

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 121/MP/2017

Coram:

Shri A. K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 21.2.2018

In the matter of:

Petition under Section 79(1)(b) of the Electricity Act, 2003 read with Article 13 of the PPA dated 22.4.2007 and Clause 4.7 of the Competitive Bidding Guidelines, seeking adjustment of tariff for increase / decrease in cost/revenue of CGPL due to occurrence of 'Change in Law' events.

And

In the matter of:

Coastal Gujarat Power Limited
C/o Tata Power Company Limited
34, Sant Tuka Ram Road, Carnac Bunder,
Mumbai-400021

.... Petitioner

Versus

1. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan, Race Course
Vadodara-390007, Gujarat
2. Maharashtra State Electricity Distribution Company Limited,
4th Floor, Prakashgad, Plot No. G-9
Bandra (East), Mumbai-400051,
Maharashtra
3. Ajmer Vidyut Vitran Nigam Limited
Hathi Bhata, Old Power House
Ajmer, Rajasthan
4. Jaipur Vidyut Vitran Nigam Limited
Vidyut Bawan, Janpath
Jaipur, Rajasthan

5. Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area,
Jodhpur, Rajasthan
6. Punjab State Power Corporation Limited
PP & R, Shed T-1, Thermal Design,
Patiala-147001
7. Uttar Haryana Bijli Vitran Nigam Limited Vidyut Sadan,
Plot No. C-16, Sector-6
Panchkula-134112, Haryana
8. Dakshin Haryana Bijli Vitran Nigam Limited
Vidyut Nagar, Vidyut Sadan,
Hissar, Haryana-125005

.....Respondents

Parties Present:

Shri Amit Kapur, Advocate, CGPL
Shri Abhishek Munot, Advocate, CGPL
Shri Tushar Nagar, Advocate, CGPL
Ms.Swapna Seshadri, Advocate, PSPCL
Ms.Ranjitha Ramachandran, Advocate, GUVNL, Rajasthan and Haryana Discoms
Shri Shashi K.Jain, RUVNL

ORDER

The Petitioner, Coastal Gujarat Power Limited (CGPL), has filed the present petition under Section 79 (1)(b) of the Electricity Act, 2003 (Act) read with Article 13 of the PPA and Paragraph 4.7 of the Competitive Bidding Guidelines seeking certain reliefs under Change in Law events during the operating period in respect of Mundra Ultra Mega Power Project (Mundra UMPP).

2. The Petitioner which is a subsidiary of Tata Power Company Ltd., has set up a 4000 MW Ultra Mega Power Project at Mundra in the State of Gujarat (Mundra UMPP) based on imported coal after Tata Power Company Ltd. was selected as the successful bidder based on the competitive bidding carried out in accordance with Section 63 of the Electricity Act, 2003 (Act). The tariff of the Mundra UMPP was adopted by the Central Commission under

Section 63 of the Electricity Act, 2003 vide order dated 19.9.2007 in Petition No.18/2007. The Petitioner has entered into a PPA dated 22.4.2007 with the distribution companies in the States of Gujarat, Maharashtra, Rajasthan, Punjab and Haryana for supply of 3800 MW from Mundra UMPP for a period of 25 years, namely Gujarat Urja Vikas Nigam Limited, Maharashtra State Electricity Distribution Company Limited, Ajmer Vidyut Vitran Nigam Limited, Jaipur Vidyut Vitran Nigam Limited, Jodhpur Vidyut Vitran Nigam Limited, Punjab State Power Corporation Limited and Haryana Power Generation Corporation Limited (collectively referred to as “Procurers”). Subsequently, the Petitioner and the Procurers have entered into a Supplemental PPA on 31.7.2008 for advancement of the Scheduled Commercial Operation Dates (SCOD) in terms of Article 3.1.2 (iv) of the PPA.

3. All five units of the Mundra UMPP were commissioned as per the following dates:

Unit	Scheduled Commercial Operation date	Revised Scheduled Commercial Operation date
First	22.8.2012	30.9.2011
Second	22.2.2013	31.3.2012
Third	22.8.2013	31.7.2012
Fourth	22.2.2014	30.11.2012
Fifth	22.8.2014	31.3.2013

4. The Petitioner has sought the following reliefs under Change in Law events during the operating period on the following counts:

(a) Levy of Swachh Bharat Cess by the Govt. of India in the Finance Act, 2016 in terms of Notification No. 22/2015 dated 6.11.2015.

(b) Levy of Krishi Kalyan Cess by the Govt. of India in the Finance Act, 2016.

(c) Levy of Service Tax on transportation of goods by a vessel from a place outside India to the first customs station of landing in India.

(d) Mandate under Companies Act, 2013 to spend a minimum of 2% of the average net profits of the company towards the CSR Policy.

5. The Petitioner has submitted the financial impact of the aforesaid events on Change in Law accompanied by Auditor`s Certificate dated 23.9.2017 as under:

S. No	Change in law events (During the Operating Period)	Effective date of change in law	Financial Impact in FY 2016-17 (Rs. in crore)
1.	Levy of Swachh Bharat Cess	6.11.2015	3.13
2.	Levy of Krishi Kalyan Cess	1.6.2016	2.48
3.	Levy of Service tax on transportation of goods by a vessel from a place outside India to the first custom station of landing in India	1.6.2016	13.53
4.	Mandate of Corporate Social Responsibility	1.4.2014	Nil

6. The Petitioner has submitted that in accordance with Article 13.3 of the PPA, the Petitioner notified the procurers on 20.5.2014, 19.1.2016 and 13.6.2016 about the above “Change in Law” events affecting the revenues/cost of the Petitioner during the operating period. Accordingly, the Petitioner has filed the present petition with the following prayers:

“(a) Hold and declare that each of the items set out in Paras 25 to 44 of the petition constitute Change in Law events impacting revenues and/or costs of the Petitioner during the Operation Period.

(b) Compensate/ retribute/ restore the Petitioner through monthly tariff payments, to the same economic position as if such Change in Law events had not occurred.

(c) Permit the Petitioner to raise and recover Supplementary Invoices for recovery of such additional monthly tariff payments by the Procurers.

(d) Prescribe the mechanism for computing the compensation payable and its basis of recovery for both past period as well as for future period along with carrying cost along with the basis of allocation (whether on Allocated Contracted Capacity or Energy Scheduled by each Procurer during the said period).

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

7. Notices were issued to the respondents to file their replies to the petition. Replies to the petition have been filed by Gujarat Urja Vikas Nigam Limited (GUVNL) vide its affidavit dated 16.8.2017, Rajasthan Distribution Companies (AVVNL/JVVNL/JVVNL) vide affidavit dated 22.8.2017, Haryana Utilities (UHBVNL and DHBVNL) vide their affidavit dated 27.9.2017, Punjab State Power Corporation Limited (PSPCL) vide its affidavit dated 23.9.2017 and Maharashtra State Electricity Distribution Company Limited (MSEDCL) vide its affidavit dated 28.8.2017. The Petitioner has filed its consolidated rejoinder to the replies of the respondents.

Analysis and Decision:

8. After consideration of the submissions of the Petitioner and the Respondents, the claims of the Petitioner have been dealt with as under:

- (a) Whether the provisions of the PPA with regard to notice have been complied with?
- (b) What is the scope of change in law in the PPA?
- (c) Whether compensation claims are admissible under Change in Law in the PPA?
- (d) Carrying cost on the Change in law events.

- (e) Mechanism for processing and reimbursement of amount claimed under Change in Law.

The above issues have been dealt with in the succeeding paragraphs.

Issue No. 1: Whether the provisions of the PPA with regard to notice have been complied with?

9. The claims of the Petitioner in the present petition pertain to the Change in Law events during the operating period. Article 13.3 of the PPA provides for notification of the Change in Law events to the Procurers as under:

“13.3 Notification of Change in law

13.3.1 If the Seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2 Notwithstanding Article 13.3.1, the Seller shall be obliged to serve a notice to all Procurers under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material. Provided that in case the Seller has not provided such notice, the Procurers shall have the right to issue such notice to the Seller.

13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:

(a) the Change in Law; and

(b) the effects on the Seller of the matters referred to in Article 13.2.”

10. The Petitioner notified the Procurers on 20.5.2014, 31.8.2015, 19.1.2016 and 13.6.2016 about the above Change in Law events affecting the revenues/cost of the Petitioner during the operating period.

11. We have considered the submissions of the petitioner. Under Article 13.3 of the PPA, the Petitioner is required to give notice about occurrence of Change in Law events as soon as reasonably practicable after becoming aware of such events. The petitioner gave notices dated 20.5.2014, 31.8.2015, 19.1.2016 and 13.6.2016 to the Procurers. In the said notices, the Petitioner has brought out the occurrence of Change in Law events and apprised the procurers about the impact of such events. The Procurers have not responded to the notices of the Petitioner. Thereafter, the Petitioner has filed the present petition. Therefore, in our view, the Petitioner has complied with the requirement of notice and prior consultation in terms of Article 13.3 of the PPA.

Issue No. 2: What is the scope of Change in Law in the PPA?

12. The Petitioner has approached the Commission under Article 13 of the PPA read with Section 79 of the Act and Para 4.7 of the Competitive Bidding Guidelines for compensation of the cost incurred by the Petitioner due to “Change in Law” during the operating period. We had held in our order dated 17.3.2017 in Petition No. 157/MP/2015 (CGPL Vs. GUVNL and Others) that the Commission has the jurisdiction to adjudicate the tariff related dispute and that the increase/decrease in the cost or revenue to the seller (Petitioner) during the operating period shall be decided by the Commission in terms of the provisions of Section 79 (1) (b) and (f) of the Act, the Competitive Bidding Guidelines and the provisions of the PPA. Relevant portion of the said order dated 17.3.2017 is extracted as under:

“Appropriate Commission has been defined in the PPA dated 22.4.2007 between the Petitioner and the procurers as “the Central Electricity Regulatory Commission constituted under the Electricity Act, 2003”. Therefore, under the provisions of the Competitive Bidding Guidelines, this Commission is the Appropriate Commission for adjudication of tariff related dispute. Under Article 13.2.(b) of the PPA, the compensation for any increase/decrease in

revenues or cost to the seller shall be determined and would be effective from such date, as decided by the Central Electricity Regulatory Commission whose decision shall be final and binding on both the parties. From the provisions of the Act, Competitive Bidding Guidelines and provisions of the PPA, it is clear that the increase/decrease in cost or revenue to the seller (the Petitioner) shall be decided by this Commission.”

13. The claims of the Petitioner pertain to the operating period. The “Operating Period” has been defined in the PPA as under:

“Operating Period in relation to the Unit means the period from its COD and in relation to the Power Station, the date by which all the Units achieve COD, until the expiry or earlier termination of this Agreement in accordance with Article 2 of this Agreement.”

14. The dates of commercial operation of the units of Mundra UMPP are as under:

S. No.	Unit	Date of commercial operation of the units
1	First	7.3.2012
2	Second	30.7.2012
3	Third	27.10.2012
4	Fourth	21.1.2013
5	Fifth	22.3.2013

15. The first unit of the generating station achieved COD on 7.3.2012 and the last unit of the generating station achieved COD on 22.3.2013. Therefore, the operating periods of the different units of the generating station will be considered from the respective dates of their commercial operation and the operation period of the generating station will be reckoned with effect from 22.3.2013.

16. Article 13 of the PPA between the petitioner and the Procurers of Mundra UMPP provides Change in Law as under:

"13. ARTICLE 13: "CHANGE IN LAW"

13.1 Definitions.

In this Article 13, the following terms shall have the following meanings:

13.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline:

(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law or (ii) a change in interpretation of any Law by a Competent Court of law, tribunal or Indian Governmental Instrumentality provided such Court of law, tribunal or Indian Governmental Instrumentality is final authority under law for such interpretation or (iii) change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Seller, which results in any change in any cost of or revenue from the business of selling electricity by the Seller to the Procurer under the terms of this Agreement or (iv) any change in the (a) the Declared Price of Land for the Projector (b) the cost of implementation of the resettlement and rehabilitation package of the land for the project mentioned in the RFP or (d) the cost of implementing Environmental Management Plan for the Power Station mentioned in the RFP ;OR (d) the cost of implementing compensatory afforestation for the Coal Mine, indicated under the RFP and the PPA;

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

Provided that if Government of India does not extend the income tax holiday for power generation projects under Section 80 IA of the Income Tax Act, upto the Scheduled Commercial Date of the Power Station, such non-extension shall be deemed to be a "Change in Law".

13.1.2 "Competent Court" means:

The Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to the Project.

13.2 Application and Principles for computing impact of Change in Law

While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.

(a) Construction Period

xxxxxxx

(b) Operation Period

As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Appropriate Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law

Provided that the above mentioned compensation shall be payable only if and for increase/decrease in revenues or cost to the Seller is in excess of an amount equivalent to 1 % of Letter of Credit it in aggregate for a Contract Year."

The terms “Law” has been defined in the PPA as under:

“Law” means in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the Appropriate Commission”.

The “Indian Governmental Instrumentality” has been defined in the PPA as under:

“Indian Governmental Instrumentality” means the GOI, Government of India, Government of States where the Procurers and Project are located and any ministry or department of or board, agency or other regulatory or quasi-judicial authority controlled by GOI or Government of States where the Procurers and Project are located and includes the Appropriate Commission”.

Thus, the expenditure incurred in terms of Article 13.1.1 (i) to (iii) if they have resulted in any change in any cost or revenue from the business of selling electricity and the expenditure incurred in terms of Article 13.1.1 (iv) shall be admissible under Change in Law.

17. The events broadly covered under Change in Law are the following:

- (a) Any enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law, or
- (b) Any change in interpretation of any Law by a Competent Court of law, Tribunal or Indian Governmental Instrumentality acting as final authority under law for such interpretation, or
- (c) Any change in any consents or approvals or licences available or obtained for the project, otherwise than the default of the seller.

- (d) Such changes (as mentioned in (a) to (c) above) result in any change in any cost of or revenue from the business of selling electricity by the Seller to the Procurer under the Agreement.
- (e) The purpose of compensating the Party affected by Change in Law is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such “Change in Law” has not occurred.
- (f) The adjustment in monthly tariff payment shall be effective from the date of (i) adoption, promulgation, amendment, re-enactment or repeal of the law or change in law or (ii) the date of order/judgment of the Competent Court or Tribunal or Indian Government Instrumentality if the Change in Law is on account of change in interpretation of Law.
- (g) The compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Central Commission.
- (h) The compensation shall be payable only if and for increase/decrease in revenues or cost to the Petitioner is in excess of an amount equivalent to 1% of Letter of Credit in aggregate for a Contract Year.

Issue No. 3: Whether compensation claims are admissible under Change in Law?

18. The Petitioner has raised claims under Change in Law in respect of four events, namely, Levy of Swachh Bharat Cess, Levy of Krishi Kalyan Cess, levy of service tax on transportation of goods by a vessel from a place outside India to the first custom station of

landing in India and mandate under Companies Act, 2013 to spend two per cent of net profit towards CSR activities. Keeping in view the broad principles discussed above, we proceed to deal with the claims of the petitioner under Change in Law during the Operating Period:

A. Levy of Service tax on transportation of goods by a vessel from a place outside India to the first custom station of landing in India.

19. The Petitioner has submitted that as on the cut-off date, there was no service tax payable on the transportation of goods by a vessel from a place outside India to the first custom station of landing in India as the same was exempted under Section 66 (D)(ii) of the Finance Act, 1994 which was repealed by Finance Act, 2016 to the extent it provided the service of transportation of goods by 'an aircraft or a vessel from a place outside India to the first customs station of landing in India from payment of service tax. Further, Ministry of Finance, Government of India vide its Notification No. 9/2016 dated 1.6.2016 amended the negative list by exempting the transportation of goods by an aircraft from payment of Service Tax. However, the said Section is not applicable to transportation of goods by a vessel, thereby making it liable to service tax. As a result, ocean freight for import consignments upto Indian sea port has become taxable, from 1.6.2016 while air freight for import consignments continue to be exempted.

20. The Petitioner has submitted that Ministry of Finance, Government of India vide its Notification No. 8/2015 dated 1.3.2015 read with Notification No. 8/2014 dated 11.7.2014 and Notification No 26/2012 dated 20.6.2012, imposed the service tax at the rate of 4.5% inclusive of Swachh Bharat Cess and Krishi Kalyan Cess (with abatement of 70%) on the

service component in case goods are transported by a vessel from a place outside India to custom station in India. The Petitioner has submitted that levy of Service Tax on goods transported by a vessel from a place outside India to the custom station of clearance in India has increased the Petitioner's liability towards payment of Service Tax, which ultimately increases the cost of running/ operating Mundra UMPP. The Petitioner has submitted that the Swachh Bharat Cess and Krishi Kalyan Cess would be payable over and above the service tax payable on the transportation of goods on vessel.

21. GUVNL, Haryana Utilities, Rajasthan Utilities and PSPCL have submitted that the Notification No. 8/2015 as relied upon by the Petitioner does not reflect the rate of 4.5% upon the transport by vessel from a place outside India. The respondents have further submitted that the Petitioner may avail CENVAT credit in respect of the services availed. The respondents have further submitted that quantum of coal is to be considered as per the actual quantum or quantum as per bid assumed parameters for SHR, GCV and Auxiliary consumption.

