

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 310/MP/2015**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson  
Shri A.K.Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member**

**Date of order: 2<sup>nd</sup> March, 2017**

**In the matter of:**

Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with the statutory framework for tariff-based competitive bidding for transmission service with respect to the 765 kV 1 x D/C transmission line from Dharamjaygarh-Jabalpur and 765 kV S/C transmission line from Jabalpur pool-Bina being implemented by Jabalpur Transmission Company Limited.

**And**

**In the matter of**

Jabalpur Transmission Company Limited  
C-2, Mira Corporate Suites,  
Ishwar Nagar,  
New Delhi – 110025

... Petitioner

**Vs.**

1. Adhunik Power and Natural Resources Ltd.  
3rd Floor, Crescent Towers,  
229 AJC Bose Road,  
Kolkata, 700 020, West Bengal
2. Corporate Power Ltd.  
8th and 9th Floor, Mahabir Tower  
Main Road, Ranchi – 834 001, Jharkhand
3. Essar Power (Jharkhand) Ltd.  
Essar House, 11 KK Road  
Mahalaxmi, Mumbai – 400 034
4. West Bengal State Electricity Distribution Co. Ltd.

7th Floor, Bidyut Bhavan  
DJ Block, Sector II, Salt Lake City  
Kolkata – 700 091, West Bengal

5. MB Power (Madhya Pradesh) Ltd.  
213, Okhla Industrial Area, Phase III,  
New Delhi – 110020

... Respondents

**Parties present:**

Shri Amit Kapur, Advocate, JTCL  
Ms. Poonam Verma, Advocate, JTCL  
Shri Nishtha Kumar, Advocate, JTCL  
Shri TAN Reddy, JTCL  
Shri Harshit Gupta, JTCL

**ORDER**

The Petitioner, Jabalpur Transmission Company Ltd., has filed the present petition under Sections 61, 63 and 79 of the Electricity Act, 2003 (the Act) read with the statutory framework for tariff-based competitive bidding for transmission service and regulatory power of this Commission, with the following prayers:

- “(a) Allow the present Petition and approve the quantification of increase of Rs. 80.37 crores per annum in the levelised transmission charges on account of Force Majeure and Change in Law event;
- (b) Restore the Petitioner to the same economic condition prior to the occurrence of the Changes in Law and Force Majeure events;
- (c) Allow commencement of transmission charges of respective elements from COD of DJ Line i.e. 14.09.2015, and JB Line i.e. 01.07.2015 as approved by this Hon’ble Commission in its Judgment dated 16.10.2015.; and
- (d) Pass any such further order(s) as this Hon’ble Commission may deem fit in the facts and circumstances of the present case.”

**Background of the case:**

2. M/s Sterlite Grid Limited (SGL) was selected as the Transmission Service Provider based on the international tariff based competitive bidding to execute transmission system for System Strengthening common for Western Region and

Northern Region on Build, Own Operate and Maintain (BOOM) basis, comprising the following lines:-

- (a) Dharamjaygarh- Jabalpur pool 765 kV D/C line
- (b) Jabalpur- Bina 765 kV Quad S/C line

3. Letter of Intent (LOI) was issued by PFC Consulting Limited as the Bid Process Coordinator (BPC) to SGL. SGL accomplished all the milestones required in terms of the Request for Proposal (RfP) and Letter of Intent and acquired the Jabalpur Transmission Company Ltd. (JTL) as its fully owned subsidiary. JTCL entered into the Transmission Service Agreement with Long Transmission Agreement on 1.12.2010. JTCL approached the Commission for grant of transmission licence in Petition No. 107/TL/2011 and adoption of tariff of the transmission system in Petition No. 109/TT/2011. The Commission in its order dated 12.10.2011 in Petition No.107/TL/2011 has granted the transmission licence to JTCL for inter-State transmission of electricity and in order dated 28.10.2011 in Petition No. 109/TT/2011 has adopted the tariff of the transmission system under Section 63 of the Act.

4. As per the TSA, the transmission lines were to be completed and commissioned within 36 months from the effective date. The effective date was 31.3.2011 and therefore, both transmission lines were to be commissioned by 31.3.2014. Dharamjaygarh- Jabalpur pool 765 kV D/C line (hereinafter referred to as "DJ Line") was commissioned on 19.9.2015 resulting in a delay of 17 months 19 days. Jabalpur- Bina 765 kV Quad S/C line (hereinafter referred to as "JB Line") was commissioned on 1.7.2015 resulting in a delay of 15 months. The Petitioner attributed the delay to the force majeure and change in law events on

account of the time taken to obtain forest clearance and the approval under section 164 of the Act. The petitioner filed Petition No. 73/MP/2014 seeking the following reliefs:-

- (a) Declaration of events such as non-grant of Forest Clearance and delay in Section 164 authorisation as Force Majeure;
- (b) Declaration that amendment to Forest Guidelines constitutes Change in Law as per the Transmission Service Agreement;
- (c) Extension in the Scheduled Commercial Operation Date due to the said force majeure and change in law events; and
- (d) Grant of an increase of Rs. 80.37 crores in the levellised tariff charges to restore economic viability of the project and offset the adverse impact of the said unforeseeable events.

5. After considering submissions and arguments of the petitioner and the Long Term Transmission Customers (LTTCS), the Commission vide order dated 16.10.2015 in Petition No 73/MP/2014 decided the issues raised in the said Petition. As regards the delay in obtaining forest clearance, the Commission decided that the said event was covered under Change in Law as well as force majeure. As regards the delay in obtaining the Section 14 authorisation, the Commission held that “the project was affected by force majeure conditions on account of delay in issue of Section 164 authorisation for a period of 17 months and 20 days. The Commission after considering the circumstances for the delay in grant of forest clearance and section 164 authorisation and the efforts made by the petitioner to mitigate the force majeure events, the Commission allowed extension of SCOD from the date of SCOD as per the TSA (i.e. 31.3.2014) till the

respective dates of commercial operation of the transmission lines i.e.1.7.2015 in case of JB line and 19.9.2015 in case of DJ line. As regards the prayer of the Petitioner to grant relief in the form of increase in levelised transmission charges to offset the additional cost incurred by the Petitioner on account of Change in Law and force majeure events, the Commission issued the following directions:

*“45. At the time of filing the petition, the project was still under execution. Jabalpur Dharmajaygarh 765 kV D/C line and Jabalpur-Bina 765 kV S/C line have been commissioned on 14.9.2015 and 1.7.2015 respectively. Therefore, the petitioner is required to quantify the increase in expenditure on account of change in law as on the COD of the transmission lines after accounting for the expenditure assumed in the bid towards forest clearance and provide the documentary proof to the LTTCs and the Commission in terms of Article 12.2.3. The petitioner is granted liberty to approach the Commission with quantification of the increase in transmission charges on account of change in law and force majeure supported by documentary evidence which shall be considered in accordance with Law.”*

6. Pursuant to, and in compliance with, the directions given by this Commission in order dated 16.10.2015 in Petition No. 73/MP/2014, the petitioner has filed the present petition for quantification and award of compensation.

7. The petitioner has submitted that the increase in the project cost and the financial implications on the petitioner on account of Change in law and Force Majeure events are as under:

(a) On account of the Force Majeure event of delay in issuance of Forest clearance and change in law event of change in forest guidelines resulting in the delay in commissioning of the Project by 17 months and 19 days:-

- (i) Additional expenditure towards Interest during Construction (“IDC”) on loans during the extended construction period of 17 months and 19 days amounting to Rs. 198.62 crore;
- (ii) Additional expenditure towards overhead cost for the Petitioner amounting to Rs. 15.91 crore, including salaries, office, travel, rent etc.;
- (iii) Additional expenditure towards increase in afforestation rates as prescribed by MoEF amounting to Rs. 27.22 crore;
- (iv) Additional expenditure towards extraordinary efforts made to complete line in the forest area in less than six months, after grant of Forest Clearance, including cost incurred towards overheads, higher unit rates for services rendered, mobilising multiple EPC contractors and other additional resources amounting to Rs. 37.50 crore;
- (v) Additional expenditure incurred towards price variation and margin money on account of delay in delivery of conductors due to delay in commissioning amounting to Rs. 115.10 crore.

(b) On account of Force Majeure event of delay in issuance of Section 164 authorisation and Change in law event of change in Forest Guidelines:-

- (i) Additional expenditure towards increase in quantity of materials used, due to the unforeseen Right of Way (“ROW”) issues on account of delay in grant of Section 164 authorisation, amounting to Rs. 228.61 crore;

(ii) Additional expenditure towards increase in forest area, on account of change in line route due delay in issuance of Section 164 authorisation, amounting to Rs. 6.32 crore;

(c) On account of Force Majeure and Change in law events resulting in delay in commissioning of the Project:-

(i) Additional expenditure towards taxes and duties, especially on account of change in excise duty and service tax post the SPV acquisition amounting to Rs. 31.19 crore.

8. The Petitioner has claimed a total compensation of Rs. 660.469 crore as increase in the total project cost as per the details given below:

Ser No.	Reasons for cost increase	Cost increase (Rs. in crores)
<b>A</b>	On account of the Force Majeure event of delay in issuance of forest clearance resulting in delay in the commissioning of the project by 17 months 19 days	
<b>1.</b>	Additional expenditure towards IDC on loans during extended construction period of 17 months 19 days	198.62
<b>2.</b>	Additional expenditure towards overhead cost	15.91
<b>3.</b>	Additional expenditure towards increase in Afforestation rates post bid deadline as prescribed by MoEF	27.22
<b>4.</b>	Additional expenditure towards extraordinary efforts made to complete line in the forest area in less than 5 months	37.5
<b>5.</b>	Additional expenditure towards price variation and margin money on account of delay in delivery of conductors due to delay in	115.1

	commissioning of the project	
<b>B</b>	On account of Force Majeure event of delay in issuance of Section 164 authorisation and Change in Law event of change in Forest Clearance	
<b>1.</b>	Additional expenditure towards increase in quantity of materials used, due to the unforeseen ROW issues on account of delay in grant of Section 164 authorisation	
<b>(i)</b>	Increase in Tower Steel	39.34
<b>(ii)</b>	Increase in the quantity of insulators, hardware fittings, conductors and earth wire accessories	13.029
<b>(iii)</b>	Increase in erection and civil works including foundation	28.45
<b>2.</b>	Additional expenditure towards increase in input cost of transmission line supply and services	147.79
<b>3.</b>	Additional expenditure towards increase in forest area on account of change in line route due to delay in issuance of Section 164 authorisation	6.32
<b>C</b>	Additional expenditure towards taxes and duties, especially on account of change in excise duty and service tax post the bid deadline	31.19
	<b>TOTAL</b>	<b>660.469</b>
	<b>Increase in the levelised transmission charges</b>	<b>80.37 crores per annum</b>

9. The petition was admitted and notices were issued to the respondents. However, none of the Respondents has filed reply to the petition. The petitioner was directed to file the following information in support of its claims:

- (a) Detailed working in support of claims of increase in levelised tariff of Rs 80.37crore;
- (b) Detailed calculation in support of IDC estimates of Rs 88.24 crore as on SCOD i.e. on 31.3.2014;



- (c) Detailed working in support of IDC claim of Rs 286.86 crore on actual COD along with relevant supporting documents and period-wise details of actual expenditure incurred on cash basis;
- (d) Reasons for claiming the overheads expenditure till September 2015 whereas Dharamjaygarh-Jabalpur pool 765 kV D/C line was commissioned on 14.9.2015 and Jabalpur-Bina 765 kV Quad S/C line was commissioned on 1.7.2015;
- (e) Detailed calculation of impact of change in rate of service tax and excise duty; and
- (f) Details of supply of equipment and rendering of services to verify the impact of change in tax rate.

10. The Petitioner, vide its affidavit dated 26.2.2016, has filed the information called for as under:

- (a) As regards the detailed working in support of claim of increase in levelised tariff of Rs. 80.37 crore, the Petitioner is stated to have incurred an additional expenditure of Rs. 660.469 crore subsequent to the award of the project. In order to offset the impact of additional cost incurred and restore the economic viability of the project, the Petitioner has sought compensation in a proportionate manner by way of an increase of Rs. 80.37 crore per annum in the levelled transmission charges, detailed as under:

Levelled Transmission Charges as adopted by this Hon'ble Commission in its Order dated 28.10.2011 in Petition No. 109 of 2011	Rs. 142.128 crore
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Original Project Cost estimate (Refer to para No. 30 of Petition and Facility Agreement with Banks dated 11.06.2012)	Rs. 1168.0 crore
Additional Expenditure incurred subsequent to the award of the project (Refer to para No. 29 of the Petition)	Rs. 660.469 crore
Proportionate increase in the levelised Transmission charges	$(660.469 \div 1168) \times 142.128$ = Rs. 80.37 crore

The petitioner has submitted that increase is on account of cost and time overrun due to Force Majeure and Change in Law events which have been allowed by this Commission by its Order dated 16.10.2015 in Petition No. 73/MP/2014.

(b) As regards the detailed calculation in support of IDC estimates of Rs. 88.24 crore as on SCOD, the Petitioner is stated to have incurred IDC of Rs. 88.24 crore as on 31.3.2014 as under:

(Rs. in crore)

S. No	Description	Amount	Supporting Document	Annexure
1.	Interest on Loan	83.21	Calculation sheet, Bank statement and Balance Sheet as on 31 <sup>st</sup> March, 2014	<b>1</b>
2.	Interest on LC Bill Discounted	1.27	Calculation Sheet	<b>2</b>
3.	Financing Charges	3.76	Calculation Sheet, Bank statements	<b>3</b>
	<b>Total</b>	<b>88.24</b>		

(c) As regards the detailed working in support of IDC claim of Rs. 286.86 crore on actual COD (i.e. 14.9.2015) along with relevant supporting

documents and period-wise details of actual expenditure incurred on cash basis, the Petitioner has submitted as under:

(Rs. in crore)				
S. No	Description	Amount	Supporting Document	Annexure
1.	Interest on Loan	217.27	Calculation sheet, Bank statement and Balance Sheet as on 30 <sup>th</sup> September, 2015	<b>4</b>
2.	Interest on LC Bill Discounted	1.26	Calculation Sheet	<b>5</b>
3.	Financing Charges	3.76	Calculation Sheet, Bank statement	<b>6</b>
4.	Interest on Financing Charges	64.57	Calculation Sheet, Bank statement	<b>7</b>
	<b>Total</b>	<b>286.86</b>		

(d) As regards the reasons for claiming the overheads expenditure till September 2015, the Petitioner has submitted that it has claimed overheads incurred due to delay in the commissioning by 17 months and 19 days in of case of the DJ Line and 15 months in the case of the JB Line. The overheads claimed have been calculated from the Scheduled COD of 31.3.2014 till the actual COD of each of the elements, i.e., 1.7.2015 for JB line and 14.9.2015 for DJ Line. The Petitioner has submitted that the claim of overheads expenditure has been restricted till 14.9.2015.

E. Detailed calculation of impact of change in rate of service tax and excise duty. The petitioner has submitted as under:

(a) As per Article 12 of the TSA, Change in law means the occurrence, *inter alia*, of any change in tax or introduction of any tax made applicable for providing Transmission Service by the Transmission Service Provider ("**TSP**")

as per the terms of the TSA, which is seven days prior to the bid deadline, resulting into any addition recurring/non-recurring expenditure by the TSP or any income to the TSP.

(b) In the present case, there has been a change in the Service Tax and Excise duty subsequent to the Bid dead line, i.e. 28.12.2010. The details of the change in taxes and duties are as follows:-

Tax and Duty	Tax rate 7 days before Bid dead line	Tax rate after Bid dead line
Service Tax	10.3%	12.36%
Excise Duty	10.3%	12.36%

(c) The detailed calculation of impact of change in rate of Service Tax and Excise Duty, as certified by the Petitioner's Chartered Accountants, is as follows:-

(Figures in Crs)						
Description	2011-12	2012-13	2013-14	2014-15	Till Sept 15	Total
Capex-as per financials	33	347	717	522	267	1885
Less: adjustments on items which will not have impact on account of change in taxes-						
Interest during construction and finance charges	4	18	67	94	40	222
SPV Acq Cost	20	-	-	-	-	20
Forest Cost	-	-	0	112	0	113
Manpower Cost	1	3	4	5	3	15
<b>Capex impacted by change in taxes</b>	<b>8</b>	<b>326</b>	<b>646</b>	<b>310</b>	<b>223</b>	<b>1514</b>
Applicable taxes						
Service Tax	10%	12.36%	12.36%	12.36%	12.36%	
Excise Duty	10%	12.36%	12.36%	12.36%	12.50%	

Change in Taxes	0%	2.06%	2.06%	2.06%	2.13%	
Service Tax	0%	2.06%	2.06%	2.06%	2.06%	
Excise Duty	0%	2.06%	2.06%	2.06%	2.20%	
<b>Impact on account of change in taxes</b>	<b>-</b>	<b>6.72</b>	<b>13.31</b>	<b>6.39</b>	<b>4.76</b>	<b>31.19</b>

(d) The final Total Project Cost incurred by the petitioner is Rs. 1885 crore. Out of the total project cost of Rs. 1885 crore, expenditure towards IDC, SPV acquisition, forest cost, manpower cost does not attract Excise duty and service tax. Capital Expenditure which has been impacted by the change in Taxes, less the non-taxable capex, amounts to Rs. 1514 crore. Accordingly, due to the change in taxes, the total additional expenditure incurred by the Petitioner is Rs. 31.19 crore.

F. Details of supply of equipment and rendering of services to verify the impact of change in tax rate: The petitioner has submitted that the total capital expenditure impacted by the change in Service Tax and Excise duty is Rs. 1514 crore

#### **Analysis and Decision:**

11. We have considered the submissions made in the petition, the additional affidavit dated 26.2.2016 and the Auditors Certificates with respect to each of the respective claims. The Respondents have not filed any response in the present proceedings. The petitioner has provided the details of all expenses incurred and the corresponding documents in support thereof as quoted in Para 8 of this order.

## **(A) Interest During Construction**

12. The Petitioner has submitted that on account of the Force Majeure event of delay in issuance of Forest clearance and Change in Law event of change in forest guidelines has resulted in the delay of 17 months and 19 days in commissioning of the DJ line and 15 months in commissioning of the JB lines. The initial IDC as per the financing agreement signed by the Petitioner with State Bank of India and other scheduled banks was Rs. 91 crore which was based on an assumed debt of Rs. 876 crore till the SCOD of 31.3.2014 as per the TSA. As on the SCOD, the Petitioner has incurred Rs.88.24 crore as IDC. On account of delay in commissioning of the transmission lines, the Petitioner has incurred Rs. 222.29 crores from the SCOD till the respective dates of commercial operation of DB Line and DJ Line.

13. The Commission in para 34 of the order dated 16.10.2015 in Petition No.73/MP/2014 had observed as under:

34.....In our view, the letter dated 13.2.2012 issued by MoEF disentitling the persons to utilize degraded forest land on the basis of certificate from the Chief Secretary regarding non-availability of non-forest land for the purpose of compensatory afforestation where the forest cover in the State is less than 50% is covered under "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". The petitioner explored the alternative of acquiring non-forest land but could not secure the possession of such land. The petitioner has submitted that though on 16.7.2012, Govt. of Madhya Pradesh allotted 485 hectare land for the purpose of afforestation, the possession of the said land was not handed over till the date of filing of the petition. The petitioner took up the matter with Government of India and other authorities like CEA and the Government of Madhya Pradesh and Chhattisgarh. Government of India after considering similar requests made amendment to the guidelines vide letter dated 11.7.2014 by permitting all persons laying transmission lines irrespective of the voltage level to utilize degraded forest land for the purpose of compensatory afforestation. After the issue of the said amendment, the petitioner has taken up the matter with the concerned authorities and obtained forest clearances on 10.3.2015, 16.3.2015 and 16.6.2015. Thereafter, the petitioner has carried out the works on the forest portion and balance portion of the transmission

lines and commissioned them on 1.7.2015 and 14.9.2015. In our view, the process of obtaining forest clearance which involved time and cost are covered under change in law.”

14. The Commission has come to the conclusion that the process of obtaining forest clearance is covered under change in law. Relief for change in Law during Construction Period is provided in Article 12.2.1 of the TSA as under:

“12.2.1 During Construction Period: During the Constriction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below: For every cumulative increase/decrease of each Rupees Five Crores Fifty Lakhs ( ₹ 5,50,00, 000/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non-escalable Transmission Charges shall be an amount equal to 0.32 percent (0.32) of the Non-Escalable Transmission Charges.”

As per the above provisions of the TSA, the impact of change in law resulting in increase/decrease in the cost of the project during the construction period on account of change in law shall be admissible in the form of non-escalable transmission charges as per the given formula. The Petitioner has not only incurred additional expenditure in getting forest clearance, the Petitioner has also incurred the Interest During Construction during the period beyond SCOD till the respective dates of commercial operation of the DJ and DB transmission lines. In the view of the Commission, the delay in getting the forest clearance was beyond the control of the Petitioner and the Petitioner should be allowed IDC for the extended period in order to put the Petitioner in the same economic position as if the Change in Law had not occurred. Therefore, the Petitioner shall be entitled to reimbursement of the additional cost incurred by it on account of expenditure incurred for forest clearance and the Interest During Construction from SCOD till the respective dates of commercial operation of the transmission lines.

15. The petitioner was directed to file the detailed working in support of its IDC claim of Rs. 286.86 crore as an actual COD and the IDC of Rs. 88.24 crore as on COD of the

transmission system. The petitioner vide its affidavit dated 26.2.2016 has submitted the copy of the facility agreement dated 11.6.2012 executed between the petitioner, consortium of lenders and the lenders agents namely, State Bank of India, and the month-wise summary of the IDC accrued for the period from October, 2012 to September, 2015 supported by copies of the Bank Statement. It is observed from the facility agreement that the consortium of lenders agreed for term loan facility amounting to Rs. 876 crore as loan capital against the total estimated cost of the project at Rs. 1168 crore. The petitioner has not submitted the detailed calculation/working in support of IDC claim of Rs. 286.86 crore as on the date of actual COD but has submitted the month-wise summary of IDC accrued for the period from October, 2012 to September, 2015. The summary of IDC up to the original SCOD and the actual COD as compiled from the submitted IDC summary and the auditor certificate is extracted as under:-

(Rs. in Crore)

Particulars	As per Month wise IDC summary submitted vide affidavit dated 26.2.2016			As per auditor Certificate dated 4.12.2015		
Period	Total IDC	Interest earned	Net Interest	IDC	IDC on financing overrun	Total
Up to 31.3.2014 (i.e. Original SCOD)	57.46	1.80	55.65	88.24	35.92	124.16
For the time over run period From Original SCOD 1.4.2014 to September, 2015	126.48	0.62	125.85	134.05	28.65	162.7
Total	183.93	2.43	181.50	222.29	64.57	286.86

From the above table, it appears that as against the IDC of Rs. 198.62 crore claimed in the petition for the period between the SCOD and the actual COD, the month-wise IDC summary for the corresponding period works out to Rs. 125.85 crore. Further, the month-wise IDC summary submitted by the petitioner does not contain any information about the loan outstanding and the rate of interest applied to



arrive at the interest accrued. The petitioner has also not given the reasons for the discrepancy between the IDC certified in the auditor certificate and the IDC given in month-wise summary at Annexure 4 of the affidavit dated 26.2.2016. Moreover, the auditor's certificate also does not clearly signify the documents considered for arriving at the IDC certified in the Auditor's Certificate dated 4.12.2015. Besides, it is also not clear as to whether the Debt Equity was deployed in equal proportion. In the absence of the required information duly certified by the auditor, it is not possible to quantify the admissible IDC. The petitioner is directed to submit the auditor certificate clearly mentioning the application of Debut Equity in equal proportion with documentary proof, loan-wise outstanding particulars as on SCOD, further drawal and repayment till actual COD, applicable interest rates, gross IDC, Income generated from temporary parking of loan amount and net IDC capitalised, supported by the documentary proof for Loan drawal, Loan repayment and interest along with documentary evidence for deferment of drawal of loan consequent to the delay in execution of the project.

**B. Expenditure and Overhead cost**

16. The Petitioner has submitted that it has incurred overhead cost of Rs. 15.91 crore from the SCOD (31.3.2014) till the commercial operation of the DJ and DB transmission lines. The details of overhead cost have been tabulated as under:

(Rs. in crore)

Description	2011-12	2012-13	2013-14	2014-15	Till Sept, 2015	Total
Manpower	1.11	2.65	3.73	4.57	3.24	15.30
Travel (including Vehicle)	0.19	0.55	0.70	1.01	1.32	3.77
Professional Fees	2.95	4.79	3.15	3.07	0.71	14.67
Admin & Others	0.15	0.51	0.36	0.81	1.17	3.00

Total Overhead incurred	4.40	8.50	7.94	9.46	6.44	36.74
Overheads incurred post March 2014				9.46	6.44	15.90

The overhead expenditure pertains to the expenditure on manpower, travel including vehicle, professional fees, administrative and other charges. The petitioner as a transmission licensee is required under the TSA to maintain all consents and requirements in full force for execution of the project. Therefore, this expenditure is not admissible under Change in Law and is accordingly disallowed.

**C. Additional expenditure towards increase in Afforestation rates**

17. The petitioner has submitted that it has incurred additional expenditure towards increase in Afforestation rates post bid dead line as prescribed by MoEF of Rs. 27.22 crore. In order dated 16.10.2015 in Petition No. 73/MP/2014, it has been decided that “the process of obtaining forest clearance which involved time and cost are covered under change in law”. Therefore, the expenditure incurred by the petitioner for carrying out various Afforestation works for obtaining the environmental clearance shall be admissible to the petitioner under Change in Law. We have perused the documents submitted by the petitioner in regard to such claims. The details of which has been tabulated below:

765 kV D/C J-D T/L (MP & CG portion= 397.496 Hectare)				
Sl.No	State	Forest Cost 2010 in Rs (Cr)	Forest Cost 2014 in Rs (Cr)	Cost increase in Rs (Cr.)
1	MP	44.80	55.44	10.64

2	CG	15.31	20.67	5.36
Total				16.0
<b>765 kV S/C J-B T/L (MP Portion= 138.31 Hectare)</b>				
Sl.No	State	Forest Cost 2010 in Rs (Cr)	Forest Cost 2014 in Rs (Cr)	Cost increase in Rs (Cr.)
1	MP	18.37	29.59	11.2

Total Cost increase = 16 + 11.2 = 27.22crore

In support of these expenditures, the petitioner has placed on record a summary of increase in Afforestation rates in **Annexure P-6** of the petition. However, the said expenditure is not supported by actual receipt of payment to the concerned authorities or by auditor certificate. The petitioner is directed to put on record the actual receipts of the payments made to the authority in connection with the forest clearance duly certified by the auditor.

**D. Additional expenditure towards extraordinary efforts to complete the forest line**

18. The petitioner has submitted that it has incurred additional expenditure of Rs. 37.5 crore towards extraordinary efforts made to complete line in the forest area in less than 5 months which included costs incurred towards overheads, higher unit rates for services rendered, mobilising multiple EPC contractors and other additional resources. The Petitioner has submitted that had the Petitioner not deployed additional resources, there would have been further delay in commissioning of both the lines. We have considered the submissions of the Petitioner. As per the provisions of Article 4.1 of the TSA, the petitioner at its own cost and expense is responsible for financing, constructing, owning and commissioning each of the elements of the project for scope of work set out in Schedule 2 of the TSA. Therefore, the additional expenditure towards

extraordinary efforts made by the petitioner to complete the transmission lines in the forest area due to delay in commissioning of the Project are not admissible either under Change in Law or under Force Majeure provisions of Transmission Service Agreement and accordingly, the said expenditure is disallowed.

**E. Additional expenditure towards price variation and margin money on account of delay in delivery of conductor**

19. The petitioner has submitted that it has incurred additional expenditure of Rs. 115.10 crore towards price variation and margin money on account of delay in delivery of conductors due to delay in commissioning of DB and DJ lines. We have considered the submissions of the Petitioner. The Petitioner has been selected through competitive bidding based on the levelised consolidated tariff quoted by the Petitioner and the Petitioner was expected to take into account the price variation in the cost of conductors. In our view, the expenditure on this account is not covered either under change in law or force majeure in the TSA and accordingly, the expenditure is disallowed.

**F. Additional Expenditure on account of increase in quantity of materials used due to unforeseen issues on account of delay in grant of section 164 authorisation**

20. The Petitioner has submitted that an additional expenditure of Rs. 228.61 crores was incurred on account of delay in grant of section 164 approval. The Petitioner has submitted that on account of delay in grant of Section 164 approval, the Petitioner had to face severe ROW issues as a result of which the Petitioner had to make changes in tower location in multiple locations resulting in increased amount of angle points and tension towers thereby increasing the cost of tower steel as well as corresponding increase in civil works in the same

locations. The petitioner has further submitted that there was an increase of Rs. 39.94 crore on account of the additional expenditure to meet the increase in requirement of tower steel by 64424.53 MT. The petitioner has submitted that on account of the Change in type of power, increase in angle tower, increase in line length has resulted into increase in quantity of input items such as quad tension hardware, suspension hardware, pilot string with counter and space damper amounting to Rs. 13.029 crore. The petitioner has also submitted that as the consequence in increase in line length and change in tower type there has been an increase in the civil quantity as per the type tested tower and foundation designs in conformity with IS codes. The additional cost on account of concerting, rebar, erection, excavation, benching and tower protection has resulted in additional cost of Rs. 28.85 crore. The petitioner has also submitted that due to absence of Section 164 authorization, potential EPC contractor did not agree to enter into contract with a private transmission licensees. In the meanwhile, the input cost of steel, cement, labour have been increase by approximately 24%, 12.5%, 16% respectively post bid deadline which has adversely impacted the input cost by approximately Rs. 147.79 crore. The summary of financial impact due to increase in quantity and price of input material has been projected by the petitioner as under:

S. No.	Description	Impact due to increase in BOQ	Impact due to increase in price of material
1.	Increase in Tower Steel	39.34	84.61
2.	Increase in erection and civil works including foundation	28.45	30.85
3.	Increase in the quantity of insulators, hardware fittings, conductor & earth wire accessories	13.029	32.341
	<b>Total</b>	<b>80.82</b>	<b>147.79</b>

21. We have considered the submissions of the petitioner. The main reason for the claim of the petitioner is on account of the delay in grant of authorization under Section 164 of the Electricity Act, 2003, as a result of which the petitioner is stated to incurred the additional expenditure on the quantity and price of the materials used for the transmission lines. The petitioner has quoted the tariff for laying the transmission line between the starting point and end point and any variation in the line length of the transmission line is the responsibility of the petitioner. The petitioner should have factored all possible eventualities regarding the change in the route and in its impact on tariff in its bid. ROW issues are common in case of the construction of the transmission line cover in long distances and the petitioner should have factored the possible impact of ROW in its bid. As regards the change in price of the material, it is based on the market mechanism and the petitioner is required to factor the price fluctuation on this account. Though, delay in grant of Section 164 approval has been held to be covered under Force Majeure Event, the expenditure on account of delay in grant of Section 164 approval cannot be admitted under Force Majeure as there is no provision under Article 11.7 of the PPA regarding available relief for Force Majeure Event to cover the expenditure claimed by the petitioner. Accordingly, the said claim is disallowed.

**E. Additional expenditure towards increase in forest area on account of change in line route due to delay in issuance of Section 164 authorization**

22. The petitioner has submitted that on account of change in line route due to delay in issuance of Section 164 authorization, the petitioner has incurred an additional expenditure of Rs. 6.32 crore towards increase in forest area. The

petitioner has submitted that as per the initial survey conducted by the petitioner in March, 2011, the project was envisaged to traverse through 507 Ha of forest land across the State of Madhya Pradesh and Chhattisgarh. The petitioner has submitted that during the course of construction, the petitioner was unable to opt the optimal line length on account of absence of authorization under Section 164. The petitioner was constrained to re-route the line which involved forest area of 537 Ha resulting in an increase in forest area by 29.7 Ha and an additional cost of Rs. 6.32 crore. We have considered the submission of the petitioner. It is emerging from the submission of the petitioner that the envisaged forest area was 527.3 Ha as per the estimation of the petitioner which has been increased by 29.7 Ha when the actual transmission lines were executed. The petitioner had made the route survey and should have envisaged for all possible alignment of the routes considering the topography and ROW issues. The expenditure on account of the additional Afforestation cannot be attributed to the delay in receipt of authorization under Section 164 of the Act.

**F. Additional expenditure towards taxes and duties on account of change in excise duty and service tax**

23. The petitioner has submitted that service tax as well as excise duty have been revised by Ministry of Finance, Department of Revenue vide circular dated 17.2.2010. On account of such change, the petitioner has to bear the additional expenditure of Rs. 31.19 crore, the details of which have been quoted in Para 10 (E) (c) of this order. We have considered the submission of the petitioner. Since the changes in service tax and excise duty have occurred on account of the Act of the Parliament, they constitute Change in Law and the expenditure incurred by

the petitioner is admissible under Change in Law. The petitioner has submitted the Auditor's Certificate in support of its claim for additional expenditure on taxes vide Annexure P-13 of the petition. It is clarified that relief under change in law for service tax and excise duty shall be admissible on the capital expenditure covered within the original cost of the project subject to production of the receipts of the actual taxes paid.

24. In view of the above discussion, the claims of the petitioner are decided as under:-

Sl. No	Reason for cost Increase	Decision
1.	Additional expenditure towards IDC on loans during extended construction period of 17 months 19 days.	Allowed subject to submission of the information required under Para 15 of this order.
2.	Additional expenditure towards overhead cost	Not allowed
3.	Additional expenditure towards increase in afforestation rates post bid dead line as prescribed by MoEF.	Allowed subject to the production of documents in Para 17
4.	Additional expenditure towards extraordinary efforts made to complete line in the forest area in less than 5 months.	Not allowed
5.	Additional expenditure towards price variation and margin money on account of delay in delivery of conductor due to delay in commission of the project.	Not allowed
6.	Additional Expenditure on account of increase in quantity of materials used due to unforeseen issues on account of delay in grant of section 164 authorisation.	Not allowed
7.	Additional expenditure towards increase in forest area on account of change in line route due to delay in issuance of Section 164 authorisation.	Not allowed
8.	Additional expenditure towards taxes and duties, especially on account of change in excise duty and service tax post the bid dead line.	Allowed subject to the condition laid down in Para 23

25. The provisions regarding relief on account of Change in Law is provided in Article 12.2.1 of the TSA which is extracted as under:-



*“12.2.1 During Construction Period: During the Constriction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:*

*For every cumulative increase/decrease of each Rupees Five Crores Fifty Lakhs (Rs5,50,00, 000/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non-escalable Transmission Charges shall be an amount equal to 0.32 percent (0.32) of the Non-Escalable Transmission Charges.*

*12.2.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2 and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to rights of appeal provided under applicable law.”*

As per the above provision, the party affected by Change in Law and claiming increase in the cost of the project in the transmission charges is entitled for increase in non-escalable transmission charges which shall be equal to 0.32% of non-escalable transmission charges for every cumulative increase of Rs. 5,50,00,000/- in the cost of the project upto Scheduled COD. The petitioner is entitled for relief for Change in Law in terms of the above provisions.

26. The petition is disposed of in terms of the above.

**Sd/-**  
**(Dr. M. K. Iyer)**  
**Member**

**Sd/-**  
**(A.S. Bakshi)**  
**Member**

**Sd/-**  
**(A.K. Singhal)**  
**Member**

**Sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**