

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 25/MP/2020

Subject : Petition under Section 79 of the Electricity Act,2003 read with Article 10 of the Power Purchase Agreements dated 17.3.2010 and 21.3.2013 executed between GMR Warora Energy Limited and the Distribution Companies in the States of Maharashtra and Dadra and Nagar Haveli pursuant to liberty granted in order dated 16.5.2019 in Petition No. 284/MP/2018.

Date of Hearing : 27.8.2021

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

Petitioner : GMR Warora Energy Limited (GWEL)

Respondents : Maharashtra State Electricity Distribution Company Limited (MSEDCL) and Anr.

Parties Present : Shri Vishrov Mukerjee, Advocate, GWEL
Ms. Swapna Seshadri, Advocate, DNH PDCL
Shri Anand K Ganesan, Advocate, DNH PDCL
Shri Ashwin Ramanathan, Advocate, DNH PDCL
Shri M. G. Ramachandran, Sr. Advocate, MSEDCL
Shri Anup Jain, Advocate, MSEDCL

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 pursuant to the liberty granted by the Commission in its order dated 16.5.2019 in Petition No. 284/MP/2018 seeking compensation for As-is-Where-is-Basis ('AIWIB') coal and washery coal procured by the Petitioner to meet shortfall in linkage coal. The learned counsel further circulated the note of arguments and mainly submitted as under:

(a) The Appellate Tribunal for Electricity ('APTEL') vide judgment dated 14.8.2018 in Appeal No. 111/2017 and Appeal No. 290/2017, *inter alia*, held that shortfall in linkage coal constitutes a change in law and remanded the matter to the Commission for computation.

(b) Pursuant to the said judgment, the Commission vide its order dated 16.5.2019 in Petition No. 284/MP/2018 set out the formula/mechanism for compensation in relation to change in law claims allowed by the APTEL and also approved AIWIB coal and washery coal as alternate coal. However, in absence of particulars regarding AIWIB coal and washery coal, the Petitioner was granted liberty to approach the Commission along with the information/particulars to determine the impact/ compensation in relation to AIWIB coal and washery coal.



(c) As per Article 10.2.1 of the Power Purchase Agreements, in case of change in law, the party affected by such change in law event shall be restored to the same economic position as if such change in law had not occurred. Accordingly, the Petitioner is entitled to compensation for shortfall in coal in terms thereof.

(d) The Commission in order dated 3.6.2019 in Petition No. 156/MP/2018 (MB Power (Madhya Pradesh) Ltd. v. UPPCL and Ors.) has already allowed the compensation for AIWIB coal and washery coal therein. In the case of the Petitioner, per MCal cost of AIWIB coal and washery coal is less than the per MCal cost of open market coal, e-auction coal and imported coal. Thus, the Petitioner exercised its option to procure AIWIB coal and washery coal from SECL with a view to minimize the overall average cost of procurement and resultant impact on account of additional cost pass through on the beneficiaries of the PPA.

(e) MSEDCL owes approximately Rs. 57 crore towards principal amount and Rs. 19 crore towards carrying cost for AIWIB coal and washery coal. Also, DNH owes approximately Rs. 36 crore towards principal amount and Rs. 13 crore towards carrying cost for AIWIB coal and washery coal.

(f) Reconciliation process of the claims being a long-drawn process, it would be appropriate that the Respondents may be directed to release the amount, which may be subject to the outcome of reconciliation. Also, in case of the disputed amount under the bill, the disputing entity ought to approach the Commission for resolving the issue instead of requiring the generating station to approach the Commission for release of payment.

(g) The Petitioner, along with the present Petition, has furnished all the details as to quantity of coal procured, costs incurred, normative parameters, auditor certificate, Form 15 as per Tariff Regulations and sample invoices, etc.

3. Learned senior counsel for the Respondent No.1, MSEDCL mainly submitted as under:

(a) No requisite detail has been furnished by the Petitioner with regard to AIWIB and washery coal in terms of the direction of the Commission vide order dated 16.5.2019. In support of its claim, the Petitioner has merely furnished an auditor certificate.

(b) It appears that both the AIWIB coal as well as the washery coal was being considered by the Petitioner as part of linkage coal supplied to the Petitioner by SECL. Even in the supplementary bill dated 30.5.2019 as raised by the Petitioner pursuant to the Commission's order dated 16.5.2019 whereby the differential impact for computation for shortfall in linkage coal had been claimed, actual firm linkage is being reflected by including both AIWIB coal as well as washery coal.

