

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 329/MP/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member**

Date of Order: 4th July, 2025

In the matter of

Petition under Section 79(1) (b) read with Section 79(1) (f) of the Electricity Act, 2003 *inter alia* seeking reimbursement of the RLDC/ SLDC Charges from the Respondent and compensation on account of Change in Law events, namely, introduction of Composition User Fee and Jharkhand Mineral Bearing Land Cess Act, 2024.

And

In the Matter of:

Adhunik Power and Natural Resources Limited,
1st floor, 468, Udyog Vihar,
Phase-III, Gurugram– 122 016, Haryana

..... Petitioner

VERSUS

1. Tamil Nadu Power Distribution Corporation Ltd.,
(Formerly known as 'Tamil Nadu Generation and Distribution Corporation Ltd.')

NPKRR Maligai, 6th Floor,
Eastern Wing, 144, Anna Salai,
Chennai-600 002, Tamil Nadu, India

2. PTC India Limited,
2nd floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi – 110066.

...Respondents

Parties present:

Shri Dipak Khurana, Advocate, APNRL
Ms. Monalika, Advocate, APNRL
Shri Amit Griwan, APNRL
Ms. Deepti Dash, Advocate, PTC
Ms. Anusha Nagarajan, Advocate, TNPDC
Shri Rahul Ranjan, Advocate, TNPDC



ORDER

The Petitioner, Adhunik Power and Natural Resources Limited (hereinafter referred to as 'Adhunik Power') has filed the present Petition under Section 79(1) (b) read with Section 79(1) (f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking reimbursement of the RLDC/ SLDC charges from the Respondents and compensation on account of the Change in Law events, namely, the introduction of Composition User Fee and Jharkhand Mineral Bearing Land Cess Act, 2024. Originally, the Petitioner had made the following prayers:

- "a) Hold and direct that the Respondent No. 1 is liable to pay the amounts towards the System Operating Charges and Market Operating Charges (RLDC Charges) to the ERLDC in terms of the PPAs dated 18.12.2013 & 19.12.2013 & Supplementary PPAs dated 08.05.2018 and 10.05.2018;*
- b) Direct the Respondent No. 1 to pay the amount of Rs. 81,79,579/- towards reimbursement of System Operating Charges and Market Operating Charges (RLDC Charges) paid by the Petitioner to the ERLDC along with applicable Late Payment Surcharge under the PPAs till the disposal of the present Petition and to pay the Late Payment Surcharge till the date of realization of the amount;*
- c) Restrain the Respondent No. 1 from deducting/withholding any amount from the Invoices of the Petitioner under the PPAs against payment of System Operating Charges and Market Operating Charges (RLDC Charges) by the Respondent No.1;*
- d) Hold that levy of Composition User Fee constitute Change in Law event as per the provisions of the PPAs and that the Petitioner is entitled to be restored to the same economic condition prior to occurrence of the said Changes in Law event;*
- e) Direct the Respondents to make payment of Rs. 5,98,11,585/- (Rupees Five Crores Ninety Eight Lakhs Eleven Thousand Five Hundred and Eighty Five Only) to the Petitioner towards the additional expenditure incurred by the Petitioner on account of Change in Law event i.e. levy of Composition User Fee, in supplying power to the Respondents under the PPAs from April, 2022 up till April, 2024 and direct the Respondents to continue paying the same under the PPAs;*
- f) Grant carrying cost @ 1.25% per month on compounding basis from the date(s) on which the said amount(s) became due to the Petitioner till the actual realization of the same;*

g) *Grant Late Payment Surcharge as per the PPAs on the aforesaid amount towards Change in Law amount from the date the same become payable till the date of realization;*

h) *Direct the Respondents to continue to make payments accrued in favor of the Petitioner on account of Change in Law event enumerated in the Petition, up to the effect of the said Change in Law event as also the expenses incurred by the Petitioner towards the aforementioned Change in Law event, on a regular basis;*

i) *In the interim pending final adjudication of the present Petition, direct the Respondents to make payment of Rs. 5,38,30,426/- (Rupees Five Crores Thirty Eight Lakhs Thirty Thousand Four Hundred and Twenty Six Only) i.e. 90% of the already incurred amount by the Petitioner uptill April, 2024 towards supply of power to the Respondents;*

j) *Pass such other and further Orders as this Commission may deem fit in the facts and circumstances of the present case.”*

2. Subsequently, the Petitioner moved the IA No. 17 of 2025 seeking to amend the Petition and incorporate additional prayers in light of subsequent developments that occurred after the filing of the original Petition. The IA was allowed by the Record of Proceedings for hearing dated 14.1.2025, and the amended Petition was taken on record. The additional prayers incorporated by the Petitioner are as under:

“(dd) Hold that levy of Cess under the Jharkhand Mineral Bearing Land Cess Act, 2024 constitutes a Change in Law event as per the provisions of the PPAs and that the Petitioner is entitled to be restored to the same economic condition prior to occurrence of the said Changes in Law event;

(ee) Direct the Respondents to make payment of. Rs. 81,44,358/- (Rupees Eighty One Lacs Forty Four Thousand Three Hundred and Fifty Eight Only) to the Petitioner towards the additional expenditure incurred by the Petitioner on account of Change in Law event i.e. levy of cess under the Jharkhand Mineral Bearing Land Cess Act, 2024, and direct the Respondents to continue paying the same under the PPAs;

(ii) In the interim pending final adjudication of the present Petition, direct the Respondents to make payment of Rs. 73,29,922.2/- (Rupees Seventy Three Lacs Twenty Nine Thousand Nine Hundred and Twenty Two and Twenty Paise) i.e. 90% of the already incurred amount by the Petitioner up till 30.11.2024 (concerning levy under the Jharkhand Mineral Bearing Land Cess Act, 2024), towards supply of power to the Respondents.”

3. The details of the Project of the Petitioner, tied-up capacities, and the Power Purchase Agreements are as under:

S. No.	Particulars	Details
1.	Location of the Project (s)	Saraikela- Kharswan, Jharkhand
2.	Project Details	Total Capacity: 540 MW (2x270 MW); Thermal Power Project
3.	Power Supplied to	(i) Jharkhand Bijli Vitran Nigam Limited (122.85 MW+ 66 MW) (ii) Tamil Nadu Power Distribution Corporation Limited (100 MW) (iii) West Bengal State Electricity Distribution Company Limited (100 MW) (iv) Haryana Power Purchase Centre (100MW) (through PTC for a period of 5 years)
4.	Concerned PPA details	PPA-I dated 19.12.2013 as entered into between the Petitioner & PTC for 100 MW capacity, and PPA-II dated 18.12.2013 (Between PTC & TNPDC)
5.	Cut-off date for reckoning Change in Law events	27.2.2013

Submission of the Petitioner

4. The Petitioner has mainly submitted as under:

(a) The Petitioner (a generating company within the provisions of the Act) has set up a 540 MW (2x270 MW) Thermal Power Project at Saraikela-Kharswan in the State of Jharkhand. The Petitioner supplies power to more than one State and has a composite scheme for the generation and sale of electricity as envisaged in Section 79(1)(b) of the Act. This Commission, vide its common order dated 6.6.2018, in Petition Nos. 305/MP/2015 and 255/MP/2017 (both of which were Change in Law Petitions), pertaining to the Petitioner's above Project, have already held that the Petitioner has a composite scheme for the generation and supply of electricity in more than one State. The Petitioner is selling power under the following PPAs:

- (i) Jharkhand Bijli Vitran Nigam Limited, for supply of 122.85 MW power under the PPA for a period of 25 years,
- (ii) Jharkhand Bijli Vitran Nigam Limited for the supply of an additional 66 MW of power under the long-term PPA in line with the earlier long-term PPA of 122.85 MW.

- (iii) Tamil Nadu Power Distribution Corporation Limited through PTC India Limited, for the supply of 100 MW under the long-term PPAs for a period of 15 years,
- (iv) West Bengal State Electricity Distribution Company Limited through PTC India Limited, for the supply of 100 MW power under the PPA for a period of 25 years,
- (v) Haryana Power Purchase Centre through PTC India Ltd., for supply of 100MW power under the PPA for a period of 5 years.

(b) The Petitioner has set up a 540 MW Thermal Power Project (hereinafter referred to as the “generating station”) in District Saraikela-Kharswan in the State of Jharkhand. On 18.12.2013, Respondent No. 1, Tamil Nadu Generation and Distribution Corporation Limited (now TNPDC), and Respondent No. 2, PTC India Limited (PTCIL), entered into a Power Purchase Agreement for the supply of 100 MW power for a period of fifteen years for meeting the TANGEDCO’s base load power requirements. On 19.12.2013, the Petitioner entered into a back-to-back Power Purchase Agreement (PPA) dated 18.12.2013 with Respondent No. 2, PTCIL. The Petitioner commenced power supply to the Respondents from 1.1.2016, from its Power Plant.

Re: Reimbursement of System Operating Charges and Market Operating Charges paid to the ERLDC by the Petitioner (‘RLDC/SLDC Charges’)

(b) The Procurer/ Respondent No. 1 has an obligation for the payment of applicable RLDC/ SLDC Charges, under the PPA (as listed under Clause 4.3 of the PPA). The Petitioner had paid Market Operation Charges (‘MOC’) and System Operating Charges (‘SOC’) charges to Eastern Load Despatch Centre (‘ERLDC’) for the supply of power to the Respondents, which is the concerned RLDC in the present case. Accordingly, in terms of Clause 4.3 of the PPA, the Petitioner, vide its letter dated 4.1.2017, raised a Supplementary Invoice for the months of January 2016 to December 2016, on Respondent No. 2 for reimbursement of MOC and SOC paid by it to the ERLDC. Respondent No. 2 vide its letter dated 12.1.2017 requested Respondent No. 1 to reimburse the MOC and SOC raised by ERLDC. However, Respondent No. 1, vide its Letter dated 20.1.2017, denied paying the said charges.

(c) On 30.10.2018, the Petitioner again requested Respondent No. 2 to reimburse the MOC and SOC, and Respondent No. 2, in turn, requested Respondent No. 1 to reimburse the said charges vide its letter dated 14.11.2018. Respondent No. 1, vide its letter dated 22.11.2018, denied reimbursement of MOC and SOC. Thereafter, the Petitioner, on various dates, issued Supplementary Bills for the RLDC Fees and charges (SOC & MOC) paid by it to the ERLDC. On 18.11.2019, the Petitioner once again informed PTCIL that the RLDC fees and charges bills are raised by Power System Operation Corporation Limited ('POSOCO') as per the Central Electricity Regulatory Commission (Fees and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2019. The Petitioner stated that non-reimbursement of such charges is in contravention of the terms of the PPA, and non-payment of the same shall be considered as an Event of Default on the part of the Respondents. The Petitioner requested Respondent No. 2 to release the payment of Rs. 37,26,408/- for the period of supply from January 2016 till September 2019.

(d) Respondent No. 1, vide its letter dated 23.6.2022, while denying its obligation to pay the MOC and SOC, informed that the payment of SOC is for the Petitioner/ Respondent No. 2's existence as an inter-State trading licensee for availing grid access. TNPDCCL further informed that the MoC & SOC became applicable to be levied on PTCIL/Petitioner just before the injection takes place at the Injection Point, and therefore, are not part of the Transmission Charges, and the charges are applicable to the Petitioner and cannot be passed on to TNPDCCL. The Petitioner, vide its letter dated 5.7.2022, refuted the above assertions of the TNPDCCL and reiterated its stand that the payment of the aforementioned charges should be borne by TNPDCCL only, and therefore, the same needs to be reimbursed to the Petitioner. The Petitioner also stated that a delay in payment/reimbursement beyond the due date shall also attract a Late Payment Surcharge under the PPA.

(e) On 8.4.2024 and 18.4.2024, TNPDCCL sent dispute notices to Respondent No. 2, PTCIL, who forwarded the same to the Petitioner. In response to the said dispute notices, the Petitioner, on 26.4.2024, reiterated its stand and requested the Respondents to clear/settle the outstanding MOC and

SOC along with the applicable LPS of Rs. 81,79,579/-. While doing so, the Petitioner relied upon the Commission's Order dated 4.1.2024 in Petition No. 145/MP/2021 (*KSK Mahanadi Power Company Limited v. Tamil Nadu Generation and Distribution Corporation Limited*). The Commission, in the said Order, has decided the issue and has held that the generator is entitled to reimbursement of transmission charges and RLDC/SLDC charges by the Procurer. The PPA signed between KSK Mahanadi (Petitioner therein) and the Respondent (same as Respondent No. 1 herein) had an identical clause for the Procurer's Obligations. This Commission, as stated in the said Order, held that it was the Respondent/Procurer, who is liable to reimburse the SOC and MOC to the generator.

(f) Despite the said position, and in teeth of the above decision of this Commission, TNPDCCL vide its letter dated 26.6.2024 once again asserted that it is not liable to pay the said charges and it shall make the payment for Invoice dated 15.4.2024 for the said charges to the RLDC under protest and the amount shall be recovered in the subsequent pending bill of the Petitioner. From all the aforesaid facts and circumstances and this Commission's Order dated 4.1.2024, it is clear that TNPDCCL, being the Procurer, is liable to reimburse the transmission charges and MOC & SOC paid by the Petitioner, and it is the sole obligation of TNPDCCL to pay the said charges.

Re: Change in Law events; Composition User Fee

(g) Article 10.1 of the PPAs defines the expression 'Change in Law' whereas, Article 10.2.1 of the PPAs contains the principle, namely the purpose of compensating the party affected by such Change in Law, is to restore the affected party to the same economic position as if such Change in Law had not occurred, by way of adequate compensation, to the extent contemplated in Article 10. In the present case, the Bid Deadline was 6.3.2013, and as such, the cut-off date for the Change in Law event resulting in compensation is 27.2.2013 (hereinafter 'cut-off date'). Any Change in Law event occurring after the said date would entitle the Petitioner to compensation as per Article 10 of the PPAs.

(h) As on the cut-off date, i.e., 27.2.2013, there was no levy of Composition User Fee for use of State roads and associated facilities. The Government of Jharkhand on 16.9.2021 issued a Notification under Section 2 of the Indian Tolls (Jharkhand Amendment) Act, 2002 introducing 'Jharkhand Highways Fee (Determination of Rates and Collection) Amendment Rules, 2021'. In terms of Rule 3a of the aforementioned Rules, a Composition User Fee may be based on the 'to and fro' basis, and such user fee shall be Rs. 600 for each way, for which the base year shall be the year 2021. Further, such user fee rate may be revised yearly at a rate not exceeding @ 10% per year, on the first of April, each year. 'Jharkhand Highways Fee (Determination of Rates and Collection) Amendment Rules, 2021' qualifies to be 'Law' within the meaning of the PPAs entered between the parties and therefore, levy of Composition User Fee in terms of Rule 3 of the aforementioned Rules is a Change in Law event within the meaning of Article 10.1.1 of the PPAs. Due to the said levy of Composition User Fee, the cost of supply of power by the Petitioner to the Respondents under the PPAs has increased on account of payment of Composition User Fee on transportation of coal by use of State roads and associated facilities, and thus the Petitioner needs to be compensated for it as per Article 10.3 read with Article 10.5 of the PPAs. The claim of the Petitioner on account of levy of Composition User Fee from April 2022 to April 2024 is Rs. 5,98,11,585/- (inclusive of GST). In accordance with Article 10.4 of the PPAs, the Petitioner has notified the above-narrated 'Change in Laws' event, which occurred after 27.2.2013 (i.e., 7 days prior to the Bid Deadline date), to Respondent No. 2 vide letter dated 12.4.2022, along with relevant documents and raised its invoices. Respondent No. 1, vide its letters dated 13.4.2023, 5.2.2024 and 15.3.2024, disputed the invoices raised by Respondent No. 2. During the relevant period, the Petitioner has incurred additional expenses of Rs. 5,98,11,585/- in generating and supplying power to the Respondents under the PPAs due to the above narrated Change in Law event. The said calculation is based on the units of electricity/power supplied by the Petitioner to the Respondents under the PPAs.

Jharkhand Mineral Bearing Land Cess

(i) After filing of the present petition (i.e. on 10.8.2024), the Govt. of Jharkhand notified the Jharkhand Mineral Bearing Land Cess Act, 2024 on

7.10.2024 which provided for levy of Cess on mineral bearing land for augmenting health care services, education, social security services, agriculture, rural infrastructure, drinking water and sanitation, and for other necessary purposes in the State of Jharkhand. The enactment of the said Act is a Change in Law event under Article 10.3.4, read with Articles 10.3.2 and 10.3.3 of the PPAs. The Petitioner is sourcing coal from the coal mines of Central Coalfields Ltd. & Bharat Coking Coal Ltd. in Jharkhand, for generating power. In terms of the Jharkhand Mineral Bearing Land Cess Act, 2024, the cess is leviable at the time of dispatch of coal from these mines, and the same is a Change in Law event. In pursuance of the above, the Petitioner issued a Notice for Change in Law, dated 11.11.2024, to Respondent No. 2, TNPDC, under Article 10 of the PPA dated 19.12.2013.

(j) The Central Coalfields Limited raised bills against the Petitioner levying the said cess, and accordingly, the Petitioner raised Supplementary Bill dated 23.12.2024, which was subsequently revised on 9.1.2025, upon Respondent No. 2, TNPDC claiming an amount of Rs. 1,09,06,218/- and thereafter, a revised amount of Rs. 81,44,353/- towards such cess paid for the period from 7.10.2024 to 30.11.2024. The aforesaid levy could not have been foreseen or anticipated by the Petitioner, and was imposed subsequently by the State Government through a gazette notification dated 7.10.2024. Due to its impact, an adjustment in the existing tariff is inevitable so as to ensure that the Petitioner is restored to the same economic position that existed at the time of the bid, as provided for in the PPAs. The imposition of such a levy has increased the operational cost of the Project of the Petitioner and is a Change in Law event under the PPAs. As per Article 10.3.4 of the PPAs, this Commission is empowered to determine the tariff adjustment/compensation on account of a Change in Law. The Petitioner is entitled to the impact of the Change in Law event as per Article 10.3.4, read with Articles 10.3.2, 10.1.1, and 10.2 of the PPAs.

(k) The Petitioner is also entitled to carrying cost @ 1.25% per month on a compounding basis, on the above amount(s) from the date the said amount(s) became due to the Petitioner till the date of payment, in terms of Article 10.5.1 of the PPAs. The Petitioner's claim for carrying cost is in consonance with the

principles of restitution provided in Article 10 of the PPAs. The impact of the above levies is more than 1% of the aggregate value of the Letter of Credit (LC) for the relevant Contract Year. The 1% of the LC amount works out to about Rs. 36,86,104/-. As such, the Petitioner fulfils the condition laid down in Article 10.3.2 of the PPAs for claiming the additional cost/expenses incurred by the Petitioner in supplying power/ electricity to the Respondents under the PPAs as set out in the present Petition, as well as for future supply.

Proceedings before the Commission

Hearing dated 14.1.2025

5. During the course of the hearing on 14.1.2025, the learned counsel for the Petitioner reiterated the submissions made in the Pleadings. Learned counsel further submitted that subsequent to the filing of the present Petition, the Petitioner had also moved IA (Diary) No. 26/2025 seeking amendment(s) of the Petition so as to include its Change in Law claim arising out of levy of Cess under the Jharkhand Mineral Bearing Land Cess Act, 2024. Learned counsel, accordingly, urged to allow the said IA and to take on record the Amended Petition filed by the Petitioner. Considering the submissions made by the learned counsel for the Petitioner, IA (Diary) No. 26/2025 was allowed, and the amended Petition was taken on record. The matter was admitted on 14.1.2025, and notices were issued to the Respondents, permitting them to file their respective replies. Reply has been filed by the Respondent, TNPDC, and the Petitioner has filed a rejoinder thereto.

Reply of the Respondent, TNPDC

6. Respondent No.1, Tamil Nadu Power Distribution Corporation Limited ('TNPDC') [formerly known as Tamil Nadu Generation and Distribution Corporation Ltd. ('TANGEDCO')], vide its reply dated 18.3.2025, has mainly submitted as under:

Re: Reimbursement of System Operating Charges and Market Operating Charges paid to the ERLDC by the Petitioner ('RLDC/SLDC Charges').

(a) As per the CERC Notification No. L-1/153/2014/CERC dated 18.5.2015, the expenses incurred by the NLDC/RLDCs towards monitoring of grid operations, supervision, and control over the Inter-State Transmission System, real-time operations for grid control and dispatch, etc., are to be borne by the inter-State transmission licensees, generating stations, sellers, distribution licensees, and buyers in the form of System Operation Charges and Market Operation Charges. In line with the above Notification, TNPDC, as a Distribution Licensee, is required to pay the SOC and MOC for expenses incurred by the NLDC/RLDCs related to grid operation monitoring, supervision, and control of the Inter-State Transmission System, as well as real-time operations for grid control and dispatch. Likewise, the Petitioner, as a generating company, is obligated to pay the SOC and MOC as per the RLDC Fees and Charges notified on 18.5.2015, for utilizing grid access. Since the SOC and MOC are applicable to the Petitioner only when the injection occurs at the injection point, TNPDC is not liable to reimburse the same.

(b) As per Article 4.3 of the PPA, the Procurer is responsible for paying transmission charges (only from the injection point onwards) and any applicable RLDC/SLDC charges, which are limited to those corresponding to the contracted capacity of the Procurer. The Procurer will only reimburse these charges if they have been paid by the Seller from the injection point onwards. Thus, under Article 4.3 of the PPA, the Respondent is only liable to pay charges from the Injection Point onwards. This is clear from a holistic reading of Article 4.3 of the PPA.

(c) The declaration prayed for that the Petitioner is eligible for reimbursement of RLDC Charges, is clearly time-barred. Under Article 58 of the Schedule to the Limitation Act, 1963, the limitation period for instituting any suit or proceedings seeking a declaration is three years from the date when the right to sue first accrues. The right to sue accrued for the first time when the event being claimed as a Change in Law took place. Based on the materials on record, the cause of action for reimbursement of payment already made towards the RLDC Charges arises from January 2016, as the TNPDC had clearly denied the claim of the Petitioner on 20.01.2017 itself. However, the present Petition has been filed with an inordinate delay of almost 8 years. In

this regard, TNPDCCL has placed reliance on the Hon'ble Supreme Court's Judgment passed in the case of Andhra Pradesh Power Coordination Committee and Others v. Lanco Kondapalli Power Limited, (2016) 3 SCC 468.

(d) Repeated exchange of letters or communications does not extend the period of limitation. The act of submitting a claim or engaging in correspondence over an extended period of time, despite the clear denial of the claim by TNPDCCL in January 2017, cannot extend the statutory period of limitation. In this case, the continued exchange of letters between January 2016 and August 2024, prior to the filing of the Petition, does not reset or extend the limitation period. The law is clear that merely engaging in communication without a resolution or acknowledgment of the claim does not stop the time for the purposes of limitation. In this regard, TNPDCCL has placed reliance on the Hon'ble Supreme Court's Judgment passed in CLP India Pvt Ltd v GUVNL & Ors. [(2020) 5 SCC 585].

(e) The Petitioner's claim is based on the order dated 4.1.2024 passed by this Commission in Petition No. 145/MP/2021. TNPDCCL has challenged the aforementioned order before the APTEL in Appeal No. 219 of 2024, and the matter is currently pending adjudication before the APTEL. Without prejudice, the Petitioner, while having claimed payment from the Respondent as early as January 2016, chose not to file any petition until the passing of the Order by this Commission on 4.1.2024 in Petition No. 145/MP/2021 involving another generator. It is well settled that the mere fact that relief has been granted to a similarly placed person does not entitle a party that has chosen not to agitate its rights by taking recourse to appropriate legal proceedings to such relief. It also does not serve to exclude the time that has started to run from the time that the cause of action arose.

Re: 'Composition User Fee' under Jharkhand Highway Fee (Determination of rates and Collection) Amendment Rules, 2021

(f) The State of Jharkhand vide Notification dated 16.9.2021 issued by Road Construction Department of Government of Jharkhand is levying Composition User Fee (CUF), for use of State roads and/or bridges including interchanges, flyovers, ROB/RUB, bypasses and tunnel thereon in mining

areas, at the rate of Rs 600 per trip from the mineral transporting vehicles in the name of "Composition User Fee" commuting in mining areas. Under this scheme, the Department of Mines and Geology, Government of Jharkhand, developed a mechanism for the realization of 'Toll Tax' in the form of 'Composition User Fee' from mining lessees/dealers/transporters and vehicle owners. The Notification dated 16.9.2021, issued by the Road Construction Department, merely sets out the fee for use of State roads, etc., and is not in the nature of a tax, levy, or cess imposed under a statute. The said notification is nothing more than a rate chart, and cannot be construed as 'Law' merely because the same is styled as a notification.

(g) The validity of levying/collecting 'Toll Tax' in the form of 'Composition User Fee' through the medium of 'Jharkhand Integrated Mines and Minerals Management System Portal' at the time of generation of transport challan for transportation and otherwise removal of minerals Jharkhand Highways Fee (Determination of Rates and Collection) Amendment Rules, 2021 has been challenged by several parties in more than 200 Writ Petitions that have been filed before the Hon'ble Jharkhand High Court. By way of order dated 30.3.2022, the Hon'ble High Court in W.P. (c) No. 1031 of 2022 and batch has directed that no coercive action be taken pursuant to the notification in question. A similar order was passed by the Hon'ble Jharkhand High Court in W.P. (c) No. 5087 of 2022 on 3.5.2023. If the present claim is held admissible by this Commission, that should be subject to the orders of the Hon'ble Jharkhand High Court, where the validity of the levy of the Composition User Fee is still under pending adjudication in a batch of over 200 writ petitions filed under Article 226 of the Constitution of India.

(h) The PPA in the present case does not contain any provisions regarding the grant of relief of carrying costs for restoring parties to their original economic positions. Consequently, the Petitioner is not entitled to claim relief in the form of carrying costs or any related compensation. It is a settled principle that in matters of restitution, the courts should adopt a pragmatic view and grant relief in a manner that is reasonable, fair, and practicable. It has been held that the Court should not be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitution is taken. [Reference: Citibank

N.A. v. Hiten P. Dalal Ors. (2016) 1 SCC 411 and Kerala State Electricity Board Through its Special Officer (Revenue) and Another v. M.R.F Limited and Others, (1996) 1 SCC 597]. The Petitioner cannot seek to derive any profit from the change in law compensation.

(i) The present Petition was filed in August 2024, whereas the events of Change in Law for which the Petitioner claims compensation occurred in September 2021. For the period during which the Petitioner chose not to approach this Commission, the Petitioner cannot claim carrying costs, as there has been significant delay and laches on the part of the Petitioner in approaching the Commission. The principle that a delay in filing a Petition or providing information shall result in the denial of carrying cost has been established by the APTEL in several judgments. Therefore, the claim for carrying cost is not admissible if claims are not brought before the Commission promptly after events become known.

(j) This Commission, in a series of judgments, has held that if there is a delay of more than six months between the occurrence of a Change in Law event affecting the Petitioner and the filing of the Petition in relation to all such events, the Petitioner shall be entitled to carrying costs on the additional expenditure incurred due to the Change in Law events, only from the date of filing the Petition until the date of the Order passed by this Commission. In this regard, TNPDCCL has placed reliance on the Commission's order dated 19.5.2024 in Petition No. 167/MP/2021.

Re: Levy of Cess by Jharkhand Mineral Bearing Land Cess Act, 2024

(k) The Government of Jharkhand vide Gazette Notification dated 7.10.2024 announced the imposition of a Cess under the Jharkhand Mineral Bearing Land Cess Act, 2024. This new legislation mandates the levy of a Cess on all mineral-bearing lands within the State of Jharkhand. Thus, the new legislation pertains to the levy of cess and not the introduction of any new tax or alteration of the existing tax regime. A perusal of the Change in Law clause stipulated in the PPA dated 18.12.2013, read with clauses of the Jharkhand Mineral Bearing Land Cess Act, 2024, it becomes clear that the imposition of a cess by any government does not qualify as a "Change in Law" event under the

terms specified. The Change in Law clause typically addresses the introduction or modification of taxes, duties, or levies that directly affect the parties involved in the agreement. However, the imposition of a cess, as outlined in the Jharkhand Mineral Bearing Land Cess Act, 2024, does not fall within the scope of such a Change in Law.

(l) Without prejudice, if the aforesaid claims and carrying costs are held to be admissible at all, the Petitioner is only entitled to claim a reasonable cost for arranging funds that may be necessary in order to meet the increased cost by applying the principle of mitigation. This principle of Change in Law compensation under restitution emphasizes that the Petitioner is only entitled to be compensated for the actual, reasonable costs incurred due to the law change, and not for any potential profit or windfall. The Petitioner must also act reasonably to mitigate the impact of the change, ensuring that they do not overstate their claim or fail to take reasonable steps to reduce costs. The goal is to restore fairness and cover necessary losses without allowing the appellant to profit from the situation. The Petitioner is not entitled to receive carrying cost compensation on a compounding basis, as there are no provisions within the relevant agreements or contractual framework that explicitly provide for the payment of carrying costs on a compounding basis. The Petitioner is not entitled to any late payment surcharge, as one of the claims raised in the Petition is time-barred, and for the other claims, the Petitioner approached this Commission after a significant delay from the date of the cause of action.

(m) The Petitioner has further prayed for a blanket direction of releasing payment which fall due in the future (prayer (h)) and in this manner, the Petitioner is seeking relief without any cause of action having arisen given that the said relief pertains to bills that have not even been raised and hence, no default or breach can be said to have occurred. If the Petitioner is entitled to payment, it must first supply electricity and raise bills in accordance with the PPA. The Petitioner, duly performing the PPA by supplying electricity in terms thereof, being a condition precedent to performance by TNPDC, cannot be granted until the Petitioner first performs the contract and until and unless there is a breach on the part of TNPDC. It is well-settled that an order directing specific performance is premised on a clean slate where the party seeking relief

must establish through irrefutable facts, complete performance of its part of the bargain.

Rejoinder of the Petitioner

7. The Petitioner, vide its rejoinder dated 7.4.2025, has mainly submitted as under:

Re: Reimbursement of System Operating Charges and Market Operating Charges paid to the ERLDC by the

(a) The contentions raised by the Respondent No. 1 herein regarding the applicability of CERC notification dated 18.5.2015 and the charges pertaining to SOC and MOC being applicable to the Petitioner only when the injection occurs at the injection point, have been examined by this Commission in the context of a PPA containing similar terms and conditions, in the matter of *KSK Mahanadi Power Company Limited vs Tamil Nadu Generation and Distribution Corporation Limited* (Petition No. 145/MP/2021), and the Commission while rejecting the contentions of the Respondent had held that the payment of the applicable RLDC/SLDC charges on the contracted capacity is the responsibility of Respondent, TNPDC and in case of payment made by the Petitioner for the above, the same is required to be reimbursed by the Respondent.

(b) Article 4.3.1 (b) read with Article 4.4.2 of Schedule 4 to the PPA being squarely applicable to the Respondent No. 1, which clearly provide for the obligation of the Respondent No. 1 to pay/reimburse the RLDC/SLDC charges, the Respondent No. 1 is liable to pay/reimburse the RLDC/SLDC charges on the contracted capacity to the Petitioner as sought for in the Petition. In this regard, the Petitioner, vide letter dated 26.4.2024, again requested the Respondent to release payment against the aforesaid charges.

(c) The contention of Respondent No. 1 as regards the claims/reliefs claimed in the Petition being barred by limitation is erroneous, untenable, and misconceived. The non-payment of SOC and MOC (RLDC Charges) in terms of the provisions of the PPA amounts to a continuous cause of action, and therefore, the claims sought by the Petitioner in the present Petition are not barred by limitation. In this regard, the Petitioner has placed reliance on the

APTEL's Judgment passed in the matter of *Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd – Appeal No. 10/2020*. The Udupi Judgment of the APTEL was challenged before the Hon'ble Supreme Court in Civil Appeal No. 838 of 2021 titled *Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd*. However, vide order dated 8.2.2022, the Civil Appeal was dismissed on the grounds that there was no substantial question of law that merited consideration.

