

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 156/MP/2018**

Subject : Petition for seeking compensation/relief for increased expenses due to certain events of 'Change in Law' as per the applicable provisions of the PPAs dated 18.1.2014 and 20.1.2014.

Date of Hearing : 17.9.2018

Coram : Shri P. K. Pujari, Chairperson  
Dr. M. K. Iyer, Member

Petitioner : MB Power Madhya Pradesh Limited (MBPMPL)

Respondents : UPPCL and Others

Parties present : Shri Amit Kapur, Advocate, MBPMPL  
Shri Akshat Jain, Advocate, MBPMPL  
Ms. Aparajita Upadhaya, Advocate, MBPMPL  
Shri Aashish Anand Bernard, Advocate, PTC India  
Shri Paramhans, Advocate, PTC India  
Shri Abhisekh Gupta, MBPMPL  
Shri Rohit Kumar Gururani, MBPMPL

**Record of Proceedings**

Learned counsel for the Petitioner submitted that the present petition has been filed for seeking compensation/relief for increased expenditure due to Change in Law events as per the provisions of the PPAs dated 18.1.2014 and 20.1.2014. Learned counsel further submitted as under:

- a) The Petitioner has set up a 1200 (2x 600 MW) coal based thermal power project in District Annupur of Madhya Pradesh. The Petitioner is supplying power to two State Discoms under long term PPA namely, Uttar Pradesh and Madhya Pradesh for 361 MW (net) and 35% of the project capacity respectively and balance to other States such as Punjab, Gujarat, Telangana, Maharashtra, Tamil Nadu, Bihar, Uttar Pradesh, Delhi, Rajasthan, West Bengal, North Eastern States etc. under short term PPAs. Therefore, the Commission has jurisdiction to adjudicate upon the present Petition in terms of Sections 3, 79 and 64 (5) of the Electricity Act, 2003.
- b) The entire transaction of supply of power from the Petitioner to PTC is on back to back basis and it is settled position of law that when a trading licensee is not functioning as a merchant trader i.e. without taking upon itself the financial and commercial risks but passing on all the risks to the purchaser under re- sale, there is clearly a link between the discoms and the generator with trader acting only as an intermediary.

c) The Commission in its earlier orders has allowed the claims on account of Change in Law event, wherein power is being supplied by the generating companies to the distribution companies through trading licencees.

d) The Ministry of Power (MoP) issued directions to the Commission under Section 107 of the Electricity Act, 2003 and has directed that any change in domestic duties, levies, cess and taxes imposed by the Central Government/ State Government/Union Territories or by any Government Instrumentality leading to corresponding changes in the cost may be treated as Change in Law and may be allowed as pass through. Therefore, in the light of MoP direction, the Commission may allow the change in law claims which have already been decided by the Commission in its earlier orders.

e) The Petitioner has claimed 15 change in law events and the Commission in its earlier orders has already allowed these change in law events except change in coal sizing charge, change in surface transportation cost and introduction of evacuation facility charges for dispatch of coal by Coal India Limited.

f) Periodic increase in Crushing/ sizing Charges and Surface transportation Charges are not captured in the CERC Escalation Index. The Hon'ble Appellate Tribunal for Electricity in its judgment of Wardha Power Company limited versus Reliance infrastructure Limited has held that escalable index/ indexing of cost is not applicable in case of Change in law wherein the impact of change in law is to be determined on an actual basis.

g) Learned Counsel for the Petitioner requested the Commission to direct UP Discoms to pay 75% of the compensation as claimed by the Petitioner, subject to the adjustment after issue of final order in the Petition. If the payment received exceeds the amount due after issue of final order, the Petitioner shall refund the excess amount to UP Dscoms with 9% interest in terms of Commission's direction dated 28.9.2017 in I.A No. 57 of 2017 in Petition No. 97/MP/2017 (Adani Power Limited vs Uttar Haryana Bijli Vitran Nigam Limited and Others).

2. Learned counsel for PTC sought permission to file its reply during the course of day, which was allowed by the Commission.

3. After hearing the learned counsel for the Petitioner and PTC India, the Commission directed UP Discoms to file their replies, as a last opportunity, by 1.10.2018, with an advance copy to the Petitioner, who may file its rejoinders, if any, by 7.10.2018. The Commission directed the Petitioner to file their written submission with regard to change in coal sizing charge, change in surface transportation cost and introduction of evacuation facility charges for dispatch of coal by Coal India Limited, by 1.10.2018. The Commission further directed that due date of filing the replies, rejoinders and written submission should be strictly complied with. No extension shall be granted on that account.

4. Subject to the above, the Commission reserved the order in the petition.

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

**T. Rout  
Chief (Law)**