

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 188/MP/2021**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Shri I.S.Jha, Member**

**Shri Arun Goyal, Member**

**Shri P.K.Singh, Member**

**Date of order: 2<sup>nd</sup> December, 2021**

**In the matter of**

Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 seeking compensation on account of events pertaining to Change in Law events, read with Article 10 of the Power Purchase Agreement dated 19.12.20213 executed between the Petitioner and the Respondent No. 1.

**And**

**In the matter of**

Coastal Energen Private Limited,  
7th Floor, Buhari Towers, 4, Moores Road,  
Chennai-600 008

.... **Petitioner**

**Vs.**

1. Tamil Nadu Generation and Distribution Corporation Limited,  
6th Floor, Eastern Wing, 144, Anna Salai,  
Chennai-600 002.

2. My Home Power Private Limited,  
5th Floor, 3rd Block, 'My Home Hub', Madhapur,  
Hyderabad-500 081.

...**Respondents**

**Parties Present:**

Shri Mridul Chakravarty, Advocate for the Petitioner

Shri Hemant Singh, Advocate for the Petitioner

Shri Lakshyajit Singh Bagdwal, Advocate for the Petitioner

Ms. M. Hemalatha, TANGEDCO

Shri S. Poonkodi, TANGEDCO



## ORDER

The Petitioner, Coastal Energen Private Limited, has filed the present Petition under Sub-sections (1)(b) and (1)(f) of Section 79 of the Electricity Act, 2003 (hereinafter referred to as "the Act") seeking compensation on account of Change in Law events in terms of the Power Purchase Agreement (PPA) dated 19.12.2013 entered into with the Respondent No. 1, Tamil Nadu Generation and Distribution Corporation Limited ('TANGEDCO') for supply of 558 MW from the Petitioner's generating station. The Petitioner has made the following prayers:

*"(a) Declare that the events/ notifications enumerated in the present petition constitute Change in Law events as per the provisions of the PPA, and that the Petitioner is entitled to be restored to the same economic position as it was prior to occurrence of the said Changes in Law events;*

*(b) Direct the Respondent No. 1 to make payment of Rs. 145.8 Crores to the Petitioner towards the additional expenditure incurred by the Petitioner till 31.03.2021 on account of the said Change in Law events, as enumerated in the present petition, towards supplying power to the Respondent No. 1 under the PPA dated 19.12.2013;*

*(c) Direct the Respondent No. 1 to make payment of 15.64 crore to the Petitioner towards the additional expenditure incurred by the Petitioner on account of the Change in Law events of increase in levy of Counter Veiling Duty;*

*(d) Direct the Respondent No. 1 to continue to make payments accrued in favour of the Petitioner on account of Change in Law events enumerated in the Petition till the subsistence of the said Change in Law events;*

*(e) Approve and grant carrying cost and interest to the Petitioner on the change in law events as enumerated in the present petition, calculated based on the methodology of computing late payment surcharge as provided under the PPA (i.e., on compounding interest basis);*

*(f) Direct the Respondent No. 1 to consider the actual operational parameters in light of Regulation 6.3B (3) of the CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 for the purpose of computing change in law compensation, in the event the power plant has to operate below normative plant availability factor;*

*(g) Declare and/ hold that the Petitioner is entitled to tariff over and above the tariff under the PPA on account of the events enumerated in the Petition;*

*(h) Grant liberty to the Petitioner to raise any other change in law claim not covered in the present petition, at a later stage; and*

*(i) Pass any other or further orders as this Commission may deem fit in the present facts and circumstances of the case and in the interest of justice.”*

2. The Petitioner has sought compensation on account of the following Change in Law events during the operating period:

- (a) Levy of royalty on stevedoring and shore handling operations on imported Coal;
- (b) Levy of Tariff for Mechanization of Evacuation of Cargo on imported coal;
- (c) Levy of Tariff for electrically operated Hopper on imported coal;
- (d) Levy of Tariff for Hiring Harbour Mobile Cranes on imported coal;
- (e) Increase in Wharfage, including levy for supply of labour & Pension fund levy on imported coal;
- (f) Increase in Counter Veiling Duty on imported coal; and
- (g) Carrying cost.

3. The case was called out for virtual hearing on 30.11.2021. During the course of hearing, the Commission observed that the Ministry of Power, Government of India has notified the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as ‘the Change in Law Rules’), the relevant provisions of which are extracted as under:

*“3. Adjustment in tariff on change in law — (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.*

*(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.*

*(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.*

*(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.*

*(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -*

*(a) where the agreement lays down any formula, in accordance with such formula; or*

*(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;*

*(6) The recovery of the impacted amount, in case of the fixed amount shall be,—*

*(a) in case of generation project, within a period of one-hundred eighty months; or*

*(b) in case of recurring impact, until the impact persists.*

*(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.*

*(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).*

*(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”*

4. As per the above quoted provisions, on the occurrence of a Change in Law, the affected party, in the present case the Petitioner, and other parties, in the present case the Respondents, are to settle the Change in Law claims among themselves and approach the Commission only in terms of Rule 3 (8) of the Change in Law Rules.

5. Learned counsel for the Petitioner did not have any objection to the same, but requested to adjust the filing fees paid in the present Petition against the Petition to be filed in terms of Rule 3 (8) of the Change in Law Rules.

6. The filing fees deposited by the Petitioner in respect of the present Petition shall be adjusted against the Petition to be filed by the Petitioner in terms of the liberty granted as above.

7. Accordingly, the Petition No. 188/MP/2021 is disposed of in terms of the above.

**Sd/-**  
**(P.K.Singh)**  
**Member**

**sd/-**  
**(Arun Goyal)**  
**Member**

**sd/-**  
**(I.S.Jha)**  
**Member**

**sd/-**  
**(P.K. Pujari)**  
**Chairperson**