

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 75/MP/2013

Sub: Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Articles 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.

Date of Hearing : 10.10.2013

Coram : Shri V. S. Verma, Member
Shri M. Deena Dayalan, Member
Shri A. K. Singhal, Member

Petitioner : Sasan Power Limited, Mumbai

Respondents: : MP Power Management Company Ltd. & Others

Parties present : Shri J.J.Bhatt, Senior Advocate, SPL
Shri Vishrov Mukherjee, Advocate, SPL
Ms. Ritika Arora, Advocate, SPL
Shri P.Venkatarao, SPL
Shri Arun, Dhillon, SPL
Shri N. K. Deo, SPL
Shri Raj Verma, SPL
Shri Sandeep S. Mysetty, SPL
Shri Mayank Gupta, SPL
Shri Srikant, SPL
Shri Vivek Kejirwal, SPL
Shri R.S.Johri, SPL
Shri G.Umapathy, Advocate, MPPMC
Shri M.G.Ramchandran, Advocate, HPPC
Shri Poorva Saigal, Advocate, HPPC
Shri Apoorve Karol, Advocate, HPPC
Shri Padamjit Singh, PSPCL
Shri T.P.S.Bawa, PSPCL
Ms. Shobana Masters, Advocate, BRPL and BYPL
Shri Himansu Chauhan, BRPL
Shri Alok Shankar, Advocate, TPDDL
Shri S.S.Barpanda, NLDC
Ms. Jyoti Prasad, NLDC

Record of Proceedings

At the outset, learned senior counsel for the petitioner submitted as under:

(a) The present petition has been filed to recoup/adjust the project economics due to a change in law which had led to an increase in the price of diesel and would impact the costs in the operating period of the project;

(b) The price of diesel has been regulated by Government of India by subsidizing the actual cost of diesel through the Administered Pricing Mechanism (APM). In 2002, APM was discontinued. However, it continued to be applicable in spirit. The price of diesel continued to remain subsidized and hence controlled by the Government of India and same has been noted in various reports and studies including the Kelkar Committee Report published in September, 2012. On 17.1.2013, Indian Oil Corporation issued a press release intimating of the withdrawal of the subsidized pricing for bulk consumers of diesel. A decision has been taken by a Government instrumentality i.e the Government of India to withdraw the subsidy on diesel to bulk consumer. The decision creates a new segment of diesel consumers i.e bulk consumers who have to pay the market-linked price for diesel and no subsidy is available to them. The decision to withdraw subsidy on diesel has led to an increase in costs to the petitioner. The decision of the Government of India amounts to change in law in terms of Article 13 of the PPA.

(c) The main source of diesel consumption for Sasan UMPP is for mining. The captive coal mines allotted to Sasan UMPP are an integral part of the generating station as is evident from the concept paper on UMPP, provisions of RfQ and the PPA and the definition of project in the PPA which includes the captive coal mines. Under Article 13 of the PPA, the increase in price of land of the coal mines, increase in cost of compensatory afforestation and cost of implementation of the R&R plan for the coal mines have been included as a change in law. Therefore, coal blocks of Moher, Moher-Amlohri extension and Chhatrasal are an integral part of the project and any change in law which affects the cost of the coal mines is a change in law under the PPA.

(d) The petitioner procures diesel from the OMCs at the non-subsidized market determined price. The estimated impact as on 1.3.2013 on account of increase in prices of diesel will be approximately ₹ 133 crore per annum for approved peak coal production levels. Therefore, this amount may be allowed under the change in law on the basis of the amount of diesel consumed for the actual coal supplied to the project.

2. Learned counsel for MPPCL submitted that since increase in diesel price is not covered under Article 13 of the PPA, the petitioner is not entitled to any relief in this regard.
3. Learned counsel for HPPC submitted as under:
 - (a) The Regulation of diesel prices through APM by the Government of India was changed by the year 2002 and accordingly the change in law, if any occurred much prior to the cutoff date of the bidding with reference to the bid submitted on 27.7.2007 pursuant to which the PPA was signed. Accordingly, the change over from APM to the market driven prices for diesel did not occur post the cut- off date to constitute change in law under Article 13 of the PPA;
 - (b) At the time of submission of bids in July 2007, it was clear that APM as the legal mechanism of pricing diesel no longer subsisted and the pricing of diesel would be governed by market determined factors. The provision of subsidy thereafter by the Government of India for diesel was not pursuant to any legal mandate and was a decision by the Government of India which cannot be said to be covered by the term ' law' as defined in the PPA.
 - (c) The bidders were rather required to proceed on the basis of the then prevalent of APM being not applicable and to take into account of diesel prices that would be as per the market forces.
 - (d) The subsidy provided was totally discretionary and was not pursuant to any mandate of law. The increase or decrease of diesel prices could not therefore be a subject matter of adjustment on account of change in law under Article 13 of the PPA.
 - (e) The petitioner is claiming that the coal mines are an integral part of the project. In that case, all benefit accruing from the coal mines should be accounted for.
4. Learned counsel for the Tata Power Distribution Company Limited submitted that mechanism suggested by the petitioner cannot be accepted.
5. The representative of PSPCL submitted that at the time of submission of the bid, the bidder is required to bid for escalable and non-escalable price. The petitioner must have included the cost of diesel while making the bid. The present application seems to convert a competitive bidding into a cost plus tariff.
6. Learned counsel for BRPL and BYPL submitted that the claims made by the petitioner be considered as Chang in law events under the PPA.

7. Learned senior counsel for the petitioner submitted that it has to be decided whether diesel is regulated or not. As law defined in the PPA includes the order or and notification of Govt. of India instrumentality, the notification of the Govt. of India creating two categories of consumers is covered under change in law. Any increase and decrease in price of diesel is change in law.

8. After hearing the learned senior counsel for the petitioner, learned counsels for MPPCL, HPPC, TPDDL BRPL and BYPL and representative of PSPCL, the Commission directed the petitioner and the respondents to file the required information on affidavit and written submissions, if any, within one week with advance copy to the other party.

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

By order of the Commission

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