

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 300/MP/2018

and

Petition No. 301/MP/2018

Coram:

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

Date of Order : 28.01.2022

Petition No. 300/MP/2018

In the matter of:

Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 read with Regulation 14(3)(ii) and Regulation 8(3)(ii) of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2014 and read with statutory framework governing procurement of power through Competitive Bidding and Article 10 and 13 of the respective Power Purchase Agreements, executed between GMR Kamalanga Energy Limited and its beneficiaries, seeking compensation on account of Change in Law events impacting revenues and costs during the Operating Period.

And in the matter of:

1. GMR Kamalanga Energy Limited,
Skip House, 21/1, Museum Road,
Bangalore-560 005.
2. GMR Energy Limited,
Skip House, 21/1, Museum Road,
Bangalore-560 005.

...Petitioners

Vs

1. Bihar State Power (Holding) Company Limited,
First Floor, Vidyut Bhawan, Bailey Road,
Patna-800001.
2. Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Plot No. C-16, Sector-6,
Panchkula, Haryana.



3. Dakshin Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Vidyut Nagar,
Hisar-125005.
4. Grid Corporation of Odisha,
Janpath, Bhubaneswar-751022.
5. PTC India Ltd.,
2nd Floor, NBCC Tower-15, Bhikaji Cama Place,
New Delhi-110066.

...Respondents

Petition No. 301/MP/2018

In the matter of:

Petition under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding 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 Procurers for compensation due to Change in Law impacting revenues and costs during the Operating Period.

And in the matter of:

GMR Warora Energy Limited,
701/704, 7th Floor, Naman Centre, A-Wing,
Bandra Kurla Complex, Bandra,
Mumbai-400051.

.... Petitioner

Vs

1. Maharashtra State Electricity Distribution Company Limited,
5th Floor, Prakashgadh, Plot No. G-9,
Anant Kanekar Marg Bandra (East),
Mumbai-400051.
2. DHN Power Distribution Company Limited,
(Previously Electricity Department, Dadra & Nagar Haveli)
Vidyut Bhawan, Opposite Secretariat Silvassa-396230,
Union Territory of Dadra & Nagar Haveli.
3. Tamil Nadu Generation and Distribution Corporation Limited
144, Anna Salai, NPKRR Maaligai,
Chennai-600002.
4. GMR Energy Trading Limited,
21/1, Skip House, Museum Road,
Bangalore-560 005.

.....Respondents

For Petitioner : Shri Venkatesh, Advocate, GMR



Shri Ashutosh K. Srivastava, Advocate, GMR
Shri Abhishek Nangia, Advocate, GMR
Shri Abani Mishra, GMR
Shri Karan Yambem, GMR

For Respondent : Ms. Anushree Bardhan, Advocate, BSPHCL
Shri Shubham Arya, Advocate, HPPC
Ms. Poorva Saigal, Advocate, HPPC
Shri Ravi Kishore, Advocate, PTC India
Shri R.K Mehta, Senior Advocate, GRIDCO
Ms. Himanshi Andley, Advocate, GRIDCO
Ms. Swapna Seshadri, Advocate, DNHPDCL
Shri Ashwin Ramanathan, Advocate, DNHPDCL
Shri Gopal Jain, Senior Advocate, MSEDCL
Shri Anup Jain, Advocate, MSEDCL
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Ms. Aakanksha Bhola, Advocate, TANGEDCO
Shri Sukanta Panda, GRIDCO
Ms. Susmita Mohanty, GRIDCO
Shri Mahfooz Alam, GRIDCO

ORDER

The Petitioner in Petition No. 300/MP/2018, GMR Kamalanga Energy Limited (GKEL) and the Petitioner in Petition No. 301/MP/2018, GMR Warora Energy Limited (GWEL) have filed the instant petitions under Section 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as “the Act”) read with Article 10 of the Power Purchase Agreements (hereinafter referred to as “the PPA”) entered into between GKEL and GWEL with their beneficiaries/ procurers, seeking compensation on account of “Change in Law” events impacting revenues and costs during the Operating Period. GKEL and GWEL have been collectively referred to as the Petitioners hereinafter.