(d) The Petitioner, vide letter dated 4.1.2017 had raised Supplementary Invoice for the months of January, 2016 to December, 2016, on Respondent No. 2 for reimbursement of MoC and SoC paid by it to the ERLDC, and thereafter, the Respondent No. 2 vide its letter dated 12.1.2017 requested Respondent No. 1 to reimburse the MoC and SoC raised by ERLDC. However, Respondent No. 1 denied paying the said charges vide its letter dated 20.1.2017. The Petitioner, thereafter, on several occasions, requested the Respondents to reimburse the said charges, as they were payable in line with the terms of the PPA. The continuous non-payment of the RLDC/ SLDC charges by the Respondent in terms of the PPA as well as the Regulations for the period from 2016 till 2024, would constitute as a 'continuous cause of action' which partakes the character of a 'continuing breach' under Section 22 of the Limitation Act and accordingly, fresh period of limitation would commence every moment when the breach is continued. Therefore, as held by this Commission in the KSK case (Supra), the Respondent cannot be permitted to take benefit of its own wrongs, and as such, the contention of the Respondent *qua* the claims being barred by limitation is misconceived and not tenable.

Re: Objection on merits to the 'Change in Law' claims

(e) A conjoint reading of the definitions of terms "Change in Law" and "Law", that the term "Law" squarely includes any notification passed by an Indian Governmental Instrumentality. Upon a bare reading of the terms of the PPA, it is evident that the Government of Jharkhand is an Indian Government Instrumentality and accordingly the notification dated 16.9.2021 introducing Jharkhand Highway Fee (Determination of rates and Collection) Amendment Rules, 2021 by way of which the Government of Jharkhand has started levying

the 'Composition User Fee' for use of roads and associated facilities qualifies as a Change in Law event under the PPA.

(f) The above-stated event occurred after 27.2.2013 (i.e., 7 days prior to the Bid Deadline date) and is covered under Article 10.1.1 of the PPAs as a Change in Law event. Therefore, the Petitioner is not only entitled to recover the entire additional expenses incurred by the Petitioner on account of above stated event of Change in Law along-with carrying cost but is also entitled to recover the future additional expenditure which the Petitioner shall incur due to the said event of Change in Law for the entire tenure of the PPAs.

(g) With regard to the levy of 'Composition User Fee' by way of the aforesaid Jharkhand Highway Fee (Determination of rates and Collection) Amendment Rules, 2021, the alleged challenge to the aforesaid Rules of 2021 by way of which the 'Composition User Fee' has been imposed, does not have any bearing on the claims/reliefs sought for by the Petitioner herein in terms of the PPA between the parties. The contention of the Respondent as regards the reliefs in the present petition being subjected to the outcome of the challenge pending before the Hon'ble High Court is highly misconceived and misplaced. It is denied that the PPA does not contain any provisions regarding the grant of relief of carrying costs and that the court should adopt a pragmatic view of the matter.

(h) The Petitioner should be restored to the same economic position in terms of Article 10.2.1 as if the Change in Law had not occurred. In this regard, the Petitioner has placed reliance on the APTEL's Judgment dated 13.4.2018 passed in Appeal No. 210 of 2017 (Adani Power Ltd (APL) vs CERC & Ors). The aforesaid judgment of the APTEL was challenged before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court vide its judgment dated 25.2.2019 in Civil Appeal No. 5865 of 2018 with Civil Appeal No. 6190 of 2018 (Uttar Haryana Bijili Vitran Nigam Limited & Anr. Vs. Adani Power Ltd. & Ors.) uphold the directions of payment of carrying cost to the generator on the principles of restitution. In view of the provisions of the PPA, the principles of restitution and the aforesaid judgment of the Hon'ble Supreme Court, the Petitioner would be eligible for carrying cost arising out of approved Change in

Law events from the date the Petitioner incurred the additional expenditure owing to such Change in Law till the actual payment to the Petitioner.

(i) There is no delay by the Petitioner in approaching this Commission for its Change in Law claims. The Petitioner, vide its letter dated 12.4.2022, notified the Respondent of the aforesaid Change in Law event. However, the Respondent, by way of its correspondences dated 13.4.2023 and 5.2.2024, disputed the invoices raised by the Petitioner. Thereafter, the Petitioner forthwith, without any undue delay, approached this Commission praying for the reliefs as sought for in the present petition. As such, there is no delay by the Petitioner in approaching this Commission.

(j) There is no specific timeline provided under the PPA for intimation by the Petitioner to Respondent No. 1; thus, after agreeing to such a Clause under the PPA, it cannot now aver that notification of Change in Law events after a gap of a few months is untenable. In any event, claims of Change in Law event are based on a continuing cause of action as the supply of power is continuous in nature throughout the term of the PPA; therefore, the said objection of delay raised by Respondent No. 1 is not even relevant. In this regard, reliance has been placed on this Commission's order dated 19.8.2019 in Petition No. 17/MP/2019, which is a decision between the same parties in relation to the same PPA.

(k) The claim for carrying cost raised by the Petitioner is in consonance with the principles of restitution provided in Article 10 of the PPAs. The principles of carrying cost have been settled in a catena of judgments and are aimed at restoring the affected party to the same economic position as before, and the same has been upheld by the Hon'ble Supreme Court vide its judgment in Uttar Haryana Bijli Vitran Nigam Limited (Supra) wherein it has upheld the directions of payment of carrying cost to the generator on the principles of restitution.

Re: Levy of Cess by Jharkhand Mineral Bearing Land Cess Act, 2024

(l) Although the earlier cess imposed by the Government of Jharkhand by way of the Jharkhand Mineral Bearing Land Cess Act, 2024 was Rs. 100/MT. However, as per the notification dated 19.3.2025, the said additional cess has

been increased to Rs. 250/MT. In this regard, the Petitioner, by way of the letter dated 21.3.2025, notified the Respondent about the increase in the Jharkhand Mineral Bearing Land Cess on coal dispatches and reserved its rights to claim additional cost under the provisions of the Change in law in the PPA. Therefore, the Petitioner is not only entitled to recover the entire additional expenses incurred by the Petitioner on account of above stated event of Change in Law along with carrying cost but is also entitled to recover the future additional expenditure which the Petitioner shall incur due to the said event of Change in Law for the entire tenure of the PPAs. Needless to say, the increase in cess notified by the Government of Jharkhand vide Notification dated 19.3.2025 and/or any further amendment/modification in respect thereof shall be considered for compensating the Petitioner for the said event of Change in Law for the entire tenure of the PPAs.

(m) In light of the evident principle laid down in Article 10.2 of the PPAs, the Respondents are under an obligation to restore the Petitioner, i.e., the affected party, to the same economic position through the monthly tariff, as if such a change in law had not occurred.

Hearing dated 8.4.2025

8. The matter was finally heard on 8.4.2025, and the parties were directed to file their respective written submissions. Accordingly, the Commission reserved the matter for order.

9. The Petitioner and the Respondent, TNPDC, in their written submissions dated 24.4.2025, respectively, have reiterated their submissions, and the same are not repeated herein for the sake of brevity.

Analysis and Decision

10. After considering the submissions of the parties and perusal of the documents placed on record, the following issues arise for consideration:

Issue No.1: Whether the Petitioner's claim for reimbursement of RLDC/SLDC charges is barred by limitation?

Issue No.2: Whether the Petitioner is entitled to the reimbursement of RLDC /SLDC charges?

Issue No. 3: Whether the Change in Law claims made by the Petitioner are admissible under the PPA? If so, the reliefs are to be awarded to the Petitioner.

We now proceed to discuss the above issues and examine the Petitioner's claims.

Issue No.1: Whether the Petitioner's claim for reimbursement of RLDC/ SLDC charges is barred by limitation?

11. The Respondent, TNPDCCL, has submitted that the declaration prayed for by the Petitioner that it is eligible for reimbursement of the RLDC/ SLDC charges is clearly time-barred. As per Article 58 of the Schedule to the Limitation Act, 1963, the limitation period for instituting any suit or proceedings seeking a declaration is three years from the date when the right to sue first accrues. The Petitioner had sought the reimbursement of payment made towards RLDC charges by way of an invoice raised in January 2017 for the period from January 2016, and TNDPCL had denied its liability for payment of such charges in principle, and on interpretation of the PPA by its letter dated 20.1.2017. Therefore, the cause of action for seeking declaratory relief as prayed for in the Petition arose upon TNDPCL having refuted its liability for the payment of any RLDC charges, and the present Petition has been filed after an inordinate delay of 8 years. Also, the direction for payment sought by the Petitioner is consequential to the declaratory relief that has been sought. Further, it is well established that repeated exchange of letters or communications does not extend the period of limitation and the act of submitting a claim or engaging in correspondence over an extended period of time, despite the clear denial of claim by TNPDCCL in January, 2017, cannot extend the statutory period of limitation. It has also been submitted that insofar as the reliance on the Commission's order dated 4.1.2024 in

Petition No.145/MP/2021, to contend that the cause of action in the present case is continuous one, is concerned, the Commission in the said case was dealing with the case where the money claim made was in respect of a period that would be within limitation.

12. Whereas, the Petitioner has submitted the contention of TNPDCL as regards the claims/reliefs claimed being barred by limitation is erroneous and untenable. The non-payment of SOC and MOC (RLDC Charges) in terms of the provisions of the PPA amounts to a continuous cause of action, and therefore, the claims sought by the Petitioner in the present case are not barred by limitation. In this regard, the Petitioner has relied upon the judgment of APTEL in Appeal No. 10/2020 in the matter of *Power Company of Karnataka Ltd. v. Udupi Power Corporation Limited*. Further, the Commission in its order dated 4.1.2024 in Petition No. 145/MP/2021 has already rejected an identical contention of limitation raised by the Respondent herein. The contention of TNDPCL that in the said order the Commission had relied upon the Covid-19 Suo Motu limitation order of the Hon'ble Supreme Court and therefore, the Petition in that case was found to be in limitation is also misconceived as a bare perusal of paragraph 19 of the said order shows that the same was an additional independent finding that too on an assumption. The said finding of the Commission in no way effaces or even dilutes the categorical findings in paragraphs 16 & 17 of the order, wherein the Commission has held that the continuous non-payment of the RLDC/ SLDC charges by the Respondent in terms of the PPA as well as the Regulations for the period from 2016 till 2024, would constitute as a 'continuous cause of action' which partakes the character of a 'continuing breach' under Section 22 of the Limitation Act and accordingly, fresh period of limitation would commence every moment when the breach is continued.

13. We have considered the submissions made by the parties. As rightly pointed out by the Petitioner, a similar objection of limitation has already been dealt with by the Commission in order dated 4.1.2024 in Petition No. 145/MP/2021 in the matter of *KSK Mahanadi Power Company Limited v. TANGEDCO*, wherein the Commission has *inter alia* held that the default in the payment of transmission charges and RLDC/SLDC charges partakes the character of 'continuing breach' as contemplated under Section 22 of the Limitation Act and a fresh period of limitation continue to run at every moment of time, during which the breach continues. The relevant extract of the order dated 4.1.2024 is reproduced below:

"...13. The matter has been examined. Though no period of limitation has been prescribed in the 2003 Act for filing of Petitions for adjudication of disputes, the Hon'ble Supreme Court in the 'Lanco Kondapalli case' has held that the claims coming for adjudication before the Commission cannot be entertained or allowed, if otherwise, the same is not recoverable, in a regular suit on account of law of limitation. The relevant extract of the said judgment is as under:

"30.....In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Sections 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86 (1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time-barred claims, there is no conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view."

14. In the light of the above judgment, the limitation period prescribed for money claims under the Limitation Act, 1963 i.e. 3 years, will be applicable for filing the application before the Commission.

.....
16. As stated, the Petitioner has relied upon the decision of APTEL in Udupi case, and contended that the non-payment of tariff for the period from August, 2015 till July, 2020, in terms of the PPA is a 'continuous cause of action' and hence not barred by limitation. Per contra, the Respondent has submitted that since the same

were rejected vide its various letters, the claim is barred by limitation. In Udupi case, APTEL, while examining the issue of non-payment of LPSC, on account of the delay in payment of monthly bills by the discoms, had observed as under:

“192. The details submitted by the appellants demonstrate that the ESCOMs have treated their respective arrangement for procurement of electrical supply from the respondent Udupi Power as running accounts wherein the demands raised by the seller through bills/invoices issued on monthly basis could be satisfied by payments made, on account, for reconciliation/adjustment in due course, such part payments/instalments/tranches being piecemeal and in sums unilaterally decided as per convenience or sweet will of the procurer(s), the drawal of electricity having continued unabated despite such defaults consistently indulged in.

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194. The pattern shown by the above-mentioned details of billing and payments is clearly indicative of the procurers having understood the arrangement with seller to be such as obliged running accounts to be maintained. This being the sequitur, the argument of the respondent Udupi Power that it is a case of "continuing cause of action" gets validated and strengthened rendering the plea of limitation bar superfluous.

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203. We do not find substance in any of the submissions of the appellants in context of factual matrix at hand. It is a settled position of law that a "continuing wrong" constitutes two elements. It is an act which creates (i) a continuing source of injury and (ii) renders the doer of the act responsible and liable for the continuance of the said injury. Every time a breach is committed, the aggrieved party gets a fresh cause of action to invoke appropriate judicial proceedings.

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207. We uphold the submission that, in the facts and circumstances presented before us, the elements of "continuing breach" are satisfied. Indisputably, there have been breaches of the contract on account of the non-payment of regular monthly bills and invoices towards infirm power and LPSC by the ESCOMs in terms of the PPA as well as Regulations. Each 'breach' by the ESCOMs resultantly burdened Udupi Power with additional working capital cost till it gets paid by the ESCOMs. As such, the breach creates a continuing source of injury, thereby satisfying the first element of 'continuing breach'. Since ESCOMs have consistently defaulted in paying charges and LPSC, there has been a continuous and recurring disobedience and non-compliance of applicable law. The 'breach' being recurring, the second element of 'continuing breach' is satisfied. There is no obligation on the part of Seller to specifically claim LPSC by raising invoices since neither Regulations nor PPA envisage anything but its accrual which has to be automatic.

208. For the foregoing reasons, we uphold the submission of the second respondent that the default of ESCOMs in paying against monthly tariff bills as well as LPSC partakes the character of a "continuing breach" as contemplated under Section 22 of the Limitation Act, 1963. Thus, "a fresh period of limitation begins to run at every moment of the time during which the breach ... continues". Since the breach continues on account of continued refusal to discharge liability towards LPSC, a fresh cause of action is constituted so long as the breach is recurrent and continues.

209. We conclude that the plea of bar of limitation raised by the appellants is without substance and must be rejected.”

17. It is noticed that in the present case, the Petitioner vide letter dated 8.10.2015 had raised invoice for payment of transmission charges including RLDC/SLDC charges for the month of August, 2015 and in response, the Respondent vide its letter dated 13.10.2015 disputed the claim regarding RLDC/SLDC charges, and had deducted the same from the transmission charges paid to the Petitioner. Further, on a debit note, being raised by the Petitioner vide letter dated 22.10.2015 for these charges, the Respondent had reiterated that the said charges were not payable. There has also been deduction of these charges including the short payment of the transmission charges by the Respondent during the disputed period i.e. till July, 2020. As observed by APTEL in the aforesaid judgment, undisputedly, there have been breaches of the contract by the Respondent, on account of the non-payment of the transmission charges and the RLDC/ SLDC charges, in terms of the PPA as well as the Regulations. As there has been continuous and recurring disobedience and non-compliance of the provisions of law, the said default partakes the character of 'continuing breach' as contemplated under Section 22 of the Limitation Act, and accordingly fresh period of limitation continues to run at every moment of time, during which the breach continues. In *State of M.P & ors v Yogendra Srivastava* (2010) 12 SCC 538, it was held by the Hon'ble Supreme Court that if the denial of a benefit occurs every month, then such denial gives rise to a fresh cause of action, every month, based on a continuing wrong. The relevant portion of the order is extracted below:

"18. ... Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong...."

18. It is a settled position of law that a party cannot take the benefit of its own wrong. We therefore agree with the submissions of the Petitioner that the cause of action in the present case is continuous. Accordingly, we conclude that the plea of bar of limitation raised by the Respondent is misconceived and is not tenable.

19. Even assuming that the contention of the Respondent that the claim of the Petitioner is barred by limitation is acceptable, we notice that the claims of the Petitioner for the amounts due and payable till March, 2017 would be within the prescribed period of limitation of three years, considering the fact that the Hon'ble Supreme Court has excluded the period from 15.3.2020 till 28.2.2022 being considered for the purpose of limitation, as stated in para 15 above. In terms of this, the dues payable by the Respondent since March, 2017 cannot be said fall within the period of limitation. The Petitioner has pointed out that apart from minor deductions prior thereto, the Respondent had started effecting unilateral deduction of the POC transmission charges from October, 2017 and thus, it had time till October, 2020 to file its claims before this Commission. We agree with the submissions of the Petitioner. In line with the judgment of the Hon'ble Supreme Court extending the period of limitation, coupled with the fact that the cause of action is continuous, as stated above, we hold that the present petition filed by the Petitioner in May, 2021 with the reliefs sought in para 1 above, cannot be said to be hit by limitation. Issue (A) is decided accordingly ..."

The above findings of the Commission squarely apply to the present case. The continuous non-payment of the RLDC/SLDC charges by the Respondent, TNDPCL, would constitute a continuous cause of action which partakes the character of a continuing breach under Section 22 of the Limitation Act, and accordingly, the fresh period of limitation would commence every moment when the breach is continued. Hence, the Petitioner's claims for reimbursement of RLDC/ SLDC charges cannot be said to be barred by limitation. The attempts of the Respondent, TNDPCL, to distinguish the applicability of the said findings to the present case are, in our view, misconceived. In the said order, the Commission has categorically held that the default in the payment of RLDC/SLDC charges partakes the character of a continuing breach as contemplated under Section 22 of the Limitation Act. Further, the finding of the Commission, in paragraph 19 therein, that the claims of the Petitioner for the amounts due and payable till March 2017 are within the period of limitation, considering the Hon'ble Supreme Court has excluded the period from 15.3.2020 till 28.2.2022 for the purpose of computation of limitation. This is clearly an independent finding, which proceeds by accepting the Respondent's contention on limitation therein. Accordingly, the plea of bar of limitation as raised by the Respondent, TNDPCL, is not tenable.

14. The issue (i) is decided accordingly.

Issue No. 2: Whether the Petitioner is entitled to the reimbursement of RLDC /SLDC charges?

15. The Petitioner has submitted that on a plain reading of the definition of the contracted capacity and Article 4.3.1(b) of the PPA, the Procurer/ Respondent has certain obligations under the PPA, which have been listed under Clause 4.3 of the PPA. One of the obligations listed under the said clause of the PPA is the payment of applicable RLDC/ SLDC Charges. The Petitioner has been paying Market Operation Charges (MOC) and System Operating Charges (SOC) charges to Eastern Load

Despatch Centre for the supply of power to the Respondents, which is the concerned RLDC in the present case. It has also stated that the obligation to pay the RLDC/SLDC charges under Article 4.3.1(b) and Clause 4.4.2 of Schedule 4 of the PPA is squarely on the Respondent as a procurer, and there is no qualification, restriction, or condition attached to the said obligation.

16. *Per contra*, the Respondent, TNPDC, has submitted that the obligation of the Respondent to reimburse the Petitioner only, arises in respect of the transmission charges payable for actual usage of the CTU network for transmission of power from the injection point to the delivery point and technically, the SOC and MOC are applicable to the Petitioner only when the injection occurs at the injection point, and therefore, the Respondent is not liable to reimburse the same. It has also contended that, as per Article 4.3 of the PPA, the Respondent is responsible for paying transmission charges (only from the injection point onwards) and any applicable RLDC/SLDC charges, which are limited to those corresponding to the contracted capacity of the Procurer. The Procurers will only reimburse these charges if they have been paid by the Seller from the point of injection onwards. The SOCs and MOCs become applicable to the Petitioner just before injection takes place at the Injection Point and hence are not liable to be reimbursed by the Respondent.

17. We have considered the submissions made by the parties. This very issue has also been examined by the Commission in its order dated 4.1.2024 in Petition No. 145/MP/2021 in the matter of KSK Mahanadi Power Company Limited v. TANGEDO, wherein the Commission, after examining the provisions of the identical PPA, has held that the payment of applicable RLDC/SLDC charges on the contracted capacity is the responsibility of the Procurer/TANGEDCO and in case of payment made by the Petitioner for the above, the same is required to be reimbursed by the

Procurer/TANGEDCO. The relevant extract of the order dated 4.1.2024 is reproduced below:

“

21. We have examined the submissions. Some of the provisions of the PPA executed by the parties are extracted below for consideration.

Definitions:

Contracted capacity: shall mean the Aggregated Contacted Capacity; 500 MW

Delivery Point: shall mean the STU interface(s) as specified in Schedule 1 of this agreement;

Injection Point: shall mean the PGCIL 765/400 kV CHAMPA POOLING STATION IN CHHATTISGARH as specified by the successful bidder in Format 4.10 of the Selected bid;

Interconnection Point: shall mean the point where the power from the Power Station switchyard bus of the Seller is injected into the interstate/intrastate transmission system (including the dedicated transmission line connecting the power station with the interstate/intrastate transmission system);

Transmission charges: shall mean the charges to be paid by the Seller and reimbursed by the Procurer as transmission tariff for usage of intervening CTU networks for the transmission of power from the injection point up to the Delivery point, as approved by the Appropriate Commission.

Articles

4.3 Procurers Obligation

4.3.1 Subject to the terms and conditions of this Agreement, **the Procurer shall:**

a) ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be;

b) be responsible for payment of the Transmission Charges from the Injection Point onwards) and applicable RLDC/ SLDC charges limited to the charges applicable to the Contracted Capacity of Procurer. The Procurer shall reimburse any of the above charges, if paid by the Seller;

c) Deleted

d) Deleted

e) make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station; subject to the availability of transmission capacity and

f) fulfil all obligations undertaken by the Procurer under this Agreement.

xxxxx.

