THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2124 of 2024

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Petition under Section 86(1)(b) of the Electricity Act, 2003 and Article 14 of the Power Purchase Agreement dated 12.11.2006 read with Supplementary Power Purchase Agreement dated 31.12.2009, seeking approval that the developments under the new environment Rules, promulgated by the Ministry of Environment Forest and Climate Change vide notification dated 07.12.2015 along with its amendment dated 28.06.2018, as events of Change in Law and seeking in-principle approval from this Hon'ble Commission for the expenditure that shall be incurred towards the installation of Flue-gas Desulfurization equipment on account of such Change in Law events.

AND

IN THE MATTER OF

MEIL Anpara Power Limited

H. No. C/02/P7, Sector C Pocket 2, Sushant Golf City, Lucknow-226030

..... Petitioner

VERSUS

1. **U.P. Power Corporation Ltd. (UPPCL)**

   Shakti Bhawan, 14-Ashok Marg, Lucknow-226001

2. **Paschimanchal Vidyut Vitran Nigam limited (PVVNL),**

   Urja Bhawan, Victoria Park, Meerut, U.P. – 250001

3. **Purvanchal Vidyut Vitran Nigam Limited (PuVVNL),**

DLW Bikharipur, Varanasi, Uttar Pradesh – 221004

4. **Madhyanchal Vidyut Vitran Nigam Limited (MVVNL),**

   4A, Gokhale Marg, Block-I, Gokhle V har, Butler Colony, Lucknow – 226001

5. **Dakshinanchal Vidyut Vitran Nigam Limited (DVVNL)**

   Urja Bhawan, Agra Mathura Bypass Road, Agra, Uttar Pradesh - 282007

..... Respondents

THE FOLLOWING WERE PRESENT

1. Ms. Ritika Singhal, Advocate, MEIL
2. Ms. Puja Priyadarshini, Advocate, UPPCL
3. Shri Deepanshu Chandak, Advocate, UPPCL
4. Shri Jagnayak Singh, SE, UPPCL
5. Shri Shubham Srivastav, AE, UPPCL

ORDER

(DATE OF HEARING: 12.11.2024)

1. The Petitioner, MEIL Anpara Power Limited, has filled the instant Petition under Section 86(1)(b) of the Electricity Act, 2003 and Article 14 of the Power Purchase Agreement dated 12.11.2006 read with Supplementary Power Purchase Agreement dated 31.12.2009 executed between Petitioner and Respondents, to seek declaration of new environment rules issued by MoEF&CC vide notification dated 07.12.2015 along with its amendment dated 28.06.2018, as 'Change in Law' events and in-principle approval of expenditure to be incurred on account of the installation of Flue-Gas Desulfurization (FGD) equipment necessitated by 'Change in Law' events.

2. The Petitioner has made following prayers:

   a. Declare new environment Rules, promulgated by the Ministry of Environment Forest and Climate Change ("MoEF&CC") vide notification dated 07.12.2015, being S.O. 3305(E) and it subsequent amendment notifications dated 28.06.2018, being G.S.R. 593(E), 19.10.2020, being G.S.R 662(E) and 05.09.2022, being G.S.R 682(E), as events of Change in Law.

b. Grant in-principle approval to the Petitioner under Article 14 of the PPA towards expenditure that shall be incurred towards the installation of Flue-gas desulfurization/ FGD equipment on account of Change in Law events brought forth by the Notifications issued by MOEF&CC dated 07.12.2015, 28.06.2018 and 19.10.2020.

c. Allow the Petitioner to approach this Hon'ble Commission to claim appropriate relief for change in law under Article 14 of the PPA upon installation of the FGD system; and

d. Pass such other orders that this Hon'ble Commission deems fit in the facts of this case.

3. During the hearing, Ms. Puja Priyadarshini, counsel for Respondent, objected in-principle approval of expenditure claimed by the Petitioner on following grounds:

a. FGD installation expenditure has not been incurred but only a cost estimate was made based on competitive bidding process.

b. The Commission in Petition No. 1132 of 2016 in a similar matter between Rosa Power Supply Company Limited and UPPCL, vide its Order dated 25.05.2017, has already denied grant of in-principle approval.

c. The Petitioner has not issued 'Change in Law' notice to UPPCL as per the PPA. The first notice dated 08.03.2016 sent by the Petitioner to UPPCL was a simple letter. As per Article 14.2.3 of the PPA, it was obligation of the Petitioner to inform UPPCL both 'Change in Law' events as well as financial impact on account of the same.

4. Subsequently, Ms. Ritika Singhal, counsel for the Petitioner, submitted that the Petitioner vide letter dated 12.08.2024 and various letters sent by the Petitioner to UPPCL has intimated UPPCL details of competitive bidding process for FGD system and cost likely to be incurred along with its financial impact.

5. The Commission observed that the issues raised by the Petitioner pertained to adjudication of disputes with respect to expenditure that would be incurred towards the installation of FGD system and declaration of change in law. Therefore, Section 86(1)(f) of the Electricity Act, 2003 is attracted to the present Petition.

6. The Commission allows UPPCL to file its reply within four weeks and thereafter three weeks for the Petitioner to file its rejoinder. Further, considering the vacant position of the Member (Law) in the quorum, the Commission decides to list the matter for hearing after joining of Member (Law). The date of the next hearing would be communicated through a separate notice.

(Sanjay Kumar Singh)
Member

(Arvind Kumar)
Chairman

Place: Lucknow
Dated: 03.12.2024