2. GKEL has set up a coal based 1400 MW Thermal Power Plant (“TPP”), at Village Kamalanga, District Dhenkanal in Odisha (in short, “the Kamalanga Project”). The Kamalanga Project is being implemented in two stages wherein the first stage



comprises 3(three) units of 350 MW each (1050 MW) which has achieved COD on 25.3.2014. The Kamalanga Project was awarded mega power project status for Stage 1 by the Ministry of Power (MoP) on 1.2.2012. The power from the Kamalanga Project is being supplied to BSPHCL in the State of Bihar, GRIDCO in the State of Odisha, and to Haryana Discoms in State of Haryana.

3. GWEL has developed a coal based TPP with an installed capacity of 600 MW in the Warora Taluka, District Chandrapur in the State of Maharashtra (in short, "the Warora Project"). The Warora Project comprises two units of 300 MW each. Unit 1 of the Warora Project was commissioned on 19.3.2013 and Unit 2 was commissioned on 1.9.2013. GWEL had entered into three separate PPAs with Respondent No.1, Respondent No.2 and Respondent No.3, respectively, being the Distribution Licensees operating in Maharashtra, Union Territory of Dadra and Nagar Haveli and Tamil Nadu, (in short, "the Procurers"), for supplying power from the Warora Project. GWEL has directly entered into PPAs with Respondent No.1 and Respondent No.2 and whereas with TANGEDCO, Respondent No.3, it has entered into a back to back PPA through, GMR Energy Trading Limited, Respondent No.4.

4. The Ministry of Environment, Forests and Climate Change ("MoEFCC"), Government of India notified the Environment (Protection) Amendment Rules, 2015 (in short, "the MoEFCC Notification") dated 7.12.2015. The Petitioners have submitted that the MoEFCC Notification mandates all TPPs to comply with the revised emission control norms (ECNs) as specified in the MoEFCC Notification, and it is a 'Change in Law' event. As per the MoEFCC Notification, the Petitioners are required to install various Emission Control System (ECS) like WFGD (wet limestone based flue-gas desulphurization) system which will lead to additional recurring/ non-



recurring expenditure by the Petitioners and will thereby impact the economies of the Kamalanga Project and the Warora Project. They have submitted that the instant petitions have been filed for restoring them to the same economic position as if such 'Change in Law' event had not occurred.

5. We have considered the submissions of the Petitioners. The Petitioners have prayed for declaring the MoEFCC Notification as a "Change in Law" event and for grant of consequential relief on account of increase in capital cost, increased O&M cost and auxiliary power consumption etc., besides other prayers.

6. During the hearing on 16.11.2021, it was observed that the Petitioners have not yet finalised the capital cost towards installation of ECS in the instant case. In this regard, the Petitioners had submitted that the bidding process for installation of FGD system is in final stages and it is expected to be completed by January 2022. Accordingly, the Commission had directed the Petitioners to complete the process of award and to place on record the final hard cost and the details of award on affidavit as soon as it is finalised. The Commission had further directed the Petitioners to involve the procurers/ beneficiaries in the process of bidding as per the directions of CEA and the procurers/ beneficiaries may raise their concerns, if any, with the Petitioners.

7. During the hearing on 11.1.2022, the learned counsel for the Petitioners submitted that the bidding process for installation of FGD system for both the Projects has not been completed and that it may take couple of months more. He further submitted that the Petitioners will move an application for listing of the petitions once the bidding process is completed.



8. We note that the bidding process for the installation of FGD system, required to be installed in compliance of the MOEFCC notification dated 7.12.2015, has not been completed by the Petitioners and that it would take couple of months more. The instant petitions were filed in 2018 and still the process of award of contracts has not been completed. Further, after completion of the bidding process, the Petitioners may have to revise the petition in accordance with the prices discovered in the bidding process and share the details with the beneficiaries/ procurers. This process would take some more time. In our view, no purpose would be served by keeping these petitions pending any further. The Petitioners are directed to file fresh petitions on completion of tendering process and award of contracts and also to share the details with the beneficiaries/ procurers. The filing fee paid by the Petitioners towards filing these petitions will be adjusted against the petitions to be filed by the Petitioners.

9. This order disposes of Petition No. 300/MP/2018 and Petition No. 301/MP/2018 in terms of the above discussion and findings.

sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson

