

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 153/MP/2015**

Subject : Petition for computation of compensation for change in law events during operation period

Date of hearing : 15.10.2015

Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member

Petitioner : Sasan Power Limited

Respondents : MP Power Management Company Limited and others

Parties Present : Shri J J Bhatt, Senior Advocate, SPL  
Shri Vishrov Mukherjee, Advocate, SPL  
Shri Janmali Manikala, Advocate, SPL  
Ms. Ranjitha Ramachandran, Advocate, HPPC  
Shri Shubham Arya, Advocate, HPPC  
Ms. Mehkala, Advocate, MPPMCL  
Shri Rajiv Srivastava, Advocate, UPPCL

**Record of Proceedings**

Learned senior counsel for the petitioner submitted that the in the present petition the impact of cost increase due to imposition of royalty, clean energy cess and excise duty on coal is settled. However, increase in water charges is yet to be decided by the Commission. Learned senior counsel for the petitioner further submitted as under:

(a) The petitioner has reduced the allocation and Water Supply agreement has "Take or Pay" provision for 90% allocation.

(b) Learned senior counsel presented approximate yearly impact on SPL due to increase in water charges and stated that water charges are provided as vide Government Notification and there is no question of considering any escalation on water charges and entire impact should be passed on to the beneficiary. It was further submitted SPL is seeking compensation for the increase in water charges on actual basis. Judgment of the Hon'ble Appellate Tribunal for Electricity in Wardha Power Ltd vs Reliance Infrastructure Ltd was relied upon in the support of the same.

2. Learned senior counsel for the petitioner also submitted that all the details as directed by Commission regarding coal related expenses have been filed. Auditor's certificate has been filed and challan for each payment is also filed. On the issue of payment of royalty, clean energy

cess and excise duty on coal are paid at the time of Dispatch of coal (relevant regulations and SC judgement were relied upon) and hence, impact on SPL should be considered at the point of Dispatch of Coal. However, Commission was of the view that variance in coal despatch and coal consumption will lead to stock / inventory and impact of change in law for unused coal can't be borne by Procurers. Commission stated that SPL at most can be provided the carrying cost for the inventory but impact should be calculated on coal consumed.

3. Learned senior counsel for the petitioner submitted that delayed payments for Change in Law events are severely affecting sustained operations of SPL which has passed on all the benefits to the Consumers while offering highly competitive tariff, Commission may be pleased to grant carrying costs for the amount of compensation due to SPL. He also submitted that payment mechanism should be devised wherein Monthly settlement should be allowed with yearly true-up to avoid cash flow issues.

4. Counsel for Haryana & Rajasthan submitted as under:

- a) Impact of change in law should be for the period from actual commissioning dates of the generating units and cannot be allowed with regard to Scheduled Commercial operation dates.
- b) Normative quantum of items such as water and coal needs to be appropriately determined and the effect of change in law needs to be considered with reference to such quantum. SPL should furnish details of the quantum of water and coal with reference to what is reasonable, normative and the performance parameters assured by the Original Equipment Manufacturers (OEM).
- c) On issue of water charges it was stated that payment details have not been provided. SPL has assumed the water charges at the time of bidding at Rs. 1.8/m<sup>3</sup> which is incorrect, the applicable rate as per the notification issued by Water Resource department dated 25.07.2003 clearly provide that the water charges effective from 01.11.2007 would be Rs. 2/m<sup>3</sup>.
- d) Trend of applicable water charges shows a clear y-o-y escalation and it cannot be claimed that the fixed water charges was considered for the entire term.
- e) Impact of change in law events should be based on the normative coal requirement and should be allowed based on actual coal consumed
- f) There is no provision in the PPA to provide for carrying cost. Submitted that delay is on account of SPL as it could not convince Commission by way of filings to grant relief and Procurers should not be asked to pay additional amount.

5. The Commission observed that it would not get into the minor aspects of calculation of impact etc but would lay down the down the broad principles and quantification can be done by the Parties.

6. Counsel for Uttar Pradesh submitted that no additional submissions need to be made by him and agreed that the Commission should establish the principle.

7. Learned senior counsel for the petitioner in its rejoinder submitted as under:

- a) The details pertaining to water charges were not sought by Commission. SPL will file the relevant details pertaining to water charges as and when the Commission directs SPL to do so.
- b) SPL is claiming water charges on actual and Commission may be pleased to grant SPL compensation for the expenditure incurred on actuals alone.

- c) The compensation for change in law events is to be granted in terms of Article 13.2 of the PPA. Article 13.2 of the PPA contemplates payment of compensation for change in law events on actual basis and not normative basis.
8. The Commission directed the petitioner to submit on affidavit actual expenditure incurred and paid on account of water charges by 22.10.2015.
9. The Commission directed that due date of filing the information, reply and rejoinders should be strictly complied with. The information, reply and rejoinders filed after due date shall not be considered.
10. Subject to above, Commission reserved order in the petition.

**By order of the Commission**  
**Sd/-z**

**(T. Rout)**  
**Chief (Law)**