

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 16/MP/2021

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

Date of order: 31st January, 2022

In the matter of

Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 read with Article 10 of the Power Purchase Agreement dated 1.4.2013 and amended Power Purchase Agreement dated 10.4.2015 entered into between Sembcorp Energy India Limited (formerly Thermal Powertech Corporation of India Limited) and the distribution licensees of States of Andhra Pradesh and Telangana, seeking compensation on account of the Change in Law event due to levy of Evacuation Facility Charges and Rapid Loading Charges imposed by Coal India Limited.

And

In the matter of

Sembcorp Energy India Limited,
(Formerly Thermal Powertech Corporation India Limited),
6-3-1090, A Block,
5th Floor, T.S.R Towers,
Rajbhawan Road, Somajiguda,
Hyderabad – 500082, Telangana.

.....**Petitioner**

Vs.

1. Southern Power Distribution Company of Telangana Limited,
Formerly, Central Power Distribution Company of Andhra Pradesh Limited),
Mint Compound,
Hyderabad – 500063, Telangana

2. Northern Power Distribution Company of Telangana Limited,
(Formerly, Northern Power Distribution Company of Andhra Pradesh Limited),
Vidyuth Bhavan, Nakkalagutta,
Hanamkonda, Warangal-506001.

3. Southern Power Distribution Company of Andhra Pradesh Limited
D.No.19-13-65/a,
Kesavayanagunta,
Tiruchanoor Road, Tirupati.

4. Eastern Power Distribution Company of Andhra Pradesh Limited,
P&T Colony, Seethammadhara,



Parties Present:

Shri Hemant Sahai, Advocate, SEIL
Shri Nitish Gupta, Advocate, SEIL
Ms. Nehul Sharma, Advocate, SEIL
Shri Saurobroto Dutta, Advocate, SEIL
Shri Harsha Peechara, Advocate, TSSPDCL

ORDER

The Petitioner, Sembcorp Energy India Limited (formerly known as 'Thermal Powertech Corporation India Limited'), has filed the present Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as "the Act") *inter alia* seeking compensation on account of occurrence of Change in Law events, namely, (a) introduction of evacuation facility charges, and (b) imposition of rapid loading charges in terms of notification issued by Coal India Limited. The Petitioner has made the following prayers:

"(a) Allow the present Petition;

(b) Declare the EFC Notification dated 19.12.2017, issued by CIL is a Change in Law event under the PPA dated 01.04.2013 and the Amended Power Purchase Agreements executed till date between the Petitioner and the Respondents, during Operating Period and having an impact on the Project of the Petitioner;

(c) Declare that the RLC Notifications notified from 26.02.2011 to 31.08.2017 issued by CIL is a Change in Law event impacting the Petitioner's Plant in terms of the PPA dated 01.04.2013, and the Amended Power Purchase Agreements executed till date between the Petitioner and the Respondents, during Operating Period and having an impact on the Project of the Petitioner;

(d) Grant compensation/additional tariff to the Petitioner as per the approved / devised methodology for the period from the issuance of the Change in Law Notifications, till the final disposal of the present petition along with carrying cost and future interest thereon;

(e) Allow consequential reliefs on account of additional expenditure incurred in generating and supplying power to the Respondents due to the occurrence of the abovementioned Change in Law events from the date of levy, so as to restore the Petitioner to the same economic position as if such Change in Law has not occurred;

(f) Evolve a suitable compensatory mechanism for the period from the date of disposal of the petition till the balance operating period of the Project so as to compensate the Petitioner for the impact on costs during the operating period of the Project and restore the Petitioner to the same economic position prior to occurrence of the change in law events i.e. the imposition and levy of EFC and RLC;

(g) Grant carrying cost/ interest for the change in law events of Evacuation Facility Charge and Rapid Loading Charges.”

2. The matter was heard on 24.1.2022 through video conferencing. During the course of hearing, the learned counsel for the Petitioner submitted that the Telangana Discoms (Respondent No. 1 and Respondent No. 2) have already filed their replies. However, the Andhra Pradesh Discoms (Respondent No. 3 and Respondent No. 4) are yet to file their replies. Learned counsel further submitted that the Petitioner has already issued the Change in Law notice to the Respondents. In response to the specific query of the Commission as to whether the Change in Law notice issued by the Petitioner was under the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as 'the Change in Law Rules'), learned counsel for the Petitioner replied in negative. Learned counsel further submitted that the Telangana Discoms having already disclosed their stand on the affidavit, issuing the notice under the Change in Law Rules would not serve any purpose. In any case, the Telangana Discoms would not be in position to take a view different from that taken in their replies. Learned counsel, however, added that the Petitioner may be permitted to issue notice to the Andhra Pradesh Discoms, who are yet to file any replies, under the Change in Law Rules and the matter may be adjourned and kept pending in the meanwhile.

3. We have considered the submissions of the Petitioner. Change in Law Rules provides as under:

“2(c) “change in law”, in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —

(i) -----

(ii) -----

(iii) -----

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 occurrence of a Change in Law, the affected party, in the present case the Petitioner, and other party, in the present case the Respondents/Procurers, 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. It is apparent from a plain reading of the Change in Law Rules that it provides for quantification of claims and a process and methodology for early recovery of mutually agreed claims relating to impact of change in law. The Change in Law Rules also provide that if there is a formula in the agreement for adjusting and recovering the amount of the impact of change in law, it shall be applied, otherwise the formula as prescribed in the Change in Law Rules is to be applied. We also find that the Change in Law Rules provide a time bound mechanism for settlement of such claims.

6. We consider the process and methodology as prescribed in the Change in Law Rules is simply a mechanism for time bound settlement of claims in a deterministic manner and the Petitioner is not going to be prejudiced by adopting the said mechanism. We have already held in our earlier orders (e.g. Order dated 06.12.2021 in Petition No. 228/MP/2021) that since the Change in Law Rules is in the nature of procedural law and under the Change in Law Rules any substantive rights are not being taken away, it is to be applied retrospectively in all pending proceedings. We

find that this instant petition is filed at a pre-mature stage without adhering to the procedure.

7. In view of foregoing discussions, the Petitioner may approach the Telangana Discoms and the Andhra Pradesh Discoms for settlement of Change in Law claims among themselves in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

8. Accordingly, the Petition No. 16//MP/2021 is disposed of in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member