

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 700/MP/2020

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S.Jha, Member

Shri Arun Goyal, Member

Shri P.K.Singh, Member

Date of order: 19th January, 2022

In the matter of

Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 for claiming compensation on account of the event pertaining to Change in Law as per Article 10 of the Power Purchase Agreement dated 29.6.2012 read with Addendum I to PPA dated 27.9.2017 executed between the Petitioner and TANGEDCO for 200 MW Medium term power supply (PPA-I) and as per the terms of the Power Purchase Agreement dated 23.8.2013 executed between the Petitioner and TANGEDCO for 400 MW long term power supply (PPA-II).

And

In the matter of

Jindal Power Limited,
Tamnar- 496107,
District Raigarh, Chhattisgarh

... Petitioner

Vs.

Tamil Nadu Generation and Distribution Corporation Limited,
NPKRR Maligai, 6th Floor,
Eastern Wing, 144, Anna Salai,
Chennai – 600 002

... Respondent

Parties Present:

Shri Matrugupta Mishra, Advocate, JPL

Ms. Ritikka Singhal, Advocate, JPL

Shri Vignesh Srinivasan, Advocate, JPL

Shri Sanjeev Thakur, Advocate, JPL

Ms. Anusha Nagarajan, Advocate, TANGEDCO

Ms. Aakanksha Bhola, Advocate, TANGEDCO

ORDER

The Petitioner, Jindal Power 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, introduction of Evacuation Facility Charges @ Rs. 50/MT of coal by Coal India Limited vide its Price Notification dated 19.12.2017, in terms of Article 10 of (i) Power Purchase Agreement (‘PPA’) dated 29.6.2012 read with Addendum I dated 27.9.2017 for supply of 200 MW on medium-term basis, and (ii) PPA dated 23.8.2013 for supply of 400 MW on long-term basis. The Petitioner has made the following prayers:

“(a) Declare the CIL notification dated 19.12.2017 bearing No. CIL:S&M:GM(F)/Pricing 2017/1005 as Change in Law event as per the provisions of the PPAs and that the Petitioner is entitled to be restored to the same economic condition prior to occurrence of the said Changes in Law event;

(b) Direct the Respondent to make payment of Rs. 3421.06 lakh to the Petitioner towards the additional expenditure incurred by the Petitioner till 31.03.2020 on account of the said Change in Law event;

(c) Grant liberty to the Petitioner to raise any other change in law claim not covered in the present petition, at a later stage.”

2. Order was reserved in the matter on 11.11.2021. 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 the 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 if the Petitioner is asked to follow the Change in Law Rules at this stage, it will only delay its claims. The learned counsel for the Respondent submitted that as regards the applicability of Change in Law Rules, the Commission

may take an appropriate decision in line with the decision already taken by the Commission in similarly placed cases.

4. We have considered the submissions of the parties. 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 since the order in the present Petition was reserved, the new mechanism for settlement in terms of Change in Law Rules should not be applied to the 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 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. 700/MP/2020 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**