

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 32 of 2012

In the matter of
Petition filed by JSW Energy Limited under section 86(1)(f) of the Electricity Act, 2003
seeking clarification in Case No. 67 of 2011, regarding levy of clean energy cess and
counter veiling duty on import of coal as notified by the Ministry of Finance ,affecting
its power purchase agreement with MSEDCL.

Shri V.P. Raja, Chairman
Shri. Vijay L. Sonavane, Member

JSW Energy Limited Mumbai

..... Petitioner

Vs.

Maharashtra State Electricity Distribution Company Limited (MSEDCL)

.....Respondent

Present during the hearing:

For the Petitioner:

Shri. Anand Ganeshan, Advocate, Shri. Abhay
Yagnik, Shri. C.P. Tated GM, Shri. Aniruddha
Ganu, Dy GM

For the Respondent:

Shri. M. A. Baig, Supdt. Engineer (Power
Purchase) ,Shri. S G Metre EE (PP)

ORDER

Dated: 30 July, 2012

JSW Energy Limited filed a Petition under section 86(1) (f) of the Electricity Act, 2003 for adjudication of the issue of Change in Law under article 13 of the power purchase agreement dated 23 February, 2010 entered into between the Petitioner and the Respondent on account of the imposition of the clean energy cess and counter veiling duty (CVD) on coal by the Government of India.

2. The prayers in the Petition are as follows:

“

- a) *Direct that the Respondent is liable to reimburse the impact of Change in Law, namely, Clean Energy Cess and CVD on actual basis, and, as per the claims of the Petitioner, comply with Article 13.2 (b) of the PPA by placing the Petitioner on the same economic position as if there was no levy of Clean Energy Cess and CVD.*
- b) *Pass such other orders as the Hon'ble Commission may deem just in the facts of the present case.”*

3. Submissions of the Petitioner:

- a) In the Order dated 1 December, 2011 in Case 67 of 2011, the Commission held that the imposition of clean energy cess and excise duty / CVD by the Govt. of India on imported coal has the effect of Change in Law in India as per Article 13.1.1/ 13.2.b of the PPA. This was not in effect at the time of execution of PPA and therefore there is Change in Law. The Commission had also directed both parties to mutually settle the additional claims on this account based on documentary evidence provided by the Petitioner.
- b) Petitioner contends that MSEDCL is not following the principle as per Article 13.2 of PPA for making additional payments on account of Change in Law, but has been calculating on the basis of calorific value of coal, station heat rate, the notional price of coal, etc., and not as per the actual consumption of coal. It also ignores losses in actual transportation, handling and storage.
- c) The quantum of CVD reimbursed has been arrived at by assuming a notional price on which CVD is calculated, ignoring the actual quantum of CVD paid.
- d) The Petitioner has therefore approached the Commission for clarification on the order, under the power vested into it under Regulations 92, 93 and 94 of the Maharashtra

Electricity Regulatory Commission (Conduct of Business) Regulations 2004 to clarify the principles of reimbursement of the CVD and clean energy cess in terms of PPA Article 13.2. Regulations 92, 93, and 94 of the MERC (Conduct of Business) Regulations 2004 read as under:

“Saving of inherent power of the Commission:

92. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.

93. Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these Regulations including summary procedures, if the Commission, in view of the special circumstance of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for so dealing with such a matter or class of matters.

94. Nothing in these Regulations shall bar the Commission to deal with any matter or exercise any power under the Act for which no regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it.”

4. The Commission vide notice dated 23 April, 2012 scheduled a hearing in the matter on Thursday 17 May, 2012 and directed the Petitioner to serve a copy of the Petition on the Respondent and authorized consumer representatives. The Respondent was directed to file their reply, if any, with a copy being served on the Petitioner and authorized consumer representatives.

5. A hearing in the matter was held on 17 May, 2012. The Petitioner submitted that the dispute is mainly regarding the methodology to be followed for calculation of additional payment towards CVD and clean energy cess and requested that the calculations should be made as per the provisions available in clause of Change in law in the PPA.

6. The Commission directed that the methodology shall be the same as followed normally. Imposition of duties does not affect the methodology and the matter should be settled with mutual consent between the Petitioner and the Respondent.

7. In case the dispute is not resolved by the parties the Commission may appoint an arbitrator. Parties are directed to submit names of arbitrators for settlement of the dispute.

8. The Respondent vide letter dated 8 June, 2012 requested the Petitioner to submit the detailed proposal and calculations along with supplementary documents for settlement of the disputes and a copy of letter was submitted to Commission on 16 June, 2012

9. The Petitioner vide letter dated 3 July, 2012 made an application on affidavit to the Commission informing that the Petitioner has now decided to accept the methodology adopted by the Maharashtra State Electricity Distribution Company Ltd with regard to the above calculation. The Petitioner further submitted that the Commission may be pleased to dispose of the case as withdrawn.

10. The hearing in the matter held on 4 July, 2012, the Petitioner submitted that an affidavit has been filed withdrawing the Petition as the Petitioner has now resolved to accept the methodology adopted by the MSEDCL.

In view of the above, the present petition stands dismissed as withdrawn.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman