

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 118/MP/2015**

**Coram:**

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

**Date of Hearing: 03.09.2015**

**Date of Order: 30.12.2015**

**In the matter of**

Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 13 of the Power Purchase Agreement dated 7.8.2007 executed between Sasan Power Limited and the procurers for compensation due to change in law impacting revenues and costs during the operating period.

**And**

**In the matter of**

Sasan Power Limited  
Reliance Power Ltd. 3rd Floor,  
Reliance Energy Centre,  
Santa Cruz East, Mumbai

..... **Petitioner**

**Vs**

1. MP Power Management Company Ltd.  
Shakti Bhawan, Jabalpur-482 008.
2. Paschimanchal Vidyut Vitran Nigam Ltd.  
Victoria Park, Meerut-250 001.
3. Purvanchal Vidyut Vitran Nigam Ltd.  
Hydel Colony, Bhikaripur, Post-DLW, Varanasi-221 004.
4. Madhyanchal Vidyut Vitran Nigam Ltd.  
4A-Gokhale Marg, Lucknow-226 001.

5. Dakshinanchal Vidyut Vitran Nigam Ltd.  
220kV, Vidyut Sub-Station,  
Mathura Agra By-Pass Road,  
Sikandra, Agra-282 007.
6. Ajmer Vidyut Vitran Nigam Ltd.  
400 kV GSS Building (Ground Floor), Ajmer Road,  
Heerapura, Jaipur
7. Jaipur Vidyut Vitran Nigam Ltd.  
400 kV GSS Building (Ground Floor), Ajmer Road,  
Heerapura, Jaipur
8. Jodhpur Vidyut Vitran Nigam Ltd.,  
400 kV GSS Building (Ground Floor), Ajmer Road,  
Heerapura, Jaipur
9. Tata Power Delhi Distribution Ltd.,  
Grid Sub-Station Building, Hudson Lines, Kingsway camp,  
New Delhi-110 009.
10. BSES Rajdhani Power Ltd.,  
BSES Bhawan, Nehru Place,  
New Delhi-110 019.
11. BSES Yamuna Power Ltd.,  
Shakti Kiran Building, Karkardooma,  
Delhi-110 092.
12. Punjab State Power Corporation Ltd.,  
The Mall, Patiala-147 001.
13. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula (Haryana)-134 109.
14. Uttarakhand Power Corporation Ltd.,  
Urja Bhawan, Kanwali Road,  
Dehradun-248 001.

.....Respondents

For the Petitioner : Shri Sanjay Sen, Senior Advocate, SPL  
Shri Janmali Manikala, Advocate, SPL  
Shri Surya Kant, SPL  
Shri N.K. Deo, SPL

For the Respondents : Shri G.Umapathy, Advocate, MPPMCL

Ms. R. Mekhala, Advocate, Advocate MPPMCL  
Shri Rajiv Srivastava, Advocate, UP Discoms  
Ms Ranjitha Ramachandran, Advocate. Rajasthan Discoms  
and HPCC  
Ms. Poorva Saigal, Advocate, HPPC  
Shri Gaurav Gupta, Advocate, PSPCL  
Shri Rahul Dhawan, Advocate, BRPL and BYPL

### **ORDER**

The petitioner, Sasan Power Limited, has set up a 4000 MW coal fired super critical, ultra Mega power project based on linked captive coal mine at Sasan, District: Singauli, in the State of Madhya Pradesh (hereinafter referred to as "Sasan UMPP").

2. The petitioner has filed the present petition under clauses (b) and (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 (hereinafter "2003 Act") read with Article 13 read of the Power Purchase dated 7.8.2007 read with Paragraph 5.17 of the Competitive Bidding Guidelines seeking the following reliefs under 'Changes in Law' during the operating period:

(a) Increase in electricity duty on sale of power to State of Madhya Pradesh i.e. Lead Procurer MP Power Management Company Limited with effect from 25.4.2012 to 31.7.2014.

(b) Withdrawal of electricity duty on sale of power to the State of Madhya Pradesh with effect from 1.8.2014.

(c) Increase in rate of electricity duty on auxiliary power consumption in Power Plant

(d) Increase in electricity duty paid on auxiliary power consumption in captive

Coal Mines;

(e) Imposition of Energy Development Cess at the rate of ₹ 0.15 per KWh on (i) sale of power to the State of Madhya Pradesh i.e. Lead Procurer MP Power Management Company Limited (Respondent No.1 herein) and (ii) auxiliary power consumed by Sasan UMPP.

3. The petitioner has submitted its claims under change in law as under:

(a) Electricity duty on sale of power to State of Madhya Pradesh: For claiming the benefits of Change in Law under Article 13 of the PPA, the events must have occurred seven days prior to the bid deadline which was 28.7.2007. On 21.7.2007, the applicable rate of electricity duty on sale of power to State of Madhya Pradesh in terms of the MP Electricity Duty Act, 1949 was 2 paise / kWh. On 25.4.2012, the Government of Madhya Pradesh enacted the Madhya Pradesh Vidyut Shulk Adhiniyam, 2012 which repealed the MP Electricity Duty Act, 1949. As per Section 3 (1) read with Part C of Schedule of the Electricity Duty Act 2012, electricity duty on sale of power to State of Madhya Pradesh was increased from 2 paise/kWh to 5 paise/kWh. The increase in electricity duty on sale of power to State of Madhya Pradesh i.e. State owned Distribution and trading licensee was in effect from 25.4.2012 to 31.7.2014. The total amount payable by the petitioner towards electricity duty on sale of power to State of Madhya Pradesh till 31.7.2014 is approximately ₹13.2 crore out of which ₹7.87 crore is due to increase in electricity duty from the rate prevailing at the time of the bid. The petitioner has already paid approximately ₹4.769 crore towards electricity duty on sale of power to State of Madhya Pradesh of which ₹2.86 crore

is towards the increase in electricity duty. On 1.8.2014, the Electricity Duty Act, 2012 was amended and the electricity duty on sale of power to State of Madhya Pradesh was withdrawn. The withdrawal of electricity duty with effect from 1.8.2014 has led to a reduction in annual cost of ₹22 crore. The financial impact on account of the change in Electricity Duty on sale of power to the State of Madhya Pradesh from 1.8.2014 onwards to be determined as per the following formula:

Impact (in Rs) = (Actual Electricity Duty paid on sale of power to state of Madhya Pradesh – which is currently NIL) *LESS* (Electricity Duty on sale of power to state of Madhya Pradesh calculated at the rate of 2 paise per kWh *multiplied with* the actual units sold to the state of Madhya Pradesh)

Based on the above formula, computation of the financial impact on the petitioner on account of the change in Electricity Duty on sale of Power to State of Madhya Pradesh is as under (a sum of ₹7.87 crore is required to be deducted from this amount as one time reimbursement towards increase in the Electricity duty on sale of power till 31.7.2014 by the petitioner to State of Madhya Pradesh):

Description	Estimated Annual Generation Units (MUs)	Pre-bid (7 days prior to Bid Deadline i.e. on 21.7.2007)		Post 1.8.2014		Additional Cost on account of Change in Law (₹crore)	Remarks
		Rate ₹/KWh	Electricity Duty (₹crore)	Rate ₹/KWh	Electricity Duty (₹crore)		
Sale of Power to State of MP for 6 units operation	11005.3	0.02	22.0	-	-	(22.0)	₹.02/unit for 2007-08 prevailing at the time of submissions of bid
<b>Total</b>	<b>11005.3</b>	<b>0.02</b>	<b>22.0</b>	<b>-</b>	<b>-</b>	<b>(22.0)</b>	

(b) Increase in Electricity duty on the auxiliary power consumption: As on 7 days prior to the Bid Deadline Date, i.e. 21.7.2007, the applicable rate of electricity duty in terms of the MP Electricity Duty Act, 1949 was 8% of the prevailing DISCOM tariff on electricity consumed for the power plant auxiliaries. Thereafter, in terms of Section 3(3) read with Part C of the Schedule of the Electricity Duty Act 2012, the electricity duty on auxiliary power consumed by a generating company has increased from 8% of the DISCOM tariff to 15% of the DISCOM tariff. The financial impact on account of the change in Electricity Duty on auxiliary power consumption is as per the following formula:

**Electricity Duty on auxiliary power consumption in Power plant:**

Impact (in Rs) = (Actual Electricity Duty paid on auxiliary power consumed in Power plant at the rate of 15% of prevailing DISCOM electricity tariff (including FCA) under the provisions of the Electricity Duty Act, 2012) *LESS* (Electricity Duty on auxiliary power consumed in Power plant calculated at the rate of 8% of the prevailing DISCOM tariff under the provisions of the MP Electricity Duty Act, 1949)

**Electricity Duty on auxiliary power consumption in Captive Coal Mine:**

Impact (in Rs) = (Actual Electricity Duty paid on auxiliary power consumed in coal mine at the rate of 40% of prevailing DISCOM electricity tariff (including FCA) under the provisions of the Electricity Duty Act, 2012) *LESS* (Electricity Duty on auxiliary power consumed in coal mine calculated at the rate of 40% of the prevailing DISCOM tariff under the provisions of the MP Electricity Duty Act, 1949)

Based on the above formula, computation of the financial impact on the petitioner on account of the change in electricity duty on electricity consumed for the power plant auxiliaries and captive coal mine is ₹85.5 crore per annum. The details of computation of the impact on account of increase in electricity duty on auxiliary consumption are as under:

Description	Estimated Annual Auxiliary Power Units (MUs)	Pre-bid (7 days prior to Bid Deadline i.e. on 21.7.2007)		Post Bid		Additional Cost on account of Change in Law (₹crore)
		Rate ₹/KWh	Electricity Duty (₹crore)	Rate ₹/KWh	Electricity Duty (₹crore)	
Auxiliary power consumption in power plant, colony, water intake system for 6 units operation	1746.1	0.28	48.89	0.73	126.8	77.9
Auxiliary power consumption of coal mines	127.1	1.58	20.1	2.18	27.7	7.6
<b>Total</b>	<b>1873.24</b>		<b>69.0</b>		<b>154.4</b>	<b>85.5</b>

(c) Levy of Energy Development Cess for sale of power to State of Madhya Pradesh i.e. MPPMCL and auxiliary power consumption of Sasan UMPP: On 11.1.2013, the Government of Madhya Pradesh enacted the Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 2012 (“Amendment Act, 2012”). As per clause (1) of sub-section (1) of Section 3 of the Amendment Act, 2012, the petitioner is required to pay the cess at the rate of ₹ 0.15 per unit on the electricity supplied to a distribution licensee or consumer in the State of Madhya Pradesh or consumed by itself or its employees. The impact of payments on account of imposition of the cess is ₹193.98 crore as per the following formula:

Impact (in Rs) = (The entire amount paid towards the Cess at the rate of fifteen paise per unit on the total units of electrical energy supplied to DISCOMs of State of Madhya Pradesh) *PLUS* (The entire amount paid towards the Cess at the rate of fifteen paise per unit on the total units of electrical energy consumed as auxiliary consumption by the Petitioner), since there was no Cess at the time of submission of the bid.

The details of computation of the financial impact on the petitioner due to

imposition of cess are as under:

Description	Expected Annual Units (MUs)	Pre-bid		Post Bid		Additional Cost on account of Change in Law (₹ crore)
		Rate ₹/KWh	Cess (₹crore)	Rate ₹/KWh	Cess (₹ crore)	
Electricity sold to DISCOMs in State of Madhya Pradesh for 6 units operation	11005.28	NIL	0.00	0.15	165.1	165.1
Auxiliary power consumption in power plant including mines	1873.24	NIL	0.00	0.15	28.1	28.1
<b>Total</b>	<b>12878.51</b>		<b>0.00</b>		<b>193.18</b>	<b>193.18</b>

4. The petitioner has submitted that in accordance with Article 13.3 of the PPA, the petitioner notified the procurers on 20.12.2014 about the above stated events amounting to Change in Law' affecting the revenue/cost of the petitioner during the operation period.

5. The events of Change in Law have a financial impact on the cost and revenue of the petitioner during the operating period for which the petitioner is entitled to be compensated in terms of Article 13 of the PPA. Accordingly, the petitioner has filed the present petition with the following prayers:

(a) Declare that each of the items set out in Paragraphs 16 to 30 above are a Change in Law impacting revenues and costs during the Operating Period for which the Petitioner may be compensated in terms of Article 13 of the PPA; and

(b) Restore the Petitioner to the same economic condition prior to occurrence of the Changes in Law by permitting the Petitioner to raise Supplementary Bills on monthly basis in terms of Article 13.4.2 of the PPA as per the computations set out in Paragraphs 16 to 30 above to compensate the Petitioner including the carrying cost as and when the financial impact of the respective Changes in Law arise, either jointly or severally; and/or



(c) Pending disposal of this Petition, grant interim relief up to 80% of the amount claimed in order to ensure that the economic viability of the Project is not hampered.

6. The petition was admitted on 9.6.2015. Notices were issues to the respondents to file their replies to the petition. The Commission directed the petitioner to file the following information/clarifications:

(a) Whether Sasan Power Ltd. has factored the electricity duty on auxiliary consumption at the time of bidding and if so, the details thereof;

(b) Whether Sasan Power Limited is paying the enhanced electricity duty to the Government of Madhya Pradesh and if so, submit the proof of payment;

(c) Whether the efficacy of levying electricity duty on auxiliary consumption has been contested by the petitioner in the appropriate forum;

(d) Whether Sasan Power Limited has billed the procurers for the enhanced charges;

(e) Claim on the basis of actual additional cost incurred under specific heads duly audited by statutory auditors in terms of Article 13 of PPA.

7. The petitioner, vide its affidavit dated 13.7.2015, has submitted as under:

(a) The petitioner had assumed nil electricity duty on auxiliary consumption at the time of submission of the bid. SPL has only sought relief to the extent of impact on it since 21.7.2007 (which is 7 days prior to the Bid Deadline Date) as allowed under Article 13 of the PPA.

(b) It has made a payment of ₹476.94 lakh towards electricity duty on sale of power to State of Madhya Pradesh for the period commencing from 16.8.2013 to 31.3.2014.

(c) At present, no electricity duty is payable by a generating company in which Government of MP has at least fifty one percent equity. The petitioner vide its letter dated 20.4.2015 sought clarification from the Chief Engineer (Elect. & Safety) and The Chief Electrical Inspector, Govt. of Madhya Pradesh with regard to applicability of electricity duty and cess on Sasan UMPP and requested to refund the electricity duty already paid as the Govt. of the MP has abolished the electricity duty from 1.8.2014. In response, no response was received from the Govt. of MP in this regard.

(d) SPL has not raised any bill to the Procurers for the increase in electricity duty and cess.

(e) The petitioner has submitted the details of actual additional cost incurred towards electricity duty and cess duly certified by auditor as under:

Sr. No.	Particular	Actual additional cost	Amount claimed by the Petitioner subject to actual expenditure
<b><u>Electricity Duty</u></b>		Amount (in ₹crore)	
1	Sale of Power to state of MP	4.77*	₹7.87 crore Till 31.07.2014 and thereafter ₹ (22) crore
2	Auxiliary power consumption in power plant		77.9
3	Auxiliary power consumption in coal mines		7.6
<b><u>Electricity Cess</u></b>			

4	Electricity sold to MP		165.1
5	Auxiliary power consumption in Power plant and coal mines	28.1	

8. Replies to the petition have been filed by the, Haryana Power Purchase Center (HPPC), Rajasthan Distribution Companies (AVVNL/JVVNL/JdVVNL) and MP Power Management Company Limited (MPPMCL). The submissions of the respondents are discussed in brief in paras 9 to 11 of this order.

9. HPPC and Rajasthan Distribution companies vide their replies dated 21.7.2015 and 23.7.2015 have submitted as under:

(a) Electricity duty on auxiliary power consumption of Sasan UMPP is not covered under Change in law. The electricity duty and/or cess is to be considered only for auxiliary consumption in relation to actual power units sold to the procurers as a whole and in proportion to shares of each procurer.

(b) Electricity Duty or cess is to be confined to the actual auxiliary power consumption (in proportion to the procurers) or 6% of actual gross power generated units, whichever is lower.

(c) The petitioner has contended that the gross capacity of each unit is 620 MW whereas the net contracted capacity is 620.4 MW. Therefore, the auxiliary consumption is anticipated to be 39.6 MW for each Unit or 237.6 MW for the generating station @ 6% which is inclusive of the consumption of electricity in the project, township and coal mines. In case the actual auxiliary power consumption of the Project is more than 6% of the gross power generated, the compensation

payable on account of increase in duty and cess should be limited to 6% auxiliary power consumption. Therefore, the electricity duty and cess paid on the auxiliary consumption in excess to 6% is to the account of the petitioner.

(d) Electricity duty on coal mine power consumption ought not to be considered and there is no Change in Law with regards to auxiliary power consumption for the captive coal mines. Therefore, Change in Law is only with regard to the auxiliary consumption in the project from 8% to 15%.

(e) Since the tariff of the distribution Companies are not applicable to the petitioner, changes in their tariff are not covered under Change in Law events. If all power consumption in coal mines is considered, it should be proportionate for the actual coal utilized in the power project and not the entire coal mined in the coal mines.

(f) The impact of the electricity duty and cess should be considered and recalculated in line with the basis of the contentions above and it may be considered whether such impact satisfies the provisions of Article 13.2(b) i.e. exceeding 1% of the letter of credit aggregates for a year.

(g) In response to the petitioner's affidavit dated 13.7.2015, HPPC and the Rajasthan Distribution companies have submitted as under:

(i) The petitioner had not assumed nil electricity duty on auxiliary consumption at the time of submission of bid.

(ii) The petitioner has not submitted break up or details of electricity duty paid to Government of MP. It is not clear whether such payment was for

supply to the distribution companies or for auxiliary consumption in the generating station or for coal mines.

(iii) SPL has not made any submissions on whether it is contesting the levy of electricity duty on auxiliary consumption. The petitioner is seeking exemption from payment of electricity duty on account of being a Govt. of India initiative.

(iv) The claim of the petitioner for additional cost does not appear to correlate. The petitioner has not paid outstanding dues and any interest costs incurred on account of such delay in payment should be solely to the account of the petitioner.

10. Distribution companies of Uttar Pradesh in their reply dated 10.8.2015 have submitted as under:

(a) The present Petition is not maintainable as (i) in terms of Regulation 12 (2) (ii) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014, change in law has been categorized as an uncontrollable factor. The petitioner is required to establish beyond reasonable doubt that it has no option but to file the present petition under the “uncontrollable factor” of “Change in law” and (ii) There are several provisions in the Madhya Pradesh Vidyut Shulk Abhiniyam, 2012 which are prima facie discriminatory against the petitioner as well as procurers in the PPA. The petitioner should challenge the provisions of the Electricity Duty Act in competent court of law before seeking relief under the Change in Law provisions of the PPA.

(b) Section 5 of the Madhya Pradesh Vidyut Shulk Adhiniyam, 2012 provides for exemption of MPPMCL from the payment of duty if in the opinion of the State Govt., it is necessary and expedient to do so in public interest. The provision for exemption from the imposition of electricity duty in respect of the distribution licensee of MP, lead procurer, is discriminatory against the other procurers.

(c) There is no document on record stating that the Energy Department of the Madhya Pradesh would be undertaken by levying cess on the units of energy sold or supplied to a consumer, which, in turn, would be passed on to other procurers under change in law. The change in law claimed by SPL has to be project specific.

(d) If Electricity Duty on auxiliary consumption is allowed to be paid, it would amount to payment of duty twice (i) when the duty is charged from SPL and (ii) when it would be paid by the Procurers on supply of electricity to their consumers.

11. MPPMCL, Lead procurer vide its reply dated 11.8.2015, has submitted as under:

(a) The present petition is maintainable in terms of the PPA. As per the provisions of Madhya Pradesh Shulk Adhiniyam, 2012, electricity duty is applicable as (i) 5 paise per unit on the quantum of power sold to MP; (ii) 15% of the tariff of the distribution companies for electricity consumer for power project auxiliaries. However, Govt. of Madhya Pradesh vide its notification dated 1.8.2014 abolished duty on sale of power to Madhya Pradesh.

(b) As per the provision of MP Upkar Adhiniyam, 1981, which was amended in January 2013, cess is applicable to the generating company on sale of power to MP and on auxiliary power consumption.

(c) The compensation may be considered for the period prior to 1.8.2014. Thereafter, the same may be reimbursed/refunded to the MPPMCL as per the provisions of the PPA.

(d) Increase in electricity duty on auxiliary consumption from 8% to 15% amounts to a change in law. The quantum claim for compensation be considered as per Article 3 of the PPA.

(e) On abolition of electricity duty from 1.8.2014, compensation on account of increase in electricity duty on auxiliary consumption in captive coal mines, i.e. 40% of DISCOM Tariff, as decided by the Commission for units of electricity consumed for coal mines shall be payable by all procurers in the ratio of their respective shares.

(f) The claims of the petitioner are covered under Change in law. Accordingly, compensation may be computed on the basis of Article 13.2(b) of the PPA.

12. The petitioner, vide its rejoinders to the replies filed by the respondents, has submitted as under:

(a) Article 13 of the PPA defines change in law as to mean enactment of any law which results in any change in costs or revenues from business of selling of electricity. The Commission, vide order dated 30.3.2015 in Petition No.

6/MP/2015, has held that events occurring as a result of the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal of any law are covered under change in law. Auxiliary power consumption is an integral part of operating the generating station and it is not possible to operate the project without incurring auxiliary power consumption. The increase in cost on account of increase in rate of electricity duty and cess on auxiliary power consumed by a generating company on account of the Electricity Duty Act and the Cess Act amounts to Change in Law in terms Article 13 of the PPA.

(b) There is no cap on the auxiliary power consumption of the project in terms of the PPA and the compensation for the same is to be paid as per actual by the procurers.

(c) Auxiliary Power Consumption is to be calculated taking into account the entire quantum of power generated at Sasan UMPP. This includes auxiliary power consumption of the captive coal mines which are an integral part of Sasan UMPP as held by the Commission in orders dated 4.2.2015 and 31.3.2015 in Petition Nos. 21/MP/2013 and 6/MP/2013 respectively.

(d) In terms of Section 3(3) read with Part C of the Schedule of the Electricity Duty Act 2012, the electricity duty on auxiliary power consumption is being levied at the prescribed / notified distribution tariff, which keeps varying as per the tariff determined by the Madhya Pradesh Electricity Regulatory Commission. In any event, the petitioner is only claiming amounts which it is actually being billed for



by the concerned authority. The petitioner has no control over the applicable rate at which electricity duty is being imposed.

(e) All the coal being mined from the captive coal mines is entirely consumed for the project to generate the contracted capacity for supply to the procurers.

(f) The aggregate amount claimed for Changes in Law events in the present Petition is approximately ₹256.6 crore annually which is more than the threshold amount prescribed under Article 13.2(b) of the PPA. In terms of Article 13.2(b) of the PPA, the aggregate impact on account of Change in Law should be more than 1% of the letter of credit amount in that contract year for all procurers combined. The Letter of credit amount is approximately ₹315 crore (aggregate amount of letter of credit by all procurers) at peak tariff of the project i.e. approximately ₹1.32 per unit during the PPA term of 25 years. Accordingly, the threshold amount beyond which compensation for change in law can be claimed would be about ₹3.1 crore. In this regard, the petitioner has submitted as under:

(i) The compensation is linked to increase/decrease in revenue or cost and not to a specific change in law event.

(ii) The annual impact on account of all change in law events are more than the threshold amount which is 1% of the letter of credit amount for that contract year of all procurers combined.

(iii) SPL has paid the ₹ 4.74 crore “under protest” as it is understood that the other generating stations operating in State of Madhya Pradesh are

making payments towards the same. If procurers desire that the petitioner challenge the claims, they ought to indemnify the petitioner for any interest/ penalty which may be imposed on account of non-payment. Any delay in payment of electricity duty and cess on account of delay by the procurers in compensating the petitioner is to be borne by the procurers.

(iv) The classification of Change in Law as uncontrollable factor in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (2014 Tariff Regulations) has no bearing in the present case. Since, the petitioner is seeking relief under Change in Law events in terms of Article 13 of the PPA, the provisions of 2014 Tariff Regulations are not applicable in the present case.

(v) No duty or obligation has been imposed on the petitioner in terms of the PPA or the bidding documents to challenge the imposition of any duty or cess by a statutory authority. Without prejudice to the foregoing, the procurers including the distribution companies of UP being the affected parties by the imposition of cess have locus to challenge the same before appropriate court of law, if they wish to.

13. The petitioner was directed vide ROP dated 11.8.2015 to file the following information:

- (a) Details of auxiliary consumption separately for generating station, colony, water intake system and coal mines.
- (b) Schedule generation, actual gross generation at generator terminal and actual sent out generation at switchyard;

- (c) Energy scheduled to the procurers including Madhya Pradesh;
- (d) Year-wise calculation of electricity duty and energy cess for the years 2013-14 and 2014-15 separately.
- (e) As number of units were declared under commercial operation in different period during 2013-14 and 2014-15, submit the quantity of coal required to be produced/mined along with auxiliary consumption required for the respective quantum.

14. The petitioner, vide its affidavit dated 20.8.2015, has submitted the requisite information as under:

- (a) Details of auxiliary consumption separately for generating station, colony, water intake system and coal mines:

Financial Years	Power Plant			Coal Mines (in MU)
	Generating Station (in MU)	Colony (in MU)	Water Intake System (in MU)	
2013-14 (from 16th August 2013)	220.1	0.5	7.5	9.0
2014-15	1055.7	1.7	21.1	18.5
2015-16 (April, 2015 to July, 2015)	591.2	0.8	8.1	15.1

- (b) Details of schedule generation, actual gross generation at generator terminal and actual sent out generation at switchyard as under:

Financial Years	Scheduled generation (in MUs)	Actual gross generation at generator terminal (in MU)	Actual sent out generation at Switchyard (in MUs)
2013-14	2524.0	2742.3	2504.7
2014-15	14856.7	16168.2	15071.1
2015-16 (April, 15 to July, 15)	8950.6	9698.6	9083.4

(c) The details of energy scheduled to the procurers including Madhya Pradesh:

S. No.	State	Distribution Company	Energy scheduled (in MUs)		
			Financial year 2013-14	Financial year 2014-15	Financial year 2015-16 (April'15 to July'15)
1	MP	MPPMCL	953.869	5611.521	3405.585
2	Punjab	PSPCL	375.585	2235.544	1335.305
3	UP	PaVVNL	190.535	1123.489	674.791
		PuVVNL	31.762	187.255	112.465
		MaVVNL	31.766	187.255	112.465
		DaVVNL	63.525	374.485	224.930
4	Haryana	DHBVN	138.612	799.157	475.200
		UHBVN	138.612	799.157	475.200
5	Rajasthan	AVVNL	90.319	533.032	326.426
		JVVNL	90.276	533.140	326.426
		JDVVNL	70.218	414.727	253.887
6	Delhi	TPDDL	82.801	515.244	293.407
		BRPL	125.731	455.586	204.321
		BYPL	76.559	712.009	508.051
7	Uttarakhand	UPCL	63.807	375.099	222.168

(d) The details of year-wise calculation of electricity duty and energy cess for the years 2013- 14 and 2014-15:

Calculation of electricity duty and energy cess for financial year 2014-15

Financial Year 2013-14						
	Units	Applicable rate	Applicable Duty	Rate applicable at the time of Bid	Applicable Duty	Differential sought by SPL
	(MUs)	₹ / KWh	₹ in crore	₹ / KWh	₹ in crore	₹ in crore
<b>Electricity Duty</b>						
Auxiliary consumption						
Power Plant	228.2	0.78	17.8	0.28	6.4	11.4
Coal Mine	9.0	2.06	1.8	1.58	1.4	0.4
Sale of Power to MP	953.9	0.05	4.8	0.02	1.9	2.9
<b>Sub Total (A)</b>	<b>1191.0</b>		<b>24.4</b>		<b>9.7</b>	<b>14.7</b>

Energy Development Cess						
Auxiliary consumption (power plant, colony, water system and coal mines)	237.1	0.15	3.6	0.00	0.0	3.6
Sale of Power to MP	953.9	0.15	14.3	0.00	0.0	14.3
<b>Sub Total (B)</b>	<b>1191.0</b>		<b>14.3</b>		<b>0.0</b>	<b>14.3</b>
<b>Total (A)+(B)</b>			<b>38.72</b>		<b>9.71</b>	<b>29.01</b>

**For FY 2013-14:** ED on APC Main Plant + Water Intake system: 15% of ₹5.20 per unit @ 11 kV of Load Factor < 50%; ED on APC Colony : 15% of ₹ 5.10 per unit @ 33 kV of Load Factor < 50%; ED on APC Coal Mines : 40% of ₹ 5.15 per unit @ 132 kV of Load Factor < 50%

**For Bid time:** ED on APC Main Plant + Water Intake system: 8% of Rs 3.50 per unit @ 132 kV or above; ED on APC Colony : 8% of ₹3.80 per unit @ 33 kV ED on APC Coal Mines : 40% of Rs 3.95 per unit @ 132 kV

Calculation of electricity duty and energy cess for financial year 2014-15:

	Financial Year 2014-15					
	Units	Applicable rate	Applicable duty	Rate applicable at the time of Bid	Applicable duty	Differential sought by SPL
	(MUs)	₹ / kWh	₹ in crore	₹ / kWh	₹ in crore	₹ in crore
<b>Electricity Duty</b>						
Auxiliary consumption						
Power Plant	1078.6	0.78	84.1	0.28	30.2	53.9
Coal Mine	18.5	2.06	3.8	1.58	2.9	0.9
Sale of Power to MP (Apr'14 to Jul'14)	1670.2	0.05	8.4	0.02	3.3	5.0
Sale of Power to MP ( Aug'14 to Mar'15)	3941.3	0	0.0	0.02	7.9	-7.9
<b>Sub Total (A)</b>	<b>6708.6</b>		<b>96.3</b>		<b>44.4</b>	<b>51.9</b>
<b>Energy Development Cess</b>						
Auxiliary consumption (power plant, colony, water system and coal mines)	1097.1	0.15	16.5	0.00	0.0	16.5
Sale of Power to MP	5611.5	0.15	84.2	0.00	0.0	84.2
<b>Sub Total (B)</b>	<b>6708.6</b>		<b>100.6</b>		<b>0.0</b>	<b>100.6</b>
<b>Total (A)+(B)</b>			<b>196.93</b>		<b>44.35</b>	<b>152.57</b>

**For FY 2014-15:** ED on APC Main Plant + Water Intake system: 15% of ₹ 5.20 per unit @ 11 kV of Load Factor < 50%; ED on APC Colony : 15% of ₹ 5.10 per unit @ 33 kV of Load Factor < 50%; ED on APC Coal Mines : 40% of ₹ 5.15 per unit @ 132 kV of Load Factor < 50%

**For Bid time:** ED on APC Main Plant + Water Intake system: 8% of ₹ 3.50 per unit @ 132 kV or above; ED on APC Colony: 8% of ₹3.80 per unit @ 33 kV ED on APC Coal Mines: 40% of ₹ 3.95 per unit @ 132 kV

Calculation of electricity duty and energy cess for financial year 2015-16 (April-July 2015)

<b>Financial Year 2015-16 (April, 15 to July, 15)</b>						
	Units	Applicable rate	Applicable Duty	Rate applicable at the time of Bid	Applicable duty	Differential sought by SPL
	(MUs)	₹ / KWh	₹ in crore	₹/ KWh	₹ in crore	₹in crore
<b>Electricity Duty</b>						
Auxiliary consumption						
Power Plant	600.1	0.86	51.8	0.28	16.8	35.0
Coal Mine	15.1	2.22	3.4	1.58	2.4	1.0
Sale of Power to MP	3405.6	0	0.0	0.02	6.8	-6.8
<b>Sub Total (A)</b>	<b>4020.8</b>		<b>55.1</b>		<b>26.0</b>	<b>29.1</b>
<b>Energy Development Cess</b>						
Auxiliary consumption (power plant, colony, water system and coal mines)	615.2	0.15	9.2	0.00	0.0	9.2
Sale of Power to MP	3405.6	0.15	51.1	0.00	0.0	51.1
<b>Sub Total (B)</b>	<b>4020.8</b>		<b>60.3</b>		<b>0.0</b>	<b>60.3</b>
<b>Total (A)+(B)</b>			<b>115.4</b>		<b>26.0</b>	<b>89.4</b>

**For FY 2015-16:** ED on APC Main Plant + Water Intake system: 15% of ₹ 5.75 per unit @ 11 kV of Load Factor < 50%; ED on APC Colony : 15% of ₹ 5.65 per unit @ 33 kV of Load Factor < 50%; ED on APC Coal Mines : 40% of ₹ 5.55 per unit @ 132 kV of Load Factor < 50%

**For Bid time:** ED on APC Main Plant + Water Intake system: 8% of ₹ 3.50 per unit @ 132 kV or above; ED on APC Colony: 8% of ₹ 3.80 per unit @ 33 kV ED on APC Coal Mines: 40% of ₹ 3.95 per unit @ 132 kV

The petitioner has submitted that total amount towards electricity duty and energy development cess till 31.3.2015 has been changed from ₹ 234.9 crore to ₹ 235.6 crore due to (i) change in date of commissioning of the first unit from 31.3.2013 to 16.8.2013 as per the directions of the Commission, (ii) Change in the applicable Discom tariff - As per advice of Chief Engineer (Electrical Safety) and the Chief Electrical Inspector, the Discom tariff applicable on auxiliary power consumption have been revised from 400 kV level connection to different voltage levels. The earlier claims

of the petition were based on Discom rate of 400 kV connections as the petitioner is connected at 400 kV level.

(e) Details of quantity of coal required to be produced / mined along with auxiliary consumption required for the respective quantum based on CoD of different units:

Period	Coal produced / mined**	Coal despatched	Auxiliary consumption of coal mine
	(In million tons)	(In million tons)	(MUs)
Mar 31, 2013 to Aug 15, 2013	0.3	0.2	2.6
Aug 16, 2013 to Jan 27, 2014	0.7	0.9	5.0
Jan 28, 2014 to Apr 11, 2014	1.0	1.0	2.6
Apr 12, 2014 to May 26, 2014	0.9	0.9	2.7
May 27, 2014 to Dec 25, 2014	5.5	5.4	15.0
Dec 26, 2014 to Mar 26, 2015	2.6	2.5	5.9
Mar 27, 2015 to July 31, 2015	5.4	5.4	11.5

\*\* Coal Production started from Sept'12

### Analysis and Decision:

15. We have considered the submissions of the petitioner and respondents and perused documents on record. The following issues arise for our consideration:

- (a) Whether the provisions of the PPA with regard to notice has been complied with?
- (b) Whether the claims of the petitioner are admissible under change in law?
- (c) If so, which claims of the petitioner admissible claims under Change in Law?
- (d) Mechanism for processing and reimbursement of admitted claims under Change in Law

The above issues have been dealt with hereinafter.

**Issue No (a): Whether the provisions of the PPA with regard to notice has been complied with?**

16. The claims of the petitioner in the present petition pertain to the Change in Law events which have an impact of the cost or revenue of the project during the operating period. Article 13.3 of the PPA envisages for notification of the Change in Law events to the procurers. Article 13.3 of the PPA is extracted as under:

**“13.3 Notification of Change in Law**

13.3.1 If the Seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article it shall give notice to the Procurer of such Change in Law as soon as reasonable practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2 Notwithstanding Article 13.3.1, the Seller shall be obliged to serve a notice to all Procurers under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material. Provided that in case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.

13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:

- (a) the Change in Law; and
- (b) the effects on the Seller of the matters referred to in Article 13.2.

17. The petitioner has submitted that a consolidated notice was issued to all the procurers on 20.12.2014 regarding the “change in Law” that took place during the period between the cut-off date and the start of the operating period which will affect the cost or revenue of the project during the operating period. In this regard, no response was received from the procurers.



18. We have considered the submission of the petitioner. Under Article 13.3 of the PPA, the seller is obliged to notify the events of Change in Law both beneficial to him as well as to the procurer as they occur. In our view, the petitioner has complied with the requirement of notice under Article 13.3 of the PPA.

**Issue No .2: Whether the claims of the petitioner are admissible under Change in Law?**

19. The petitioner has approached the Commission under Article 13 of the PPA read with Section 79 of the Act and Para 5.17 of the Competitive Guidelines for compensation of the cost incurred by the petitioner due to “Change in Law” during the operating period. Section 79(1)(b) and (f) of the Act provides as under:

“79 (1). The Central Commission shall discharge the following functions, namely,

(a) .....

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State.

.....

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration”

As per the above provision, the Central Commission has the power to adjudicate the dispute involving a generating company covered under clause (b) of sub-section (1) of Section 79 of the Act i.e. a generating company having a composite scheme for generation and sale of electricity in more than one State. The generating station of the petitioner is an UMPP and is supplying power from the generating station to more than one State and therefore, any adjudications of the dispute regarding tariff falls within the jurisdiction of this Commission. Further, Para 5.17 of the Competitive Bidding

Guidelines published by the Ministry of Power vide OM No. 23/11/2004-R&R (Vol-II) dated 19.1.2005 provides as under:

“5.17 Where any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the Appropriate Commission”

Appropriate Commission has been defined in the PPA dated 7.8.2007 between the petitioner and the procurers as “the Central Electricity Regulatory Commission constituted under the Electricity Act, 2003”. Therefore, under the provisions of the Competitive Bidding Guidelines, this Commission is the Appropriate Commission for adjudication of tariff related dispute. Under Article 13.2.(b) of the PPA, the compensation for any increase/decrease in revenues or cost to the seller shall be determined and effective from such date, as decided by the Central Electricity Regulatory Commission whose decision shall be final and binding on both the parties. From the provisions of the Act, Competitive Bidding Guidelines and provisions of the PPA, it is clear that the increase/decrease in cost or revenue to the seller (the petitioner) shall be decided by this Commission.

20. The claims of the petitioner pertain to the operating period. The “Operating Period” has been defined in the PPA as under:

“Operating Period in relation to the Unit means the period from its COD and in relation to the Power Station the date by which all the Units achieve COD, until the expiry or earlier termination of this Agreement in accordance with Article 2 of this Agreement.”

The dates of commercial operation of the units of Sasan UMPP are as under:

<b>Unit</b>	<b>Date of commercial operation of the</b>
-------------	--

	<b>units</b>
First	16.8.2013
Second	28.1.2014
Third	12.4.2014
Fourth	27.5.2014
Fifth	26.12.2014
Sixth	27.3.2015

The first unit of the generating station achieved COD on 16.8.2013 and the last unit of the generating station achieved COD on 27.3.2015. Therefore, the operating periods of the different units of the generating station will be considered from the respective dates of their commercial operation and the operating period of the generating station will be reckoned with effect from 27.3.2015.

21. The petitioner in this petition has claimed the impact of the expenditure incurred on account of increase in the electricity duty on sale of power in the State of Madhya Pradesh, increase in electricity duty payable for auxiliary power consumption of the project and coal mine, and levy of energy development cess by Govt. of Madhya Pradesh. The petitioner has submitted that at the time of the submission of bid, i.e. on 21.7.2007, as per the MP Electricity Duty Act, 1949, the applicable rate of electricity duty on sale of power to State of Madhya Pradesh was 2 paisa/ kWh and electricity duty on auxiliary power consumption the generating station was 8% of the Discom tariff in terms of MP Electricity Act, 1949, and the petitioner was exempted from the levy of energy development cess under Madhya Pradesh Upkar (Sanshodhan) Adhinyam, 1981. The petitioner has submitted that on 25.4.2012 Government of Madhya Pradesh through the enactment of Madhya Pradesh Vidyut Shulk Adhinyam, 2012 which repealed the MP Electricity Duty Act, 1949, increased the electricity duty on sale of power to Madhya Pradesh and electricity duty on auxiliary power consumed by

the generating company from 2 paisa/kWh to 5 paisa kWh and 8% of the Discom tariff to 15% of the Discom tariff respectively. With regard to increase in electricity duty on the auxiliary power consumption for coal mine, the petitioner has submitted that at the time of submission of bid, auxiliary power consumption for coal mine was 40% of Discom tariff and there is no change in the rate of 40% of electricity duty in Discom tariff. However, the Discom tariff will change from time to time on the basis of the tariff order of the Madhya Pradesh State Electricity Regulatory Commission. The petitioner has submitted that on 11.1.2013, Govt. of Madhya Pradesh enacted the Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 2012 in which the Govt. of Madhya Pradesh levied cess on the generating company at the rate of ₹0.15 per unit on the electricity supplied to a distribution licensee or consumer in the State of MP or consumed itself or its employees. The petitioner has submitted that on 1.8.2014, Govt. of MP amended the Electricity Duty Act, 2012 by which the electricity duty on sale of power to State of MP was withdrawn. The petitioner has submitted that increase and subsequent withdrawal of electricity duty on sale of power to the State of M.P due to enactment of the Electricity Duty Act, 2012 and amendments thereof amounts to change in law.

22. In the light of the submission of the petitioner, it has to be considered under which provisions of the Change in Law under Article 13 of the PPA, the claims of the petitioner shall be considered. Article 13.1.1 of the PPA which deals with the events of Change in Law is extracted as under:

“13.1.1 **“Change in Law”** means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline: (i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law or (ii) a change in interpretation of any Law by a Competent Court of law, tribunal or Indian

Governmental Instrumentality provided such Court of law, tribunal or Indian Governmental Instrumentality is final authority under law for such interpretation or (iii) change in any consents, approvals or licences available or obtained for the Project, otherwise than for default of the Seller, which results in any change in any cost of or revenue from the business of selling electricity by the Seller to the Procurer under the terms of this Agreement or (iv) any change in the (a) the Declared Price of Land for the Projector (b) the cost of implementation of the resettlement and rehabilitation package of the land for the project mentioned in the RFP or (c) the cost of implementing Environmental Management Plan for the Power Station mentioned in the RFP ;OR (d) the cost of implementing compensatory afforestation for the Coal Mine, indicated under the RFP and the PPA;

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

Provided that if Government of India does not extend the income tax holiday for power generation projects under Section 80 IA of the Income Tax Act, upto the Scheduled Commercial Date of the Power Station, such non-extension shall be deemed to be a Change in Law.

Further, Article 13.2 provides as under:

“While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.”

23. The petitioner has claimed the compensation on account of Change in Law under Article 13.1.1(i) of the PPA, i.e. the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any law. According to the petitioner, increase and subsequent withdrawal of electricity duty, and imposition of cess was in the nature of enactment for of new law. In our view, the claims under change in law made in the present petition will be covered under Article 13.1.1.(i) of the PPA.

**Issue No. (c) : Which claims of the petitioner are admissible under Change in Law?**

24. The petitioner has claimed the benefits of “Change in Law” during operating period in respect of three items which have been examined in the succeeding paragraphs:

**(A) Electricity Duty on sale of power to State of Madhya Pradesh**

25. The cut-off date for submission of bid was 21.7.2007. As per the MP Electricity Duty Act, 1949, the applicable rate of electricity duty on sale of power to State of Madhya Pradesh as on the date of submission of the bid was 2 paisa/kWh. Subsequently, the Govt. of Madhya Pradesh notified the Madhya Pradesh Vidyut Shulk Adhiniyam, 2012 on 25.04.2012 (“Electricity Duty Act, 2012”) which repealed the MP Electricity Duty Act, 1949. As per Section 3(1) read with Part C of Schedule of the Electricity Duty Act 2012, the petitioner is required to pay electricity duty on sale of power to the State of Madhya Pradesh at the rate of 5 paise/kWh. The petitioner has submitted that from the submission of the bid to till 31.7.2015, applicable duty on energy scheduled to the Madhya Pradesh @ 2 paisa/kWh is ₹ 5.2482 crore. However, the electricity duty payable from the date of commercial operation of 1<sup>st</sup> unit i.e. 16.8.2013 to 31.7.2015 is ₹ 13.1205 crore. Therefore, ₹ 7.823 crore shall be payable by the distribution companies of Madhya Pradesh to the petitioner due to increase in electricity duty from 2 paisa/kWh to 5 paisa/kWh. Since the operating period starts from the date of the COD, the claims have been allowed with effect from that date. Accordingly, the petitioner is allowed reimbursement of ₹ 7.8723 crore from the date of commercial operation of the first unit i.e. 16.8.2013 to 31.3.2015 on account of electricity duty for sale of power to Madhya Pradesh as per the calculation given as under:

Electricity Duty for Sale of Power to MP							
Financial Year	Scheduled Generation	Applicable rate after bid submission	Applicable Duty after bid submission	Rate applicable at the time of Bid submission	Applicable Duty at the time of bid submission	Differential (4-6)	Allowed by the Commission
	(MU)	₹ / kWh	₹ in crore	₹ / kWh	₹ in crore	₹ in crore	₹ in crore
1	2	3	4	5	6	7	8
2013-14	953.869	0.05	4.7695	0.02	1.9078	2.8617	2.8617
2014-15 (1.4.2014 to 31.7.2014)	1670.2	0.05	8.351	0.02	3.3404	5.0106	5.0106
<b>Total</b>	<b>2624.069</b>		<b>13.1205</b>		<b>5.2482</b>	<b>7.8723</b>	<b>7.8723</b>

26. Govt. of Madhya Pradesh vide its notification No.F-3-02-2011-XIII dated 1.8.2014 abolished the electricity duty on sale of power to State of Madhya Pradesh which has led to reduction in annual cost of ₹ 22 crore towards electricity duty with effect from 1.8.2014. At the time of submission of bid, the petitioner has factored the electricity duty levied by Government of Madhya Pradesh at prevailing rate of 2 paisa/kWh which was part of quoted tariff of the generating station. Accordingly, all beneficiaries/procurers are paying for the claim through tariff. Since the Government of MP has abolished electricity duty, it will have implication by way of reduction of ₹.22 crore annually in the tariff. Therefore, the petitioner must refund the said amount of ₹ 22.0 crore to beneficiaries/procurers in proportion to their share in the contracted capacity with effect from 1.8.2014 or adjust in their bills.

**(B) Increase in electricity duty on the Auxiliary power consumption (APC) in power plant and coal mine:**

27. The petitioner has submitted that as per Section 3 of the Madhya Pradesh Electricity Duty Act, 1949, the applicable rate of electricity duty was 8% of the prevailing Discom tariff on electricity consumed for the power plant auxiliaries. The petitioner has

submitted that Govt. of Madhya Pradesh vide Madhya Pradesh Vidyut Shulk Adhiniyam, 2012 dated 25.4.2012 increased the electricity duty on power consumed by the generating station. Therefore, as per Section 3 (3) of the Madhya Pradesh Vidyut Shulk Adhiniyam, 2012, the petitioner is required to pay 15% of the Discom tariff on electricity duty for the electricity consumed by it. Relevant portion of the said Section is extracted as under:

3. Levy of duty on sale of consumption of electricity: (1) and (2).....

(3) Every generating company, Captive Generating Plant and producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in Part-C of the schedule on the units of electricity consumed by himself or sold to consumers within the State of Madhya Pradesh.

Part-C

14. For the electricity consumed by Captive Generating Plants, Producers or Generating Companies for their auxiliary consumption and for their own consumption 15 percent of the tariff which would have been applicable if the electricity is supplied by Distribution Licensee.”

28. The petitioner has computed the financial impact on account of increase in electricity duty on auxiliary power consumption for generating station and coal mine for the years 2013-14, 2014-15 and 2015-16 as under:

Electricity Duty on the Auxiliary Power Consumption							
Financial Year		Auxiliary power Consumption	Applicable rate for	Applicable Duty	Rate applicable at the time of Bid	Applicable Duty	Differential
		(Mu)	₹ / kWh	₹ in crore	₹ / kWh	₹ in crore	₹ in crore
2013-14	Power Plant	228.1	0.78	17.79	0.28	6.3868	11.403
	Coal Mine	9.0	2.06	1.854	1.58	1.422	0.43
2014-15	Power Plant	1078.6	0.78	84.1308	0.28	30.201	53.9298
	Coal Mine	18.5	2.06	3.811	1.58	2.923	0.888
2015-16 (1.4.2015)	Power Plant	600.1	0.86	51.6086	0.28	16.8028	34.8058



<b>to 31.7.2015</b>	Coal Mine	15.1	2.22	3.3522	1.58	2.3858	0.9664
<b>Total</b>	Power Plant	1906.8	2.42	153.529 4	0.84	53.3906	100.1386
	Coal Mine	42.6	6.34	9.0172	4.74	6.7308	2.2844

Perusal of above table reveals that data for auxiliary power consumption of power station and coal mine together submitted by the petitioner works out to 237.1 MUs, 1097.1 MUs and 1949.4 MUs for the years 2013-14, 2014-15 and 2014-15 respectively which works out to 8.65%, 6.78% and 6.34% respectively of actual generation at generator terminal. Since the tariff of project is based on competitive bidding, the auxiliary power consumption considered is not known. However, based on the installed capacity of the Project i.e. (6X660) = 3960 MW and the contracted capacity of 3722.40 MW, the auxiliary power consumption works out to 6.0%. Therefore, we have considered 6% auxiliary power consumption for power plant inclusive of consumption of coal mine as power required for mining operation is also taken from the power station for computing electricity duty and energy development cess on auxiliary power consumed in power plant inclusive of consumption of Coal mine.

29. The energy scheduled by the beneficiaries of the generating station is ex-bus energy actually supplied to the beneficiaries. Therefore, actual power at generator terminal required to be generated including 6% auxiliary power consumption would be schedule energy divided by (1-6%) i.e. 0.94. Based on this actual generation (including 6% APC) and increase in electricity duty in the years 2012-13, 2014-15 and 2015-16 have been computed as under:

<b>Electricity Duty on the Auxiliary Power Consumption for Power Station</b>										
Financial Year	Scheduled Schedule Generation	Corresponding Generation on generator terminal	A.P.C @ 6% including consumption for coal mine	A.P.C for coal mine	A.P.C excluding coal mine	Applicable rate for	Applicable Duty	Rate applicable at the time of Bid	Applicable Duty	Differential
	MU	MU	MU	MU	MU	₹/kWh	₹ in crore	₹/kWh	₹ in crore	₹ in crore
2013-14	<b>2504.70</b>	<b>2664.574</b>	<b>159.8744</b>	9.0	<b>150.8745</b>	0.78	<b>11.7682</b>	0.28	<b>4.2245</b>	<b>7.5437</b>
2014-15	14856.70	15805.0	948.30	18.5	929.8	0.78	72.5244	0.28	26.034	46.49
2015-16 (1.4.2015 to 31.7.2015)	8950.60	9521.91	571.31	15.1	556.21	0.86	47.8341	0.28	15.5739	32.260
Total	<b>26331.00</b>	<b>27991.489</b>	<b>1679.489</b>	42.6	<b>1636.889</b>		<b>132.127</b>		<b>45.8329</b>	<b>86.2942</b>

30. As per applicable electricity duty on the auxiliary power consumption at the time of submission of bid, the total amount recovered through quoted tariff till 31.7.2015 on electricity duty on APC of power station and coal mine is ₹45.8329 crore. However, the electricity duty payable by the petitioner from COD of 1st unit i.e. 16.8.2013 to 31.7.2015 is ₹132.1271 crore. Therefore, the petitioner is entitled to recover ₹ 86.2942 crore due to increase in electricity duty from the beneficiaries in proportion to the scheduled generation.

31. The petitioner has claimed increase in electricity duty in the auxiliary power consumption for coal mine. It is noted there is no change in the rate of 40% of electricity duty of Discom tariff. However, the Discom tariff would undergo change on year to year basis based on the order of the State Electricity Regulatory Commission which shall be covered under Article 13.1.1(ii) of the PPA. The petitioner has claimed increase in electricity duty in the auxiliary power consumption for coal mine as under:

<b>Electricity Duty on the Auxiliary Power Consumption for Coal Mine</b>						
F.Y.	A.P.C for coal mine	Applicable rate after submission of the bid	Applicable Duty after submission of the bid	Rate applicable at the time submission of the bid	Applicable Duty at the time submission of the bid	Differential
	MU	₹/kWh	₹ in crore	₹/kWh	₹ in crore	₹ in crore
2013-14	9.0	2.06	1.854	1.58	1.422	0.43
2014-15	18.5	2.06	3.811	1.58	2.923	0.888
5-16 (1.4.2015 to	15.1	2.22	3.3522	1.58	2.3858	0.9664

31.7.2015)						
Total	42.6		9.0172		6.7308	2.2844

As per the above data, the total amount recovered till 31.7.2015 on electricity duty on APC of the generating station and coal mine was ₹6.7308 crore. However, the electricity duty payable by the petitioner from COD of 1st unit i.e. 16.8.2013 to 31.7.2015 is ₹ 9.0172 crore. Therefore, the petitioner is entitled to increase in electricity duty of ₹2.2844 crore which shall be payable by the beneficiaries to the petitioner on the scheduled generation.

**(C) Levy of Energy Development Cess on sale of power to MP State, auxiliary power consumption of power plant:**

32. The petitioner has submitted that at the submission of bid, the Madhya Pradesh (Sanshodhan) Adhiniyam, 1981 was not applicable to the generating companies. Subsequently, Govt. of the Madhya Pradesh amended the Madhya Pradesh (Sanshodhan) Adhiniyam, 1981 and notified the Madhya Pradesh (Sanshodhan) Adhiniyam, 2012 in the Gazette of Madhya Pradesh on 11.1.2013. As per Section 3 (1) (a) of the Madhya Pradesh (Sanshodhan) Adhiniyam, 2012, every generating company is required to pay the cess at the rate of ₹ 0.15 per unit on the electricity supplied to the distribution licensee or consumer in the State of Madhya Pradesh by itself or its employee. The petitioner has submitted that imposition of cess by Govt. of Madhya Pradesh through an enactment is covered under change in law. Lead procurer, MPPMCL has submitted that as per the provision of Madhya Pradesh (Sanshodhan) Adhiniyam, 2012, the petitioner is entitled to recovery of cess levied on it on sale of power to MP and on auxiliary power consumption. HPPC and the Distribution companies of Rajasthan have submitted that cess is to be confined to the actual

auxiliary power consumption (in proportion to the procurers) or 6% of actual gross power generated units, whichever is lower.

33. We have considered the submissions of the petitioner and the respondents. Section 3 (1) (a) of the Madhya Pradesh (Sanshodhan) Adhiniyam, 2012 provides as under:

“3(1) (a) Every Generating Company shall pay to the State Government at the prescribed time and in the prescribed manner an energy development Cess at the rate of 15 paise/unit on the total units of electrical energy sold or supplied to a distribution licensee or consumer in the State of Madhya Pradesh or consumed by itself or its employees during prescribed period.”

As per the above provision, the generating company is required to pay energy development cess to the Government of Madhya Pradesh at the rate of 15 paise/unit on the electrical energy sold to a distribution company or consumer with the State of Madhya Pradesh or for self consumption.

34. The petitioner has computed the financial impact on account of levy of energy development cess on sale of power to the State of Madhya Pradesh, auxiliary power consumption of power plant and coal mines for the years 2013-14, 2014-15 and 2015-16 as under:

Energy Development Cess							
Financial Year		Auxiliary power consumption (power station+coal mine) /Schedule Energy to MP	Applicable rate after submission of the bid	Applicable Duty after submission of the bid	Rate applicable at the time of submission of the bid	Applicable Duty at the time of the submission of the bid	Differential
		(Mu)	₹ / kWh	₹ crore	₹ / kWh	₹ in crore	₹ in crore.
2013-14	Auxiliary Consumption (Power plant, colony, water system & coal mines)	237.1	0.15	3.5565	0.0	0.0	3.5565

	Sale of Power to MP State	953.9	0.15	14.3085	0.0	0.0	14.3085
<b>2014-15</b>	Auxiliary Consumption (Power plant, colony, water system & coal mines)	1097.1	0.15	16.4565	0.0	0.0	16.4565
	Sale of Power to MP State	5611.5	0.15	84.1725	0.0	0.0	84.1725
<b>2015-16 (1.4.2015 to 31.7.2015)</b>	Auxiliary Consumption (Power plant, colony, water system & coal mines)	615.2	0.15	9.228	0.0	0.0	9.228
	Sale of Power to MP State	3405.6	0.15	51.084	0.0	0.0	51.084
<b>Total</b>	Auxiliary Consumption (Power plant, colony, water system & coal mines)	1949.4		29.241	0.0	0.0	<b>29.241</b>
	Sale of Power to MP State	9971		149.565	0.0	0.0	<b>149.565</b>

35. For computation of levy of energy development cess on sale of power to the State of Madhya Pradesh, auxiliary power consumption of power plant and coal mine, we have considered auxiliary power consumption for power plant and coal mine same as has been considered for computation of electricity duty. Details of increase in levy of energy development cess on sale of power to MP, auxiliary power consumption of power plant and coal mine are as under:

<b>Energy Development Cess</b>							
<b>Financial Year</b>		Auxiliary power consumption (power station+coal mine) @6%/Schedule Generation	Applicable rate for	Applicable Duty after submission of bid	Rate applicable at the time of Bid	Applicable Duty at the time of submission of bid	Differential
		(Mu)	₹ / kWh	₹ in crore	₹ / kWh	₹ in crore	₹ in crore
<b>2013-14</b>	Auxiliary Consumption (Power plant, colony, water system & coal mines)	159.8745	<b>0.15</b>	<b>2.398</b>	0.0	0.0	<b>2.398</b>
	Sale of Power to MP State	953.9	0.15	14.3085	0.0	0.0	14.3085

<b>2014-15</b>	Auxiliary Consumption (Power plant, colony, water system & coal mines)	948.30	0.15	14.2245	0.0	0.0	14.2245
	Sale of Power to MP State	5611.5	0.15	84.1725	0.0	0.0	84.1725
<b>2015-16 (1.4.2015 to 31.7.2015)</b>	Auxiliary Consumption (Power plant, colony, water system & coal mines)	571.31	0.15	8.5697	0.0	0.0	8.5697
	Sale of Power to MP State	3405.6	0.15	51.084	0.0	0.0	51.084
<b>Total</b>	Auxiliary Consumption (Power plant, colony, water system & coal mines)	<b>1679.4894</b>		<b>25.192</b>	<b>0.0</b>	<b>0.0</b>	<b>25.192</b>
	Sale of Power to MP State	9971		149.565	0.0	0.0	149.565

36. It is noted that at the time of submission of bid, energy development cess was nil. Government of Madhya Pradesh through Madhya Pradesh (Sanshodhan) Adhiniyam, 2012 as levied 15 paise per unit as energy development cess on the total units of electrical energy sold to the distribution company or consumer in the state of Madhya Pradesh. Accordingly, the petitioner has to pay energy development cess of ₹ 149.565 crore based on the applicable rate from COD of 1<sup>st</sup> unit i.e. 16.8.2013 to 31.7.2015. Therefore, the petitioner is allowed increase in energy development cess of ₹ 149.565 crore for sale of power to MP. The petitioner is also allowed to recover increase in energy development cess of ₹ 25.192 crore for auxiliary power consumption of power

plant and coal mine from the beneficiaries of the generating station on the schedule energy pro-rated to contracted capacity of each beneficiary the generating station .

37. The summary of our decision with regard to various claims of the petitioner is given in the table as under:

(₹ in crore)

Events of Change in Law	2013-14		2014-15		2015-16 (1.4.2015 to 31.7.2015)		Total	
	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed
<b>Electricity Duty</b>								
In respect of Power sold to MP	2.8617	2.8617	5.0106	5.0106			7.8723	7.8723
<b>Energy Development Cess</b>								
In respect of Power sold to MP	14.3085	14.3085	84.1725	84.1725	51.084	51.084	149.565	149.565
<b>Electricity Duty on account of</b>								
<i>APC of Power Plant</i>	11.403	7.5437	53.9298	46.49	34.8058	32.2602	100.1386	86.2942
<i>APC of Coal Mine</i>	0.43	0.43	0.888	0.888	0.966	0.966	2.284	2.284
<b>Total</b>	11.833	7.9737	54.8178	47.378	35.7718	33.2262	102.4226	<b>88.6395</b>
<b>Energy Development Cess on account of</b>								
Auxiliary consumption (power plant and coal mines)	3.5565	2.398	16.4565	14.22458	9.2228	8.5697	29.241	25.192
<b>Electricity Duty+ Energy Development Cess on account of</b>								
i) Power sold to MP	17.1702	17.1702	89.1831	89.1831	51.084	51.084	157.4373	157.4373
<b>Electricity Duty+ Energy Development Cess on account of</b>								
ii) Auxiliary consumption (power plant and coal mines)	15.3895	10.3717	71.2743	61.6026	44.9946	41.7959	131.6636	113.7702
<b>Grand Total (i+ii)</b>	32.5597	<b>27.5419</b>	160.4574	<b>150.7857</b>	96.0786	<b>92.8799</b>	289.1009	<b>271.2075</b>

The increase in electricity duty and energy development cess on sale of power to Madhya Pradesh shall be payable by the Discoms of Madhya Pradesh in proportion to the share of MP in the scheduled generation. The increase in electricity duty and energy development cess on auxiliary power consumption of station and coal mine shall be payable by all beneficiaries/procurers of the station. Apart from the above, the

beneficiaries/procurers will get back or adjust an amount of ₹ 22 crore annually with effect from 1.8.2014 in proportion to their shares in the contracted capacity.

38. The increase in electricity duty and energy development cess on sale of power to Madhya Pradesh shall be payable by the distribution companies of Madhya Pradesh in proportion to the share of Madhya Pradesh in the scheduled generation. The increase in electricity duty and energy development cess on auxiliary power consumption of the generating station and coal mine shall be payable by all the beneficiaries/procurers of the generation station. In addition, the petitioner shall refund ₹ 22 crore annually to the beneficiaries with effect from 1.8.2014 in proportion to their share in the contracted capacity or shall adjusted in their bills.

**Issue No. (d): Mechanism for compensation on account of Change in Law during the operating period:**

39. The petitioner has submitted that the minimum value of Change in Law should be more than 1% of the Letter of Credit amount in a particular year. As per Article 11.4.1.1 of the PPA, letter of credit amount for first year would be equal to 1.1 times of the estimated average monthly billing based on normative availability and subsequent years the letter of credit amount will be equal to 1.1 times of the average of the monthly tariff payments of the previous contract year plus the estimated monthly billing during the current year from any additional units expected to be put on COD during that year on normative availability. The petitioner has further submitted that the petitioner may be permitted to claim from the procurer's compensation that would be equivalent to the financial impact of the change in law on the cost and revenue of the petitioner.



40. Article 13.2 (b) of the PPA provides for the principle for commuting the impact of change in law during the operation period as under:

"Operation Period As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Appropriate Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above mentioned compensation shall be payable only if and for increase/decrease in revenues or cost to the Seller is in excess of an amount equivalent to 1% of Letter of Credit in aggregate for a Contract Year."

The above provision enjoins on the Commission to decide the effective date from which the compensation for increase/decrease of revenues or cost shall be admissible to the petitioner. Moreover, the compensation is payable only if and for increase/decrease in revenues or cost to the seller is in excess of an amount equivalent to 1% of the letter of credit in aggregate for the contract year. In our view, the effect of change in law as approved in this order shall come into force from the date of commercial operation of the concerned unit/units of the generating stations. Accordingly, the compensation shall be calculated in the following manner:

(a) Since the first and second units of the project were declared under commercial operation on 16.8.2013 and 28.1.2014 respectively, the first contract year would be the financial year 2013-14. On the basis of 80% normative availability of Unit-1 and Unit-2 from their respective CODs, total units generated would be 3466.30 MUs in the contract year 2013-14. The quoted tariff of the contract year from 1.4.2013 to 31.3.2014 is ₹ 0.702/kWh. Therefore, average billing for the contract year 2013-14 based on generation

corresponding to normative availability (80%) of 3466.30 MU, rate of unit ₹ 0.702/kWh works out to ₹ 243.33 crore.

(b) Consequently, the average aggregate monthly bill based on the 8 months' operation units would be ₹ 30.42 crore. The Letter of Credit amount which is 1.1 times, the estimated average monthly billing based on Normative Availability is about ₹ 33.458 crore.

(c) As per Article 13.2 (b) of the PPA, the threshold amount beyond which compensation for change in law can be claimed is 1% of the aggregate letter of credit amount for a Contract Year which will amount to about ₹0.33 crore.

(d) During the year 2014-15, unit-3, unit-4, unit-5 and unit-6 were declared under commercial operation on 12.4.2014, 27.5.2014, 26.12.2014 and 27.3.2015 respectively. On the basis of 80% normative availability of Unit-1 to unit 6 from respective COD, total units generated would be 12912.26 MUs in the contract year 2014-15. The quoted tariff of the contract year from 1.4.2014 to 31.3.2015 is ₹ 1.313 /kWh, the average monthly bill based on normative availability (80%), rate of unit ₹ 1.313 /kWh and 12 months period works out to ₹ 1695.38 crore. The Letter of Credit amount which is 1.1 times the estimated average monthly billing based on Normative Availability is about ₹ 1864.92 crore and 1% of the aggregate letter of credit amount for a contract year 2014-15 works out to ₹ 0.42 crore.

(e) During the year 2015-16, all the six units have been under commercial operation. On the basis of 80% normative availability of Unit-1 to unit 6 from respective COD, total units generated would be 16304.11 MUs in the contract year 2015-16. The quoted tariff of the contract year from 1.4.2015 to 31.3.2016 is ₹ 1.321 /kWh, the average monthly bill based on normative availability (80%), rate of unit ₹1.321 /kWh and 12 months period works out to ₹ 1723.02 crore. The Letter of Credit amount which is 1.1 times the estimated average monthly billing based on Normative Availability is about ₹1895.32 crore and 1% of the aggregate letter of credit amount for a contract year 2015-16 works out to ₹1.57 crore.

41. In the present case, the compensation of ₹ 27.5419 crore, ₹150.7857 crore and ₹ 92.8799 crore have been allowed in the years 2013-14, 2014-15 and 2015-16 (upto July-2015) respectively. The compensation so allowed is higher than the threshold amount of ₹0.33 crore, ₹ 0.42 crore and ₹1.57 crore in financial years 2013-14, 2014-15 and 2015-16 (upto July 2015) respectively as prescribed under Article 13.2 (b) of the PPA. Accordingly, the petitioner is entitled to be compensated on account of such increase in cost or revenue of the project.

### **Mechanism of Payment of compensation on Account of Change in Law**

42. The Commission has specified a mechanism herein considering the fact that compensation for such Change in Law shall be paid in subsequent contract years also. To approach the Commission every year for computation and allowance of

compensation for such Change in Law is a time consuming process which results in time lag between the amount paid by Seller and actual reimbursement by the Procurers which may result in payment of carrying cost to the amount actually paid by the Seller. Accordingly, the following mechanism shall be adopted for payment of compensation due to Change in Law events as per Article 13.4.2 of PPA in the subsequent years of the Contracted Period:

- (a) Compensation shall be paid on Monthly basis.
- (b) Monthly compensation payment shall be effective from the date of start of supply of scheduled energy to the procurers or from the date of Change in Law whichever is later.
- (c) The increase in electricity duty and energy development cess on sale of power to Madhya Pradesh shall be computed corresponding to the schedule energy and shall be payable by the distribution companies of Madhya Pradesh in proportional to the scheduled generation. In case actual generation is less than the schedule generation then actual generation shall be considered for computation of APC.
- (d) Increase in electricity duty and energy development cess on APC of the generating station and coal mine shall be computed corresponding to the schedule energy and shall be payable by all beneficiaries/procurers of the generating station in proportional to their scheduled energy. APC shall be actual or 6% whichever is lower, including mine consumption.

(e) The petitioner shall refund ₹ 22 crore to the beneficiaries/procurers annually w.e.f. 1.8.2014 an amount of in proportional to their share in the contracted capacity or adjust the amount in their bills.

(f) At the end of the year, the petitioner shall reconcile the actual payment made towards additional electricity duty on sale of power to MP, electricity duty and energy cess on the auxiliary power consumption to power plant and coal mine with the books of accounts duly audited and certified by statutory auditor. The reconciliation statement duly certified by auditor shall be kept in possession by the petitioner and can be shown to the beneficiaries/procurers, if so desired.

(g) Total generation ex-bus and scheduled generation ex-bus on month to month basis as per the meters installed at the switchyard bus of the generating station shall be reconciled with the SCADA data of RLDC and Regional Energy Accounting of RPC/ WRLDC for the month.

43. The petitioner has prayed that a mechanism be devised to permit the petitioner to recover such levies through supplementary invoices on the procurers for the future Change in Law events subject to reconciliation and final adjudication by the Commission which may be carried out on a yearly basis. We have considered the submission of the petitioner. As per Article 13.2(b) of the PPA, the Commission has to determine the compensation for any increase/decrease in revenues or cost on account of change in law events during operating period and the effective date for such compensation. Each claim has to be considered on its own merit in the light of the provisions of the PPA and therefore, the prayer of the petitioner

for permitting the petitioner to levy the charges without it being first determined by the Commission is not accepted.

44. This order disposes of Petition No. 118/MP/2015.

sd/-  
**(Dr. M. K. Iyer)**  
**Member**

sd/-  
**(A. S. Bakshi)**  
**Member**

sd/-  
**(A. K. Singhal)**  
**Member**

sd/-  
**(Gireesh B. Pradhan)**  
**Chairperson**