

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 610/MP/2020**

**Coram:**

**Shri P.K.Pujari, Chairperson**

**Shri Arun Goyal, Member**

**Shri P.K.Singh, Member**

**Date of Order: 28<sup>th</sup> October, 2021**

**In the matter of**

Petition under Section 63 and Sections 79(1)(c) and (d) of the Electricity Act, 2003 read with Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for relief under Force Majeure, (Article 11) and Change in Law, (Article 12) of the Transmission Service Agreement dated 19.11.2014, for Transmission System Strengthening associated with Vindhyachal-V.

**And**

**In the matter of**

Powergrid Jabalpur Transmission Limited,  
(Formerly known as Vindhyachal-Jabalpur Transmission Limited),  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi-110016

**...Petitioner**

Vs

1. Maharashtra State Electricity Distribution Company Limited,  
Prakashgad, 4<sup>th</sup>Floor, Bandra (East),  
Mumbai-400051
2. M.P. Power Management Company Limited,  
Block No-11, Ground Floor, Shakti Bhawan,  
Vidhyut Nagar, Rampur,  
Jabalpur-482008, Madhya Pradesh
3. Gujarat Urja Vikas Nigam Limited,  
Vidhyut Bhawan, Race Course,  
Vadodara-390007
4. Chhattisgarh State Power State Distribution Company Limited,  
P.O Sunder Nagar, Dangania,  
Raipur- 492013, Chhattisgarh.
5. Goa Electricity Department,  
Government of Goa, Curti-Ponda,  
Goa- 403401.

6. Electricity Department, Dadar and Nagar Haveli,  
Administration of Dadar Nagar Haveli, 66 kV, Amla Road,  
Silvassa-396 230.

7. Electricity Department, Administration of Daman & Diu,  
Plot No. 35, OIDC Complex, Near Fire Station, Somnath,  
Daman-396 210.

8. Chief Engineer (PSPM),  
Central Electricity Authority,  
PSPM Division, Sewa Bhawan, Rama Krishna Puram,  
New Delhi-110 066

9. Chief Operating Officer,  
Central Transmission Utility of India Limited,  
Saudamini, Plot No.2, Sector-29,  
Gurgaon-122001

...Respondents

**The following were present:**

Shri M. G. Ramachandran, Sr. Advocate, PJTL  
Shri Shubham Arya, Advocate, PJTL  
Ms. Ranjitha Ramachandran, Advocate, PJTL  
Shri Ravi Prakash, Advocate, MSEDCL  
Ms. Prerna Gandhi, Advocate, MSEDCL  
Shri Rahul Sinha, Advocate, MSEDCL  
Shri V. C. Sekhar, PJTL  
Shri Burra Vamsi Rama Mohan, PJTL  
Shri Prashant Kumar, PJTL  
Shri Arjun Malhotra, PJTL  
Shri Amit Bhargava, PJTL  
Shri Mani Kumar, PJTL

**ORDER**

The present Petition has been filed by the Petitioner, Powergrid Jabalpur Transmission Limited (PJTL), erstwhile called Vindhyaachal Jabalpur Transmission Limited, under Sections 63, 79(1)(c) and 79(1)(d) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking time extension over and above 180 days granted by the Long Term Transmission Customers ('the LTTCs') under Article 11 of the Transmission Service Agreement dated 19.11.2014 (in short 'TSA') and compensatory relief under Article 12 of the TSA on account of Change in Law events,

which has adversely affected the construction of the 'Transmission System Strengthening associated Vindhyachal-V' (in short, 'the Project'). The Petitioner has made the following prayers:

*“(i) Admit and entertain the present Petition under Section 63 read with Section 79 (1) (c) and (d) of the Electricity Act, 2003 for declaration of the Project being affected by Force Majeure events and Change in Law events and for providing relief under Article 11 and Article 12.2 respectively of Transmission Service Agreement dated 19.11.2014 as set out hereinabove;*

*(ii) Declare that the Petitioner is entitled for time extension of balance 9 days over and above the extension of 180 days granted by Respondents-LTTCs on account of Force Majeure conditions.*

*(iii) Declare that the Petitioner shall be entitled to get the increase in cost of project amounting to Rs. 76.64 Cr. during execution and completion of the transmission project.*

*(iv) Declare that the Petitioner shall be entitled to increase in adopted annual non-escalable charges by 6.38% on account increase in aforementioned cost of project due to Change in Law.*

*(v) To allow recovery of filing fees and legal expenses in regard to the present Petition...”*

2. The Petitioner is a fully owned subsidiary of Power Grid Corporation of India Limited (in short 'PGCIL'), which was selected as a successful bidder through the tariff based competitive bidding under Section 63 of the Act to establish the Project on Build, Own, Operate and Maintain (BOOM) basis. The Petitioner is required to provide transmission service to the LTTCs (arrayed as Respondents 1 to 7) of the Project which requires establishing the transmission system comprising of the following transmission line:

<b>Scheme / Transmission Works</b>	<b>Scheduled Commercial Operation Date (SCoD)</b>	<b>Actual Commercial Operation Date (CoD)</b>	<b>Difference in days</b>
765 kV D/C Vindhyachal - Jabalpur transmission line	25.6.2018	1.1.2019	189

3. The Petitioner was incorporated as a special purpose vehicle ('SPV') by Bid Process Coordinator (in short, 'BPC'), namely, REC Transmission Projects Company Limited (in short 'RECTPCL') for the purpose of developing and implementing the Project under the Tariff Based Competitive Bidding route. In the bid process conducted by RECTPCL, PGCIL participated and emerged as a successful bidder. Letter of Intent (LoI) was issued by RECTPCL to PGCIL on 10.2.2015. In accordance with the bidding documents, PGCIL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with RECTPCL on 26.2.2015. Under the TSA, Maharashtra State Electricity Distribution Company Limited (MSEDCL) has been appointed as the lead LTTC to represent all the LTTCs for discharging the rights and obligations specified therein. The Commission in its order dated 15.6.2015 in Petition No. 89/TL/2015 granted transmission licence to the Petitioner for inter-State transmission of electricity and vide order dated 28.5.2015 in Petition No.88/ADP/2015 adopted the transmission charges of the Petitioner.

4. As per the TSA, the Project was to be completed and commissioned by 25.6.2018. However, the Petitioner has claimed that implementation of the Project was affected due to various Force Majeure and Change in Law events encountered during construction of the Project and its elements and led to certain delay in achieving the Commercial Operation Date (in short 'COD').

#### **Submissions by the Petitioner**

5. The Petitioner has submitted that the matter of extension of Scheduled Commercial Operation Date (in short 'SCOD') owing to various Force Majeure events was taken up with LTTCs in accordance with Article 4.4.2 of the TSA and a Joint Coordination Meeting was held on 24.4.2020 between the Petitioner and the LTTCs

to discuss the extension of time for the Project. As an outcome of the said discussion and through minutes dated 15.6.2020, LTTCs informed the Petitioner that despite the Force Majeure events resulting in a delay in commissioning of Project by 189 days, the Clause 4.4.2 of TSA provides for extension for 180 days. LTTCs have, therefore, agreed to grant time extension of 180 days subject to approval of respective management of the distribution licensees and after assurance of the Petitioner that there will not be any additional tariff burden on LTTCs due to extension of SCOD. With regard to remaining 9 days, the LTTCs opined that the Petitioner may approach the Commission. Due to lockdown situations, it was agreed that presently assurance letter from the Petitioner would suffice for them to provide extension and that the execution of Supplementary Agreement shall be after restoration of normalcy. In view of request of LTTCs as per minutes of Joint Coordination Meeting, vide letters dated 24.6.2020 and 25.6.2020, the Petitioner furnished undertaking to the lead LTTC that no tariff burden shall be levied on any of the LTTCs pursuant to extension of COD owing to Force Majeure events and for remaining 9 days of delay, the matter shall be taken up with the Commission and Contract Performance Guarantee for equivalent amount for liquidated damages for 9 days shall be kept valid till the decision of the Commission. It was also categorically stated by the Petitioner in the aforesaid letter dated 24.6.2020 that the claim under Change in Law shall, however, be made in accordance with the provisions of the TSA.

