

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 562/MP/2020
With IA No. 79/2021**

**Coram:
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of order: 14th February, 2022

In the matter of

Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 read with Clause 4.7 of the Competitive Bidding Guidelines and Article 13 of the Power Purchase Agreements dated 7.8.2008 and 20.1.2009 entered into by Jhajjar Power Limited with Uttar Haryana Bijli Vitran Nigam Limited, Dakshin Haryana Bijli Vitran Nigam Limited and Tata Power Trading Company Limited respectively in relation to seeking compensation for decrease in revenues and increase in the costs as a result of Change in Law events.

**And
In the matter of**

Jhajjar Power Limited,
Village: Khanpur Khurd,
Tehsil: Matenhail, District: Jhajjar-124142,
Haryana.

.....Petitioner

Vs.

1. Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Plot No. C-16, Sector 6,
Panchkula, Haryana

2. Dakshin Haryana Bijli Vitran Nigam Limited,
Vidyut Nagar, Vidyut Sadan,
Hissar – 125005, Haryana

3. Tata Power Trading Company Limited,
Corporate Centre, 'A' Block, 34,
Sant Tukaram Road, Carnac Bunder,
Mumbai – 400006 and Head Office at B-12/13,
2nd Floor, Shatabdi Bhavan, Sector – 04,
Noida-201301, UP

..Respondents



Parties Present:

Shri Sajan Poovayya, Sr. Advocate, PL
Shri Shashwat Kumar, Advocate, JPL
Shri Pratibhanu Kharola, Advocate, JPL
Shri Rahul Chouhan, Advocate, JPL
Ms. Raksha Agarwal, Advocate, JPL
Shri Deepto Roy, Advocate, JPL
Shri Dnyanraj Desa, Advocate, JPL
Ms. Disha Adhikary, Advocate, JPL
Shri Venkatesh, Advocate, TPTCL
Shri Rishub Kapoor, Advocate, TPTCL
Ms. Simran Saluja, Advocate, TPTCL
Shri Abhay Kumar, TPTCL
Shri M. G. Ramachandran, Sr. Advocate, Haryana Utilities
Shri Shubham Arya, Advocate, Haryana Utilities
Ms. Poorva Saigal, Advocate, Haryana Utilities
Ms. Shikha Sood, Advocate, Haryana Utilities
Shri Hemant Sahai, Advocate, TPDDL
Shri Nitish Gupta, Advocate, TPDDL
Shri Avdesh Mandloi, TPDDL
Shri Nishant Talwar, Advocate, TPDDL

ORDER

The Petitioner, Jhajjar Power Limited, has filed the present Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as “the Act”) *inter alia*, seeking compensation on account of additional cost incurred/ to be incurred by the Petitioner due to occurrence of certain Change in Law events, namely, (i) electrification of Railway sidings in terms of Railway Electrification Notifications, and (ii) increase in water rates in terms of Notification of Irrigation and Water Resources Department, Government of Haryana, along with carrying cost thereon. The Petitioner has made the following prayers:

“(a) *Admit the present Petition;*

(b) *Declare that the Railway Budget 2011-2012 (Electrification of the Line in the Pink Book), Vision 2020 Blueprint dated 04.04.2011 and letter of Divisional Railway Manager dated 03.05.2012, qualifies as events of 'Change in Law' in terms of the PPAs;*

(c) *Declare that the costs due to increased operational expenses due to increased water charges so as to be compliant with Haryana Government Gazette notification no.08/04/2009-21W dated 30.11.2018 issued by Irrigation and Water Resources Department, State Government of Haryana as intimated by the Engineer-in-Chief, IWRD, Government of India vide circular no. 1541-93/2R&CR/275/2011 dated 07.12.2018, qualifies as events of 'Change in Law' in terms of the PPAs;*

(d) *Allow Carrying Cost and restore the Petitioner to the same economic condition prior to occurrence of the Change in Law Events by permitting the Petition and the amounts as per the computations set out in hereinabove or through a suitable mechanism to compensate the Petitioner for the financial impact of the Changes in Law Events;*

(e) *Permit the Petitioner to recover an amount of INR 8,76,50,872 paid by it to North Western Railway and any other additional costs that it may incur in future towards Electrification Costs of the Private Railway Siding through a Supplementary Bill to be raised on the Respondents in accordance with the provisions of the PPAs;*

(f) *Permit the Petitioner to recover an amount of INR 12,83,21,205.83 (INR 3,12,22,395.62 for FY 2018-19 and 9,70,98,810.22 for FY 2019-20) paid by it to IWRD for usage of water through a Supplementary Bill to be raised on the Respondents in accordance with the provisions of the PPAs and any other additional costs that it may incur in future Contract Years;*

(g) *Declare that the Petitioner is entitled to recover carrying cost/ interest on all amounts incurred/paid by the Petitioner for ensuring compliance with the Railway Electrification Notifications and the Water Rate Notification from the date of incurrence/ payment of such amounts by the Petitioner till such date as the Petitioner recovers such amounts in their entirety;*

(h) *Allow necessary amendments to the PPAs to account for the aforementioned Change in Law Events and direct the Respondents to execute such necessary amendments; and*

(i) *Allow modification/ alternation/ amendment of the Petition/pleadings and/or provide additional information in support of the Petitioner's claim, if necessary."*

2. The Petitioner has filed interlocutory Application (IA) No. 79/2021 for amendment of the Petition to bring on record the occurrence of a new Change in Law event. The Petitioner in the IA has made the following prayers:

“(a) *Allow the present Application for amendment of the petition and consequently allow and bring on record the duly amended Petition along with executed affidavit attached along with this Application;*

(b) *Allow and bring on record the facts and events leading to the additional expenditure incurred by the Petitioner subsequent to the filing of the present petition as mentioned in paragraphs 1 to 21 of the present application.”*

3. The matter was heard on 24.1.2022 through video conferencing. During the course of hearing, learned senior counsel for the Petitioner submitted that the Petitioner had issued the notices regarding occurrence of aforesaid Change in Law events to the Respondents. However, there is no agreement/ admission between the parties regarding aforesaid events being Change in Law. In fact, the Respondents in their replies to the Petition have already contested the Change in Law claims made by the Petitioner. Thus, the entire matrix of the dispute is already before the Commission in the present case. Learned senior counsel further submitted that at the time of filing of the present Petition on 22.6.2020, the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (in short 'the Change in Law Rules') were not in existence. The Change in Law Rules have been notified only on 22.10.2021. However, the Commission, in its various recent decisions, has taken a view that the Change in Law Rules are only procedural and, therefore, apply retrospectively. However, the Petitioner having invoked the jurisdiction of the Commission by way of filing of the present Petition on 22.6.2020, the law applicable for the adjudication of the Petitioner's claims is that prevailing as on the date of institution of the Petition. It is well settled that law applicable on the date of institution of the suit alone governs the suit. In this regard, the reliance was placed on the decision of the Hon'ble Supreme Court in Ramesh Chandra v. Additional District Judge and Ors., [(1992) 1 SCC 751]. Learned senior counsel submitted that rather than disposing of the matter in view of the Change in Law Rules, the Commission may consider adjourning the matter for 60 days or *sine die*, while directing the parties to comply with the procedure prescribed in the Change in Law Rules.

Pursuant thereto, if the parties are able to reconcile the claims and resolve the issues, matter may be disposed of by way of an appropriate order. In the event, parties are not able resolve the issues, the Petitioner may be permitted to place on record the notice issued under the Change in Law Rules and response of the Respondents and thereafter, the Commission can pass an effective order in the matter.

4. Learned senior counsel for the Respondents, Haryana Utilities submitted that the Change in Law Rules only provide a process for expeditious recovery of Change in Law claims of the affected parties and the substantive law remains unaltered. It cannot be argued that the said Rules, in any way, affect the jurisdiction of the Commission under Section 79 of the Electricity Act, 2003 or for that matter take away the right to sue. Learned senior counsel submitted that the Respondents will timely respond to the notice issued by the Petitioner and the Change in Law Rules and, thereafter, the instant matter can be taken up together with the application under the Change in Law Rules. Learned senior counsel also pointed out that the Petitioner has also filed IA No. 79/2021 seeking amendments to the pleadings/ prayers, which is yet to be considered. Learned counsel for the Respondents, TPDDL and TPTCL adopted the submissions made by the learned senior counsel for the Haryana Utilities.

5. We have considered the submissions of the Petitioner. The Change in Law Rules provides 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.”

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

7. During the course of hearing, learned senior counsel for the Petitioner submitted that the Petitioner had issued the notices regarding occurrence of aforesaid Change in Law events to the Respondents. However, there is no agreement/ admission between the parties regarding aforesaid events being Change in Law. Learned senior counsel submitted that the matter may be adjourned for 60 days or sine die. It is noticed that the Petitioner has filed IA for amendment of the Petition to bring on record the new Change in Law event and accordingly, the Petitioner has to amend its Petition. In our view, no purpose would be served in keeping the Petition pending at this stage when the Petitioner has filed IA for amendment of the present Petition to include new Change in Law events. It is apparent from a plain reading of the Change in Law Rules that it provides for quantification of claims and a process and methodology for early recovery of mutually agreed claims relating to impact of change in law. The Change in Law Rules also provide that if there is a formula in the agreement for adjusting and recovering the amount of the impact of change in law, it shall be applied, otherwise the formula as prescribed in the Change in Law Rules is to be applied. We also find that the Change in Law Rules provide a time bound mechanism for settlement of such claims.

8. We consider that the process and methodology as prescribed in the Change in Law Rules is simply a mechanism for time bound settlement of claims in a deterministic manner and the Petitioner is not going to be prejudiced by adopting the said mechanism. We have already held in our earlier orders (e.g. Order dated 06.12.2021 in Petition No. 228/MP/2021) that since the Change in Law Rules is in the nature of procedural law and under the Change in Law Rules, any substantive rights are not being taken away, it is to be applied retrospectively in all pending proceedings.

9. In view of foregoing discussions, 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. The filing fees paid in the present Petition shall be adjusted against the Petition to be filed in future in terms of Change in Law Rules.

10. Accordingly, the Petition No. 562/MP/2020 and IA No. 79/2021 are disposed of in terms of the above.

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

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

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