

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 636/MP/2020

Coram:

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

Date of Order: 28.01.2022

In the matter of:

Petition under Section 79(1)(b) of the Electricity Act, 2003 read with Article 10 of the Case-1 long-term Power Purchase Agreement dated 27.11.2013 along with Addendum No. 1 dated 20.12.2013 entered into between Dhariwal Infrastructure Ltd. and Tamil Nadu Generation and Distribution Corporation Ltd. for the supply of 100 MW Contracted Capacity from Unit 2 of its 2 x 300 MW Coal based thermal generating station located at Tadali, Chandrapur in the State of Maharashtra, seeking an in principle approval of the Additional Capital Expenditure to be incurred on account of installation of Limestone based Wet Flue Gas De-Sulphurization system necessitated by a Change in Law event i.e., Environment (Protection) Amendment Rules, 2015 dated 7.12.2015 and Environment (Protection) Amendment Rules, 2018 dated 28.6.2018 issued by the Ministry of Environment, Forest and Climate Change (MoEFCC) read with the letter issued by Central Pollution Control Board dated 11.12.2017.

And in the matter of:

Dhariwal Infrastructure Limited,
CESC House,
Chowringhee Square,
Kolkata-700001.

.....Petitioner

Vs

Tamil Nadu Generation and Distribution Corporation Limited,
6th Floor, Eastern Wing,
144, Anna Salai,
Chennai-600002.

...Respondent



For Petitioner : Shri Sanjay Sen, Senior Advocate, DIL
Ms. Mandakini Ghosh, Advocate, DIL
Ms. Srishti Rai, Advocate, DIL
Ms. Divya Chaturvedi, DIL
Shri Rabi Chowdhury, DIL
Shri Subir Kumar Saha, DIL
Shri Aveek Chatterjee, DIL

For Respondent : Ms. Anusha Nagarajan, Advocate, TANGEDCO
Ms. Aakanksha Bhola, Advocate, TANGEDCO

ORDER

The Petitioner, Dhariwal Infrastructure Limited, has filed the instant petition under Section 79(1)(b) of the Electricity Act, 2003 (hereinafter referred to as “the Act”) read with Article 10 of the Case-1 long-term Power Purchase Agreement dated 27.11.2013 along with Addendum No. 1 dated 20.12.2013 (hereinafter collectively referred to as “the PPA”) entered into between the Petitioner and Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as “TANGEDCO”), seeking in-principle approval of the Additional Capital Expenditure (ACE) towards installation of Limestone based Wet Flue Gas De-Sulphurization (“WFGD”) system.

2. The Petitioner has made the following prayers:

- “A. Admit the Petition;*
- B. Declare that the Amendment Rules vide MoEFCC Notifications dated 07.12.2015 and 28.06.2018 read with the CPCB Letter dated 11.12.2017 qualify as a ‘Change in Law’ event for Unit 2 of the Petitioner’s Generating Station in terms of Article 10 of the TANGEDCO PPA;*
- C. Approve in-principle the estimated total Capital Cost of ₹ 314.61 Crores for installation of Limestone based Wet FGD system for 300 MW Gross Installed Capacity of Unit 2 of the Generating Station as proposed in the present Petition for meeting the revised emission norms in respect of SO₂ as per the Amendment Rules, subject to revision based on the actual cost incurred by the Petitioner;*
- D. Grant liberty to the Petitioner to approach this Hon’ble Commission by way of separate Petition(s) for remaining ECS which is not being proposed presently, but may be required to be installed in order to comply with the revised emission norms of NO_x, Mercury and Water Consumption, in future;*



- E. Grant liberty to the Petitioner to approach this Hon'ble Commission with a separate Petition in due course of time as explained in Paragraph 80 of the instant Petition for determination of compensation on account of 'Change in Law' event and recovery thereto through Supplementary Tariff-invoice based on the actual Capital Cost incurred due to installation of the ECS including the FGD system, to the extent of supply of 100 MW Net Contracted Capacity to the Respondent;*
- F. Condone any inadvertent omission/errors/shortcomings and permit the Petitioner to add/change/modify/alter the present pleading/petition and may also grant leave to the Petitioner to make appropriate submissions at any future date with respect to the present proceedings; and*
- G. Pass such other/further order(s) as this Hon'ble Commission may deem fit in the present facts and circumstances."*

3. The Petitioner has established a 2x300 MW coal based thermal generating station (in short, "the Generating Station") at Tadali, Chandrapur in the State of Maharashtra. The Petitioner on 27.11.2013, pursuant to a Case-1 competitive bidding conducted by the Respondent, signed PPA with TANGEDCO for supply of 100 MW Net Contracted Capacity from Unit 2 of the Generating Station. TNERC (Tamil Nadu Electricity Regulatory Commission) vide order dated 29.7.2016 in P.P.A.P. No. 03 of 2014 had approved the PPA and adopted the tariff discovered under the competitive bidding process in terms of Section 63 of the Act. The Petitioner had commenced supply of power to TANGEDCO with effect from 16.12.2015 subsequent to operationalization of Long-Term Access ("LTA") by the Central Transmission Utility India Limited (CTUIL). The Petitioner is also supplying 170 MW from same unit to Noida Power Company Limited under Section 62 of the Act.

4. The Ministry of Environment and Forests and Climate Change ("MoEFCC"), Government of India notified the Environment (Protection) Amendment Rules, 2015 (in short, "the MoEFCC Notification") dated 7.12.2015. The Petitioner has submitted that the MoEFCC Notification mandates all thermal power plants (TPPs) to comply with the revised emission control norms (ECNs) as specified in the MoEFCC



Notification, and it is a 'Change in Law' event. As per the MoEFCC Notification, the Petitioner is required to install various Emission Control System (ECS) like WFGD system which will lead to additional recurring/non-recurring expenditure by the Petitioner. The Petitioner has submitted that the instant petition is filed for restoration of the Petitioner to the same economic position as if such 'Change in Law' event had not occurred.

5. We have considered the submissions of the Petitioner. The Petitioner has prayed for declaring the MoEFCC Notification as a "Change in Law" event and for grant of "in-principle" approval of the estimated capital cost towards installation of WFGD system, besides other prayers.

6. During the hearing on 1.6.2021, it was observed that the Petitioner, in the instant case has not yet finalised the capital cost towards installation of WFGD system. In this regard, we observed that the base capital cost given in the NIT (Notice inviting Tender) and the capital cost claimed by the Petitioner towards installation of WFGD system is much higher than the benchmark cost specified by CEA. The Commission is of the view that the Petitioner ought to have referred to the capital cost specified by CEA in the NIT. In response, the learned senior counsel for the Petitioner submitted that the base capital cost quoted in the NIT is based on the report of the Consultant engaged by the Petitioner. We are of the view that giving a higher base cost in the NIT would naturally lead to discovery of a higher cost in the bidding process.

7. During the hearing on 11.1.2022, the learned counsel for the Petitioner submitted that the bidding process for installation of WFGD system has failed and the bid could not be finalised. He submitted that the Petitioner is required to issue fresh



NIT for installation of WFGD system in the generating station and the process of re-tendering is likely to take at least 3 to 4 months and requested to keep the matter in abeyance till the finalisation of re-tendering process. He also submitted that the Petitioner will also place on record the tender documents after completion of the tendering process.

8. Thus, as per the submissions of the Petitioner, it has to issue fresh NIT and start the process of re-tendering for installation of WFGD system and the process of tendering, award of contracts and furnishing the details of the estimated capital cost of WFGD system would take a few months. In this background, we are not inclined to keep the petition pending and, accordingly, the petition is disposed of. The Petitioner is at liberty to file a fresh petition on completion of the tendering process and award of contracts after to sharing the details with the Respondents/beneficiaries. The filing fee paid by the Petitioner towards the instant petition will be adjusted against the petition to be filed by the Petitioner.

9. This order disposes of Petition No. 636/MP/2020 in terms of the above discussion and findings.

sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson

