

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 402/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A. K. Singhal, Member

Shri A.S.Bakshi, Member

Date of Hearing: 05.05.2015

Date of Order: 18.11.2015

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 13.2(b) 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
C/o 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

Parties Present:

For the Petitioner : Shri J. J. Bhatt, Sr. Advocate, SPL
Shri Vishrov Mukerjee, Advocate, SPL
Ms. Ritika Arora, Advocate, SPL

Shri Mayank Gupta, SPL
Shri Suresh Nagarajan, SPL
Shri N.K.Deo, SPL

For the Respondent : Ms. Swapna Seshadari, Advocate, PSPCL and Rajasthan
Ms. Poorva Saigal, Advocate, Haryana
Ms. Ranjithan Ramchandran, Advocate, Haryana
Shri Apoorve Karol, Advocate for Respondent No.13
Shri Alok Shankra, Advocate, TPDDL
Shr Rajiv Srivastava, Advocate, UPPCL
Shri G.Umpapathy, Advocate, MPPMCL
Shri Dipender Singh Chauhan, BRPL/BYPL
Shri Rahul Dhawan, Advocate, BRPL/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: Singrauli, in the State of Madhya Pradesh. (hereinafter referred to as "Sasan UMPP").

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

(a) Monthly payments to the eligible Project Displaced Persons (PDPs) towards old age pension and to displaced helpless persons such as old, aged, disabled, widows and unmarried women.

(b) Payments towards providing free education facilities, study materials, school uniforms and education stipend to children of PDPs attending school in

the colony constructed by the petitioner.

(c) Payments made towards sustenance allowing the eligible PDPs based on the industrial wages for skilled labour fixed by the Government of Madhya Pradesh in lieu of employment.

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

(a) For claiming the benefits of Change in Law under Article 13 of the PPA, the events must have occurred after seven days prior to the bid deadline, which was 28.7.2007. On 6.9.2008, the petitioner entered into a Rehabilitation and Resettlement Agreement (R & R Agreement) with the District Collector, Singrauli, Madhya Pradesh to facilitate acquisition of land for the project by the Government of Madhya Pradesh. As per the said Agreement, the petitioner is required to provide additional benefits to PDPs over and above the MP Ideal Rehabilitation Policy, 2002. The Agreement further provides that the petitioner is required to (i) pay compensation towards pension to eligible PDPs; (ii) provide study material, school uniforms and education free of cost to students upto 10th Class and pay educational stipend to children (Boys and girls) of PDPs attending the school in colonies constructed by the petitioner; (iii) provide priority in employment to at least one member of the PDPs family. Subsequently, on 4.2.2011, the petitioner entered into an amended Agreement with District Collector, Singrauli, Madhya Pradesh (Amended Agreement). As per the Clause 3 of the Amended Agreement, the petitioner is required to pay old age pension @ ₹ 1000 per month to those PDPs of age 60 years or more. As per Clause 3 (1) of

the Amendment Agreement, the petitioner is required to pay Rs. 500 per month to displaced helpless persons such as disabled, widows, unmarried and castaway women (divorcee).

(b) There are 432 eligible PDPs (Old Age : 342 and Displaced helpless persons : 90). However, the number of eligible PDPs would vary from time to time in accordance with the changes made by the district administration or due to other events. The estimated cost towards monthly payments to the eligible PDPs to be made by it is approx. 0.63 crore per annum as per the following formula:

Impact (in Rs.) = Old age pension Calculated based on applicable rate (currently Rs 1000 per person) X number of eligible PDPs receiving such allowance in that month based on District Administration certified list) + Monthly payments to the eligible displaced helpless person calculated based on applicable rate (currently Rs 500 per person) X number of eligible PDPs receiving such allowance in that month based on District Administration certified list)

(c) As per Clause 4 of the R & R Agreement dated 6.9.2008, the petitioner is required to provide free education to the children of PDPs up to class 10th and monthly stipend along with school uniform and books. The impact of payments made towards providing free education and education stipend is approximately ₹ 4.03 crore for the financial year 2014-15 as per the following formula:

Impact (in ₹) = Actual expense being incurred towards free education and stipend for that month

(d) At present, 2386 children are being provided free education out of which 974 children (boys and girls) are getting education stipend. In order to provide quality

education, the petitioner has engaged DAV Management. The number of students eligible for free education and stipend would vary from time to time in accordance with the students passing out of school and new admissions.

(e) As per clause 7 (iv) of the Amended Agreement dated 4.2.2011, the petitioner is required to either provide employment or pay sustenance allowance to PDPs in the event the petitioner is not able to provide employment within three years from the date of handing over the possession of land by the PDPs. Accordingly, the petitioner through its contractor has made efforts to employ PDPs. Subsequently, Office of the Collector and District Magistrate, Singrauli vide its letters dated 4.2.2013 and 19.2.2013 informed the petitioner that if no payments for sustenance allowance are made, the properties of the petitioner would be attached and a proposal for cancellation allocated/acquired land would be forwarded to the Government of India.

(f) The petitioner's obligation to provide employment to PDPs or pay sustenance allowance was also discussed in the special review meetings convened by District Collector, Singrauli on 14.8.2013, 4.9.2013 and 31.7.2014. In the review meeting dated 31.7.2014, the District Collector directed the petitioner to commence payment of sustenance allowance equivalent to industrial wages payable to skilled labour in the State of Madhya Pradesh. As per the Government of Madhya Pradesh Notification No.1/9/5/2009/10882-11181 dated 3.4.2014, the industrial wages for skilled labour was fixed at ₹6125/- per month for the period commencing from 1.4.2014 to 30.9.2014, subject to revision by Government of Madhya Pradesh from time to time. Based on the Notification dated 3.4.2014, the impact of sustenance

allowance would be approx ₹ 23.34 crore per year as worked out according to the following formula:

Impact (in ₹) = Actual sustenance allowance paid (Calculated based on applicable industrial wage x number of eligible PDPs receiving such allowance in that month based on District Administration certified list).

