in revenue/costs of Coastal Gujarat Power Limited due to occurrence of 'Change in Law' events.

Petitioner : Coastal Gujarat Power Limited (CGPL)

Respondents : Gujarat Urja Vikas Nigam Limited (GUVNL) and 7 Ors.

Date of Hearing : 27.9.2021

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

Parties Present : Shri Amit Kapur, Advocate, CGPL
Shri Abhishek Munot, Advocate, CGPL
Shri Tushar Nagar, Advocate, CGPL
Shri M. G. Ramachandran, Sr. Advocate, GUVNL
Ms. Ranjitha Ramachandran, Advocate, GUVNL, Haryana & Rajasthan Utilities
Ms. Poorva Saigal, Advocate, GUVNL, Haryana & Rajasthan Utilities
Shri Shubham Arya, Advocate, GUVNL, Haryana & Rajasthan Utilities
Ms. Srishti Khindaria, Advocate, GUVNL, Haryana & Rajasthan Utilities
Ms. Tanya Sareen, Advocate, GUVNL, Haryana & Rajasthan Utilities
Shri Anup Jain, Advocate, MSEDCL
Shri Ajay Kapoor, CGPL



Shri Abhay Kumar, CGPL
Shri Prasad Bagade, CGPL
Shri Gaurav Gupta, Haryana Utilities
Shri Swapnil S. Katkar, MSEDCL

Record of Proceedings

Case was called out for virtual hearing.

2. At the outset, the learned senior counsel for the Respondent, GUVNL submitted that pursuant to the directions of the Commission vide Record of Proceedings for the hearing dated 13.7.2021, financial claims/ details have been reconciled between the parties. However, there are mainly two issues which are required to be considered by the Commission, namely, (i) computation of coal for coal based levies; and (ii) compensation for coal based levies has to be on lower of actual injection or scheduled generation for each 15 minute time block. Learned senior counsel, *inter alia*, submitted the following:

- (a) Quantum of coal for coal based levies ought to be on actuals subject to the ceiling of the quantum arrived at as per the parameters specified in the applicable Tariff Regulations notified by the Commission.
- (b) The Appellate Tribunal for Electricity ('the APTEL') has consistently held that for computation of coal quantum for Change in Law, the actual coal consumed is subject to the Tariff Regulations notified by the Commission. In this regard, the reliance was placed on the judgment of the APTEL dated 13.11.2019 in Appeal No. 136 of 2016 (in case of Sasan Power Limited), judgment dated 14.9.2020 in Appeal No. 182 of 2019 (in case of Adani Power Maharashtra Ltd.), judgment dated 3.11.2020 in Appeal No. 168 of 2019 (in case of Adani Power Mundra Ltd.) and judgment dated 13.11.2020 in Appeal No. 264 of 2018 (in case of Rattan India Power Ltd.)
- (c) The APTEL in paragraph 104 of the judgment dated 27.4.2021, has referred to its decision dated 14.9.2020 in Appeal No. 182 of 2019.
- (d) In the judgment dated 27.4.2021, the APTEL has only rejected the approach of the Commission of linking the computation of quantum of coal to the normative bid assumed parameters. However, the APTEL has not dispensed with the requirement of prudence and the ceiling of parameters specified in the Tariff Regulations has been provided as a measure of prudence check.
- (e) As regards second issue, scheduling of generation is done on 15 minute time block as per the prevalent provisions of the Grid Code and, therefore, the comparison of actual and scheduled generation has to be on 15 minute time block basis. The contention of the Petitioner that the compensation has to be considered as lower of actual or scheduled generation on annual or monthly basis cannot be considered. Also, the invoicing being done on monthly basis has no relevance to the above issue.
- (f) The Petitioner has submitted one of the auditor certificates in a consolidated manner instead of providing component-wise details as sought for by the Respondent.
- (g) Liberty was sought to file the note of arguments/ written submissions on behalf of the Respondent.

3. The learned counsels for the Respondents, Haryana Utilities and Rajasthan Utilities adopted the submission made by the learned senior counsel for the Respondent, GUVNL. Learned counsel appearing on behalf of the Rajasthan Utilities submitted that as per the order of the Commission dated 21.2.2018 in Petition No. 121/MP/2017, the Petitioner was required to reconcile the actual payment made towards Change in Law events with the books of account duly audited and certified by statutory auditor. However, neither the Petitioner has furnished the certificate based on the audited account nor has undertaken any reconciliation.

4. The learned counsel for the Respondent, Maharashtra State Electricity Distribution Co. Ltd. ('MSEDCL') also adopted the submission made by the learned senior counsel for the Respondent, GUVNL.

5. The learned counsel for the Petitioner circulated the note of arguments and made detailed submission in the matters. The learned counsel mainly submitted the following:

(a) By the judgment dated 27.4.2021, the APTEL has held that the relief for Change in Law on coal based levies has to be on actual basis and cannot be limited to normative parameters. APTEL has also held that the disallowance of Change in Law relief on coal based levies on actual negates Article 13 of the PPA, which provides for restitution of the affected party to the same economic position as if such Change in Law had not occurred and the principles laid down by the Hon'ble Supreme Court in the case of Energy Watchdog v. CERC and Ors., [(2017) 14 SCC 80] and UHBVNL and Anr. v. Adani Power Limited [(2019) 5 SCC 325].

(b) Under the grab of prudence check, neither the procurers nor the Commission can question the Petitioner's commercial decision and wisdom. The prudence check does not permit the Appropriate Commission to deny the relief for Change in Law. In this regard, the reliance was placed on the decision of APTEL dated 20.9.2021 in Tata Power Renewable Energy Ltd. v. MERC and Ors.

(c) Consideration of lower of actual injection or scheduled generation for each 15 minute time block, as suggested by GUVNL, leads to under-recovery of the Petitioner's Change in Law compensation and such methodology is neither contemplated by the PPA nor in orders of this Commission or the judgment of APTEL. Compensation on the basis of 15 minute time block is lower than compensation on the basis of lower of total of actual injection or scheduled generation. Therefore, it has to be computed on lower of total actual injection or total scheduled generation computed on annual or monthly basis. Besides, billing of the Petitioner for energy charges takes place on a monthly basis.

6. After hearing the learned senior counsel and learned counsels for the parties, the Commission directed the Petitioner to provide to the Respondents, a copy of the detailed auditor certificate, as requested by the Respondents instead of consolidated certificate, which was agreed to by the learned counsel for the Petitioner. Further, based on the request of the learned senior counsel for the Respondent, GUVNL, the Commission permitted the Respondent to file its note of arguments/ written submissions within two days with copy to the Petitioner.

7. Subject to the above, the Commission reserved the order in the matter.

By order of the Commission

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