22. The Petitioner in its rejoinder has submitted that the Government of India vide its Notification No. 26/2012 dated 20.6.2012 has exempted the taxable services by way of transportation of goods by a vessel in excess of 50% of the taxable value. Subsequently, vide Notification No. 8/2014 dated 11.7.2014, the Government of India exempted the taxable services by way of transportation of goods in a vessel in excess of 40% of the taxable value. Further, vide Notification No. 8/2015 dated 1.3.2015, the Government of India exempted the taxable services by way of transportation of goods in a vessel in excess of 30% of the taxable value only is chargeable. The Petitioner has submitted that the

Government of India, vide Notification No. 9/2016 introduced Service Tax on Transportation of imported goods with effect from 1.6.2016 and the applicable rate of service tax as on 1.6.2016 was 15% inclusive of Swachh Bharat Cess and Krishi Kalyan Cess i.e. (14% of Service Tax + 0.5 % each of Swachh Bharat Cess and Krishi Kalyan Cess). Since, the service tax on transportation of good in a vessel is chargeable only to the extent of 30%, the applicable rate of service tax on transportation of goods from a vessel would come to 4.5% i.e. 30% of the rate of 15% inclusive of corresponding Swachh Bharat Cess and Krishi Kalyan Cess. i.e. Service tax at the rate of 4.20% and Swachh Bharat Cess and Krishi Kalyan Cess at the rate of 0.15% each. The Petitioner has submitted that its claim towards service tax on transportation of imported goods is based on actual invoicing amount and the actual tax paid which has impact on the Petitioner's cost and revenue. The Petitioner has submitted that it is not entitled to CENVAT credit as the output i.e. electricity is not subject to CENVAT.

23. We have considered the submissions of the parties. The Petitioner has submitted that Mundra UMPP was awarded as an imported coal based project where the coal is shipped from outside India. As on cut-off date, i.e 30.11.2006, no service tax was payable on transportation of goods by a vessel from a place outside India to the custom station landing in India. Subsequently, Government of India, Ministry of Finance vide Finance Act, 2012 through Section 66 D (p) (ii) exempted transportation of goods 'by an aircraft or a vessel from a place outside India to the first customs station of landing in India from payment of service tax. Relevant portion of the Finance Act, 2012 is extracted as under:

“66B. Charge of service tax on and after Finance Act, 2012: There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all

services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

66D. Negative list of services: The negative list shall comprise of the following services, namely:

(a) to (o) *****

(p) Service by way of transportation of goods-

(ii) by an aircraft or a vessel from a place outside India to the first customs station of landing in India.”

24. Subsequently, Ministry of Finance, Government of India vide its Notification No. 25/2012 dated 20.6.2012 exempted the services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India from the service tax in excess of 50% of the taxable value. Ministry of Finance, Department of Revenue vide its Notification No. 9/2016 dated 1.3.2016 by amending the said notification and the negative list therein, exempted the transportation of goods by an aircraft from payment of Service Tax . Relevant portion of the said Notification is extracted as under:

“53.....Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India”.

From the above amendment, it appears that transportation of goods by an aircraft is exempted from the service tax. However, service tax on transportation of goods by vessel is applicable. The Government of India vide its Notification No. 26/2012 dated 20.6.2012 exempted the taxable services by way of transportation of goods by a vessel in excess of 50% of the taxable value. Subsequently, vide Notification No. 8/2014 dated 11.7.2014, the Government of India exempted the taxable services by way of transportation of goods in a vessel in excess of 50% to 40% of the taxable value. Further, vide Notification No. 8/2015 dated 1.3.2015, the Government of India exempted the taxable services by way of transportation of goods in a vessel in excess of 30% of the taxable value. The Government

of India, vide Notification No. 9/2016 introduced Service Tax on Transportation of imported goods with effect from 1.6.2016 and the applicable rate of service tax as on 1.6.2016 was 15% inclusive of Swachh Bharat Cess and Krishi Kalyan Cess i.e. (14% of Service Tax + 0.5 % each of Swachh Bharat Cess and Krishi Kalyan Cess). Since, the service tax on transportation of good in a vessel is chargeable only to the extent of 30%, the applicable rate of service tax on transportation of goods from a vessel would come to 4.5% i.e. 30% of the rate of 15% inclusive of corresponding Swachh Bharat Cess and Krishi Kalyan Cess. i.e. Service tax at the rate of 4.20% and Swachh Bharat Cess and Krishi Kalyan Cess at the rate of 0.15% each. As per the said Notification Nos. 26/2012, 8/2014 and 8/2015, the said rate of Service Tax is applicable only subject to this condition that the CENVAT credits on inputs, capital goods and input services, used for providing the taxable service, has not been availed by the petitioner under the provisions of the CENVAT Credit Rules, 2004.

25. In view of the above, said notifications levying the service tax on goods transported by a vessel from a place outside India to the custom station of clearance on India qualifies as change in law under Article 13.1.1(i) of the PPA. Accordingly, the same is admissible.

26. The Government of India Notification Nos. 26/2012, 8/2014 and 8/2015 provides that the abatement of service tax is applicable only to the condition that CENVAT credits on inputs, capital goods and input services, used for providing taxable service has not been taken. Therefore, the service tax @ 4.5% is applicable only when the CENVAT credit has not been availed. Since, the Petitioner has not availed CENVAT credit, it is entitled to

service tax paid on the transportation of coal by a vessel from a place outside India to the first Custom station of landing in India.

27. It is clarified that the Petitioner shall be entitled to recover on account of service tax on transportation of goods by a vessel from a place outside India to the first Customs Station of landing in India required in proportion to the actual coal consumed corresponding to the scheduled generation for supply of electricity to the Procurers. If actual generation is less than the scheduled generation, the coal consumed for actual generation shall be considered for the purpose of computation of impact of service tax on transportation of goods by a vessel from a place outside India to the first Customs Station of landing in India. The Petitioner and Procurers are directed to carry out reconciliation on account of these claims annually.

B. Levy of Swachh Bharat Cess

28. The Petitioner has submitted that as on the cut-off date, there was no levy of Swachh Bharat Cess on service tax on all or any of the taxable services. However, subsequently, Government of India through Finance Act, 2015 provided for levying Swachh Bharat Cess at the rate of 2% as Service Tax on all or any of the taxable services. Accordingly, Ministry of Finance, Government of India vide its Notification dated 6.11.2015 has levied Swachh Bharat Cess @ 0.5%. The Petitioner vide its affidavit dated 10.10.2017 has worked out the impact on account of Swachh Bharat Cess to be Rs. 3.13 crore during the year 2016-17. The Petitioner has submitted that the Commission has already allowed imposition of Swachh Bharat Cess as change in law event vide order dated

1.2.2017 in Petition No. 8/MP/2014, order dated 6.2.2017 in Petition No. 156/MP/2014 and order dated 7.4.2017 in Petition No. 112/MP/2015.

29. The respondents i.e. GUVNL, Haryana Utilities, Rajasthan Utilities, PSPCL have submitted that the Petitioner has not demonstrated the link between the cess and income/ expenditure of the Petitioner. The respondents have further submitted that although the Petitioner is claiming that the imposition of Swachh Bharat Cess has increased the service tax but the Petitioner has not identified the taxable services in respect of which cess is payable. The respondents have submitted that in the orders relied upon by the Petitioner, the Commission had allowed the Swachh Bharat Cess on Service tax on transportation of coal whereas in the present petition, the Petitioner has not specified the services under which the cess is being paid by the Petitioner. The respondents have submitted that since, the Petitioner has already claimed the Swachh Bharat Cess in the Service Tax on transportation @ 4.5%, it cannot be allowed separately as it would amount to the double counting.

30. MSEDCL has submitted that the Petitioner has not assessed the financial impact on account of levy of Swachh Bharat Cess. MSEDCL has further submitted that the PPA provides that the compensation under the change in law will be applicable only if it is in excess of 1% of the Letter of Credit in aggregate for a contract year. MSEDCL has submitted that the Commission may carry out prudent check on each components submitted by the Petitioner for the purpose of seeking compensation under change in law.

31. The Petitioner in its rejoinder has submitted that since Swachh Bharat Cess has been levied after the cut-off date, it qualifies as a change in law event under Article 13 of

the PPA. The Petitioner has further submitted that it avails various services in the course of its business of generation and selling of electricity for which it is required to pay Swachh Bharat Cess to the extent of Rs 3.13 crore during 2016-17. The Petitioner has submitted that there is no dual counting of Swachh Bharat Cess on the part of the Petitioner as the Petitioner's claim with regard to Swachh Bharat Cess is with respect to service tax on transportation of imported goods as well as with respect to the other taxable services.

32. The Petitioner, vide Record of Proceedings for the hearing dated 20.12.2017, was directed to submit the information with regard to the services in which Swachh Bharat Cess has been imposed. The Petitioner vide its affidavit dated 8.1.2018 has furnished the list of services availed by the Petitioner on which Krishi Kalyan Cess and Swachh Bharat Cess have been imposed during Financial year 2015-16 and 2016-17 as under:

S. No.	Relevant clause of Service Tax under which taxable	Brief description of Services
1.	Transportation of goods by a vessel from a place outside India to the first customs landing station in India	Ocean Freight on coal received at Mundra
2.	Air Travel Agent-Services on Air Ticket Booking	Services on Air Ticket booking
3.	Banking & Other Financial Services	Financial Services Charges
4.	Business-Auxiliary Services	AC maintenance charges
		AMC of Civil Works Plant Area
		Calibration and stamping of weighing machine
		Certification of Boiler Furnace Cradle
		Repair charges of alternator
		Maintenance of chimney elevator
		Servicing and recharging of Dozer Alternator
		Repairing of ESP Dust Analyzer, SMPS
		Charges for disposal of Hazardous Waste
		Hiring Charges of heavy Equipment
		Lead Acid battery repair
		Repair Man lifter Starter

		Charges for Miscellaneous Electrical Work
		Rewinding of AC Motors
		Online sealing works
		Software upgradation of PGCIL's ABT meter
		Preventive Maintenance of the fire tender
		Repair of KVM switch
		Repairing of battery charger f/b card
		Repairing & Service of Rolling Shutter
		Repairing of compressor controller
		Service Charges of instrument
		Rolling Shutter Repairing & Service
		Security Layout
		Impeller balancing of water service water pump, sludge pump etc.
		Service Charges of lab instruments, vacuum pump, oven blower and vibrating disc.
		Repairing of SO2 Analyzer cards
5.	Business Support Service	Housekeeping and O&M
		Housekeeping Services-plant area
		Housekeeping, pantry, catering services at field hostel-plant
		Catering Services-officer canteen, Worker canteen
		Repairing of slurry pump
		Maintenance of TG & Aux
		ESP Card repair Services
		Monitoring & reporting on environment & social requirements
		Catering and Housekeeping Services at GH
		AMC Job for BTG
6.	Cost Accountant	Cost Audit Services (Report) as mandated under Companies Act
7.	Courier Services	Courier Services
8.	Credit Rating Agency	Rating Services from CRISIL
9.	Dredging Services	Dredging Services
10.	Erection, Commissioning or installation	Electrical Services for panel installation
		Removal and reinstallation of gear
		Service and installation of AC
11.	General Insurance	Plant Insurance
		Employee Health Insurance
12.	Legal Consultancy Services	Legal Fees
		Legal Services
		Consultancy & Legal Services

13.	Government Services	Deployment of CISF Personnel at Plant
14.	Management Consultancy - Director	Sitting allowance to non-executive directors
15.	Management Consultant	Expert services for U50 Overhaul
		Expert services of CEP & Booster
		EDS analysis
		TRA Fees
16.	Manpower Recruitment Agency or Supply	Services for main lift operator
		Nursing Services at Medical center at the plant & colony
		Company Guest House management services
17.	Medical Services	Medical Services for annual health check up
18.	Port Service	Fixed Port Handling Charges
		Permission Charges on usage of Intake Channel
19.	Rent-a-Cab Operator	Hiring of School Bus for Employees children
		Bus Services for employees from colony to plant
		Bus hiring for various Departments
20.	Renting of Immovable property	O&M charges – Intake Channel
21.	Technical Testing & Analysis Agency	Coal analysis charges
		Coal stock yard sampling & analysis
		Drinking water sampling and analysis
22.	Telecommunication Services	Telecommunication Services received from BSNL, Tata Tele, Vodafone, WRLDC
23.	Transport of goods by road	Hiring utility vehicle for material transportation
		Transportation Charges on LDO, various equipment sent for repairing
24.	Transport of Passengers by Air [Other than economy class]	Standby Charge for Air Ambulance provider for Mundra Employees

33. We have considered the submissions of the Petitioner and Respondents. Swachh Bharat Cess has been imposed by an Act “Parliament” on the taxable services at the rate of 0.5%. Section 119 (2) and (3) of the Finance Act, 2015 provides as under:-

“119 (2). There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Swachh Bharat Cess, as service tax on all or any of the taxable services at the rate of two per cent, on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

119 (3). The Swachh Bharat Cess leviable under sub-Section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.”

Therefore, Swachh Bharat Cess @ 2% is a service tax leviable on taxable service and has been introduced through the Act of Parliament and hence is covered under change in law. The Commission has already allowed Swachh Bharat Cess as change in law events vide order dated 1.2.2017 in Petition No. 8/MP/2014, order dated 6.2.2017 in Petition No. 156/MP/2014 and order dated 7.4.2017 in Petition No. 112/MP/2015. The Commission had directed the Petitioner to submit the taxable service on which Swachh Bharat Cess has been levied. The Petitioner has given list of 24 taxable services as extracted in Para 32 of this order. We have examined the taxable service and find that only 4 services at Sr. No. 1, 18, 21 and 23 are directly related to the input cost for generation and sale of power by the Petitioner to the procurer. Accordingly, Swachh Bharat Cess at the rate of 0.5% is allowed on the following services:-

- (a) Transportation of goods by a vessel from a place outside India to the first customs landing station in India- Ocean Freight on coal received at Mundra.
- (b) Port Service- Fixed Port Handling charges and Permission Charges on usage of intake channel.
- (c) Technical Testing & Analysis Agency- Coal analysis charges and coal stock yard sampling & analysis and Drinking Water sampling and analysis.
- (d) Transport of goods by road- Hiring utility vehicle for material transportation and transportation charges on LDO, various equipment sent for repairing.

The Petitioner shall submit the Audited Certificate as regard to actual payment of Swachh Bharat Cess to the Procurers while claiming the same under Change in Law.

C. Krishi Kalyan Cess

34. The Petitioner has submitted that as on the cut-off date, there was no levy of Krishi Kalyan Cess and it came into existence through the Finance Act, 2016 with effect from 1.6.2016 at the rate of 0.5% as service tax on all or any of the taxable services. The Petitioner has further submitted that as per Article 13.1.1(i) read with the definition of 'Law', promulgation, amendment, modification or repeal, of any statutes, notifications, ordinance, rules, regulations, codes etc. falls within the scope of 'Change in Law'. Therefore, promulgation of Finance Act, 2016 falls within the provisions of Change in Law in terms of the provisions of the PPA. The Petitioner submitted that levy of Krishi Kalyan Cess has increased the petitioner's liability towards payment of service tax, which ultimately increases the cost of business of selling electricity and therefore, it is admissible as a change in law event under Article 13 of the PPA.

35. The respondents i.e. GUVNL, Haryana Utilities, Rajasthan Utilities, PSPCL have submitted that the Petitioner has not identified the services in respect of which Krishi Kalyan Cess is being paid by it. The respondents have further submitted that since, the Petitioner has already considered the cess in the service tax on transportation @ 4.5%, there cannot be any double counting.

36. MSEDCL has submitted that the Petitioner has not assessed the financial impact on account of levy of Krishi Kalyan Cess. The PPA provides that the compensation under the change in law will be applicable only if it is in excess of 1% of the Letter of Credit in

aggregate for a contract year. The Commission may carry out prudence check on each components submitted by the Petitioner for the purpose of seeking compensation under change in law.

37. The Petitioner in its rejoinder has submitted that Krishi Kalyan Cess has been levied after the cut-off date and therefore, it qualifies as a change in law event under Article 13 of the PPA. The Petitioner has submitted that it avails various services in the course of its business of generation and selling of electricity and therefore, the Petitioner is required to pay Krishi Kalyan Cess on the services availed to the extent of Rs. 2.48 crore during 2016-17. The Petitioner has further submitted there is no dual counting of Krishi Kalyan Cess on its part as its claim with regard to Krishi Kalyan Cess is with respect to service tax on transportation of imported goods as well as with respect to the other taxable services.

38. The Petitioner, vide Record of Proceedings for the hearing dated 20.12.2017, was directed to submit the information with regard to the services in which Swachh Bharat Cess has been imposed. The Petitioner vide its affidavit dated 8.1.2018 has furnished the list of services availed by the Petitioner on which Krishi Kalyan Cess have been imposed during Financial year 2015-16 and 2016-17 which has been enumerated in para 32 above.

39. We have considered the submissions of the Petitioner and Respondents. Krishi Kalyan Cess has been imposed by an Act "Parliament" on the taxable services at the rate of 0.5%. Section 161 (2) and (3) of the Finance Act, 2016 provides as under:-

"161 (2). There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Krishi Kalyan Cess, as service tax on all or any of the taxable services at the rate of 0.5 per cent, on the value of such services for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.

162 (3). The Krishi Kalyan Cess leviable under sub-Section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.”