6. The Petitioner has submitted the following details of delay that occurred due to force majeure events based on which extension of 9 days (over and above 180 days already allowed by the LTTCs) is being claimed:

Sr. No.	Force Majeure Event	Time Period	Delay with overlap (in days)	Delay without Overlap (in days)
1	Delay in Forest Clearance	22.08.2016 to 17.05.2018	633	633
2	Delay in assessment of land compensation in the State of Madhya Pradesh	12.05.2017 to 31.12.2018	598	37
3	Civil suits filed at Hon'ble High Court and District Courts of Madhya Pradesh – Order of status quo by Courts	13.03.2018 to 26.11.2018	258	2
4	Obstruction by local villagers and Dharna & Pradarshan	01.07.2017 to 24.11.2018	511	191
5	Delay due to Sanjay Dubri Tiger Reserve	02.08.2017 to 26.02.2018	208	0
6	Delay due to promulgation of Goods and Services Tax (GST) Act, 2017	01.07.2017 to 28.09.2017	89	0
<b>Total Impact</b>				<b>861</b>

7. The Petitioner has submitted that the following Change in Law events occurred during the implementation of the Project and a brief about them is provided in the subsequent paragraphs:

- (a) Increase in acquisition price of SPV;
- (b) Notification of Good and Service Tax Act, 2017 (in short 'GST Laws') by Government of India;
- (c) Notification of payment of land compensation for tower base as well as corridor of transmission line by Government of Madhya Pradesh; and
- (d) Cost Over-run on account of increase in the Project cost including funding cost and overhead cost.

8. As regards acquisition price of SPV, the Petitioner has submitted that prior to submission of bid by PGCIL, BPC vide its letter dated 21.11.2014 had intimated to the

bidders the acquisition price payable by the selected bidder for acquisition of 100% equity shareholding of the Petitioner company along with its related assets and liabilities as Rs.17,67,51,000/-. However, subsequent to bidding, BPC vide its letter dated 24.2.2015 informed the successful bidder about final acquisition price as Rs.17,90,56,575/-. This increase in acquisition price by Rs.23,05,575/- constitutes a Change in Law event covered under Article 12.1.1 of the TSA as it has occurred after seven days prior to the bid deadline.

9. The Petitioner has submitted that introduction of GST Laws by the Parliament after the cut-off date (7 days prior to the bid deadline) i.e. 05.01.2015 qualifies to be a Change in Law. The Petitioner has further submitted that the Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018, *inter-alia*, has already held that the introduction of GST and subsuming/ abolition of specific taxes and duties, etc. in the GST constitute Change in Law. The claim of the Petitioner on account of introduction of GST Laws is Rs.19.14 crore.

10. The Petitioner has submitted that the Government of Madhya Pradesh, vide its GO No. R/3283/2016/7/2A dated 11.05.2017 has separately notified payment of land compensation for tower base as well as for corridor of transmission line to the landowners. Since this notification of Government of Madhya Pradesh was issued after cut-off date i.e. 05.01.2015 (7 days prior to bid deadline), it qualifies as Change in Law event in terms of Article 12.1.1 of the TSA. The additional expenditure incurred and anticipated to be incurred by the Petitioner account on this is Rs.51.41 crore.

11. The Petitioner has submitted that in terms of Article 12.2 (Relief for Change in Law) of the TSA, the impact of Change in Law for the construction period is to be

given as an increase in the cost of the Project. The cost of the Project or the Project cost refers to and encompasses within its scope all costs in regard to the establishment of the Project incurred by the entity i.e. not only the hard cost of the capital assets (i.e. plant, machinery and equipment, etc.) installed in the Project but also the interest cost, finance charges during construction and other soft costs related to the establishment of the Project.

12. The Petitioner has submitted that as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short, 'the 2014 Tariff Regulations'), Interest During Construction (IDC), which essentially comprises of the interest payable on debt part, is allowed to be capitalized along with other hard costs. The total expenditure incurred in the Project including on account of time overrun is capitalized along with IDC as an additional cost. It has been submitted that for competitively bid transmission projects, increase in Project cost on account of Change in Law events need to be fully serviced, namely, the cost overrun in regard to increase in the Project cost on account of Change in Law and also funding cost during the construction period. The entire increase in the Project cost (100%) on account of capital expenditure incurred by the Petitioner on account of Change in Law as well as the funding and financing cost of such capital expenditure, in full, during the construction period need to be serviced by increased transmission charges payable over and above the quoted transmission tariff during the entire period of the TSA in order to compensate the Petitioner of the impact of Change in Law events. Therefore, the compensation/ relief should not be restricted to only the capital expenditure incurred but should also include funding and financing cost as well as the overheads.



13. As to the overhead cost, the Petitioner has entered into a Consultancy Agreement with Power Grid Corporation of India Limited to establish the Project with Consultancy Charges @ 5% + applicable taxes on the Project cost. In lieu of IEDC incurred as an overhead on the Project cost, the overheads have been claimed owing to the increase in the Project cost on account of Change in Law.

14. The Petitioner has summarized the increase in the cost of Project on account of Change in Law events along with funding cost and overhead cost as under:

(Rs. in crore)					
Sr. No.	Change in Law Event	Basic amount	Associated increase in funding costs	Associated increase in overhead costs	Increase in project cost on account of Change in Law
1	Increase in acquisition price by BPC	0.23	0.11	0.01	0.35
2	Notification of GST laws by Government of India	19.14	0.75	1.13	21.03
3	Notification of payment of land compensation by Government of Madhya Pradesh.	51.41	0.81	3.03	55.26
	Total impact on Project cost	70.78	1.67	4.17	76.64

#### **Hearing dated 15.04.2021**

15. The Petition was admitted on 15.04.2021 and notices were issued to the Respondents to file their reply. The Respondent, Maharashtra State Electricity Distribution Company Limited (MSEDCL) has filed its reply and the Petitioner has filed rejoinder to the same.

#### **Reply of MSEDCL**

16. MSEDCL, in its reply dated 24.11.2020, has mainly submitted as under:

- (a) Based on the letters of BPC, it is observed that the final acquisition price of SPV is increased by Rs.23,05,575/- due to increase in reimbursement of expenses. However, it is not clear about the reasons for such increase in the reimbursed expenses.

(b) The Petitioner has claimed Rs.19.14 crore towards GST. However, no supporting invoices have been placed on record and only Auditor Certificate has been submitted along with the Petition. Hence, prudence check is required before allowing the compensation towards Change in Law for GST.

(c) On 11.5.2017, the Government of Madhya has notified the Policy regarding 'payment of Land Compensation for Tower base as well as for corridor of transmission line, to the land owners'. The Petitioner has claimed Rs.51.41 crore towards said Change in Law event. However, no supporting invoices have been furnished in this regard. In Auditor Certificate submitted by the Petitioner, Rs.12.19 crore has been arrived at by considering the anticipated expenditure for financial year 2020-21. Inclusion of future estimated expenditure, if any, should not be considered for any calculation of impact of Change in Law. Hence, prudence check is required before allowing the claim in this regard.

(d) As per Article 12.2.1 of the TSA, the calculations should be based on the cumulative increase/ decrease in Project cost upto scheduled CoD of the Project. As per the schedule 3 of the TSA, the scheduled CoD (26.06.2018) is 40 months from the effective date. Calculations submitted by the Petitioner involves the period after 26.06.2018. Therefore, the calculations of the percentage increase in the annual non-escalable transmission charges given by the Petitioner is erroneous since it considers the increase in amount even after SCOD and also the anticipated expenditure for the financial year 2020-21. Therefore, the claim of the Petitioner to be entitled to increase in adopted annual non-escalable charges by 6.38% on account of increase in cost of Project due to Change in Law, should not be allowed. The entitlement to increase in adopted annual non-escalable charges should be arrived at only after prudence check.

### **Rejoinder of Petitioner to the Reply of MSEDCL**

17. The Petitioner in its rejoinder dated 18.03.2021 to the reply filed by MSEDCL has submitted as under:

(a) Due to continuous and prudent efforts of the Petitioner, the implementation of the Project was expedited and the Project was eventually completed with a delay of merely 189 days on 01.01.2019. Force majeure events encountered during the implementation of the Project such as delay in Forest Clearance, delay in assessment of land compensation in the State of Madhya Pradesh, Civil suits filed before the Hon'ble High Court and District Courts of Madhya Pradesh, obstruction by local villagers and dharna Pradarshan, delay due to Sanjay Dubri Tiger Reserve and delay due to promulgation of Goods and Services Tax (GST) Act, 2017 were beyond the control of the Petitioner. Major Force majeure events i.e. forest clearance and Right of Way issues were taken up through PRAGATI (Pro-Active Governance and Timely Implementation). Considering the force majeure events, vide minutes of meeting dated 15.06.2020 of the meeting held on 24.04.2020 issued by the LTTCs, the LTTCs had granted time extension of 180 days after assurance of the Petitioner that there will not be any additional tariff burden on LTTCs due to extension of SCOD due to Force Majeure events.

(b) As regards increase in acquisition price of SPV, BPC for the Project had indicated the reasons for increased acquisition price to the Petitioner vide letter dated 23.07.2020. The increase of Rs.23,05,575/- in acquisition price by BPC (which has acted on behalf of the beneficiaries in initiating the competitive bid process) were not within the control of the Petitioner. The reason for increase in acquisition price as provided by BPC in its letter dated 23.07.2020 is due to increase in "reimbursement of expenses".

(c) With regard to the Notification of GST Laws as Change in Law events, an Auditor certificate with detailed breakup of implication of GST vis-à-vis the taxes applicable prior to introduction of GST related to the various packages covered in the transmission project implemented by the Petitioner has been provided and the Petitioner has only claimed the differential increase in amount of taxes after the introduction of GST.

(d) The increase in cost due to the introduction of Policy by Government of Madhya Pradesh dated 11.05.2017 is covered under Change in Law event in terms of the Article 12.1.1 of the TSA.

(e) As regards the anticipated expenditure of Rs.12.19 crore under land compensation and GST impact during financial year 2020-21, such expenditure pertains to the period prior to COD of the Project i.e. 01.01.2019. The Petitioner is yet to pay the balance & retention amount to the contractors under service contract and tower supply package contract as per the contract terms and conditions and, thus, the differential GST amount of Rs.0.32 crore is applicable on the above-mentioned payments to the contractors. The payment of Rs.11.86 crore towards land compensation has not been made till date due to litigation/ court cases regarding identification of landowners and it shall be paid once the court cases are resolved.

(f) Considering the various force majeure conditions, LTTCs have granted the time extension of 180 days with consent to reduce the CPG equivalent to 8 days LD amount. The Petitioner has prayed to grant the time extension of balance 9 days. Accordingly, the Petitioner is entitled for increase in the adopted non-escalable charges corresponding to the expenditure incurred/ payable up to CoD of the Project in accordance with the provisions of the Article 12.2.1 of the TSA.

### **Hearing dated 17.09.2021**

18. The matter was heard at length on 17.09.2021. The learned senior counsel for the Petitioner circulated note of arguments and made detailed submission in the matter. The learned counsel for the Respondent, MSEDCL also made his submission by referring to the reply filed by the Respondent.

### **Analysis and Decision**

19. We have considered the submissions of the Petitioner and MSEDCL and perused the documents on record. Based on the above, the following issues arise for our consideration:

**Issue No. 1: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under Force**

## **Majeure and Change in Law?**

**Issue No. 2: Whether the Petitioner is entitled for additional 9 days of time extension over and above the 180 days granted by LTTCs?**

**Issue No. 3: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?**

**Issue No. 4: What reliefs, if any, should be granted to the Petitioner in the light of the answers to the above issues?**

The above issues have been dealt with in succeeding paragraphs.

**Issue No. 1: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under Force Majeure and Change in Law?**

20. The Petitioner has claimed relief under Article 11 (Force Majeure) of the TSA.

Article 11.5.1 of the TSA provides as under:

*“11.5 Notification of Force Majeure Event*

*11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. Provided that such notice shall be a pre-condition to the Affected Party’s entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.*

*11.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.”*

21. Under Article 11.5.1 of the TSA, an affected party shall give notice to the other party of any event of force majeure as soon as reasonably practicable, but not later than seven days after the date on which the party knew or should have reasonably

known of the commencement of the event of force majeure. It further provides that such notice shall be a pre-condition to the affected party's entitlement to claim relief under the TSA.

22. The Petitioner has further claimed relief under Article 12 (Change in Law) of the TSA. Article 12.3.1 of the TSA provides as under:

***“12.3 Notification of Change in Law Event***

*12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Lead Long Term Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.*

*12.3.2 The TSP shall also be obliged to serve a notice to Lead Long Term Transmission Customer even when it is beneficially affected by a Change in Law.*

*12.3.3 Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the TSP.”*

23. Article 12.3 of the TSA provides that if the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law, it shall give notice to the lead LTTC as soon as reasonably practicable after being aware of the same. It further provides that any notice served pursuant to Articles 12.3.1 and 12.3.2 of the TSA shall provide amongst other things, precise details of Change in Law and its effect on the TSP.

24. The Petitioner has placed on record the various notices issued to the LTTCs intimating the occurrence as well as the cessation of the Force Majeure events for e.g. (i) for delay in the forest clearance, the notices were issued on 15.06.2017, 13.04.2018 and 2.07.2018; (ii) for delay due to roll out of GST Act, 2017, notices were issued on 07.07.2017 and 01.06.2018; (iii) for obstruction by local villagers and Dharna Pradarshan, the notices were issued on 05.02.2018, 07.04.2018, 10.08.2019, 09.11.2018 and 31.12.2018; (iv) for delay due to severe RoW consequent upon the

Notification by Government of Madhya Pradesh towards land diminution value, the notices were given on 15.06.2017 and 31.12.2018; (v) for delay due to Civil Suits filed before District and Hon`ble High Court of Madhya Pradesh, the notices were given on 23.03.2018, 29.10.2018 and 27.11.2018, whereas the issue of delay due to Sanjay Dubri Tiger Reserve was brought to the notice of the LTTCs in the meeting dated 24.04.2020 itself.

25. The Petitioner gave notices to the LTTCs dated 15.06.2017 under Change in Law events regarding payment of compensation for transmission lines due to introduction of land compensation for transmission lines in the State of Madhya Pradesh and dated 07.07.2017 regarding introduction of GST with effect from 01.07.2017. It is noticed that the Petitioner gave consolidated notice dated 30.10.2019 enumerating the Force Majeure events, including extension of time to implement the Project, to LTTCs. However, no response was received from the lead LTTC/ LTTCs. As regards increase in the acquisition price of SPV, while the Petitioner has not placed any notice intimating the LTTCs about the aforesaid Change in Law, it has been pointed out that all the LTTCs were duly informed by the Petitioner regarding increase in the acquisition price of SPV by BPC in Petition No. 88/ADP/2015 filed by the Petitioner under Section 63 of the Act for adoption of tariff and it also served copies of the Petition *inter-alia* stating reimbursement of increased acquisition price of SPV, on the LTTCs including the BPC. Perusal of the records reveals that the Petitioner had in fact indicated/ intimated the LTTCs about the increase in the acquisition price of SPV in the aforesaid Petition filed by the Petitioner after the selected bidder (PGCIL) acquired the SPV as per the bid process, which in our view suffices the requirement of notice to LTTCs. It is worthy of mentioning here that notice is a legal concept describing a requirement that a party be aware of legal process affecting their rights,

obligations or duties. We have considered that through Petition No. 88/ADP/2015, LTTCs were made aware about increase in acquisition price by BPC. Accordingly, in our view, the Petitioner has complied with the requirement of TSA regarding prior notice to the lead LTTC regarding occurrence of Force Majeure events and Change in Law before approaching the Commission. We further observe that the Respondents have not raised any issue as regards non-compliance with provision of notifying them of force majeure/ change in law.

26. This issue is answered accordingly.

**Issue No.2: Whether the Petitioner is entitled for relief under Force majeure events i.e. additional 9 days of time extension over and above the 180 days granted by LTTCs?**

27. The Petitioner has sought 9 days extension under Article 11.7 (Force Majeure) of the TSA on account of the following force majeure events:

28. The provisions of the TSA with regard to “Force Majeure” are extracted hereunder:

*“11.3 Force Majeure*

*A ‘Force Majeure’ means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:*

*(a) Natural Force Majeure Events: Act of God, including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,*

*(b) Non-Natural Force Majeure Events:  
i. Direct Non–Natural Force Majeure Events:*



- *Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the TSP; or*
- *the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the TSP to perform their obligations under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development/ operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or*
- *any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down. ii. Indirect Non - Natural Force Majeure Events.*
- *act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or*
- *radioactive contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or*
- *industry wide strikes and labour disturbances, having a nationwide impact in India.*

#### *11.4 Force Majeure Exclusions*

*11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:*

- (a) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. for the Project;*
- (b) Delay in the performance of any contractors or their agents;*
- (c) Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;*
- (d) Strikes or labour disturbance at the facilities of the Affected Party;*
- (e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and*
- (f) Non-performance caused by, or connected with, the Affected Party`s:*
  - i. negligent or intentional acts, errors or omissions;*
  - ii. failure to comply with an Indian Law; or*
  - iii. breach of, or default under this agreement or any Project Documents.*

#### *11.6 Duty to perform and duty to mitigate*

*To the extent not prevented by a Force Majeure Event, the Affected Party shall continue to perform its obligations as provided in this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.*

29. In the light of the provisions of force majeure, the claims of the Petitioner have been examined. The Petitioner has submitted that construction of Project was delayed for the reasons which according to it, were beyond its control on following counts: delay in obtaining forest clearance; (b) delay in assessment of land compensation in the State of Madhya Pradesh; (c) civil suits filed before the Hon`ble High Court of Madhya Pradesh and order of status quo by courts; (d) obstruction by local villagers and dharna Pradarshan; (e) delay due to Sanjay Dubri Tiger reserve; and (f) delay due to promulgation of Goods and Service Tax Act, 2017.

30. The Petitioner has submitted that 35.984 km of the transmission line passed through forest area covering 214.099 hectares of land. On 23.02.2016, the Petitioner made on-line application for grant of forest clearance to the three divisions, namely Sidhi Division, Singrauli Division and Satna Division. The first permission for tree cutting for conductor corridor works was received on 17.05.2018 for Sidhi Division and thereafter on 07.06.2018 and 12.06.2018 for Singrauli Division and Satna Division respectively. The Petitioner has submitted that in terms of Ministry of Environment, Forest and Climate Change ('MoEFCC') Notifications dated 14.03.2014 and 10.10.2014, the general time for grant of forest clearance (Stage-I and Stage-II) in normal circumstances is stipulated as six months from the date of the application to the Forest Department. The Petitioner has submitted that permission for the forest clearance applied on 23.02.2016 should have been granted by 22.08.2016 (six months from 23.01.2016). Keeping in view that even the Stage-I forest clearance allowed on 17.05.2018, there is at least delay of 633 days due to delay in the forest clearance

which was beyond the control of the Petitioner and the Petitioner could not have proceeded with the implementation of the Project.

31. The Respondent, MSEDCL has submitted that there is overall delay of 189 days in the commissioning of the Project due to Force Majeure events. In the joint meeting of LTTCs held on dated 24.04.2020, extension of 180 days was granted in terms of Article 4.4.2 of the TSA subject to approval of management of respective distribution licensees and subsequent to execution of Supplementary Agreement of TSA about assurance of the Petitioner that there will not be any additional tariff burden on LTTCs due to extension of SCoD. MSEDCL has submitted that the Commission may take appropriate decision regarding extension of time for remaining 9 days after prudence check.

32. We have considered the rival submissions. The Petitioner has claimed that delay in grant of forest clearance is covered under force majeure. The Petitioner has submitted that since there was delay of 633 days on account of delay in grant of permission for tree cutting for tower foundation works and it was unable to commission the Project by SCoD. It is apparent that force majeure means any event or circumstance or combination of events and circumstances which wholly or partly prevents or unavoidably delays an affected party in the performance of its obligations under the TSA. An affected party has been defined in the TSA as “any of the Long Term Transmission Customers or the TSP whose performance has been affected by an event of Force Majeure”. In the present case, the execution of the transmission lines was affected on account of delay in grant of permission of tree cutting from forest authorities. It is pertinent to note that as per paragraph 4.4 of the guidelines issued by MoEFCC, “if a project involves forest as well as non-forest land, it is advisable that

work should not be started on non-forest land till approval of the Central Government for release of forest land under the Act has been given.” While as per the TSA, the Project was to be completed and commissioned by 25.06.2018, the Stage-I forest clearance was received only on 17.05.2018. In our view, the Petitioner was prevented from discharging its obligations under the TSA on account of delay in grant of forest clearance and, therefore, the delay of 633 days in grant of permission for tree cutting by forest authorities is covered under force majeure and the Petitioner is entitled for relief under provisions of the TSA.

33. Subsequent to the meeting held on 24.04.2020 amongst MSEDCL, other LTTCs and the Petitioner, the LTTCs have agreed for grant of extension of 180 days in terms of provisions of Article 4.4.2 of the TSA and for remaining 9 days, the LTTCs advised the Petitioner to approach the Commission for condonation of delay.

34. We have examined the matter. Article 11.7 of the TSA provides for relief for force majeure events, which is extracted as under:

**11.7 Available Relief for a Force Majeure Event**

*Subject to this Article 11*

*(a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;*

*(b) every Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement.*

*(c) For the avoidance of doubt, it is clarified that the computation of Availability of the Element(s) under outage due to Force Majeure Event, as per Article 11.3 affecting the TSP shall be as per Appendix –III to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 as on seven (7) days prior to the Bid Deadline. For the event(s) for which the Element(s) is/are deemed to be available as per Appendix –III to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014, then only the Non Escalable Transmission Charges, as applicable to such Element(s) in the relevant Contract Year, shall be paid by the Long Term Transmission Customers as per Schedule 5, for the duration of such event(s).*

*(d) For so long as the TSP is claiming relief due to any Force Majeure Event under this Agreement, the Lead Long Term Transmission Customer may, from time to time on one (1) day notice, inspect the Project and the TSP shall provide the Lead Long Term Transmission Customer's personnel with access to the Project to carry out such inspections, subject to the Lead Long Term Transmission Customer's personnel complying with all reasonable safety precautions and standards."*

35. Article 4.4 provides for extension of time for implementation of the Project as under:

***"4.4. Extension of time:***

*4.4.2 In the event that an Element or the Project cannot be commissioned by its scheduled COD on account of any Force Majeure Event as per Article 11, the Scheduled COD shall be extended, by a "day for day" basis, for a maximum period of one hundred and eighty (180) days. In case the Force Majeure Event continues even after the maximum period of one hundred and eighty (180) days, the TSP or the Majority Long Term Transmission Customers may choose to terminate the Agreement as per the provisions of Article 13.5."*

36. The above provisions provide for extension of SCoD up to a maximum of 180 days and the same has already been granted by the LTTCs. However, there is delay of 189 days in implementation of Project. Article 4.4.2 of TSA provides for terminating TSA by TSP (the Petitioner) or the majority of LTTCs if force majeure event continues beyond the period of 180 days. We note that neither TSP nor LTTCs have terminated TSA and the Project has finally achieved COD with a delay of 189 days. None of the Respondents have raised objection to extension of SCoD or argued against existence of force majeure event. We have considered that respondent have not shown acquiescence to the condonation of further delay of 9 days. In view of the above and considering that the delay in achieving COD was due to delay in obtaining forest clearance, we allow the extension of SCoD of 9 days (beyond 180 days already allowed) till CoD of the Project. Thus, total delay in the Project of 189 days from SCoD to COD is hereby condoned.

37. As we have concluded in the preceding paragraph that SCoD of the Project has

been extended till its actual CoD on account of delay in forest clearance, we are of the view that there is no requirement to make any observations on merits on the other force majeure events claimed by the Petitioner i.e. delay in assessment of land compensation in the State of Madhya Pradesh; civil Suits filed before the Hon`ble High Court of Madhya Pradesh and order of status quo by courts; obstruction by local villagers and dharna pradarshan; delay due to Sanjay Dubri Tiger reserve; and delay due to promulgation of Goods and Service Tax Act, 2017.

38. This issue is answered accordingly.

**Issue No. 3: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?**

39. The provisions of the TSA with regard to Change in Law are extracted as under:

***“12.1 Change in Law***

*12.1.1 Change in Law means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP:*

- The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- A change in the interpretation or application of any Law by Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier:*
- A change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents Clearances and Permits;*
- Any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP:*
- any change in the Acquisition Price; or*
- any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.*

40. Perusal of the above provisions of Article 12 in the TSA reveal that for an event to be 'Change in Law', its occurrence has to be after the seven days prior to the bid deadline and should result into any additional recurring/ non-recurring expenditure by TSP or any income to TSP. The events broadly covered under Change in Law are following:

- (a) Any enactment, coming into effect, adoption, promulgation, amendment, modification or repeal, of any Law;
- (b) Any change in interpretation of any law by a Competent Court of law, or Indian Governmental Instrumentality having the legal power for such interpretation; or
- (c) Imposition of a requirement for obtaining any consents, clearances and permits which was not required earlier;
- (d) A change in terms and conditions prescribed or inclusion of any new terms and conditions for obtaining consents, clearances and permits or the inclusion of new terms and conditions for obtaining such consents, clearances and permits;
- (e) Any change in the Transmission Licence Regulations issued by the Commission;
- (f) Any change in the Acquisition price; and
- (g) Any change in tax or introduction of any tax made applicable for providing transmission service by the TSP as per the terms of the agreement.

41. Cut-off date for change in law events i.e. the date which is seven days prior to the bid deadline was 5.1.2015. In the light of the above provisions of Change in Law, the claims of the Petitioner which have occurred after cut-off date during the construction and operating period have been examined as under:

**(a) Increase in acquisition price of BPC**

42. The Petitioner has submitted that prior to submission of bid, BPC vide its letter

dated 21.11.2014 had intimated to the bidders the acquisition price payable by the selected bidder for acquisition of 100% equity shareholding of SPV along with all its related assets and liability as Rs.17,67,51,000/-. However, subsequent to bidding, BPC vide its letter dated 24.02.2015 intimated the successful/ selected bidder the final acquisition price as Rs.17,90,56,575/-. The Petitioner has submitted that increase of Rs.23,05,575/- in the acquisition price of SPV is Change in Law event in terms of Article 12.1.1 of TSA and accordingly, the same may be allowed.

43. MSEDCL has submitted that the Petitioner has not provided reasons as to which parameters have resulted into increase in the acquisition price and the claim of the Petitioner on this count may be allowed after prudence check.

44. *Per contra*, the Petitioner has submitted that REC Transmission Projects Company Limited is the Bid Process Coordinator (BPC) for the Project and the BPC had indicated the reasons for increased acquisition price to the Petitioner vide letter dated 23.07.2020. The increase of Rs.23,05,575/- in acquisition price by BPC (who has acted on behalf of the beneficiaries in initiating the competitive bid process) were not within the control of the Petitioner. It has been submitted by the Petitioner that reason for increase in acquisition price as provided by BPC in its reply dated 23.07.2020 is due to increase in "reimbursement of expenses".

45. We have considered the submissions made by the parties. In the present case, BPC vide its letter dated 21.11.2014 had informed all the bidders about the acquisition price payable for acquiring 100% equity shareholding of SPV as Rs.17,67,51,000/-. Subsequently, the BPC vide its letter dated 24.02.2015 intimated the successful bidder the final acquisition price as Rs.17,90,56,575/-. The Petitioner



wrote to BPC on 16.07.2020 seeking reasons for increase in acquisition price. In response, BPC vide its letter dated 23.07.2020 has submitted response with the details of increase in the acquisition price as under:

		(Rs. in lakh)	
Particulars		Final Acquisition Price intimated after bidding vide letter dated 24.2.2015	Tentative Acquisition Price intimated before bidding vide letter dated 21.11.2014
1	Professional Fee	1500.00	1500.00
2	Reimbursement of Expenses	89.12	68.62
3	Interest on Expenses	0.02	0.01
<b>Sub-Total without Service tax</b>		<b>1589.14</b>	<b>1568.63</b>
4	Service Tax	196.42	193.88
5	Share Capital	5.00	5.00
<b>Total with Service tax</b>		<b>1790.56</b>	<b>1767.51</b>

46. Perusal of above details reveals that the increase of Rs.23,05,575/- is due to increase in expenses, interest on expenses and payment of service tax to the Government of India. As per sixth bullet under Article 12.1.1 of the TSA, 'any change in the acquisition price' constitutes a Change in Law event. In view of the above, the Petitioner is entitled to relief for change in law on account of increase in acquisition price.

**(b) Notification of GST Law w.e.f. 01.07.2017**

47. The Petitioner has submitted that the Goods and Service Tax Act, 2017 has been notified by the Ministry of Finance, Government of India with effect from 01.07.2017, which is after the cut-off date, i.e. 05.01.2015 and, therefore, constitutes a Change in Law event. The Petitioner has further submitted that the Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018 has held that the introduction of GST w.e.f. 01.07.2017 constitutes a Change in Law and that the differential between the taxes subsumed in GST and the rates of GST on various items shall be admissible under Change in Law and also that the TSPs shall work out and provide the details

of increase/ decrease in the tax liability in respect of introduction of GST to the LTTCs duly supported by Auditor's certificate. The Petitioner has claimed additional expenditure incurred by it on account of introduction of GST Laws as Rs.19.14 crore.

48. MSEDCL has submitted that the Petitioner has claimed Rs.19.14 crore towards GST. However, no supporting invoices have been placed on record by the Petitioner and it has only furnished an Auditor Certificate in this regard. Therefore, prudence check is required before allowing the claim towards Change in Law on account of introduction of GST Laws.

49. *Per contra*, the Petitioner has submitted that it has placed on record the copy of the Auditor Certificate consisting of detailed breakup of implication of GST vis-à-vis the taxes applicable prior to introduction of GST related to the various packages covered in the transmission project implemented by the Petitioner. The Petitioner has claimed the differential increase in amount of taxes after the introduction of GST.

50. We have considered the submissions made by the Petitioner and the Respondent, MSEDCL. The Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018 in the matter of 'Additional tax burden on transmission licensees on introduction of Goods and Service Tax compensation cess' has held that the introduction of GST with effect from 01.07.2017 shall constitute a Change in Law event. The relevant extract of the order dated 17.12.2018 in Petition No. 1/SM/2018 is reproduced below:

*"27. From the forgoing, it is observed that due to varied nature of such taxes, duties and cess etc. that have been subsumed/abolished on introduction of GST, it is not possible to quantify the resulting impact in a generic manner for all the TSPs. The abolition of taxes, duties, cess, etc. on the introduction of GST are "Change in Law" events and the savings arising out of such "Change in Law" should be passed to the beneficiaries of the*

*TSPs. Similarly, the introduction of GST has also resulted in imposition of new or increase in existing taxes, duties, cess etc. which constitute "Change in Law" events and accordingly the additional impact due to introduction of GST shall be borne by the beneficiaries. The details of the increase or decrease in the taxes, duties, cess etc. shall be worked out by the TSPs and the beneficiaries. The TSPs should provide the details of increase or decrease in the taxes, duties, cess etc. supported by Auditor Certificate and relevant documents to the beneficiaries and refund or recover the amount from the TSPs due to the decrease or increase in the taxes, duties, cess etc. as the case may be. Since the GST liveable on the transmission licensees pertain to the construction period, the impact of GST shall be disbursed by the beneficiaries to the transmission licensees in accordance with the provisions in the TSA regarding relief for Change in Law during construction period. In case of any dispute on any of the taxes, duties, cess etc., the beneficiaries may approach the Commission.*

**Summary**

28. Summary of our decision in the order is as under:-

(a) *Introduction of GST with effect from 1.7.2017 shall constitute a Change in Law event if the cut-off date (7days prior to the bid deadline) as per the relevant TSA falls on or after 1.7.2017.*

(b) *The differential between the taxes subsumed in GST and the rates of GST on various items shall be admissible under Change in Law.*

(c) *The TSPs shall work out and provide the details of increase or decrease in the tax liability in respect of introduction of GST to the beneficiaries/Long Term Transmission Customers duly supported by Auditor's Certificate.*

(d) *The additional expenditure on account of GST shall be reimbursed by the beneficiaries/Long Term Transmission Customers as per the relevant provisions of the TSA regarding Change in Law during the construction period or operating period, as the case may be.*

(e) *In case of dispute, either party is at liberty to approach the Commission in accordance with law."*

51. In the present case, as on cut-off date i.e. 05.01.2015, there was no GST. Subsequently, the Parliament and State Legislative Assemblies, in order to introduce a unified indirect tax structure, have introduced a fresh set of taxation laws, which has replaced various Central and State level taxes, through various enactments collectively referred to as the GST Laws which came into effect from 01.07.2017. Since the additional recurring and non-recurring expenditure, which has been incurred by the Petitioner is on account of an Act of Parliament/ State Legislative Assemblies after the cut-off date, i.e. 05.01.2015, the same is covered under Change in Law provisions of the TSA under Article 12.1.1. The relief for any additional

expenditure incurred by the Petitioner due to introduction of GST shall be admissible for the Project within the original scope of work. The Petitioner vide Auditor Certificate dated 17.03.2021 has placed on record the detailed break-up of implication of GST vis-à-vis taxes applicable prior to introduction of GST related to the various packages covered in the transmission Project implemented by the Petitioner. The Petitioner shall submit relevant documents to establish one to one correlation between the items and GST levied thereon, duly supported by invoices and Auditor's certificate. The Respondent LTTCs shall match invoices and reconcile them before making payment.

**(c) Notification of payment of land compensation for tower base as well as corridor of transmission line by Government of Madhya Pradesh**

52. The Petitioner has submitted that Government of Madhya Pradesh vide GO No. R/3283/2016/7/2A dated 11.05.2017 has notified payment of land compensation for tower base as well as for corridor of transmission line, to the landowners. According to the Petitioner, this notification, which has been enacted after the cut-off date, required the Petitioner to pay land compensation for tower base as well as the corridor of transmission line and, therefore, qualifies as Change in Law in terms of Article 12.1.1 of the TSA. The Petitioner has submitted that the additional expenditure incurred and anticipated to be incurred by the Petitioner is Rs.51.41 crore.

53. MSEDCL has submitted that no supporting invoices have been placed on record by the Petitioner and only Auditor Certificate has been furnished in this regard. It has been submitted that in the Auditor Certificate submitted by the Petitioner, Rs.12.19 crore have been arrived at by considering the anticipated expenditure for the financial year 2020-21. Inclusion of future estimated expenditure, if any, should not be considered for any calculation of impact of Change in Law. Therefore, Rs.

12.19 crore should not be considered by the Commission for the claim of Change in Law. Accordingly, prudence check is required before allowing the compensation towards Change in Law in this regard.

54. *Per contra*, the Petitioner has submitted that anticipated expenditure of Rs.12.19 crore under land compensation and GST impact during financial year 2020-21, pertains to the period prior to COD of the Project i.e. 01.01.2019. It has been submitted by the Petitioner that the amount of Rs.11.86 crore is liable for payment towards land compensation but has not been made till date due to litigation/ court cases regarding identification of landowner. Thus, this expenditure is balance & retention payment and shall be paid once court cases are resolved. Similarly, anticipated GST impact of Rs.0.32 crore provided in auditor certificate pertains to period prior to 01.01.2019. The Petitioner is yet to pay the balance & retention amount to the contractors (corresponding to the work executed prior to DOCO of Project) under service contract and tower supply package contract. This differential GST amount of Rs.0.32 crore is applicable on above mentioned payments.

55. We have considered the submissions made by the parties. Government Order No. R/3283/2016/7/2A dated 11.05.2017 of the Government of Madhya Pradesh requires payment of land compensation for tower base and corridor for transmission line to the landowners. The translated version of the aforesaid GO issued by the Government of Madhya Pradesh submitted by the Petitioner is as follows:

*“Govt. of Madhya Pradesh  
Ministry of Revenue Department*

*Ministry of Revenue Department Sr. No: R/3283/2016/7/2A Date: 11.5.2017*

*To,  
All Collectors,  
Madhya Pradesh*

*Subject: About determination of compensation amount payable to private landlords because of setting up transmission lines by the POWERGRID in the state.*

*Ministry of Power, Govt. of India vide letter ref 3/7/2015- Trans. dated 15.10.2015 has issued the guidelines regarding determination of compensation payment for utilisation of land proposed under Right of way in laying of transmission lines.*

*2. Hence, in consideration of the Ministry of Power, Govt of India letter dated 15.10.2015 and in the interest of public, following guidelines are being issued for the payment of compensation amount for the land used for the installation of the High Tension transmission lines of 66 kV and above:*

*(1) In addition to the compensation for the damage caused by the entry on the land, 85% of the existing market rates of the land used for the establishment of the tower will be paid to Land owner.*

*(2) 15% of the existing market rates will be paid for the area of land situated under the transmission line between the width of the outer wires of both the sides of transmission lines tower. For this purpose, the width between the two outer wires will be considered as follows:*

<b>Sl. No.</b>	<b>Transmission capacity</b>	<b>Width between both outer conductors ( in Meters )</b>
1	66 kV	18 meters
2	110 kV	22 meters
3	132 kV	27 meters
4	220 kV	35 meters
5	400 kV S/C	46 meters
6	400 kV D/C	46 meters
7	+/- 500 kV HVDC	52 meters
8	765 kV S/C (in Delta configuration)	64 meters
9	765 kV D/C	67 meters
10	+/- 800 kV HVDC	69 meters
11	1200 kV	89 meters

*2. The amount to be given above will only be compensation amount. The land will remain registered in the name of the former land owner as before.*

*3. Even if otherwise provided in any rule, compensation for agricultural land will be payable on the basis of prevailing market rates of agricultural land and similarly compensation for non- agricultural land will be payable on the basis of prevailing market rates of non-agricultural land.*

*4. This circular is applicable only to Power transmission lines. Under this, compensation is to be paid to Power transmission line. Under this Power distribution is not included....”*

56. Perusal of the above quoted GO dated 11.05.2017 issued by the Government of Madhya Pradesh, vide Circular No. R/3283/2016/7/2A reveals that these are directions of the State Government which are binding on the State authorities for determination of compensation for transmission lines.

57. 'Indian Government Instrumentality' as defined in the TSA is under:

*“Indian Governmental Instrumentality’ shall mean Government of India, Government of any State in India or any ministry, department, board, authority, agency, corporation, commission under direct or indirect control of the Government of India or any State Government or both, any political sub-division of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India but excluding TSP and Long Term Transmission Customers;”*

58. Further, the term 'Law' has been defined in the TSA as under:

*“Law’ or ‘Laws’ in relation to this Agreement, shall mean all laws including electricity laws in force in India and any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any of them by an Indian Governmental Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Appropriate Commission;”*

59. Thus, 'Law' under TSA includes any statute, ordinance, rule, regulation, notification, order or code or any interpretation of any of them by an Indian Governmental Instrumentality having force of law. Therefore, the GO dated 11.05.2017 issued by the Revenue Department, Government of Madhya Pradesh qualifies as 'Law' under the TSA and its introduction/ implementation being after the cut-off date in the present case, is a Change in Law event in terms of Article 12.1.1 of the TSA.

60. Nothing is placed before the Commission by the parties as to whether any compensation was payable by the Petitioner for tower base and transmission line corridor before the aforementioned GO dated 11.05.2017 issued by the Revenue Department, Government of Madhya Pradesh vide Circular No. R/3283/2016/7/2A

came into force. However, subsequent to the issue of the said GO dated 11.05.2017, the compensation for tower base @85% of market value of land and the compensation for the transmission line corridor @15% of the market value of land became payable. Therefore, if any compensation was payable for tower base and transmission line corridor prior to the GO dated 11.05.2017, the additional liabilities of compensation payable for the Petitioner shall be only the differential amount. In light of the above, the Petitioner is entitled to relief only on account of differential additional expenditure incurred towards payment of land compensation for tower base and transmission line corridor in terms of the GO dated 11.05.2017 of the Government of Madhya Pradesh.

61. However, we note that as per the CA certificate furnished by the Petitioner, expenditure of Rs.12.19 crore is on anticipated basis and the Petitioner is yet to actually incur such expenditure. The claimed amount of Rs.12.19 crore by the Petitioner consists of (i) the differential GST impact of approximately Rs.0.32 crore (Rs.0.30 crore as differential GST impact + Rs.0.02 crore as overhead cost) applicable on the balance & retention amount to the contractors under service contract and tower supply package contract, etc., which is yet to be paid by the Petitioner and (ii) amount of Rs.11.86 crore (Rs.11.20 crore as land compensation + Rs.0.56 crore as overhead cost) towards land compensation, for which the payment has not been made till date due to litigation/ court cases regarding identification of landowners. Since the above expenditure pertains to the period prior to COD i.e. 01.01.2019, the Petitioner is entitled to seek Change in Law relief for such expenditures (except overhead cost). However, these expenditures were on anticipated basis to be incurred during financial year 2020-21 and had not been actually incurred by the Petitioner at the time of filing of the Petition. The Petitioner will be entitled to Change in Law reliefs on account of such expenditure upon providing documentary evidence of having incurred such



expenditures on actual basis.

**(d) Cost over-run on account of Change in Law events**

62. The Petitioner has submitted that in terms of Article 12.2.1 of the TSA, the impact of Change in Law during the construction period of the Project is to be given as an increase in the cost of the Project and that the expression cost of Project or Project cost during the construction period also refers to and encompasses within its scope, all costs in regard to the establishment of Project incurred by entity. This not only includes the hard cost of capital assets (plant, machinery and equipment, etc.) but also the cost of funding during construction and other soft costs/ overheads related to establishment of the Project. Relying upon the notified Terms and Conditions of Tariff Regulations, it has been submitted by the Petitioner that even as per the said Regulations, IDC, which essentially comprises of interest payable on debt part is allowed to be capitalized and the total expenditure incurred in competition of the Project including on account of time overrun is capitalized with IDC as an additional cost to the extent of 70% of the increased Project cost and the balance 30% of the increased Project cost is serviced as equity providing for a return of 15.5% post-tax. Similarly, for competitively bid transmission Projects, increase in Project cost on account of Change in Law events needs to be fully serviced, namely, the cost overrun in regard to increase in Project cost on account of Change in Law and the funding cost during the construction period. For that purpose, the quantum of Project cost related to increase in the Project cost is to be apportioned as debt-equity in the ratio of 70:30 and increased equity deployed related to such increase in Project cost is to be serviced at a higher return consistent with the rate of return applicable to the equity.

63. The Petitioner has further submitted that the increase in the Project cost on

account of Change in Law *inter-alia* also includes the funding cost and the overhead cost during the construction period needs to be serviced as per by increase in transmission charges payable over and above the quoted transmission tariff during the entire period of TSA in order to enable the Petitioner to be compensated fully for the effect of Change in Law event. Therefore, the compensation/relief to the Petitioner should not be restricted only to the capital expenditure incurred but should also include the funding /financing costs as well as overheads. Accordingly, the Petitioner has claimed additionally Rs.4.17 crore as overhead cost and Rs.1.67 crore as funding costs for the aforesaid Change in Law events. The Petitioner in support of its contention has relied upon the judgment of the APTEL dated 20.10.2020 in Appeal No. 208 of 2019 in the case of Bhopal Dhule Transmission Company vs Central Electricity Regulatory Commission and Ors.

64. We have considered the submissions made by the parties. In terms of Article 12.2 of the TSA, relief for Change in Law during the construction period entails a stipulated increase/decrease in the non-escalable transmission charges for the corresponding increase/decrease in the cost of Project up to SCoD. Any compensation to the Petitioner for a Change in Law event has to be according to provisions of Article 12 of the TSA. Since the Petitioner, while entering into the contract i.e. TSA, was fully aware of the formula provided in Article 12.2 of the TSA for compensation on account of a Change in Law event, it is not entitled to claim any additional cost on account of Change in Law events over and above the compensation as per formula provided in Article 12.2 of the TSA. Further, it is not the contention of the Petitioner that the provision of Article 12 of the TSA is insufficient to compensate for the impact of Change in Law. Moreover, the overhead cost claimed by the Petitioner as consultancy charges to PGCIL is not directly linked to any Change in Law event and in our view, it

is governed by the contract executed between the Petitioner and PGCIL. Therefore, any such consultancy charges cannot be allowed to be passed on to the consumers under the Change in Law provisions of the TSA.

65. We also take note of the submissions of the Petitioner that the matter of extension of SCoD owing to various force majeure events was taken up with LTTCs in accordance with Article 4.4.2 of the TSA and a joint coordination meeting was held between the Petitioner and the LTTCs on 24.04.2020 to discuss the extension of time for the Project. Based on the request of LTTCs, the Petitioner vide its letter dated 24.06.2020 had undertaken that no tariff burden shall be levied on any of the LTTCs pursuant to the extension of the SCoD owing to the force majeure events. Relevant portion of the said letter dated 24.06.2020 is extracted as under:

*“In view of foregoing it is submitted that , subject to the condition that time extension of 180 days shall be provided by LTTCs (for the remaining 9 days’ time extension, PJTL would approach CERC), it is hereby confirmed that no additional tariff burden shall be levied on any LTTCs pursuant to extension of CoD owing to Force majeure conditions and that CPG for equivalent amount for 9 days shall be kept valid until the decision of CERC.”*

66. Admittedly, the issue regarding time over-run and time extension of 180 days for the Project from SCoD to actual CoD has been duly settled with LTTCs and the Petitioner has not sought relief on account of force majeure events that resulted into time over-run for the Project. Therefore, the Petitioner has already forgone its claims for the period from SCoD till the revised CoD of the Project. We also take note of the fact that none of the Change in Law events deliberated in the present Petition has resulted in delay in Project implementation.

67. The Petitioner has placed reliance on the judgment of the APTEL dated 20.10.2020 in Appeal No. 208 of 2019 in the case of Bhopal Dhule Transmission Company vs. Central Electricity Regulatory Commission and Ors. to claim IEDC and

IDC. Without going into applicability of the aforesaid judgment of the APTEL in the instant case, in view of the fact that the Petitioner has itself undertaken that it will not claim additional tariff on account of extension of COD for event of force majeure, any claim of IDC/ IEDC cannot be considered beyond the SCOD.

68. This issue is replied accordingly.

**Issue No. 4: What reliefs, if any, should be granted to the Petitioner in the light of the answers to the above issues?**

69. Article 12.2 of the TSA provides for relief for Change in Law as under:

*“12.2 Relief for Change in Law*

*12.2.1 During Construction Period: During the Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:*

*- For every cumulative increase/decrease of each Rupees Three Crore Seventy Six Lakh in the cost of the Project upto the Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to zero point three one three percent (0.313%) of the Non-Escalable Transmission Charges.*

*12.2.3 For any claims made under Article 12.2.1 and 12.2.2 above, the TSP shall provide to the Long Term Transmission Customers and the Appropriate Commission documentary proof of such increase/decrease in cost of the Project/revenue for establishing the impact of such Change in Law.*

*12.2.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to the rights of appeal provided under applicable Law.”*

70. MSEDCL has submitted that in terms of the above provisions of the TSA, the calculation should be based on the cumulative increase/ decrease in the Project cost up to SCoD of the Project only, which is 26.06.2018. However, the calculation submitted by the Petitioner involves the period after 26.06.2018 and, thus, the calculation of percentage increase in the annual non-escalable transmission charges given by the Petitioner is erroneous.

71. We have considered submissions of MSEDCL. Its contention, in our view, is misconceived. The extension of SCOD by 189 days (180 days by LTTCs and 9 days in this order) was on account of events of force majeure and it was agreed by the Petitioner that it would not claim any additional tariff on this count. However, in our view, events of Change in Law have to be treated differently as payments due to Change in Law events have been or are to be made by the Petitioner to government authorities and is, therefore, eligible for relief in terms of provisions of TSA. In terms of Article 4.4 of the TSA, the LTTCs and the Petitioner have agreed to extend the SCoD of the Project by 180 days (out of total time over-run of 189 days) on account of occurrence of various force majeure events and the extension for the balance 9 days has been allowed by the Commission in the present order. Thus, as a result, the revised SCoD of the Project is 01.01.2019 (same as COD of the Project) and consequently, the Petitioner is entitled to claims the relief for Change in Law events during the construction period up to 01.01.2019.

72. All reliefs on account of Change in Law have been claimed by the Petitioner for the construction period. Accordingly, as per Article 12.2.1 of the TSA, for every cumulative increase/ decrease of each rupees three crore seventy six lakh in the cost of the Project up to the revised SCOD of the Project on account of Change in Law during the construction period, the Petitioner shall be entitled to be compensated with increase/ decrease in non-escalable transmission charges by an amount equal to zero point three one three percent (0.313%) of the non-escalable transmission charges.

73. The Petitioner shall provide documentary proof of such increase/ decrease in cost of the Project/ revenue to LTTCs.

74. After CoD of the transmission system, the Petitioner has been recovering transmission charges for the Project under the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2010. With effect from 01.11.2020, the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020 has come into force. Therefore, the impact of Change in Law payable to the Petitioner shall be recovered in accordance with the provisions of Regulation 15(2)(b) (second bill to the DICs) of the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020.

75. This issue is answered accordingly.

76. The Petitioner has sought reimbursement of fee paid by it for filing the Petition and legal expenses. The filing fee can be reimbursed in respect of tariff petitions that are filed for (a) determination of tariff, (b) revisions of tariff due to additional capital expenditure, and (c) truing up of expenditure. This Petition being a miscellaneous Petition and not a tariff petition, reimbursement of filing fee is not allowed. Accordingly, the prayer of the Petitioner for reimbursement of the filing fee is hereby rejected.

77. The Petition No. 610/MP/2020 is disposed of in terms of the above discussions and findings.

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

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

**Sd/-  
(P.K. Pujari)  
Chairperson**