

tariff. The reduction in cost of power generating station is to be achieved on account of reduction in transportation cost and operational efficiency of generating station of IPP.

- 6.39 The tariff of Rs. 3.079 per unit even after addition of impact of Change in Law claim (STC & MSP coal) in June, 2021 is lower by Rs. 0.43 /kWh than the variable rate for Nashik Units, which is a significant reduction.
- 6.40 Thus, the overall cost of power supplied under tolling arrangement is lower than the cost of generation from Nashik TPS which is considered for tolling.
- 6.41 This Petition has been filed by MSPGCL in compliance of the directives by the Commission in the MYT Order dated 30 March, 2020 in Case No. 296 of 2019 regarding filing separate Petition for approval of the Change in Law claims for coal tolling arrangement under Case -IV Phase-II. Though the issue in this regard was raised in the Review Petition in Case No. 180 of 2020, the Commission had re-iterated the directions given in the MYT Order dated 30 March, 2020.
- 6.42 This is being carried out since November, 2019 and as such there is some delay in filing the Petition.
- 6.43 MSPGCL refers to the Order dated 23 March, 2020 passed by the Hon'ble the Supreme Court of India in Suo Motu Petition No. 03/2020 where limitation period of all proceedings, before all judicial / quasi- judicial for a in the country, irrespective whether the said proceedings are governed by special or general law of limitation, was extended until further Orders. Thereafter, the Hon'ble the Supreme Court on 27 April, 2021 passed another Order in the aforesaid Case, whereby it restored the previous Order dated 23 March, 2021 and directed that the period of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall be stand extended till further Orders.
- 6.44 As a result of the aforesaid Order, there is no specific delay in filing the Present Petition. Therefore, the Commission may condone the delay in filing the Petition.
- 6.45 Therefore, MSPGCL submits this Petition seeking Change in Law claims.
- 7. MSEDCL in its reply (in Case No. 128 of 2021) dated 26 November, 2021 has stated that:**
- 7.1 The intention of coal tolling arrangement under Case IV was to optimize utilization of coal. MSPGCL shall substantiate the operational efficiency of the Power Station selected under Case IV bidding as compared to its own Power station which were replaced and then show the savings in cost of generation.

- 7.2 MSPGCL should provide monthly comparison of savings in per unit cost of actual coal which is used by IPPs with the same quality and quantity of coal if used by its own Power Plant.
- 7.3 As per MSPGCL submission it is evident that during the meeting held on 8 March, 2021, it was decided that MSPGCL would be benefitted from Mine Specific coal, only if requisite quantity is supplied by WCL to MSPGCL and accordingly, MSPGCL agreed to make payment to WCL for add-on price of Rs. 450 per MT. There is no clarity on what the quantity was discussed to be supplied by WCL to MSPGCL in order to justify the add-on price of Rs. 450 per MT. MSEDCL was not party to the said meeting held on 8 March, 2021 and therefore is not aware of the outcome of said meeting. MSEDCL was never consulted by MSPGCL before changing their stand on making the payment of add-on price to WCL for Mine Specific Coal. Further, MSPGCL has not provided any information regarding the treatment of MSP coal charges levied from date of Notification to 31 December, 2020.
- 7.4 MSPGCL has revised the rate for the purpose of MoD by an estimation of 1 paisa per unit on account of WCL circular for change in Surface Transportation Charges and the same rate continued till 31 December, 2020. Since 01 January, 2021, MSPGCL has also agreed to pay additional variable charges but the rate in MoD was brought into effect only from May 2021. As mentioned by MSPGCL, impact of Change in Law claims is about Rs.0.19/kWh, which is mainly impacted by MSP. Non consideration of this per unit impact in MoD, MSEDCL might have backed down cheaper power generating Units and might have suffered a loss, for which MSPGCL is responsible.
- 7.5 Any notional claims made by MSPGCL may not be considered by the Commission and any claim, if any to be allowed by the Commission may only be on the basis of actual coal quality and quantity supplied to DIL from WCL, after due reconciliation and as per terms and conditions specified in the DPA and relevant notifications. Commission may not allow any claim made on provisional basis on account of 'Change in Law' as requested in the present matter. MSPGCL had enough time for final reconciliation and computation of actual Change in Law impact.
- 7.6 As per the provisions of Maharashtra Electricity Grid Code, 2020, MSPGCL was supposed to approach the Commission in stipulated time of one month from the date of occurrence of event of 'Change in Law'. However, the Petitioner has failed to do so and is now claiming the said impact of 'Change in Law' for the period ending 31 March, 2021.
- 8. During the first hearing held on 30 November, 2021**
- 8.1 The Commission heard the Case No. 127 of 2021 (Phase-I) and Case No. 128 of 2021(Phase-II) together as the issue was similar and identical in nature. Advocate Ms. Deepa Chawan appeared on behalf of DIL and sought to intervene in the matter. The Representative of MSPGCL and MSEDCL stated that they had no objection for the intervention.

- 8.2 Considering that it was a tripartite agreement between parties of these Cases and the intervenor applicant and therefore was a necessary party, the Commission allowed the Intervention Application in these matters.
- 8.3 Advocate of the DIL sought two weeks' time for filing reply to the Petition. Advocate of the MSEDCL requested two weeks' time after DIL's submission for replying to the submission of DIL. MSPGCL requested one week time thereafter for filing its submission. Considering request made by parties, the Commission allowed the time sought by the parties.
- 9. DIL's submissions (in Case No. 128 of 2021) dated 23 December, 2021 are given as under:**
- 9.1 Ministry of Power issued Guidelines for Case – IV for flexibility and methodology for utilisation of coal in IPP on 20 February, 2017.
- 9.2 On 18 October, 2019, MSPGCL and DIL entered into a Detailed procedure Agreement and Tripartite Agreement executed between MSPGCL, MSEDCL and DIL.
- 9.3 WCL vide its Circular dated 1 November, 2019 increased the price of coal for supply from Mine Specific Sources w.e.f. 2 November, 2019. Same was brought to notice of MSPGCL through a letter by DIL on 4 November, 2019 under Clause 5.2.8 of the DPA.
- 9.4 MSPGCL on 16 December 2019 learnt that less Rakes of Coal had been sent to DIL compared to what should have sent to them. MSPGCL was sensitized about the action of WCL in releasing less quantum of coal after factoring the increased price as MSPGCL had failed to bear the burden of increase in price in accordance with Clause 5.2.8 of the DPA and Clause 8.2 (viii) of the Case – IV bidding guidelines.
- 9.5 On 24 December, 2019, WCL issued notice revising Surface Transportation Charges from pithead to the loading point of coal for all existing lead distance with effect from 25 December, 2019.
- 9.6 On 29 October, 2020, post completion of the initial contract period, the contract was extended for 3 months under the same terms and conditions.
- 9.7 On 27 November, 2020 CIL revised the rate of pit -head Run of Mine prices of coal. WCL issued a Notification dated 27 November, 2020 notifying the revised prices of coal.
- 9.8 On 20 January, 2021 the contract under Case – IV Phase -II was further extended up to 31 October, 2021.
- 9.9 On 31 July, 2021, WCL revised evacuation facility charges from 1 August, 2021.

- 9.10 After filing the Petition (Case No. 128 of 2021), on 25 October, 2021 the Contract with DIL once again extended up to 31 March, 2022.
- 9.11 In November, 2021, DIL got to know from the Commission's website about the filing of Case No. 128 of 2021 and hence on 29 November, 2021 DIL sought impleadment in the matter which was granted by the Commission during hearing dated 30 November, 2021.
- 9.12 It is submitted that Clause 8.2 (viii) stipulates that as part of the extant policy, it is the responsibility of the buyer to bear any increase in cost of coal, duties, and taxes on coal during the contract period.
- 9.13 MSPGCL has raised its claims (albeit not the whole claim nor the issue of entire payment to be made by it) in these proceedings which is pursuant to the direction of the Commission in the MYT Order. The nature of these proceedings is Regulatory and Tariff related as the primary issue raised by MSPGCL in the present proceedings is the pass through of amounts of the claims under coal tolling arrangement. The Regulatory powers of the Regulatory Commission are indeed wide and therefore, all the tariff related issues need to be considered holistically.
- 9.14 MSPGCL has vide its Petitions under in Case No. 128 of 2021 approached the Commission seeking the additional costs on account of increase in price of coal for Phase – II (i.e., from 1 November, 2019 to 31 March, 2022) under coal tolling arrangements.
- 9.15 The supply of power under Case -IV Phase-II would continue up to 31 March, 2022 as per the extension of contract vide addendum -III dated 25 October, 2021. Hence the final reconciliation for Phase -II of the coal tolling arrangement is pending.
- 9.16 **Impact of the variation in Coal price:** MSPGCL in its Petition raised claims for additional costs for Phase -II of the coal tolling arrangement from 1 November, 2019 to 31 May, 2021 arising due to occurrence of two Change in Law events. (Increase in STC & introduction of MSP coal). MSPGCL in its Petition has considered the STC at the flat rate of Rs. 115/ ton. However, in reality, the coal has been supplied by WCL from different mines for which the distance of loading point from pit-head varied and therefore, STC have been levied by WCL at different rates depending on the applicable distance slab need to be considered as per the WCL Circular dated 24 December, 2019.
- 9.17 **Add on pricing to supply of Mine Specific Coal:** With regard to the introduction of add-on pricing due to mine specific coal by WCL under its circular dated 1 November, 2019, the submission of MSPGCL in the present Petition has failed to capture the exact details.
- 9.18 The issue of increase in coal price by WCL towards supply of Mine Specific coal and the consequent short supply under the Case-IV contract affected DIL in the period from 2 November, 2019 to 31 December, 2020 as MSPGCL did not pay the add-on price of Rs. 450/ Ton with applicable taxes and duties during this period. MSPGCL may have

taken a stand to deny the payment of such add-on premium to WCL, but WCL has supplied coal to DIL only after considering such add-on premium from 2 November, 2019. DIL paid price of coal upfront to MSPGCL as per the DPA, whereas it received less coal from WCL causing financial disadvantage. MSPGCL was informed about the reduced quantum of coal, however MSPGCL did not respond to it and continued to make the payment to WCL only up-to the amount transferred by DIL, as upfront payment without adding the top-up amount for mine specific charges or surface transportation charges.

- 9.19 The provision 10.2.1 of the DPA states that in case of any change in the price of coal, MSPGCL is required to recover the difference between the price of coal paid to WCL and the amount received from DIL under FAC mechanism from MSEDCL on monthly basis. MSPGCL has failed to place on record any evidence which shows the acceptance of WCL for not considering the add-on premium due to supply of Mine Specific Coal for the period from 2 November, 2019 to 31 December, 2020.
- 9.20 The quantum of coal received from WCL for the period 2 November, 2019 to 31 December, 2020 as against the upfront payment made by DIL matches with the actual notified price of coal as on date of supply wherein the full value of MSP has been billed. MSPGCL has not incorporated the expenses against MSP for the period 2 November, 2019 to 31 December, 2020 in its Petition.
- 9.21 The actual cumulative impact of such increase in price of coal from 1 November, 2019 till 31 May, 2021, on account of increase in STC w.e.f. 25 December, 2019, on account of introduction of mine specific sources of coal w.e.f. 2 November, 2019 and the coal price rise from 1 December, 2020 is Rs. 26.41 Crores as against the figure of MSPGCL in Petition of Rs. 8.76 Crores.
- 9.22 WCL had revised the basic coal prices with effect from 1 December, 2020 vide its Notification dated 28 November, 2020. MSPGCL has not considered this change in price in its Petition for computation of the Change in Law claims.
- 9.23 Increase in coal price due to evacuation facility charges are not claimed by MSPGCL in its Petition. WCL vide its circular dated 31 July, 2021 has increased the rate of evacuation facility charges to Rs. 60/Ton from Rs. 50/Ton. The same was communicated to MSPGCL by DIL vide its letter dated 10 August, 2021 with a request for arranging for payment for the additional cost as per the Clause 5.2.8 of the DPA. However, MSPGCL has not claimed the same under the present Petition.

10. DIL filed Misc. Application on 23 December, 2021 and stated as under:

- 10.1 DIL has filed a detailed Affidavit in Reply in the Petition being Case No. 128 of 2021 detailing the correct factual matrix and the financial impact for reconciliation relating to

payments pursuant to revision of prices of coal. The said Affidavit dated 23 December, 2021 filed by DIL be treated as part and parcel of the present Misc. Application.