Therefore, Krishi Kalyan Cess @ 0.5% is a service tax on taxable service and has been introduced through an Act of Parliament and is therefore covered under change in law. The Commission has already allowed Krishi Kalyan Cess as change in law events vide order dated 1.2.2017 in Petition No. 8/MP/2014, order dated 6.2.2017 in Petition No. 156/MP/2014 and order dated 7.4.2017 in Petition No. 112/MP/2015. The Commission had directed the Petitioner to submit the taxable service on which Krishi Kalyan Cess has been levied. The Petitioner has given list of 24 taxable services as extracted in Para 32 of this order. We have examined the taxable service and find that only 4 services at Sr. No. 1, 18, 21 and 23 are directly related to the input cost for generation and sale of power by the Petitioner to the procurer. Accordingly, Krishi Kalyan Cess at the rate of 0.5% is allowed on the following services:-

- (a) Transportation of goods by a vessel from a place outside India to the first customs landing station in India- Ocean Freight on coal received at Mundra.
- (b) Port Service- Fixed Port Handling charges and Permission Charges on usage of intake channel.
- (c) Technical Testing & Analysis Agency- Coal analysis charges and coal stock yard sampling & analysis and Drinking Water sampling and analysis.
- (d) Transport of goods by road- Hiring utility vehicle for material transportation and transportation charges on LDO, various equipment sent for repairing.

The Petitioner shall submit the Audited Certificate as regard to actual payment of Krishi Kalyan Cess to the Procurers while claiming the same under Change in Law.

D. Mandate of Corporate Social Responsibility

40. The Petitioner has submitted that on 27.2.2014, the Ministry of Corporate Affairs, Government of India notified that the provisions of Section 135 and Schedule VII of the Companies Act, 2013 shall come into force on 1.4.2014 and on the same date, the Ministry of Corporate Affairs also notified the Companies (Corporate Social Responsibility) Rules, 2014. As per Section 135 of the Companies Act, 2013 every company having a net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more or a net profit of Rs. 5 crore or more is required to spend a minimum of 2% of the average net profit of the company made during the three immediately preceding financial years towards the CSR Policy. The Petitioner has submitted that as on the cut-off date, there was no requirement of mandatorily spending of two per cent of net profit towards Corporate Social Responsibility (CSR) activities. Subsequently, the Parliament enacted the Companies Act, 2013 and rules relating to mandatory spending towards CSR activities were brought into force with effect from 1.4.2014. The Petitioner has submitted that for the FYs 2014-15, 2015-16 and 2016-17, it has not incurred any expenditure towards the CSR activities under the Companies Act, 2013.

41. The Respondents, GUVNL, Haryana Utilities, Rajasthan Utilities, PSPCL and MSEDCL has submitted that CSR expenses are meant for the welfare of general public by providing education, health camps and other social activities, etc. These expenses are meant for the public at large which cannot be passed upon the consumers. The

respondents have submitted that the Appellate Tribunal in its judgments dated 2.6.2016, 28.11.2013 and 21.7.2016 in Noida Power Company Limited versus Uttar Pradesh Electricity Regulatory Commission, Tata Power Company Limited versus Maharashtra Electricity Regulatory Commission and Gujarat Energy Transmission Corporation Limited versus Gujarat Electricity Regulatory Commission, respectively has rejected to allow CSR as a change in law event. The respondents have further submitted that Commission vide orders dated 17.2.2017 and 17.3.2017 in Petition Nos. 16/MP/2016 and 157/MP/2015 respectively has also rejected the Corporate Social Responsibility in the context of Environment Clearance.

42. The respondents have submitted that every law cannot be considered as change in law under Article 13 of the PPA. Article 13 covers only those laws which results in any change in cost of or revenue from the business of selling electricity by the sellers to the procurers. In support of its contention, the respondents have relied upon the judgment of the Appellate Tribunal dated 19.4.2017 in Appeal No 161 of 2015. The respondents have submitted that expenses incurred towards CSR activities are an application of profit and therefore, it has no relation whatsoever with the revenue or cost of the business of selling electricity and cannot be considered as change in law event under Article 13 of the PPA.

43. The Petitioner in its rejoinder has submitted that as per prudent accounting principles, any CSR expenditure incurred is expense (before arriving at net profits) in the books of accounts of the company. It is cost of the business and is charged to the profit and loss accounts of the company. Therefore, expenditure towards CSR activities affects the

cost of business of selling electricity and is a change in law event under Article 13 of the PPA.

44. We have considered the submissions of the Petitioner and the respondents. Section 135 of the Companies Act, 2013 provides as under:

“135. Corporate Social Responsibility— (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation. For the purposes of this section-average net profit shall be calculated in accordance with the provisions of section 198.”

As per the above provision, any company with a net worth of Rupees five hundred crore or more or turnover of Rupees one thousand crore or more or net profit of Rupees five crore or more is required to constitute a Social Corporate Responsibility Committee of the Board consisting of three directors to formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII. As per sub-section (5) of Section 135 of the Companies Act, 2013, the Board of the Company shall ensure that the Company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

45. As per the above provision, the company is required to spend, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy. The obligation under Section 135 of the Companies Act, 2013 is on the net profit of the company. This obligation does not effect in any manner, the cost or revenue from the business of selling electricity.

46. A similar issue has been considered by the Commission in its order dated 17.2.2017 in Petition No. 16/MP/2016 where in the Commission has not considered expenditure incurred towards CSR on environment clearance under change in law. The relevant portion of the said order is extracted as under:

“27....Thus corporate social responsibility also includes expenditure on ensuring environmental sustainability, ecological balance and conservation of natural resources and maintaining quality of soil, air and water. MoEF has prescribed that the CSR cost should be

Rs. 5 per Tonne of Coal produced which should be adjusted as per annual inflation. As per sub-section (5) of section 135 of the Companies Act, 2013, the Board of the Company shall ensure that the Company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. Therefore, the Corporate Social Responsibility Committee of the Petitioner's company should consider and include the expenditure on account of condition (xxiii) of the environmental clearance in the Corporate Social Responsibility Policy of the company and meet the expenditure out of the net profits of the company. In our view, this expenditure cannot be allowed under Change in Law as the environment clearance has specifically classified as CSR cost for which provisions have been made in the Companies Act, 2013 to be met out of the net profit of the company."

In our view, the expenses towards CSR activities are in the nature of the fulfillment of statutory duty by the Petitioner out of the profit of the company as per the provisions of the Companies Act, 2013. If such expenses are passed on to the consumers, it would defeat the provisions of the Companies Act, 2013 as the expenditure would be met by the consumers and not by the Company out of its profit. Therefore, the claim of the Petitioner for relief under change in law on account of imposition of Mandate of Corporate Social Responsibility is not admissible and accordingly disallowed.

Carrying Cost

47. The Petitioner has submitted that the intent of having change in law clause under the PPA is to restore the affected party to the same economic position as if change in law event has not taken place. The Petitioner has prayed for recovery of compensation for both past period and future period along with the carrying cost. GUVNL has submitted that the Petitioner is not entitled to any carrying cost as the same has been rejected by the Commission vide order dated 17.3.2017 in Petition No. 157/MP/2015. Similar submissions have been made by the other procurers, namely PSPCL and the Discoms of Haryana (UHBVNL and DHBVNL). In our view, there is no provision in the PPA to allow carrying cost on the amount covered under change in law till its determination by the Commission.

The issue has been decided in order dated 16.2.2017 in Review Petition No. 1/RP/2016 in Petition No. 402/MP/2015. Accordingly, the claim of the Petitioner is rejected.

The mechanism for compensation on account of Change in Law during the operation period.

48. The Petitioner has submitted that the compensation is payable only if the impact of all incidences of change in law increase/decrease the revenue /cost of the project and such resultant change in revenue/cost is in excess of an amount equivalent to 1% of the Letter of Credit in aggregate for a contract year. The Petitioner has submitted that the compensation for Change in Law events would be in excess of an amount equivalent to 1% of Letter of Credit in aggregate for each contract year.

49. Article 13.2 (b) of the PPA provides for the principle for commuting the impact of “Change in Law” during the operation period as under:

"Operation Period

As a result of “Change in Law”, the compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Appropriate Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above mentioned compensation shall be payable only if and for increase/decrease in revenues or cost to the Seller is in excess of an amount equivalent to 1% of Letter of Credit in aggregate for a Contract Year."

50. The above provision enjoins on the Commission to decide the effective date from which the compensation for increase/decrease in revenues or cost shall be admissible to the Petitioner. Moreover, the compensation shall be payable only if the increase/decrease in revenues or cost to the seller in excess of an amount equivalent to 1% of the letter of credit in aggregate for contract year. The Commission has specified a mechanism considering the fact that compensation of change in law shall be paid in subsequent

contract years also. Accordingly, the following mechanism is prescribed to be adopted for payment of compensation due to change in law events allowed as per Article 13.4.2 of the PPA in the subsequent years of contracted period:

(a) Monthly change in law compensation payment shall be effective from the date of commencement of supply of electricity to the respondents or from the date of Change in Law, whichever is later.

(b) The increase in Service Tax on transportation of goods by a vessel from a place outside India to the first custom station of landing in India shall be computed based on actual payment subject to ceiling of coal consumed corresponding to scheduled generation and shall be payable by the beneficiaries pro-rata based on their respective share in the scheduled generation. In case of reduction of Service Tax on transportation of goods by a vessel from a place outside India, the Petitioner shall compensate the procurers on the basis of above principle. If actual generation is less than scheduled generation then compensation payable shall be computed based on actual payment subject to ceiling of coal consumed corresponding to actual generation.

(c) At the end of the year, the petitioner shall reconcile the actual payment made towards change in law with the books of accounts duly audited and certified by statutory auditor and adjustment shall be made based on the energy scheduled by the Procurers during the year. The reconciliation statement duly certified by Auditor shall be retained by the Petitioner so that the same could be produced on demand from Procurers/ beneficiaries, if so desired.

(d) For Change in Law items related to the operating period, the year-wise compensation henceforth shall be payable only if such increase in revenue or cost to the petitioner is in excess of an amount equivalent to 1% of LC in aggregate for a contract year as per provision under Article 13.2(b) of the PPA.

(e) To approach the Commission every year for computation and allowance of compensation for such change in law event which has been determined in this order, is a time consuming process which results in time lag between the amount paid by Seller and actual reimbursement by the Procurers. Accordingly, the mechanism prescribed above is to be adopted for payment of compensation due to change in law events allowed as per Article 13.2 (b) of the PPA for the subsequent period as well.

(f) The change in law events which have reduced the cost of CGPL during financial years, 2015-16 and 2016-17 as furnished by the petitioner vide affidavit dated 10.10.2017 and 26.10.2017 shall be adjusted against the increase in the cost due to change in law events which have been allowed by the Commission.

51. The Commission has not made computation of the threshold value based on the claims for Change in Law allowed in this order. The Petitioner shall calculate the threshold value as per Article 13.2 (b) of the PPA and if the impact due to Change in Law exceeds the threshold value, the Petitioner shall be entitled to raise the supplementary bills as per the PPA.

Summary

52. Based on the above analysis and decisions, the summary of our decision under the Change in Law during the operating period of the project is as under:

Change in Law Event	Decision
Levy of service tax on transportation of goods by a vessel from a place outside India to the first custom station of landing in India	Allowed
Levy of Swachh Bharat Cess	Allowed on services at Sr. No. 1, 18, 21 and 23 of para 32 of this order
Levy of Krishi Kalyan Cess	
Mandate under Companies Act, 2013 to spent 2% of the net profit towards CSR activities	Not Allowed

53. Petition No. 121/MP/2017 is disposed of in terms of the above.

sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member