

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 118/MP/2015
and
Petition No. 153/MP/2015**

**Coram:
Shri P. K. Pujari, Chairperson
Dr. M.K. Iyer, Member
Shri I.S.Jha, Member**

Date of Order: 28th January, 2020

Petition No. 118/MP/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 Limited,
3rd Floor, Reliance Energy Centre,
Santa Cruz East, Mumbai

.... Petitioner

Versus

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, Punjab.
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

Petition No. 153/MP/2015

In the matter of

Application for computation of compensation for Change in Law events during
Operating Period.

And

In the matter of

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

.... Petitioner



Versus

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,
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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, Punjab
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

ORDER

The Petitioner, Sasan Power Limited has set up a 3960 MW coal fired super-critical, Ultra Mega Power Project based on the linked captive coal mine at Sasan District Singauli in the State of Madhya Pradesh (hereinafter referred to as “the Project”) and is supplying power to the Respondents, located in the States of Madhya Pradesh, Uttar Pradesh, Punjab, Haryana, Uttarakhand and Delhi in terms of the Power Purchase Agreement dated 7.8.2007 executed between the Petitioner and the Respondents. The Project was conceived by Government of India to be implemented by a developer selected through tariff based competitive bidding process.

2. The Petitioner had filed Petition No. 118/MP/2015 before the Commission under Section 79 of the Electricity Act, 2003 (hereinafter referred to as ‘the Act’) and Article 13 of the Power Purchase Agreement dated 7.8.2007 executed between the Petitioner and the Procurers seeking compensation on account of the following Change in Law events:

- (a) Levy of Electricity Duty and Energy Development Cess on sale of power to the State of Madhya Pradesh; and
- (b) Increase in Electricity Duty and levy of Energy Development Cess on the Auxiliary Power Consumption in the Plant and Mine.

3. The aforesaid Petition was disposed of by the Commission vide order dated 3.9.2015 wherein the Commission allowed the aforesaid claims of the Change in Law events and computed the compensation payable to the Petitioner by the procurers. However, while allowing and computing the claims of the Petitioner with



respect to increase in Electricity Duty and levy of Energy Development Cess on the Auxiliary Power Consumption, the Commission, based on the installed capacity of the Petitioner's Project (3960 MW) and contracted capacity (3722.40 MW) arrived at the Auxiliary Power Consumption of 6% for the Power Plant inclusive of consumption in coal mine and consequently, computed such claims on the Auxiliary Power Consumption of 6%. Further, in the said order, prescribing the mechanism for payment of compensation due to Change in law events for the subsequent contract years, the Commission also restricted the claims of the Petitioner corresponding to the Auxiliary Power Consumption at actuals or 6% whichever is lower, including for mine consumption.

4. The Petitioner had also filed another Petition being Petition No. 153/MP/2015 before the Commission, for computation of compensation for Change in Law events during the Operating Period in pursuance of the directive of the Commission vide order dated 30.3.2015 in Petition No. 6/MP/2013. In the said Petition, the Petitioner had sought computation of compensation for the following Change in Law events:

- (a) Increase in Water Charges and one-time water allocation fees;
- (b) Imposition of royalty, Clean Energy Cess and Excise Duty on coal; and
- (c) Carrying Cost.

5. The Petition No. 153/MP/2015 was disposed of by the Commission vide order dated 19.2.2016 read with order dated 22.9.2016 in Review Petition No. 19/RP/2016 wherein the Commission allowed and computed the claims of the Change in Law events in respect of imposition of Royalty, Clean Energy Cess and Excise Duty on coal consumption. However, the Commission disallowed the claims in respect of increase in Water Charges and one-time water allocation fees. In the



aforesaid order, the Commission while computing the claims of the Petitioner in respect of imposition of Royalty, Clean Energy Cess and Excise Duty on Coal restricted the Auxiliary Power Consumption @ 6% including the consumption in coal mine. Further, in the said order, while prescribing the mechanism to be adopted for the payment of compensation due to Change in Law events for the subsequent contract years, the Commission observed that the same shall be computed based on the actual subject to the ceiling of coal consumed corresponding to the scheduled generation based on SHR of 2241 kCal/kWh. As regards, the Carrying Cost, the Commission did not allow the interest/carrying cost in the absence of specific provision in the PPA and observed that since the Petitioner had already preferred Review Petition No. 1/RP/2016 in Petition No. 402/MP/2014 in respect of the decision of the Commission not to allow carrying cost in respect of various Change in Law claims in Petition No. 402/MP/2014, the decision therein would also apply to the Petition No. 153/MP/2015. The Commission, subsequently, in its order dated 16.2.2017 in Review Petition No. 1/RP/2016 disallowed the carrying cost.

6. Being aggrieved by the aforesaid decisions of the Commission, the Petitioner had filed Appeal No. 77 of 2016 and Appeal No.136 of 2016 before the APTEL on the following aspects:

- (a) Allowing the recovery of Royalty, Clean Energy cess and Excise Duty on the basis of coal consumption instead of coal despatched;
- (b) Disallowance of increase in water charges and one time water allocation fees as Change in Law events;
- (c) Limiting the Auxiliary Power Consumption of the Project to 6% instead of actuals;



(d) Limiting the Station Heat Rate (SHR) to 2241 kCal/kWh instead of actuals; and

(e) Carrying Cost.

7. The said Appeals came to be decided by APTEL vide judgment dated 13.11.2019. In the said judgment, the APTEL allowed the claims of the Petitioner in respect of one time water allocation fees and carrying cost, and decided the issues of Auxiliary Power Consumption and SHR partially in favour of the Petitioner. Relevant portion of the above judgment dated 13.11.2019 is extracted as under:

“ORDER

For the forgoing reasons, as stated supra, we are of the considered view that some issues raised in Appeal Nos. 77 of 2016 and 136 of 2016 have merits and, hence, these appeals are partly allowed.

The Appeal No. 324 of 2016 is dismissed as devoid of merits.

*Accordingly, the impugned Orders dated 30.12.2015, 19.02.2016 and dated 22.09.2016 in Review Petition No. 19/RP/2016 passed by Central Electricity Regulatory Commission are hereby upheld/set aside to the extent of our findings set out in **para 23** of this judgment.(supra)*

The matters stand remitted back to the Central Commission with the direction that consequential order may be passed in view of our findings/ directions, as stated supra, as expeditiously as possible, but not later than three months from the date of issue of this judgment and order.”

8. Accordingly, in terms of the direction of the APTEL, this consequential order is issued in Petition Nos. 118/MP/2015 and 153/MP/2015 to the extent the said Appeals have been allowed by the APTEL.

(A) One-time Water Allocation Fee

9. The Commission in its order dated 19.2.2016 in Petition No. 153/MP/2015 had rejected the claim of the Petitioner in respect of levy of one-time water allocation fees as Change in Law event in terms of the PPA and had observed as under:



“46. The petitioner has submitted that Government of Madhya Pradesh vide notification dated 22.6.2013 has amended the Madhya Pradesh Irrigation Rules, 1974 in terms of which the petitioner is required to pay onetime fee for water allocation equivalent to one month water tax and cess on the annual allocated water quantity. The petitioner has submitted that water allocation fees payable by the petitioner is Rs.7.12 crore (172.71 MCM xRs.5.5 x 90% x 1/12). It is noticed that the petitioner has taken the water rate as equivalent to water tax and cess whereas as per the agreement tax and cess are in addition to water charges. In our view, one time water allocation fees cannot be covered under any of the provisions of Change in Law under the PPA and hence the claim is disallowed.”

10. The APTEL in its judgment dated 13.11.2019 has set aside the decision of the Commission and has observed that as on the cut -off date, there was no water allocation fee to be paid by the Petitioner to the Government of Madhya Pradesh and has been imposed subsequently by an amendment dated 22.6.2013. APTEL has held that the same amounts to be a change in law and the Petitioner needs to be compensated in this regard in terms of Energy Watchdog judgment of the Hon`ble Supreme Court so as to restore the Petitioner to the same economic position. Relevant portion of the judgment of the APTEL is extracted as under:

“17. ISSUE NO. (B):

Whether levy of one time water-allocation fee and increase in water charges amount to Change in Law in terms of Article 13 of the PPA or not?

...

17.12.5 *In the present case, imposition of one time water allocation fee and increase in water charges for year on year basis have been notified by the State Government which is an Indian Governmental Instrumentality.*

17.12.6 *We are inclined to agree with the views of the Central Commission that change in base prices are not eligible for compensation under change in law and only the new taxes and/or levies or changes in existing in taxes and/or levies applicable on the base price of inputs are allowed for compensation under Change in Law.*

17.12.7 *In a host of judgments of this Tribunal in various cases, it has been held that the increase in input cost cannot be allowed as Change in Law and, hence, we hold that changes in water charges are not eligible for compensation under Change in Law. However, as on the cut-off date, there was no water allocation fee to be paid by the Appellant to the Government of Madhya Pradesh and has been imposed subsequently by an amendment dated 22.06.2013, the same amounts to be a change in law event and as per Energy Watchdog judgment of the Hon'ble Supreme Court, the Appellant needs to be compensated to this account so as to restore it to the same economic position.*

17.12.8 *We also agree with the analysis of the Central Commission that the water charges have shown increasing trend over the years and Appellant should have*



*realistically assessed and factored in the bid such increase in water charges over the contract period. We are of the view that a prudent bidder would address the risk in increase of input cost by suitably quoting an escalable component of capacity charge. A similar case came up before this Tribunal in Appeal No.195 of 2016 and decided vide its judgment dated 27.05.2019 that there cannot be any compensation on account of increase in rate of water charges. **Therefore, this issue, i.e. Issue (B) is partially decided against the Appellant i.e. increase in water charges, being input cost, not allowed as compensation to the Appellant. However, levy of one time water allocation fee, being held to be a change in law event, the same needs to be compensated to the Appellant.***

11. Accordingly, in terms of the above finding of the APTEL, the Petitioner is entitled to be compensated by the Procurers on account of the levy of one time water allocation fees, equivalent to the amount of one month's water tax and cess on the annual allocated quantity of water, in proportion to their contracted capacity. The Petitioner is entitled to claim reimbursement of one time water allocation fees along with proof of payment and the computation duly certified by the auditor from the procurers and to be billed in accordance with the PPA.

(B) Auxiliary Power Consumption

12. The Commission in its order dated 30.12.2015 in Petition No. 118/MP/2015, while allowing the claims of the Petitioner in respect of the increase in Electricity Duty and levy of Energy Development Cess on Auxiliary Power Consumption had considered the Auxiliary Power Consumption at 6% including the Auxiliary Power Consumption in mine and had observed as under:

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

...

28Perusal 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:

...

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

...

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:

...

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:

...

(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.....”

13. Similarly, the Commission in its order dated 19.2.2016 in Petition No. 153/MP/2015 read with order dated 22.9.2016 in Petition No. 19/RP/2016 while allowing the claims of the Petitioner in respect of royalty, Clean Energy Cess and



Excise Duty on coal, had considered the Auxiliary Power Consumption @ 6% for computing the coal consumed for generation of the scheduled energy. The relevant extract of the said order dated 19.2.2016 is reproduced as under:

“19. Coal consumed for generation of scheduled energy has been worked out by adopting the following methodology:

(i) Auxiliary consumption has been considered as 6% to compute actual generation required at generator terminal to deliver schedule energy to beneficiaries. The reason for considering 6% APC given in Petition No. 118/MP/2015 is extracted as under:

“28.....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.”

(ii) Actual power at generator terminal required to be generated including auxiliary power consumption of 6% would be scheduled energy divided by (1-6%) i.e. 0.94

20. Based on the above, the actual generation, schedule generation, coal consumption has been computed as under:”

14. The APTEL in its judgment dated 13.11.2019 set aside the above decision of the Commission and has held as under:

“18. ISSUE NO. (C):

Whether auxiliary power consumption is justified to be limited at 6% of the installed capacity instead of actual auxiliary power consumption in the computation of compensation on account of Change in Law?

...

18.13.2 *It is the case of the Appellant that the procurers have erroneously contended that the Appellant’s bid was accepted on the premise that it would be supplying power from generating station to the tune of 3722.4 MWs out of its total capacity of 3960 MWs by virtue of which auxiliary power consumption works out to 6%. It is relevant to note from the Order dated 30.12.2015 in Petition No. 118 of 2015 in which the Central Commission itself noted that “since the tariff of the project is based on competitive bidding, the auxiliary power consumption is not known”. In other words, auxiliary power consumption has not been considered at all for evaluation of the bid.*

18.13.3 *We also noticed that the Central Commission has passed subsequent Orders where it has held that bid assumptions cannot be the basis for compensation under Change in Law (Order dated 15.10.2018 in Petition No. 88/MP/2018 in case of GMR Warora Energy Ltd v MSEDCL). The objective of change in law provision under Article*



13 is restoration to the same economic position and the same has been highlighted and accepted by the Hon'ble Supreme Court as well as this Tribunal in various cases such as Energy Watchdog and Adani Carrying Cost judgments of the Hon'ble Apex Court and Sasan 161 and GMR 193 judgments of this Tribunal.

18.13.4 In view of the facts, as stated supra, we are of the opinion that while compensation of various levies on coal cannot be linked to the dispatched quantity, we do not see merit in the Central Commission's view that the compensation should be restricted to bid auxiliary consumption (at 6%). It is also noticed that the Central Commission has in subsequent orders taken a position that compensation for Change in Law events cannot be restricted to bid parameters.

18.13.5 Having decided that the change in law compensation shall be based on the quantum of coal consumed as opposed to coal dispatched, we hold that for determination of coal consumption for scheduled generation, the auxiliary consumption should be based on actual. However, to adequately protect the interest of the consumers/procurers, the auxiliary consumption shall be capped to the applicable normative levels contained in the **CERC Tariff Regulations, 2009. Hence, this issue, i.e. Issue (C) is partially decided in favour of the Appellant. ...**

In terms of the above judgment of APTEL, while determining the coal consumption for scheduled generation, the auxiliary consumption shall be as per the actual subject to the normative level as per the 2009 Tariff Regulations.

15. Accordingly, as far as the claims of the Petitioner in respect of increase in Electricity Duty and levy of Energy Development Cess on Auxiliary Power Consumption are concerned, the Petitioner shall be entitled to recover compensation on account of these Change in Law events from the Procurers of the Project in proportion to their share in scheduled generation on the basis of normative auxiliary consumption as per the 2009 Tariff Regulations or at actual, whichever is lower.

16. As regards the claims of the Petitioner in respect of levy of Royalty, Clean Energy Cess and Excise Duty on coal for the period from 2013-14 to 2015-16 (till August, 2015), the Petitioner shall be entitled to recover compensation on account of these Change in Law events from the Procurers of the Project in proportion to the coal consumed corresponding to the scheduled generation at normative auxiliary consumption as per the 2009 Tariff Regulations or at actual, whichever is lower. If



the actual generation is less than the scheduled generation, then coal consumed for actual generation shall be considered.

17. Accordingly, the Petitioner is entitled to claim reimbursement of additional expenditure incurred due to these Change in Law events, along with proof of payment and the computation duly certified by the auditor, from the procurers and to be billed in accordance with the PPA.

(C) Station Heat Rate

18. The Commission in its order dated 19.2.2016 in Petition No. 153/MP/2015, while prescribing the mechanism for compensation on account of Change in Law events for the subsequent years of contracted period had observed as under:

“50. 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 in 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:

...

(c) The increase in royalty on coal, clean energy cess and excise duty on coal shall be computed based on actual subject to ceiling of coal consumed corresponding to scheduled generation based on SHR of 2241 kCal/kWh (based on the submission made in Petition No. 14/MP/2013) and shall be payable by the beneficiaries on pro-rata based on their respective share in the scheduled generation. In case of reduction in royalty on coal, clean energy cess and excise duty on coal, the petitioner shall compensate the procurers on the basis of above principle...”

19. However, the APTEL in its judgment dated 13.11.2019 has set aside the above decision of the Commission and has held as under:

“19. ISSUE NO. (D):



Whether the compensation payable on Change in Law events impacting cost of coal consumed corresponding to scheduled generation is to be allowed based on Station Heat Rate (SHR) at normative level or actual SHR?

19.8 Our Findings:

19.8.1 *We have carefully considered the rival contentions of both the parties and also taken note of various judgments relied upon by the parties. It is the main contention of the Appellant that principle of change in law provisions of PPA is restoration to the same economic position. On the other hand, the Respondents contend that SHR as quoted in the bid should be considered for computation of coal quantity to arrive at actual compensation to be made to the Appellant.*

19.8.2 *Having regard to the contentions of the Appellant and the Respondents and after critical analysis of the issue, we are of the opinion that while we have held that compensation of various levies cannot be linked to the dispatched quantity of coal, the compensation should not be restricted to bid SHR. It is also relevant to note that the Central Commission has in subsequent orders taken a position that compensation for Change in Law events cannot be restricted to bid parameters.*

19.8.3 *In light of the above, we are of the opinion that for determination of coal consumption for scheduled generation, SHR should be based on the actual instead of bid SHR. However, to adequately protect the interest of the procurers and consumers at large, the SHR is required to be capped to the applicable normative levels contained in the CERC Tariff Regulations, 2009. Hence, this issue, i.e. Issue (D) is partially decided in favour of the Appellant. ...”*

In terms of the above finding of the APTEL, while determining the consumption of coal for the scheduled generation, SHR shall be as per the actual subject to the normative parameters as per the 2009 Tariff Regulations.

20. Accordingly, the Petitioner shall be entitled to recover the increase on account of levy of Royalty, Clean Energy Cess and Excise Duty on coal for the subsequent years of the contracted period from the Procurers in proportion to the coal consumed corresponding to the scheduled generation at the normative parameters as per 2009 Tariff Regulations or at actual, whichever is lower. If the actual generation is less than the scheduled generation, the coal consumed for actual generation shall be considered for the purpose of computations. Accordingly, the Petitioner shall submit its claim along with computations duly certified by the auditor to the Respondents and shall bill in accordance with the PPA.



(D) Carrying Cost

21. The Commission in its order dated 19.2.2016 in Petition No. 153/MP/2015, in respect of grant of carrying cost in respect of expenditure incurred on account of Change in Law events had observed as under:

“51. The petitioner has prayed that the petitioner be allowed interest/carrying cost for the expenditure incurred on account of change in law event detailed in the affidavit so that the economic position of the petitioner is restored. Rajasthan Distribution Utilities have submitted that there is no provision in the PPA for such carrying cost. It has been further submitted that the compensation payable to the petitioner should be strictly in accordance with Article 13.2(b) which provides for compensation from the date as decided by the Commission. We are not inclined to allow interest/carrying cost as there is no specific provision in the PPA. However, against the decision of the Commission not to allow carrying cost pertaining to Sasan UMPP in Petition No.402/MP/2014, the petitioner has filed a Review Petition 1/RP/2016. The Commission has issued notice in the said matter. Therefore, the decision taken in the said RP will be applicable in this case also.”

22. Further, the Commission in its order dated 16.2.2017 in Review Petition No. 1/RP/2016 did not allow carrying cost to the Petitioner in respect of the Change in Law claims in Petition No. 402/MP/2014 and observed that the Petitioner is not entitled for carrying cost on account of payments made towards additional obligations.

23. However, the APTEL in its judgment dated 13.11.2019 has set aside the above decision of the Commission and has held as under:

20. ISSUE NO. (E):

Whether the Appellant is entitled to carrying costs on expenditure incurred on account of Change in Law?

.....
20.4 Our Findings:

20.4.1 *We have noted the submissions of both the parties and we are of the opinion that after a series of litigation, the matter relating to carrying cost has finally been settled by the Hon’ble Supreme Court vide its judgment dated 25.02.2019 passed in Civil Appeal No. 5865 of 2018. The Hon’ble Supreme Court, while dismissing the appeal filed against Adani carrying cost judgment of this Tribunal, upheld that compensation for change in law includes compensation for carrying cost. Hence, the principle of carrying cost so laid down by the Hon’ble Apex Court, shall apply to the*



present Appeal as well. **Therefore, this issue, i.e. Issue (E) is decided in favour of the Appellant.**

Accordingly, the APTEL has held that the principle of the carrying cost as laid down by the Hon'ble Supreme Court, shall also apply to the case of the Petitioner and the Petitioner is entitled to carrying cost on expenditure incurred on account of Change in Law.

24. As regards the rate of carrying cost, the Commission in its order dated 17.9.2018 in Petition No. 235/MP/2015 (AP(M)L v UHBVNL & Ors.) had observed as under:

“24. After the bills are received by the Petitioner from the concerned authorities with regard to the imposition of new taxes, duties and cess, etc. or change in rates of existing taxes, duties and cess, etc., the Petitioner is required to make payment within a stipulated period. Therefore, the Petitioner has to arrange funds for such payments. The Petitioner has given the rates at which it arranged funds during the relevant period. The Petitioner has compared the same with the interest rates of IWC as per the Tariff Regulations of the Commission and late payment surcharge as per the PPA as under: -

<i>Period</i>	<i>Actual interest rate paid by the Petitioner</i>	<i>Working capital interest rate as per CERC Regulations</i>	<i>LPS Rate as per the PPA</i>
<i>2015-16</i>	<i>10.68%</i>	<i>13.04%</i>	<i>16.29%</i>
<i>2016-17</i>	<i>10.95%</i>	<i>12.97%</i>	<i>16.04%</i>
<i>2017-18</i>	<i>10.97%</i>	<i>12.43%</i>	<i>15.68%</i>

25. It is noted that the rates at which the Petitioner raised funds is lower than the interest rate of the working capital worked out as per the Regulations of the Commission during the relevant period and the LPS as per the PPA. Since, the actual interest rate paid by the Petitioner is lower, the same is accepted as the carrying cost for the payment of the claims under Change in Law.

26. The Petitioner shall workout the Change in Law claims and carrying cost in terms of this order. As regards the carrying cost, the same shall cover the period starting with the date when the actual payments were made to the authorities till the date of issue of this order. The Petitioner shall raise the bill in terms of the PPA supported by the calculation sheet and Auditor's Certificate within a period of 15 days from the date of this order. In case, delay in payment is beyond 30 days from the date of raising of bills, the Petitioner shall be entitled for late payment surcharge on the outstanding amount.”



25. In line with the above order of the Commission, in the instant case also, the Petitioner shall be eligible for carrying cost at the actual interest rate paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the Rate of Interest on Working Capital rate as per the applicable CERC Tariff Regulations or the Late Payment Surcharge Rate as per the PPA, whichever is the lowest and to be billed in accordance with the PPA.

26. Apart from the above, all other terms and conditions of the order dated 30.12.2015 in Petition No. 118/MP/2015 and order dated 19.2.2016 in Petition No. 153/MP/2015 read with order dated 22.9.2016 in Petition No. 19/RP/2016 shall remain unaltered.

27. In terms of the above order, the directions of the APTEL in its judgement dated 13.11.2019 in Appeal No. 77 of 2016 and Appeal No. 136 of 2016 stand implemented.

**Sd/-
(I. S. Jha)
Member**

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

**sd/-
(P.K. Pujari)
Chairperson**

