

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
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Case No. 154 of 2013 and Case No. 189 of 2013

Dated: 19 December, 2013

**CORAM: Shri Vijay L. Sonavane, Member
Smt. Chandra Iyengar, Member**

Case No. 154 of 2013:

In the matter of: Petition filed by Indiabulls Power Limited for compensation in tariff on account of increase in fuel and other incidental costs and dispute between a Generating Company and the Distribution Licensee, relating to the provisions of the Power Purchase Agreements (PPAs) dated 22nd April 2010 and 5th June 2010.

Indiabulls Power Ltd.Petitioner

V/s

Maharashtra State Electricity Distribution Co. LimitedRespondent

Advocates / Representative for the Petitioner:

Shri. Sanjay Sen (Adv.)

Advocate / Representative for the Respondent:

Shri. Kiran Gandhi (Adv.)
Shri. A.S.Chavan (Rep.)

Authorised Consumer Representatives:

Smt. Ashwini Chitnis (Prayas)

And

Case No. 189 of 2013:

In the matter of: Petition of Adani Power Maharashtra Limited for compensation in tariff on account of "Change in Law" under the PPAs dated 31.03.2010, 19.08.2010 and 16.02.2013.

Adani Power Maharashtra Ltd.Petitioner

V/s

Maharashtra State Electricity Distribution Co. LimitedRespondent

Advocates / Representative for the Petitioner:

Shri. Sanjay Sen (Adv.)

Advocate / Representative for the Respondent:

Shri. Kiran Gandhi (Adv.)
Shri. A.S.Chavan (Rep.)

Authorised Consumer Representatives:

Smt. Ashwini Chitnis (Prayas)

Daily Order

1. These two cases are being heard simultaneously because of the fact that both the Petitioners have approached this Commission for compensation over and above the tariff discovered through Competitive Bidding. The Petitioners have relied upon the change in NCDP and advisory issued by the MoP on 31 July 2013. As per said MoP's letter, the CIL has indicated that it will not be able to supply the coal as per Letter of Assurance and coal will have to be imported to bridge the gap. The issue of possible increase in cost of power was discussed and CERC's advice was sought. The decision of the Government was conveyed vide letter dated 31 July, 2013. The Commission noted that in the Press Note issued by MoC it appears that this decision is in the context of the 78000 MW which are to be commissioned by 31.3.2015. It is to be seen as to how many projects are impacted by this decision in the State of Maharashtra.
2. The enforceability / legal force of the said MoP's communication and whether it amounts to "Change in Law" needs to be analysed and addressed. The judgment of the individual cases will be dependent on the said issues. On Prima-facie reading of the said MoP's communication it appears that it could have long-term implications on the competitively discovered PPA rates under Section 63 of the Electricity Act, 2003 and also raises the question of "Sanctity of Contracts". Therefore, the Commission feels that while each case needs to be dealt separately based on the facts of that case, overall framework need to be taken into consideration and the legal approach and methodology to be adopted in all these cases needs to be similar.
3. Further, the issue of increasing tariff for compensating shortage of coal will have impact on retail power tariff in the State. The views of Government of Maharashtra should also be sought in these matters.
4. Representative of the Indiabulls has made presentation illustrating the proposed formula for determining the compensation for arranging coal from alternate sources.
5. Representative of Adani Power submitted that barring marginal difference, their submissions on compensation are similar as that of Indiabulls.
6. Having heard the parties, the Commission directs as follows:
 - a. The Petitioner, Indiabulls to submit the financial impact on the tariff due to coal shortage considering the actual values of various parameters in the formula as they have already started supplying power. Indiabulls/MSEDCL is further directed to reply to the issues raised by Prayas in its letter dated 18 December 2013.
 - b. The Petitioner, Adani Power to implead Government of Maharashtra (Energy Department) as a party in Case No. 189 of 2013 and serve a copy of the Petition on them.
 - c. The Respondent, MSEDCL to submit its stand on the above advice issued by Ministry of Power and its reply to the submission made by the Petitioners within six weeks as committed during the hearing.
 - d. Government of Maharashtra is requested to submit its stand on above said advice of the Ministry of Power within six weeks.

- e. All parties to make their submissions with copy served on other parties and Authorised Consumer Representatives.
7. After receiving the submissions from all the parties, Secretariat of the Commission will communicate the next date of hearing in these matters.

Sd/-
(Chandra Iyengar)
Member

Sd/-
(Vijay L. Sonavane)
Member