

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 562/MP/2020

Coram:

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

Date of order: 31.03.2026

In the matter of

Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 read with Clause 4.7 of the Competitive Bidding Guidelines and Article 13 of the Power Purchase Agreements dated 7.8.2008 and 20.1.2009 entered into by Jhajjar Power Limited with Uttar Haryana Bijli Vitran Nigam Limited, Dakshin Haryana Bijli Vitran Nigam Limited and Tata Power Trading Company Limited respectively in relation to seeking compensation for decrease in revenues and increase in the costs as a result of Change in Law events.

And

In the matter of

Jhajjar Power Limited,
Village: Khanpur Khurd,
Tehsil: Matenhail, District: Jhajjar-124142,
Haryana.

.....Petitioner

Vs.

1. Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Plot No. C-16, Sector 6,
Panchkula, Haryana

2. Dakshin Haryana Bijli Vitran Nigam Limited,
Vidyut Nagar, Vidyut Sadan,
Hisar – 125005, Haryana

3. Tata Power Trading Company Limited,
B-12/13, 2nd Floor, Shatabdi Bhavan, Sector – 04,
Noida-201301, UP

4. Tata Power Delhi Distribution Limited,
NDPL House Hudson Lines, Kingsway,
Camp, Delhi – 110009.

.....Respondents



Parties Present:

Shri Aniket Prasoon, Advocate, JPL
Shri Aman Sheikh, Advocate, JPL
Ms Archita Kashyap, Advocate, JPL
Ms Tanya Bajaj, Advocate, JPL
Shri M. G. Ramachandran, Sr. Advocate, HPPC
Ms Poorva Saigal, Advocate, HPPC
Shri Shubham Arya, Advocate, HPPC
Ms Reeha Singh, Advocate, HPPC
Shri Nitish Gupta, Advocate, TPDDL
Ms Aparna Tiwari, Advocate, TPDDL
Shri Venkatesh, Advocate, TPTCL
Ms Surbhi Kapur, Advocate, TPTCL
Shri Vedant Choudhary, Advocate, TPTCL
Ms. Sefali Sobti, TPDDL
Shri Anurag Bansal, TPDDL

ORDER

Jhajjar Power Limited (JPL) owns and operates a 1,320 MW coal-based thermal power plant comprising two units of 660 MW each at Jhajjar, Haryana, supplying power to the State of Haryana and the National Capital Territory (NCT) of Delhi. Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited, the distribution licensees, procure power through the Haryana Power Purchase Centre (HPPC), and Tata Power Trading Company Limited (TPTCL), an inter-State trading licensee, sells power procured from the Petitioner to Tata Power Delhi Distribution Limited (TPDDL) under back-to-back arrangements.

2. JPL has filed the instant petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as “the Act”) *inter alia*, seeking compensation on account of additional cost incurred/ to be incurred by the Petitioner due to occurrence of certain Change in Law events, namely, (i) electrification of Railway sidings in terms of Railway Electrification Notifications, and (ii) increase in water rates in terms of Notification of Irrigation and Water Resources Department, Government of Haryana, along with carrying cost thereon. It is noted that the Commission, vide order dated 14.2.2022, had disposed of this petition directing the Petitioner to approach the



procurers for settlement of Change in Law claims among themselves in terms of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (2021 Change in Law Rules) and to approach the Commission only in terms of Rule 3(8) of the 2021 Change in Law Rules. The relevant portions of the said order are as follows:

“3. The matter was heard on 24.1.2022 through video conferencing. During the course of the hearing, learned senior counsel for the Petitioner submitted that the Petitioner had issued the notices regarding the occurrence of the aforesaid Change in Law events to the Respondents. However, there is no agreement/ admission between the parties regarding the aforesaid events being a Change in Law. In fact, the Respondents in their replies to the Petition have already contested the Change in Law claims made by the Petitioner. Thus, the entire matrix of the dispute is already before the Commission in the present case. Learned senior counsel further submitted that at the time of filing of the present Petition on 22.6.2020, the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (in short ‘the Change in Law Rules’) were not in existence. The Change in Law Rules have been notified only on 22.10.2021. However, the Commission, in its various recent decisions, has taken a view that the Change in Law Rules are only procedural and, therefore, apply retrospectively. However, the Petitioner having invoked the jurisdiction of the Commission by way of filing the present Petition on 22.6.2020, the law applicable for the adjudication of the Petitioner's claims is that prevailing as on the date of institution of the Petition. It is well settled that the law applicable on the date of institution of the suit alone governs the suit. In this regard, the reliance was placed on the decision of the Hon'ble Supreme Court in Ramesh Chandra v. Additional District Judge and Ors., [(1992) 1 SCC 751]. Learned senior counsel submitted that rather than disposing of the matter in view of the Change in Law Rules, the Commission may consider adjourning the matter for 60 days or sine die, while directing the parties to comply with the procedure prescribed in the Change in Law Rules. Pursuant thereto, if the parties can reconcile the claims and resolve the issues, the matter may be disposed of by way of an appropriate order. In the event, parties are not able to resolve the issues, the Petitioner may be permitted to place on record the notice issued under the Change in Law Rules and the response of the Respondents and thereafter, the Commission can pass an effective order in the matter.”

“8. We consider that the process and methodology as prescribed in the Change in Law Rules is simply a mechanism for time-bound settlement of claims in a deterministic manner, and the Petitioner is not going to be prejudiced by adopting the said mechanism. We have already held in our earlier orders (e.g. Order dated 06.12.2021 in Petition No. 228/MP/2021) that since the Change in Law Rules is like procedural law and under the Change in Law Rules, any substantive rights are not being taken away, it is to be applied retrospectively in all pending proceedings.

9. In view of the foregoing discussions, the Petitioner may approach the procurers for settlement of Change in Law claims among themselves in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules. The filing fees paid in the present Petition shall be adjusted against the Petition to be filed in future in terms of Change in Law Rules.

10. Accordingly, the Petition No. 562/MP/2020 and IA No. 79/2021 are disposed of in terms of the above.”

3. Subsequently, APTEL, vide order dated 5.4.2022 in OP No. 1 of 2022, observed that several petitions seeking compensation on account of Change in Law events had

been disposed of by the Commission by directing the parties to follow the procedure prescribed under the 2021 Change in Law Rules and directed the Commission to exercise its review jurisdiction, suo motu, in all similarly placed claims for compensation founded on change in law events where similar decisions were taken by the Commission after coming into force of 2021 Change in Law Rules on 22.10.2021. APTEL further observed that if such orders of the Commission are found to be inconsistent with the legal position clarified by APTEL in the order dated 5.4.2022, or if those orders do not conform to the interpretation given by APTEL, the Commission shall vacate the same and restore the concerned claim cases to its file and complete the process of adjudication in accordance with law. In pursuance of the APTEL order dated 5.4.2022, the Commission heard together various petitions involving Change in Law claims, including Petition No. 562/MP/2020 and vide RoP dated 9.5.2022, decided to pass suo-motu orders applying the 2021 Change in Law Rules to Petitions previously disposed of by the Commission. However, the Commission observed that for Petitions where APTEL had already set aside the Commission's dismissal orders, no suo-motu orders are needed. The Commission further stated that it will decide on related requests as given in the following paragraphs by APTEL in order dated 5.4.2022:

"72 - For the foregoing reasons, we find the impugned orders of the Central Commission applying the CIL Rules to matters pending before it for adjudication under Section 79(1)(f) of the Electricity Act on the date of coming into force of said rules wholly erroneous, improper and bad in law. The said orders are thus set aside. In the result, the proceedings in claim cases (in which impugned orders were passed – and that includes the orders dated 04.02.2022 in the Original Petitions) remain inchoate. The Central Commission is duty-bound to consider each of them on the merits of the claims and adjudicate in accordance with law on the dispute(s) in proper exercise of its jurisdiction under Section 79 of the Electricity Act. It is directed to proceed to do so expeditiously."

"74 - Such that the affected parties do not suffer on account of faulty approach of adjudicatory authority, and this tribunal is not flooded by appeals raising identical issues against such other decisions as above, rendered in similar fact-situation by the Central Commission, it would be appropriate that it be asked to properly and fully perform its statutory function by exercise of its review jurisdiction, suo motu, in all similarly placed claims for compensation founded on change in law events where similar decisions have been taken by the Central Commission after coming into force of CIL Rules on 22.10.2021 and, if such decisions are found running afoul of the view taken by this tribunal by this judgment, to vacate the same and restore the concerned Claim cases to its file and complete the process of adjudication thereupon in accordance with law. Needful action in

the above nature shall be initiated by the Central Commission within four weeks of this judgment. Of course, a review can be undertaken even at the instance of the parties in question, should they approach the Commission on their own. We may add that these directions are without prejudice to the remedy, if any, already pursued or intended to be pursued by the concerned parties vis-à-vis other such cases.”

4. The Petitioner filed I.A. No. 15/IA/2023 on 22.12.2022 to amend the petition to bring on record certain developments that had taken place after the filing of the petition. In the hearing dated 21.2.2023, the Petitioner stated that it had also filed IA No.79/IA/2021 earlier, seeking amendment to the pleadings/prayers to bring on record, the Ministry of Railway's Amendment No.5 to Circular No.2018/TC/(FM)/14/04 dated 23.6.2020 on account of which the Petitioner had been required to bear the additional costs towards maintenance of Over Head Equipment (OHE). The Commission, vide RoP dated 21.2.2023, had permitted the Petitioner to file a consolidated amended petition.

5. The prayers made by the Petitioner in the amended petition are as follows:

“(A) Admit the present Petition;

(B) Declare that the Railway Budget 2011-2012 (Electrification of the Line in the Pink Book), Vision 2020 Blueprint dated 04.04.2011 and letter of Divisional Railway Manager dated 03.05.2012, qualify as events of 'Change in Law' in terms of the PPAs;

(B2) Declare that the Amendment No. 5 dated 23.06.2020 to Circular No. 2018/TC (FM)/14/04 issued by the Ministry of Railways, by way of which additional costs of maintenance of OHE were imposed on the Petitioner, qualifies as an event of 'Change in Law' in terms of Article 13 of the PPAs;

(B3) grant in-principle approval to the Petitioner to recover the additional expenditure which may be incurred by the Petitioner in future due to the issuance of Amendment No. 5 dated 23.06.2020 to circular no. 2018/TC (FM)/14/04 issued by the Ministry of Railways requiring the Petitioner to bear the cost towards maintenance of OHE and the inspection charges payable to NWR;

(B4) grant in-principle approval to the Petitioner to recover the additional expenditure which may be incurred by the Petitioner in future due to issuance of Policy Circular on Private Sidings: Freight Marketing Circular No. 99/TC(FM)/26/1/Pt.-II dated 22.08.2016 by Ministry of Railways requiring the Petitioner to bear the cost towards inspection and supervision during maintenance of S&T assets.”

(C) Declare that the costs due to increased operational expenses due to increased water charges, to be compliant with Haryana Government Gazette notification no.08/04/2009-21W dated 30.11.2018 issued by Irrigation and Water Resources Department, State Government of Haryana, as intimated by the Engineer-in-Chief, IWRD, Government of India vide circular no. 1541- 93/2R&CR/275/2011 dated 07.12.2018, qualifies as events of 'Change in Law' in terms of the PPAs;

(D) Allow Carrying Cost and restore the Petitioner to the same economic condition before the occurrence of the Change in Law Events by permitting the Petition and the amounts as per the computations set out hereinabove or through a suitable mechanism to compensate the Petitioner for the financial impact of the Changes in Law Events;

(E) Permit the Petitioner to recover an amount of INR 9,99,63,038 (Rupees Nine Crore Ninety Nine Lakhs Sixty Three Thousand and Thirty Eight) paid by it to North Western Railway and other additional costs that it may incur in future towards Electrification Costs of the Private



Railway Siding through a Supplementary Bill to be raised on the Respondents in accordance with the provisions of the PPAs.

- (F) *Pass directions to allow the Petitioner to recover an amount of INR 39,10,33,433/- (Indian Rupees Thirty Nine Crores Ten Lakh Thirty Three Thousand Four Hundred Thirty Three Only) paid by it to IWRD for usage of water for the period of FY 2018 – 2019 till November 2022 through a Supplementary Bill to be raised on the Respondents in accordance with provisions of the PPAs and any other additional costs that it may incur in future Contract Years;*
 - (FA) *Declare that the Notification dated 15.07.2022 has no. 199/N/LA/HWRA/2022, issued by the Haryana Water Resources Authority, qualifies as events of 'Change in Law' in terms of the PPAs;*
 - (FB) *Pass directions to allow the Petitioner to recover the increased operational expenses incurred by it to be compliant with the HWRA Notification;*
- (G) *Declare that the Petitioner is entitled to recover carrying cost/ interest on all amounts incurred/paid by the Petitioner for ensuring compliance with the Railway Electrification Notifications and the Water Rate Notification from the date of incurrence/ payment of such amounts by the Petitioner till such date as the Petitioner recovers such amounts in their entirety;*
- (H) *Allow necessary amendments to the PPAs to account for the aforementioned Change in Law Events and direct the Respondents to execute such necessary amendments;*
- (I) *Allow modification/ alternation/ amendment of the Petition/pleadings and/or provide additional information in support of the Petitioner's claim, if necessary; and*
- (J) *Pass such further order(s) as this Hon'ble Commission may deem just and proper in the facts and circumstances of the case."*

Hearing in the matter

6. The Petition was admitted on 6.4.2021, with directions for the impleadment of parties and filing of replies and rejoinders. Thereafter, the matter was heard on several occasions including, on 24.1.2022, 9.5.2022, 21.3.2023, 2.5.2023, 23.8.2023, 18.10.2023, 12.2.2024 and 7.5.2025 during which submissions were made on the Change in Law claims relating to railway electrification and increase in water charges, and time was granted to the parties for filing replies, rejoinders, amended pleadings, and additional affidavits to place subsequent developments on record. The Commission, vide RoP of the hearing dated 12.2.2024, permitted the Petitioner to file an additional affidavit to bring on record the details relating to the additional demands raised by the Railways upon the Petitioner towards electrification of railway sidings. Final arguments were concluded on 30.7.2025, and the matter was reserved for order by the Commission, with liberty to the parties to file written submissions.

7. The gist of the submissions made by the Petitioner is as follows:

Additional cost incurred by the Petitioner towards railway electrification (railway Change in



Law events)

- a) The Petitioner planned a private railway siding at Jharli station on the Rewari–Manheru line, which was a single-line, non-electrified section during the bidding stage. The proposal was developed in accordance with the Liberalisation of Siding Rules Policy issued by the Railway Board vide Letter no. 99/TC (FM)/26/1 dated 31.3.2005, and the Indian Railways Code for the Engineering Department, (Reprint 1999). The Chief Operations Manager (“COM”), NWR, vide letter number T 5/PLG/423/Siding/Jharli/BKN Divn dated 10.9.2008, confirmed that no separate Rail Traffic Clearance (“RTC”) would be required for putting up the Private Railway Siding, but required submission of detailed plans for examination. A feasibility study and conceptual plan were prepared, revised as per the suggestions of the DRM and COM, and received in-principle approval. Following this, a final location survey and Detailed Project Report were prepared, estimating the non-electrified siding cost of at ₹32.65 crore. Construction began in December 2009 and was completed in October 2011.
- b) The Railway Board first announced the future electrification of the Alwar–Rewari–Hissar–Jakhal route on 4.4.2011. Subsequently, on 3.5.2012, the DRM, Bikaner, informed the Petitioner that electrification of the Rewari–Manheru section, where the Petitioner’s siding is located, had been sanctioned, and under the 2012 Freight Policy, the Petitioner has to bear the OHE capital cost since the section had been approved for electrification. The Petitioner was therefore asked to submit an undertaking to bear these costs. A siding agreement was executed on 30.5.2012 (effective from 5.12.2011), and on 11.6.2012, the Petitioner consented to bear the OHE capital cost. Later, Railways Vikas Nigam Limited (RVNL) estimated the electrification cost at ₹8.63 crore, which was revised to ₹8.76 crore on 14.10.2016. The Petitioner paid ₹8,76,50,872 in advance, which was acknowledged by the Senior DRM on 6.2.2017. It was further clarified that electrification had already been sanctioned in the Railway Budget 2011–12 as part of the doubling work executed by RVNL.
- c) The Private Railway Siding was originally planned and executed as an un-electrified line, and the electrification requirement and resulting expenditure were never envisaged in the bid or in the earlier in-principle approval of 23.12.2008. The electrification decision came only in 2011, creating a substantial additional financial burden. The advance payment was based on an estimated cost, and there may be further demands if actual costs exceed the estimate.

- d) Thereafter, on 23.6.2020, through the Amended Circular issued by the Ministry of Railways, the additional costs towards maintenance of OHE were imposed on the Petitioner. Therefore, in effect, contrary to the erstwhile position of 7 (seven) days prior to Bid-Deadline, wherein the Railways were to bear such costs as per the original circular bearing no. 99/TC (FM)/26/1 dated 31.3.2005 ("Original Circular"), these additional costs were to be borne by the Petitioner. The relevant extract of the Original Circular is as follows:

"4.3 Maintenance of OHE (Both new & existing siding): It has been decided that OHE maintenance cost for existing as well as new sidings will be borne by the Railways. Necessary amendment in the existing instructions as well as correction to para 1826-E will be issued separately."

- e) Subsequently, on 23.6.2020, the Amended Circular was passed by the Ministry of Railways, by way of which additional costs towards maintenance of OHE were imposed on the Petitioner. The above position of payment to be made towards OHE maintenance was altered from being payable by Railways to being payable by the siding owner, i.e., the Petitioner in the present case. The relevant extract of the Amended Circular is as follows:

"1.4 Para 9.3 Maintenance of OHE Para 9.3.1 – OHE maintenance cost for existing as well as new sidings shall be borne by the siding owner in accordance with Railways guidelines. Railway will carry out necessary inspection of maintenance work in six months."

- f) The Ministry of Railways had issued Policy Circular Private Sidings: Freight Marketing Circular No. 99/TC(FM)/26/1/Pt.-II dated 22.8.2016 ("2016 Policy Circular") in supersession of the Original Circular. However, this circular did not alter the prevailing requirements for the payment of OHE maintenance charges as provided under the Original Circular. However, vide the 2016 Policy Circular, under Clause 9.6, a new provision for 'Maintenance of signalling and telecom (S&T) Assets' was introduced. The relevant portion is reproduced below:

"9.6.3 Periodicity of inspection of equipments inside the siding shall be once a quarter. Railway shall inspect the installation at the level of Sr. Section Engineer to ensure safety and reliability aspects of the Signals and Telecom equipment. The cost of such inspection & supervision shall be charged to the siding owner."

- g) As per the procedure specified in Article 13 of the PPAs, the Petitioner issued requisite Change in Law notices dated 16.9.2021 to the Procurers, i.e., HPPC and TPTCL, Respondent Nos. 1 to 3 herein, notifying the occurrence of the Additional Railway Change in Law Events.

- h) As on 22.12.2022, it had incurred ₹8,76,50,872 towards electrification of the Private Railway Siding and ₹1,23,12,166 towards S&T works. Subsequently, RVNL confirmed completion of electrification and communicated a final cost of ₹18,52,16,669, which was forwarded by NWR on 12.12.2023 with a demand for the balance amount of ₹8,52,53,631.
- i) In compliance with the directions in RoP dated 2.5.2023, the Petitioner has submitted that railway siding electrification was never a part of the original project plan. When the bid was submitted, the entire siding plan was approved by the Railways as an un-electrified siding in 2008. The Petitioner built the siding during 2009–11 as approved. Electrification became mandatory only after the Railway Board's 2011 circular, which proposed the electrification of the route. In 2012, the DRM informed the Petitioner that the siding owner must pay the electrification costs under the 2012 policy. Later, in 2016, Railways demanded ₹8.76 crore for electrification, which the Petitioner paid in 2017. In 2020, Railways also shifted OHE maintenance costs to the Petitioner, and the Petitioner had to spend another ₹1.23 crore on signalling and telecom works, with more costs likely. Since all these requirements arose after the PPA Cut-Off Date and were not part of the original approved scope, they qualify as Change in Law events under Article 13 of the PPA.
- j) The Petitioner is coordinating with NWR to obtain a detailed cost breakup and will submit it to the Commission after a prudence check. Haryana DISCOMs and TPTCL have been informed of the additional demand of ₹18,52,16,669 raised by NWR on 6.2.2023. The Petitioner may be permitted to recover ₹18,52,16,669 payable to NWR toward electrification costs (including the ₹8.76 crore already paid).

Additional cost incurred by the Petitioner towards the increase in water rates (water change in law event)

- k) The Irrigation and Water Resources Department, State Government of Haryana ("IWRD") vide its notification no. 08/04/2009-21W dated 30.11.2018 ("Water Rate Notification") has increased the rate for water supply to ₹10 (Indian Rupees ten) per cubic meter of water from ₹4.24 (Indian Rupees Four and Paise Twenty-Four) per cubic meter. The Water Rate Notification was issued pursuant to Haryana Canal and Drainage (Amendment) Rules, 2018, which amended the Haryana Canal and Drainage Rules, 1976. The Petitioner submitted its bid on 10.3.2008 and signed the PPAs with Respondent Nos. 1 to 3 in August 2008 and January 2009, respectively. During this period, the prevailing rate of water supply was ₹ 3.531 per cubic meter

as per IWRD notification No. S.O.84/H.A.29/1974/S.65/2007 dated 25.10.2007. Consequently, JPL incurred the following additional costs:

2018-19	₹ 4,38,07,541/-
2019-20	₹ 8,64,98,851/-
2020-21	₹5,65,11,261/-
2021-22	₹9,71,84,075/-
2022-23 (till November 2022)	₹10,70,31,705/-

- l) The Haryana State Government authorised the Haryana Water Resources Authority (“HWRA”) to determine the water tariff pursuant to the Haryana Water Resources (Conservation, Regulation and Management) Authority (Amendment) Act, 2022, as notified on 12.4.2022 (“HWRA Act”). Thereafter, in consultation with the IWRD and Public Health Engineering Department over the bulk water tariff, HWRA considered it prudent to revise the prevailing water tariff. Accordingly, under the powers granted to HWRA under Section 18 of the HWRA Act, HWRA issued its Notification, vide which it revised and increased the bulk water tariff for power plants.
- m) Due to enactment of the HWRA Notification, the bulk water tariff for JPL has increased to ₹2000 (Rupees two thousand) per 100 cubic meters, which in effect is a 100% increase from the Water Rate Notification issued by the Irrigation and Water Resources Department on 30.11.2018 in the following manner:

Tariff as per Govt. notification 30.07.2012			Tariff as per Govt. notification 30.11.2018		Proposed tariff by IWRD	Tariff determined and decided by HWRA 2022	% Increase in tariff since 2018
Sr. No.	Description	Tariff	Description	Tariff	Tariff	Tariff	
1.	Water supply in Bulk: Industries, Power Plants and other Bulk Users	Rs.300 per 2500 Cft. (Rs. 425 per 100 cum)	Water supply in Bulk:- (i)(b) Other industries, Power Plants and Bulk users	Rs. 1000 per 100 cum	Rs. 2500 per 100 cum	Rs. 2000 per 100 cum	100%

- n) The Petitioner has incurred additional expenditure on account of increased water charges, which have risen from ₹39,10,33,433 (up to November 2022) to ₹66,66,26,910 (up to December 2023).
- o) At the time of bid submission and execution of the PPAs, the applicable water rate under IWRD was ₹3.531 per cubic meter. This was later increased to ₹4.24 per

cubic meter on 30.7.2012 under the Haryana Canal and Drainage Rules, 1976. Subsequently, IWRD issued a notification on 30.11.2018, revising the rate to ₹10 per cubic meter. Following the Haryana Water Resources (Conservation, Regulation and Management) Authority (Amendment) Act, 2022, notified on 12.4.2022, the HWRA was empowered to set water charges. The HWRA, through its notification dated 15.7.2022, increased the bulk water tariff for power plants to ₹2,000 per 100 cubic meters (₹20 per cubic meter), which is a 100% increase from the 2018 rate and a 466% increase from the rate applicable at the time of bidding.

8. Haryana Utilities, Respondent Nos. 1 & 2 have submitted, vide affidavits dated 22.5.2023 and 18.8.2025 respectively, that the Change in Law claims raised by the Petitioner are barred by limitation, vitiated by delay and laches, and are liable to be rejected. The alleged Change in Law events relating to Railway Budget 2011-12, Vision 2020, DRM letter dated 3.5.2012, and Freight Marketing Circular dated 22.8.2016 arose much prior to the filing of the petition in June 2020, and the declaratory reliefs sought beyond the statutory limitation period cannot be entertained. The Petitioner failed to issue the required notices in a timely manner as mandated under Article 13.3.1 of the PPA. On merits, the railway electrification and allied costs flow from the Railway Policy dated 31.3.2005, which predates the cut-off date and was accepted by the Petitioner, and that subsequent railway circulars are merely operational measures and do not constitute a Change in Law. Claims relating to OHE maintenance and S&T inspection are stated to be operational in nature and not a pass-through under Section 63. The claim for increased water charges is stated to be settled against the Petitioner on the basis of the judgment of the Hon'ble Supreme Court in *GMR Warora Energy Ltd.*, and no carrying cost is admissible.

9. In response, the Petitioner, vide affidavit dated 27.12.2025, has submitted that the demands raised by NWR towards electrification of the railway siding were only tentative in nature and that the final amount for electrification of the Siding was communicated to the Petitioner only on 12.12.2023, upon which the monetary impact of the Change in Law

event crystallised. In terms of Article 13 of the PPA, the limitation is required to be reckoned from the date of such crystallisation and not from the date of the tentative estimate dated 6.2.2017, and therefore, the objection that the petition filed on 22.6.2020 is barred by limitation is misconceived and liable to be rejected.

10. TPTCL, Respondent No. 3, in its reply vide affidavit dated 21.3.2023, has submitted that it is merely an intermediary trader facilitating the supply of 10% power from JPL to TPDDL under a back-to-back arrangement executed only to enable JPL to avail Mega Power Policy benefits, and that it neither owns nor operates the project nor has any role in the occurrence of the alleged Change in Law events. TPTCL has further submitted that , if any liability exists, it lies with the generator and the ultimate beneficiaries; therefore, the petition, insofar as it concerns TPTCL, deserves dismissal.

11. The Petitioner, in its rejoinder to the reply of TPTCL, has submitted, vide affidavit dated 5.4.2023, that TPTCL has not disputed the occurrence of Change in Law events and cannot evade its contractual obligations by claiming to be a mere intermediary. There is direct contractual privity under the PPA, and TPTCL is obligated to pay Change in Law compensation, including supplementary bills and the Late Payment Surcharge, irrespective of recovery from TPDDL. Further, placing reliance on the Commission's order dated 8.10.2018 in Petition No. 133/MP/2016 (Sasan Power Limited v. MP Power Management Company Limited & Ors.), the Petitioner has submitted that the Commission has categorically held that Change in Law events occurring after the cut-off date are allowable under the PPA. Accordingly, the costs incurred by the Petitioner to ensure compliance, which were neither anticipated nor known as on the cut-off date, squarely constitute a Change in Law event, entitling the Petitioner to relief.

12. Tata Power Delhi Distribution Limited (TPDDL), Respondent No. 4, in its reply vide affidavit dated 21.3.2023, has submitted that under the back-to-back PSA, Change in Law compensation is admissible only if the cost impact exceeds the prescribed threshold and

on issue of a timely notice. The claims relating to OHE maintenance under the 2020 railway circular are commercial and not statutory in nature, are barred by delay, and lack supporting evidence, and claims under the 2016 circular relating to signalling and transmission assets are similarly time-barred and unsupported. TPDDL has further submitted that under the competitive bidding framework, operational risks were borne by the Petitioner and allowing such claims would undermine tariff certainty.

13. In response, the Petitioner, vide affidavit dated 5.4.2023, has submitted that railway circulars and notifications constitute “Law” under Article 13 of the PPA, Indian Railways being an instrumentality of the Government, and it relies on APTEL and Hon’ble Supreme Court judgments in Nabha Power and Adani Power. The costs for electrification, signalling, and revised water charges were incurred after the cut-off date, notices were duly issued, and TPDDL failed to respond to its notice dated 16.9.2021. The Petitioner has further submitted that the cause of action is continuing and prays for approval of all Change in Law claims, along with carrying costs.

Analysis and Decision

14. Based on the submissions of the parties, the issues that emerge for our consideration are as follows:

Issue No.1: Whether the petition is barred by limitation?

Issue No.2: A. Whether the following events qualify as “change in law” in terms of the PPAs? and B. Whether the provisions with regard to notice in the PPA have been complied with by the Petitioner?

- a) Railway Budget 2011-2012 (Electrification of the Line in the Pink Book).
- b) Vision 2020 Blueprint for railway electrification program dated 4.4.2011.
- c) Letter of Divisional Railway Manager dated 3.5.2012.
- d) Amendment No. 5 dated 23.6.2020 to Circular No. 2018/TC (FM)/14/04 issued by the Ministry of Railways.
- e) Haryana Government Gazette Notification No.08/04/2009-21W dated 30.11.2018



issued by Irrigation and Water Resources Department, State Government of Haryana, as intimated by the Engineer-in-Chief, IWRD, Government of India vide Circular No. 1541- 93/2R&CR/275/2011 dated 7.12.2018.

f) Notification dated 15.7.2022 has no. 199/N/LA/HWRA/2022, issued by the Haryana Water Resources Authority.

Issue No.3 : In-principle approval to recover the additional expenditure towards OHE maintenance and S&T inspection charges.

Issue No.4: Allow carrying cost and restore the Petitioner to the same economic condition before the occurrence of the “change in law” events.

Issue No.5: Necessary amendments to the PPAs to account for the aforementioned “change in law” events.

15. We have heard the learned counsels for the Petitioners and Respondents, carefully perused the records, and considered the submissions of the parties. We proceed to examine the issues below.

Issue No.1: Whether the petition is barred by limitation?

16. The Haryana Utilities, vide affidavits dated 22.5.2023 and 18.8.2025, have submitted that the “change in law” claims raised by the Petitioner are barred by limitation and vitiated by delay and laches, and therefore not maintainable. It has been contended that the alleged “change in law” events arose much prior to the filing of the petition in June 2020 and that declaratory relief sought beyond the statutory limitation period cannot be entertained. TPDDL has submitted that the claims relating to OHE maintenance under the 2020 Railway Circular are barred by delay. In response, the Petitioner, in its rejoinders, which are similar in the case of TPDDL and Haryana Discoms, has submitted that it should be first affected by such “change in law” event, which in this case happened on 5.1.20217 and 9.7.2020, when the Petitioner actually made the payments to the Railways. The Petitioner has submitted that the electrification charges paid by it have not been finalised, and it anticipates that a further amount may be due and payable, and therefore, the cause of action is a continuing one. The Petitioner has further submitted



that, in view of the continuing cause of action, the plea of limitation is not applicable and that it is entitled to relief under Article 13 of the PPA to restore its economic position. The Petitioner, in its rejoinder to the TPDDL's reply, has submitted that it had issued a "change in law" notice dated 9.8.2017 to the Respondents; however, the Respondents did not respond to the same. In the absence of any acceptance or denial by the Respondents, the Petitioner was constrained to approach the Commission on 22.6.2020, within three years from the date of the "change in law" notice.

17. We have considered the submissions of the parties. The Commission, in an order dated 23.6.2023 in Petition No. 513/MP/2020, has held that "change in law" events will be governed by Article 113 of the Schedule of the Limitation Act, 1963, which provides for a limitation period of three years from the date when the right to sue accrues. The relevant portion of the order dated 23.6.2023 is as follows:

"17. Schedule to the Limitation Act lays down various types of suits for the purpose of limitation. However, Change in Law claims under the PPA is not specifically provided for in the Limitation Act. In that case, Article 113 of the Schedule is relevant which is extracted as under:

<i>Description of application</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>113. Any suit for which no period of limitation is provided elsewhere in the schedule</i>	<i>Three years</i>	<i>When the right to sue accrues</i>

Thus, the period of limitation for filing petitions in adjudicatory cases involving Change in Law claims before the Commission shall be governed under Article 113 of the Limitation Act which is three years from the time when the right to sue accrues."

"22. We have considered the submissions made by the parties. There is no denial of the fact that APMuL has issued formal notices for certain events of Change in Law events after a lapse of more than 3 years after signing of the FSA when it came to be affected by Change in Law. The issue is whether such delay in giving notice would result in denial of compensation for the expenditure incurred by APMuL in respect of these events of the Change in Law. It is pertinent to note that Article 13.3.1 of the PPA provides that if the Seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a change in law, it shall give notice of such event as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law event. As per Article 13.3.3, the notice shall provide among other things the precise details of the Change in Law and effects on the Seller of the matters referred to in Article 13.2 (for construction period as well as operation period). Thus, the purpose of notice is to inform the Procurer about the details of Change in Law and its impact on the Seller. Further, PPA does not provide for any adverse consequences including denial of compensation for the

actual expenditure incurred on account of Change in Law where delay has occurred in issuing the Change in Law notices. Therefore, in the absence of any specific timeline for giving notice about the occurrence of Change in Law event, delay in giving notice will not adversely affect or obliterate the claims of APMuL except to the extent the claims are barred by limitation.

23. We have already observed in para 19 that limitation in the present case will be governed by Article 113 of the Schedule of the Limitation Act which provides for a period of three years from the date when the right to sue accrues.....”

18. As per the Limitation Act, the period of limitation for filing petitions in case of “change in law” events is three years. It is observed that the Petitioner made the first payment towards the electrification of the railway siding on 5.1.2017 and a subsequent payment on 9.7.2020, and the railways completed the work and raised a final bill for ₹18,52,16,669 on 6.2.2023. The first payment towards the electrification was made on 5.1.2017, and the final amount crystallised only on 6.2.2023. Thus, the cause of action commenced on 5.1.2017 and continued up to 6.2.2023 when the final amount towards the cost of electrification crystallised. The petition was filed on 23.6.2020 through the e-filing portal, within three years of the date on which the cost of electrification of the railway siding crystallised. Thus, we are of the view that the petition is filed within the limitation period.

Issue No.2: A. Whether the following events qualify as “change in law” in terms of the PPAs? and B. Whether the provisions with regard to notice in the PPA have been complied with by the Petitioner?

- (a) Railway Budget 2011-2012 (Electrification of the Line in the Pink Book).
- (b) Vision 2020 Blueprint for railway electrification program dated 4.4.2011.
- (c) Letter of Divisional Railway Manager dated 3.5.2012.
- (d) Amendment No. 5 dated 23.6.2020 to Circular No. 2018/TC (FM)/14/04 issued by the Ministry of Railways.
- (e) Haryana Government Gazette Notification No.08/04/2009-21W dated 30.11.2018 issued by Irrigation and Water Resources Department, State Government of Haryana, as intimated by the Engineer-in-Chief, IWRD, Government of India vide Circular No. 1541- 93/2R&CR/275/2011 dated 7.12.2018.

(f) Notification dated 15.7.2022 has no. 199/N/LA/HWRA/2022, issued by the Haryana Water Resources Authority.

19. We have considered the submissions of the Petitioner and the Respondents and have perused the documents on record. The basic plea of the Petitioner is to declare the notifications issued by the Ministry of Railways regarding electrification of the railway sidings and the notifications issued by the Irrigation and Water Resources Department and Haryana Water Resources Authority, Government of Haryana as “change in law” events and to allow the additional liability on the Petitioner on account of issue of the said notifications in accordance with the PPAs. The Petitioner entered into PPA with Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited on 7.8.2008 (which was later amended on 17.9.2008) (Discom PPA) and with TPTCL on 20.1.2009 (which was later amended on 21.10.2010) (TPTCL PPA), and TPTCL has a back-to-back contract with TPDDL. The Petitioner has approached the Commission under Article 13 of the PPAs seeking compensation for a decrease in revenues and an increase in costs resulting from “change in law” events.

20. Article 13 of the PPAs provides that a party impacted by a “change in law” event should be restored to the same economic position as if such “change in law” had not occurred. The provisions on “change in law” under both the PPAs are the same, except that the effective date under the TPTCL PPA is different. Article 13 of the Discom PPA is as follows:

“13.1 Definitions

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

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

(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law; or

(ii) a change in interpretation of any Law by a Competent Court of Law, tribunal or Indian Governmental Instrumentality provided such Court of Law, tribunal or Indian Governmental Instrumentality is final authority under Law for such interpretation; or

(iii) change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Seller, which results in any change in any cost of or revenue from the business of selling electricity by the Seller to the Procurers under the terms of this Agreement, or



(iv) any change in the (a) Declared Price of Land for the Project; or (b) the cost of implementation of the resettlement and rehabilitation package of the land for the Project mentioned in the RFP; or (c) the cost of implementing Environmental Management Plan for the Power Station mentioned in the RFP; but does not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

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

13.2 *Application and principles for computing impact of Change in Law.*

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

(b) Operation Period

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

Provided that the above-mentioned compensation shall be payable only of and for increase/decrease in revenues or cost to the Seller is in excess of an amount equivalent to one percent (1%) of Letter of Credit for a Contract Year.”

21. As per Article 13 of the Discom PPA and TPTCL PPA, the following three conditions are to be met to qualify as a “change in law” – (a) the event should have occurred after the cut-off date (b) the event must arise from the enactment, amendment, modification or interpretation of any law by a competent court, tribunal or Indian Governmental Instrumentality (c) issuance of notice regarding “change in law” event to the beneficiaries as provided for Article 13.3 of the PPAs.

22. We would first examine the “change in law” events concerning electrification of the railway siding, i.e. the events (a), (b), (c) and (d) mentioned at paragraph 14 above. As per Article 13.1 of the Discom PPA, any defined “change in law” event occurring after seven days prior to the Bid Deadline constitutes a “change in law” event. The cut-off date as per the Discom PPA is 3.3.2008, and per the TPTCL PPA is 20.1.2009.

23. The Haryana Discoms have submitted that the railway electrification and allied costs flow from the Railway Policy dated 31.3.2005, which predates the cut-off date, and that the subsequent railway circulars are merely operational measures and do not constitute

“change in law” events. It is noted that the railway siding electrification was not part of the original project plan. When the bid was submitted, the Rewari–Manheru rail line was a single non-electrified line, and the siding plan was approved by the Railways as an un-electrified siding in 2008. The Petitioner had built the siding during 2009-11 as approved by the Railways. Electrification became mandatory only after the Railway Board’s 2011 circular, which proposed the electrification of the route. In 2012, the DRM informed the Petitioner that electrification costs must be paid by the siding owner under the 2012 policy *‘for new siding in the electrified territory or territory approved for electrification, the capital cost of OHE shall be borne the cost of electrification will have to be borne by the siding owner.’* Later, vide letter dated 14.10.2016, Railways raised a demand for ₹8.76 crore towards electrification of the railway siding of the Petitioner, which the Petitioner paid on 5.1.2017, and the Petitioner issued notice to this effect to the beneficiaries on 9.8.2017. The amount that had to be paid by the Petitioner towards electrification of the railway siding crystallised much after the cut-off dates under the Discom PPA and the TPTCL PPA. All these requirements arose after the cut-off dates 3.3.2008 and 20.1.2009 under the Discom PPA and TPTCL PPA, respectively, and were not part of the original approved scope. Hence, the first criterion that the event should have occurred after the cut-off date is satisfied.

