

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 240/MP/2019

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

Date of order: 18th January, 2022

In the matter of

Petition under Section 79(1)(b) of the Electricity Act, 2003 for claiming compensation on account of occurrence of 'Change in Law' event as per Article 10.1.1 of the Case -1 long-term Power Purchase Agreement dated 21.3.2013 entered into between GMR Warora Energy Limited and DNH Power Distribution Corporation Limited, thereby resulting into additional recurring/non-recurring expenditure to GMR Warora Energy Limited for supply of 200 MW Contracted Capacity from its 2x300 MW Thermal Power Station at Warora, Distt. Chandrapur in the State of Maharashtra to DNH Power Distribution Corporation Limited.

And

In the matter of

GMR Warora Energy Limited,
701/704, 7th Floor,
Naman Centre, A-Wing,
Bandra Kurla Complex, Bandra,
Mumbai – 400 051

... Petitioner

Vs.

1. DNH Power Distribution Corporation Limited,
Vidhyut Bhavan, 66 KV Road,
Near Secretariat, Amli,
Silvassa - 396230,
U.T. of Dadra & Nagar Haveli

2. Power Grid Corporation of India Limited,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110016

...Respondents

Parties Present:

Ms. Divya Chaturvedi, Advocate, GWEL
Shri Saransh Shaw, Advocate, GWEL
Shri Anand K Ganesan, Advocate, DNHPDCL



Shri Anand K. Ganesan, Advocate, DNHPDCL
Shri Ashwin Ramanathan, Advocate, DNHPDCL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Soumya Singh, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Shri Abani Mishra, GWEL
Shri Karan Yambem, GWEL

ORDER

The Petitioner, GMR Warora Energy Limited, has filed the present Petition under Section 79(1)(b) of the Electricity Act, 2003 (hereinafter referred to as “the Act”) with the following prayers:

(a) Declare and adopt the Orders of this Commission notified vide Notification No. L-1/44/2010-CERC as ‘Change in Law’ events within the meaning of Article 10 of the DNH PPA and allow subsequent relief;

(b) Declare and adopt the CERC (Sharing of Inter State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 notified by this Commission as ‘Change in Law’ event within the meaning of Article 10 of the DNH PPA and provide consequential relief thereof;

(c) Declare that any increase in Inter-State Transmission Charges on account of promulgation/amendment of applicable regulations will be a Change in Law event and consequential relief thereto will be extended to the Petitioner;

(d) Direct the Respondent No.1 to make a payment of Rs.25.32 crore to the Petitioner on account of abnormal increase in PoC charges till June, 2019 along with carrying cost and to make payment subsequently for all future Supplementary Bills in terms of the PPA;

(e) Direct the Respondent No.1 to make a payment of Rs.33.78 crore to the Petitioner on account of abnormal and unprecedented increase in Inter-State Transmission Charges on account of the notification of the CERC (Sharing of Inter State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 till July, 2019 along with Carrying Cost and to make payment subsequently for all future Supplementary Bills in terms of the PPA;

*In alternate,
The Commission in exercise of its regulatory powers may please to grant the following relief:*

(vi)(a) Direct that the Petitioner is entitled to a compensation of Rs.65,76,41,465 crore till June, 2019 in light of the unforeseen events taking place after the Cut-off date;

(vi)(b) Direct that the Petitioner is entitled to compensation on account of any



increase in the Inter-State Transmission Charges in future along with the carrying cost; and

(vii) Condone any inadvertent omission/errors/shortcomings and permit the Petitioner to add/change/modify/alter the present pleading/petition and may also grant leave to the Petitioner to make appropriate submissions at any future date in regard to the present proceedings.”

2. Order was reserved in the matter on 30.9.2021. However, consequent upon notification of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as “the Change in Law Rules”) by the Ministry of Power, Government of India, it was considered expedient for ends of justice to rehear the matter. Hence, matter was re-listed for hearing on 11.1.2022 through video conferencing.

3. During the course of hearing on 11.1.2022, the learned counsel for the Petitioner submitted that the present Petition has been filed for seeking compensation on account of Change in Law events. The learned counsel further submitted that notice regarding Change in Law events was sent to the Respondent, DNHPDCL in terms of the PPA. However, no response was received from the Respondent in this regard. The learned counsel for the Petitioner also submitted that the Change in Law Rules may not be applicable in the present case. The learned counsel for the Respondent submitted that the Respondent has already filed its reply.

4. We have considered the submissions of the parties. The 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.”

5. 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 Respondent/Procurer, 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.

6. The Petitioner has submitted that the Change in Law Rules may not be applicable in the present case. We have considered the submission of the Petitioner. 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.

7. 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.

8. In view of foregoing discussions, the Petitioner may approach the procurer 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.

9. Accordingly, the Petition No. 240/MP/2019 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**