

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Subject: - In the matter under Section 86(1)(f) of the Electricity Act, 2003 interalia seeking declaration that shifting of metering point from the switchyard of Unit-I-300 MW Coal based thermal power station at Pathadi village, Korba Chhattisgarh of the petitioner to the 765/400 kV PGCIL's Bilaspur Station is on account of Change in Law within the meaning of Article 12.1.1(i) of the PPA dated 11.05.2005 and consequently the Petitioner is entitled to increased costs incurred/ to be incurred by it on account of the said Change in Law as well as that the Petitioner is entitled to Tariff Adjustment Payment as per Article 12.2.1 of the PPA read with Implementation Mechanism for PPA dated 24.11.2012.

Petition No. 36/2016

ORDER

(Date of Motion Hearing: 23rd August, 2016)

(Date of Order: 29th August, 2016)

Lanco Amarkantak Power Pvt. Ltd.

Petitioner

V/s

PTC India Ltd., New Delhi and Anr.

Respondent

Shri Deepak Khurana, Advocate and Shri Anil Sharma, VP (Commercial and Fuel) appeared on behalf of the petitioner.

The petitioner has filed the subject petition under Section 86(1)(f) of the Electricity Act, 2003 to adjudicate the dispute between the petitioner and PTC India Ltd. on the issue related to shifting of metering point from the switchyard of Unit-I (300 MW) of its Coal based thermal power station at Pathadi village, Korba Chhattisgarh to 765/400 kV PGCIL's Bilaspur Station on account of Change in Law in terms of Article 12.1.1(i) of the Power Purchase Agreement executed between M/s. Lanco Amarkantak Power Pvt. Ltd. and PTC India Ltd.

2. In the subject petition, it is stated that the petitioner (M/s. Lanco Amarkantak Power Limited) entered into the power purchase agreement with M/s. PTC India Ltd. on 11th May' 2005 (as amended on 2nd August' 2005) for sale of power of 300 MW from its power station for a term of 25 years. Thereafter, M/s. PTC India Ltd. (Respondent No. 1 herein) entered into a Power Sale Agreement (PSA) with the erstwhile MPSEB on 30th May' 2005 for further sale of the aforesaid 300 MW power purchase from the petitioner. The said PSA is now vested with MPPMCL, Jabalpur (Respondent No. 2 herein).

3. In the instant petition, M/s. Lanco Amarkantak Power Limited has approached the Commission for adjudication of dispute between M/s. Lanco Amarkantak Power Limited and M/s. PTC in terms of Article 12.1.1(i) of the PPA executed between them i.e. M/s. Lanco

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Amarkantak and M/s. PTC India. The petitioner has contended that the change in injection point from the original LILO Point to new PGCIL's Bharari Pooling Station (resulted in change of metering point) is Change in Law within the meaning of Article 12.1.1(i) of the PPA. It is also mentioned that the aforesaid change in the metering point was made on the directions given by Western Regional Load Despatch Centre (WRLDC).

4. With the above contention, the petitioner has sought the following relief:

- (i) *Declare/ hold that the direction given by the Western Regional Load Despatch Centre (a wholly owned subsidiary of PGCIL) and the government instrumentality, vide its letter dated 19.11.2014, to the Petitioner regarding change of injection point from the original LILO Point to new PGCIL Bharari Pooling Station resulting in the change of metering point (old accounting point) from the Power Station's switchyard to metering point (new accounting point) at PGCIL Bharari Pooling Station is Change in Law within the meaning of Article 12.1.1(i) of the PPA read with Implementation Mechanism for PPA dated 24.11.2012;*
- (ii) *Declare that since 08.09.2014, the Petitioner is entitled to adjustment in Tariff payment within the meaning of Article 12.2 of the PPA read with Implementation Mechanism for PPA dated 24.11.2012 on account of decrease in revenue due to loss of additional energy as well as on account of operation and maintenance expenses for 400 kV transmission line connecting the switchyard of the Power Station of the Petitioner to the PGCIL Pooling sub-station as well as that of its bays at PGCIL Pooling sub-Station;*
- (iii) *Direct the Respondent No. 1 to pay a sum of approx. Rs. 1.895 crore for FY 2014-15 (from 08.09.2014 to 31.03.2015) and approx. Rs. 3.23 crore for FY 2015-16 respectively towards adjustment in Tariff payment and direct to make future payments based on the above principle/ mechanism within the meaning of Article 12.2 of the PPA read with Implementation Mechanism for PPA dated 24.11.2012.*

5. The Commission has noted that M/s. Lanco Amarkantak Power Limited (the petitioner herein) had earlier filed an Appeal No. 7 of 2009 with the Hon'ble Tribunal for Electricity against the order passed by the Commission on 25th August' 2008 on the issue of some dispute

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between the same parties i.e. M/s. Lanco Amarkantak Power Limited and M/s. PTC. Hon'ble Appellate Tribunal for Electricity in its judgment dated 6th August' 2009 has held the following:

“31. According to the Learned Counsel for the Respondents, the person who is granted a trading licence by the Central Commission need not obtain a separate licence to undertake intra-state trading from the State Regulatory Commission. There is no dispute over this proposition. But merely because a person who has been given licence for inter-state trading can undertake intra-state trading also without any licence from the State Commission, it does not mean such a licensee who is undertaking both the intra-state trading and inter-state trading can automatically become a licensee of the State Commission. If that principle is accepted then any Regulatory Commission in India would become competent to decide any dispute between any licensee and any generating company anywhere in India. This is not the intention of the Legislature.

32. To put it briefly, the conjoint reading of Clause 10(2) and Clause 1.4(t) and Section 86(1)(f) would clearly indicate that the Madhya Pradesh State Commission could deal with the disputes only between the trading licensee who has been granted a trading licence for intra-state trading in Madhya Pradesh and the generator and that person cannot be called to be trading licensee to invoke the jurisdiction of the Commission merely because he has been granted licence either by the Central Commission for inter-state trading or by any other Commission for trading.

33. Lastly, it was contended by the Learned Senior Counsel for the Respondent that if this Tribunal comes to the conclusion that Madhya Pradesh State Commission has no jurisdiction, it could be given liberty to approach the Chhattisgarh Commission. Opposing this contention, it is contended by the Learned Senior Counsel for the Appellant that such a protective order by giving liberty to enable the R-2 approach the other Commission will have the effect of perpetuating the illegality of the Order dated 25.8.2008 and as such, such a liberty should not be given to R-2 especially when the Appellant has taken a stand that the dispute in question cannot be decided by any Commission and the R-2 has to seek relief through arbitration only as referred to in the PPA.

34. In the light of the said objection, we do not want to give any liberty. As such, the Appeal has to be allowed on the ground that the Order impugned is liable to be set aside

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as it suffers from the lack of jurisdiction. Accordingly, the order dated 25.8.2008 is quashed and set aside. This Appeal is allowed. No costs."

6. In view of the above judgment by APTEL in Appeal filed by the same petitioner herein, the subject petition is not maintainable before this Commission hence disposed of.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman