

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 174/MP/2020

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding ('Competitive Bidding Guidelines') and Article 10 of the Power Purchase Agreements dated 17.3.2010, 21.3.2013 and 27.11.2013 executed between GMR Warora Energy Limited and the Distribution Companies in the States of Maharashtra, Dadra and Nagar Haveli and Tamil Nadu respectively for compensation due to levy of charges for transportation of fly ash.
- Date of Hearing : 13.7.2021
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : GMR Warora Energy Limited (GWEL)
- Respondents : Maharashtra State Electricity Distribution Company Limited and 3 Ors.
- Parties Present : Shri Vishrov Mukerjee, Advocate, GWEL
Shri Anand K Ganesan, Advocate, DNHPDCL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner, GWEL submitted that the present Petition has been filed for determination of compensation on account of expenditure incurred towards transportation of fly ash and for computation of carrying cost thereon. Learned counsel mainly submitted as following:

(a) The Commission in its order dated 16.3.2018 in Petition No.1/MP/2017 has held that the levy of charges for transportation of fly ash pursuant to the Notification dated 25.1.2016 issued by Ministry of Environment, Forest and Climate Change is Change in Law event in-principle. However, the admissibility of its claims was made subject to compliance of certain conditions stipulated by the Commission in its order dated 19.12.2017 in Petition No.101/MP/2017 (D B Power Ltd. v. PTC India Ltd. and Ors.) and accordingly, the Petitioner was granted liberty to approach the Commission with necessary information/ details for determination of compensation.

(b) On 22.12.2018, the Petitioner invited bids for awarding the contract for transportation of fly ash. Pursuant to the bid process and after negotiation with the short-listed bidders, Avantta Infra Pvt. Ltd. was selected as successful bidder. The Petitioner has placed on record the copies of Letter of Intent dated 7.4.2019 and agreement for transportation of fly ash dated 15.4.2019.

(c) Fly ash being made available to Avantta Infra Pvt. Ltd. is being supplied to Ashtech (India) Pvt. Ltd. for utilization in road construction projects and 'end user' certificate to this effect has also been placed on record by the Petitioner.

(d) In addition, the Petitioner has also entered into contracts with various cement manufacturers viz. Ultra Tech Cement Ltd., ACC Ltd., Ambuja Cement Ltd. and Manikgarh Cement Ltd for the supply of fly ash to manufacture cement.

(e) However, since such cement manufacturers, as an industry, do not participate in any competitive bid process for the transportation of fly ash, these contracts have been entered into on negotiation basis. The above position has been acknowledged by the Commission in its order dated 3.10.2019 in Petition No. 213/MP/2018 (D.B Power Ltd. v. PTC India Ltd. and Ors.) Further, similar to above case, in the present case also, the cost incurred towards transportation of fly ash for utilization in the manufacture of cement is substantially lower than the transportation cost incurred for supplying fly ash for road construction projects and thus, the objection of keeping the cost of transportation reasonable is fulfilled.

(f) For the period from 3.5.2019 to 31.8.2019, the Petitioner has incurred Rs. 2,46,97,176/- towards transportation of fly ash.

(g) Till date, no revenue has been generated from sale of fly ash.

3. Learned counsel for the Respondent, DNH Power Distribution Co. Ltd. submitted that the cost of transportation to the cement manufactures (Rs. 105-140/MT) is substantially lower than the cost of transportation discovered for supplying fly ash for road construction projects (Rs. 594/MT). Therefore, the Commission needs to take a view on the prudence of such expenditure as more than half of the Petitioner's total claim is on account of the latter. It was also submitted that when the costs under negotiated route are substantially lower, the Petitioner ought to have disposed of fly ash under the most cost-efficient route.

4. In response to the specific query of the Commission regarding a stark difference in the costs towards transportation of fly ash to cement manufactures and for the purpose of road construction works, learned counsel for the Petitioner submitted that such difference is likely due to the economies of scale and the fact that the cement manufactures have their own arrangements with transporters for purposes of transportation of fly ash.

5. In response to the further query of the Commission regarding any constraint in supplying all fly ash to the cement manufacturers, learned counsel for the Petitioner submitted that the supply of fly ash to the cement manufactures are on the basis of their demands. Further, in response to the query of the Commission as to whether the invitation of bids for awarding the contracts for transportation of fly ash was for any restricted end use, learned counsel for the Petitioner replied in negative.

6. After hearing the learned counsel for the parties, the Commission directed the Petitioner to provide the following details/ information on affidavit, by 29.7.2021:

a) Certified copy of statement from the entities to whom fly ash has been supplied and utilized, to the effect that they have not paid any cost towards fly ash and its transportation to the Petitioner;

- b) Detail of quantum of fly ash supplied to each users, for each month;
- c) Copy of agreement pertaining to supply of fly ash executed with users of fly ash;
- d) Whether the Petitioner has maintained separate account to record revenue generated from fly ash sales?; and
- e) Action taken by the Petitioner for sale of fly ash along with documentary evidence.

7. The Petitioner shall comply with above directions within the specified timeline and no extension of time shall be granted.

8. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

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