CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 79/MP/2013

Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Articles 13 and 17 of the Power Purchase Agreement dated 07.08.2007 executed between the Distribution Companies in the State of Haryana and PTC India Limited and the back to back PPA dated 12.3.2009 entered into between GMR Energy Limited and PTC Indian Limited for compensation due to change in law impacting revenues and costs during the operating period.

Date of hearing : 3.6.2014

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member

Petitioner : GMR-Kamlanga Energy Limited, Bangalore

Respondents : Dakshin Haryana Bijili Vitran Nigam Limited

Parties present : Shri Amit Kapoor, Advocate, GMR
Shri Vishrov Mukerjee, Advocate, GMR
Shri Rohit Venkat, Advocate, GMR
Shri V. Akshaya Babu, GMR
Shri Rohan Jodhan, GMR
Shri Jatinder Kumar, GMR
Shri Sunil, GMR
Shri G. Umapathy, Advocate, DHBVNL
Shri R. Mekhala, Advocate, DHBVNL
Shri Varun Pathak, Advocate, PTC

Record of Proceedings

Learned counsel for the petitioner submitted as under:

(a) The petitioner GMR-Kamalanga Energy Limited (GEL) is commissioning 1400 MW Power plant in village Kamalanga, district Dhenkanal in the State of Odisha in two phases. First phase of 3x350 MW has been commissioned. Out of 1050 MW capacity in the Phase-I, 900 MW capacity has been tied up. Out of this, same 262.50 MW has been tied up through MOU with GRIDCO and the remaining capacity has been tied up with distribution companies of Haryana and Bihar based on competitive bidding. The balance capacity of 150 MW is yet to be tied up

(b) Change in royalty structure on coal, shift from UHV based pricing to GCV based pricing, levy of Central Excise duty of 6%, levy of clean energy cess, changes in new coal distribution policy by Government of India, levy of development surcharge by Railway are Change in Law events and the petitioner is entitled to be restored to the same economic position as though the changes have not occurred.

(c) Article 13 of the PPA provides the mechanism to recognize and deal with Change in Law which includes compensation for any increase and decrease in revenue or cost to the seller. Further, the petitioner has met all the criteria laid down in Article 13 of the PPA to qualify as Change in Law

(d) Article 13.1.1 of the PPA provides that the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal of any law etc. are Change in Law event, where law means any Statutes, Ordinances, Regulations, Notifications, Court Rules, Interpretations. Since, all claims in the petition are amendments in the Statute, they come under the purview of the definition of Change in Law.

(e) The audited accounts for 2013-14 are available and based on that calculation for actual impact of the change in law events will be submitted before the Commission.

2. Learned counsel for the distribution companies of Haryana submitted as under:

(a) The petitioner has not complied with provisions of Article 13 of the PPA strictly.

(b) The project was conceived based on domestic coal and the imported coal was never the basis for the project and any increase in cost on account of imported coal cannot be fastened to the procurers.

(c) All the cost impact can be calculated only after the tariff period is over, not before. Since claims such as increase in MAT rate, Income tax rate, Service tax etc. do not constitute a cost of business of selling of electricity, they cannot be construed as change in law event.

(d) The petitioner was supposed to supply power from the COD of first unit i.e. 30.4.2013. However, the petitioner did not get the full contracted capacity till 9.2.2014. Therefore, all these months it was selling power in the open market.

The petitioner should submit the details of the power sold during this period so that the same can be adjusted in the tariff.

3. Learned counsel for the PTC India Ltd submitted that the present petition is akin to imposition of new levy, tax, charge etc. Since the viability of the project has come into jeopardy due to external reasons attributable to Govt. Instrumentality/Govt. , same may be kept in mind while deciding the present case.

4. Learned counsel for the petitioner submitted that in terms of Article 13 of the PPA, the change in law events were notified to the procurers. With regard to inclusion of imported coal, learned counsel for the petitioner submitted that as per the decision of Cabinet Committee dated 21.6.2013, CEA had issued directions to all generating companies to provide for imported coal blending facility due to shortage of domestic coal. Therefore, whether cost of imported coal can be treated as a pass-through is covered in the statutory advice. Learned counsel for the petitioner requested the Commission for an early resolution for the fuel cost part of the claim and devise a mechanism to recover the same.

5. After hearing the learned counsels for the parties, the Commission directed the petitioner to submit on affidavit by 25.8.2014, detailed computations of all the cost impacts claimed (on actual usage basis based on the audited accounts) along with documentary evidence.

6. The Commission directed that due dates of filing the information should be strictly complied with

6. Subject to above, the Commission reserved its order in the petition.

By order of the Commission
SD/-
(T. Rout)
Chief (Law)