

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 86 of 2023

Petition of M/s. RattanIndia Power Limited (RIPL) seeking relief on account of Change in Law due to SECL notification for Supply of coal in excess of 5% of Annual Contracted Quantity (ACQ) through Rail cum Road mode and Levy of Forest Cess at Rs. 57/ tonnes with effect from 01.01.2023 by SECL in terms of the PPA dated 21 August 2019.

Coram

Sanjay Kumar, Chairperson
Anand M. Limaye, Member
Surendra J. Biyani, Member

RattanIndia Power Ltd ...Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. ...Respondent

Appearance

For Petitioner : Shri Vishrov Mukerjee (Adv.)

For Respondent : Shri Harinder Toor (Adv.)

ORDER

Date: 18 June 2024

1. RattanIndia Power Limited (**RIPL**) has filed the present Petition under Section 86(1)(k) read with Sections 61 & 62 of the Electricity Act (EA), 2003 seeking relief on account of Change in Law due to South Eastern Coalfields Ltd (**SECL**) notification for Supply of coal in excess of 5% of Annual Contracted Quantity (**ACQ**) through Rail cum Road mode and Levy of Forest Cess at Rs. 57/ tonnes with effect from 01.01.2023 by SECL in terms of the Power Purchase Agreement (**PPA**) dated 21 August 2019.

2. RIPL's main prayers are as follows:

- a. *Hold and declare that supply of coal beyond 5% of the ACQ through RCR mode for the period till 31.01.2022 amounts to change in consents and qualifies as a Change in Law event in terms of Article 10 of the PPAs and RattanIndia is entitled to compensation for the same;*
- b. *Hold and declare that South Eastern Coalfields Limited's Notice dated 31.01.2022 for supply of coal through Rail cum Road Mode beyond 5% of the ACQ, constitutes a Change in Law event in terms of Article 10 of the PPAs and RattanIndia is entitled to compensation for the same;*
- c. *Direct MSEDCL to pay compensation amounting to Rs. 84.74 Crore (Calculated till February 2023) to RattanIndia in respect of the Change in Law events mentioned herein above from the date of applicability of the respective Change in Law events mentioned in the Petition;*
- d. *Hold and declare that South Eastern Coalfields Limited's Notice dated 03.01.2023 levying Forest Cess on lifting of coal from Gevra OC mine, constitutes a Change in Law event in terms of Article 10 of the PPAs dated 22.04.2010 and 05.06.2010 and RattanIndia is entitled to compensation for the same as and when the same is incurred*
- e. *Direct MSEDCL to pay Carrying Cost computed monthly on compound interest basis on the Change in Law events mentioned herein above;*
- f. *Direct MSEDCL to pay compensation for the period subsequent to February 2023 and in future for additional recurring/non-recurring expenditure incurred by RattanIndia due to the Change in Law events mentioned herein above.*
- g. *Direct that compensation payable by MSEDCL would also include interest pendente-lite and till date of payment;*

3. RIPL in its Case has stated as follows:

- 3.1. RIPL owns and operates a 1350 MW (5x270 MW) coal fired power plant located at Amravati and supplying power of 1200 MW to MSEDCL since 3 March 2013 under PPA dated 22 April 2010 (450 MW) and dated 5 June 2010 (750 MW)
- 3.2. RIPL in the present Petition is seeking compensation on account of the following Change in Law events under the PPAs: -
 - a. Supply of coal in excess of 5% of ACQ through Rail-cum-Road (**RCR**) mode as per directions of SECL vide Notification dated 31.01.2022 for supply of coal beyond trigger level and up to Monthly Scheduled quantity through Road/ RCR mode only.

- b. Levy of Forest Cess at Rs. 57/ tonnes with effect from 01.01.2023 by SECL in terms of Notice dated 03.01.2023 for lifting of coal through Gevra Open Cast mine through all modes and tax thereon
- 3.3. RIPL executed Fuel Supply Agreement (**FSA**) with SECL on 22.12.2012 and Letter of Assurance (**LOA**) was issued by SECL on 6.6.2009. The primary mode of supply of coal by SECL to RIPL is through Rail Mode. However, as per Clause 4.3.3 of the FSA, RIPL may be required to lift coal from the loading point/ coal stocks by its own transport arrangement (by RCR mode/ any other mode) only up to a maximum of 5% of the ACQ.
- 3.4. Further, Coal India Limited (**CIL**) restricted linkage coal supply through rail mode to the extent of trigger level mentioned in the FSA. Thus, SECL has been allocating coal to RIPL through RCR mode beyond 5% of the ACQ.
- 3.5. On 24.05.2021 CIL conveyed the decision of 421st CIL board meeting for the desirous FSA holders that the trigger level of supply for power utilities (SEB/IPP/ Gencos) be increased from 75% to 80% in those FSA (Post New Coal Distribution Policy (**NCDP**) FSAs through LoA route for SEBs/ IPP) and FSA's under Shakti Policy) for the current fiscal year. Accordingly, FSA was revised for trigger level for penalty under the FSA from 75% of ACQ to 80% of ACQ for FY 2021-22.
- 3.6. Further, SECL on 31.01.2022 notified that the quantity of coal beyond trigger level and up to the Monthly Scheduled Quantity (**MSQ**) would be offered through Road/RCR mode only. Relevant extract of the Notification dated 31.01.2022 is reproduced below:

“The Power Plants having FSA with SECL are informed that order booking shall be accepted for the month of January 2022 onwards as per the modalities given here under.

