

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 35 of 2016

Date: 31 March, 2016

CORAM: **Shri. Azeez M. Khan, Member**
 Shri. Deepak Lad, Member

In the matter of Petition filed by Abhijeet MADC Nagpur Energy Private Limited in the matter of a dispute between a Generating Company and the Distribution Licensee as a result of the deliberate and willful failure of the distribution licensee to make payments, on account of the Change in Law, as per the terms of the Power Purchase Agreement dated 04.08.2010 (PPA).

Abhijeet MADC Nagpur Energy Private Limited (AMNEPL)Petitioner
Reliance Infrastructure Ltd. Respondent
Advocate for the Petitioner:	Adv. Hemant Singh
Advocate for the Respondent:	Adv. Anjali Chandurkar
Advocate for Maharashtra Airport Development Co. (MADC):	Adv. Ravi Prakash (Intervention Applicant)

Daily Order

Heard the Advocates of Petitioner, Respondent and MADC.

Advocate of MADC requested the Commission to allow its Intervention in this matter. The Commission asked MADC to first file its Application, with a copy to the Parties, which would be decided thereafter. In the meantime, AMNEPL and RInfra-D may provide all the documents to MADC.

Advocate of Petitioner submitted that AMNEPL has communicated all the events of "Change in Law" to RInfra-D and is entitled for payments on account of Change in Law. Regarding dispute on invoices and amount of payments, AMNEPL and RInfra-D should have a joint meeting to sort out the disputes and differences in computations.

AMNEPL requested the Commission to allow time to file Rejoinder on the issues such as transportation, percentage of domestic coal and auxiliary consumption, which were raised by RInfra-D in its reply.

The Commission asked RInfra-D regarding delay in submitting Reply to the Petition. Advocate of RInfra-D submitted that RInfra-D had intended to submit the details/facts in the matter, and delay is on account of collecting various documents. RInfra-D indicated various mismatches as in amounts/rates of coal in the invoices and the computations of AMNEPL for which amounts were computed on account of Change in Law.

RInfra-D also informed the Commission that AMNEPL has submitted hard punched numbers in the Excel formats which do not match with the invoices submitted by AMNEPL. RInfra-D further submitted that AMNEPL has not provided evidence of actual financial losses due to Change in Law. AMNEPL is entitled to have its economic position restored subject to actual financial losses.

RInfra-D also submitted that the ratio of Domestic and International Coal is 95:05 instead of quoted 60:40. Hence, any Change in Law as per PPA must apply only on 60% of Domestic Coal and not on an actual Domestic coal used for power generation.

AMNEPL submitted that it opposes the Intervener in this case, not being a necessary party.

The Commission directed AMNEPL and RInfra-D to have joint meetings and come to a conclusion on computation of amounts and events of Change in Law as per PPA agreeable to both Parties or otherwise within a month's time. Their Joint Statement needs to be submitted to the Commission with the following:

- 1) Events of Change in Law agreeable to both the Parties in principle
- 2) Events of Change in Law not agreeable to the Parties in principle
- 3) Computation of amount agreeable to both the Parties
- 4) Any other point of differences

The Commission directed AMNEPL and RInfra-D to also submit their Rejoinders/ additional submissions, if any, within a month, along with response to the Intervention Application (if and when received).

Next date of hearing shall be communicated by the Secretariat of the Commission.

(Deepak Lad)
Member

(Azeez M. Khan)
Member