15.6 Entirety

15.6.1 This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

15.6.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or supply of

power up to the Contracted Capacity under this Agreement to the Procurer by the seller shall stand superseded and abrogated.

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Schedule 4 (Tariff)

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4.4 Transmission/Wheeling Charges and RLDC/SLDC Charges

4.4.1 The payment of POC and Non POC Charges to the CTU, from the Injection Point to the Delivery Point shall be paid by the Seller and would be reimbursed by the Procurer.

4.4.2 The payment of the RLDC/SLDC charges shall be the responsibility of the Procurer.”

22. In terms of Article 4.3.1(b) of the PPA, the obligation for payment of transmission charges from the injection point onwards and the applicable RLDC/SLDC charges up to the contracted capacity of 500 MW, is on the Procurer i.e. the Respondent TANGEDCO. It further provides that in case the Seller (Petitioner herein) pays the transmission charges, then the same is to be reimbursed by the Procurer. Similar provision exists in Clause 4.4.1 and 4.4.2 of Schedule 4 of the PPA. The contracted capacity as defined in the PPA, in the present case is 500 MW. The only restriction provided for in Article 4.3.1(b) is that the transmission charges shall be limited to the contracted capacity of the Respondent (Procurer). Thus, on a plain reading of Article 4.3.1(b) along with the definition of the contracted capacity, it is evident that the obligation to pay the transmission charges from the injection point onwards for a contracted capacity of 500 MW is squarely upon the Respondent TANGEDCO and not the Petitioner. However, in case the transmission charges and the RLDC/SLDC charges are paid by the Petitioner, then the Respondent TANGEDCO is liable to reimburse the same to the Petitioner. The contention of the Respondent that the term ‘limited to’ in Article 4.3.1(b) read with the term ‘for usage of intervening CTU networks...’ in the definition of ‘transmission charges’ indicates that there is no absolute responsibility on the Respondent to pay the transmission charges for the entire capacity, but only for the capacity made available to the Respondent up to the contracted capacity, is clearly misconceived and contrary to the reading of the provisions of the PPA. In case, the parties intended that the responsibility for payment of the transmission charges by the Respondent are to be based on actual availability, then the same would have been reflected in the said clause. The parties having not intended as such, the interpretation placed by the Respondent TANGEDCO on the said provision, is contrary to the settled principles of law, that a contract between parties is to be read and understood in their plain language to know the intention of the parties.

25. As regards RLDC/SLDC charges, the Respondent has submitted that being a distribution licensee, it pays the System Operation Charges and Market Operation Charges incurred by NLDC/RLDC towards monitoring of grid operations etc., and similarly, the Petitioner, being a generating company is bound to pay the SOC and MOC in terms of the RLDC Fees and Charges, notified on 18.5.2015, for availing grid access. It has also submitted that technically SOC and MOC become applicable to the Petitioner just before the injection takes place at the injection point and hence are not liable to be reimbursed by the Respondent. It is noticed that similar to the issue of transmission charges, Article 4.3.1(b) read with Clause 4.4.2 of Schedule 4 of the PPA (as quoted above) is squarely applicable to the Respondent, who is responsible for the payment of RLDC/SLC charges. These

provisions contain no restriction or qualification with regard to the obligation of the Respondent to pay/reimburse these charges, when paid by the Petitioner. It is noticed from Annexure-E annexed to the Petition, that the Respondent, apart from deduction of the transmission charges payable to the Petitioner, has not reimbursed the RLDC/SLDC charges to the Petitioner, during the disputed period. When the language of the contract is plain and unambiguous and the intention of the parties are clear, with regard to the obligation of the Respondent (Procurer) to pay/ reimburse the RLDC/SLDC charges, the same cannot be denied on the plea that SOC/MOCs technically become applicable on the Petitioner just before injection takes place at the injection point. The submissions of the Respondent on this count are also not acceptable. In our view, the payment of the applicable RLDC/SLDC charges on the contacted capacity is the responsibility of Respondent TANGEDCO and in case of payments made by the Petitioner for the above, the same is required to be reimbursed by the Respondent. ...”

The above findings also apply to the present case. As noted above, the provisions of the PPAs in the present case are similar to those examined in the above KSK case. Therefore, the Petitioner in this case is also entitled to reimbursement of the RLDC/SLDC charges paid by it. Accordingly, the Respondent, TNDPCL, shall be liable to reimburse the relevant RLDC/SLDC charges to the PTCIL/Petitioner, if paid by them, along with applicable Late Payment Surcharge as per the PPAs.

18. The issue (ii) is answered accordingly.

Issue No. 3: Whether the Change in Law claims made by the Petitioner are admissible under the PPA? If so, the reliefs are to be awarded to the Petitioner.

19. The Petitioner has also approached the Commission seeking compensation to offset the financial impact of the Change in Law events that occurred during the operating period, along with the carrying cost. Hence, it may be pertinent to refer to the relevant Change in Law provisions in the PPAs.

20. The PPA dated 19.12.2013, as entered into between the Petitioner and PTC, provides that the provisions of the PPA dated 18.12.2013, as entered into between PTC and TNDPCL, shall be applicable *mutatis mutandis* to the said PPA, except to the extent of deviations as expressly stated therein. Indisputably, terms of Article 10

(Change in Law) of the PPA dated 18.12.2013 have been made applicable to the PPA dated 19.12.2013 without any deviations. Article 10 of the PPA dated 18.12.2013, which deals with the events of Change in Law, is extracted as under:

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

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;*
- any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement. but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.*

10.2 Application and Principles for computing impact of change in law

10.2.1 While determining the consequence of Change in Law under this Article 10, the parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred. 10.3 Relief for Change in Law

10.3.2 During Operating Period

The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Standby Letter of Credit in aggregate for the relevant Contract Year.

10.3.3 For any claims made under Article 10.3.1 and 10.3.2 above, the Seller shall provide to the Procurer and the Appropriate Commission documentary proof of such increase /decrease in cost of the Power Station or revenue/expense for establishing the impact of such Change in Law.

10.3.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 10.3.1 and 10.3.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to right of appeal provided under applicable Law.”

21. The term “Law” has been defined under Article 1.1 of the PPA as under:

“Law” shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission.”

22. The term “Indian Governmental Instrumentality” is also defined in Article 1.1 as under:

“Indian Governmental Instrumentality” shall mean the Government of India, Governments of state of Tamil Nadu, Jharkhand and New Delhi; and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government or both, any political sub-division of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer.”

23. Thus, the events broadly covered under ‘Change in Law’ are as under:

- a) Any enactment, bringing into effect, adoption, promulgation, amendment, modification, or repeal of any law, or
- b) Any change in the interpretation of any Law by a Competent Court of law, Tribunal, or Indian Governmental Instrumentality acting as the final authority under law for such interpretation, or
- c) Imposition of a requirement for obtaining any consents, clearances, and permits which was not required earlier.
- d) Any change in the terms and conditions or inclusion of new terms and conditions prescribed for obtaining any consents, clearances, and permits, other than the default of the settler.
- e) Any change in the tax or introduction of any tax made applicable to Petitioner’s supply of power to TNPDC as per the terms of the Agreement.

- f) Such Changes (as mentioned in (a) to (c) above) result in additional recurring and non-recurring expenditures by the seller or any income to the seller.
- g) The purpose of compensating the Party affected by such Change in Law is to restore, through Monthly Tariff Payments, to the extent contemplated in Article 10, the affected Party to the same economic position as if such “Change in Law” had not occurred.
- h) The Petitioner shall provide to the Procurer and the Appropriate Commission documentary proof of such increase/ decrease in cost of the Power Station or revenue/ expense for establishing the impact of such Change in Law;
- i) The decision of the Commission with regard to the determination of compensation and the date from which such compensation shall become effective shall be final and binding on both parties, subject to the rights of appeal provided under the Act.
- j) The compensation shall be payable for any decrease in revenue or increase in expenses to the seller (Petitioner) in excess of an amount equivalent to 1% of the value of the standby Letter of Credit in aggregate for the relevant Contract Year.

24. Moreover, Article 10.4 of the PPA provides for Notification of the Change in Law to the Procurer. The relevant extract of the said article reads as under:

“10.4 Notification of Change in Law

10.4.1. If the Seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim relief for such a Change in Law under this Article 10, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

10.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve a notice to the Procurer under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material.

Provided that in case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.

10.4.3 Any notice served pursuant to this Article 10.4.2 shall provide, amongst other things, precise details of:-

- (a) The Change in Law; and*
- (b) The effects on the Seller.”*

25. As per Article 10.4.1 of the PPA, the Petitioner is required to serve notice about the occurrence of Change in Law events as soon as practicable after being aware of such events. In the present case, the Petitioner issued the Change in Law notice in respect of the introduction of the Composition User Fee on 12.4.2022. However, it is observed that the Respondent, TNDPCL, *vide* letter dated 13.4.2023, had refused to accept the Composition User Fee as a Change in Law event. In respect of Jharkhand Mineral Land Bearing Cess, the Petitioner issued the Change in Law notice on 11.11.2024. Moreover, the Petitioner, along with its rejoinder, has also placed on record the Change in Law notice dated 21.3.2025 issued in respect of the revision/increase in the Jharkhand Mineral Bearing Land Cess by the Government of Jharkhand in terms of its Notification dated 19.3.2025. Further, neither of the Respondents has sought to raise any objection on the aspect of notice of Change in Law events by the Petitioner under the PPAs. Thus, the requirement of a Change in Law notice under Article 10 of the PPAs has been duly complied with by the Petitioner.

26. In view of the above, we now proceed to examine the Change in Law claims made by the Petitioner, namely, (i) levy of Composition User Fee, and (ii) levy of Jharkhand Mineral Bearing Land Cess.

Composition User Fee

27. The Petitioner has submitted that the Government of Jharkhand, on 16.9.2021, i.e., after the cut-off date, introduced 'Jharkhand Highway Fee (Determination of rates and Collection) Amendment Rules, 2021' (hereinafter referred to as '2021 Rules') under which the Government of Jharkhand has started levying 'Composition User Fee' for use of State roads and associated facilities. The said fee is leviable under Rule 3a of the 2021 Rules, and the Government of Jharkhand, Department of Mines & Geology

has implemented the 2021 Rules on mineral (coal in the present case) carrying commercial vehicles. The Petitioner has further submitted that, as on the cut-off date, i.e., 27.2.2013, there was no levy of the Composition User Fee for the use of State roads and associated facilities. In terms of Rule 3A of the aforementioned Rules, a Composition User Fee may be based on the 'to and fro' basis, and such user fee shall be Rs. 600 for each way, for which the base year shall be the year 2021. Further, such user fee rate may be revised yearly at a rate not exceeding @ 10% per year, on the first of April, each year. Due to this levy of Composition User Fee, the cost of supply of power by the Petitioner to the Respondents under the PPAs has increased on account of payment of Composition User Fee on transportation of coal by use of State roads and associated facilities, and thus, the Petitioner needs to be compensated for it as per Article 10.3 read with Article 10.5 of the PPAs.

