

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 25/MP/2020

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 10 of the Power Purchase Agreements dated 17.3.2010 and 21.3.2013 executed between GMR Warora Energy Limited and the Distribution Companies in the States of Maharashtra and Dadra and Nagar Haveli pursuant to liberty granted in Order dated 16.5.2019 in Petition No. 284/MP/2018.
- Date of Hearing : **28.11.2023**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : GMR Warora Energy Limited (GWEL).
- Respondents : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) and Anr.
- Parties Present : Shri Vishrov Mukerjee, Advocate, GWEL
Shri Yashaswi Kant, Advocate, GWEL
Ms. Priyanka Vyas, Advocate, GWEL
Shri Anand Ganesan, Advocate, DNHPDCL & MSEDCL
Ms. Swapna Seshadri, Advocate, DNHPDCL
Ms. Ritu Apurva, Advocate, DNHPDCL
Shri Karthikeyan Murugan, Advocate, DNHPDCL
Ms. Kriti Soni, Advocate, DNHPDCL
Ms. Aishwarya Subramani, Advocate, DNHPDCL
Ms. Ashabari Thakur, Advocate, DNHPDCL
Shri Anup Jain, Advocate, MSEDCL

Record of Proceedings

The learned counsel for the Petitioner submitted that the present Petition had been filed pursuant to the liberty granted by the Commission in its order dated 16.5.2019 in Petition No. 284/MP/2018 seeking compensation for As-Is-Where-Is-Basis ('AIWIB') coal and washery coal procured by the Petitioner to meet the shortfall in linkage coal. The learned counsel further circulated the note of arguments and mainly submitted as under:

- (a) Pursuant to the direction of the Commission, the parties had engaged in discussion for reconciliation of the Petitioner's outstanding claims and the Respondent, MSEDCL, in its reply dated 17.10.2023, has admitted to the provisional differential impact of Rs.58.01 crore as against the claim of Rs. 58.91 crore for the period from February 2015 to June 2020.
- (b) The difference with respect to Rs. 0.18 crore is primarily due to non-consideration of expenditure towards liaisoning with SECL and IR. Similar to the unloading, sampling and AMM charges, liaisoning costs are also being incurred by the Petitioner in connection with the procurement of coal, and this Commission

has in the past approved the inclusion of charges such as handling and sampling charges, etc. which are incidental to the procurement of coal under Tariff Regulations, 2014.

(c) MSEDCL ought to be directed to pay the Petitioner at least the admitted principal of Rs. 58.01 crore as compensation for the cost incurred till June 2020 towards procurement of AIWIB coal and washery coal by the Petitioner. Insofar as carrying cost is concerned, the said issue is no longer *res-intergra* and stands settled in terms of the catena of judgments of the Hon'ble Supreme Court. The Petitioner is entitled to carrying cost from the effective date of Change in Law events/date when the Petitioner incurred the expenditure on account of Change in Law event. As on 31.10.2023, the Petitioner's claim for carrying cost works out to Rs. 63 crore.

(d) Insofar as the reconciliation with the Respondent, DNH is concerned, the said PPA has already expired by efflux of time and the Petitioner and DNH are still engaged in the reconciliation process to settle the outstanding claims/ dues including but not limited to claims pending adjudication in the present proceedings. Hence, the Commission may dispose of the present petition as withdrawn *qua* DNH due to pending reconciliation between the parties while granting liberty to the Petitioner to approach the Commission in the event parties do not reach an amicable settlement.

2. Learned counsel for Respondent, MSEDCL mainly submitted as under:

(a) Pursuant to the direction of the Commission, MSEDCL and the Petitioner have reconciled the Petitioner's compensation claims, and MSEDCL has admitted the differential financial impact of Rs.58.01 crore on a provisional basis, which may change/modify subject to further audit.

(b) Insofar as payment of the aforesaid provisional reconciled amount is concerned, MSEDCL will abide by any directions issued by the Commission in this regard. However, MSEDCL has also raised certain objections towards such claims of the Petitioner in its reply, which may also be considered by the Commission.

(c) In an earlier round of litigation, i.e. in Petition No. 284/MP/2018, both AIWIB and washery coal were being considered as part of the linkage coal by the Petitioner itself. Hence, it would not be appropriate to consider the AIWIB coal and washery coal as alternate coal. Moreover, there is nothing to distinguish or segregate between the quantum of AIWIB & washery coal and the linkage coal.

(d) As per the Petitioner, there was no specific need to use washery coal additionally to attend the norms specified in the MoEF Notification dated 4.2.2014 as the Petitioner, by using the imported coal along with linkage coal, was already achieving the norms set out i.e. quarterly ash content below 34%.

(e) Insofar as carrying cost is concerned, the parties may also be permitted to reconcile the carrying cost amount.

3. In response, learned counsel for the Petitioner mainly submitted as under:

(a) The Commission, in its order dated 16.5.2019 in Petition No. 284/MP/2018 has already allowed the AIWIB coal and washery coal as an alternate coal subject to the Petitioner furnishing additional documents

/information to determine the compensation, which the Petitioner has furnished in the present Petition. The said order has also been affirmed by the APTEL vide its Judgment dated 14.8.2018 in Appeal Nos. 111 of 2017 and Anr. and by the Hon'ble Supreme Court by judgment dated 20.4.2023 in the case of GMR Warora Energy Ltd. & Ors. v. CERC & Ors. [2023 SCC Online SC 464].

(b) Pending a final decision in Petition No.284/MP/2018, since the Petitioner was using AIWIB coal and washery coal along with linkage coal, AIWIB and washery coal was billed at ECR as per the PPA. This was necessary; otherwise there would have been a mismatch in Form 15 in terms of coal utilised and actual generation. The said amount, however, did not include the incremental cost towards AIWIB coal and washery coal.

(c) In the present case, the Petitioner has claimed only the incremental cost of AIWIB coal and washery coal.

(d) As such, the Petitioner has no objection towards reconciling its carrying cost claim. However, time bound directions may be issued for completing such reconciliation exercise.

4. Learned counsel for the Respondent, DNH did not object to Petitioner's request for withdrawal of the Petition *qua* DNH due to the pendency of reconciliation between the parties with the liberty to approach the Commission in the event the parties do not reach an amicable settlement.

5. Considering the submissions made by the learned counsel for the parties, the Commission ordered as under:

(a) MSEDCL to pay Rs. 46.41 i.e. 80 % of the admitted principal differential impact of Rs.58.01 crore within a week, which will be subject to the outcome of the present petition.

(b) The Petitioner and MSEDCL to carry out the reconciliation of the carrying cost claim of the Petitioner within three weeks and to file an outcome of such exercise, on affidavit, within a week thereafter.

(c) With regard to the Petition as withdrawn *qua* DNH, the Petitioner to file its submission on an affidavit in this regard.

6. The Petition will be listed for the hearing on **16.2.2024**.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)