



**Petition No. 1655 of 2020**

**BEFORE  
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW**

**Date of Order: 27.09.2021**

**PRESENT:**

Hon'ble Shri Raj Pratap Singh, Chairman  
Hon'ble Shri Kaushal Kishore Sharma, Member  
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

**IN THE MATTER OF**

Petition on account of occurrence of 'Change in Law' events as per Article 13.1.1 of the Power Purchase Agreement (PPA) dated 26.09.2014 between Noida Power Company Limited and Dhariwal Infrastructure Limited for claiming additional recurring/non-recurring expenditure incurred by Dhariwal Infrastructure Limited for the supply of 187 MW of Power (Net Capacity - 170 MW after excluding Normative Auxiliary Power Consumption) from Unit 2 of the Generating Station located at Taladi, Chandrapur, Maharashtra to Noida Power Company Limited.

Dhariwal Infrastructure Limited (DIL),  
Registered Office: CESC House,  
Chowringhee Square,  
Kolkata - 700 001

..... Petitioner

AND

Noida Power Company Limited (NPCL),  
Electric Sub-Station,  
Knowledge Park - IV,  
Gautam Buddha Nagar,  
Greater Noida - 201 310

..... Respondent

The following were present:

1. Ms. Mandakini Ghosh, Advocate, DIL
2. Shri. Rabi Chowdhary, Director, DIL
3. Shri. Aveek Chatterjee, DIL
4. Shri. Alok Sharma, Head - Legal, NPCL



5. Ms. Divya Chaturvedi, Advocate, NPCL
6. Ms. Srishti Rai, Advocate, NPCL
7. Shri. Sanket Srivastava, NPCL
8. Shri. Rama Shankar Awasthi, Consumer Representative
9. Shri. Divyanshu Bhatt, Counsel Shri. Rama Shankar Awasthi

**Order**

**(Date of Hearing: 14.09.2021)**

1. The Commission vide its Order dated 09.08.2021 directed Shri. Divyanshu Bhatt, Counsel of Shri. Rama Shankar Awasthi to file the reply in the matter in 3 weeks' time. The Commission also directed the Petitioner (DIL) to submit its rejoinder within one week time thereafter.

The matter came up for hearing today.

2. Shri. Divyanshu Bhatt, Counsel of Shri. Rama Shankar Awasthi submitted that they do not intend to file reply in the matter.
3. Ms. Mandakini Ghosh, Advocate, DIL submitted that the instant petition has been filed for claiming compensation on account of occurrence of Change in Law events, i.e., Notification dated 11.10.2019 and 17.10.2019 issued by SECL revising the rates of CG Development Cess and CG Environment Cess from Rs. 7.50/tonne to Rs. 11.25/tonne with effect from 04.09.2019, therefore, applicable during FY 2019-24 control period.
4. On a specific query asked by the Commission to the Respondent (NPCL) that whether all the provisions regarding 'Change in Law' has been addressed in the Petition. Ms. Divya Chaturvedi, Advocate, NPCL confirmed that all the provision of PPA dated 26.09.2014 have been compiled by the Petitioner. The Counsel also submitted that they have filed reply dated 22.07.2021 and Petitioner has filed rejoinder dated 30.07.2021.
5. Ms. Mandakini Ghosh, Counsel of Petitioner referred to the Hon'ble APTEL judgement dated 21.12.2018 in I.A. No. 449 of 2018 and Appeal No. 193 of 2017: GMR Kamalanga Energy VS CERC & Others holding that Departments, Corporations/Companies like Coal India Limited or Indian Railways formed under different Statutes are construed as Indian Governmental Instrumentalities. The Counsel, further the PPA between Petitioner (DIL) and the Respondent (NPCL) is dated 26.09.2014 and the cut-off date considered for the purpose of the instant petition for Change in Law event is 26.10.2015.
6. The Commission observed that the event of Change in Law is for the coal producing company/whoever is the owner of land and not for the Generating Company and since the coal price captures all taxes and duties paid by the coal miner, there cannot be double benefit, i.e., first at the time of enhancing Coal Price and secondly at the time of separately under Change in Law event. Ms. Mandakini Ghosh,



Advocate, DIL submitted that the notification dated 11.10.2019 and 17.10.2019 of SECL states that the increase in rates of CG Development Cess and CG Environment Cess is to be paid by Coal Consumers, thus increasing the landed price of coal.

7. The Commission observed that with the notification of SECL dated 11.10.2019 and 17.10.2019, the landed price of coal has increased, creating an additional expenditure for the Generating Company and ought to be paid to the coal producing company.
8. The Commission also observed that the Change in Coal Price is also payable to Petitioner through CERC Escalation index in terms of the Commission's earlier Orders. The escalation index captures certain things, i.e., additional taxes, levy by the competent authority etc. Therefore, it needs to be ensured whether the Notification dated 11.10.2019 and 17.10.2019 issued by SECL revising the rates of CG Development Cess and CG Environment Cess is part of CERC escalation index or not. The Petitioner (DIL) may submit its replies within two weeks in this regard.

List the matter on 30.11.2021

(Vinod Kumar Srivastava)  
Member

(Kaushal Kishore Sharma)  
Member

(Raj Pratap Singh)  
Chairman

Place: Lucknow

Dated: ~~27.09~~ 2021

