

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 215/MP/2021**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri P.K. Singh, Member**

**Date of order: 13<sup>th</sup> December, 2021**

**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 13.2(b) 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 (SPL),  
C/o- Reliance Power Ltd, 3<sup>rd</sup> Floor,  
Reliance Energy Centre, Santacruz East,  
Mumbai-400 055.

Vs.

1. MP Power Management Company Limited,  
Shakti Bhawan, Jabalpur,  
Madhya Pradesh-482008.

2. Paschimanchal Vidyut Vitran Nigam Limited,  
Victoria Park,  
Meerut – 250001, Uttar Pradesh.

3. Purvanchal Vidyut Vitran Nigam Limited,  
Hydel Colony, Bhikaripur, Post-DLW,  
Varanasi – 221004, Uttar Pradesh.

4. Madhyanchal Vidyut Vitran Nigam Limited,  
4A-Gokhale Marg,  
Lucknow – 226001, Uttar Pradesh

5. Dakshinanchal Vidyut Vitran Nigam Limited,



220 kV Vidyut Sub-Station, Mathura Agra by-pass road, Sikandra,  
Agra-282007, Uttar Pradesh

6. Ajmer Vidyut Vitran Nigam Limited,  
Hathi Bhata, City Power House,  
Ajmer-305001, Rajasthan.

7. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhawan,  
Jaipur – 302005, Rajasthan,

8. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur-342003, Rajasthan.

9. Tata Power Delhi Distribution Limited,  
Grid Sub-station Building, Hudson Lines, Kingsway Camp,  
New Delhi-110009.

10. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi-110019.

11. BSES Yamuna Power Limited,  
Shakti Kiran Building, Karkardooma,  
Delhi- 110092.

12. Punjab State Power Corporation Limited,  
The Mall,  
Patiala-147001, Punjab.

13. Haryana Power Purchase Centre,  
Room No. 239, Shakti Bhawan, Sector 6,  
Panchkula-134109, Haryana.

14. Uttarakhand Power Corporation Limited,  
Urja Bhawan, Kanwali Road,  
Dehradun-248001, Uttarakhand.

**Parties Present:**

Shri Amit Kapur, Advocate, SPL  
Shri Vishrov Mukerjee, Advocate, SPL  
Ms. Aparajita Upadhyay, Advocate, SPL



## ORDER

The Petitioner, Sasan Power Limited, has filed the present Petition under Section 79 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) read with Article 13.2(b) of the Power Purchase Agreement dated 7.8.2007 seeking compensation on account of Change in Law event. The Petitioner has made the following prayers:

*”(a) Declare that the events set out in Paragraph 2 as Change in Law event impacting revenues and costs during the Operation Period for which the SPL may be compensated in terms of Article 13 of the PPA;*

*(b) Grant liberty to approach this Commission for in-principle approval of the additional expenditure to be incurred on account of change in law after the completion of the pilot study for filling up the de-coaled/mine void areas with fly ash mixed with overburden and subsequent approval of the DGMS.*

*(c) Pass any such other and further reliefs as this Commission deems just and proper in the nature and circumstances of the present case.”*

2. The case was called out for admission through virtual hearing on 2.12.2021.
3. During the course of hearing, the learned counsel for the Petitioner submitted that pursuant to amendment dated 3.11.2009 (‘2009 Fly Ash Amendment’) to the Fly Ash Notification dated 14.9.1999 (‘1999 Fly Ash Notification’) read with Revised Environmental Clearance dated 30.6.2015 and MoEF&CC Office Memorandum dated 20.8.2019 of the Ministry of Environment, Forest and Climate Change (‘MoEF&CC’), an obligation has been imposed on the Petitioner to use 25% or more fly ash in external dump of overburden and backfilling of open case mine on volume-to-volume basis of total material used, that constitute Change in Law events in terms of Article 13 of the Power Purchase Agreement dated 7.8.2007.
4. In response to the observation of the Commission regarding the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred

to as “the Change in Law Rules”) notified by the Ministry of Power, Government of India, the learned counsel submitted that present Petition has been filed before the Commission prior to the notification of the Change in Law Rules. The learned counsel submitted that even the notice regarding Change in Law event has been issued by the Petitioner to the Procurers much earlier on 7.9.2021 i.e. prior to issuance of the Change in Law Rules. The learned counsel further submitted that these rules are not exhaustive and that they do not deal with the in-principle approval of Change in Law events as sought by the Petitioner under the present Petition. The learned counsel requested to issue notice in the matter to examine the issue as to whether the present case falls under the Change in Law Rules.

5. After hearing the submissions of the learned counsel of the Petitioner, the matter was reserved on “admissibility”.

6. We have considered the submissions made by the learned counsel for the Petitioner. Relevant portion of Change in Law Rules notified by the Ministry of Power, Government of India, are extracted as under:

*“2(c) “change in law”, in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —*

*(i) -----*

*(ii) -----*

*(iii) -----*

*3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.*

*(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the*

*proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.*

*(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.*

*(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.*

*(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -*

*(a) where the agreement lays down any formula, in accordance with such formula; or*

*(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;*

*(6) The recovery of the impacted amount, in case of the fixed amount shall be —*

*(a) in case of generation project, within a period of one-hundred eighty months; or*

*(b) in case of recurring impact, until the impact persists.*

*(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.*

*(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).*

*(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”*

7. As per the above-quoted provisions, on occurrence of a Change in Law, the affected party, in the present case the Petitioner, and other parties, in the present case the Respondents/ Procurers, are to settle the Change in Law claims amongst themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

8. The learned counsel has contended that present Petition has been filed before the Commission prior to the notification of the Change in Law Rules and even the notice regarding Change in Law event has been issued by the Petitioner to the Procurers much earlier on 7.9.2021 i.e. prior to issuance of the Change in Law Rules. Therefore, these are not applicable in the present case. The issue of retrospective application of the rules has been dealt by the Commission in order dated 6.12.2021 in Petition No 228/MP/2021 as under:

*"13. It is a settled law that as a general rule, no law operates retrospectively unless it has been provided differently in the law itself, or with exceptions as have been delineated by Hon`ble Supreme Court. Hon`ble Supreme Court in the case of T. Kaliamurthi and Anr. v. Five Gori Thaikal Wakf and Ors. [2008 (9) SCC 306], dealing with law of limitation has succinctly laid down the principle as under (emphasis by us):*

*"22. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right."*

*14. It is also a settled principle of law that where a particular provision operates in a future, it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included. In this regard, it would be relevant extract the decision of the Hon`ble Supreme Court in the case of Trimbak Damodhar Raipurkar v. Assaram Hiranman Patil, [(162) Supp. (1) SCR 700]:*

*"9. In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included."*

9. In light of the above observation, the contention of the leaned counsel that the present Change in Rules do not apply to the present case, is not sustainable.

10. The learned counsel further contended that these rules are not exhaustive and that they do not deal with the in-principle approval of Change in Law events as

sought by the Petitioner under the present Petition. We do not find merit in the said contention of the Petitioner for the reason that the Petitioner has made a specific prayer for declaration of Change in Law events impacting revenues and costs during the Operation period for which it may be compensated in terms of PPA. The prayer for in-principle approval pertains to additional expenditure to be incurred on account of Change in Law. We note that the compensation for Change in Law shall be computed in terms of Rule 3(5) of the Change in Law Rules, which provides that where the agreement lays down any formula, the same shall be in accordance with such formula; or where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to the Change in Law Rules. Therefore, the Rules provide for mechanism for recovery of compensation towards Change in Law events. Accordingly, the said contention of the Petitioner is not sustainable.

11. In view of the foregoing discussion, the Petitioner may approach the procurers for settlement of Change in Law claims among themselves in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

12. Accordingly, the Petition No. 215/MP/2021 is disposed of in terms of the above at the admission stage.

**Sd/-  
(P.K.Singh)  
Member**

**sd/-  
(Arun Goyal)  
Member**

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

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