

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 131/MP/2024

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Date of Order: 20th April, 2025

IN THE MATTER OF:

Petition under Rule 3(7) and Rule 3(8) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 read with Article 12 of the Transmission Service Agreement dated 07.12.2018 executed between Mumbai Urja Marg Limited/ Petitioner and its Long Term Transmission Customers, and Sections 61 and 63 of the Electricity Act, 2003, seeking verification of the calculation of the impact due to change in law events on the cost of implementation of the Petitioner's transmission project, and consequent adjustment in the monthly transmission charges.

AND

IN THE MATTER OF:

Mumbai Urja Marg Limited,

(erstwhile, Vapi-II North Lakhimpur Transmission Limited)

DLF Cyber Park, Tower-B, 9th Floor,

Udyog Vihar, Phase-III, Sector 20,

Gurugram – 122008

... Petitioner

Versus

1. **Maharashtra State Electricity Distribution Company Limited,**
Hongkong Bank Building, M.G. Road,
Fort, Mumbai- 400001,
Maharashtra
2. **Gujrat Urja Vikas Nigam Limited,**
Sardar Patel Vidyut Bhawan,
Race Course Road, Vadodara- 390007,
Gujarat
3. **M. P. Power Management Company Limited**
Shakti Bhawan, Vidyut Nagar, Rampur,
Jabalpur– 482008, Madhya Pradesh
4. **Chhattisgarh State Power Distribution Company Limited**
Vidyut Sewa Bhavan, Danganiya,



Raipur– 492013,
Chhattisgarh

5. **Goa Electricity Department,**
Electricity Department, 3rd Floor,
Vidyut Bhavan, Panjim, Goa – 403001
6. **DNH Power Distribution Corporation Limited,**
Vidhyut Bhavan, 66 KV Road, Near Secretariat,
Amli, Silvassa– 396230,
U.T. of Dadra & Nagar Haveli
7. **Electricity Department, Daman & Diu,**
Vidyut Bhavan, Somnath,
Kachigam Road, Kachigam- 396210,
Daman
8. **Department of Power, Arunachal Pradesh,**
Vidyut Bhavan, Zero Point Tinali,
Itanagar– 791111,
Arunachal Pradesh
9. **Assam Power Distribution Company Limited,**
1st Floor, Bijulee Bhawan, Paltan Bazar,
Guwahati - 781001
10. **Manipur State Power Distribution Company Limited,**
3rd Floor, New Directorate Building, Near 2nd MR Gate,
Imphal-Dimapur Road, Imphal– 795001,
Manipur
11. **Meghalaya Energy Corporation Limited,**
Lumjingshai, Short Round Road, Shillong- 793001
Meghalaya
12. **Power and Electricity Department, Mizoram,**
Kawlphetha Building, New Secretariat Complex,
Khatla, Aizawl– 796001,
Mizoram
13. **Department of Power, Nagaland,**
Electricity House, A.G. Colony,
Kohima- 797001, Nagaland
14. **Tripura State Electricity Corporation Limited,**
Bidyut Bhaban, Banamalipur, Agartala– 799001,
Tripura
15. **Central Transmission Utility of India Limited,**
Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk, Gurgaon-122001

Haryana

16. National Load Despatch Centre

B-9, Qutub Institutional Area,
Katwaria Sarai / 1st Floor
New Delhi – 110016

...Respondents

Parties present:

Shri Basava Prabhu Patil, Sr. Advocate, MUML
Shri Deep Rao, Advocate, MUML
Shri Anup Jain, Advocate, MSEDCL
Ms. Nishtha Goel, Advocate, MSEDCL
Shri Anand K Ganesan, Advocate, GUVNL
Shri Utkarsh Singh, Advocate, GUVNL
Shri Parth Bhalla, Advocate, GUVNL

ORDER

The Petitioner, Mumbai Urja Marg Limited ('MUML') had filed the present Petition under Rule 3(7) and Rule 3(8) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('CIL Rules') read with Article 12 of the Transmission Service Agreement ('TSA') dated 7.12.2018 executed between the Petitioner and its Long Term Transmission Customers ('LTTCs') i.e. Respondent Nos. 1 to 14 and Sections 61 and 63 of the Electricity Act, 2003 (the 'Act'), seeking verification on the calculation of the impact due to Change in Law events on the cost of implementation of the Petitioner's transmission project, and consequent adjustment in the monthly transmission charges.

2. The Petitioner has made the following prayers:

- (a) *Admit the present Petition;*
- (b) *Verify the calculation on the impact of the change in law events incurred by the Petitioner towards the implementation of Part D of the Project, and adjust the amount of the impact in the monthly tariff/charges in terms of Rule 3(8) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021;*
- (c) *Direct payment of carrying cost to the Petitioner in terms of Rule 3(1) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 and Article 12 of the Transmission Service Agreement dated 23.04.2019, and*



- (d) *Pass such other or further order(s) as the Commission may deem just and proper in the facts and circumstances of the case.*”

Factual matrix:

3. The facts necessary to appreciate the issues that arise in the present case are taken from the Petition filed by the Petitioner/MUML in the present matter. The brief facts of the instant case are entailed in the following paragraphs.

(a) The Petitioner/ MUML, *erstwhile* Vapi-II North Lakhimpur Transmission Limited, was originally set up as a wholly owned subsidiary of PFC Consulting Limited (‘PFCCL’), with the objective to establish the “Western Region Strengthening Scheme-XIX (‘WRSS-XIX’) and North-Eastern Region Strengthening Scheme-IX (‘NERSS-IX’) (the ‘Project’) and to act as a Transmission Service Provider (‘TSP’) after being acquired by a successful bidder.

(b) The Respondent Nos. 1 to 14 are the long-term transmission customers (‘LTTCs’), under the TSA consisting of Western region (Respondent Nos. 1 to 7) and North Eastern region constituents (Respondent Nos. 8 to 14). Respondent No. 15/ Central Transmission Utility of India Limited (‘CTUIL’) is the nodal agency responsible for the billing, collection, and disbursement of the transmission charges to transmission licensees. Respondent No. 16, National Load Despatch Centre (‘NLDC’), is the implementing agency for the purpose of computing the transmission charges to be collected from the designated ISTS customers.

(c) PFCCL was notified by the Ministry of Power as the Bid Process Coordinator (‘BPC’) vide Gazette notification dated 4.5.2018 for carrying out the bid process for the Project through the Tariff Based Competitive Bidding

(‘TBCB’). The Request for Qualification (‘RfQ’) was issued by PFCCCL on 14.8.2018 for shortlisting of the bidders. On 13.11.2018, the Request for Proposal (‘RfP’) was issued to the shortlisted bidders, and after the bidding process, Sterlite Grid 13 Limited (‘Sterlite’) emerged as the successful bidder, and the Letter of Intent (‘LoI’) was issued on 2.3.2020. The Commission granted transmission licence to the Petitioner vide order dated 1.4.2021 in Petition No. 599/TL/2020 and adopted the transmission tariff of Rs. 2565.92 million per annum for the Project vide order dated 1.4.2021 in Petition No. 561/AT/2020.

(d) The transmission elements forming part of WRSS-XIX were categorised into Part A, B, and C, and the transmission elements forming part of NERSS-IX were termed as Part D under the TSA. Part D of the Project comprises of the following elements:

- (i) Pare HEP (NEEPCO) (from near LILO point)– North Lakhimpur (AEGCL) 132 kV D/c line (with ACSR Zebra conductor) along with the 2 no. 132 kV line bays at North Lakhimpur end. (‘PN Line’);
- (ii) LILO of one circuit of Pare HEP-North Lakhimpur (AEGCL) 132 kV D/c line (with ACSR Zebra) at Nirjuli (POWERGRID) substation (‘LILO of PN Line’)

(e) As per the terms of the TSA, the original SCOD of Part D of the Project was 22.6.2023. However, Part D of the Project was commissioned on 5.8.2023, which was within the timeline for commissioning as extended vide orders dated 27.7.2020 and 12.5.2021 issued by the MOP in light of the Covid-19 pandemic. As per Article 12.1.1 of the TSA, an event is a Change in Law event if it occurs after a date, which is 7 (seven) days prior to the bid deadline resulting in any additional recurring or non-recurring expenditure by the Transmission Service Provider (TSP) or income to the TSP. In the present case, the Bid Deadline,

which is the last date for submission of response to the RFP was 27.5.2019. Accordingly, the date 7 days prior to the Bid Deadline was 20.5.2019 (“cut-off date”).

(f) With the issuance of the CIL Rules and the Clarification on the CIL Rules dated 21.2.2022 issued by the MoP which expressly states that CIL Rules are applicable on Change in Law events that have occurred on or after the notification of the CIL Rules in the official gazette i.e., 22.10.2021, the Petitioner has approached the Commission for seeking verification of the calculation of the Change in Law impact in terms of Rule 3(7) and 3(8) of the CIL Rules read with Article 12 of the TSA.

(g) The Petitioner has submitted that the following events have occurred after the cut-off date and post the coming into effect of the CIL Rules, i.e., 22.10.2021, which have caused the Petitioner to incur an additional expenditure of Rs. 39,86,19,476 towards the Project during its construction period:

- (i) Additional expenditure due to an increase in the Net Present Value rates for forest conversion – Rs. 2,05,69,199
- (ii) Additional compensation towards land and surface damage in:
 - Papum Pare District, Arunachal Pradesh – Rs. 26,90,64,150
 - Itanagar Capital Region, Arunachal Pradesh –Rs. 10,89,86,127

Additional expenditure due to an increase in the Net Present Value rates for forest conversion

(h) As per the Petitioner, under the provisions of the Forest (Conservation) Act, 1980 (“FCA”) and the rules and guidelines issued thereunder, when a user agency applies for the diversion of forest land for non-forestry purposes, in addition to paying for compensatory afforestation (“CA”), the Net Present Value (“NPV”) of the forest land to be diverted for non-forest purposes is also

recovered from the user agencies-for undertaking forest protection, conservation measures and other related activities. The rates of NPV recoverable from the user agency depend on the type of forest land being diverted. As on the Cut-Off Date, the NPV rates payable by the Petitioner were governed by the Guidelines dated 5.2.2009 ('2009 Guidelines') issued by the Ministry of Environment, Forest and Climate Change ('MoEFCC'). Under the 2009 Guidelines, the Petitioner was required to pay the NPV for Class-I Dense Forest at the rate of Rs. 9,39,000/- per hectare in lieu of diversion of forest land for implementation of the PN Line and LILO of PN Line. After the cut-off date, i.e., 20.5.2019, the MoEFCC, *vide* its Notification dated 6.1.2022, read with Clarification dated 19.1.2022, enhanced the NPV rate for Class-I Dense Forest to Rs. 14,36,670/- for all forest diversion proposals where in-principle/ Stage-I Forest diversion approval was obtained after 6.1.2022. In line with the said revision, the NPV rates applicable for Class I- Dense Forest stood changed to the following:

Element	Original NPV rates (per hectare) (in Rs.)	Revised NPV rates (per hectare) (in Rs.)
PN Line	9,39,000	14,36,670
LILO of PN Line	9,39,000	14,36,670

(i) The Petitioner paid the NPV for the forest land to be diverted for implementation of the PN Line and LILO of PN Line at a higher NPV rate on account of the MoEFCC's Notification dated 6.1.2022 read with the Clarification dated 19.1.2022, both of which were issued after the cut-off date (20.5.2019), and after the notification of the CIL Rules i.e., 22.10.2021. Therefore, the Petitioner is entitled to seek recovery of the consequent additional expenditure incurred on account of this Change in Law event in terms of Article 12 of the

TSA and the CIL Rules. In support of aforesaid claim, the Petitioner has also placed on record the demand notes dated 6.4.2022 and 22.4.2022 issued by the concerned forest officials seeking a payment of approximately Rs. 5.93 crores towards the NPV at the revised rates (in line with the MoEFCC's Notification dated 6.1.2022 read with the Clarification dated 19.1.2022), and the proof of payment by the Petitioner. Due to the aforementioned Change in Law event, the Petitioner has paid an additional amount of Rs. 2,05,69,199 over and above the NPV computed (and assumed) based on the 2009 Guidelines which were applicable as on the Cut-off Date and it is entitled to recover this additional expenditure as Change in Law relief under the CIL Rules in terms of Article 12 of the TSA through an increase in its monthly transmission tariff.

B. Additional compensation towards land and surface damage

(j) The PN Line and LILO of PN Line pass through forest lands in the States of Assam and Arunachal Pradesh. As on the Cut-Off Date, the Petitioner was only required to seek forest diversion and pay requisite CA charges, NPV, and other costs in terms of the FCA and the rules and guidelines issued thereunder. However, after the Petitioner obtained Stage-I and Stage-II clearances for diversion of the forests for implementation of the PN Line & LILO of PN Line, and paid all requisite charges, an additional requirement was imposed on the Petitioner to pay the compensation towards land and surface damage to the impacted forest dwellers in the Papum Pare and Itanagar District which caused it to incur unforeseeable additional expenditure.

Papum Pare District, Arunachal Pradesh

(k) The PN Line and LILO of PN Line pass through forest lands in the Papum Pare District, Arunachal Pradesh. After the receipt of requisite approvals for

diversion of the forest and tree cutting, when the Petitioner commenced work on the ground, it faced stiff resistance from the local persons situated on the forest lands that were being traversed by the PN Line and LILO of PN Line. These persons were purportedly dependent on the forest area and demanded land and surface damage compensation from the Petitioner. For commencing the work at forest sites, the Petitioner sought police protection and necessary assistance from the district administrative authorities in terms of its power under Sections 10 and 16 of the Indian Telegraph Act, 1885. However, the Deputy Commissioner, Papum Pare ('DC Papum Pare') *vide* its letter dated 20.12.2021 directed the Petitioner to deposit the additional compensation of Rs. 23,43,49,590 (Rs. 22,97,54,500 + Rs. 45,95,090) towards Right of Way ("RoW")/land and surface damage compensation to persons occupying the forest lands traversed by the PN Line and LILO of the PN Line.

(I) After the cut-off date, the Department of Power, Government of Arunachal Pradesh ("DoP, Arunachal Pradesh") adopted the "*Guidelines for payment of compensation towards damages in regard to Right of Way for transmission lines*" dated 15.10.2015 issued by the MOP ("2015 MOP Guidelines") and notified the methodology for payment of the RoW compensation in the State of Arunachal Pradesh *vide* its Notification dated 29.08.2019 ("2019 Notification"). The 2019 Notification was a new law, introduced after the Cut-off Date, that required transmission licensees, like the Petitioner, to pay the RoW compensation to persons occupying private lands traversed by the transmission projects. Subsequently, *vide* notification dated 9.2.2022 ("2022 Notification"), the Department of Power, Government of Arunachal Pradesh, extended the applicability of the 2019 Notification for payment of the RoW compensation to persons who were dependent on forest

land that was to be diverted for implementation of the transmission projects such as the Petitioner's Project.

(m) The Petitioner objected to the letter dated 20.12.2021 passed by the DC, Papum Pare, vide its letter dated 23.12.2021 clarifying that the Petitioner has already paid compensatory levies under the FCA. However, in response, the DC's Office, vide its letter dated 18.4.2022, clarified that the 2022 Notification has extended the applicability of the 2019 Notification for the determination of compensation payable to the forest dwellers whose land is notified as Jhum Land under the Jhum Land Regulations, 1947 ('JLR, 1947'). Subsequently, on 30.3.2023, the DC Papum Pare directed the Petitioner to deposit an additional compensation of Rs. 3,47,14,560 towards surface damage for location nos. 27/0, 28/0, and 28/1 in Buka village, Papum Pare district. The said compensation was required to be paid by the Petitioner in addition to the earlier demand of Rs. 23,43,49,590. In total, the Petitioner paid Rs. 26,90,64,150 (Rs. 23,43,49,590 and Rs. 3,47,14,560) as per the directions dated 20.12.2021 and 30.3.2023 issued by the DC Papum Pare. According to the Petitioner, it is entitled to recover this additional expenditure as Change in Law relief in terms of Article 12 of the TSA and the CIL Rules since such additional costs have been incurred solely on account of an additional legal requirement introduced after the Cut-off Date.

Itanagar Capital Region, Arunachal Pradesh

(n) With respect to the Itanagar region, the Petitioner was facing similar situations as were prevailing in the Papum Pare region. After receipt of requisite forest diversion approvals and payment of the CA, NPV, and other fees to the MoEFCC, the Petitioner started implementation of the PN Line and LILO of PN

Line in the Itanagar Capital Region. However, the Petitioner faced stiff resistance from the local inhabitants on the basis that they were dependent upon forest produce from the concerned forest land. In order to cope with such a situation, the Petitioner sought police protection and administrative support/intervention of the local authorities vide its correspondence dated 3.9.2021. In response, the Deputy Commissioner, Itanagar Capital Region ('DC Itanagar') vide its correspondence dated 25.2.2022 informed the Petitioner that to address the RoW issues, it has taken steps to form a committee under the JLR, 1947 for evaluating the representations made by the villagers and recommend its proposal for resolution of these issues. Subsequently, vide its letters dated 5.5.2022 and 2.11.2022, DC Itanagar directed the Petitioner to pay Rs. 8.92 crores towards land and surface damage. Thereafter, vide another letter dated 25.1.2023, the DC Itanagar directed the Petitioner to pay Rs. 1.97 crores towards land and surface damage. In total, the Petitioner was directed to pay approximately Rs. 10.89 crores towards land and surface damage for onwards payment to impacted persons situated on forest lands traversed by the Project in the Itanagar Capital Region. The DC Itanagar, vide its letters dated 5.5.2022, 2.11.2022, and 25.1.2023, calculated the land and surface damage payable by the Petitioner using the format prescribed under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("LARR 2013"). On 11.5.2022, the Petitioner objected to the order dated 5.5.2022 issued by the office of DC Itanagar and pointed out that LARR 2013 is not applicable to its case since as a transmission system/line developer, it is only securing right of way, and was not acquiring any land or displacing the dwellers dependent on the concerned land. In response, the DC Itanagar, vide its letter dated 4.6.2022, informed the Petitioner that land and

surface damage compensation ought to be given to the persons occupying forest lands in accordance with the 2022 Notification vide which the DoP, Arunachal Pradesh has extended the applicability of the 2019 Notification for payment of the RoW/land and surface damage compensation to persons situated on forest lands in Papum Pare District/Itanagar Circle. In compliance with aforementioned letters dated 5.5.2022 and 2.11.2022 issued by the DC Itanagar, the Petitioner made the payment of Rs.10.89 crores.

(o) The issuance of the 2022 Notification for payment of the land and surface damage to directing the Petitioner to pay land and surface damage to persons situated on forest lands, and consequent Orders passed by the DC Papum Pare and DC Itanagar amounts to imposition of a requirement for obtaining new Consents, Clearances and Permits which were not required at the time of bidding/as on the Cut-off Date and constitutes a Change in Law event under Article 12 of the TSA read with the CIL Rules. Since DCs of the Papum Pare District and the Itanagar Capital Region are 'Indian Governmental Instrumentality' as defined under the TSA, the orders issued by them have the force of law. In support of its contention, the Petitioner has placed reliance on the judgment of the Appellate Tribunal for Electricity dated 12.8.2024 in Appeal No. 194 of 2022 (Powergrid Southern Interconnector Transmission System Limited Vs. Central Electricity Regulatory Commission & Ors) and the remand order passed by the Commission in Petition No. 13/MP/2021 dated 11.10.2024. The Petitioner has also relied upon the order dated 25.2.2023, passed by the Commission in Petition No. 164/MP/2021(Kohima-Mariani Transmission Limited v. CGM, Assam Electricity Grid Corporation Limited and Ors,)), to aver that notifications issued by the DC would thus qualify as law under the TSA. Accordingly, the Petitioner is entitled to additional expenditure against land

compensation paid by it in terms of the aforesaid Notifications under the Change in Law. In addition to this, the Petitioner is also entitled to the carrying cost in terms of Article 12 of the TSA and Rule 3(1) of the CIL Rules, which requires the affected party to be restored to such economic position as if the Change in Law event had not occurred.

Proceedings before the Commission

Hearing dated 19.4.2024:

4. Vide Record of Proceedings for the hearing dated 19.4.2024, the Petitioner and the Respondents were directed to file their replies, and certain information was sought from the Petitioner. The Petitioner filed an affidavit placing on record additional documents and its affidavit in response to the queries raised by the Commission. The Respondent No. 1/ Maharashtra State Electricity Distribution Company Limited ("MSEDCL") and the Respondent No. 2/ Gujarat Urja Vikas Nigam Limited ("GUVNL") have filed their replies on 26.4.2024 and 27.4.2024, respectively. In response to the said replies, the Petitioner has filed its rejoinders to both the replies of Respondent Nos. 1 & 2 on 29.4.2024.

5. In response to the Commission's query on recovery of Change in Law impact clarified that it had started recovering the Change in Law impact from February 2024 onwards corresponding to the billing period of December 2023, the Petitioner vide its affidavit dated 28.4.2024 has submitted that the disbursement advice dated 16.2.2024 issued by the CTUIL/Respondent No. 15 confirms billing of total monthly transmission charges including the impact of the claimed Change in Law events and proportionate recovery of transmission charges for the month of December 2023. Further, a detailed response was provided to the other queries raised by the Commission, including

detailed calculations for each expense, as envisaged by the Petitioner, before the Cut-Off Date vis a vis claimed due to Change in Law events along with the breakup.

Hearing dated 29.4.2024:

6. Vide Record of Proceedings (ROP) for the hearing dated 29.4.2024, the Petitioner was directed to clarify when it had approached the forest authority for the diversion of the forest land and the reasons for such delay in getting forest land diversion. In response, the Petitioner vide its compliance affidavit dated 6.5.2024, inter alia, has submitted that with respect to the PN Line, while the Petitioner applied for the forest diversion for PN Line on 14.8.2020, in time after the acquisition of the Petitioner Company by the successful bidder on 23.6.2020, the delay in receiving Stage-I clearance was completely attributable to internal administrative processing of the proposal by the Forest Department. With respect to the LILO of PN Line, it was severely impacted by the Covid-19 pandemic and heavy rainfall in the region, which hampered undertaking a physical survey of the forests. Such a physical survey was necessary before alternate routes could be finalised and any proposal for the forest diversion could be prepared. The Petitioner has submitted that it applied for the forest diversion for the LILO of PN Line on 25.5.2021 after the effect of these events ceased, and there was some clarity on the route of the PN Line. The Petitioner obtained Stage-I approval for LILO of PN Line on 30.3.2022, and any alleged delay in the grant of such approval was solely attributable to the time taken by the concerned forest officials in processing the Petitioner's proposal and the delay in the identification of degraded compensatory afforestation land.

Hearing dated 8.5.2024:

7. During the course of the hearing, Respondent No. 2, GUVNL, sought liberty to examine the details furnished by the Petitioner, including in its affidavit dated 6.5.2024,

and it was granted by the Commission. Further, in view of the Schedule to the 2022 Notification which indicated the tower locations to be on private land, the Petitioner was directed to clarify which tower locations are on forest land as well as on private land, and the basis on which it was assumed that no compensation will be required to be paid for any such private land at the time of bidding. The Commission also sought details of the RoW compensation paid for private land and forest land in the Papum Pare and Itanagar District. In response, the Petitioner filed its compliance affidavit on 30.5.2024.

Mentioning of matter on 5.9.2024:

8. The Petition was mentioned by the learned counsel for the Petitioner on 5.9.2024 for urgent listing because the CIL Rules envisage a timebound verification and adjustment of Change in Law impact. The learned counsel for Respondent No. 3, M.P. Power Management Company Limited (“MPPMCL”), sought liberty to file a reply in the matter. The Commission granted a final opportunity to all the Respondents to file their respective replies. Vide ROP dated 5.9.2024, the Petitioner was directed to submit the clarification regarding the location of certain towers and the Doimukh forest area. In response, the Petitioner filed its compliance affidavit dated 25.9.2024.

9. The Respondents, MPPMCL and DNHPDCL, filed their replies on 9.9.2024, and the Petitioner filed its rejoinders to the said replies on 19.9.2024.

Hearing dated 30.9.2024:

10. The matter was again listed for the hearing on 30.9.2024. On the request of Respondents, GUVNL and DNHPDCL, the Commission permitted them to file their additional reply to the Petitioner’s compliance affidavit dated 25.9.2024 with an

advance copy to the Petitioner, who may file its rejoinder, if any. The Respondent, GUVNL, filed an additional reply on 17.10.2024.

Hearing dated 18.10.2024:

11. The matter was reserved after having detailed arguments from both sides. After hearing the parties in detail, liberty was granted to them to file their written submissions. The Petitioner was directed to place on record certain documents and details in relation to its land and surface damage claim. Further, Respondent No. 8, Department of Power, Arunachal Pradesh, was directed to clarify whether there were guidelines/notification prevailing in the State of Arunachal Pradesh providing for the compensation towards (i) land and/or RoW and (ii) surface damages in respect of lands other than private land.

12. The Petitioner filed its compliance affidavit in response to the queries raised by the Commission, along with its written submissions on 15.11.2024. Respondent No. 2, GUVNL, also filed its written submissions on 15.11.2024. However, no reply has been filed by the Respondent No. 8, Department of Power, Government of Arunachal Pradesh, in response to the query raised by the Commission.

Submissions of Respondent No. 1/ MSEDCL

13. MSEDCL, in its reply dated 26.4.2024, has submitted as under:

- a) The Petition is barred by limitation and not maintainable under the CIL Rules. The Petitioner had raised the invoice for the transmission charges, including the Change in Law impact on 30.12.2023. In terms of Rule 3(7), it was mandatorily required to file the Petition on or before 30.1.2024, but the Petitioner has belatedly filed the present Petition on 11.3.2024.
- b) The Petitioner has not complied with Rule 3(7) while filing the Petition, as the Petitioner was required to furnish all relevant documents and details of calculation.

- c) The provisions under the TSA provide that the TSP is responsible for obtaining all consents, clearances, and permits in order to carry out its obligations, and it is their obligation to resolve all compensation issues and bear all the expenses. Therefore, no liability arises against LTTCs for the claims raised.
- d) With respect to the land and surface damage claim, the TSA outlines the obligations of the TSP in the development and construction of the project, including obtaining all necessary consents, clearances, and permits, and Article 5.1.5 of the TSA clearly prohibits claims based on resettlement and rehabilitation.
- e) Notification of the Government of Arunachal Pradesh dated 9.2.2022, cited as a Change in Law event by the Petitioner, is based on the existing Land Acquisition, Rehabilitation, and Resettlement Act, 2013. Therefore, the same cannot be considered.
- f) Since none of the claims of the Petitioner are maintainable, consequently, the Petitioner is also not entitled to the claim of the carrying cost. There is no provision for carrying costs in the TSA.

Submissions of Respondent No. 2/GUVNL:

14. GUVNL, vide its Reply dated 27.4.2024 and written submissions dated 15.11.2024, has submitted as under:

- a) The CIL Rules do not dispense with the requirement of the Petitioner to plead and establish the existence of a Change in Law, but only provide for the manner of recovery of the Change in Law impact.
- b) The MoEFCC's Notification dated 6.1.2022 on revision of the NPV rate refers to the judgment of the Hon'ble Supreme Court dated 28.3.2008 in the case of T.N. Godavarman Thirumalpad v. Union of India, [WP (Civil) No. 202 of 1995] as well the earlier 2009 Notification dated 5.2.2009. In the said decision, the Hon'ble Supreme Court had stipulated that the NPV must be revised every three years. Since the revision in rates of NPV was as stipulated in the judgment of the Hon'ble Supreme Court as well as the 2009 Notification, there is no Change in Law *per se*.
- c) The 2022 Notification clearly provided that if in-principle approval was accorded prior to 6.1.2022, the said Notification would not apply. Accordingly, the Petitioner

must furnish relevant details to establish that it was not responsible for the delay in obtaining the in-principle approval.

d) The claim for land and surface damage is based on the provisions of Sections 67 and 68 of the Electricity Act and the provisions of the Telegraph Act, and the Petitioner could not have assumed that it would not be required to pay the land and surface damage.

e) There is no supporting documentation or evidence, nor has the Petitioner demonstrated the veracity of the claims as required in terms of Article 12.2.3.

f) Assuming that there is any Change in Law, the impact can only be considered on the project cost, and no consequential, indirect, or remote costs can be claimed. Further, variation in prices is a risk undertaken by the bidder.

g) The claims for Change in Law during the construction period would be governed only by Article 12.2.2 of the TSA, and no carrying cost can be claimed. There cannot be any further consideration.

Submissions of Respondent No. 3/MPPMCL and Respondent No. 6/ DNHPDCL:

15. In addition to the above, Respondents MPPMCL and DNHPDCL, vide their replies dated 8.9.2024 and 9.9.2024, respectively, have made the following submissions:

a) The Petitioner has, in the instant Petition, informed the Commission that it shall be filing a separate petition for claiming relief for the force majeure events prior to 21.10.2021. Such piecemeal adjudication is not permissible under law, particularly under Order II Rule 2 of the Code of Civil Procedure, 1908.

b) In case the Petitioner thought that the LARR was not applicable and the imposition of excess compensation was not within the ambit of the LARR as per the Petitioner, the orders of the DC, Itanagar Region, should have been appropriately challenged before a Writ Court for exercising excess jurisdiction arbitrarily.

c) The Petitioner has not demonstrated that there is any actual cost outlay for the interest. The carrying cost is being claimed on the basis of the restoration principle, and when the Petitioner has not incurred the cost, there is no restoration involved.

16. The Petitioner, vide its rejoinders dated 29.4.2024 and 19.9.2024, affidavits dated 12.4.2024, 28.4.2024, 30.5.2024, 6.5.2024, 25.9.2024, and 15.11.2024, and written submissions dated 15.11.2024, has re-joined the aforesaid submissions made by the Respondents and responded to the queries raised by the Commission, as summarized below:

Re: Compliance with the provisions of the TSA and CIL Rules

- a) In terms of Rule 3(7) of the CIL Rules, the Petitioner was required to submit the relevant documents along with the details of calculation to the Commission within 30 days of coming into effect of recovery of the impact of Change in Law. The captioned Petition was filed on 11.3.2024, within the prescribed period of 30 days from the date of recovery, i.e., 16.2.2024. Accordingly, the Petitioner has approached the Commission within the timeframe prescribed under the CIL Rules, and there has been no delay whatsoever on its end. The date of commissioning of the Project has no relation to the timeline prescribed under the CIL Rules.
- b) The Respondents have wrongly relied on Articles 4.1 and 5.1.3 of the TSA to state that it was the Petitioner's responsibility to resolve all issues while seeking forest-related permits and clearances. This argument is in ignorance of Article 12 of the TSA, which entitles the Petitioner to seek Change in Law relief if there is any increase in capital expenditure relative to the cost assumptions taken into account at the time of bidding due to change in the applicable law, including by/through the Indian Government Instrumentalities. Assuming the responsibility to develop the Project and seek all relevant consents and permits cannot be equated to assuming responsibility for any increase in costs associated with the same, post the Cut-Off Date due to amendments in the applicable law in ignorance of Article 12 of the TSA.
- c) The reliance placed on Article 5.1.5 is unfounded since the costs relating to land and surface damage do not in any manner relate to resettlement and rehabilitation costs. Land and surface damage have been paid by the Petitioner in terms of the Change in Law and directions issued by the concerned District Collector for the people dependent on forest produce, and the Petitioner was not involved in any rehabilitation/resettlement. Accordingly, no reliance can be placed on Article 5.1.5 of the TSA.

d) In any case, MSEDCL's argument is in ignorance of Article 12 of the TSA, which entitles transmission licensees to recoup additional capital expenditure incurred due to a Change in Law event that has occurred after the Cut-Off Date. Since the claims of the Petitioner are directly flowing from the Change in Law events that have occurred after the Cut-Off Date, it is entitled to claim relief in the form of increased transmission charges.

e) The CIL Rules expressly allow transmission licensees to recover the carrying costs under Rule 3(1). Further, Article 12 of the TSA also allows recovery of carrying costs. Reliance has been placed by the Petitioner on the judgments of the APTEL dated 20.10.2020 and 15.9.2022 in Appeal Nos. 208 of 2019 and 256/2019 & batch, respectively, and the order of the Commission dated 15.2.2023 in Petition No. 453/MP/2019.

Re: Revision in the NPV Rates:

a) With respect to obtaining forest clearances for the portions of the lines that were impacted by the NPV revision, despite all efforts, the requisite Stage-I clearances were granted to the Petitioner only on 30.3.2022, and no delay was attributable to it in receiving the requisite Stage-I approvals.

b) Further, reliance on the Hon'ble Supreme Court Judgement dated 28.3.2008 in WP (Civil) No. 202/1995 is misplaced since without a change/ revised notification on the NPV rates by the MoEFCC, there was no way in which the Petitioner could have taken into account the higher NPV rates at the time of bidding. Irrespective of the guideline laid down by the Hon'ble Supreme Court, the MoEFCC changed the NPV rates only in the year 2022, and compensation was duly paid by the Petitioner based on such revised rates.

Re: Additional requirement to pay land and surface damage

a) The scope of 'damages' payable under Sections 67 and 68 of the Electricity Act is restricted to compensation payable under the guidelines issued by the MOP in this regard, including the 2015 MOP Guidelines and the Works of Licensees Rules, 2006 ("2006 Rules"). However, neither the said MOP guidelines nor the 2006 Rules prescribe any requirement for payment of RoW/ land and surface damage compensation by transmission licensees to persons dependent on forest produce and/ or situated on forest lands while seeking forest diversion.

b) Further, the Petitioner has been granted approval under Section 164 of the Electricity Act, and hence, under Rule 3(4) of the 2006 Rules, the provisions of Rule 3 thereunder do not apply to the Petitioner. Additionally, the 2015 MOP Guidelines were adopted in the State of Arunachal Pradesh only after the Cut-off Date vide the 2019 Notification. Hence, there was no obligation on the Petitioner to pay RoW/ land and surface damage for forest lands as on the Cut-off Date based on the applicable law.

c) In response to the Commission`s query regarding whether the Subject Tower Locations are situated in forest land or not, the Petitioner has placed on record the following documents/details:

i. The letters dated 23.9.2024 and 26.9.2024 issued by the DFO, Lakhimpur Forest Division, DFO, Sagalee Forest Division, and DFO, Banderdewa Forest Division confirming that the tower location nos. AP 26/0 to AP 35/0 of PN Line; AP 51/0 to AP 62/0 of the PN Line; AP 43/0 to AP 49/0 of the LILO of PN Line; AP 36 to AP 51 of the PN Line; AP 3/0 to AP 11/0, AP 21/0 to AP 30/0, AP 32/0, and AP 34/0 to AP 42/0 of the LILO of PN Line are situated on the forest lands;

ii. The Petitioner has received forest diversion approvals from the MoEFCC, which is the apex body in relation to all matters concerning forests in India, for all the very same locations on which the queried towers are situated;

iii. Toposheets/ maps prepared by the concerned DFOs post site inspection with the user agency/present Petitioner, marking the route of the transmission lines and the Subject Tower Locations traversing through the forest lands as verified/certified by the concerned DFOs, conclusively establishes that the Subject Tower Locations are situated on forest lands. Based on the said toposheets, the respective State Forest Divisions/Department uploads Google Maps (kml files) on the e-green watch portal (egreenwatch.nic.in) as part of the process of issuance of the forest diversion approvals. These maps/kml files record the route of the lines based on these certified toposheets;

d) In response to the queries raised by the Commission on whether any land/surface damage compensation has been paid for jhum land and the basis on which the Petitioner assumed that it would not be required to pay any compensation with respect to jhum land, the following has been submitted by the Petitioner:

i. No Jhum land was acquired by the Petitioner, or any Government entity, for the implementation of the Project. Since JLR 1947 is only applicable to cases of acquisition of land by the Government, it does not apply to the present case of the Petitioner.

ii. The DC Itanagar, vide its letter dated 7.11.2024 and the office of the DC Papum Pare vide its letters dated 18.4.2022 and 5.11.2024, has clarified that prior to the issuance of the 2022 Notification, there was no requirement on transmission licensees, such as the Petitioner, to pay RoW/ surface damage compensation to forest inhabitants whose land had been categorised as jhum land under the JLR. It was also clarified that the Jhum land where such RoW/ land and surface damage compensation was directed to be paid was identified as jhum land for the first time only during the implementation of the Project.

iii. Neither the lands over which the Subject Towers were located been categorised as 'Jhum Land', as defined under the JLR, as on the cut-off date, nor was there any publicly available official document from any Indian Government Instrumentality notifying such lands as jhum lands as on the Cut-off Date. In any case, the JLR, 1947 only provides for payment of the compensation in cases of acquisition of jhum land, which was not the Petitioner's case. Therefore, as on the Cut-off Date, the Petitioner proceeded on the basis that it would have to pay only forest-related compensation under the FCA.

Analysis and Decision

17. We have heard the learned counsels for the Petitioner and Respondents, carefully perused the documents available on records, and considered the submissions of the parties. Based on the above, the following issues arise for adjudication:

Issue No. 1: What is the scope and object of CIL Rules and whether the Commission can, in this case, adjudicate the merits of Change in Law claims made by the Petitioner?

Issue No. 2: Whether the provisions with respect to notice and timelines under the CIL Rules have been complied with?

Issue No.3: Whether the events so claimed by the Petitioner constitute Change in Law events in terms of the TSA and the CIL Rules or not?

Issue No. 4: If the answer to Issue No. 2 is in the affirmative, what compensation/relief is to be granted?

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

Issue No. 1: What is the scope and object of CIL Rules and whether the Commission can, in this case, adjudge the merits of Change in Law claims made by the Petitioner?

18. Pertinently, the present Petition has been filed under Rule 3(7) and Rule 3(8) of the CIL Rules read with Article 12 of the TSA dated 7.12.2018. The Petitioner has also invoked the Sections 61 and 63 of the Act and has primarily prayed for verification of the calculation of the impact of Change in Law events incurred by the Petitioner and consequently, the adjustment of the amount of the impact in the monthly tariff /charges in terms of Rule 3(8) of the CIL. As such, the Petitioner has not prayed for declaration or recognition of the events so claimed in the Petition as Change in Law event in terms of Article 12 of the TSA. As per the Petitioner, the role of the Commission under Rule 3(8) is limited to verifying the calculation and adjusting the amount of impact in the monthly tariff /charges within the prescribed timeline of sixty days from the date of receipt of the relevant documents under Rule 3(7). The term 'verify' has been used in the context of 'calculation' and not 'claim'. Therefore, the Commission is only required to verify the arithmetic calculation of the impact and not review or adjudge the merits of the Change in Law claim of the affected party.