- 10.2 In terms of the said Affidavit dated 23 December, 2021, DIL has raised issues relating to revision in price of coal during the contract period which has been agreed to be borne by MSPGCL as the buyer under the Clauses 5.2.8 and 10.2.1 of the DPA.
- 10.3 In this Affidavit, DIL has pointed out that as MSPGCL did not adhere to the mandate of Clause 8.2 (viii) of the Case IV bidding guidelines dated 20 February, 2017 evolved by the Ministry of Power and its own commitment as recorded in Clauses 5.2.8 and 10.2.1 of the DPA dated 18 October, 2019 executed between the parties.
- 10.4 It is imperative that the Commission ought to consider all the claims arising from the transaction at one juncture without the vice splitting. The factual matrix and issues brought on record by DIL would enable the Commission to consider the claims under the said guidelines dated 20.02.2017, in its entirety.
- 10.5 DIL craves leave of the Commission to adopt appropriate proceedings in terms of adverse financial impact sustained by DIL and arising due to no actions taken by MSPGCL on its obligations under the DPA dated 18 October, 2019, the said guidelines dated 20 February, 2017 and the Bidding Documents.

11. MSEDCL in its submission (on MA filed by DIL) dated 7 January, 2022 has stated as under:

- 11.1 The Misc. Application filed by DIL is contrary to the settled position of law that the Respondent cannot seek reliefs in a Petition filed by others. The same is what DIL is trying to do with the present Misc. Application by seeking relief against MSPGCL which is not the matter of concern/issue of the present Petition in hand. Accordingly, the present Misc. Application is not maintainable on the said ground alone.
- 11.2 MSPGCL has neither paid and/or willing to pay the amount to WCL for a period prior to January 2021 which is evident from their own pleadings. Hence, the claim amount of DIL prior to January 2021 cannot be considered.
- 11.3 MSPGCL had nowhere in its Petition made any claims pertaining to "Change in Law" due to variation in coal pricing arising from introduction of add on pricing on Mine Specific Coal supplied Specific Coal supplied by WCL for a period prior to January 2021. However, DIL by way of the present Misc. Application is trying to introduce a claim which has never been raised by MSPGCL. Thus, the said claim more so in light of the above is not tenable and cannot be considered in the present Petition.
- 11.4 If, there is any dispute in regard to delivery of quantity of coal, as alleged, it has to be mutually reconciled between MSPGCL and DIL, and under no circumstance the

burden of failure, if any, to deliver agreed quantity of coal will extend to MSEDCL. Therefore, present Misc. Application filed by DIL may not be allowed.

12. MSEDCL's submission (Reply to the Petition) (in Case No. 128 of 2021) dated 7 January, 2022:

- 12.1 MSPGCL has filed a Petition after a period of almost 2 years of the TPA. It is the matter of fact that the generation supplied by DIL was dispatched based on the MoD and the Energy Charge Rate (ECR) which was considered in the MoD during the period. Had MSPGCL sought approval of the various Change in Laws within a reasonable time of one month from date of occurrence of Change in Law, the same would have been considered in the MoD and MSEDCL would have dispatched economic power considering the ECR of generating stations and same would have been benefited MSEDCL.
- 12.2 MSPGCL has considered the Change in Law impact only from June, 2021 onwards in the MoD. Therefore, MSEDCL might have backed down other cheap power and might have suffered loss.
- 12.3 The MERC State Grid Code Regulations, 2020 in Regulation 33.10 stipulates timelines for submission of change in law claims (within a reasonable time period not exceeding period of one month from the date of its first occurrence) for approval of the Commission, failing which the Commission may take appropriate view, while approving the claims of Seller/ Generating Company towards principal component of claim of Change in Law or its claim of carrying cost thereof or both.
- 12.4 The Commission in Case No. 195 of 2020 in the matter of Sai Wardha has held that in terms of the provisions of State Grid Code, 2020 the Commission mandates generator to file change in law claims for approval of the Commission within a month of such Change in Law affecting it. Failing which, the Commission may disallow part/ whole principal amount or carrying cost, or both as deemed fit.
- 12.5 The WCL circular for MSP came into effect from 2 November, 2019 and WCL circular for change in STC came into effect from 25 December, 2019. Hence MSPGCL has defaulted to file the Change in Law claims within a reasonable time of one month.

MSEDCL's Reply to DIL's submission:

- 12.6 The present Case IV Phase -II would continue up-to 31 March, 2022, so both DIL and MSPGCL have sufficient time to reconcile the coal tolling arrangement and come to mutual agreement.
- 12.7 DIL has stated that MSPGCL has submitted the notional calculation for STC and has submitted its own computations different from MSPGCL. Hence, it would be in interest

of justice to direct MSPGCL and DIL to reconcile conflicts on the subject matter and only after coming consonance approach the Commission.

12.8 As far as the payment of add-on pricing due to supply of Mine Specific Coal for the period prior to January, 2021 is concerned, it is imperative to mention that MSPGCL has evidently stated their position on payment of additional charges, and they have neither paid nor willing to pay amount to WCL. Hence the claim amount regarding the same cannot be considered. MSPGCL has not claimed the Change in Law in its Petition on account of the Mine Specific Coal pricing and DIL is trying to introduce a claim which has never been raised by MSPGCL in its Petition. Hence the claim of DIL is not tenable.

12.9 The amount of final payment cannot be reached on the basis of notional calculations but the same shall be done on the basis of calculations made after reconciliation by DIL and MSPGCL or on the basis of decision of the Commission.

13. MSPGCL’s submission (in Case No. 128 of 2021) dated 7 January, 2022:

13.1 As per the MoP’s Guidelines for Case-IV dated 20 February, 2017, any impact of Change in Law is to directly pass through in FAC mechanism from the ultimate buyer, i.e., Distribution Licensee. MSPGCL might have claimed the same on monthly basis from MSEDCL through FAC mechanism. However, as per the directives issued by the Commission in Case No. 296 of 2019 and Case No. 180 of 2020, wherein the Commission has directed to come-up with the claim of 'Change in Law' through separate Petition for prudence check by Commission. Accordingly, MSPGCL has filed this present Petition for claim of Change in Law impact from MSEDCL which has occurred due to mine specific coal and increase in other elements of coal prices.

MSPGCL’s Replies to MSEDCL’s submission:

13.2 This Case-IV arrangement ensures the receipt of expected energy against station selected for Case-IV. Also, it further ensures the reduction in cost of power generation which is ultimate objective of this scheme of, flexibility in utilisation of coal through IPP, as tariff quoted by the IPP under Case-IV is lower than the ceiling tariff computed as per Case-IV Guidelines.

13.3 Any inefficiency of the DIL is cannot be passed on to MSEDCL as while carrying out the reconciliation of energy supplied by DIL in lieu of transfer of coal under Case – IV arrangement, the reconciliation of energy has been undertaken on the normative operational parameters approved by the Commission for the Power Station against which coal tolling arrangement is undertaken.

13.4 During the Period of November, 2019 to October, 2021, there is saving of Rs. 0.58/kWh which is amounting to Rs. 163.23 Crores as worked out under:

Particulars	Units	Amount
Total Units generated by DIL (A)	MU	2794.26
Bill Amount of DIL (B)	Rs. Crore	794.22

Average Rate of DIL ($C=B/A * 10$)	Rs. / kWh	2.842
Average Approved Rate for Nashik (D)	Rs. / kWh	3.43
Saving [$E=(D-C) * A/10$]	Rs. Crores	163.23
Per unit saving ($F=E/A * 10$)	Rs. / kWh	0.58

- 13.5 Regarding the Mine Specific coal and claim of Change in Law from 02 November, 2019 to 31 December, 2020, initially, it was decided to not pay for add-on rate of MSP coal to WCL in order to avoid additional burden on the end consumers. However, in view of the dwindling coal stock position, in meeting dated 8 March, 2021 between MSPGCL and WCL officials, MSPGCL agreed to accept MSP coal provided that consistent supply of coal is maintained by WCL.
- 13.6 MSPGCL's Board has agreed to release of payment of mine specific prices w.e.f. 01 January, 2021 and has approved the settlement of outstanding dues on account of mine specific prices for the period from 02 November, 2019 to 31 December, 2020 with adjustment against MSPGCL's claim viz. short delivery, grade slippage, surface moisture, stone claims etc.
- 13.7 It is submitted that as on date settlement of Mine Specific Coal dues for the period from 02 November, 2019 to 31 December, 2020 has not been settled with WCL. Hence, MSPGCL has not claimed the impact of Change in Law for the said period in the present Petition. Based on the settlement of dues for the said period with WCL, MSPGCL proposes to submit the claims of Change in Law separately.
- 13.8 The submission of MSEDCL that due to non- consideration of Change in Law impact on account of Mine Specific Coal in DIL rate resulted in to backing down of other cheaper Unit and scheduling of DIL's Unit is incorrect. This has already explained in the Petition.
- 13.9 MSPGCL clarifies that it has added impact of Change in Law on account of MSP w.e.f. May, 2021 considering average of last three months in view of the variation of quantum of monthly coal receipt of MSP coal at DIL for revision of MoD. It has correctly declared MoD from time to time. The claim of impact of Change in Law submitted in present Petition is on actual basis and not on notional basis.
- 13.10 MSPGCL submits that claim of Change in Law of Rs. 8.76 Crore in the present Petition was up to May, 2021 only. However, Coal quantity considered while computing impact of Change in Law for the month of May, 2021 was inadvertently up-to 13 May, 2021 only. Hence, revised claim of impact of Change in Law considering bills up to 31 May, 2021 is Rs. 11.71 Crores.

13.11 The on-going Case-IV, Phase-II contract with DIL is extended up to 31 March, 2022, Hence, the final reconciliation will be undertaken only after the contract period is over, i.e. after 31 March, 2022.

Reply to DIL's submission:

13.12 The present Petition includes the 'Change in Law' impact of MSP for the period 01 January, 2021 to 31 May, 2021 only, with other Change in Law events.

13.13 Regarding the lesser coal receipt to DIL due to non-payment of add-on rate by MSPGCL (from 02 November, 2019 to 31 December, 2020) and further onwards, the period is beyond the scope of the present Petition, as MSPGCL is in process of reconciliation in the light of tender conditions and terms and conditions of the contract as well as based on facts and figures, therefore all such issues will be taken care, accordingly between MSPGCL and DIL.

13.14 Regarding the claim of evacuation charges, MSPGCL was not having necessary data as well as reconciliation available. Therefore, it was not included in the Petition. However, MSPGCL will separately file a Petition to claim the unrecovered impact of Change in Law under Case -IV.

General submission:

13.15 MSPGCL is playing a role of State Nodal agency for implementation of case -IV scheme. It has no direct benefit to MSPGCL but the scheme benefits the end consumers in terms of saving in the variable cost. MSEDCL has not principally objected on the claim of Change in Law as per contract conditions.

13.16 MoP notified the Electricity (Timely Recovery of Costs due to Change in Law) Rules on 22 October, 2021. It is evident that MoP has directed for automatic pass through the cost of Change in Law immediately on occurrence of the event and relevant papers/ calculation may be submitted to the Commission for post facto approval. In view of this, MSPGCL submits following additional prayers for the present Petition.

13.17 Additional prayers:

1. Allow pass through of cost of Change in Law claimed in present Petition and subsequent Rejoinder submission to the Petition for claim of Change in Law towards Case-IV, Phase-II contract with DIL.

2. In view of MoP letter, henceforth allow MSPGCL to claim cost of change in law under Case-IV, through monthly FAC mechanism and approve the claim of change in law levied through monthly FAC on post facto basis.

3. Allow MSPGCL to claim impact of Change in Law for the period from 01 November, 2019 to 31 December, 2020, separately.

14. MSPGCL’s Rejoinder submission (on MSEDCL’s submission) (in Case No. 128 of 2021) dated 2 February, 2022:

- 14.1 Any dispute in the amount between MSPGCL and DIL regarding delivery of quantity of coal, will be reconciled and resolved at the time of final reconciliation.
- 14.2 The comparison of the ‘possible MoD’ rate for DIL after adding the Change in Law impact and the lowest Variable cost for the MSPGCL Units under zero schedule is as below for the period of January, 2021 to April, 2021:

Month	DILs’ possible MoD rate including Change in Law impact (Rs. /kWh)	The lowest variable cost for which Units were given ‘zero schedule’ (Rs./ kWh)
January, 2021	2.93	3.39
February, 2021	2.91	3.11
March, 2021	3.05	3.42
April, 2021	3.08	3.48

- 14.3 Variable Cost for DIL power even with the “Change in Law” claim addition is considerably lower than the Variable Cost at which power was not regularly scheduled. Thus, even if Change in Law impact of Mine Specific coal was considered for revision in MoD, it would not have affected the schedules given to DIL’s Unit and not disturbed the economical dispatch of power.

15. DIL in its Petition in Case No. 48 of 2022 (filed on 23 February, 2021) has stated as under:

- 15.1 MSPGCL has filed a Petition in Case No. 128 of 2021. On application, DIL was allowed to implead in the matter vide Commission’s daily Order dated 30 November, 2021 in Petition No. 128 of 2021. Accordingly, DIL has filed its detailed submission in Case No. 128 of 2021 on 23 December, 2021. This detailed submission includes the factual matrix and the financial impact for reconciliation relating to payments pursuant to revision of prices of coal. Therefore, the DIL’s submission dated 23 December, 2021 should be treated as part and parcel of the present Petition.
- 15.2 In its submission dated 23 December, 2021, DIL has raised issues relating to revision in price of coal during the contract period which has been agreed to be borne by MSPGCL as the buyer under the Clauses 5.2.8 and 10.2.1 of the DPA. DIL has pointed out that MSPGCL did not adhere to the mandate of Clause 8.2 (viii) of the MoP’s Case IV bidding guideline dated 20 February, 2017. It has not adhered to its own commitment as recorded in Clauses 5.2.8 and 10.2.1 of the DPA dated 18 October, 2019 executed between the parties. WCL had factored in the revised rates and supplied less quantum of coal to DIL which has adversely impacted DIL. The present proceedings relate to and concern the financials of the entire transaction and relate to MSPGCL raising claim in terms of variation in coal price as stated in the Petition being Case No. 128 of 2021.

- 15.3 The actual cumulative impact of the increase in price of coal from 01 November, 2019 till 31 May, 2021 on account of increase in the Surface Transportation Charges w.e.f. 25 December, 2019, on account of introduction of mine specific sources of coal w.e.f. 02 November, 2019 and also the coal price rise from 01 December, 2020 is the issue in present Petition.
- 15.4 MSPGCL has after having perused the DIL's Reply dated 23 December, 2021 in Case No. 128 of 2021 clearly stated and acknowledged the aspect of entirety of its claim when it has averred in Paragraph 2. II. (c) of its Rejoinder dated 07 January, 2022.
- 15.5 Thus, MSPGCL has also acknowledged that separate claims of change in law would arise in respect of the same contract and the transactions and the same guidelines for the earlier period. Under such circumstances, both the Petitions namely, the present Petition and Case No. 128 of 2021 ought to be heard together.
- 15.6 The Present Petition is not barred by Limitation. The cause of action has arisen within the jurisdiction the Commission and hence the Commission has jurisdiction to hear the present Petition.
- 16. MSEDCL in its Reply (Case No. 48 of 2022) dated 4 May, 2022 has submitted as under:**
- 16.1 As disclosed by DIL itself, the present Application has been filed citing identical facts, circumstances and documents, and for identical reliefs as sought for by the Petitioner in MA filed in Case No. 128 of 2021 filed by MSPGCL before this Commission, which is currently pending adjudication.
- 16.2 With regard thereto, the MSEDCL has already filed an Affidavit in Reply dated 26 November, 2021 to the aforesaid Miscellaneous Application filed by DIL, as also an Additional Affidavit dated 07 January, 2022 in the same proceedings. MSEDCL repeats and reiterates the contents of these affidavit(s) in their entirety.
- 16.3 Succinctly, by way of the present Petition, DIL is seeking approval of claims against MSPGCL in respect of impact of variation in coal pricing arising from Surface Transportation Charges, introduction of add on pricing on Mine Specific Coal supplied by Western Coalfields Limited and revision of Evacuation Facility Charges.
- 16.4 Needless to state, identical prayers were made by DIL in the Miscellaneous Application filed by DIL in Case No. 128 of 2021.
- 16.5 To that end, it is ex facie apparent that the Petition in Case No. 48 of 2022 is not maintainable even in terms and in consideration of the principles of res subjudice, which restrain the Petitioner from filing multiple application(s) for the same relief and on the same identical facts and circumstances.