

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 15/MP/2019

Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 for declaration that any variation in the cost of fuel 'invoiced' to the Petitioner, owing to any increase in rate of taxes, levies, cess or duties which includes but is not limited to royalty, central excise duty, S.E.D. CST, energy cess, sizing charges, surface transportation and also enactment of new taxes/royalties on the coal cost which includes but is not limited to NMET, DMF, forest transit fee and PWD cess, imposed by the Central Government, State Government/Union Territory or any other Government, being a component of invoiced rate of coal, is a pass-through cost as per the terms of the PPA dated 7.8.2008.

Date of Hearing : 11.1.2022

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

Petitioner : Jhajjar Power Limited (JPL)

Respondents : Haryana Power Purchase Centre (HPPC) and Ors.

Parties Present : Ms. Shikha Ohri, Advocate, JPL
Ms. Surabhi Pandey, Advocate, JPL
Shri Shubham Arya, Advocate, HPPC
Ms. Poorva Saigal, Advocate, HPPC
Ms. Bitika Kaur, JPL
Ms. Sudipta Ghosh, JPL
Shri Vikas Kadian, HPPC

Record of Proceedings

Order was reserved in the matter. However, consequent upon issue of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 by the Ministry of Power, Government of India requiring a change in procedure dealing with the Change in Law cases, the matter is re-listed.

2. During the course of hearing, the learned counsel for the Petitioner submitted that the present Petition has been filed seeking declaration that any variation in the rate of taxes, levies, cess or duties, which includes but is not limited to royalty, central excise duty, S.E.D CST, energy cess, sizing charges, surface transportation and also enactment of new taxes on coal cost which includes but is not limited to NMET, DMF, forest transit fee and PWD cess, imposed by the Central Government, State Government/ Union Territory, or any other Government, being a component of invoiced rate of coal is a pass-through cost as per Article 11 read with Schedule 7 of

the Power Purchase Agreement ('PPA') dated 7.8.2008. Therefore, there is no need to invoke Change in Law provisions in the present case. The learned counsel further submitted that it is only in the alternative that the Petitioner has sought to invoke the Change in Law provision of the PPA in praying that it may be allowed pass through of the above-mentioned taxes, duties and charges under the Change in Law provisions of the PPA. The learned counsel submitted that the generating station/ Project of the Petitioner falls under the category of Case – 2 bidding project, wherein the entire fuel cost is pass through under the PPA as evident from bare reading of Article 11 read with Schedule 7 of the PPA. However, the Respondents had temporarily withheld payment of its supplementary invoices in relation to the additional NMET royalty on coal citing lack of clarity as to the applicability of Change in Law clause of the PPA and had further asked the Petitioner to approach the Commission for seeking confirmation on the reimbursement of the amount claimed on account of change in the rates of taxes and duties and introduction of any new taxes, duties and levies. The learned counsel also added that the Respondents are, in fact, already making the payments of the invoices raised by the Petitioner to this effect.

3. The learned counsel for the Respondent, HPPC submitted that to the extent the variation in the invoiced rate of coal supplied to the Petitioner on account of increase in taxes, levies and cess, etc. is in accordance with provisions of the PPA, namely, Schedule 7 read with Article 11, the same may be allowed as a pass through in tariff by the Commission subject to the prudence check.

4. After hearing the submissions made by the learned counsel for the parties, the Commission reserved the matter for order.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)