

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 240/MP/2019

Coram:

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 20th September, 2023

In the matter of

Petition under Section 79(1)(b) of the Electricity Act, 2003 for claiming compensation on account of occurrence of 'Change in Law' event as per Article 10.1.1 of the Case - 1 long-term Power Purchase Agreement dated 21.3.2013 entered into between GMR Warora Energy Limited and DNH Power Distribution Corporation Limited, thereby resulting into additional recurring/non-recurring expenditure to GMR Warora Energy Limited for supply of 200 MW Contracted Capacity from its 2x 300 MW Thermal Power Station at Warora, District Chandrapur in the State of Maharashtra to DNH Power Distribution Corporation Limited.

And

In the matter of

GMR Warora Energy Limited,
701/704, 7th Floor,
Naman Centre, A-Wing,
Bandra Kurla Complex,
Bandra, Mumbai – 400 051

..... **Petitioner**

Vs

1) DNH Power Distribution Corporation Limited,
Vidyut Bhavan, 66 kV Road,
Nr. Secretariat, Amli,
Silvassa – 396 230.

2) Power Grid Corporation of India Limited,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi – 110 016.

.....**Respondents**

ORDER

The present Petition has been filed by the Petitioner, GMR Warora Energy Limited under Section 79(1)(b) of the Electricity Act, 2003 read with Article 10.1.1 of

the long-term Power Purchase Agreement ('PPA') dated 21.3.2013 entered into between the Petitioner and Respondent No.1, DNH Power Distribution Corporation Limited for seeking compensation on account of unprecedented and unforeseen increase in the shared inter-State Transmission Charges due to Change in Law events viz. (i) unprecedented increase in PoC Charges notified by this Commission from the cut-off date i.e. 1.6.2012, and (ii) introduction of HVDC charges and Reliability Support charges by this Commission vide Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2015. The Petitioner has made the following prayers:

“(i) Declare and adopt the Orders of this Commission notified vide Notification No. L-1/44/2010-CERC as ‘Change in Law’ events within the meaning of Article 10 of the DNH PPA and allow subsequent relief;

(ii) Declare and adopt the CERC (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 notified by this Commission as ‘Change in Law’ event within the meaning of Article 10 of the DNH PPA and provide consequential relief thereof;

(iii) Declare that any increase in Inter-State Transmission Charges on account of promulgation/amendment of applicable regulations will be a Change in Law event and consequential relief thereto will be extended to the Petitioner;

(iv) Direct the Respondent No.1 to make a payment of Rs. 25.32 crore to the Petitioner on account of abnormal increase in PoC charges till June, 2019 along with carrying cost and to make payment subsequently for all future Supplementary Bills in terms of the PPA;

(v) Direct the Respondent No.1 to make payment of Rs. 33.78 crore to the Petitioner on account of abnormal and unprecedented increase in Inter-State Transmission Charges on account of notification of the CERC (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 till July, 2019 along with Carrying Cost and to make payment subsequently for all future Supplementary Bills in terms of the PPA;

In alternate, the Commission in exercise of its Regulatory powers may be pleased to grant the following relief:

(vi)(a) Direct that the Petitioner is entitled to a compensation of Rs. 65,76,41,465 crore till June, 2019 in light of the unforeseen events taking place after the Cut-off date;

(vi)(b) Direct that the Petitioner is entitled to compensation on account of any increase in the Inter-State Transmission Charges in future along with the carrying cost;

(vii) Condone any inadvertent omission/errors/shortcomings and permit the Petitioner to add/change/modify/alter the present pleadings/petition and may also grant leave to the Petitioner to make appropriate submissions at any future date in regard to the present proceedings; and

(viii) Pass such other/further order(s) as this Commission may deem fit in the present facts and circumstances.”

2. The case was heard on 22.8.2022. During the course of the hearing, the learned counsels for the Petitioner and the Respondents had raised the following contentions before us. The relevant portion of the ROP is extracted below:

“2. At the outset, learned counsel for the Petitioner submitted that after the detailed submissions made by the Petitioner and the Respondent, DNHPDCL, the matter had been reserved for order on 30.9.2021 and the parties had also filed their respective written submissions. However, in view of the notification of Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (‘Change in Law Rules’) by the Ministry of Power, Government of India, the Commission had re-listed the matter on 11.1.2022 and thereafter, vide order dated 18.1.2022 disposed of the matter directing the parties to settle the change in law claim in terms of the said Rules and to approach the Commission only in terms of Rule 3(8) thereof. Learned counsel submitted that in view of the observations of the Appellate Tribunal for Electricity in the judgment dated 5.4.2022 in OP No.1 of 2022 and Ors., with regard to the applicability of the Change in Law Rules on the pending petitions, the Commission vide order dated 14.6.2022 in suo-motu Petition No. 8/SM/2022, inter-alia, restored the present Petition. Learned counsel submitted that since the pleadings in the matter are already complete and the parties have already argued the matter, the Commission may consider the same and pass an appropriate order in the matter.

3. Learned counsel for the Respondent, DNHPDCL submitted that the matter has already been argued and the Respondent has also filed its written submissions in the matter.

4. Considering the submissions made by the learned counsel for the parties, the Commission reserved the matter for order.”

3. The learned counsel for the Petitioner, vide its letter dated 15.9.2023, has submitted that the Petitioner has now decided not to pursue with the matter. Accordingly, the learned counsel for the Petitioner has sought permission to withdraw the present Petition.

4. The Petition is being decided by circulation. In view of the submissions of the Petitioner, vide its letter dated 15.9.2023, the Petitioner is permitted to withdraw the present Petition.

5. Accordingly, Petition No. 240/MP/2019 is disposed of as withdrawn.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member