(c) There is no clarity as to whether the AIWIB coal and washery coal was part of the linkage coal or an alternate coal procured on account of shortfall in linkage coal. In the earlier case, the Petitioner is not entitled to raise a claim of washery coal and AIWIB coal by projecting it as being used as alternate coal. However, in the latter case, there can be no dispute as to the claim of the Petitioner in view of the Commission's order dated 16.5.2019. However, no

supporting documents providing the requisite clarity have been placed on record by the Petitioner in this regard.

(d) Primary obligation of providing the requisite details in support of its claims is on the Petitioner itself and, thus, there cannot be any direction of upfront payment, which may be subject to outcome of reconciliation.

4. Learned counsel for the Respondent No.2, DNH Power Distribution Co. Ltd. mainly submitted as under:

(a) Pursuant to the APTEL decision and prior to the order of the Commission dated 16.5.2019, the Petitioner had on 16.2.2019 raised the supplementary bills claiming compensation for change in law including 100% of its claim for shortage coal (for the period from April 2013 to March 2019) for an amount of Rs. 72.47 crore. However, subsequent to the order of the Commission, wherein the Commission did not grant any relief for AIWIB coal and washery coal, the Petitioner raised a supplementary bill on 30.5.2019 for coal shortage to the tune of Rs. 78.15 crore for the same period from April 2013 to March 2019. Surprisingly, the claim amount had been increased instead of decreasing.

(b) Even in the Form 15 as furnished by the Petitioner, it has unilaterally added the various other components over and above as provided in the Form 15 notified by the Commission in the Tariff Regulations. After being pointed out, the Petitioner, in rejoinder, has furnished the details under Form 15 of the 2019 Tariff Regulations instead of Form 15 of the 2014 Tariff Regulations as applicable in the present case.

(c) It is noticed that on many occasions, per MT landed cost of AIWIB coal and washery coal had been lower than per MT landed cost of the linkage coal. However, the Petitioner has unilaterally included the various additional components thereon.

(d) No requisite details have been furnished by the Petitioner in terms of the order of the Commission dated 30.5.2019, such as invoices of AIWIB coal and washery coal, transportation invoices, detailed computation as per Form 15 of 2014 Tariff Regulations and GCV, etc. The Petitioner has merely provided two sample invoices in support of its claims.

5. In rebuttal, the learned counsel for the Petitioner submitted that since in the order dated 30.5.2019 in Petition No. 284/MP/2018, AIWIB coal and washery coal have been treated as 'other' coal, there is no question of whether they are part of linkage coal or outside of linkage coal. It was also submitted by the learned counsel that on the basis of the same Form 15, which the Respondents are now disputing, payments towards other change in law claims have been paid by the Respondents. As to inclusion of AIWIB coal and washery coal under the linkage coal in the supplementary invoices, learned counsel submitted that since the compensation for AIWIB coal and washery coal was to be determined in terms of liberty granted by the Commission in order dated 30.5.2019, AIWIB coal and washery coal were booked under the head of linkage coal and the Petitioner only claimed the bid energy charges for such coal in its invoices and did not include the actual cost (incremental) of AIWIB coal and washery coal in coal cost pass through compensation. The learned counsel also added that, as per his instructions, all the invoices/bills pertaining to AIWIB coal and washery coal have been already provided to the Respondents. Accordingly, the learned counsel requested to direct the Respondents

to pay atleast 50% of the outstanding amount and the balance amount can be released subject to reconciliation process.

6. Considering the submissions made by the learned counsel for the Petitioner and the learned senior counsel and learned counsel for the Respondents, the Commission directed the Petitioner to share all the invoices/bills relating to procurement of AIWIB coal and washery coal and indicate the quantum of coal procured under the linkage and AIWIB & washery basis with the Respondents within two weeks. The Respondents were directed to complete their verification/reconciliation process within two weeks thereafter and to file the outcome of their verification process after serving copy to the Petitioner. It is expected that the parties would diligently pursue the matter for reconciliation of the computation issue as per the direction of the APTEL, in the alternate come up with an agreed agency to be nominated by this Commission for reconciling the computation issue.

7. The Petitioner is directed to mention the matter after expiry of period given to the Respondents for verification of the claims and the exercise thereafter, pursuant to which the matter will be listed for hearing in due course.

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