

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.121/MP/2017**

Subject :Petition under Section 79 (1) (b) of the Electricity Act, 2003 read with Article 13 of the PPA dated 22.4.2007 and Clause 4.7 of the Competitive Bidding Guidelines, seeking adjustment of tariff for increase/decrease in cost/revenue of CGPL due to occurrence of 'Change in Law' events.

Date of hearing : 20.12.2017

Coram : Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member

Petitioner : Coastal Gujarat Power Limited

Respondents : Gujarat Urja Vikas Nigam Limited and Others

Parties present : Shri Amit Kapur, Advocate, CGPL  
Shri Abhishek Munot, Advocate, CGPL  
Shri Tushar Nagar, Advocate, CGPL  
Ms.Swapna Seshadri, Advocate, PSPCL  
Ms.Ranjitha Ramachandran, Advocate, GUVNL, Rajasthan Discoms & Haryana Discoms  
Shri Shashi K.Jain, RUVNL

**Record of Proceedings**

Learned counsel for the petitioner submitted that the present petition has been filed *inter-alia* forseeking adjustment of tariff for increase/decrease in cost/revenue of the petitioner due to occurrence of Change in Law events namely, Swachh Bharat Cess, Krishi Kalyan Cess, Service Tax on transportation of imported goods and Corporate Social Responsibility (CSR). Learned counsel for the petitioner further submitted as under:

(a) Under Section 135 of the Companies Act, 2013, every company with a net-worth of Rs. 500 crore or more or turnover of Rs. 1000 crore or more or net profits of Rs. 5 crore or more during any Financial Year is mandated to constitute CSR committee to formulate a CSR policy which shall reflect the CSR activities to be undertaken by the Company. However, the Board of Directors shall ensure that the Company spends a minimum of 2% of the average net profits made during the three immediately preceding Financial Years towards CSR policy.

(b) As per the accounting principle, any CSR expenditure incurred is recognized as an expense in the book of accounts of the company as it is a cost to the business. Therefore, such CSR expense affects the cost of business of selling electricity by the company to the procurers and hence is a Change in Law event in terms of Article 13 of the PPA.

(c) Clause 4.7 of the Competitive Bidding Guidelines read with the Revised Tariff Policy dated 28.1.2016 provides that if there is any change in domestic duties, levies, cess and taxes, after award of the bids, which lead to a corresponding change in the cost, the same may be treated as Change in Law. In support of its contention, learned counsel relied upon the Hon'ble APTEL judgment dated 19.4.2017 in Appeal No.161 of 2015 in *Sasan Power Ltd. V. CERC and Others*, wherein it has been held that any change in tax which impacts the cost of business of generation and sale of electricity is to be treated as Change in Law.

(d) Hon'ble Supreme Court vide its judgement dated 11.4.2017 in [Energy Watchdog V. CERC and Ors. (2017 SCC Online SC 378)], has held that 'law' under Article 13 of the PPA relates to Indian Law and any Change in Indian Law would amount to a Change in Law event under Article 13 of the PPA which the parties are entitled to being compensated.

(e) With regard to carrying cost, learned counsel submitted that the intent of having CIL under the PPA is to restore the affected party to the same economic position as if such CIL event has not occurred. Relief under Article 13.2 (b) of the PPA has to take into consideration the actual economic impact of such CIL event. In support of his argument, learned counsel for the Petitioner relied upon the Hon'ble Supreme Court judgment in *Nabha Power Ltd. Vs. PSPCL*.

2. Learned counsel for GUVNL, Rajasthan Discoms and Haryana Discoms submitted as under:

(a) The Commission vide order dated 17.3.2017 in Petition No. 157/MP/2015 has already rejected the CSR in the context of environment clearance.

(b) The Tariff Policy, 2016 recognised that taxes which change the cost may be allowed as pass through 'unless otherwise provided in the PPA'. Therefore, if the tax is not covered under Article 13, no relief can be claimed on that account.

(c) The Petitioner has not claimed any specific amount or furnished any documents in this regard, therefore, no computation can be granted at this stage and delay in computation is to the account of the Petitioner.

(d) The Petitioner is not entitled to any carrying cost. The Commission had already rejected the claim of carrying cost vide order dated 16.2.2017 in Petition No. 1/RP/2016 in Petition No. 402/MP/2014 and order dated 17.3.2017 in Petition No. 157/MP/2015.

(e) The Hon'ble Supreme Court judgment in *Nabha Power Ltd. Vs. PSPCL* is not applicable in the present case.

3. Learned counsel for PSPCL adopted the submissions made by learned counsel for GUVNL, Rajasthan Discoms and Haryana Discoms.

4. The Commission directed the Petitioner to file the information on affidavit by 5.1.2018 with regard to the services in which Krishi Kalyan Cess and Swachh Bharat

Cess have been imposed, with an advance copy to the respondents who may their responses, if any, by 12.1.2018.

5. Subject to the above, the Commission reserved order in the Petition.

**By order of the Commission**

**Sd/-  
(T. Rout)  
Chief (Law)**