

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 133/MP/2016

Subject: 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 07.08.2007 executed between Sasan Power Limited and the Procurers for compensation due to Change in Law impacting revenues and costs during the Operating Period

Petitioner: Sasan Power Ltd.

Respondents: MPPMCL & Others

Date of hearing: 23.4.2018

Coram: Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
Shri Ravindra Kumar Verma, Member (E.O)

Parties present: Shri Vishrov Mukhrjee, Advocate, SPL
Shri Janmali. M, Advocate, SPL
Shri Yashaswi Kant, Advocate, SPL
Ms. Swapna Seshadri, Advocate, PSPCL
Ms. Ranjitha Ramachandran, Advocate, Haryana & Rajasthan Discoms
Shri Rajiv Srivastava, Advocate, UPPCL & UP Discoms
Ms. Garima Srivastava, Advocate, UPPCL & UP Discoms
Ms. Gargi Srivastava, Advocate, UPPCL & UP Discoms
Shri G.Umapathy, Advocate, MPPMCL
Shri Aditya Singh, Advocate, MPPMCL
Dr. Navin Kohli, MPPMCL

Record of Proceedings

During the hearing, the learned counsel for the Petitioner, SPL broadly adopted the submissions of the Petitioner, CGPL (in Petition No. 77/MP/2016). In addition, the learned counsel submitted the following:

(i) The MOEFCC notification dated 7.12.2015 mandatorily require all thermal power plants installed till December, 2016 to comply with the revised norms on or before 6.12.2017. Accordingly, the Petitioner is required to install ECS in its various Projects.

(ii) The MOEFCC notification is a Change in law event which requires the Petitioner to carry out major capital works/ modifications in order to operate



the Projects and supply power to the beneficiaries. As such, the Petitioner would incur substantial one time capital expenditure apart from recurring operational expenditure and additional increase in costs due to change in operational parameters.

(iii) The in-principle regulatory approval of additional cost would be critical for securing finances from financial institutions. The said approval of Change in law event would ultimately lead to adjustment of tariff based on actual amount spent, subject to prudence check by the Commission.

(iv) The EC so obtained by PFC on behalf of the Petitioner, envisaged environmental management plan of ₹865 crore. This amount does not include allocation of cost towards installation, implementation & maintenance of FGD system. Thus, the installation of FGD was not contemplated in the original EC and the same has been introduced by MOEFCC notification dated 7.12.2015. As there was no requirement for installation of FGD System, there was no need for allocation of separate funds for FGD System. Under Article 13 of the PPA, any change in estimate provided for Environment Management Plan is to be considered as Change in law.

(v) The cost of installation of FGD system is estimated to be ₹4500 crore. A Detailed Project Report has been prepared on the impact of installing and operating FGD system and the same would require huge amount of limestone and other raw materials, including additional water requirement and recurring cost towards disposal of waste and by-products. The installation would further lead to increase in Auxiliary Power Consumption of the station by 2%, thereby grossing up the tariff and reduction in the contracted capacity allocated to the Procurers.

(vi) The COD of the Project is 27.3.2015 i.e prior to the MOEFCC notification and hence the Change in law event may be considered during the operating period. In terms of Article 13.2 read with 13.2 (b) of the PPA, the Petitioner is required to be compensated and restore to the same economic position as if the Change in law event had not occurred.

(vii) The Hon'ble Supreme Court has in the Energy Watchdog case confirmed that Article 13.1.1 is divided into four parts and are different instances of change in law and the same ought to be read as distinct from each other.

2. In response, the learned counsel for the respondent, MPPMCL submitted the following:

(i) The claim of the Petitioner for Change in law has to be considered in terms of Article 13 of the PPA. As per Article 13.2 (b), the compensation for any increase or decrease in the revenues or cost need to be determined with reference to Change in law which has the effect on the cost of sale of electricity.

(ii) EC dated 23.11.2006 granted to the Petitioner has mandated provision for installation of FGD at a later stage. It also mandated separate funds to be



allocated for installation of FGD and for making environmental management plan which are to be included in the capital cost. The Petitioner has not complied with the same after obtaining the EC. The notification dated 7.12.2015 by MOEFCC merely confirms the requirement of installation of FGD and hence does not constitute Change in law.

(iii) The issue of installation of FGD as Change in law event was considered by the APTEL in JSW Energy Ltd v/s MSEDCL & anr, wherein after interpretation of the provisions of the EC, the APTEL had rejected the said claim as Change in law event. The facts in the present case are similar as it involves interpretation of the same provision of EC. Hence, the relief prayed for by the Petitioner may not be allowed.

3. The learned counsel for the respondent, PSPCL adopted the above submissions of the respondent, MPPMCL and submitted as under:

(i) The present Petition is premature at this stage as any claim for change in law or any relief/ compensation provided has to be considered only after the expenditure has been incurred as per the terms of the PPA.

(ii) The Petitioner has not placed on record relevant clearances and consents pertaining to the generating station. Further, EC dated 23.11.2006 envisaged the installation of FGD as on the cut-off date. If the Petitioner is required to install FGD subsequently, for any reason, the same cannot be considered as a Change in law.

4. The learned counsel for the respondent, Haryana Utilities also adopted the submissions of the other respondents above. In addition, she submitted that the MOEFCC notification may be considered as Change in law. However, the relief under Change in law can only be granted only when such change in law event has necessarily impacted the revenue or cost of business of selling of electricity of the Petitioner.

5. The learned counsel for the respondent, UP discoms adopted the submissions made by the learned counsel for respondents, PSPCL & Haryana discoms. In addition, the learned counsel submitted the following:

(i) The present Petition is not maintainable as the relief sought for by the Petitioner is outside the scope and ambit of Article 13 of the PPA.

(ii) The process of preparation of DPR by the Petitioner indicates that there have been no actual expenses towards the purported Change in law event as claimed by the Petitioner. Thus, there is no scope of compensating the Petitioner for a future action by which the Petitioner has not been adversely affected in respect of economic position contemplated in Article 13.2 of the PPA.

4. In response, the learned counsel for the Petitioner clarified that FGD system was not a part of environment management plan and the EC dated 23.11.2006 with regard to allocation of funds was only towards environment protection measures and not setting up of FGD. He also submitted that the subject matter in JSW case



cannot be made applicable to the case of the Petitioner as the facts and circumstances in both the cases are different from each other. However, the order of the Commission in respect of Petition No. 104/MP/2017 is applicable to the instant case of the Petitioner.

5. The Commission after hearing the parties, reserved its order in the Petition. However, at the request of the learned counsel for the parties, time to file written submissions, with copy to the other, has been granted till **4.6.2018**.

By order of the Commission

Sd/-
T.Rout
Chief (Legal)

