

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 513/MP/2020

Coram:

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

Date of order: 31st January, 2022

In the matter of

Petition under Section 79 of the Electricity Act, 2003 read with Article 13 of the Power Purchase Agreements dated 7.8.2008 entered with Haryana Utilities, Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees dated 19.1.2005, amended from time to time and revised Tariff Policy 2016, seeking compensation due to certain change in law events.

And

In the matter of

Adani Power (Mundra) Limited,

Adani House, near Mithakhali Six Roads, Navrangpura,
Ahmedabad, Gujarat – 380009.

...Petitioner

Vs.

1. Uttar Haryana Bijli Vitran Nigam Limited,

Narela, New Delhi, Delhi - 131028

2. Dakshin Haryana Bijli Vitran Nigam Limited,

Shaheed Harikishan Marg, Block C,
Block G, New Industrial Twp 5,
New Industrial Town, Faridabad,
Haryana121001

.....Respondents

Parties Present:

Shri Amit Kapur, Advocate, APMuL
Ms. Poonam Verma, Advocate, APMuL
Shri Saunak Rajguru, Advocate, APMuL
Shri Aniket Ojha, Advocate, APMuL
Shri M. G. Ramachandran, Sr. Advocate, HPPC
Shri Shubham Arya, Advocate, HPPC
Ms. Poorva Saigal, Advocate, HPPC



Ms. Shikha Sood, Advocate, HPPC
Shri Krishna Rao, APMuL
Shri Mehul Rupera, APMuL
Shri Sameer Ganju, APMuL
Shri Malav Deliwala, APMuL
Shri Kumar Gaurav, APMuL
Shri Tanmay Vyas, APMuL
Shri Rahul Panwar, APMuL
Shri Hitesh Modi, APMuL

ORDER

The Petitioner, Adani Power (Mundra) 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”) seeking compensation through tariff adjustment along with carrying cost on account of Change in Law events, namely, (i) levy of forest tax by Government of Chhattisgarh and South-Eastern Coal Fields Limited ('SECL') in the State of Chhattisgarh, (ii) levy of forest tax by Government of Madhya Pradesh and SECL in the State of Madhya Pradesh, (iii) increase in rate of Chhattisgarh Environment Cess and Infrastructure Development Cess by Government of Chhattisgarh and SECL, (iv) levy of evacuation facility charges by Coal India Limited and (v) levy of restriction on sulphur content in fuel oil in terms of MARPOL, after the cut-off date of the Project. The Petitioner has made the following prayers:

“(a) Admit the present Petition

(b) Declare that Levy of Forest Tax upon coal procurement from SECL and amendments to the same are change in law events both in the State of Chhattisgarh and State of Madhya Pradesh.

(c) Hold that Amendments to Chhattisgarh Infrastructure Development Cess and Chhattisgarh Environment Cess rates qualify as change in law events

(d) Declare that levy of Evacuation Facility Charges by Coal India Limited is a change in law event.

(e) Hold that levy of sulphur restrictions in fuel pursuant to MARPOL



qualifies as a change in law event.

(f) Direct the Respondents to make the payment of the compensation for the aforementioned change in law events from the date it affected the Petitioner under the PPAs.

(g) Hold and declare that Petitioner is entitled to claim carrying cost at the rate of LPS as stipulated under the PPA for the period of delay in making payment from the date of notification of change in law on monthly compounding basis.”

2. The matter was heard on 24.1.2022 through video conferencing. During the course of hearing, the learned counsel for the Petitioner submitted that in order to expedite the process, the Petitioner has also issued the Change in Law notice as required under the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (in short, 'the Change in Law Rules'). However, the Respondents have already disputed the aforesaid claims in their replies to the present Petition. Learned senior counsel for the Respondents submitted that the Respondents are in receipt of a notice from the Petitioner dated 15.1.2022 as per the Change in Law Rules and are in process of finalizing their response thereon. Accordingly, the learned senior counsel submitted that the matter may be adjourned for a month so that it can be dealt along with the application of the Petitioner under Rule 3(7) of the Change in Law Rules.

3. 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.”

4. 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.

5. During the course of hearing, learned senior counsel and learned counsel for the parties submitted that the matter may be adjourned to be dealt along with the application of the Petitioner under Rule 3(7) of the Change in Law Rules. In our view, no purpose would be served in keeping the petition pending. 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.

6. 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.

7. 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.

8. Accordingly, the Petition No. 513/MP/2020 is disposed of in terms of the above.

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

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

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