24. The “Indian Government Instrumentality” is defined in Article 1 of the PPAs as follows:

“means the GOI, Government of Haryana and any ministry or, department of or, board, agency or other regulatory or quasi-judicial authority controlled by GOI or Government of Haryana and includes the Appropriate Commission.”

25. Further, the Hon’ble Supreme Court of India, vide judgment dated 20.4.2023, in Civil Appeal No.11095 of 2018, titled GMR Warora Energy Ltd. v. CERC & Ors., has held that Indian Railways is an instrumentality of the State and the notifications or circulars issued by it qualify as “change in law”. The relevant excerpt of the judgment dated 20.4.2023 is as follows:



“134. Insofar as the Busy Season Surcharge and Development Surcharge are concerned, they are issued under the Circulars/Notifications of Indian Railways. The notification on coal quality is issued by MoEF. All these are the instrumentalities of the State, and these would, therefore, amount to ‘Change in Law’.”

26. Accordingly, we hold that the second criterion that the event must arise from the enactment, amendment, modification or interpretation of any law by a competent court, tribunal or Indian Governmental Instrumentality, is also satisfied.

27. Now we proceed to examine the events concerning the increase in water charges in terms of the Notification of the Irrigation and Water Resources Department, Government of Haryana.

28. With regard to increase in water charges, the Petitioner has submitted that the Haryana Government Gazette Notification No. 08/04/2009-21W dated 30.11.2018, issued by the Irrigation and Water Resources Department, Government of Haryana, mentioned at (e) in paragraph 14 above, revised the water rates applicable for supply of canal water for industrial and power generation purposes within the State. The revised rates were notified pursuant to the State Government’s policy decision and were subsequently intimated by the Engineer-in-Chief, IWRD, Government of Haryana, vide Circular No. 1541-93/2R&CR/275/2011 dated 07.12.2018. The Petitioner has further submitted that the Notification No. 199/N/LA/HWRA/2022 dated 15.7.2022, issued by the Haryana Water Resources Authority (HWRA), mentioned at (f) in paragraph 14 above, revised and rationalised the water abstraction charges applicable for withdrawal and use of water for industrial and power generation purposes in the State of Haryana. The Petitioner, vide letter dated 28.2.2020, issued a notice to HPPC and TPTCL under the “change in law” event on account of an increase in water rates pursuant to the above notifications issued by the irrigation and water resources department of the Government of Haryana.

29. We have considered the submissions of the parties and examined the documents placed on record. The Commission has held that an increase in water charges constitutes an input cost and does not qualify as a “change in law” event. The Commission, in an

order dated 28.3.2018 in Petition No. 239/MP/2016, has held that the increase in water charges is not admissible under the “Change in Law”. The relevant portion of the order dated 28.3.2019 is as follows:

“34. In the light of above, the increase in water charges is not admissible under change in law and the claim of the Petitioner is rejected subject to the outcome of decision in Appeal No. 133 of 2016 filed by Sasan Power Limited before the Appellate Tribunal for Electricity.”

30. Further, APTEL vide judgement dated 13.11.2019 in Appeal Nos. 77 of 2016 and 136 of 2016 have upheld the above decision of the Commission. The relevant portion of the APTEL’s judgement dated 13.11.2019 is as follows:

“17.12.8 We also agree with the analysis of the Central Commission that the water charges have shown increasing trend over the years and Appellant should have realistically assessed and factored in the bid such increase in water charges over the contract period. We are of the view that a prudent bidder would address the risk in increase of input cost by suitably quoting an escalable component of capacity charge. A similar case came up before this Tribunal in Appeal No.195 of 2016 and decided vide its judgment dated 27.05.2019 that there cannot be any compensation on account of increase in rate of water charges. Therefore, this issue, i.e. Issue (B) is partially decided against the Appellant i.e. increase in water charges, being input cost, not allowed as compensation to the Appellant. However, levy of one time water allocation fee, being held to be a change in law event, the same needs to be compensated to the Appellant.”

31. In view of the settled legal position, we are of the view that the increase in water charges on account of the Government of Haryana notifications at (e) and (f) does not qualify as a “change in law” event under Article 13 of the PPAs. Accordingly, the Petitioner’s request for consequential relief because of the Government of Haryana notifications is rejected.

B. Whether provisions with regard to notice in the PPA have been complied with by the Petitioner?

32. We now proceed to examine the event relating to the electrification of the railway siding with reference to the third criterion, i.e., issuance of notice to the beneficiaries as provided under Article 13.3 of the PPAs. Article 13.3 of the Discoms PPA and TPTCL PPA deals with the issue of notice in respect of “change in law” event, and it is as follows:

“13.3 NOTIFICATION OF CHANGE IN LAW



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

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

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

(a) the Change in Law; and

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

TPTCL PPA also provides for a similar provision in Article 13.3.

33. The Haryana Utilities, vide affidavits dated 22.5.2023 and 18.8.2025, have submitted that the Petitioner failed to issue “change in law” notices within the stipulated time under Article 13.3.1 of the PPA. Per contra, the Petitioner vide affidavits dated 27.12.2025 has submitted that the “change in law” events occurred after the cut-off date as defined under the PPA and the notices were issued in compliance with Article 13.

34. We have considered the parties’ submissions. It has been noted that the Railway Siding was conceptualised as an unelectrified siding. However, vide the Railway Budget 2011-12 (Electrification of the Line in the Pink Book) and Vision 2020 Blueprint dated 4.4.2011 (Railway Notifications), the electrification work on the Rewari-Manheru section was sanctioned by the Railway Board. Subsequently, vide letter dated 14.10.2016 (having Reference No. 676-T/ Plan/RE/Sidings/II), the Petitioner was asked to deposit an amount of ₹8,76,50,872 (Electrification Cost) in advance so that the electrification of the Railway Siding can be executed simultaneously with the electrification of the Rewari-Manheru section. The said amount was released by the Petitioner on 5.1.2017. The Petitioner vide letter dated 9.8.2017 had issued a notice to HPPC and TPTCL under the “change in law” event (Electrification of the Railway Siding). Further, Petitioner, vide letter dated 16.9.2021, had issued an appropriate notice to HPPC and TPTCL, under the

“change in law” “Amendment No. 5 dated 23.06.2020 to Circular No. 2018/TC (FM)/14/04 issued by the Ministry of Railways”.

35. It is observed that Railways, for the first time, raised a demand on the Petitioner for ₹8,76,50,872 towards cost of electrification of the railway siding on 14.10.2016 and the same was paid by the Petitioner on 5.1.2017 and the Petitioner issued a notice to the procurers to this effect on 9.8.2017, much before the crystallisation of the actual cost of the electrification on 6.2.2023. The above sequence of events shows that the Petitioner had proactively issued the notice to the procurers much before the crystallisation of the actual cost of electrification and thereby has complied with the requirement of serving the notice regarding “change in law” in terms of Article 13.3 of the PPAs, satisfying the third criterion of issue of notice regarding “change in law” event. Therefore, the events at (a), (b), (c) and (d) mentioned above qualify as “change in law” events in terms of Article 13.1.1 of the PPA.

Issue No. 3: In-principle approval to recover the additional expenditure towards OHE maintenance and S&T inspection charges.

36. The Petitioner has prayed for the grant of in-principle approval to recover the additional expenditure incurred/to be incurred towards maintenance of OHE, inspection charges, and costs towards inspection and supervision during maintenance of S&T assets. On the contrary, the Haryana Discoms have submitted that OHE maintenance and S&T inspection are operational in nature and are not a pass-through under Section 63 of the Act; therefore may not be allowed. TPDDL has submitted that the claims relating to OHE maintenance under the 2020 Railway Circular are commercial and not statutory in nature. We have considered the parties' submissions. On examination, we observe that the PPA does not provide for the grant of any in-principle *approval* for the recovery of such costs. Relief under “change in law” can be granted only upon examination of actual expenditure incurred, subject to a prudence check and in

accordance with the applicable contractual and regulatory framework. Accordingly, the Petitioner's prayer seeking in-principle approval for OHE maintenance and S&T inspections is denied.

Issue No.4: Allow carrying cost and restore the Petitioner to the same economic condition before the occurrence of the “change in law” events.

37. The Petitioner has submitted that it is entitled to recover carrying cost/ interest on all amounts incurred/ paid by the Petitioner for ensuring compliance with the Railway Electrification Notifications and the Water Rate Notification from the date of incurring/ payment of such amounts by the Petitioner till it recovers the same from the procurers. The Petitioner has also submitted that in both the PPAs, compensation for “change in law” during the Operation Period is payable subject to the condition that increase/ decrease in revenues or costs to the Petitioner on account of the introduction of the Railway Electrification Notifications and Water Rate Notifications is in excess of an amount equivalent to one percent (1%) of the Letter of Credit (as defined in the relevant PPA) in aggregate for a Contract Year. On the other hand, Haryana Discoms have submitted that the Railway Electrification Notifications and Water Rate Notifications issued by the Government of Haryana are not “change in law” events and hence, no carrying cost is admissible.

38. We have already held that the Water Rate Notifications issued by the Government of Haryana are not “change in law” events and therefore the Petitioner is not entitled to any relief on account of the said notifications. We have also held that the Railway Electrification Notifications are “change in law” events. It is noted that Rail Vikas Nigam Limited (RVNL) raised a demand of ₹8,76,50,872 towards electrification of the railway siding on 14.10.2016, and the Petitioner had paid the same, which was also acknowledged by the Senior DRM on 6.2.2017. The Petitioner has also paid ₹1,23,12,166 towards S&T works. Subsequently, RVNL completed the electrification work, informed the Petitioner of the final cost of ₹18,52,16,669 and raised a demand for



the balance amount of ₹8,52,53,631. On examination, we note that the additional cost towards electrification of the private railway siding has arisen due to “change in law” events occurring after the cut-off date. The said expenditure has been incurred pursuant to the Railways' directions and was not contemplated at the time of bidding. It is also noted that the Petitioner has issued notice to the procurers as required under Article 13.3 of the PPA. Accordingly, the Petitioner is entitled to recovery of the additional costs incurred towards the electrification of the railway siding.

39. With regard to the carrying cost, it is a settled principle of law that carrying cost is payable as per the provisions of the PPA to compensate the affected party for the time value of money deployed on account of “change in law” events. If the PPAs contain a restitution clause, the party is allowed to be restored to the same economic position as if the “change in law” events had not occurred. This is in line with the Hon’ble Supreme Court’s judgement in Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power Ltd. & Ors dated 25.2.2019, wherein it was held that in case there is an in-built restitutionary principle in the PPA, the affected party has to be put in the same economic position as if such a “change in law” event had not occurred, i.e., the party must be given the benefit of restitution as understood in civil law. Since in the present matter, both the PPAs have inbuilt restitutionary principles, the Petitioner is entitled to the carrying costs on the additional expenditure incurred due to the “change in law” event from the occurrence of the “change in law” event.

40. We would like to state that we have not computed the threshold value for the “change in law” compensation becoming payable during the Operation Period as per the proviso to Article 13.2(b) of the PPAs. The “change in law” compensation as allowed under this order shall become payable only if the impact due to them exceeds the threshold value as provided in the aforesaid article.

Issue No. 5: Necessary amendments to the PPAs to account for the aforementioned “change in law” events.



41. The Petitioner has requested to allow necessary amendments to the PPAs to account for the aforementioned “change in law” events and to direct the Respondents to execute such necessary amendments. The State Commission is vested with the jurisdiction under Section 86(1)(b) of the Electricity Act, 2003, to regulate electricity procurement, the procurement process and the price at which electricity is procured from generating companies, licensees or other sources through PPAs. Further, under Article 18.1 of the PPA, the PPA may be amended or supplemented by a written agreement between the parties, subject to the approval of the Appropriate Commission. Therefore, we are of the considered opinion that the State Commission is the appropriate Commission to examine the proposed amendments to the PPAs.

42. In this regard, we would refer to the Commission’s order dated 13.8.2025 in Petition No. 65/MP/2024, wherein it was held that the State Commission is the Appropriate Commission under the PPA to approve the amendments to the PPA and directed the party to approach the State Commission. The relevant portion of the order dated 13.8.2025 is as follows:

“Further, in the present case, the tariff was determined under Section 63 of the Act and the original tariff was adopted by the State Commission. It is the State Commission, which is vested with ample power under Section 86(1) (b) to regulate the electricity purchase and procurement process of distribution licensees, including the price at which electricity is being purchased. Accordingly, the State Commission is the Appropriate Commission under Article 18.1 of the Act to approve amendments in the terms and conditions of the PPAs, including the tariff.

40. Thus, we opine that this Commission does not have the necessary jurisdiction to deal with the issues involved in the Petition, i.e., approval for SPPAs dated 28.2.2023. Accordingly, the Petitioner is at liberty to approach the State Commission for appropriate relief.”

43. Accordingly, the Petitioner may approach the State Commission for appropriate relief.

44. Petition No. 562/MP/2020 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

