

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 239/MP/2016**

Subject : Petition under section 79 (1) (b) and 79 (1) (f) to claim amounts to compensate the petitioner on account of the consequences of the occurrence of change in Law events.

Date of Hearing : 15.2.2018

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

Petitioner : ACB (India) limited

Respondent : Gujarat Urja Vikas Nigam limited

Parties present : Shri Sanjay Sen, Senior Advocate,, ACBIL  
Shri Hemant Singh, Advocate, ACBIL  
Shri Matrugupta Mishra, Advocate, ACBIL  
Shri Nishant Kumar, Advocate. ACBIL  
Ms. Ranjitha Ramchandaran, Advocate, GUVNL  
Ms. Poorva Siagal, Advocate, GUVNL

**Record of Proceedings**

Learned senior counsel for the Petitioner submitted that the present petition has been filed seeking compensation on account of increase in water charges by the Government of Chhattisgarh as change in law event, which has impacted the revenue and cost of the project during the operating period. Learned senior counsel for the Petitioner further submitted as under:

a) As per the Notification of Water Resource Department, Government of Chhattisgarh dated 21.3.2006, any entity drawing water from natural/own source for generation of thermal power was required to pay Rs 0.90 per cubic meter of water supplied. The said Notification was in existence at the time of submission of the bid. Accordingly, the Petitioner had factored the above amount while quoting the bid tariff.

b) The Water Resources Department, Government of Chhattisgarh vide Notification dated 31.5.2010 revised the water rate from Rs 0.90 per cubic

meter to Rs. 2.00 per cubic meter. Further, the said Notification dated 31.5.2010 also provides that there will be an annual increase of the water rate @ 15 %. The Notifications issued by Water resource Department from time to time falls within the definition of change in Law as defined in the PPA. Therefore, increase in water rate through the Notifications issued by Water resource Department is a change in law event.

c) Under Notification dated 21.3.2006, the Petitioner was falling under the category of drawing water from Natural/own source and was paying Rs. 0.90 towards water charges. Pursuant to the execution of Water Supply Agreement dated 4.12.2013 with Government of Chhattisgarh, the category of the Petitioner was changed as entity drawing water from dam/ reservoir. And therefore, the Petitioner was made liable to pay Rs 9.12 per cubic meter calculated on 15 % annual escalation on Rs 6 .00 per cubic meter applicable to entities drawing water from dam/ reservoir.

d) The Commission's order dated 19.2.2016 in Petition No 153/MP/2015 (Sasan Power Limited versus MPPMCL) is not applicable in the present case as the Notification dated 21.3.2006 was in existence at the time of submission of the bid and the Petitioner had factored the prevalent rate of water charges while quoting the bid tariff.

2. Learned counsel for GUVNL submitted as under :

a) The water charge is an input cost during the operating period and is in the nature of O & M expenses, which are factored while quoting the tariff. Therefore, the increase in water charges cannot be allowed as change in law event.

b) The water charges are payable in pursuance to the Agreement entered by the Petitioner with Govt. of Chhattisgarh and is a commercial agreement between the Petitioner and the Government of Chhattisgarh. Any change in the price in the contractual arrangement cannot be considered as change in law event.

c) Merely because the Notification dated 21.3.2006 did not provide for the escalation does not mean that water charges will not be increased. The Petitioner has himself admitted that the Notification dated 21.3.2006 provided for a revision in three years. There was no indication either in law or Agreement that there would be no increase in water charges. The Petitioner was aware that water charges are to be increased from time to time.

d) The change in category from one source to other source is not a change in law event and any change in rate due to such change in source cannot be change in law event. There is no law which required the said change. It is only a contractual arrangement between the Petitioner and Water Resource Department which cannot be considered as change in law event.

e) The Commission vide order dated 19.2.2016 in Petition No 153/MP/2015 has already held that the water charges are in the nature of operating cost incurred for procuring the water during the operating period and therefore , not admissible as change in law event.

3. After hearing the learned senior counsel and learned counsel for the parties, the Commission directed the Petitioner to file the written submission along with the Notifications issued by Government of Chhattisgarh and by the Government of Madhya Pradesh prior to the bifurcation of the States and details of computation of water charges along with documentary proof by 28.2.2018 with an advance copy to the respondent. The respondent may file its written submission by 9.3.2018.

4. The Commission directed that due date in filing the information and written submissions should be strictly complied with. No extension shall be given on this account.

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

**By order of the Commission**

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