19. *Per contra*, the Respondents have submitted that the Petitioner has proceeded on the basis that the Change in Law events so claimed are admitted by the parties, while there is no such admission. It is for the Petitioner to plead and establish that there is a Change in Law event in terms of the TSA that has impacted the Petitioner for which the relief has been sought. The CIL Rules do not dispense with the

requirement of the Petitioner to plead and establish the existence of a Change in Law but only deal with the issues post declaration of Change in Law or in case the parties agree that there is a Change in Law event.

20. We have considered the submissions made by the parties. As noted above, the Petitioner, in the instant case, has approached the Commission in terms of CIL Rules, particularly Rule 3(8) thereof, which enjoins the Appropriate Commission to verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under Rule 3(7). The Rule 3(7) requires the generating company or the transmission licensee, as the case may be, within 30 days of the coming into effect of the recovery of impact of Change in Law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges. In the present case, as has been stated by the Petitioner, the recovery of the impact of Change in Law events as indicated in the Petition, has already commenced. It is stated that the Petitioner submitted its billing claiming the transmission charges including the Change in Law impact to NLDC on 30.12.2023 and pursuant to the disbursement advice dated 16.2.2024 issued by CTUIL, the Petitioner has started recovering the Change in Law impact from the February, 2024 onwards corresponding to the billing period December, 2023. However, the fact remains that certain LTTCs to the TSA, namely, MSEDCL (Lead LTTC), GUVNL, MPPMCL, and DNH & DD Power Corporation Limited, are contesting the Change in Law claims itself.

21. In this background, it is pertinent to examine the scope and object of the CIL along with the relevant provisions of the TSA to ascertain the extent of intervention of the Commission required in such Change in Law claim proceedings, where the event so claimed is covered by the Change in Law Rules regime, i.e. have occurred after the

notification of these Rules on 22.10.2021. The relevant provisions of CIL Rules read as under:

“1. Short title, commencement and application.—(1) These rules may be called the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) These rules shall apply to a generating company and transmission licensee.

2. Definitions— (1) In these rules, unless the context otherwise requires,—

(a) “Act” means the Electricity Act, 2003 (36 of 2003);

(b) “agreement” means an agreement for the purchase, supply or transmission of electricity entered into under the Act;

(c) “change in law”, in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes

3. Adjustment in tariff on change in law

(1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated—

(a) where the agreement lays down any formula, in accordance with such formula; or

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be,—

(a) in case of generation project, within a period of one-hundred eighty months; or

(b) in case of recurring impact, until the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.....”

The object of these Rules, as can be easily gathered from its short title, is undoubtedly a timely recovery of the costs due to a Change in Law event. The delay in a timely recovery of the Change in Law impact has been one of the key concerns affecting the power sector as a whole. Such delay not only severely impact the financial position of the affected party but, at the same time, also create a significant liability of carrying costs on the other side (usually Discoms), which ultimately is passed on to the end consumers. Taking note of this very aspect, the Hon’ble Supreme Court in *GMR Warora Energy Limited v. Central Electricity Regulatory Commission and Ors.*, [2023 8 SCR 183], has observed as under:

“176. We find that, when the PPA itself provides a mechanism for payment of compensation on the ground of ‘Change in Law’, unwarranted litigation, which wastes the time of the Court as well as adds to the ultimate cost of electricity consumed by the end consumer, ought to be avoided. Ultimately, the huge cost of litigation on the part of DISCOMS as well as the Generators adds to the cost of electricity that is supplied to the end consumers.

177. We further find that non-quantification of the dues by the Electricity Regulatory Commissions and the untimely payment of the dues by the DISCOMS is also detrimental to the interests of the end consumers. If timely payment is not made by DISCOMS, under the clauses in the PPA, they are required to pay late payment surcharges, which are much higher. Even in case of ‘Change in Law’ claims, the same procedure is required to be followed.

178. Ultimately, these late payment surcharges are added to the cost of electricity supplied to the end consumers. It is, thus, the end consumers who suffer by paying higher charges on account of the DISCOMS not making timely payment to the Generators.

179. It is further to be noted that the appeal to this Court under Section 125 of the Electricity Act, 2003 is only permissible on any of the grounds as specified in Section

100 of the Code of Civil Procedure, 1908. As such, the appeal to this Court would be permissible only on substantial questions of law. However, as already observed herein, even in cases where well-reasoned concurrent orders are passed by the Electricity Regulatory Commissions and the learned APTEL, the same are challenged by the DISCOMS as well as the Generators. On account of pendency of litigation, which in some of the cases in this batch has been more than 5 years, non-payment of dues would entail paying of heavy carrying cost to the Generators by the DISCOMS, which, in turn, will be passed over to the end consumer. As a result, it will be the end consumer who would be at sufferance. We are of the opinion that such unnecessary and unwarranted litigation needs to be curbed.

181. We, therefore, appeal to the Union of India through Ministry of Power ("MoP" for short) to evolve a mechanism so as to ensure timely payment by the DISCOMS to the Generating Companies, which would avoid huge carrying cost to be passed over to the end consumers.

182. The Union of India, through MoP, may also evolve a mechanism to avoid unnecessary and unwarranted litigation, the cost of which is also passed on to the ultimate consumer."

22. Having regard to the object of CIL Rules, it is noticed that Rule 1(2) of the CIL Rules, further provides that they shall come into force from the date of their publication in the official gazette i.e. 22.10.2022 and as per Rule 1(3), they shall apply to a generating company and transmission licensee. Rule 2 of Change in Law provides the definitions of terms "Act", "agreement", "Change in Law", and "law". Suffice it to note that the term "agreement" includes the agreement for the transmission of electricity entered into under the Act and, therefore, would cover the TSAs as we are concerned within the present case. Also, the definition of Change in Law under Rule 2(c) gives primacy to the definition of Change in Law under the agreement, if any.

23. Rule 3 of the CIL Rules deals with "Adjustment in tariff on Change in Law". Sub-rule (1) thereof provides for the adjustment and recovery of the monthly tariff or charges in accordance with the Rules to compensate the affected party so as to restore such affected party to the same economic position as if the Change in Law had not occurred. Sub-rule (2) requires the generating company or transmission licensee, being the affected party, to give a three-week prior notice to the other party about the proposed impact on tariff or charges, positive or negative, to be recovered

from such other party. Sub-rule (3) requires the affected party to furnish to the other side, the computation of impact in tariff or charges to be adjusted and recovered, within 30 days of occurrence of Change in Law or on the expiry of three weeks from the date of notice under Sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges will start from the next billing cycle of tariff. Sub-rule (4) provides that the impact of a Change in Law may be computed as one-time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as part of the tariff. Sub-rule (5) provides that the amount of impact of the Change in Law shall be calculated as per the formula provided in the agreement, and in the event the agreement does not lay down any formula, then as per the formula given in the schedule to the said Rules. Sub-rule (6) provides that the recovery of the impact amount, in case of a fixed amount, shall be within a period of 180 months in case of generating projects and in case of recurring impact, until the impact persists. Sub-rule (7) requires the generating company or transmission licensee to furnish all the relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of impact in the monthly tariff or charges within 30 days of the coming into effect of the recovery of impact of the Change in Law. Sub-rule (8) requires the Appropriate Commission to verify the calculation and adjust the amount of impact in the monthly tariff or charges within 60 days of the receipt of the relevant documents under Sub-rule (7). Whereas, Sub-rule (9) provides that after the adjustment under sub-Rule (8), generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.

24. Clearly, the provisions of the Change in Law Rules do not throw any light on the aspect of adjudication of the Change in Law claims of the affected party by the

Appropriate Commission, specifically when such claims are disputed by the 'other side' to the agreement. This aspect has also been noted by the APTEL in its judgment dated 5.4.2022 in OP No. 1 of 2022 and Ors. in the matter of NRSS XXIX Transmission Limited v. Central Electricity Regulatory Commission and Ors., wherein the APTEL has further observed as under:

25. What needs to be highlighted here is that CIL Rules, as notified on 22.10.2021, do not cover a scenario where the parties may not be in agreement with each other on the issue as to whether the event being referred to does or does not constitute a Change in Law scenario and, further, if the answer to the first issue were to be in affirmative, as to whether such Change in Law event has led to additional cost being incurred by the licensee so as to set up a legitimate claim for compensation for restoring it to the original economic position by adjustment or recovery. To put it more clearly, the CIL Rules do not dwell at all on a situation where a licensee may have to approach the Regulatory Commission for "adjudication" of the dispute. From this perspective, it may not be wrong to also say that the CIL Rules assume that there is a consensus ad idem between the parties as to the nature of the event and its adverse effect on the cost borne by the claimant licensee, the only thing remaining to be done being to "verify the calculation" presented by the licensee within the meaning of Rule 3(8).

.....

66. As observed earlier, CIL Rules do not deal with the dispute resolution powers of Regulatory Commissions. Therefore, such delegated legislation will not apply to a scenario such as the present where the TSPs before us had approached the Central Commission for declaratory and consequential reliefs, and the beneficiaries (LTTCs) had disputed the claims for compensation, the matters involving exercise of jurisdiction under Section 79(1)(b), (c) & (f) of the Electricity Act. It bears repetition to say, and it is trite, that such subordinate legislation (CIL Rules) cannot negate the statutory role of CERC in adjudicating upon claims for Change in Law events and compensation thereof under the parent law (Electricity Act), not the least midway the process."

Thus, the APTEL has, after having examined the scheme of Change in Law Rules, expressed that the said Rules do not appear to cover a scenario where the parties are at dispute as to whether the event so claimed constitutes a Change in Law event in terms of the TSA and in such cases, the Commission is required to exercise its dispute resolution jurisdiction under Section 79(1)(b), (c) and (f) of the Act. In the present case, the Petitioner has, as such, not invoked the jurisdiction of this Commission under Section 79 of the Act. It is also noticed from the record that lead LTTC, MSEDCL, had *inter alia* objected to the Change in Law claims of the Petitioner vide above notice(s) by its reply dated 6.3.2024 itself. Despite this, the Petitioner, while

filing this case, has chosen not to invoke the adjudicatory jurisdiction of this Commission under Section 79(1)(c) read with 79(1)(f) of the Act for recognition/declaration of the events so involved as Change in Law events. On the contrary, the Petitioner has submitted that the Respondents cannot be permitted to question the merits of the Petitioner's claims. We are, however, unable to agree with such a submission of the Petitioner. Although, the Petitioner has submitted that it had replied to MSEDCL's above response vide letter dated 21.3.2024 and thereafter, MSEDCL by its letter dated 10.4.2024 had requested the Petitioner to approach the Commission in terms of Rule 3(7) and Rule 3(8) for 'validation of tis claims', we notice that both these communications had been issued post the filing of the present Petition. The fact remains that as on the date of filing of the Petition, the Change in Law claims of the Petitioner, including its inclusion in the billing, were objected to by MSEDCL, and therefore, the Petitioner ought to have also invoked the adjudicatory jurisdiction of this Commission.

25. This, in turn, poses a question as to whether the Commission can look into the aspects of merits of the Petitioner's Change in Law claims when the prayers are limited to the verification of the calculation on the impact of Change in Law and the consequent adjustment of such amount in the monthly tariff /charges. During the course of the hearing, the Respondents had sought to argue that while verifying the calculation and adjusting the amount of impact in the monthly tariff or charges under Rule 3(8), the Commission is also empowered to look into the merits/validity of the Change in Law claim itself. We are, however, not persuaded by such a line of submission as the plain reading of the said sub-rule clearly indicates the restricted role of the Commission therein. We are not inclined to accept such a liberal interpretation of said sub-rule. It is a cardinal principle of interpretation of statutes/rules/regulations that the words used therein must be understood in their natural, ordinary or popular

sense and constructed according to their grammatical meaning, unless such construction leads to some absurdity or there is something in the context or in the object of the statutes/rules/regulations to suggest to the contrary. In this case, ascribing the natural, ordinary, and grammatical meaning to the words “verify the calculation” and “adjust the amount of impact in the monthly tariff or charges” in Rule 3(8) does not lead to any absurdity or ambiguity, as already noted above. The Change in Law Rules do not cover a scenario where the parties are not in agreement with each other as to whether the event constitutes a Change in Law event or not under the TSA and the consequent invocation of the dispute resolution jurisdiction of the Commission.

26. However, it is also noticed that the present Petition has also been filed under Article 12 of the TSA. The relevant extract of Article 12 reads 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 interpretation or application of law by any Indian Government 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 and conditions for obtaining such Consents, Clearances and Permits;*
- ...*
- 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.*
- ...*

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 Rupees One Crore Eighty Seven Lakh Only (Rs. 1,87,00,000/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in the non-escalable Transmission Charges shall be an amount equal to 0.313 percent (0.313%) of the Non-Escalable Transmission Charges.*

12.2.2. ...

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.”

As already discussed above, the Change in Law definition in the agreement, if any, is given primacy over the definition contained in the Rules. Similarly, the formula laid down in the TSA, at Article 12.2.1, also prevails over the formula laid down in the Schedule to the Rules for the computation of the Change in Law impact to be adjusted and recovered. Hence, not only for determining whether an event constitutes a Change in Law event or not, but also for determining the impact of such Change in Law, the reference is required to be made to the provisions of the TSA itself. The LTTCs, in the present case, have not only disputed the merits of the Change in Law claims made by the Petitioner but also the impact claimed by the Petitioner due to such Change in Law events. In regard to such dispute(s), Article 16.3.1 of the TSA provides as under:

“16.3 Dispute Resolution:

16.3.1 Where any Dispute

i. arises from a claim made by any Party regarding any provisions of this Agreement, , or

ii. relates to any matter agreed to be referred to the Appropriate Commission, including those under Articles, 2.2.1, 2.3.1, 3.3.5, 5.1.2, 7.1.4, 7.1.5, 9.3.3, 10.9.6, 12.1.1, 12.2, 13, 15.2.4, 15.3, 16.3.3, and 18.17.1 hereof,

such Dispute shall be submitted to adjudication by the Appropriate Commission.

Appeal against the decisions of the Appropriate Commission shall be admissible only as per the provisions of the Electricity Act, 2003, as amended from time to time.”

27. Thus, any dispute arising out of the provisions of Article 12.1.1 (Definition of Change in Law) and 12.2 (Relief for Change in Law) is required to be adjudicated by the Commission. Hence, even though the Petitioner has merely prayed for the verification of the impact of Change in Law events and the consequent adjustment of such amount in the monthly tariff/ charges, the Commission is, as per Article 12 read with Article 16.3 of the TSA, empowered to look into the merits of such claim and adjudicate upon the dispute that has arisen between the parties in connection thereof. Further, as held by the Hon'ble Supreme Court in *Vijaya Bank v. Shyamal Kumar Lodh*, [(2010) 7 SCC 635] as well as the APTEL in its judgment dated 7.3.2024 in Appeal No. 277 of 2023 in the case of and *Rajasthan Rajya Vidyut Prasaran Nigam Limited v. RERC & Anr.*, it is well-settled that if the court/forum has substantive jurisdiction to entertain the matter and grant relief, the fact that the relevant statutory provision was not invoked or referred to, does not by itself oust the jurisdiction of the said court/forum. Accordingly, we reject the contention of the Petitioner that in this case, the Commission is only required to verify the arithmetic calculation of the impact and not review or adjudge the merits of the Change in Law claim of the affected party.

Issue No. 2: Whether the provisions with respect to notice and the timelines under the CIL Rules have been complied with?

28. In the present matter, the Petitioner/MUML has sought a Change in Law relief on account of an increase in the NPV rates and the additional requirement to pay the land and surface damage compensation to the persons occupying forest land.

29. As regards issuing the notice of Change in Law event, as per sub-rule (2) of Rule 3 of the CIL Rules (supra), the affected transmission company, which intends to adjust and recover the costs due to the Change in Law, is required to give three weeks

prior notice to its contractual counter-party about the proposed impact in tariff or charges, positive or negative to be recovered from the other party. Further, sub-rule (3) of Rule 3 provides that the affected party is to furnish to the other party the computation of impact in tariff or charges to be adjusted and recovered within thirty days of the occurrence of Change in Law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later and the recovery of the proposed impact in the tariff or charges shall start from the next billing cycle of tariff.

30. The relevant provisions of the TSA, in regard to the notice of Change in Law event, stipulate as under:

“12.3 Notification of Change in Law:

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...

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”.

31. In the present case, we note that the Petitioner has issued notices dated 10.2.2022, 28.2.2022, 27.6.2023, and 7.4.2023 to all its LTTCs in compliance with Article 12.3 of the TSA, intimating them of the occurrence of the two Change in Law events. Thereafter, the Petitioner issued a notice under Rule 3(2) of the CIL Rules on 8.12.2023. On the expiry of three weeks from the date of issuance of the notice under Rule 3(2), another notice under Rule 3(3) of the CIL Rules was issued by the Petitioner on 28.12.2023 to all its LTTCs in compliance with the timelines prescribed under the CIL Rules.

32. We note that in response to the said notices issued by the Petitioner under the CIL Rules, Respondent No. 1/MSEDCL/Lead LTTC and Respondent No. 5/Goa Electricity Department *vide* their letters dated 10.4.2024 and 18.3.2024, respectively advised the Petitioner to approach the Commission in terms of Rule 3(7) and 3(8) of the CIL Rules within the prescribed time frame as provided under the CIL Rules.

33. Accordingly, the Petitioner started recovering the Change in Law impact from the month of February 2024 onwards, corresponding to the billing period of December 2023, and the present Petition was filed on 11.3.2024. We observe that the present Petition was filed within 30 days of the coming into effect of the recovery of impact of the Change in Law in terms of Rule 3(7) of the CIL Rules.

34. In terms of the above sequence of events and correspondence, the Petitioner in our view, has complied with the requirement of serving the notice of Change in Law to the Respondents in terms of the relevant provisions of the TSA as well as the CIL Rules and has approached the Commission in terms of the timelines prescribed under the CIL Rules.

35. The issue is answered accordingly.

Issue No. 3: Whether the events so claimed by the Petitioner constitute Change in Law events in terms of the TSA and the CIL Rules or not?

36. Indisputably, the TSA executed between the Petitioner and its LTTCs dated 7.12.2018 defines the term Change in Law, and hence, in terms of Rule 2(c) of the CIL Rules, the definition of Change in Law under the TSA applies for the purposes of the Petitioner's claims herein.

37. Article 12 of the TSA dealing with the events of Change in Law is 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 interpretation or application of law by any Indian Government 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 and conditions for obtaining such Consents, Clearances and Permits;*
- ...*
- 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.*

...

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 Rupees One Crore Eighty Seven Lakh Only (Rs. 1,87,00,000/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in the non-escalable Transmission Charges shall be an amount equal to 0.313 percent (0.313%) of the Non-Escalable Transmission Charges.*

12.2.2. ...

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.”

38. A perusal of Article 12 of the TSA shows that for an event to qualify as a Change in Law, its occurrence has to be after seven days prior to the bid deadline i.e., the Cut-off Date and should result in any additional recurring/ non-recurring expenditure by the

TSP or any income to TSP. The bid deadline in the present case was 27.5.2019, and therefore, the cut-off date is 20.5.2019.

39. The events broadly covered under Change in Law are as under:

- a) Any enactment, coming into effect, adoption, promulgation, amendment, modification, or repeal of any law;
- b) Any change in the interpretation of any law by a Competent Court of law, or an 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 Commission`s Transmission Licence Regulations;
- f) Any change in the acquisition price;
- 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.

40. In the present matter, the Petitioner has approached the Commission seeking verification of the Change in Law impact occurring on account of (i) additional expenditure due to an increase in the NPV rates for forest conversion, and (ii) imposition of the additional requirement to pay the RoW/land and surface damages to persons occupying forest land. Such events are claimed to have occurred during the construction period after the cut-off date and after the coming into effect of the CIL Rules (i.e., post 22.10.2021) and have been examined in the following paragraphs.

Additional expenditure due to increase in the Net Present Value/NPV rates for forest conversion

41. In terms of the Forest (Conservation) Act, 1980 and the rules and guidelines issued thereunder, when a user agency applies for diversion of the forest land for non-forestry purposes, in addition to paying for the compensatory afforestation/CA, the Net Present Value/NPV of the forest land to be diverted for non-forest purposes is also recovered from the user agencies. The rates of the NPV recoverable from the user agency depend on the type of forest land being diverted.

42. We note that as on the Cut-Off Date, the NPV rates payable by the Petitioner were governed by the Guidelines dated 5.2.2009 issued by the MoEFCC, which prescribed the following NPV rates for various categories of forests:

Eco-Value	Class and NPV Rates in INR					
	Class I	Class II	Class III	Class IV	Class V	Class VI
Very Dense Forest	10,43,000	10,43,000	8,87,000	6,26,000	9,39,000	9,91,000
Dense Forest	9,39,000	9,39,000	8,03,000	5,63,000	8,45,000	8,97,000
Open Forest	7,30,000	7,30,000	6,26,000	4,38,000	6,57,000	6,99,000

43. As per the Petitioner, the PN Line and the LILO of PN Line traversed through Class-I – Dense Forest. The grievance of the Petitioner emanates from the revision in the NPV rates by the MoEFCC vide Notification dated 6.1.2022 read with Clarification dated 19.1.2022 post the cut-off date which caused the Petitioner to incur additional costs to the tune of Rs. 2,05,69,199 towards obtaining forest clearance for the implementation of PN Line and LILO of PN Line. As per the Petitioner, it had factored in the payment towards NPV to the tune of Rs. 3,88,09,809 based on the rates applicable as on the cut-off date as per the MOEFCC Guidelines dated 5.2.2009.

44. In support, the Petitioner has furnished details regarding the assumed rates, the increased actual expenditure incurred due to a change in the NPV rates, including for Class-I – Dense Forest by the MoEFCC, as captured below:

Element	Area (hectare)	Old rate of NPV	Amount as per Old NPV rates (A)	Revised NPV Rates	Amount as per Revised NPV rates (B)	Increase in NPV (B-A)
PN Line	10.381	939,000	97,47,759	14,36,670	1,49,14,071.27	51,66,312.27
LILO of PN Line	30.95	939,000	2,90,62,050	14,36,670	4,44,64,936.50	154,02,886.5
Total Additional Expenditure						2,05,69,198.7

45. *Per contra*, the Respondents have pointed out that the MOEFCC Notification dated 6.1.2022 cannot be claimed as a Change in Law event since the Hon'ble Supreme Court in its judgement dated 28.3.2008 in T.N. Godavarman Thirumalpad vs. Union of India, WP (Civil) No. 202/1995 had stated that NPV must be revised every three years, and the same should have been taken into account by the Petitioner at the time of bidding.

46. In rebuttal, the Petitioner has submitted that irrespective of the guideline laid down by the Hon'ble Supreme Court, MOEFCC changed the NPV rates for the first time only in 2022, and compensation was paid by the Petitioner based on such revised rates. The Petitioner cannot be expected to *suo moto* assume higher rates at the time of bidding without a legally binding notification by the MOEFCC.

47. Apart from this, the Respondents have also relied on Articles 4.1 and 5.1.3 of the TSA to submit that it is the Petitioner's obligation to obtain all consents, permits and clearances including forest related clearances and any additional costs in relation to them cannot be claimed against the LTTCs as part of the Change in Law relief. In

response to these suggestions made by the Respondents, the Petitioner has submitted that without a change/revised notification on the NPV rates by the MOEFCC, there was no way in which the Petitioner could have considered higher NPV rates at the time of bidding.

48. Further, the Respondents have suggested that not all documents in support of the claim have been placed on record by the Petitioner. In response, the Petitioner has submitted that it has duly placed on record the MoEFCC Guidelines dated 5.2.2009 (applicable as on the cut-off date), the Notification dated 6.1.2022 and Clarification dated 19.1.2022 issued by the MoEFCC which revised the NPV rate for Class-I – Dense Forest and caused an increase in the capital expenditure, the demand notes raised by the relevant forest officials dated 6.4.2022 and 22.4.2022 against the revised NPV rates and proof of payment of the revised NPV rates by the Petitioner. In addition to the aforementioned documents, in response to the queries raised by the Commission, the Petitioner has also placed on record the copies of challans dated 7.4.2022 and 26.4.2022 as proof of the total amount paid for forest diversion for the implementation of the PN Line and LILO of PN Line which includes the cost paid towards increased NPV.

49. We have considered the submissions made by the Petitioner and the Respondents and are of the view that the MoEFCC Notification dated 6.1.2022 and Clarification dated 19.1.2022 constitutes a Change in Law event under the TSA and resultantly, the Petitioner is entitled to a Change in Law compensation for the additional expenditure of Rs. 2,05,69,199.

Land and surface damage compensation:

50. The primary submission of the Petitioner is that, as on the cut-off date, with respect to the forest lands, the Petitioner was only required to seek the diversion in

terms of the FCA and pay the requisite CA, NPV, and other charges contemplated under the FCA. However, in terms of the Government of AP's 2022 Notification read with the 2019 Notification and the concerned orders issued by the DC, Papum Pare and DC Itanagar, the Petitioner has been required to pay the land and surface damages to the forest inhabitants/dwellers and this amounts to an additional requirement which was not applicable at the time of bidding/cut-off date and therefore, the such requirement constitutes a Change in Law event in terms of Article 12 of the TSA.

51. We have considered the submissions made by the Petitioner. It may be noted that on 15.10.2015, the Ministry of Power, Government of India, came up with the Guidelines for payment of the compensation towards damages in regard to the Right of Way for the transmission lines. The said Guidelines were formulated based on the recommendations of a Committee constituted under the Chairmanship of the Special Secretary, Ministry of Power to analyze the issues related to the Right of Way for laying of transmission lines in the Country and to suggest a uniform methodology for payment of compensation on this count. The Guidelines provided for determining the compensation towards "damages" as stipulated in Sections 67 & 68 of the Act read with Sections 10 and 16 of the Indian Telegraph Act, which were to be in addition to the compensation towards normal crop and tree damages. The said Guidelines *inter alia* provided for (i) compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate/ Guideline value/ Stamp Act rate for tower base area (between four legs) impacted severely on the Petitioner due to installation of tower/pylon structure; and (ii) compensation towards diminution of land value in the width of Right of Way corridor due to laying of transmission line and imposing certain restriction, which was to be decided by the States as per the categorization/type of land in the different place of States, subject to a maximum of

15% of land value as determined based on Circle rate/ Guidelines Value / Stamp Act rates. Further, the said Guidelines also requested all the States/ UTs to take suitable decisions regarding the adoption of the Guidelines, considering that the acquisition of land is a State subject.

52. The aforesaid Central Government Guidelines were, thus, merely recommendatory in nature and had no binding force unless a particular State/UT proceeded to adopt the same in respect of that State / UT, given that land is a State subject. For this very reason, the Commission, in the past, has not considered the said MoP Guidelines as a Change in Law event under the TSA. In the present case, the Govt of Arunachal Pradesh adopted the Ministry of Power's above Guidelines only by way of a Notification dated 29.8.2019 ('2019 Notification'). The relevant extract of the said Notification reads as under:

Government of Arunachal Pradesh
A.P Civil Secretariat: Department of Power
Block No.3, 5th Floor, Room No.1::Itanagar

No.PWRS/E-2462/2012(pt-II)

Dated, Itanagar the 29th August, 2019.

NOTIFICATION

The Governor of Arunachal Pradesh is pleased to adopt and notify the following rates of payment of compensation towards damages in regard to Right of Way(RoW)) for the transmission lines, in accordance with the Guidelines of the Ministry of Power, Govt, of India, vide Ref.No. 03/07/2015- Trans, dtd. 15.10.2015 for maintaining uniformity in compensation payment to the affected land owners during construction of transmission lines, it has been decided that a similar payment methodology towards compensation shall also be adopted in the State of Arunachal Pradesh. These guidelines of payment methodology of compensation towards "damages" as stipulated in Section 67 & 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act 1885 shall be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by tower base of 66 kV and above, not for sub-transmission and distribution lines below 66 kV.

- (i) Compensation @ 85 % of land value as determined by District Magistrate or any other competent authority based on Govt, approved rates, Circle rate/ Guidelines value/Stamp Act rates for tower base area (between four legs at ground level) impacted severely due to installation of tower/pylon structure.
- (ii) Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction at a maximum rate of 15% of land value as determined by Deputy Commissioner or any other competent authority based on Circle rate/ Guidelines value / stamp Act rates.

For this purpose, the width of RoW corridor shall not be more than that prescribed in table A at Annexure-1 and shall not be less than the width directly below the conductors.

- (iii) *In areas where land owner / owners have been offered / accepted alternate mode of compensation by concerned corporation / Municipality under Transfer Development Rights (TDR) policy of State, the licensee/utility shall deposit compensation amount as per (i) & (ii) above with the concerned Corporation / Municipality / Local Body or the State Government.*

The above guidelines shall be effective from the date of issuance of the above mentioned Government of India guidelines and shall be applicable for only those new transmission line / projects where construction have started after this date, i.e. 15.10.2015.

This guideline shall not be applicable for existing transmission lines which are already in service or under construction before the aforesaid date, or for maintenance of any existing transmission line.

Thus, by way of the aforesaid Notification, the Govt. of Arunachal Pradesh adopted a similar methodology towards land compensation, i.e., 85% of land value for the tower base area and up to 15% of the land value for the RoW corridor as specified by the MoP Guidelines. Further, the applicable land value is to be considered as determined by the District Magistrate / Deputy Commissioner or any other competent authority based on the Government-approved rates, circle rates/ guideline value, or Stamp Act rates. Further, the said Notification has been made effective from the date of issuance of the MoP Guidelines itself, i.e., 15.10.2015, and is applicable for those new transmission lines/ projects where construction had started after the said date. Pertinently, similar to the MoP Guidelines, this Notification also specifically notes that the methodology for land compensation specified therein shall be in addition to the compensation towards normal crop and tree damages.

53. As per the Petitioner, the above Notification applied to only the private land owners and did not extend to the forest inhabitants/dwellers and it was only by way of Dept. of Power, Govt. of AP's Notification dated 9.2.2022 ('the 2022 Notification') that the applicability of 2019 Notification for the payment of RoW compensation was extended to the persons who were dependent on forest land that was to be diverted

for the implementation of the Project. The relevant extract of the 2022 Notification is as under:

Government of Arunachal Pradesh
Department of Power
Arunachal Pradesh Civil Secretariat: Itanagar 791 111
Memo No. PWRS/E-31/2014-15/ Dated, Itanagar the 9th Feb. 2022

NOTIFICATION

WHEREAS, the Powers & Functions of the appropriate authority under the Electricity Act, 2003, the Indian Telegraph Act, 1885 and Government of Arunachal Pradesh Notification No. PWRS/E-2462/2013(Pt-II), Dated 29th August 2019, are vested in the Governor of Arunachal Pradesh, which shall be exercised and discharged within the State of Arunachal Pradesh.

WHEREAS, it appears to the Governor of Arunachal Pradesh that the lands and the surfaces over such lands at the following mentioned locations under possession of persons or otherwise are urgently needed at the locality or localities, more fully described in the following Schedule, for 'Construction of Pare (NEEPCO) - North Lakhimpur (AEGCL) 132 kV D/C Line and LILO of One Circuit of Pare HEP - North Lakhimpur (AEGCL) 132 kV D/C Line at Nirjuli (POWERGRID) Substation' under the project, 'North Eastern Region Strengthening Scheme - IX' in Doimukh and Gumto Circles of Papum Pare District, Arunachal Pradesh.

WHEREAS, this Notification is made under provisions of Section 67, Section 68 & Section 164 of the Electricity Act-2003, Section 10 & Section 16 of Indian Telegraph Act, 1885 and Notification No. PWRS/E-2462/2013(Pt-II), Dated 29th August 2019, of Government of Arunachal Pradesh, the powers & functions of which are vested in the Governor of Arunachal Pradesh for the payment of compensation towards damages in the Right of Way (RoW) of the aforementioned transmission line to be laid on and over the land described in the Schedule below.

AND NOW THEREFORE, any person having any claim(s) of damage(s) on the said land for the said purpose may file such claim(s) in writing to the office of the Deputy Commissioner, Papum Pare District, Yupia, within 30 (Thirty) days from the date of publication of this Notification by clearly stating the reason(s) for such claim(s); and the Deputy Commissioner, Papum Pare District, in his capacity shall dispose of the same after giving reasonable opportunity to extinguish the claim(s).

The above Notification records that the lands and surfaces over such lands at the locations, as mentioned in the Schedule, under the possession of persons or otherwise are urgently needed for the construction of the PN Line and the LILO of PN Line in Doimukh and Gumto Circles of Papum Pare District for payment of the compensation towards damages in RoW of the above transmission line to be laid on

and over the land described in the Schedule is required to be made. Accordingly, the said Notification calls upon any person having any claim(s) of damage(s) on the said land to file such claim(s) in writing to the office of DC, Papum Pare District within 30 days from the date of Publication by clearly stating the reasons for such claim and further requires the DC, Papum Pare to dispose of the same after giving reasonable opportunity to extinguish the claim(s).

54. It is noticed that the compensation payable by the Petitioner in of the Papum Pare District was determined in terms of the 2022 Notification and intimated to the Petitioner vide District Authority's letter dated 20.12.2021, whereby the Petitioner had been asked to deposit Rs. 22,97,54,500/- towards land and surface damage compensation for the disbursement of the actual affected land owners. By a subsequent letter dated 30.3.2023, the Petitioner had also been asked to pay the additional land and surface damage compensation to the tune of Rs. 3,47,14,560/-. However, the said demand arose owing to the claims of certain left-out forest occupants and the affected people in the new forest route from Loc. No. 26/0 to 29/0 in Buka village. The relevant extract of the above letter dated 20.12.2021 ('the 2021 Letter') is as under:

".....Apropos to the above subject this office has issued an order Vide No.0LRS0/PP/LA-06/2021/63, Dated Yupia the 2nd Nov'2021 for preliminary survey of the proposed site with your team on the ground to find out actual routes of the proposed 132kV lines that fall under the jurisdiction of Deputy Commissioner, Papum Pare from Sopo to North Lakhimpur Line (Tower No.62 to 26) & Lekhi village to Nirjuli S/s line (Tower No.SO to 12)] for 132 KVD/C Transmission Line from Pare HEP (NEEPCO) to North Lakhimpur (AEGCL)&LILO of one circuit of Pare(HEP)-North Lakhimpur at Nirjuli(PGCIL).

That, this office had also issued an order Vide No. DLRSO/PP/LA-06/2021/63, Dated Yupia the 29th Nov' 202, which ASSESMENT BOARD was constituted for detail examination of the prevailing different market land rates in the locality and thereby the finalized land rates of this project would be recorded by the Board with due consultation with local PRIs Members of the affected villages at DC's Conference Hall] Yupia on 6th December 2021 at 11 AM, whereas representative of VNLT L shall be part of the assessment process to brief the route alignment of proposed transmission line as well as details of construction

methodology and technical clarification to address the concerns of board members during course of the assessment.

.....

That, as recorded in the Minutes of meeting after thread bare discussion by the members present, the following points were resolved:

1. That, final Land Rate to be applicable for determining damage compensation this instant Transmission Line Project:
Under Papum Pare District proposed are as follows: -
 - i) PlainLand/Commercial/WRC :Rs.3200PerSqm
 - ii) Non-cultivable/Fallowland :Rs.600PerSqm
 - iii) HillLock/SlopeLand : Rs.200 PerSqm.
2. Out of the above shown rate, 85% will be payable for tower foundation area and 15% for surface damage area of corridor.
3. No Solatium shall be applied under JLR, 1947.
4. The rates of assets will be adopted at par with NER-II Transmission Line project between Hollongi and Itanagar— which is a similar project in the district in recent times.
5. The above assessed land rates shall be applicable only for this project and is not applicable for any other project in the locations in the district.

.....

It is directed to executing agency to add this assessed compensation amount by the assessment committee in their project cost. This compensation as assessed is over and above any compensatory levies paid to forest department for obtaining forest diversion under Forest Conservation Act 1980 and may be accommodated as additional expenses under change in law for compensation assessed route by assessment committee formed by this office for 132 kV from Sopo to North Lakhimpur Line (Tower No. 62 to 26) & Lekhi village to Nirjuli S/s line (Tower No.50 to 12)] for 132 KVD/C Transmission Line from Pare HEP(NEEPCO)to North Lakhimpur at Nirjuli (P G C I L).....

That, accordingly Vide Order No. DLR/PP/LA-06/2021/63 Dated Yupia the 7th December" 2021. a board of Officer and other stakes holder that was constituted for "Final Ground ASSESMENT —cum-VERIFICATION" had verified on the ground; and report was submitted to the Officer.

And accordingly, compensation estimated was prepared as per ground assessment carried out by the Board. The following are the detail Estimate Copy of Land and Assets value falling under the jurisdiction of Deputy Commissioner, Papum Pare [for Sopo to North Lakhimpur Line (Tower No. 62 to 26) & Lekhi village to Nirjuli S/s line(Tower No.50 to 12)] for 132 KV D/C 'transmission line from Pare HEP (NEEPCO) to North Lakhimpur (AEGCL) & L1LO of one circuit of Pare (HEP) - North Lakhimpur at Nirjuli (PGCIL) S/s' amounting to Rs. 22,97,54,500/- (Rupees Twenty Two Crores Ninety Seven Lakhs Fifty Four Thousand Five Hundred) Only as annexed below:-

Hence, the above amount may be deposited into the joint account of DC AND DLR AND SO with the following details to be disbursed to the actual affected land owners:.....

55. Perusal of the above letter along with annexures thereto indicates that in response to the Petitioner's letter dated 13.10.2021 to DC, Papum Pare requesting for the necessary identification of forest dwellers and clearance of RoW along the transmission line route, the DC, Papum Pare by its letter dated 2.11.2021 directed to carry out the preliminary survey and mapping along the RoW of the said lines and for submission of report before the constitution of actual board of assessment of said line. Thereafter, by an order dated 29.11.2021, an Assessment Board (Negotiation Board) was constituted for detailed examination of prevailing market land rates in the locality and to finalise the land rates with due consultation with local PRI members of the affected villages. The representative of the Petitioner was also part of the assessment process to brief the route alignment of the proposed line, as well as the details of the construction methodology and technical clarification to address the concerns of the board members. In the minutes of the meeting held on 6.12.2021, the land rates to be applicable for the laying of the instant transmission lines in the Papum Pare District were finalised. It was also resolved that out of the finalised rates, 85% will be paid towards tower foundations and 15% for the RoW corridor, and that no solatium shall be applied under the Jhum Land Regulations, 1947. It was also resolved that rates of assets will be adopted at par with NER II Transmission Line Project - a similar project in the district in recent times, and the above negotiated land rates shall apply to the instant project.

56. The 2021 letter also refers to certain areas falling under the route of the lines in Doimukh Forest Area having been notified as de-reserved back in 2004, and the people/actual land owners living in those villages to be paid the compensation as per OM dated 2.6.2021. The OM dated 2.6.2021 refers to the Section 10 of the Jhum Land Regulations, 1947, requiring the DCs to ensure that reasonable compensation is paid

for Jhum land acquired for the public purposes under Section 10 thereof and conducting the summary proceedings to determine the reasonableness of the compensation wherein the parties to the proceedings will be the requiring agency and the individual or the community, as the case may be, having the rights over the land being acquired. The 2021 Letter, thereafter, goes on to refer the constitution of “Joint Verification-cum-Assessment Board” by DC, Papum Pare vide order dated 7.12.2021 for the “Final Ground Assessment – Cum- Verification” and the terms of reference of such Assessment Board *inter alia* included carrying out ground assessment and identification of actual land owners of land plots falling at the proposed areas for the construction of lines, preparation of compensation estimation as per the OM dated 2.6.2021 – with temporary surface damages of land and properties to be paid only in Unclassified Forest/ Private Land areas on lumpsum basis to rightful land owner, plot-wise verification of land owners and collection of requisite documents, finalisation of land owners’ name, etc. Accordingly, vide letter dated 20.12.2021, the compensation estimates of Rs. 22,97,54,500/- were prepared, as per the assessment carried out by the Board, which comprised Rs.8,24,89,800/- towards land compensation and Rs. 14,72,64,700/- towards surface damages, i.e., damages towards the value of standing assets. Further, as also stated above, for the left-out occupants, vide letter dated 30.03.2023, in addition to the administrative charges of Rs. 45,95,090, compensation estimates of Rs. 3,47,14,560 were prepared, which comprised Rs. 3,07,37,440 towards land compensation and Rs. 39,77,120/- towards surface damages.

57. The Petitioner has also indicated that by its letter to the DC, Papum Pare dated 23.12.2021, it had pointed out to the DC that the areas considered for compensation in the letter dated 20.12.2021 fell under the diverted forest land for which the Petitioner had already paid the compensatory levies to the CAMPA account of MoEF &CC and any payment thereafter will be an additional compensation, which will have a direct

impact on the Project cost. Accordingly, the Petitioner requested the DC to reconsider the decision to direct the payment of additional compensation. In response, the DLR & SO, Papum Pare, by its letter dated 18.4.2022, *inter alia*. pointed out that the payment of land is in terms of the 2022 Notification issued by the Department of Power, Government of Arunachal Pradesh. The relevant portion of the said letter dated 18.4.2022 is extracted as under:

Apropos your letter dated 23rd December 2021, VNLTL has communicated its objections on the Order No. DLRSO/PP/LA-06/2021 dated 20th December 2021 demanding compensation to the forest dwellers. In this regard, I wish to inform you that Department of Power, Government of Arunachal Pradesh vide its notification dated 09th February 2022 has notified the applicability of the Government of Arunachal Pradesh Notification No. PWRS/E- 2462/2013 (Pt-II) dated 29th August 2019 for payment of ROW compensation to private land owners for determination of compensation payable to forest dwellers whose land is notified as Jhum Land under the Jhum Land Regulations, 1947 (in short JLR, 1947).

Accordingly, the Order dated 20th December 2021 read with Department of Power, Government of Arunachal Pradesh notification dated 09th February 2022, the compensation determined by the Assessment Board constituted under JLR, 1947 to be deposited with this office for grant of approval to undertake construction activities of transmission project - 132 KV D/C Transmission Line PHEP (NEEPCO) to North Lakhimpur (AEGCL) and LILO of One Circuit at Nirjuli Substation of POWERGRID falling within the forest land under the jurisdiction of Papum Pare District.

In view of the above, you are hereby directed to comply with the Order issued by this office for payments required to be deposited by VLNTL at the earliest so that appropriate permission for construction of aforesaid Transmission Line can be issued by this office.

Thus, by the aforesaid letter, it was intimated that by the 2022 Notification, the applicability of the 2019 Notification in respect of RoW compensation to private landowners has been extended to forest dwellers, whose land was notified as Jhum land under the Jhum Land Regulations, 1947. Accordingly, the compensation determined by the Assessment Board ('the 2021 Letter') was maintained, and the Petitioner was asked to comply with the same at the earliest.

58. In respect of Itanagar Capital Region, DLR & SO, Capital Itanagar by its letter dated 25.2.2022 informed the Petitioner that to address the concerns regarding Right of Way, its Office has taken steps to form a committee as outlined in Jhum Land Regulations, which shall assess the extent of damage/land compensation to be paid to the project affected people in RoW proposed to be utilized by the executing agency. It was also informed that there was a requirement to establish whether any community rights can be vested under the Jhum Land Regulations upon the forest dwellers. Subsequently, by its letter dated 5.5.2022, read with the letter dated 2.11.2022 (rectifying the demand raised in a letter dated 5.5.2022), a compensation estimation of Rs. 8,92,14,959/- was raised towards land and surface damages upon the Petitioner for Itanagar Capital Region. It was also informed that a public notice for the claims and objections under the Electricity Act and Indian Telegraph Act were invited from the land and asset owners, and out of identified 47 land and assets owners, the office had received 6 complaints requesting to change the alignment of towers at AP 10 and AP 11. It was stated that the hearing and settlement of complainants will be done quickly, and the executing agency will be informed regarding the change in the estimate as additional compensation amount, if any. The letter also stated that the said compensation, as assessed, was over and above any compensatory levies paid to the forest department for obtaining forest diversion under FCA and may be accommodated as additional expenses under Change in Law compensation. Subsequently, vide the letter of DC, Itanagar Capital Region, dated 25.1.2023, an additional demand of Rs. 1,97,71,168/- (Rs. 2,22,89,861 – Rs. 25,18,693 already paid under the previous estimate) was raised towards land and surface damage compensation for AP 10 to AP 11.

59. Pertinently, for the assessment of the above compensation, the land value had been considered as the Board constituted for rate fixation in respect of 132 kV D/c line

from Biswanatha Chariali to Itanagar & Gohpur LILO of NER-II Transmission and the rates of standing assets – Agri/forest/structure items had been considered based on the Arunachal Pradesh's Gazette Notifications of 2011 and 2013. Moreover, the said assessment, having been determined in the formats of the LARR Act, 2013, also includes solatium @ 100 % of land and surface damages, the contingency charges @ 1% of land and surface damages and the establishment charges @ 7% of land compensation.

60. Further, in response to the Petitioner's letter dated 11.5.2022 to the DC, Itanagar Capital Region, pointing out the non-applicability of LARR Act, 2013, and the Petitioner having already paid the compensatory levies to the Forest Deptt. under the FCA for the diverted forest land, the DLR & SO, by its letter dated 4.6.2022 *inter-alia* clarified that the payment of land is in terms of the 2022 Notification issued by the Department of Power, Government of Arunachal Pradesh. The relevant portion of the said letter dated 4.6.2022 is extracted as under:

"..... This has reference to above letter dated 11th May 2022, MUML has raised certain objections to compensation towards land and assets value falling on the ROW under the jurisdiction of the Deputy Commissioner, Itanagar, Capital Region from Nirjuli area to Karsinga (Tower No. AP -1 to AP -11) amounting to Rs. 9,61,59,256/- only for construction of 132 kV D/C Transmission Line from Pare HEP (NEEPCO) to North Lakhimpur (AEGCL) & LILO of one circuit of Pare (HEP) - North Lakhimpur at Nirjuli (PGCIL) S/s by "Mumbai Urja Marg Limited" under Itanagar Capital Region.

As we have earlier informed you that this office has constituted a Committee under Jhum Land Regulations for resolution of pending right of way issues. Basis the recommendation of the Committee, this office has decided to extend provisions of Jhum Land Regulations to the forest dwellers residing in the Itanagar Forest Division. It is further directed that fair right of way compensation should be given to forest dwellers in accordance with the Government of Arunachal Pradesh Notification No. PWRS/E-2462/2013 (Pt-II) dated 29th August 2019. It is also noted that Government of Arunachal Pradesh passed a resolution dated 09th February 2022 in which Government of Arunachal Pradesh has extended its notification No. PWRS/E-2462/2013 (Pt-II) dated 29th August 2019 for payment of ROW compensation to private landowners/forest dwellers in Papum Pare District (Itanagar Circle).

Under the provisions of Jhum Land Regulations, Deputy Commissioner has responsibility to notify the areas within his jurisdiction as Jhum Land for safeguarding the livelihood and rights of the forest dwellers.

Additionally, this office vide its letter dated 05.05.2022 has informed MUML that the compensation for right of way/tree and crop compensation as applicable under the Government of Arunachal Pradesh Notification No. PWRS/E-2462/2013 (Pt-II) dated 29th August 2019 has been notified in the format provided under the Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, the compensation assessment is done as per Department of Power, Government of Arunachal Pradesh vide its notification dated 09th February 2022 has also notified the applicability of the Government of Arunachal Pradesh Notification No. PWRS/E-2462/2013 (Pt-II) dated 29th August 2019 for payment of ROW compensation to private landowners/forest dwellers in Papum Pare District.

Therefore, you are directed to deposit a sum of Rs. 9,61,59,256/- into the joint account of DC/DLR&SO, ICC as ROW compensation and ensure compliance of this office directions dated 05.05.2022.”

61. We note that a bare reading of the various notifications and communications of the District Authorities as noted above indicates that the liability of the payment of land to the forest inhabitants/dwellers upon the Petitioner came to be fixed in terms of the 2019 Notification read with the 2022 Notification which extended the applicability of the former to the forest dwellers/inhabitants. The 2019 Notification, which is based on the MoP Guidelines, determines the compensation towards “damages” payable by a transmission licensee as stipulated under Sections 67 & 68 of the Act and covers the field in this regard. Reliance cannot be placed on Sections 67 and 68 of the Electricity Act to argue that the liability of transmission licensees to pay damages to impacted persons is unlimited. The rules and guidelines promulgated under these provisions occupy the field of law for determining the compensation payable. Pertinently, both the 2019 Notification as well the 2022 Notification came to be issued only after the cut-off date of the bid by the Petitioner, and indisputably, prior to such cut-off date, there was no notification providing for the land compensation in line with the principles laid down by the MoP Guidelines. Hence, any liability arising out of the application of such Notifications in the case of the Petitioner amounts to a Change in Law as the Petitioner

could not have factored in such liability as on the cut-off date. However, as appears from various communications, such liability has also been fastened upon in terms of the provisions of the Jhum Land Regulations, 1947, which were already prevailing as of the cut-off date. The relevant extract of the Jhum Land Regulations, 1947, reads as under:

“.....Whereas it is expedient to frame a Regulation in order to safeguard and regulate the rights of the tribes indigenous to the Balipara/Tirap/Sadiya Frontier Tracts to Jhum land in the Balipara/Tirap/Sadiya Frontier Tract.

1. (1) This Regulation shall be called the Balipara/Tirap/ Sadiya Frontier Tract Jhum Land Regulation 1947.....

2. In this Regulation: -

(b) “Jhum Lands” means and includes all lands which any member or members of a village or community have customary rights to cultivate by means of shifting cultivation or to utilise by clearing jungle or grazing livestock provided that such village or community is in a permanent location but does not include :—

(i) any land which has been or is under process of being terraced for the purpose of permanent or semi-permanent cultivation whether by means of irrigation or not.

(ii) any land attached appurtenant to a dwelling house and used for the purposes of permanent cultivation, or

(iii) any land which in the opinion of the [Deputy Commissioner] is subject to permanent cultivation.

Explanation :— *(1) any land which is otherwise Jhum land according to the above definition shall be deemed to be so notwithstanding the fact that a part or the whole thereof may have been planted with fruit trees, bamboos, or tung or reserved for growing firewood.*

(2) Any village or community shall be held to be in permanent location if it always remains within a specific area, although part or the whole of such village or community may migrate from time to time to different localities within that area. (c) “Community” includes the residents of a village as a whole, the Clan, sub-clan, phratry or kindred.

4. (1) A Customary right to Jhum land shall be deemed to be established in favour of village or a community when such village or community has enjoyed the right to cultivate or utilise such Jhum land for not less than 5 years prior to the making of this Regulation.

(2) A customary right to Jhum land shall be deemed to be established in favour of an individual cultivator,—

(a) if he inherited the land in accordance with a local custom;

(b) if he purchased the land prior to the making of this Regulation and such purchase was not contrary to local custom, or

(c) if he has purchased the land at any date subsequent to making of this Regulation, provided such purchase was not contrary to any local custom or any provisions of this Regulation, or

(d) if, being a resident of permanent village, he has brought the land under cultivation, and the land has not been cultivated at any time within 30 years preceding his bringing the same into cultivation:

Provided that such land is within cultivable reach of his own village.

8. Subject to any order that may be made under this Forest Regulation, persons having customary rights to any jhum produce, land shall be entitled to forest produce from such land for their own use or for the use of members of their own village or community, but shall be bound by any other rule or Regulation in force determining or regulating the sale of such produce.

10. The Government may acquire any Jhum land required for a public purpose. No formal acquisition proceedings shall be necessary but an opportunity shall be given to those having rights in the land to show cause against such acquisition and reasonable compensation shall be paid for all land required under this section.

Land so acquired shall, if relinquished by the Government at any time, be returned to the village, community or individual from whom it was acquired on refund, if any, of such compensation to the Government as the latter may decide.”

62. The Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulations, 1947, in short, the Jhum Land Regulations, have been framed in order to safeguard and regulate the rights of the tribe of indigenous to Balipara /Tirap/ Sadiya Frontier Tract to the Jhum Land therein. Regulation 2(b) defines the term “Jhum Lands” to mean and include all the land which any member or members of a village or community have customary rights to cultivate by means of shifting cultivation or to utilize by clearing jungle or grazing livestock provided that such village or community is in a permanent location. Regulation 4(1), thereafter, proceeds to acknowledge the customary rights to Jhum land in favour of the village or community when such village or community has enjoyed the right to cultivate or utilize such Jhum lands for not less than 5 years prior to the making of such Regulations. Similarly, Regulation 4(2) lays down the criteria for the customary right to jhum land in favour of an individual cultivator.

Similarly, Regulation 8 also entitles the persons having customary rights to any jhum land to the forest produce from such lands. Further, Regulation 10 permits the Government to acquire Jhum Land for a public purpose without formal acquisition proceedings, but after providing an opportunity to those having rights in the land to show cause against the acquisition and a reasonable compensation for all land required under the said section. Indubitably, Jhum Land Regulations, which were already in place as on the cut-off date, clearly provided for the customary rights of individuals, villages, or communities to the jhum land thereunder, including their entitlement to the forest produce.

63. However, insofar as the payment of land and surface damage compensation is concerned, the said Regulations envisaged the payment of reasonable compensation only in case of acquisition by the Government for public purposes. It is already a settled position that the laying of the transmission line does not involve the acquisition of any land but only the right of use of such land. Hence, the Petitioner could not have factored in land and surface damage compensation on the basis of Regulation 10 of Jhum Land Regulations, as the laying of the transmission line did not involve the acquisition of land. Further, it has also been clarified vide the letter of DLR & SO, Itanagar Capital Region dated 7.11.2024 and letter of DLR & SO, Papum Pare District dated 5.11.2024 that prior to the issuance of the 2022 Notification, there was no requirement on transmission licensees, such as the Petitioner, to pay RoW/ land and surface damage compensation to forest inhabitants whose land had been categorised as jhum land under the said Regulations. It was also clarified that the Jhum land where such RoW/ land and surface damage compensation was directed to be paid was identified as Jhum land for the first time only during the implementation of the Project. Similar to this case, this Commission, *vide its order dated 19.05.2024 in Petition No. 134/MP/2021*, has allowed the recovery of compensation paid towards surface

damage to the concerned Petitioner under the Change in Law provisions in view of the fact that at the time of the bidding, there was no condition/guidelines or law requiring the payment of such additional forest compensation in the form of surface damage.

The relevant portion of the order dated 19.5.2024 is extracted as under:

“185. Letter dated 8.10.2020 was issued by the Deputy Commissioner/ District Collector, Itanagar addressed to the Petitioner on the subject ‘Detail Estimate copy of Land and Asset value’ falling under his jurisdiction with respect to Chimu area to Itanagar and Gohpur LILO (Tower Nos. AP-80 to AP-105) amounting to `14,42,93,334 which was required to be paid by the Petitioner to the concerned authority for the construction of BI Line and BI LILO. Alongwith the letter dated 8.10.2020, the Petitioner has annexed Board Proceedings dated 14.09.2020 for Rate Fixation in respect of Temporary Damage to be caused during construction of BI and Gohpur LILO.

186. Letter dated 5.8.2020, issued by the Deputy Commission/ District Collector, Papum Pare District, Arunachal Pradesh is on the subject ‘additional compensation estimate copy for surface damage for Hollongi to Chimpu Stretch, Tower Nos. 53-80 for construction of BI Line and BI LILO amounting to `32,03,309 which was required to be paid to the concerned authority and this demand for surface damage was in addition to the demand raised vide letter dated 22.10.2019 for `7,37,60,086.

187. The Petitioner has placed on record Notification dated 17.12.2019 issued by Government of Arunachal Pradesh, Department of Land Management, Itanagar (Page No. 581) on the issue of Board constituted for fixation of rate of compensation comprising of the respective representatives of the Deputy Commissioner, Papum Pare for the Petitioner’s project on 4.10.2019 wherein it was resolved that the compensation shall be as per the Government of Arunachal Pradesh Notification dated 29.8.2019. However, it was clarified in this Notification that the payment of compensation for land value is not permissible inside the Reserve Forest.

188. The Petitioner has placed on record the Notification dated 29.8.2019 issued by Government of Arunachal Pradesh, Department of Power (Page No. 2159) whereby rates of payment of compensation towards damages in regard to Right of Way for the transmission lines in accordance with Guidelines of MoP, Government of India dated 15.10.2015 was allowed for maintaining uniformity in compensation of payment to the affected land owners during construction of transmission lines. The said Notification of Government of Arunachal Pradesh allowed 85% of land value as determined by the District Magistrate or any other competent authority based on Government approved rates etc. for tower base area (between four legs at ground level) impacted severely due to installation of tower/ pylon structure. The compensation towards diminution of land value in the width of RoW corridor due to laying of transmission line and imposing certain restriction at a maximum rate of

15% of land value as determined by Deputy Commissioner or any other competent authority based on circle rate/guidelines value/stamp rates

189. We have taken into consideration the above Notifications dated 17.12.2019 and dated 29.8.2019 of the Government of Arunachal Pradesh and are of the view that Government of Arunachal Pradesh is a Government Instrumentality and the said Notifications are laws under the TSA. The said Notifications have been issued after the cut off date, therefore they are a Change in Law. Accordingly, while the Government Notifications have been allowed as Change in Law, only additional expenditure incurred by the Petitioner over and above the applicable compensation rates considered by the concerned authorities as on cut off date, shall be allowed under Change in Law...”

64. In view of the above, the requirement of payment of additional land and surface damage compensation to the forest dwellers as imposed upon the Petitioner in terms of 2019 Notification read with 2022 Notification constitute a Change in Law event under the TSA and resultantly, the Petitioner is entitled to a Change in Law compensation for the above additional expenditure. The total additional expenditure incurred by the Petitioner towards the land and surface damage compensation in the Papum Pare District and Itanagar Capital Region is Rs. 37,80,50,277, and the Petitioner is entitled to recover the same in terms of Article 12.2 of the TSA.

65. In light of the above, the total Change in Law compensation allowed to the Petitioner is as under:

Sr.	Head	Amount (in Rs.)
1.	Additional expenditure due to an increase in NPV rates for Forest Conversion	2,05,69,199/-
2.	Imposition of the requirement to pay additional land and surface damage compensation in Arunachal Pradesh: -- Papum Pare District: 26,90,64,150/- -- Itanagar Capital Region: 10,89,86,127/-	37,80,50,277/-
3.	Total Change in Law compensation Allowed	39,86,19,476/-/-

Issue No. 4: If the answer to Issue No. 2 is in the affirmative, what compensation/relief is to be granted?

66. Having held that the Petitioner is entitled to recover the additional expenditure incurred due to an increase in the NPV rates for forest conversion and imposition of the additional requirement to pay RoW/land and surface damages to persons occupying forest land, we further proceed with the next issue i.e. compensation/relief to be given to the Petitioner.

67. As noted above, the relief for the Change in Law during the Construction Period is governed by the formula given in Article 12.2.1 of the TSA, which reads 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 Rupees One Crore Eighty Seven Lakh Only (Rs. 1,87,00,000/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in the non-escalable Transmission Charges shall be an amount equal to 0.313 percent (0.313%) of the Non-Escalable Transmission Charges.”

68. Accordingly, the Petitioner shall be entitled to an increase in the non-escalable Transmission Charges @ 0.313% for every cumulative increase of Rs. 1.87 crore in the cost of the Project up to the SCOD of the Project due to the Change in Law impact as allowed by the Commission in this Order.

Carrying Cost

69. The Petitioner has submitted that it is entitled to appropriate carrying cost in terms of Rule 3(1) of the CIL Rules which expressly stipulates that recovery of tariff must compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred. This is a statutory restitutionary provision for Change in Law claims made in respect of events occurring after the effectiveness of the CIL Rules.

70. The Petitioner has submitted that in addition to the express provisions of the CIL Rules, Article 12 of the TSA also allows the Petitioner to recoup carrying costs. In support, reliance has been placed by the Petitioner on various judgments, including the Hon'ble Tribunal's Judgement dated 20.10.2020 in Appeal No. 208 of 2019, Bhopal Dhule Transmission Company Ltd. v. Central Electricity Regulatory Commission, Judgment dated 15.09.2022 in APL No. 256/2019 & batch, Parampujya Solar Energy Private Limited & Anr. vs. CERC & Ors. & batch, the Commission's order dated 15.02.2023 in Petition No. 453/MP/2019, Sipat Transmission Limited vs. MSEDCL & Ors and the Hon'ble Supreme Court's Judgement dated 24.08.2022 in Civil Appeal No. 7129 of 2021, Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. vs. Adani Power (Mundra) Limited & Anr.

71. The issue of entitlement of carrying cost has been settled by the Commission in various orders and it has been held that carrying cost where entitled shall be at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable Tariff Regulations or the LPS rate as per the TSA, whichever is the lowest. The sub-rule (1) of Rule 3 of the CIL Rules also contains a restitutionary principle inasmuch as it requires compensation the affected party so as to restore such affected party to the same economic position as if the Change in Law had not occurred. Accordingly, the Petitioner is eligible for a carrying cost on the additional expenditure/cost incurred on account of the Change in Law event as allowed by the Commission. However, the carrying cost shall be permissible only for the Change in Law events allowed in the instant order. In view of the above, the Petitioner shall be eligible for carrying cost, to cover the period starting from the date when the actual payments were made by the Petitioner to the authorities or others on account of the Change in Law events allowed till the date of actual recovery, at the actual rate of interest paid by the Petitioner for

arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable Tariff Regulations or the LPS rate as per the TSA, whichever is the lowest. However, keeping in view the for the construction period, TSA provides a formula for Change in Law relief, the carrying cost incurred up to the SCOD of the Project being in the nature of IDC, shall be considered as the increase in the cost of Project and thus, will be added to the total Change in Law compensation (and thus, cost of Project) allowed in the foregoing paragraphs for working out the increase in the non-escalable Transmission Charges as per Article 12.2.1 of the TSA. For the period subsequent to the SCOD of the Project, the Petitioner shall be entitled to carrying cost on the differential Transmission Charges till it starts collecting the increased Transmission Charges factoring in the Change in Law impact in terms of Article 12.2.1 of the TSA. Accordingly, the Petitioner shall work out the carrying cost after reconciliation of additional expenditure on account of the Change in Law event allowed with the respondents, after exhibiting a clear and one-to-one correlation with the Project and the invoices raised supported with auditor certificates.

72. We note that vide affidavit dated 28.4.2024, the Petitioner confirmed that it has already started recovery of its Change in Law impact from February 2024 onwards, even prior to filing of the present Petition. We note that the Petitioner included the claims towards Change in Law in its data submission to NLDC, which is the implementing Agency, under the Central Electricity Regulatory Commission (Sharing of inter-State transmission charges and losses) Regulations, 2020 ('2020 Sharing Regulations') and calculates transmission charges to be paid by DICs under the said Regulations. The claimed amount has been included by NLDC in its calculations without any adjudication as to whether such an event qualifies under Change in Law or not. The claims of Change in Law have been disputed by the LTTCs and

beneficiaries, as noted above. We are of the view that unless the events claimed as Change in Law are consented to by the beneficiaries of the Region, in which transmission system is located, or is specifically adjudicated and allowed by the Commission, NLDC and/or CTUIL shall not include the said claims under recovery under the 2020 Sharing Regulations. NLDC and CTUIL are directed to strictly adhere to these directions for all Change in Law claims forwarded to NLDC by the transmission licensees.

73. Accordingly, Petition No. 131/MP/2024 is disposed of in terms of the above discussions and findings.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh V. Babu)
Member

sd/-
(Jishnu Barua)
Chairperson