(g) The petitioner has submitted that overall impact on the pension to old, aged, displaced helpless persons and sustenance allowance would be approximately ₹ 27.87 crore per year.

4. The petitioner has submitted that the peak tariff of the project is approximately ₹ 1.32 per unit. At 80% normative availability of total capacity, the total units will be about 26086 MUs. Consequently, the average aggregate monthly bill based on the above normative availability will be ₹ 286.9 crore. The petitioner has submitted that the LC amount which is 1.1 times the estimated average monthly billing based on normative availability is about ₹315.6 crore. The petitioner has submitted that the aggregate amount of approximately ₹27.87 crore claimed under Change in Law in the year 2014-15 is more than threshold amount prescribed under Article 13.2 (b) of the PPA and is accordingly required to be reimbursed to the petitioner.

5. The petitioner has submitted that in accordance with Article 13.3 of the PPA, the petitioner notified the procurers on 4.9.2014 about the above stated events amounting to "Change in Law" affecting the revenue/cost of the petitioner during the operation period. The petitioner convened a meeting with procurers on 19.9.2014 to discuss the impact of the Change in Law events in which the procurers agreed that the imposition of

additional conditions would be determined by the Commission and advised the petitioner to approach the Commission for suitable compensation for the Change in Law.

6. 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 events set out in Paragraphs 33 to 46 above are Change in Law events impacting revenues and costs during the Operating Period for which the Petitioner and/or the Procurers 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 Change in Law by permitting the Petitioner to raise Supplementary Bills along with carrying cost in terms of Article 13.4.2 of the PPA as per the computations set out in Paragraphs 35, 37, and 44 above to compensate the Petitioner and/or the Procurers as and when the financial impact of the respective Changes in Law arise, either jointly or severally; and/or

(c) Devise a mechanism whereby the petitioner may be permitted to recover such levies through supplementary invoices on the procurers for the future Change in Law events subject to reconciliation and final adjudication by this Hon`ble Commission which may be carried out on a yearly basis.

7. The petition was admitted on 8.1.2015 and notices were issued to the respondents to file their replies to the petition. Replies to the petition have been filed by Madhya Pradesh Power Management Company Limited (MPPMCL), Haryana Power Purchase Centre (HPPC) and Rajasthan Distribution Companies (AVVNL/JVVNL/JdVVNL). The submissions of the respondents are discussed in brief as under:

(a) The lead procurer, MPPMCL, in its reply dated 12.3.2015 has submitted that the

petitioner has entered into a Rehabilitation and Resettlement Agreement with Government of Madhya Pradesh on 6.9.2008 and Amendment Agreement on 4.2.2011 which are legally binding on the petitioner. The claims of the petitioner are covered under R&R of the project and increase in the operating cost of the project under R&R has been covered under Article 13 of the PPA. MPPMCL has submitted that the quantum claimed for compensation should be verified by the Commission as per Article 13 of the PPA. MPPMCL has submitted that the petitioner has given calculation of compensation with tariff of ₹1.32 per unit at 80% normative availability (26086 MUs), leading to average monthly bill of ₹286.9 crore per month and after considering the letter of credit of 1.1 times, 1% of the aggregated letter of credit for a contract year works out to Rs.37.2 crore which is more than the claim of ₹27.87 crore. MPPMCL has submitted that if the operating period 2014-15 is taken when the tariff is 70 paise, the quantum of “1% of the Letter of Credit in aggregate for a Contract Year” differs from the operating period 2015-16, being the third year of operation when the tariff is around Rs.1.32 per unit. MPPMCL has requested to decide the applicability of quantum of compensation in view of its submission. MPPMCL has submitted that in the Procurers’ meeting held on 19.9.2014, it was agreed that the additional expenditure on account of pension, free education facilities, education stipend and sustenance allowance to PDPs is a change in law during the operation period and it was decided that the petitioner should approach the Commission for compensation for change in law and the procurers agreed to support the petition. MPPMCL further submitted that the Commission should examine the modality of operating period and how it will be decided for each unit and

power station, as a whole, as per the PPA.

(b) HPPC in its reply dated 18.2.2015 has submitted that in meeting dated 19.9.2014, the procurers including HPPC accepted the events being covered under change in law and agreed to support the claim of the petitioner before the Commission. However, HPCC had not agreed to the quantum of the compensation claim by the petitioner and therefore, HPPC acceptance is subject to the prudence check by the Commission on the quantum of compensation payable. HPCC has further submitted that the petitioner should justify the quantum of claim to the satisfaction of the Commission.

(c) Distribution Companies of Rajasthan in its reply dated 8.4.2015 has submitted that the change in law is admissible only as per Article 13 of the PPA dated 7.8.2007. The petitioner should first give the details of amounts paid which needs to be scrutinized by the Commission before deciding the quantum to be passed on to the procurers.

8. The Commission during the hearing on 12.3.2015 directed the petitioner to submit as to (a) whether the petitioner has explored the option of taking on annuity plan to cover the expenditure claimed in the petition; and (b) the justification for the quantum of claims made in the petition. The petitioner in its affidavit dated 6.4.2015 has submitted that the R&R Agreement of 2008 and the Amendment Agreement of 2011 were signed pursuant to the directions of the District Collector to facilitate acquisition of land for the project by the State Government of Madhya Pradesh. The petitioner has submitted that as per the list prepared by the District Administration, there are 500 old age persons

and 66 displaced helpless persons who were to be paid the old age pension at the applicable rates of ₹1000 per month and Rs. 500 per month respectively. The petitioner has worked out the compensation as under:

S. No.	No. of Eligible PDPs	Monthly payments as per applicable rate (₹)	Total monthly amount (₹)	Total annual amount (₹ in crore)
1	500 (Old Age)	1000	500000	0.60
2	66 (Disabled Helpless Person)	500	33000	0.03
Total				0.63

9. The petitioner has further submitted that Clause 4 of the R&R Agreement of 2008 requires the petitioner to provide free education to the children of PDPs upto Class 10th apart from monthly stipends, school uniforms and books. As per the agreement, the children are to be provided with monthly stipend as under:

Class	Monthly Stipend to be given to boys (₹)	Monthly Stipend to be given to girls(₹)
1-5	150	200
6-8	200	250
9-10	250	300

10. The petitioner has submitted that at present 2386 children are being provided free education out of which 974 children (boys and girls) are getting education stipend. The impact of providing free education and education stipend is approximately Rs.4.03 crore for the Financial Year 2014-15. As regards the compulsory employment obligations and payment towards sustenance allowance for the PDPs, the petitioner has submitted that as per Clause 7(VI) of the R&R Agreement as amended vide Amendment Agreement of 2011, the petitioner is required to either provide employment or pay sustenance

allowance to PDPs in the event petitioner is not able to provide employment within 3 years from the date of handing over the possession of land by the PDPs. The petitioner has submitted that the District Collector Singrauli in a meeting held on 31.11.2014 clarified that the sustenance allowance should be based on the industrial wage for the skilled labour as notified by the Government of Madhya Pradesh vide Notification dated 3.4.2014 fixing the rate of wages for industrial skilled labour as ₹6,125 per month for the period 1.4.2014 to 30.9.2014. The petitioner has worked out the impact of sustenance allowance for 3175 eligible PDPs as under:

No. of Eligible PDPs	Monthly payments as per rate (₹)	Total monthly amount (₹)	Total annual amount (₹ in crore)
3175	6125	1,94,46,875	23.34
Total			23.34

11. The Commission during the hearing dated 9.4.2015 directed the petitioner to file the following information:

- (a) List of PDPs based on which the old age pension, school fees, sustenance allowance, etc. calculated and compensation claimed as per the District Administration survey during land acquisition.
- (b) Details of calculation of compensation based on actual amount disbursed along with attested copies of bank statements of the beneficiaries Accounts.
- (c) List of PDPs duly approved by the District Collector/ Authority along with a copy of approval letter of District collector.

(d) Details of process to be followed in the disbursement of compensation to PDPs.

(e) Whether the petitioner had explored possibility of any annuity plan in LIC etc. for the benefit of project displaced persons.

12. The petitioner, vide its affidavit dated 24.4.2015 has submitted the requisite information as under:

(a) As regards the list of PDPs eligible for old age pension, school fees, sustenance allowance calculated and compensation claimed, the petitioner has referred to its submission filed vide affidavit dated 6.4.2015 the contents which have been discussed in para 9 above.

(b) As regards the list of PDPs approved by the District Collector, the petitioner has submitted that the District Collector in the meeting dated 11.10.2014 clarified that as per Madhya Pradesh Ideal Rehabilitation Policy 2002, displaced persons (Visthapits or displaced persons) would cover both house outstees and land oustees and accordingly, the petitioner is required to provide employment to both these categories and in the event of inability to provide employment, the petitioner is required to pay sustenance allowance as per the rate prescribed for industrial wage for unskilled labour as prescribed by Government of Madhya Pradesh. Further, in the meeting taken by the District Collector on 31.7.2014, it was clarified that land acquired from land oustees of area more than 0.5 acre from ST/SC category and more than 1 acre from general category have to be paid sustenance allowance. PDPs who fail to satisfy the eligibility criteria are to

be dealt with separately. Therefore, the criterion for deciding eligibility for recurring payments of sustenance allowance is evolving and yet to be finalized. The petitioner is stated to have commenced payments to the PDPs. The petitioner has further submitted that since the land survey data does not have full and complete information regarding Visthapits or displaced persons, it was decided that individual Visthapits shall submit an affidavit confirming their qualification in terms of the eligibility criteria with a legal provision for prosecution in case of misrepresentation or falsehood. A team nominated by the District Collector has prepared a list of 3209 PDPs which is subject to approval and verification by District Collector. The petitioner has submitted that till date, the petitioner has paid ₹27.60 lakh to the PDPs, ₹558.82 lakh towards free education and education stipend, and ₹79.725 lakh towards pension payable to old age persons, widows, etc for the period 1.4.2013 to 31.3.2015.

(c) As regards the details of payment mechanism, the petitioner has submitted that in the meeting held on 11.10.2014, the District Collector agreed that the Visthapits would open bank accounts in Nationalised Bank and the petitioner should make direct payment to the PDPs. Accordingly, the petitioner is making payments to eligible PDPs for their sustenance allowance and old age/widow pension directly to their bank accounts. The petitioner has suggested that reimbursement of such expenses be based on banking transaction that amounts have been credited to the accounts of PDPs and for other expenditure, the petitioner be allowed to submit Chartered Accountant's certificate to claim reimbursement. The petitioner has submitted that the amount incurred on such

account be reimbursed on monthly basis through supplementary bill during the following month in which such expenses are incurred. If the supplementary bill is on quarterly or annual basis, then the petitioner should be allowed to charge carrying cost in terms of interest for the period between payment made by the petitioner to the PDPs and reimbursement by the procurers.

(d) As regards the Annuity Plan, the petitioner is stated to have sought offers from various insurance companies to provide annuity plan for an estimated annual account including offer from insurance companies to provide annuity plan for the estimated expenditure of ₹ 28 crore for 25 years. However, only Bajaj Allianz Life Insurance quoted upfront cost of availing the annuity plan at Rs.390 crore for a minimum period of 20 years as against the petitioner's requirement for 25 years. Moreover the rates indicated are tentative as specific products meeting the petitioner's requirement have not been filed with Insurance Regulatory and Development Authority by any of the insurance companies. The petitioner has submitted that the obligations of the petitioner under the Agreement dated 6.9.2008 as amended by Agreement dated 4.11.2011 would vary in future based on factors such as revision in minimum wages by the Government of Madhya Pradesh, number of students eligible for education stipend, further directives of the District Administration etc. Therefore, the annuity plan does not offer a comprehensive solution to cover all the expenses towards change in law events as mentioned in the petition. The petitioner has further submitted that the upfront expenditure of Rs.390 crore is not economical as the corresponding annual flow is ₹ 24 crore discounted at the rate of 13% p.a. which works out to ₹ 176 crore

only. In this regard, the petitioner sought guidance from the District Collector who has clarified that (i) the annuity plan will fix the amount of payments and will not cover changes due to the revision of minimum wages rate by Govt. of Madhya Pradesh; (ii) the number of people availing sustenance allowance, other pension or stipend will keep varying due to natural factors, prospective employment, payment to categories below threshold criteria, etc.; and (iii) number of school children would also vary on yearly basis. The District Collector further clarified that such a situation is not desirable and can lead to social unrest on account of non-payment/no payment to certain eligible PDPs and therefore, it is desirable to make direct payments to the PDPs.

13. The Commission, vide ROP for the hearing dated 5.5.2015, directed the petitioner to file the following information:

(i) The criteria for identification of Project Displaced Persons (PDPs) for sustenance allowance, old age pension, widow/ disabled/ unmarried girl pension and students for free education, study material and stipend.

(ii) Reasons for not providing employment to eligible PDPs in the project. How many were employed and how many are left to whom sustenance allowance is to be given.

(iii) Procedure of actual identification as to who will do the identification, who will certify the names identified by the District Authority, time period/ schedule of identification for each year eligibility. Verification of identified persons and agency

verifying and the procedure of verification.

(iv) Verification of bank accounts in which amount is to be credited, and the agency responsible for the process of submitting the proof of actual payment. Whether bank statements are supported by auditor certificate or any other process.

(v) Process of review and monitoring of continuation of beneficiaries.

(vi) List of beneficiary students as per the record of District Administration. Payment mechanism adopted and recipients of payments of ₹558.819 lakh with documentary evidence.

(vii) The reasons for claiming reimbursement towards providing free education, education stipend, study material, etc. based on the Chartered Accountant certificate only. Documentary evidence of actual payment certified by competent authority / Head of institution may be furnished.

14. The petitioner, vide its affidavit dated 8.6.2015, has submitted the information in relation to the above queries which is briefly discussed as under:

(a) In the meeting held on 31.7.2014, the District Collector clarified that land oustees from SC/ ST category would be eligible for sustenance allowance if the land acquired from them is more than 0.5 acre area and land oustees from general category would be eligible for sustenance allowance if land acquired from them is more than 1 acre area. In the said meeting it was clarified that one person per family will get sustenance allowance provided that he/she does not have any other source of income and the age of PDP should be between 18

years and 59 years on date of Notification issued under Section 4 of the Land Acquisition Act, 1894. The petitioner has submitted the criteria and number of eligible PDPs drawing payment towards sustenance allowance as under:

Criteria	Land Oustees	House Oustees	Total Oustees
Area Filter (GEN+OBC<1.0 Acre+ST+SC<0.5 Acre)	438	1431	1869
Area Filter (GEN+OBC<0.5 Acre+ST+SC<0.25 Acre)	1233	1506	2739
Number of PDPs with no minimum threshold criteria	1703	1506	3209

(b) With regard to reasons for not providing employment to eligible PDPs in the project, the petitioner has submitted that it has given preference in providing employment to PDPs and locals based on their skills and approximately 2000 persons (including PDPs and locals) were employed during the construction period of the power plant and coal mines either directly or through the petitioner's contractors. Currently, all six units of the Project have been commissioned. The Project, which is highly automated, requires very specific skill-set manpower. The petitioner has endeavoured to employ as many PDPs as possible and currently, 118 PDPs are on permanent payrolls of the petitioner. The sustenance allowance is to be paid to such eligible PDPs who are not permanently employed.

(c) With regard to the query regarding identification of PDPs, the petitioner has submitted that the names of eligible PDPs are based on the survey report i.e. Family Survey conducted by District administration & Land Acquisition Officer (in the instant case Sub Divisional Magistrate - Singrauli) for the purpose of land

acquisition in terms of Section 7 of the Land Acquisition Act, 1894. For claiming eligibility for receiving sustenance allowance, individual Visthapits are required to submit an affidavit confirming their qualification in terms of the eligibility criteria with a legal provision for prosecution, in case of misrepresentation or falsehood. This data is verified by the team nominated by the District Collector. Thereafter, allowance is disbursed directly to the bank accounts of the PDPs.

(d) With regard to verification of bank accounts in which pension and allowances are to be credited, the petitioner has submitted that the verification of bank accounts is carried out on the basis of a check list by the District Administration. The details of Bank accounts submitted by the PDPs are verified by the District Administration and officials of Petitioner company jointly. The formats along with copy of the bank passbooks are submitted for payment and subsequently, the petitioner also verifies Bank details with respective Banks before transferring the payment towards sustenance allowance. The petitioner has suggested that reimbursement of these expenses be based on records of the banking transactions maintained by the Bank which will reflect the amount that has been credited to the accounts of PDPs.

(e) With regard to process of review and monitoring of continuation of beneficiaries, the petitioner has submitted that the District Administration reviews the process of providing benefits to the eligible PDPs periodically and is the overall reviewing and monitoring authority. All PDPs have been issued a unique Identification Number.

(f) With regard to list of beneficiary students as per the record of District Administration and payment mechanism adopted and recipients of payments of Rs 558.819 lakh with documentary evidence, the petitioner has placed on record the list of beneficiary students availing student's stipend (enrolled in DAV Public Schools and various other Schools).