28. *Per contra*, TNPDCCL has submitted that the Notification dated 16.9.2021 issued by the Road Construction Department, Government of Jharkhand merely sets out the fee for use of State roads, etc., and is not in the nature of a tax, levy or cess imposed under statute. The said Notification is nothing more than a rate chart, and cannot be construed as law merely because the same is styled as a Notification. TNDPCL has also submitted that validity of levying/collecting 'Toll Tax' in the form of 'Composition User Fee' through the medium of 'Jharkhand Integrated Mines and Minerals Management System Portal' at the time of generation of transport challan for the transportation or otherwise removal of minerals has also been challenged by several parties in more than 200 Writ Petitions before the Hon'ble Jharkhand High Court. The Writ Petitioners therein have contended that the levy is in violation of the Jharkhand Highways Fee (Determination of Rates and Collection) Amendment Rules, 2021, especially in view of the fact that neither any Notification under Rule 3(2) of the 2021 Rules has been issued notifying the date of collection of 'Composition User Fee' on

completion of sections of State Road, nor any scheme under Rule 3A has been issued enabling the State Government to levy 'Composition User Fee'. TNPDCCL has further submitted that by way of orders dated 30.3.2022 and 3.5.2023, the Hon'ble High Court in W.P. (c) No. 1031 of 2022, 5087 of 2022, and batch, has directed that no coercive action be taken pursuant to the notification in question. Therefore, even if this Commission deems the present claim to be admissible, it should be made subject to the outcome of the proceedings before the Hon'ble Jharkhand High Court, where the validity of the Composition User Fee levy is currently under judicial consideration in a batch of over 200 Writ Petitions filed under Article 226 of the Constitution of India.

29. We have considered the submissions made by the parties. Indisputably, there was no levy in the nature of a Composition User Fee for the use of State roads and associated facilities at the time of the cut-off date, and this was introduced by the Government of Jharkhand only vide Notification dated 16.9.2021. By the said Notification, the Government of Jharkhand, in exercise of the power conferred under Section 2 of the Indian Tolls (Jharkhand Amendment) Act, 2002, was required to introduce the amendment rules, namely, 'Jharkhand Highways Fee (Determination of Rates and Collection) Amendment Rules, 2021'. By insertion of Rule 3A therein, a Composition User Fee has been introduced on all mechanical vehicles, which are liable to pay user fee for use of any State roads or part thereof or commuting in mining areas, based on the 'to and fro' basis and such user fee shall be at Rs. 600 for each way, for which the base year shall be the year 2021. The expression 'Composition User Fee' has been defined at Rule 2(ca) of the 2021 Regulations, which reads as under:

"(ca) 'Composition User Fee' means the levy of consolidated user fee, for use of state roads and or commuting on roads / or bridges including interchanges, flyovers, ROB/RUB, bypasses and tunnels thereon in mining areas, for such period and on such conditions as may be specified under these rules, in addition to the user fee payable under rule 3 of these Rules."

30. Further, Rule 3A of the 2021 Rules is provided as under:

“Rule 3A - Composition user fee

- 1) *Notwithstanding anything contained in rule 3 of these rules; the State Government may, by a notification in the official Gazette, in addition to the amount of user fee payable under these Rules; provide for a scheme for payment of composition user fee for such period, and payable by all such mechanical vehicles, which are liable to pay user fee for use of any state roads or part thereof or commuting in mining areas as the case may be , subject to such conditions and such restrictions, as may be specified and or as prescribed in this behalf.*
- 2) *The levy of such composition user fee shall be based on to and fro basis, and such user fee shall be such amount for one way, or such amount(s) as may be specified in this behalf; and such amount(s) may be revised after such intervals, as may be notified in this behalf.*
- 3) *Any such mechanical vehicle liable to pay the composition user fee under this rule contravenes any of the provisions of this rule for the payment of the specified composition user fee, shall be liable to pay penalty, thrice the amount of such composition user fee payable.*
- 4) *The composition user fee may be based on the, “to and fro” basis. Such user fee shall be Rs. 600/- for each way. For this purpose, the base year shall be the year 2021.*

Provided such user fee rate may be revised yearly at the rate not exceeding @ 10% per year, on every first of April, each year.”

31. Thus, it only by way of 2021 Rules that the Government of Jharkhand has sought to introduce a levy of ‘Composition User Fee’, which has been defined as the levy of consolidated user fee, for use of State roads and or commuting on roads/or bridges including interchanges, flyovers, ROB/RUB, bypasses and tunnels thereon in mining areas, for such period and on such conditions as may be specified under the Rules, in addition to the user fee payable under Rule 3 of said Rules. Further, Rule 3A of the 2021 Rules further prescribes the Composition User Fee shall be payable by all such mechanical vehicles, which are liable to pay the user fee for use of any State roads or part thereof or commuting in the mining areas as the case may be and such levy shall be based on the ‘to and fro’ basis. It also prescribes that such user fee shall be Rs. 600 for each way, which may be revised yearly at the rate not exceeding @ 10% per year, on every first April, each year and the mechanical vehicle liable to pay the Composition User Fee contravenes any of the provisions of the said Rules of the

payment of specified Composition User Fee, they shall be liable to pay penalty thrice the amount of Composition User Fee payable. Clearly, the 2021 Rules as notified by the Govt. of Jharkhand – an Indian Government Instrumentality – qualify as law as defined in the PPAs and correspondingly, the levy of Composition User Fee in terms thereof, which has resulted into additional recurring expenditure to the Petitioner in terms of the payment of this Composition User Fee on the transportation of coal by use of State road and associated facilities, constitutes a Change in Law event under the PPAs. The contentions of TNDPCL that the levy is not in the nature of a tax, levy, or cess imposed under a statute, and that the 2021 Rules are nothing more than a rate chart and hence, they cannot amount to a Change in Law, cannot be sustained. The 2021 Rules, as notified by the Government of Jharkhand, clearly qualify as Law as defined in the PPAs, and the said levy of Composition User Fee as introduced by the 2021 Act has resulted in additional expenditure to the Petitioner for the transportation of coal by use of State road and associated facilities. Thus, the levy of Composition User Fee, as introduced by the Government of Jharkhand by way of the 2021 Rules, has to be held as a Change in Law under the PPAs entitling the Petitioner to the compensation on account of the additional expenditure incurred towards the Composition User Fee. Accordingly, the Petitioner shall be entitled to recover such expenditure from the Respondents in proportion to the coal consumed corresponding to the scheduled generation at normative parameters as per the applicable Tariff Regulations of the Commission or at actual, whichever is lower, for the supply of electricity to the Respondents. If the actual generation is less than the scheduled generation, the coal consumed for actual generation shall be considered for the purpose of computation of the impact of the Composition User Fee. The Petitioner shall furnish, along with its monthly regular and/or supplementary bill(s), computations of its claims duly certified by the auditor to the Respondents.

32. However, as pointed out by TNPDC, the validity of the levy/collection of the Composition User Fee by the Government of Jharkhand under the 2021 Rules has been challenged before the Hon'ble High Court of Jharkhand in several Writ Petitions [WP (c) No. 1031 of 2022 and batch], which are currently pending. Needless to add, the entitlement of the Petitioner to the Change in Law compensation on account of Composition User Fee shall be subject to the outcome of the above proceedings, wherein the validity of its levy/collection is under challenge.

(ii) Jharkhand Mineral Bearing Land Cess

33. The Petitioner has submitted that the Government of Jharkhand, by way of a Notification dated 7.10.2024, notified the Jharkhand Mineral Bearing Land Cess Act, 2024. The said Act, more specifically under Section 3 thereof, provides for the State Government to levy a cess on mineral-bearing land. The Schedule appended to the Act provides for the imposition of a cess of Rs. 100 per MT of coal dispatched. The Petitioner is sourcing coal from the Coal Mines of Central Coalfields Ltd. ('CCL') & Bharat Coking Coal Ltd. ('BCCL') in Jharkhand, for generating power. In terms of the aforementioned Jharkhand Mineral Bearing Land Cess Act, 2024, the cess is leviable at the time of the dispatch of Coal from these Mines. The Petitioner is also being charged with the same, as a result of which there is an increase in the existing monthly tariff. The imposition of such a levy of cess has increased the operational cost of the Petitioner's Project and is a Change in Law event under the PPAs. The Petitioner, vide its rejoinder dated 7.4.2025, has also submitted that earlier, the cess imposed by the Government of Jharkhand, by way of the Jharkhand Mineral Bearing Land Cess Act, 2024, was Rs. 100/MT. However, by way of a subsequent Notification dated 19.3.2025, the said cess has been increased/revised by the Government of Jharkhand to Rs. 250/MT. The increase in Cess notified by the Government of Jharkhand vide

Notification dated 19.3.2025 and/or any further amendment/ modification in respect thereof also ought to be considered for compensating the Petitioner for the said event of Change in Law for the entire tenure of the PPAs.

34. *Per contra*, TNPDCCL has submitted that the Jharkhand Mineral Bearing Land Act, 2024, pertains to the levy of cess and does not introduce any new tax or alter the existing tax regime. From perusal of the Change in Law clause in the PPA read with clauses of the aforesaid Act, it becomes clear that the imposition of a cess by any Government does not qualify as a “Change in Law” event under the PPA. The Change in Law clause typically addresses the introduction or modification of taxes, duties, or levies that directly affect the parties involved in the agreement. Hence, the imposition of a cess, as outlined in the Jharkhand Mineral Bearing Land Cess Act, 2024, does not fall within the scope of such a Change in Law.

35. We have considered the submissions made by the parties. We note that there was no Jharkhand Mineral Bearing Land Cess as on the cut-off date of the PPAs, i.e., 27.2.2013, and it was introduced by the Jharkhand Mineral Bearing Land Cess Act, 2024, as notified by the Government of Jharkhand on 7.10.2024. In terms of Section 3 read with Schedule of the said Notification, a Cess of Rs. 100 per metric tonne of coal dispatched from the coal-bearing land within the State came to be imposed on the holder of the mining lease of the mineral-bearing lands on the despatch of Run-of-mine/mineral w.e.f. 7.10.2024. Consequently, CCL, by its Price Notification dated 9.10.2024, also informed all its consumers about the above imposition and their liability thereof. Thus, the levy of Jharkhand Mineral Bearing Land Cess in terms of Jharkhand Mineral Bearing Land Cess Act, 2024, as enacted by the Government of Jharkhand and the Notification of CCL dated 9.10.2024, passing on such levy upon its consumers, clearly constitutes a Change in Law event under the PPAs. The

contentions of TNPDCCL that the Change in Law clause typically addresses the introduction/ modification of taxes, duties or levies that directly affect the parties involved in the agreement and that the imposition of above cess does not fall within the scope of Change in Law are completely misplaced and do not flow from the Change in Law provisions of the PPAs as discussed above. The Petitioner has further also pointed out that by way of subsequent Notification dated 19.3.2025, the Government of Jharkhand has revised the Jharkhand Mineral Bearing Land Cess for the coal bearing land from Rs. 100 per MT to Rs. 250 per MT of coal dispatch, and the Petitioner is also entitled to the Change in Law compensation on account of the above revision. Having already held that the levy of Jharkhand Mineral Bearing Land Cess amounts to a Change in Law event, the subsequent increase in the rate thereof by the Government of Jharkhand in terms of its Notification dated 19.3.2025 would also amount to a Change in Law event. Accordingly, the Petitioner is entitled to compensation for the additional expenditure incurred on account of the introduction and revision of Jharkhand Mineral Bearing Land Cess. Needless to add that the Petitioner shall be entitled to recover such expenditure from the Respondents in proportion to the coal consumed corresponding to the scheduled generation at normative parameters as per the applicable Tariff Regulations of the Commission or at actual, whichever is lower, for the supply of electricity to the Respondents. If the actual generation is less than the scheduled generation, the coal consumed for actual generation shall be considered for the purpose of computation of the impact of the Jharkhand Mineral Bearing Land Cess. The Petitioner shall furnish, along with its monthly regular and/or supplementary bill(s), computations of its claims duly certified by the auditor to the Respondents.

