

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Petition No. 373/MP/2022

- Subject** : Petition under Section 79 of the Electricity Act, 2003 read with Regulations 11 and 29 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 seeking approval of additional expenditure on account of installation of Emission Control System to comply with the Notification dated 7.12.2015 issued by Ministry of Environment and Forest and Climate Change (MoEF&CC).
- Date of Hearing** : 6.9.2023
- Coram** : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner** : Udupi Power Corporation Limited
- Respondents** : Power Company of Karnataka Limited & 6 Others
- Parties Present** : Shri Amit Kapur, Advocate, UPCL
Shri Saunak Rajguru, Advocate, UPCL
Shri Rajesh Jha, Advocate, UPCL
Shri Basava Prabhu Patil, Sr. Advocate, PCKL & ESCOMs
Shri Shubhranshu Padhi, Advocate, PCKL & ESCOMs
Shri Sougat Mishra, Advocate, PCKL & ESCOMs
Shri Jay Nirupam, Advocate, PCKL & ESCOMs
Shri Geet Rajan Ahuja, Advocate, PCKL & ESCOMs

Record of Proceedings

The instant petition has been filed by Udupi Power Corporation Limited for in-principle approval of additional expenditure on account of the installation of Emission Control System (ECS) in compliance with the Ministry of Environment, Forest, and Climate Change (MoEF&CC) Notification dated 7.12.2015.

2. Learned counsel for the Petitioner, referring to the Note of Arguments, made the following submissions:

- a) The Commission, vide order dated 20.11.2019 in Petition No. 346/MP/2018 in the matter of UPCL v. PCKL & Ors. has already declared MOEF&CC Notification dated 7.12.2015 as an event of 'Change in Law'.



- b) The parent Company of the Petitioner, namely, Adani Power Limited (APL), invited bids for participation in the bidding process for the installation of FGD systems for four power plants, viz, (i) Kawai (Rajasthan) TPS (2x660 MW); (ii) Udipi (Karnataka) TPS (2x600 MW); (iii) Mundra (Gujarat) TPS, Phase-I (2x330 MW) & Phase II (2x330 MW), and (iv) Tiroda (Maharashtra) TPS, Phase I (2x660 MW), Phase II (1x660 MW), & Phase III (2x660 MW).
- c) The bidding process was transparent, as tender documents were put up for sale from 6.10.2020 to 16.10.2020; the advertisements were published on 5.10.2020 in two daily national newspapers, and on 5.10.2020, letters were issued to embassies of 28 countries notifying them about the bidding process.
- d) Based on the suggestion of PCKL, a single stage 2 envelope process was followed. Fourteen prospective bidders purchased the tender documents, and nine bidders submitted the techno-commercial and price bids. On 8.9.2021, PCKL agreed to proceed with the bidding process as per the terms and conditions of the tender documents.
- e) Techno-commercial and price bids were opened on 20.12.2021, in the presence of ESCOMs' representatives, and bids were evaluated in four stages i.e. Stage-I: Pre-qualification check, Stage II: Responsiveness check of the submitted bids, Stage III: Price bid evaluation, and Stage IV: Selection of the successful bidder.
- f) Bid of M/s Power Mech was declared lowest (L1) by the Consultant, Deloitte India, engaged by the Petitioner for this purpose. PCKL requested that the Petitioner negotiate the price of the contract with the L1 bidder, Power Mech, and the Petitioner requested that Power Mech lower its contract price. However, Power Mech did not agree with the request of the Petitioner. Accordingly, the Petitioner awarded the contract to Power Mech on 18.8.2022.
- g) For the period of shut-down required to install FGD, Petitioner's units ought to be considered as 'deemed available'.

3. Learned Senior Counsel for the Respondents (PCKL & ESCOMs) made the following submissions:

- a) The main objection of PCKL is that the Petitioner invited bids in an opaque manner and awarded the contract to M/S Power Mech for the installation of FGD. The Petitioner should have invited online bids for FGD through the Central Government portal or the State Government portal to make it available in the public domain to a large number of bidders for their probable participation.
- b) CEA, vide letter dated 11.6.2019 stated that the bids for the installation of FGD should be through competitive bidding and that the major stakeholders



should participate in the bidding process till final award of the FGD contract. However, the Respondents were informed about the bidding after the bidding process was initiated by the Petitioner and the Petitioner repeatedly informed the PCKL that stage-wise approval was not required for any capital expenditure due to a 'Change in Law'.

- c) The Petitioner's hard cost sought to be approved in principle for the FGD project is unreasonably high compared to the similarly placed entities and as such, minute prudence check is required to be applied in the present case.
4. The learned Senior Advocate for the Respondents sought time for further arguments, and the Commission allowed the same.
5. The Commission directed the Petitioner to submit (a) a comparative chart of the price discovered by it for the installation of ECS in its various generating stations and (b) the cost of the ECS installed by other generating companies over a period of the last three years, on affidavit, with a copy to the Respondents.
6. The Commission directed the Respondents to submit (a) copies of correspondence exchanged with the Petitioner with regard to their objections to the bidding process for installation of FGD and (b) their specific recommendation with regard to present bids received by the Petitioner for installation of FGD, on affidavit by with a copy to the Petitioner.
7. The Commission further directed the Petitioner to submit its Written Submissions by 29.9.2023, with an advance copy to the Respondents, and the Respondents may submit their Written Submissions by 16.10.2023, with an advance copy to the Petitioner.
8. The matter shall be listed for further hearing on 10.11.2023

By order of the Commission

sd/-
(V. Sreenivas)
Joint Chief (Law)