(g) With regard to the reasons for claiming reimbursement towards providing free education, education stipend, study material, etc. based on the Chartered Accountant certificate only, the petitioner has submitted that in order to ensure that the children of PDPs are given best quality and free education, the petitioner in addition to the education stipend, extends complete support for operating the school which includes issuing books and stationary, uniforms, transportation facilities for students, administrative expense of school, etc.

Analysis and Decision:

15. We have considered the submissions of the petitioner and the respondents and perused documents in 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 covered under Change in Law?**
- (c) If so, what should be the 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 as under:

Issue No. 1 : 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 on 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 reasonably 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 4.9.2014 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, the petitioner convened a meeting on 19.9.2014 with all the procurers to discuss the impact of the

Change in Law events. As per the minutes of the meeting dated 19.4.2014, the procurers agreed with the claims of the petitioner and advised the petitioner to approach the Commission for appropriate relief under Change in Law. The relevant portion of the minutes of meeting dated 19.9.2014 is extracted as under:

“13.4. Procurers agreed that the above mentioned additional expenditure towards pension, providing free education facilities and education stipend and sustenance allowance to PDPs is a Change in Law during operating period.

13.5. It was concluded that SPL will approach CERC for compensation of the above mentioned additional expenditure under Change in Law during operating period and Procurers agreed to support the petition.”

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 procurers as they occur. The petitioner has informed the procurers about the Change in Law events and the procurers have agreed in the meeting that these events are covered under Change in Law. 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 covered 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.

- (d).....
- (e).....

(f) to adjudicate upon disputes involving generating companies or transmission licensee 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 in more than one State and therefore, any adjudication 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:

Unit	Date of commercial operation of the units
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 old age pension and sustenance allowance to displaced helpless persons, expenditure towards providing free education, clothing, books and education stipend for children of PDPs, and compulsory employment obligation and payment towards sustenance allowance for PDPs. The petitioner has submitted that on

11.7.2007, the petitioner as the wholly owned subsidiary of Power Finance Corporation (the Bid Process Coordinator) entered into an agreement with the District Collector, Singrauli as mandated under section 41 of the Land Acquisition Act, 1894. The petitioner has submitted that in accordance with the said agreement, the petitioner in its capacity as the subsidiary of PFC, agreed to certain terms and conditions including providing compensation to PDPs under the MP Ideal Rehabilitation Policy, 2002 based on which the consents and approvals for handover of the Project Land and setting up the project was granted. The petitioner has submitted that the said agreement encapsulated the benefits to be accorded to PDPs which was premised on the then applicable rehabilitation policy in the State of Madhya Pradesh i.e. Model Rehabilitation Policy, 2002. After the petitioner was acquired by RPower and became its fully owned subsidiary, the petitioner entered into a Rehabilitation and Resettlement Agreement (R&R Agreement) with District Collector, Singrauli on 6.9.2008 which required the petitioner to provide additional benefits to the PDPs over and above the MP Rehabilitation Policy, 2002. The petitioner has submitted that such additional benefits include (a) payment of compensation towards pension to eligible PDPs, (b) provide study materials, school uniforms and education free of cost upto 10th class and payment of stipends to children of PDPs attending the school in the colony, and (c) priority in employment to at least one member of the PDP's family. The petitioner has submitted that compliance with the agreement entered in accordance with Land Acquisition Act, 1894 is a pre-requisite for implementation of the project and are in the nature of consents, approval and permission for setting up the project and introduction of new benefits for PDPs 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 (iv) of the PPA i.e. 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. According to the petitioner, the Agreement dated 11.7.2007 between the petitioner as the subsidiary of PFC and the Government of Madhya Pradesh was in the nature of consents, approval and permission for setting up the project. As per the provisions of the Request for Proposal (RfP), the procurers through their Authorised Representative are required to get the notification under issued section 6 of the Land Acquisition Act by the Government of Madhya Pradesh and provide the indicative costs of land for captive coal mines, land for compensatory afforestation and land for fuel receipt system and the cost of rehabilitation and resettlement for the same within 30 days prior to Bid Deadline. Accordingly, the petitioner as the subsidiary of PFC vide its letter dated 23.10.2006 informed the indicative declared price of land for power station, captive coal mines, compulsory afforestation and fuel transport system. In the said letter, the indicative cost of draft R&R packages were given as under:

- | | |
|---|-----------------|
| (a) Draft R&R package relating to the land required for the power station | : ₹136 crore |
| (b) Indicative cost of R&R for Moher coal block | : ₹ 30.00 crore |
| (c) Indicative cost of R&R of Moher-Almori Extension coal block | : ₹ 15 crore |
| (d) Indicative cost of R & R of Chhatrasal coal block | : ₹ 30 crore |
| (e) Indicative cost of Fuel Transport System | : ₹ 38 crore |

All the bidders were required to factor these cost in their bid. If there is change in

cost due to any factor after seven days prior to the Bid Deadline, then the additional cost is admissible under change in law. The petitioner who was awarded the bid to execute the project was expected to factor these costs while quoting the bid. In other words, the above costs form part of the tariff discovered through competitive bidding and adopted by the Commission under section 63 of the Act.

24. Section 41 of the Land Acquisition Act, 1894 requires that an agreement shall be entered into by the company with the appropriate Government. The said section is extracted as under:

“41. Agreement with appropriate government:

If the appropriate government is satisfied after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40 that [I] the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40 it shall require the company to enter into an agreement with the appropriate government, providing to the satisfaction of the appropriate government for the following matters, namely, -

- (1) the payment to the appropriate government of the cost of the acquisition
- (2) the transfer, on such payment, of the land to the company;
- (3) the terms on which the land shall be held by the company;
- (4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses of amenities shall be erected or provided:
- (4A) where the acquisition is for the construction of any building or work for a company which engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which and the condition on which, the building or work shall be constructed or executed; and
- (5) where the acquisition is for the construction of any other work, the time

within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.”

An Agreement was executed between the petitioner as the subsidiary of PFC and the Government of Madhya Pradesh on 11.7.2007 under Section 41 of the Land Acquisition Act, 1894. The following provisions of the Agreement are relevant for the purpose of deciding the claims in the petition:

“4. Ideal Rehabilitation Policy 2002 of the State shall be complied in the project.

8. As per the instruction given in the Ideal Rehabilitation Policy, 2002, the company shall be bound to provide employment in the company to at least one member of the farmers whose land is being acquired.

18. A trust will be formed as per the discussions made between the Collector, Sidhi and Sasan Power Limited for the purpose of providing education and other amenities to the displaced families due to the project.”

RPower acquired the petitioner company on 7.8.2007. In order to carry forward the requirements of compliance with the Ideal Rehabilitation Policy as agreed in the Agreement dated 11.7.2007, an agreement dated 6.9.2008 was executed between the petitioner and Collector and District Rehabilitation Officer, District Singrauli (R&R Agreement). Paras 3, 4 and 7 of the R&R Agreement which are relevant for the purpose of the claims of the petitioner are extracted as under:

“3. Old Age Pension - Every displaced male and female who is at present 60 years of age or more will be given old age pension of Rs.1,000/- per month. This will be in addition to the Government pension.

4. Free Education and Scholarship- The children of displaced families in Surya Vihar Majholi will be provided free education upto Class 10th. The children of the displaced families studying in this school will be provided stipend per month as under in addition to dress study materials:

Class	Stipend to be given to the boys	Stipend to be given to the girls
1-5	150	200
6-8	200	250
9-10	250	300

This school will be run by Saraswati Shishu Mandir or equivalent institution. Provision of 25 class rooms, Aanganwadi Centre, Library, Teacher Room, Office, Store, Kitchen etc has been made in the school. This school will be furnished with necessary furniture etc.

7. Employment:

(i) Employment- At least one member of every displaced family will be given priority for providing employment in the project according to his qualifications as per the provisions of the Model Rehabilitation Policy, 2002 of the State of Madhya Pradesh. Priority will be given to the landless displaced persons in construction work as unskilled labourer. Displaced persons to ensure registering their names with the project representatives. The sarpanch of the concerning Gram Panchayat will also cooperate in this task.

(ii) Constitution of Labour Contract Committee- This will consist of 100% persons from displaced families. Priority will be given to the members of these committees in the construction or other works of the project. Necessary cooperation will be given by the project for constitution of such self employment committees and groups. Registration of these committees will be done by the District Labour Office. All unskilled work of the project will be done through these committees.

(iii) Allotment of shops in project colony and rehabilitation village- A provision of 10% reservation has been made for the displaced families in the project colony. The order of priority for allotment will be as under:

- Self-help group run by women
- Physically disabled
- Scheduled caste
- Scheduled Tribe
- Other Backwards Classes
- General Category

The above reservation will be generally for milk, bread, laundry, vegetable shops. In the rehabilitation village, cent percent shops will be allotted to the displaced families. The order of priority for allotment will be as above only.”

An amendment was made to the above agreement vide Amendment dated

4.2.2011 under which the following were inserted:

“3. (1) Displaced helpless person such as disabled, widow, unmarried and castaway

women (divorcee) who have received nothing or do not have any means of alternative livelihood or who are not part of any family, an amount of Rs. 500/- per month shall be payable to them.

7 (IV) If the project does not in any form arrange for livelihood upto the period of 3 years from the date of handing over possession by the displaced persons then in such event arrangement for subsistence (allowance) shall be made with the assistance of the district administration.”

25. From provisions of the various agreements as quoted the above, it appears that the liability of the petitioner to provide old age pension, sustenance allowance and free education and stipends, etc. are in continuation of the agreement dated 11.7.2007 and these cannot be construed as change in the consent, approval or licence as contended by the petitioner. Tentative rehabilitation packages for land acquisition for Power Plant, captive mines, compulsory afforestation and fuel transportation system were conceived at the time of the bid and the petitioner was expected to factor these expenditures in the bid. In our view, the claims under change in law made in the present petition will be covered under Article 13.1.1.(iv) (b) of the PPA i.e. any change in the cost of implementation of the resettlement and rehabilitation package of the land for the project mentioned in the RFP.

Issue No.3 : What are the claims admissible under Change in Law?

26. 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) Old Age Pension and Pension to displaced helpless persons

27. As per clause 3 of the R& R Agreement dated 6.9.2008, the petitioner is required to pay old age pension of ₹ 1000 per month to those PDPs who are 60 years old and

above. Further, Clause 3(1) as inserted vide Amendment dated 4.2.2011 requires the petitioner to pay ₹ 500 per month to displaced helpless person such as disabled, widow, unmarried and castaway women (divorcee) who have received nothing or do not have any means of alternate livelihood or who are not part of any family. The petitioner has submitted that there are 432 eligible PDPs (342 old age persons and 90 displaced helpless people). The petitioner has submitted that for the year 2014-15 approx. ₹ 0.63 crore is to be paid annually by it to the eligible PDPs. The petitioner has claimed actual payment of ₹ 79.725 lakh towards pension payable to old persons, widow, etc. for the period 1.4.2013 to 31.3.2015. The COD of first unit of the generating station was 16.8.2013. 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 ₹ 66.04 lakh from the date of commercial operation of the first unit i.e. 16.8.2013 to 31.3.2015 on account of old age pension and displaced persons as per the calculation given as under:

Month	Old Age pensioner Amount (₹)			Widow pensioner/Physically challenged Amount (₹)			Total Amount (₹)	
	No.	Claimed	Allowed	No.	Claimed	Allowed	Claimed	Allowed
April	280	280000	0.0	40	20000	0.0	30000	0.0
May	284	284000	0.0	40	20000	0.0	304000	0.0
June	285	285000	0.0	40	20000	0.0	305000	0.0
July	286	286000	0.0	40	20000	0.0	306000	0.0
August	288	144000	144000	40	20000	10000	308000	154000
September	296	296000	296000	40	20000	20000	316000	316000
October	296	296000	296000	40	20000	20000	316000	316000
November	296	296000	296000	40	20000	20000	316000	316000
December	296	296000	296000	40	20000	20000	316000	316000
January	296	296000	296000	40	20000	20000	316000	316000
February	296	296000	296000	40	20000	20000	316000	316000
March	296	296000	296000	40	20000	20000	316000	316000
2013-14		3495000	2216000		240000	150000	3735000	2366000
April	330	330000	330000	40	20000	20000	350000	350000
May	330	330000	330000	43	21500	21500	351500	351500

June	330	330000	330000	43	21500	21500	351500	351500
July	330	330000	330000	43	21500	21500	351500	351500
August	330	330000	330000	43	21500	21500	351500	351500
September	330	330000	330000	43	21500	21500	351500	351500
October	330	330000	330000	43	21500	21500	351500	351500
November	333	333000	333000	43	21500	21500	354500	354500
December	333	333000	333000	43	21500	21500	354500	354500
January	335	335000	335000	43	21500	21500	356500	356500
February	335	335000	335000	43	21500	21500	356500	356500
March	335	335000	335000	43	21500	21500	356500	356500
2014-15		3981000	3981000		256500	256500	4237500	4237500
Total		7476000	6197000	0	496500	406500	7972500	6603500

(B) Payments towards providing free education, clothing, books and education stipends for children of PDPs

28. The petitioner has submitted that as per clause 4 of the R&R Agreement dated 6.9.2008, the petitioner is required to provide free education and stipends upto Class 10th to the children of displaced families in addition to dress, study materials etc. The petitioner has submitted that at present, 2386 children are being provided free education out of which 974 children (Boys and Girls) are receiving education stipend. The petitioner has placed on record the list of students enrolled in DAV Public School and various other schools who are availing the stipends. The petitioner has further submitted that the student`s names have been attached to their parent`s bank accounts and the payment advices are sent to respective banks to pay education stipend to the beneficiary children. The petitioner has clarified that the children of house oustees who are studying in the schools and are confirmed by the Principals of the respective schools are eligible for stipends. During first quarter every year, forms are submitted by the eligible students and these forms duly certified by the Heads of the Schools confirming that he/she is a regular student alongwith the Bank Pass Books confirming the Account Numbers are collected by the petitioner. Perusal of the documents submitted by the petitioner reveals that 817 students from DAV School and other

schools have been certified to be enrolled and have been availing monthly stipends apart from free education facilities. The impact on account of free education and education stipend is approximately ₹4.03 crore for the year 2014-15. The petitioner has claimed actual payment of ₹ 558.82 lakh towards free education and education stipends for the period from 1.4.2013 to March 2015. The petitioner is allowed reimbursement of ₹447.51 lakh from the date of commercial operation of the first unit i.e.16.8.2013 to 31.3.2015 on account of free education and education stipend as per the calculation made as under:

Free education and Education Stipend

	2013-14		16.8.2013 to 31.3.2014 (2013-14)		2014-15			Total	
	No. of Students	Amount claimed (₹ in lakh)	No.	Amount Allowed (₹ in lakh)	No. of Students	Amount claimed (₹ in lakh)	Amount allowed (₹ in lakh)	Amount claimed (₹ in lakh)	Amount allowed (₹ in lakh)
Stipend	692 (upto 15.8.2013) 746 (wef 16.8.2013 to 31.3.2014)	18.62	746	10.86	774	22.33	22.33	40.95	33.19
Free education facilities		213.71		124.14		275.06	275.06	488.77	399.20
Study Material		8.82				8.54	8.54	17.35	8.54
School Uniform		3.68				3.75	3.75	7.42	3.75
Miscellaneous		1.79		0.30		2.53	2.53	4.33	2.83
Total		246.62		135.30		312.21	312.21	558.82	447.51

(C) Sustenance allowance

29. As per clause 7(iv) of the Amendment Agreement dated 4.2.2011, if the project does not in any form arrange for livelihood upto the period of three years from the date of handing over the possession by the displaced persons, then in such event arrangement for subsistence allowance shall be made with the assistance of the District Administration. The District Collector, Singrauli, in the meeting on 31.7.2014 clarified that land acquired from land oustees of area more than 0.5 acre from ST/SC category and more than 1 acre from general category have to be paid sustenance allowance.

Further, the District Collector, Singrauli directed that sustenance allowance would be paid at the rate of wages applicable for skilled labour fixed by the Notification dated 3.4.2014 issued by Government of Madhya Pradesh. Since the land survey data does not have full and complete information regarding Visthapits or displaced persons, it was decided that individual Visthapits shall submit an affidavit confirming their qualification in terms of the eligibility criteria with a legal provision for prosecution in case of misrepresentation or falsehood. The petitioner vide its affidavit dated 6.4.2015 has submitted that the list of eligible PDPs identified by the team nominated by the District Collector is 3209 and the total compensation for sustenance allowance @ ₹6,125/month works out to ₹23.34 crore per annum.

30. As per the data verified by team nominated by the District Collector, 3175 PDPs are eligible for sustenance allowance. However, only 274 PDPs meet eligibility criteria for being granted sustenance allowance. The petitioner has claimed actual payment of ₹27.42 lakh for sustenance allowance to PDPs w.e.f November 2014 to February 2015. The petitioner has started payment of sustenance allowance w.e.f 1.11.2014 as per the minutes of meeting held on 11.10.2014 between the District Collector and the petitioner. In the said meeting, the petitioner requested the District Collector that it would pay 50% of minimum wages for unskilled industrial labour i.e. ₹3000 per month pending approval of the Commission and balance 50% would be paid thereafter. The relevant portion of minutes of meeting held on 11.10.2014 is extracted as under:

“6.3 SPL requested District Collector for the following that till Procures’ consent and CERC approval for additional recurring cost being incurred/to be incurred towards sustenance allowance is obtained.

i. Payment of 50% of minimum wages for unskilled industrial labour (about

Rs. 3000/- month) pending CERC approval for cost increase. Once CERC/Regulator approval is made available SPL shall pay the balance 50% from the date on which the sustenance allowance actually commenced.

ii. As payment of sustenance allowance is new requirement post award of the project to Reliance Power, the same need to be reimbursed by the Procurers with the approval of CERC. SPL has filed the petition with CERC earlier this month and seek the support of the Govt. of Madhya Pradesh (MPPL is the lead procurer) in expediting CERC approval. Given the highly competitive tariff at which SPL is offering power to the Procurers. In the unlikely event of CERC approval not received by 31.1.2015 the payment of sustenance allowance needs to be reviewed on 1.2.2015 with District Collector for its dis-continuation effective from 1.4.2015 and recommence after CERC grants its approval.”

In view of the above, the sustenance allowance for the month of March 2015 for 274 PDPs works out to be ₹16.78 lakh. The reason for computing and allowing sustenance allowance for the month of March 2015 also is that this will complete the payment during financial year 2014-15. Therefore, total sustenance allowance for the financial year 2014-15 will be ₹ 44.20 lakh (27.42+16.78), since the full amount calculated at the rate of ₹ 6125/ month shall be paid after approval of the Commission and the balance amount of sustenance allowance already paid from 1.4.2011 to 1.2.2015 shall be adjusted after the issue of the order. The details of payments made and the balance amount to be paid based on number of PDPs @ ₹6125/ month for the period from 1.11.2014 to 31.3.2015 are as under:

Sustenance allowance for the year 2014-15

Month	No. of PDPs	Total amount due @ Rs.6125/- (₹)	Total amount paid /claimed @ Rs.3000/- (₹)	Total amount allowed (₹)	Balance Liability (₹)
November-14	175	1071875	525000	525000	546875
December-14	233	1427125	699000	699000	728125
January-15	250	1531250	750000	750000	781250
February-15	256	1568000	768000	768000	800000
March-15	274	1678250	0.0	1678250	1678250
2014-15		7276500	2742000	4420250	4534500

It is clarified that if more PDPs meet eligibility criteria for payment of sustenance allowance and are actually paid the sustenance allowance at the applicable rates, the petitioner will be entitled to recover the same.

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

S. No	Events of Change in Law	2013-14 Amount in (₹ in lakh)		2014-15 Amount in (₹ in lakh)		Total Amount in (₹ in lakh)	
		Claimed	Allowed	Claimed	Allowed	Claimed	Allowed
1	Sustenance allowance	0.0	0.0	27.42 (upto Feb, 2015)	35.64 (upto March, 2015)	27.42 (upto Feb,2015)	35.64 (upto March, 2015)
2	Free education and Education Stipend	246.62	135.30	312.21	312.21	558.83	447.51
3	Old Age Pension and Physically Disabled persons	37.35	23.66	42.38	42.38	79.73	66.04
4	Total	283.97	158.96	382.01	390.23	665.97	549.19

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

32. 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 the 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.

33. 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 revenues or cost shall be admissible to the petitioner. Moreover, the compensation shall be payable only if and for increase/decrease in revenues or cost to the seller in excess of an amount equivalent to 1% of the letter of credit in aggregate for 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 following are considered:

- (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 is the financial year 2013-14. On the basis of 80% normative availability of Unit-1 and Unit-2 from respective COD, 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 month`s operation units will 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 was declared commercial on 12.4.2014. Considering the generation from unit-1, unit-2 and unit-3, the total power generated during 2014-15 would be 16140.33 MUs. 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 ₹ 1.55 crore.

34. In the present case, the compensation of ₹ 1.589 crore has been allowed in 2013-14 and ₹ 3.90 crore in 2014-15. The compensation so allowed is higher than the threshold amount of ₹ 0.33 crore in financial year 2013-14 and ₹1.55 crore in 2014-15 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. The remaining liability shall be payable by procurers after actual payment is made. The compensation amount allowed in the years 2013-14 and 2014-15 would be shared by the beneficiaries/procurers based on the scheduled energy of each beneficiary. While claiming the amount from the beneficiaries/procurers, the petitioner shall certify in the bill alongwith the Accountant's Certificate that the amount has actually been paid.

(e) Mechanism of payment of compensation under Change in Law for future:

35. The following mechanism should be adopted for payment of compensation due to Change in Law as per Article 13.4.2 of the PPA in the subsequent years:

(a) No. of eligible PDPs for (i) sustenance allowance,(ii) PDPs for old age pension/ disabled pension/ widow pension/ divorcee, etc. shall be certified by the District Administration annually.

(b) With regard to free education/ stipend to PDPs, who are studying in school and obtaining education stipend, the Principal/ Management of School shall certify the same.

(c) Rates/Wages shall be considered for payment of sustenance allowance, old age pension as per notification of Govt. of M.P prevailing at that point of time.

(d) The petitioner shall submit a certificate along with the bill to the effect that the actual payment to each of PDPs has been made during the month. Proof of

payment in the form of Bank statement shall be kept in his premises and can be shown to the beneficiaries/Procurers if so desired.

(e) At the end of the year, the petitioner shall reconcile the actual payment made towards sustenance allowance, old age pension and expenditure incurred on free education and stipend given to students with the books of accounts and Bank statements duly audited and certified by statutory auditor and adjustment made based on the energy scheduled during the year.

(f) The month-wise compensation paid by the petitioner shall be shared by the beneficiaries based on their energy scheduled during the month.

(g) Billing and payment on account of Change in Law shall be governed by the provisions of Article 13.4.2 read with Article 11.8 of the PPA.

36. 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 cannot be allowed.

37. This order disposes of Petition No.402/MP/2014.

sd/-
(A.S.Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson