

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 264/MP/2023

Subject : Petition under Section 79(1)(b) and 79 (1)(f) of the Electricity Act, 2003 for claiming for compensation due to levy of charges of transportation of fly ash as per the terms of Power Purchase Agreement dated 25.07.2013 executed between the Petitioner and the PTC India Limited and as per the terms of the back to back Power Purchase Agreement executed by PTC India Limited with Uttar Pradesh Power Corporation Limited on behalf of Paschimanchal Vidyut Vitran Nigam Limited, Purvanchal Vidyut Vitran Nigam Limited, Madhyanchal Vidyut Vitran Nigam Limited, Dakshinanchal Vidyut Vitran Nigam Limited dated 25.07.2013 read with Paras 155 and 156 of the order dated 12.06.2019 passed by this Commission in Petition No. 118/MP/2018.

Petitioner : TRN Energy Private Limited (TRNEPL)

Respondents : Paschimanchal Vidyut Vitran Nigam Limited and 7 Ors.

Date of Hearing : **23.4.2025**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Parties Present : Shri Matrugupta Mishra, Advocate, TRNEPL
Shri Nipun Dave, Advocate, TRNEPL
Shri Praveen, TRNEPL
Shri Gyan Prakash Gupta, TRNEPL
Shri Ravi Sharma, Advocate, CSPDCL
Shri Aryan Chanda, Advocate, CSPDCL
Shri Abhishek Kumar, Advocate, UPPCL
Shri Karan Arora, Advocate, UPPCL
Shri Ravi Kishore, Advocate, PTC

Record of Proceedings

During the course of the hearing, the learned counsel for the Petitioner submitted that the present Petition has been filed for claiming the compensation due to levy of charges of transportation of fly ash in terms of the Power Purchase Agreement dated 25.7.2013 executed between the Petitioner and PTC India Limited and in terms of the

back-to-back Power Purchase Agreement executed by PTC India Limited (PTC) with Uttar Pradesh Power Corporation Limited (UPPCL) on behalf of the Distribution Licensees of Uttar Pradesh dated 25.7.2013 read with the Commission's order dated 12.6.2019 in Petition No. 118/MP/2018. Learned counsel further submitted that the Petitioner has complied with all the requirements as mentioned in paras 155 and 156 of the order in Petition No. 118/MP/2018 and thus, the consequential reliefs as prayed for in the present case may be allowed. Learned counsel submitted that since the expenditure for transportation of fly ash is going to recur in the future also, the mechanism for compensating the Petitioner for all future expenditure with respect to transportation of fly ash may be adopted in the present matter as prescribed in Order dated 22.3.2021 in Petition No. 405/MP/2019 on a monthly basis.

2. Learned counsel for Respondent Nos. 1 to 6 highlighted the discrepancies in the Change in Law claims as averred by the Petitioner. Learned counsel firstly pointed out that the Petitioner has not placed on record complete documents/information in terms of the order dated 12.6.2019 passed in Petition No.118/MP/2018 for claiming the consequential relief. Learned counsel further pointed out that even otherwise the cost claimed to be borne by the Petitioner towards transportation of fly ash is not admissible in terms of MoEFCC notification dated 25.1.2016, which imposed the burden to bear the cost of transportation of fly ash on Thermal Power Projects only for ash to be utilized for road construction projects or manufacturing of ash-based products or use as soil conditioner in agriculture activity. The transportation cost incurred by the Petitioner for the supply of fly ash for the various purposes/uses, as discernible from the documents placed on record, is not admissible in terms of the notification dated 25.1.2016. Learned counsel added that the scope of the present proceedings is limited to the extent the Petitioner has claimed the consequential compensation in view of MoEFCC notification dated 25.1.2016 being the admitted Change in Law and not the compensation admissible under the MoEFCC notification dated 31.12.2021, in respect of which the Petitioner has not even issued a Change in Law notice under the PPA.

3. Learned counsel for Respondent No. 8, Chhattisgarh State Power Distribution Company Limited, submitted that the Respondent is neither a proper party nor a necessary party to the Petition, and hence its name ought to be deleted from the array of parties. Learned counsel, while relying on the judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 7966 of 2019 & Anr. titled as *Ramayana Ispat Private Limited v State of Rajasthan*, decided on 1.4.2025, submitted that this Commission lacks the jurisdiction to adjudicate the dispute between the Petitioner and Respondent No.8. Learned counsel added that since the Petitioner is supplying 5% of net power to Respondent No.6 at a variable charge only, the expenses incurred towards fly ash disposal/handling, which are covered under the O & M expenses and thus, form part of Fixed Charges, cannot be recovered from Respondent No.8.

4. In rebuttal, the learned counsel for the Petitioner opposed the contention of Respondent Nos.1 to 6 and submitted that once the notification dated 25.1.2016 is declared/recognized as a Change in Law, then the notification dated 31.12.2021 is *ipso facto* a Change in Law event.

5. The matter remained part-heard and will be listed for the hearing on **19.6.2025**. In the meantime, the Commission directed the parties to file their written submissions/notes of arguments within two weeks.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)