- The monthly mode-wise allocation based on the demand raised by the consumers in the beginning of the month will be done as per the present practice i.e, up to the trigger level of supplies.*
- The quantity beyond trigger level and up to MSQ will be offered through Road/ RCR mode only.*
- As and when additional quantity of coal is available, the same will be offered to all eligible power plants, source-wise on month-to-month basis beyond the MSQ.”*

- 3.7. Subsequent to the Notification dated 31.01.2022, RIPL requested SECL for allocation of coal on a monthly basis. However, SECL restricted the supply of coal through Rail mode

and supplied coal through RCR Mode beyond 5% of the ACQ in terms of Clause 4.3.3 of the FSA, which was increased up to 20% of the MSQ. The year-wise details of coal supplied in excess of 5% of the ACQ through RCR Mode and the additional cost incurred by RIPL are as under: -

FY	Wt. Avg. Basic (Rs/T)	Wt. Avg. Total (Rs/T including GST)	Quantity beyond trigger level (MT)	Amount (Rs)
2021-22	511.91	542.41	3,56,110	18,31,86,970/-
2022-23	503.84	537.96	12,66,285	66,42,05,592/-
Total (computed till 28.02.2023)			16,22,395	84,73,92,562/-

- 3.8. On 19.10.2022, RIPL issued a Notice for Change in Law to MSEDCL notifying the additional expenditure incurred on account of supply of coal through RCR mode, in accordance with Article 10 of the PPAs.
- 3.9. On 21.11.2022, MSEDCL responded to the Notice dated 19.10.2022 and stated that:-
- In terms of Para 2.6, Para 2.4 (B) xi and 5 of the RFP, RIPL should have factored in its bid the cost of transportation of fuel by taking into account all the modes of transportation of coal.
 - A Model FSA had been issued by Coal India Ltd. on 11.08.2008, which was before the Bid cut-off date (i.e., 07.08.2009) which provided that additional cost due to supply through alternate source including the inland logistics cost of Imported Coal would be borne by the Purchaser. RIPL ought to have considered the provisions of the Model FSA while quoting the tariff.
 - Clause 7 of the FSA dated 22.12.2012 between RIPL and SECL mandates coal off-take by rail, road and RCR mode and RIPL was aware of the same.
 - Cost of washing of coal has been denied by the Commission vide Order dated 07.09.2020 in Case No. 206 of 2020 and the matter is sub-judice before Hon'ble Appellate Tribunal for Electricity in Appeal No. 313 of 2022 on the issue of washery charges.
 - The Commission vide Order dated 07.03.2018 in Case No. 189 of 2013 and 140 of 2014 has approved actual cost of road transport subject to ceiling of 110% of rail freight for the same distance, which is being considered by MSEDCL. RIPL has not mentioned the actual increase in cost of coal transportation in RCR mode as compared to Railway transportation.

Accordingly, MSEDCL declined to consider the Change in Law event i.e., supply of coal through RCR mode as Change in Law. Further, it was stated that any Change in Law event needs to be approved by the Commission.

3.10. Further, SECL issued Notice dated 03.01.2023 levying Forest Cess at Rs. 57 / tonnes on lifting of coal from Gevra OC mine through all modes with effect from 01.01.2023.

- a) For ongoing dispatches, consumers were requested to deposit the differential amount or get their quantity adjusted.
- b) Road mode consumers drawing coal under FSA/ e-Auction from Gevra OC mine were informed that for further issuance of delivery orders, they are required to deposit differential payment towards Forest Cess within 7 working days of issuance of the said notice or get their quantity adjusted.
- c) Similarly, for future bookings consumers are required to deposit the coal value accordingly.

3.11. On account of levy of Forest Cess, the per unit cost impact on RIPL on lifting of coal from Gevra OC mine through all modes is as under:-

Sr.No	Particulars	UoM	Value
1.	Gross Capacity	MW	1350
2.	Net Capacity	MW	1200
3.	PLF	%	80%
4.	Normative SHR	kCal/kWh	2430
5.	Normative GCV	kCal/kg	3850
6.	SCC	kg/kWh	0.631169
7.	Coal Cost-Forest Cess	Rs/T	57.00
8.	GST@S%	Rs/T	2.85
9.	Total Additional Cost	Rs/T	59.85
10.	Per month cost impact	Rs/kWh	0.04
11.	Lifting from Gevra Mine based on past lifting during last 1year	%	80%
12.	Per month cost impact for lifting from Gevra Mine	Rs/kWh	0.03

3.12. The above impact of Rs. 0.03 / kWh is an estimated impact considering past lifting of coal from Gevra OC mine, which is approximately 80% of the total lifting for RIPL. The actual impact would depend on the actual expenditure incurred by it towards forest cess which will be payable accordingly.

3.13. On 06.01.2023, it issued Notice for Change in Law to MSEDCL notifying the additional expenditure incurred on account of levy of Forest Cess at Rs. 57 / tonnes vide SECL Notice dated 03.01.2023, in accordance with Article 10 of the PPAs.

3.14. On 30.01.2023, MSEDCL responded to the Notice dated 06.01.2023 and stated that: -

- (a) As per Clause 10.3.4 of the PPAs, compensation on account of Change in Law can be considered only on the basis of decision of the Commission.
- (b) The Commission vide Order dated 25.03.2015 in Case No. 173 of 2013 filed by RIPL has already disallowed Forest Tax as change in law event.

Accordingly, MSEDCL declined to consider the Change in Law event i.e., levy of Forest Cess as Change in Law.

4. MSEDCL in its submission dated 31 October 2023 stated as below:

4.1. RIPL change of law claims are based on provisions of Model FSA, RFP, FSA with SECL dated 22.12.2012. Under the present PPA in case of any circumstances arises of a change in law, the Seller under Article 10.3.3 is required to provide to the Procurer and the Appropriate Commission the documentary proof of the increase in expenditure of the Seller for establishing the impact of such change in law. However, the Seller has merely referred to certain alleged invoices and tables of costs/expenses, without providing and setting out the details of payments made by RIPL for the same.

4.2. RIPL was aware of the likely expenditure on inland transportation of domestic coal (by Road, Rail, RCR or other modes), prior to submission of its Bid to MSEDCL; and as such RIPL had duly factored in and/or included such expenditure in its Bid submitted to MSEDCL. In these circumstances, the said Notice does not constitute an event of change in law.

4.3. SECL Notice dated 31.01.2022 deals with certain quantum of coal which is offered by SECL through Road/RCR mode only. However, the Claim alleged by RIPL is not about expenditure incurred for transportation of such coal by Road/RCR mode directly from SECL to RIPL Rather, the Claim alleged by RIPL is about following points:

- (i) cost of transportation of coal to washeries,
- (ii) cost of washing of such coal by such coal washeries,
- (iii) cost of crushing and/or processing of the washed coal by such coal washeries and/or coal processors, and

- (iv) cost of transportation of such crushed and/or processed coal by such coal washeries and/or coal processors to railway sidings and/or wagons for transportation to RIPL. It is thus evident that the Claim alleged by RIPL is not compatible and/or in conformity with the said SECL Notice dated 31.01.2022.
- 4.4. The claim period from 02.01.2014 to 21.05.2020 is concerned, it is encompassed by Order passed by the Commission in Case No. 350 of 2019 which is pending before APTEL in Appeal No. 313 of 2022. As the period from 22 May 2020 to 31 January, 2022 is concerned, RIPL has neither disclosed nor pleaded any event of change in law, for the said period.
- 4.5. Claim alleged by RIPL due to levy of forest fee / cess of Rs 57 per tonne (i.e., with effect from 01.01.2023) under SECL Notice dated 03.01.2023, is without following:
- (i) any documentary proof of payments of said forest fee / cess by RIPL, and/or
- (ii) any accounting and subtracting of the earlier levies of forest fee / cess under said Notification dated 14.06.2002 for Rs 7 per tonne and under said Notification dated 30.06.2015 for Rs 15 per tonne.
- 4.6. The event of change in law due to levy of forest fee / cess of Rs 57 per tonne (i.e., with effect from 01.01.2023) under SECL Notice dated 03.01.2023, if applicable, would be for the differential levy of forest fee / cess between the SECL Notice dated 03.01.2023 for Rs 57 per tonne (i.e., with effect from 01.01.2023) on the one hand and the said Notification dated 14.06.2002 for Rs 7 per tonne and the said Notification dated 30.06.2015 for Rs 15 per tonne respectively.
- 4.7. RIPL has issued delayed notice on 19.10.2022 to MSEDCL for change in Law claims regarding SECL's Notice dated 31.01.2022 for Supply of Coal through Road/Road-cum-Rail mode for the quantity beyond the trigger level of penalty and up to MSQ as per provisions of PPA and filing of the case before the Commission (3 May, 2023) for Change in Law. Therefore, RIPL is not eligible for carrying cost as per the Commission's Order in Case No.83 of 2021.
5. During the E-hearing held on 7 November, 2023, RIPL requested two weeks' time for filing its rejoinder. Accordingly, the Commission allowed and granted time to file its rejoinder.
6. **Rejoinder filed by RIPL on 20.11.2023 is summarized below:**
- 6.1. As long as the conditions for change in law under the PPAs are satisfied, they should be entitled to relief. The underlying principle of the change in law provisions is to restore the affected party to the same economic position as if such a change in law had not occurred.

6.2. Provision of the FSA cannot be used to curtail or limit their right to claim change in law under the PPA. For this purpose, RIPL has relied upon judgments of the Hon'ble Tribunal upheld by the Hon'ble Supreme Court.

6.3. Entitlement of compensation for supply of coal through RCR mode beyond 5% of the ACQ:

- a. Any supply of coal through RCR mode beyond the stipulated 5% qualifies as a change in law event and it should be compensated accordingly. The obligation to lift coal by RCR or any other mode was initially restricted to 5% of the ACQ according to the FSA and any increase beyond this threshold, as indicated in subsequent notices or circulars, warrants compensation.
- b. The additional condition of supply of coal through RCR mode beyond the 5% threshold was inserted after the cut-off date and was not factored into their bidding. The change in supply terms falls under the definition of "Consents, Clearances and Permits" outlined in the PPAs, which qualifies as a change in law event.
- c. MSEDCL's objections, that RIPL's responsibility to arrange fuel and bear freight charges, are contrary to established legal principles, citing the Sasan Power Judgment, the GMR Warora 2023 Judgment, and the Coastal Gujarat Power Limited v. CERC & Ors. judgment.
- d. MSEDCL has not disputed RIPL submission regarding the change in mode of transportation resulting in additional expenditure qualifying as a change in law event. Additionally, RIPL states that it have provided the necessary documents and information for the period from 22.05.2020 to 31.01.2022 in their change in law notices and undertake to submit all requisite documents/data as directed by the commission.

6.4. Levy of Forest Cess qualifies as Change in Law:

- a. The levy of forest cess through SECL's Notice dated 03.01.2023 constitutes a change in law event in accordance with the PPAs. They assert that the additional cost incurred on forest cess for procuring coal from Gevra OC mine warrants compensation, and they have provided detailed computations and invoices to support their claim.
- b. MSEDCL has not disputed the levy of forest cess in SECL's notice but has only raised concerns about the lack of documentary proof. The Commission has the prerogative to conduct a prudence check on the expenditure incurred and RIPL has already submitted all necessary documentary evidence to MSEDCL and the commission to support their claim.

- 6.5. Further, payment of carrying cost, as part of the compensation under change in law, is established by Supreme Court judgments and should not be restricted to the date of filing the petition or providing information.
- 6.6. As regards claiming change in law compensation, it is stated that the total claimed compensation exceeds 1% of the aggregate Letter of Credit Amount in a Contract Year, thereby satisfying the threshold outlined in the PPAs.

7. MSEDCL's Surjoinder dated 8.01.2024 stated as below:

- 7.1. RIPL in paragraphs 7 and 8 of the rejoinders, has stated that the Request for Proposal (RFP) clause and the Model FSA dated 11.08.2008 should not be construed as legal provisions, and the inclusion of change in law clauses in the PPA is superfluous. The model FSAs are also disseminated by Coal India and its subsidiaries, which hold the status of a Govt. instrumentality as stipulated in the PPA. Such publicly disclosed documents are invested with the force of law as of seven days prior to the bidding process. Article 9.2.5 of the Model FSA dated 11.08.2008 is posited as a legal provision, compelling generators to bear the entirety of transportation costs under all circumstances.

“9.2.5 In all cases, the entire freight charges, irrespective of the mode of transportation of the Coal supplied, shall be borne by the Purchaser.”

- 7.2. It is imperative that Article 9.2.5 of the Model FSA remains unaltered and has been seamlessly assimilated, without modification, into Article 9.4 of the FSA dated 22.12.2012 as reproduced below:

“9.4 In all cases, the entire freight charges, irrespective of the mode of transportation of the Coal supplied, shall be borne by the Purchaser.”

- 7.3. As there is no change in any law the said SECL Notice dated 31.01.2022 is just a notice of coal offered through RCR mode which was already having provision in Model FSA that is too since 11.08.2008 and was also in force on Cut-off date that is 7 days prior to bid date.
- 7.4. In the absence of any legislative amendments, the notice issued by SECL on 31.01.2022 merely a confirmation pertaining to coal made available through the RCR mode. Hence the notice issued by SECL on 31.01.2022 cannot be treated as Change in Law as per PPAs.
- 7.5. Moreover, RIPL is emphasising that there can be no limitation imposed on compensation, however, the Hon'ble Supreme Court, in Civil Appeal No. 4089 of 2022, has not endorsed the contentions raised by RIPL at any juncture. Conversely, in Civil Appeal No. 1805 of

2021, the Hon'ble Supreme Court explicitly affirmed the imposition of a cap on Station Heat Rate in adherence to the pertinent Multi-Year Tariff (MYT) Regulations. This affirmation is predicated on the necessity to uphold the integrity of Section 63 of the Electricity Act, 2003, lest it be compromised.

- 7.6. The present claim put forth by RIPL arising from the aforementioned SECL Notice dated 31.01.2022 is mandated to be curtailed or constrained in accordance with the directive articulated in the Order dated 03.04.2018, issued by the Commission in Case No. 154 of 2013 and Case No. 147 of 2014, both instigated by RIPL against MSEDCL. The aforesaid order dated 03.04.2018, of the Commission, has attained finality, having not been contested or challenged before any adjudicatory authority.
- 7.7. Additionally, delay in submitting the change in law notice stems from the necessity to furnish comprehensive impact details. Contrary to the present claim, it is asserted that RIPL has never previously issued a change in law notice or filed a petition before the Commission within a reasonable timeframe. MSEDCL respectfully submits that the Commission should refrain from permitting RIPL to exploit interest or compounded interest as a recourse for its own delay. Further, RIPL has claimed that delay in change in law notice is due to time required for submission of impact details on account of change in Law.
- 7.8. Additionally, RIPL is providing misleading information to the Commission by asserting that the pre-existing dispute pending under Appeal No.313 of 2022 is centered on the supply of coal through Road/RCR mode. It is emphasized that any claim under RCR mode, if granted, would only be applicable from February 2022, only after the date of SECL's Notice dated 31.01.2022.
- 7.9. However, it is crucial to note that the claim related to the washing of coal is distinct and unrelated to the mode of transportation by road, as portrayed by RIPL. The choice of road mode transportation is a result of RIPL's own decision to adhere to the Ministry of Environment, Forest and Climate Change's Notification dated 02.01.2014. This decision also encompasses the beneficiation of Gross Calorific Value (GCV), which, up to the present moment, has not been taken into account by RIPL. This oversight was the basis for rejection by this commission in Case No.350 of 2019.
- 7.10. Further, RIPL's has claimed for RCR mode since February 2022 including crushing charges, rake loading charges on washed coal, surface transportation charges from the mine to the washery, and from the washery to the railway siding. The crushing charges and rake loading charges do not form integral components of road transportation, as erroneously claimed by RIPL.

- 7.11. Under the change in law, the Seller is explicitly obligated under the Article 10.3.3 to furnish documentary evidence to the Procurer and the Appropriate Commission, substantiating the increase in the Seller's expenditure and demonstrating the impact of the alleged change in law. However, RIPL has made reference to purported invoices and cost/expense tables without presenting specific details of the payments made.
- 7.12. RIPL has failed to disclose, among other essential compliance aspects: (i) Vouchers, receipts, entries/extracts from statutory Books of Account, and other documents verifying payments (including relevant tax payments), (ii) the methodology for selecting and appointing contractors who issued the invoices (especially in the context of public tendering or competitive bidding processes), (iii) the standard industry practices for competitive costing followed by the majority of contractors in that specific field/sector, (iv) the benefits gained by RIPL that offset the purported expenditure.
- 7.13. A careful examination of Articles 10.2.1, 10.3.2, 10.3.3, and 10.3.4 of the PPAs elucidates that the dispensation for a change in law is compensatory in nature. Furthermore, it explicitly requires the Commission to adjudicate and determine such compensation based on documentary evidence establishing the impact of the alleged change in law. It is imperative for the Commission to scrutinize and audit the claimed expenditure incurred by RIPL, evaluating its legality and reasonableness to prevent profiteering or unjust enrichment.
- 7.14. Therefore RIPL be directed to submit all supporting documents and conduct a prudence check for calculating correct impact of change in law, if it so arises. It is important to arrive at the actual and correct compensation amounts, if payable, as these amounts will ultimately burden the end consumers of Maharashtra.
8. During the E-hearing held on 20 February 2024, Petitioner and Respondents reiterated their submissions. The Commission allowed to file their Rejoinder/Reply, if any within 15 days.
9. **MSEDCL in additional submission dated 06.03.2024 stated as below:**
- 9.1. As per specific requirements outlined in Article 10.3.3 of the PPAs, it is Seller's obligation to provide documentary proof of increased expenditure due to changes in law. RIPL seems to have only referenced invoices and cost tables without detailing payments made, vouchers, receipts, or statutory accounting entries. Therefore, the Commission must assess the impact of law changes based on documented evidence, scrutinizing expenditures to prevent unjust enrichment or profiteering.
- 9.2. Further, the Article 10.3.2 of the PPA requires compensation for any increase in expenses to the Seller to be payable only if the increase in the expenses of the Seller is in excess of an

amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year. However, in this regard, there is no disclosure of compliance by RIPL with said Article 10.3.2.