Carrying Cost

36. The Petitioner, in its prayers, has sought a direction to the Respondent to pay carrying cost @1.25% per month from the date on which the said amount became due to the Petitioner till the actual realization of the same to restore the Petitioner to the same economic position as existed prior to the Change in Law events. The Hon'ble Supreme Court in its judgment dated 25.2.2019 in Civil Appeal No. 5865 of 2018 with Civil Appeal No. 6190 of 2018 (Uttar Haryana Bijli Vitran Nigam Limited & Anr. v. Adani Power Limited & Ors.) has also upheld the directions of carrying cost to the generator on the principles of restitution. Insofar as the allegation of delay in approaching the Commission is concerned, there is no delay by the Petitioner in approaching the Commission for its Change in Law claims. The Petitioner, vide its letter dated 12.4.2022, notified the Respondent of the Change in Law event in respect of the Composition User Fee. However, it was only after one year, i.e., 13.4.2023, that TNPDCCL sought to dispute the invoice raised by the Petitioner. Thereafter, the Petitioner forthwith approached this Commission praying for the reliefs sought in the present case. The Respondents cannot be permitted to take advantage of their own wrongs inasmuch as, on the one hand, dispute the Change in Law claim of the Petitioner raised belatedly, and on the other hand, state that the Petitioner would not be entitled to claim carrying cost for such delay.

37. *Per contra*, TNPDCCL has submitted that carrying cost ought not to be allowed, as there are no provisions for carrying cost. It has been further submitted that the Petitioner cannot seek to derive any profit out of the Change in Law compensation. The compensation is intended to cover actual losses or increased costs incurred as a result of the Change in Law, and not to enrich the Petitioner. It is also submitted that carrying cost is to be restricted to the cost of financing a prudent and efficient utility, i.e., the interest rate at which such utility can borrow the money from the lenders after

due and sincere efforts to minimize the interest cost. The present Petition was filed in August 2024, whereas the events of the Change in Law for which the Petitioner claims compensation occurred in September 2021. For the period during which the Petitioner chose not to approach this Commission, the Petitioner cannot claim carrying cost, as there has been significant delay and laches on the part of the Petitioner in approaching the Commission. This Commission in its order dated 23.6.2023 in Petition No. 513/MP/2020 in the matter of Adani Power (Mundra) Limited v. Uttar Haryana Bijli Vitran Nigam Limited & Ors. had held that if a Petition is filed more than six months after a Change in Law event, carrying costs on the additional expenditure will be allowed only from the date of filing the Petition until the date of the Commission's Order.

38. We have considered the submissions made by the parties. The Petitioner has submitted that the Petitioner should be restored to the same economic position in terms of Article 10.2.1 as if the Change in Law had not occurred. The APTEL, in its judgment dated 13.4.2018 in Appeal No. 210 of 2017 (Adani Power Ltd (APL) vs CERC & Ors), has allowed the carrying cost on the claim under a Change in Law and held as under:

"In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondent Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of re-determination of tariff the interest by a way of compensation is payable for the period for which tariff is re-determined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event

is to be passed on to the Respondent Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA...

From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less than re-determination of the existing tariff.

Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgement of the Hon'ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India & Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority..."

39. The aforesaid judgment of the APTEL was challenged before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court vide its judgment dated 25.2.2019 in Civil Appeal No. 5865 of 2018 with Civil Appeal No. 6190 of 2018 (*Uttar Haryana Bijili Vitran Nigam Limited & Anr. Vs. Adani Power Ltd. & Ors.*) has upheld the directions of payment of carrying cost to the generator on the principles of restitution and held as under:

"10. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn.

This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal...

16...There can be no doubt from this judgment that the restitutionary principle contained in Clause 13.2 must always be kept in mind even when compensation for increase/decrease in cost is determined by the CERC."

40. Article 10.2.1 of the PPA provides as under:

“10.2.1. While determining the consequences of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected party to the same economic position as if such Change in Law has not occurred.”

41. In view of the provisions of the PPAs, the principles of restitution and the aforesaid judgment of the Hon'ble Supreme Court, we are of the view that the Petitioner would be eligible for carrying cost arising out of approved Change in Law events from the date the Petitioner incurred the additional expenditure owing to such Change in Law till the actual payment to the Petitioner. Once a supplementary bill is raised by the Petitioner in terms of this Order, the provisions of Late Payment Surcharge in the PPAs would kick in if payment is not made by the Respondents within the due date.

42. However, at the same time, on the aspect of delays on the part of the generating companies in filing the Change in Law cases, the Commission, in its order dated 23.6.2023 in Petition No.513/MP/2020, has held as under:

“59. As per the settled principle of law, APMuL is entitled for carrying cost on its claims for change in law events. However, the Respondents have submitted that APMuL has filed the present Petition only in 2020 whereas a number of the events claimed as ‘Change in Law’ by APMuL date back to 2015 and therefore, APMuL cannot claim carrying cost for those events where there has been delays and laches on the part of the APMuL to approach the Commission. The principle that the delays in filing Petition/information would result in denial of carrying cost has been settled by APTEL vide its judgement dated 19.9.2007 in Appeal No 70 of 2007 in the case of matter of Maharashtra State Electricity Distribution Co. Ltd v. Maharashtra Electricity Regulatory Commission, judgment dated 30.5.2014 in Appeal No. 147, 148 and 150 of 2013 in the case of Torrent Power Ltd v. Gujarat Electricity Regulatory Commission and judgment dated 4.12.2014 in Appeal No 45 of 2014 in Paschim Gujarat Vij Company Ltd and Ors v. Gujarat Electricity Regulatory Commission.

60. We have considered the submission of Respondents. APTEL in its judgement dated 30.5.2014 in Appeal Nos.147, 148 and 150 of 2013 has referred to the Judgement dated 28.11.2013 in Appeal No. Appeal No.190 of 2011 & 162 and 163 of 2012 wherein the following principles have been laid down with regard to carrying cost claimed by distribution companies for revenue gap:

61. This judgement allows carrying cost on revenue gap where the deferment is on account of reasons other than attributable to the distribution licensee. Conversely, if

the deferment is attributable to distribution licensee, then carrying cost can be legitimately denied. Extrapolating the same principle in case of delay in filing the petition for Change in Law claims by a generating company, it can be held that the carrying cost would not be admissible if the claims are not brought before the Commission as soon as possible after becoming aware of the Change in Law events. We consider a maximum gap of six month as reasonable between the occurrence of Change in Law event and filing of the petition. Accordingly, we hold that where there is a lapse of six months or more between the occurrence of Change in Law affecting the Seller and filing of the petition, no carrying cost shall be admissible for the period prior to filing of the petition. In case, the petition is filed within six months, carrying cost shall be admissible from the date the seller is affected by change in law till the date of the Order provided the seller is eligible as per Article 13.2(b) of the PPA.”

43. In view of the above findings and since the present case also, there is a lapse of more than six months between the occurrence of Change in Law event, viz. introduction and levy of Composition User Fee affecting the Petitioner and the filing of the Petition in respect of the said event as pleaded in the Petition, we hold that the Petitioner shall be entitled to the carrying cost on the additional expenditure incurred toward the above Change in Law event allowed under this Order only from the date of filing of the Petition to the date of this Order. However, for the additional expenditure incurred towards the Jharkhand Mineral Bearing Land Cess, the Petitioner shall be eligible for carrying cost from the date of incurring the expenditure to the date of this Order.

44. Insofar as the rate of carrying cost is concerned, the Commission vide order dated 17.9.2018 in Petition No. 235/MP/2015 [AP(M)L vs UHBVNL & Ors.] had decided the issue of carrying cost as under:

“24. After the bills are received by the Petitioner from the concerned authorities with regard to the imposition of new taxes, duties and cess, etc. or change in rates of existing taxes, duties and cess, etc., the Petitioner is required to make payment within a stipulated period. Therefore, the Petitioner has to arrange funds for such payments. The Petitioner has given the rates at which it arranged funds during the relevant period. The Petitioner has compared the same with the interest rates of IWC as per the Tariff Regulations of the Commission and late payment surcharge as per the PPA as under:-

<i>Period</i>	<i>Actual interest rate paid by the Petitioner</i>	<i>Working capital interest rate as per CERC Regulations</i>	<i>LPS Rate as per the PPA</i>
<i>2015-16</i>	<i>10.68%</i>	<i>13.04%</i>	<i>16.29%</i>

2016-17	10.95%	12.79%	16.04%
2017-18	10.97%	12.43%	15.68%

25. It is noted that the rates at which the Petitioner raised funds is lower than the interest rate of the working capital worked out as per the Regulations of the Commission during the relevant period and the LPS as per the PPA. Since, the actual interest rate paid by the Petitioner is lower, the same is accepted as the carrying cost for the payment of the claims under Change in Law.

26. The Petitioner shall work out the Change in Law claims and carrying cost in terms of this order. As regards the carrying cost, the same shall cover the period starting with the date when the actual payments were made to the authorities till the date of issue of this order. The Petitioner shall raise the bill in terms of the PPA supported by the calculation sheet and Auditor's Certificate within a period of 15 days from the date of this order. In case, delay in payment is beyond 30 days from the date of raising of bills, the Petitioner shall be entitled for late payment surcharge on the outstanding amount."

45. In line with the Commission's above order, in the instant case, the Petitioner shall be eligible for the carrying cost at the actual interest rate paid by the Petitioner for arranging funds (supported by the Auditor's Certificate) or the Rate of Interest on Working Capital rate as per the applicable CERC Tariff Regulations or the Late Payment Surcharge Rate as per the PPAs, whichever is the lower.

46. The issue (ii) is answered accordingly.

47. Petition No. 329/MP/2024 is disposed of in terms of the above.

Sd/- (Ravinder Singh Dhillon) Member	sd/- (Harish Dudani) Member	sd/- (Ramesh Babu V.) Member	sd/- (Jishnu Barua) Chairperson
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