

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 1/MP/2017

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding (“Competitive Bidding Guidelines”) and (a) Article 10 of the PPA dated 17.3.2010 between Maharashtra State Electricity Distribution Company Ltd. and EMCO Energy Limited; (b) Article 10 of the PPA dated 21.3.2013 between Electricity Department of Union Territory of Dadra and Nagar Haveli and EMCO Energy Limited and (c) Article 10 of the PPA dated 27.11.2013 between GMR Energy Trading Limited and Tamil Nadu Generation and Distribution Corporation Limited through EMCO Energy Limited.
- Petitioner : GMR Warora Energy Limited (GMRWEL).
- Respondents : Maharashtra State Electricity Distribution Co. Ltd. and Others.
- Date of hearing : 9.1.2018
- Coram : Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Parties present : Shri Amit Kapoor, Advocate, GMRWEL
Shri Vishrov Mukherjee, Advocate, GMRWEL
Ms. Yashaswi Kant, Advocate, GMRWEL
Ms. Bhawya Solanki, Advocate, GMRWEL
Ms. Raveena Dhamija, Advocate, GMRWEL
Ms. Ananya Sachdeva, MSEDCL
Ms. Swapna Seshadri, Advocate, DNH Distribution Co.
Shri G. Umapathy, Advocate, TANGEDCO
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri M.G. Ramachnadran, Advocate, Prayas
Ms. Poorva Saigal, Advocate, Prayas

Record of Proceedings

During the hearing, the learned counsel for the petitioner mainly submitted the following:

- a. In the light of the judgment of the Hon’ble Supreme Court dated 11.4.2017 in Energy Watchdog Case, the Change in Law events namely, increase in Crushing/Sizing Charges, increase in Surface Transportation Charges, deviation from NCDP, increase in MAT and Corporate Tax and increase in working capital requirement disallowed by



the Commission vide order dated 1.2.2017 in Petition No. 8/MP/2014 may be re-considered.

b. Any notification, rule, ordinance, circular shall have force of law as long as it conforms to a certain form possessed by other laws in force and encapsulates a mandate and discloses a specific purpose to qualify as having force of law. It also includes taxes on all elements necessary for generating and supplying power. Judgments of the Hon'ble Supreme Court in Gulf Goan Hotels Co. Ltd Vs. Union of India [(2014) 10 SCC673] and Rai Sahib Ram Jawaya Kapur Vs. State of Punjab [AIR 1955 SC 549] were referred to.

c. Carrying costs are in the nature of compensation for money denied at the appropriate time. In terms of Article 10 of the PPA, the petitioner is entitled to carrying costs as the same in in the nature of compensation and failure to do so would render the Change in Law provision otiose.

d. Though there is no concept of return on equity and interest on working capital in competitively bid tariff, the increase in costs due to change in law events have indirect bearing on them and hence, the petitioner is entitled to interest on incremental working capital at normative interest rate. Following judgments of the Hon'ble Supreme Court and the Appellate Tribunal for Electricity (APTEL) were referred to :

- i. R.C. Cooper Vs. Union of India, AIR 1970 SC 564;
- ii. N.B. Jeejeebhoy Vs. Assisstant Collector, AIR 1965 SC 1096;
- iii. Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd., [(2010) 10 SCC 341];
- iv. North Delhi Power Ltd. Vs. DERC, 2010 ELR (APTEL) 0891;
- v. Tata Power Company Ltd. Vs. MERC, 2011 ELR (APTEL) 336

e. Accordingly, the change in law events during the operating period (as in para 3 of the petition) may be allowed.

2. In response to the above, learned counsel for TANGEDCO mainly submitted as under:

a. In order to claim compensation under Change in Law, the petitioner is required to furnish documentary evidence in support of its claim in order to ascertain if there has been any impact at all on account of Change in Law.

b. The petitioner has also not furnished the break-up details of the prices quoted in its bid. It appears that energy charge quoted is inclusive of statutory taxes, levies, duties, cess, etc. and the same is being escalated as per the escalation index notified by the Commission from time to time.

c. The components of non-escalable and escalable capacity charge, escalable energy charge and escalable inland transportation energy charge quoted by the petitioner are inclusive of taxes, duties, levies, etc. As these components, (other than the base price of the coal) are being escalated from the bid date by virtue of escalation rate notified by the Commission, the question of claim of Change in Law does not arise. Accordingly, the Commission may direct the petitioner to clarify as to whether the petitioner is



claiming escalation notified by the Commission on the tax, levies and duties allowed by the Commission under change in law.

d. In terms of Article 15.18.1 of the PPA, the procurer is absolved from all future taxes, duties, cess which the seller will be liable to pay while supplying power to the procurer.

e. Reply filed in the matter may be considered.

3. Learned counsel for DNH Power Distribution Corporation Limited submitted that some of the issues raised by the petitioner in this petition had already been considered by the Commission in its order dated 1.2.2017 in Petition No. 08/MP/2014. She also submitted that this respondent has challenged the said order before the APTEL in Appeal No. 1476 of 2017, wherein the petitioner is a party and the same is pending. The learned counsel, however, sought time to file her written submissions in the matter.

4. The learned counsel for Prayas submitted that with regard to levy of charges for transportation of fly ash, there were existing obligations of the petitioner as on cut-off date and only the increase in charges on account of the GOI Notification dated 25.1.2016 may be considered as Change in Law. He, however, added that the petitioner is required to demonstrate that the said increase in charges is on account of such notification.

5. Learned counsel for the petitioner denied that escalation is claimed on the 'change in law' reliefs allowed by the Commission. Learned counsel clarified that escalation is charged on the energy charges quoted by the petitioner which is allowed in accordance with the PPA.

6. The Commission directed the petitioner to submit on affidavit as to how the escalable rates notified by the Commission are applied while raising the bills on the beneficiaries, on or before 16.1.2018, with advance copy to the respondents and M/s Prayas. The Commission also directed the parties to file their responses in the matter by 23.1.2018, with copy to the other. In case, no submissions/responses are filed within the above mentioned date, the matter shall be disposed of based on the documents available on record.

7. Subject to the above, the Commission reserved the order in the petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Legal)**