- 9.3. The Notice dated 31.01.2022 issued by SECL, offering coal beyond the penalty trigger level through specific transportation modes, does not constitute a change in law event. RIPL was already aware of the anticipated expenses for inland coal transportation before submitting its bid to MSEDCL, hence factoring these costs into the bid. Additionally, RIPL was familiar with the relevant clauses in the Model FSA dated 11.08.2008, including those related to freight charges, mode of transportation, and the responsibilities of the Purchaser outlined in the MSEDCL RFP dated 18.05.2009.
- 9.4. The claim put forth by RIPL extends beyond the scope of the SECL Notice dated 31.01.2022, which specifically addresses the transportation of coal via Road/RCR mode from SECL to RIPL. RIPL's claim encompasses expenses related to transporting coal to coal washeries, washing, crushing, processing, and subsequent transportation to railway sidings or wagons for delivery to RIPL.
- 9.5. The claim made by RIPL for the period preceding 31.01.2022 is detailed in paras 45 to 47 of its Petition, asserting that the procurement of coal through RCR mode qualifies as a Change in Law event, this claim covers two periods:
 - a) From 02.01.2014 to 21.05.2020 and from 22.05.2020 to 31.01.2022. The period from 02.01.2014 to 21.05.2020 was previously addressed by the Commission in an order dated 07.09.2020, which rejected RIPL's claim related to the MoEF Notification dated 02.01.2014. An appeal (No. 313 of 2022) against this order is pending before Hon'ble APTEL. The Commission may consider these matters as Res Judicata.
 - b) Secondly, for the period from 22.05.2020 to 31.01.2022, RIPL has not presented any new change in law events. Therefore, the claim made by RIPL for the period before 31.01.2022 is deemed illegal, unfounded, and lacking in a substantive basis.
- 9.6. The SECL Notice dated 31.01.2022 needs to be restricted based on the Commission's Order dated 03.04.2018 in Case No. 154 of 2013 and Case No. 147 of 2014 involving RIPL and MSEDCL. The 03.04.2018 Order outlines approved indices and benchmarks for domestic coal, including factors related to inland transportation with specific guidelines on commercial freight rates, road transport costs, and transit losses. The Commission's Order dated 03.04.2018 in Case No. 154 of 2013 have reached finality without direct challenges in the Hon'ble APTEL or the Hon'ble Supreme Court.

- 9.7. RIPL's claim regarding the forest fee/cess of Rs 57 per tonne, effective from 01.01.2023 under the SECL Notice dated 03.01.2023, lacks documentary evidence of payment for the stated forest fee/cess. Furthermore, there is no indication of proper accounting or deduction for previous forest fee/cess levies set at Rs 7 per tonne (Notification dated 14.06.2002) and Rs 15 per tonne (Notification dated 30.06.2015). Any valid claim related to the change in law due to the Rs 57 per tonne forest fee/cess would focus on the differential levy compared to the previous rates. Since RIPL has not provided documented proof of actual payments for the forest fee/cess, crucial for substantiating the claim, the validity of this claim is questionable.
- 9.8. According to Article 10.4.1 and 10.3.4 of the PPAs, RIPL is obligated to promptly issue a Change in Law Notice to MSEDCL and initiate proceedings before the Commission for compensation for the Change in Law. Article 10.5.1 should be considered in conjunction with the diligence requirements of Articles 10.4.1 and 10.3.4, failure to diligently issue the Change in Law Notice and initiate proceedings promptly may impact the application of Article 10.5.1. Due to such significant delay in RIPL's issuance of the Change in Law Notice and in initiating the case, RIPL should not benefit from interest or compounded interest and granting interest or compounded interest could encourage breaches of the PPAs and would be inequitable/unjust.
10. **RIPL in its additional submission dated 8.03.2024 stated as below:**
- 10.1. SECL Notice dated 31.01.2022 is covered under Bullet 3 and Bullet 4 of Article 10.1.1 of the PPA, encompassing changes in requirements for consents, clearances, permits, and alterations in terms or conditions related to agreements with authorities, including the FSA with SECL dated 22.12.2012. In terms of this Change in law event, RIPL has been required to off take coal more than 5% of the ACQ, through RCR Mode which resulted into additional expenses of Rs. 166.87 Crores/- (computed till 31.12.2023).
- 10.2. The Gazette Notification qualifies as 'Law', the Forest and Climate Change Department, Chhattisgarh Govt. qualifies as 'Indian Govt. Instrumentality'. The Gazette Notification dated 27.07.2022 was issued after the Cut-Off Date under the PPA and has resulted in additional expenditure for RIPL. Accordingly, the same qualifies as Change in Law and RIPL is entitled to compensation.
- 10.3. Therefore, the additional cost incurred on Forest Cess by RIPL for procuring coal from Gevra OC mine from January 2023 is Rs. 6.98 Crore excluding GST (computed till December 2023).Detail calculation and the invoices raised on MSEDCL towards levy of Forest Cess being voluminous in nature, RIPL has submitted Emails vide which the said invoices along with supporting documents have been submitted to MSEDCL. RIPL

undertakes to submit Coal Bills towards levy of Forest Cess (For the period from January 2023 till December 2023) again to MSEDCL.

- 10.4. In terms of Article 8.3.5 of the PPAs, in the event of delay in payment of a Monthly Bill by MSEDCL beyond the Due Date, MSEDCL is liable to pay a Late Payment Surcharge ("LPS"). RIPL has raised the bills for levy of Forst Cess pursuant to SECL Notice dated 03.01.2023 on MSEDCL on monthly basis. MSEDCL having failed to make payment of the aforesaid bills till date is liable to pay LPS amounting to Rs. 82,30,388/- (computed till 29.02.2024) to RIPL, in terms of Article 8.3.5 of the PPAs.
- 10.5. In terms of Article 10.2.1 of the PPA, compensation for the Change in Law has to be such that RIPL is restored to the same economic position had such a Change in Law event not occurred. Compensation for Change in Law is to include Carrying Cost as well. The issue of carrying cost is no longer res-integra and stands settled in terms of the following judgments of the Hon'ble Supreme Court.
- a. Issue regarding the rate at which the carrying cost is to be paid to RIPL stands settled by the Hon'ble Tribunal and the Hon'ble Supreme Court. The Judgment dated 22.03.2022 passed by the Hon'ble Tribunal in Appeal No. 118 of 2021 titled RattanIndia v. MERC & Anr. ("Appeal 118 Judgment") wherein it was held that the LPS rate i.e., SBI PLR plus 2% ought to be considered for recovery of carrying cost, in the absence of which, RIPL cannot be restored to the same economic position as it was prior to the change in law events.
 - b. Common Judgment dated 20.04.2023 in Civil Appeal No. 11095 of 2018 titled GMR Warora Energy Ltd. v. CERC & Ors. & Batch and Civil Appeal No. 4089 of 2022 titled MSEDCL v. RattanIndia ("Common Judgment dated 20.04.2024") wherein findings of the Hon'ble Tribunal in the Appeal 118 Judgment vis-à-vis payment of carrying cost at the LPS rate under the PPAs, and on monthly compounding basis was affirmed by the Hon'ble Supreme Court.
- 10.6. The Hon'ble Supreme Court and the Hon'ble Tribunal judgments passed in the context of RIPL and MSEDCL for the same PPAs have held that carrying cost has to be computed on compounding basis on the LPS rate under the PPA. Therefore, in terms of the aforesaid submissions and judgments, RIPL is entitled to Carrying Cost amounting to Rs. 32,09,85,145/- (computed till 29.02.2024 at the LPS rate on the expenditure incurred on compound interest basis computed monthly) on account of the Change in Law event.

Commission Analysis and Ruling

11. RPL has filed the present Petition under Section 86 and 63 of the Electricity Act, 2003 read with Article 10 of the PPAs dated 22 April, 2010 & 5 June, 2010 executed with MSEDCL seeking declaration of below mentioned events as a Change in Law and appropriate mechanism for grant of an adjustment/ compensation to offset financial/ commercial impact of Change in Law:
 - a. Supply of coal in excess of 5% of ACQ through RCR mode as per directions of SECL vide Notification dated 31.01.2022 for supply of coal beyond trigger level and up to Monthly Scheduled quantity through Road/ RCR mode only.
 - b. Levy of Forest Cess at Rs. 57/ tonnes with effect from 01.01.2023 by SECL in terms of Notice dated 03.01.2023 for lifting of coal through Gevra Open Cast mine through all modes and tax thereon
12. MSEDCL has opposed the claim on the grounds that RIPL should have factored in transportation costs in their bid, referencing provisions in the Model FSA and clauses in the FSA between RIPL and SECL. In respect of Forest Cess, MSEDCL contended that RIPL has not provided documentary proof demonstrating actual payment of these charges and also contended that change in law compensation should be limited to differential amount between existing and revised cess.
13. The Commission notes that any event can be said to be a 'Change in Law Event', only if it satisfies the provisions stipulated under the PPA. Relevant part of PPAs dealing with provisions of Change in Law are reproduced below:

"Article 1.1 Definitions

.....

"Bid Deadline" shall mean the last date and time for submission of the Bid in response to the RFP;

"Change in Law" shall have the meaning ascribed thereto in Article 10.1.1 of this Agreement;

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

Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;

“Indian Government Instrumentality” Shall mean the Government of India, Governments of State (s) of Maharashtra and any other ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above State Government(s) or both, any political subdivision of any of them including any court or Appropriate Commission (s) or tribunal or judicial or quasi judicial body in India but excluding the seller and the procurer

“ARTICLE 10: CHANGE IN LAW

10.1 Definitions

In this Article 10, the following terms shall have the following meanings:

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

- a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- b. a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- c. the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- d. a change in the terms and conditions prescribed for obtaining any Consents Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;*
- e. any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of the Agreement.*

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.”

10.2 Application and Principles for computing impact of Change in Law

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

10.3 Relief for Change in Law

..... **10.3.2 During Operating Period**

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

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

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

10.4 Notification of Change in Law

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

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

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

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

- a. the Change in Law; and*
- b. the effects on the Seller.*

10.5 *Tariff Adjustment Payment on account of Change in Law*

10.5.1 *Subject to Article 10, the adjustment in Monthly Tariff Payment shall be effective from:*

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or*
- (ii) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.*

10.5.2 *The payment for Changes in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.”*

Thus, the Change in Law provisions of the PPA have the following ingredients, and the evaluation of whether or not an event qualifies as a Change in Law or not, and its consequences, has to be addressed accordingly:

- a. The definition of ‘Law’ under the PPA is an inclusive definition and contemplates all laws applicable in India in various forms. However, for an event to be considered a ‘Change in Law’ event requires that it be caused by the operation of law or by an Indian

Government Instrumentality;

- b. The term ‘Indian Govt. Instrumentality’ covers GoI, GoM and any Ministry, Inspectorate, Department, Agency, Body, Authority or Legislative body under their direct or indirect control;
- c. ‘Change in Law’ encompasses introduction, increase, or modification of any law after cut-off date (which is 7 August, 2009 in this case) which results in additional expenditure to the Power Producer, or an increase or decrease in revenues or cost to it;
- d. The expenditure or income or decrease in cost must be on actual basis and must financially impact the Power Producer;
- e. The object of the ‘Change in Law’ provision is to compensate the Party affected by such an event which was beyond its control so as to restore it, to the same financial position as if such Change in Law event had not occurred.

These are the guiding principles for ascertaining whether or not the events claimed as ‘Change in Law’ by Power Producers are to be treated as such under the PPA.

- 14. Based on the above understanding, the Commission frames following issues for its considerations:
 - a. Whether SECL notice dated 31.01.2022 mandating supply of coal in excess of 5% of ACQ though RCR mode is Change in Law event? If yes, compensation for the same.
Whether SECL notice dated 3.01.2023 levying Forest Cess of Rs 57/tonne is Change in Law event? If yes, compensation for the same.
 - b. Carrying cost, if applicable, on compensation for Change in Law event

The Commission is addressing above issues in subsequent paragraphs.

- 15. **Issue A: Whether SECL notice dated 31.01.2022 mandating supply of coal in excess of 5% of ACQ though RCR mode is Change in Law event? If yes, compensation for the same?**
 - 15.1. RIPL contends that the FSA allowed only up to 5% ACQ coal be supplied through RCR mode, but SECL vide notification dated 31.01.2022 has exceeded this limit, leading to additional costs. Therefore, it is seeking compensation based on these events. MSEDCL, however, argues that RIPL should have factored in transportation costs in their bid, referencing provisions in the Model FSA and clauses in the FSA between RIPL and SECL.

- 15.2. The Commission notes that RIPL has relied upon SECL notice dated 31.01.2022 ref No. SECL/BSP/M&S/Rail Open/1972 which has informed to all its stakeholders that the quantity beyond trigger level and up to MSQ will be offered through Road /RCR Mode Only. Relevant part of this notification is reproduced below:

“The Power Plants having FSA with SECL are informed that order booking shall be accepted for the month of January 2022 onwards as per the modalities given here under.

- 1. The **monthly mode-wise allocation** based on the demand raised by the consumers in the beginning of the month **will be done as per the present practice i.e. up to the trigger level of supplies.***
- 2. The **quantity beyond trigger level** and up to MSQ **will be offered through Road/ RCR mode only***
- 3. As and when additional quantity of coal is available, the same will be offered to all eligible power plants, source-wise on month-to-month basis beyond the MSQ.”*

It is important to note that above SECL notice has mentioned that mode-wise allocation will be done ‘as per the present practice i.e. up to the trigger level of supplies’ which implies that before such notice dated 31.01.2022, mode-wise allocation was being done only upto trigger level of supply and balance through other mode.

- 15.3. Further, RIPL’s following submission in its Petition has clearly established that before above said notice dated 31.01.2022, Coal India was supplying coal beyond 5% through Road/RCR mode:

*“18. Subsequent to the execution of the FSA, RattanIndia has been requesting SECL for supply of coal on a monthly basis. **However, SECL has been allocating coal to RattanIndia through RCR mode beyond 5% of the ACQ** and RattanIndia has been constrained to procure coal from SECL as is.*

.....

- 20. On 21.05.2020, the requirement to wash coal (in order to have ash content not exceeding 34%) was withdrawn by the Ministry of Environment and Forest (“MoEF”). **However, RattanIndia was constrained to procure coal through RCR Mode, as Coal India Ltd. restricted linkage coal supply through rail mode to the extent of trigger level mentioned in the FSA.**”*

Although, RIPL has contended SECL notice dated 31.01.2022 as Change in Law event, but as accepted by RIPL itself SECL was supplying coal beyond the triggered level through RCR mode in May 2020 and supplying coal through RCR mode beyond stipulated 5% of ACQ since signing of FSA.

15.4. Thus, the Commission is of the opinion that SECL notice dated 31.01.2022 does not change existing arrangement of coal supply and hence cannot be considered as cause for increased expenses. Further, it is also important to note that FSA with Coal India which has condition of supply of coal upto 5% of ACQ through RCR mode was signed only on 22.12.2012 i.e. after signing of PPAs on 22.04.2010 and 5.06.2010. As on cut of date i.e. 7.08.2009, FSA was not in placed. At that time RIPL had LoAs dated 6.6.2009 (with SECL) and dated 13.06.2009 (with WCL) which assured supply of domestic coal to its proposed power plant. In that LoAs, nothing was mentioned about mode of transportation of the Coal. Thus, as on cut of date, there was no document with RIPL which specified mode of transportation of the coal. In fact, as submitted by MSEDCL, Model FSA document available as on cutoff date has following provision with respect to transportation of coal:

“9.2.5 In all cases, the entire freight charges, irrespective of the mode of transportation of the Coal supplied, shall be borne by the Purchaser.”

In view of above provision of Model FSA which is available on cutoff date, it was clear that entire freight charges, irrespective mode of transportation of coal is to be borne by RIPL. Hence, while submitting its bid, RIPL must have considered the same. Further, above said provision of Model FSA has been incorporated as Article 9.4 of the FSA signed on 22.12.2012. This also established that there is no change in condition for RIPL.

15.5. In view of above analysis, the Commission rejects RIPL’s request to consider SECL notice dated 31.01.2022 as Change in Law event and hence also rejects request for allowing alleged increase expenses on account of the same.

16. Issue B: Whether SECL notice dated 3.01.2023 levying Forest Cess of Rs 57/tonne is Change in Law event? If yes, compensation for the same ?

16.1. RIPL has submitted that Prior to 03.01.2023, there was no levy of Forest cess. Thereafter, SECL vide Notice dated 03.01.2023 reference SECL/BSP/M&S/1511 levied Forest cess at the rate Rs. 57 per MT w.e.f. 1.01.2023. RIPL has submitted that the above enactment is in the nature of tax and as such fall within the definition of change in law and, therefore, RIPL is entitled for compensation for increased expenses on account of the same.

16.2. MSEDCL in its reply has highlighted that RIPL's claim regarding the forest fee/cess of Rs 57 per tonne, effective from 01.01.2023 under the SECL Notice dated 03.01.2023, lacks documentary evidence of payment for the stated forest fee/cess. MSEDCL has also highlighted that any valid claim related to the change in law due to the Rs 57 per tonne forest fee/cess would focus on the differential levy compared to the previous rates i.e. Rs 7 per tonne (Notification dated 14.06.2002) and Rs 15 per tonne (Notification dated 30.06.2015).

16.3. The Commission notes that RIPL has relied upon SECL notice dated 3.01.2023 conveying levy of forest fees/cess of Rs 57 per tonne effective from 1.01.2023 as Change in Law event under the PPA. Said SECL notice is based on Government of Chhattisgarh' gazette notification dated 27 July 2022 reproduced below:

“File No. 6-2/2014/10-2/van. – In exercise of the powers conferred by Rule 5 of the Chhattisgarh Transit (Forest Produce) Rules, 2001 and in suppression of this department’s Notification No. 06-02/2014/10-2, dated 30th June 2015, the State Government hereby, fixes the fee as mentioned in column (3) of Table below to be recovered for issue of transit pass for the transportation of corresponding forest produce as mentioned in column number (2) of the said Table, as under, -

TABLE

<i>S. No.</i>	<i>Name of Forest Produce</i>	<i>Prescribed Fee</i>
<i>1</i>	<i>2</i>	<i>3</i>
<i>1</i>	<i>Lime Stone, Dolomite, Fire clay, Manganese, Copper, Rock-phosphate, Pyro-Phyllite, Diaspore, Ochre, Bauxite, Calcite, Coal, Quartz, Silica,</i>	<i>Rs 57/- per Ton</i>

In view of above, the Commission notes that Government of Chhattisgarh is a ‘Government Instrumentality’ under the PPA. SECL vide notice dated 3.01.2023 has conveyed implementation of said notification to stakeholders. Further, RIPL has issued a Change in Law Notice to MSEDCL immediately on 6.01.2023 conveying such imposition of Forest Fee/cess. Therefore, the Commission rules that SECL notice dated 3.01.2023 read with above notification of Government of Chhattisgarh comply with criteria stipulated in the PPA for considering any event as Change in Law.

16.4. At the same time, the Commission also notes that RIPL is claiming Rs 57/- per Ton as Change in Law impact whereas MSEDCL is pointing out that only incremental impact i.e. difference between Rs 57 per tonne notified above and Rs. 15 per tonne applicable since 30.06.2015 should be considered as compensation on account of Change in Law. In this regard, the Commission notes that above quoted Notification dated 27.07.2022 of Government of Chhattisgarh has clearly stated that it has superseded earlier notification dated 30.06.2015. Thus, there must be Forest fee/cess stipulated in notification dated 30.06.2015. It is the responsibility of RIPL to demonstrate with documents whether Forest Fees/cess was being recovered prior to SECL notice dated 3.01.2023 and claim compensation under Change in Law limited to differential amount. Further while computing financial impact of such Forest Fees/Cess, RIPL shall ensure that issue of GCV, SHR & Aux Consumption shall be considered as per Commission’s Order dated 16 November 2021 in Case No. 240 of 2020 (RPL Vs MSEDCL).

- 16.5. Hence, the Commission directs RIPL to compute Change in Law impact on account of above said SECL notice of imposing Forest Fees/Cess as per observation in para above and provide detailed computation along with documentary proof for verification to MSEDCL.
17. **Issue C: Carrying cost, if applicable, on compensation for Change in Law event**
- 17.1. RIPL stated that in terms of Article 10.2.1 of the PPA, compensation for the Change in Law has to be such that it is restored to the same economic position had such a Change in Law event not occurred. Compensation for Change in Law is to include Carrying Cost as well. The issue of carrying cost is no longer res-integra and stands settled in terms of Civil Appeal No. 4089 of 2022 titled MSEDCL v. RattanIndia (“Common Judgment dated 20.04.2023”) wherein findings of the Hon’ble Tribunal vis-à-vis payment of carrying cost at the LPS rate under the PPAs, and on monthly compounding basis was affirmed by the Hon’ble Supreme Court.
- 17.2. While opposing claim of carrying cost, MSEDCL stated that as per Article 10.4.1 and 10.3.4 of the PPAs, RIPL is obligated to promptly issue a Change in Law Notice to MSEDCL and initiate proceedings before the Commission for compensation for the Change in Law. Due to RIPL's delay in issuance of the Change in Law Notice and in initiating the case, RIPL should not benefit from interest or compounded interest.
- 17.3. The Commission notes that issue of granting carrying cost on Change in Law compensation has finally been decided by the Hon’ble Supreme Court’s judgment dated 20.04.2023 (Civil Appeal 4089 of 2022 titled MSEDCL Vs RattanIndia) in respect of PPAs under present case. Hon’ble Supreme Court in that judgment has upheld APTEL’s judgment granting carrying cost at rate of LPS stipulated in the PPA on compounding basis. Accordingly, the Commission rules that RIPL shall be eligible to claim carrying cost on increased expenses on account of Forest Fees/cess at LPS rate stipulated in the PPA on compounding basis.
- 17.4. Said carrying cost amount is normally allowed from date of incurring such increased expenses till date of payment of such increased expenses by Discom to generator. MSEDCL has highlighted that RIPL has delayed issuance of Change in Law notice and filing of present Petition and RIPL should not get benefit of such delay in terms of carrying cost. In this regards, the Commission notes that there is no delay in issuances of Change in Law notice dated 6.01.2023 for Change in Law event dated 3.01.2023, but present Petition seeking approval for Change in Law event and its compensation has been filed only on 3.05.2023 i.e. 4 months after Change in law event. Although, PPA does not specified specific time for filing of such Change in Law Petition, considering implications of implications of increased expenses on Merit Order Despatch stack of the State, the Commission has made following provisions in its State Grid Code Regulations 2020:

“33.10 In case of claim for un-approved change of law, the Seller/Generating Company shall file Petition before the Commission with its claim for un-approved change of law for purpose of incorporation in the merit order stack within reasonable time period not exceeding period of one month from the date of its first occurrence with intimation to the concerned Buyer/Distribution Licensee, failing which the Commission may take appropriate view, while approving the claim of Seller/Generating Company towards principal component of claim of change of law or its claim of carrying cost thereof or both”

Above provisions of State Grid Code are equally applicable to RIPL and in view of above provisions, RIPL should have filed this Petition by 3.02.2023. As Petition has been filed on 3.05.2023, there is delay of 3 months in filing the Petition. Allowing the carrying cost for such delay of RIPL would not be appropriate. Hence, the Commission rules that while computing carrying cost on compensation amount for increased expenses on account of Forest Fees/cess, this period of 3 months should be deducted from total period between date of incurring such increased expenses and payment of the same by MSEDCL.

18. Hence following Order.


ORDER

1. Case No. 86 of 2023 is partly allowed.
2. RIPL is eligible for Change in Law compensation on account of imposition of Forest Fees/Cess vide SECL notice dated 3.1.2023. Said Change in law compensation be computed as per directions in para 16.4 above.
3. Carrying cost is also payable on above Change in Law compensation. Same shall be computed as per directions in para 17.4 above.

Sd/-
(Surendra J. Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

