

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 199/MP/2018

**Coram:
Shri P. K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 11th March, 2019

In the matter of:

Petition under Sections 63 and 79(1)(f) of the Electricity Act, 2003 read with the statutory framework and Article 12 of the Transmission Service Agreement dated 10.6.2015 executed between Maheshwaram Transmission Limited and its Long Term Transmission Customers for claiming compensation due to Changes in Law.

And

In the matter of:

Maheshwaram Transmission Limited
F-1, Mira Corporate Suits,
1 & 2, Ishwar Nagar, Mathura Road,
New Delhi-110065

.... Petitioner

Versus

1. Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO),
NPKRR Malligai, 144 Anna Salai,
Chennai- 600002
2. Bangalore Electricity Supply Company Limited (BESCOM),
KR Circle, Bangalore-560001
3. Gulbarga Electricity Company Limited (GESCOM),
Station main road, Gulbarga-585102
4. Hubli Electricity Supply Company Limited (HESCOM),
Navanagar, PB Road,
Hubli-580025, Karnataka
5. Mangalore Electricity Supply Company Limited (MESCOM),
Paradigm Plaza, AB Shetty Circle,
Mangalore-575001
6. Chamundeshwari Electricity Supply Company Limited (CESCOM),
927, LJ Avenue, Ground Floor,
New Kantharajurs Road, Sarawathipuram,
Mysore-570009

7. KERALA State Electricity Board Limited,
8th Floor, Vaidyuthi Bhawanam,
Pattom, Thiruvanthapuram-695004

8. Electricity Department, Govt. of Puducherry,
137, N.S.C. Bose Salai,
Puducherry-605001

9. Electricity Department, Govt. of Goa (GED)
Vidyut Bhawan, Panaji,
Goa-403001

10. Southern Power Distribution Company of Andhra Pradesh Limited,
D. No.-19-13-65/A,
Srinivasapuram, Corporate Office,
Tiruchanoor Road, Tirupati-517503

11. Eastern Power Distribution Company of Andhra Pradesh Limited,
P&T Colony, Seethamadhara,
Visakhapatnam-530013

12. Northern Power Distribution Company of Telangana Limited,
H. No. 2-5-3, 1/2, Vidyut Bhawan,
Corporate Office, Nakkal gutta,
Hanamkonda, Warangal-506001

13. Southern Power Distribution Company of Telangana Limited,
6-1-50, Corporate Office,
Mint Compound, Hyderabad-500063

14. Power Company of Karnataka Limited (PCKL),
5th Floor, KPTCL Building,
Kaveri Bhawan, Bangalore-560009

ORDER

The present Petition has been filed by Maheshwaram Transmission Limited (MTL) under Sections 63 and 79 (1) (f) of the Electricity Act, 2003 (hereinafter referred to as the 'Act'), seeking compensatory and declaratory reliefs under Article 12 of the Transmission Services Agreement dated 10.6.2015 (TSA) on account of change in law events, which have adversely affected the construction and operation of the project with the following prayers:

“(a) Admit and allow the present Petition.

(b) Declare that the unforeseen escalation in compensation payable to landowners subsequent to the bid deadline by Orders being Lr. No. G1/3816/2016 dated 05.11.2016, as issued by the Collector, Rangareddy district and End. No. G1/25/2017 dated 20.04.2017, as issued by the District Collector, Sangareddy district constitute a Change in Law in accordance with Article 12 of the TSA;

(c) Declare that the increase in the taxes on account of promulgation of GST Laws, constitute a Change in Law in accordance with Article 12 of the TSA;

(d) Grant an appropriate increase in transmission tariff to the Petitioner so as to offset the adverse impact of the Change in Law Events.”

2. The Petitioner, Maheshwaram Transmission Limited (MTL) is a fully owned subsidiary of Sterlite Grid 3 Limited (SGL) which was selected as a successful bidder through the International tariff based competitive bidding process under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the ‘Act’) to establish the following transmission systems on Build, Own, Operate and Maintain basis and to provide transmission service to the Long Term Transmission Customers (LTTCs) of the project.

(a) Maheshwaram (PG)- Mahabubnagar 400 kV D/C Line (MM Line), along with 2 No. of 400 KV line bays at Mahabubnagar S/S of TSTRANSCO; and

(b) Nizamabad-Yeddumailaram (Shankarpalli) 400 kV D/C Line (NS Line) along with 2 No. of 400 kV line bays at Yeddumailaram S/S of TSTRANSCO.

3. MTL approached the Commission for grant of transmission licence in Petition No. 218/TL/2015 and for adoption of tariff of the transmission system in Petition No. 219/ADP/2015. The Commission in its order dated 23.11.2015 in Petition No. 218/TL/2015 granted licence to MTL for inter-State transmission of electricity and in order dated 24.11.2015 in Petition No. 219/ADP/2015 adopted the tariff of the transmission system.

4. As per the TSA, the transmission lines were to be completed and commissioned within 34 months from the effective date. Effective date has been defined as the later of the dates of (i) the execution of the TSA, (ii) acquisition of the SPV by the selected bidder, and (iii) submission of Contract Performance Guarantee on behalf of the TSP. Accordingly, the effective date is the date of signing of the Share Purchase Agreement i.e. 20.8.2015 and the date of scheduled COD is 20.6.2018. The Petitioner has submitted that it has completed the construction of the transmission lines in advance on 14.10.2017 and 15.12.2017 respectively and conducted the trial run of both the transmission lines on the same date.

5. The Petitioner has submitted that as per Article 12 of the TSA, an event constitutes a change in law if it occurred after the date which is seven days prior to the bid deadline which is 22.9.2014. Therefore, cut- off date for considering the claims under change in law is 15.9.2014. The Petitioner has submitted that after the cut-off date, the following change in law events have significantly increased the cost of the project during the construction period:

(a) Promulgation of new set of compensation guidelines for the reorganized Rangareddy and Sangareddy districts in the State of Telangana; and

(b) Promulgation of GST Laws with effect from 1.7.2017.

6. The Petitioner has submitted that due to change in law events, the Petitioner has incurred the following additional expenditure:

Particulars	As on cut-off date (15.9.2014)	As on the date of promulgation	Additional payments/costs (Rs. in crore)
Order for compensation	As per the Indian Telegraph Act, 1885	Rs. 6,06,60,669	6,06,60,669

parameters being L.No. G1/3816/2016 dated 5.11.2016			
Order for compensation parameters being End No. G1/125/2017, dated 20.4.2017	As per the Indian Telegraph Act, 1885	7,08,19,991	7,08,19,991
Promulgation of GST Laws w.e.f 1.7.2017	Nil		1,27,00,000

7. The Petitioner has submitted that the impact of increase in the amount of compensation payable in the Rangreddy and Sangareddy districts as well as levy of GST laws on the capital cost of the project is Rs. 14.42 crore. As per Article 12.2.1 of the TSA, the Petitioner is entitled to claim the increase in the cost of the project for every cumulative increase of Rs. 1.24 crore in the cost of the project.

8. After admitting the Petition, notices were issued to the Respondents to file their replies.

9. Reply to the Petition has been filed by TANGEDCO and the Petitioner has filed Rejoinder to the same.

10. TANGEDCO in its reply dated 4.10.2018 has submitted as under:

(a) The compensation granted by the District Collectors of Rangareddy and Sangareddy Districts is not in line with the guidelines dated 15.10.2015 issued by the Ministry of Power, Government of India for determining compensation using uniform methodology throughout the country towards “damages” as stipulated in Section 67 and 68 of Act read with Section 10 and 16 of the Indian Telegraph

Act, 1885 which will be in addition to the compensation towards normal crop and tree damages. Since, the compensation granted was not in line the guidelines issued by MoP, the Petitioner should have approached Hon'ble High Court for re-fixing the compensation as per the guidelines of MoP.

(b) The Petitioner being the TSP is responsible for paying any compensation on account of the damages to the land owners due to construction of the transmission lines. The petitioner has accounted all such expenditures during the bidding.

(c) Article 5.1.5 of the TSA provides that in case the project involves any resettlement and rehabilitation, the resettlement and rehabilitation package will be implemented by the State Government authorities, for which the costs is to be borne by the TSP and no changes would be allowed in the transmission charges on account of any variation in the resettlement and rehabilitation cost. Therefore, the Petitioner cannot pass on the burden and liability on the LTTCs and should comply with the provisions of the TSA. The Petitioner has failed to act diligently and is now attempting to shift the responsibility.

(d) The Petitioner has not placed on record the details regarding compensation paid towards crop and tree damages with details of beneficiaries, along with receipt for the compensation paid towards tower location area and Line corridor and details of beneficiaries who are yet to receive the compensation towards tower location area and Line corridor.

(e) The Petitioner is liable to complete the project within a period of 34 months from the effective date of 20.8.2015. The project was commenced on

20.8.2015 and majority of supply and erection works were completed before the effective date of GST i.e. 1. 7.2017. The trial operations of NS line and MM line were completed by the Petitioner on 14.10.2017 and 15.12.2017 respectively. Therefore, GST is not applicable for the portions of project like supply of materials, laying of foundation, erection of towers and stringing of lines which were completed ahead of 14.10.2017 and 15.12.2017.

11. The Petitioner in its rejoinder dated 17.10.2018 to the reply filed by TANGEDCO has submitted as under:

(a) With regard to the contention of TANGEDCO that compensation determined by the District Collectors is not in accordance with the guidelines dated 15.10.2015 issued by the Ministry of Power and the Petitioner should have approached the appellate authority, there is no requirement under the TSA which mandates the Petitioner to challenge the validity of a law before it can claim change in law relief. The Petitioner is only required to establish that there is change in law after the cut-off date and therefore, the Petitioner is entitled to relief on account of promulgation of new set of compensation guidelines for the reorganized Rangareddy and Sangareddy districts in the State of Telangana.

(b) The Petitioner's obligation is restricted to factoring in the costs of establishing the Project as per the law prevalent at the time of bidding. The Petitioner cannot be expected to foresee and factor for all changes in any laws for the entire Project life. Article 5.1.4(d) does not stipulate that the Petitioner must bear the cost of all changes in the rates of legally determined compensation.

(c) The Commission, vide order dated 10.1.2018 in Petition No. 1/SM/2018, has held that in all cases concerning transmission licensees who have executed standard form of TSAs as a result of a Tariff Based Competitive Bidding Process, the promulgation of GST Laws would be Change in law in accordance with the TSA where the cut-off date under the TSA is prior to 30.6.2017. The Petitioner's case is covered by the said order dated 10.1.2018. Since, the said order has not been challenged, it has attained finality and is therefore, binding on all the parties.

12. During the course of hearing, learned counsel for the Petitioner submitted that TANGEDCO in its reply has contended that since the rates of compensation was not in accordance with the guidelines issued by Ministry of Power (MoP) vide notification dated 15.10.2015, the Petitioner should have approached the Hon`ble High Court for re-fixing the compensation as per the guidelines issued by MoP. Learned counsel for the Petitioner submitted that the Petitioner is under no obligation under TSA to challenge the validity of a law before claiming the relief of change in law event. The Petitioner is only required to establish that change in law event has occurred after the cut-off date.

13. Learned counsel for TANGEDCO submitted that TANGEDCO is not pressing upon the argument that the Petitioner should have approached the High Court regarding fixation of the compensation. Learned counsel for TANGEDCO submitted that as per Article 5.1.4 (d) of the TSA, the Petitioner was entitled to seek access to the site and other places where the Project is being executed, at its own costs, including payment of any crop compensation or any other compensation as may be required. Therefore, the Petitioner cannot pass the burden and liability on the LTTCs. Learned counsel submitted that as per Article 5.1.5 of the TSA, in case the Project involves any

resettlement and rehabilitation, the resettlement and rehabilitation package will be implemented by the State Authorities, for which the cost is to be borne by the TSP and no charges would be allowed in the transmission charges on account of any variation in the resettlement and rehabilitation cost. Learned counsel for TANGEDCO further submitted that the Petitioner's claim on account of promulgation of GST is not sustainable as the construction of Nizamabad Yeddumailaram (Shankarpalli) transmission line and Maheshwaram-Mahabubnagar transmission line were completed on 14.10.2017 and 15.12.2017, i.e. soon after the promulgation of GST. Therefore, GST is not applicable for the portions of project like supply of materials, laying of foundation, erection of towers and stringing of lines which were completed ahead of 14.10.2017 and 15.12.2017.

14. The Commission vide RoP dated 24.10.2018 directed the Petitioner to submit the following information:

- (a) Original estimate cost and tax portion included therein;
- (b) Auditors Certificate on computation for the increase in tax separately for service tax/ GST and excise duty worked out on the original estimated cost as well as on actual cost incurred after deducting the exclusions for which these are not applicable; and
- (c) Clarify, whether any of the taxes which were applicable at the time of bid which have been subsumed/ abolished with GST. If so, submit Auditor Certificate on savings of such taxes.

15. The Petitioner, vide its affidavit dated 6.11.2018, has submitted the information called for as under:

- (a) With regard to original estimate cost and tax portion included therein, the Petitioner has submitted that the original cost estimate for the Project was Rs. 345 crore. As against the original cost of the Project, the Petitioner has actually

incurred around Rs. 387.75 crore. The Petitioner has also placed on record a copy of the Auditor's Certificate dated 6.11.2018 certifying the original cost of the Project estimated by the Petitioner.

(b) With regard to Auditors Certificate on computation for the increase in tax separately for service tax/ GST and excise duty worked out on the original estimated cost as well as on actual cost incurred after deducting the exclusions for which these are not applicable, the Petitioner has submitted that the total impact upon the Petitioner due to the increase in taxes is around Rs. 1.27 crore. The Petitioner has submitted that the Auditor's certificate dated 6.11.2018 furnishing the detailed computation for the increase in tax separately for Service Tax and GST has been worked out on the original estimated cost after deducting the estimated exclusions for which the taxes are not applicable.

(c) With regard to clarification as to whether any of the taxes which were applicable at the time of bid which have been subsumed/ abolished with GST, the Petitioner has submitted that there are no savings on account of subsumed/ abolished taxes due to promulgation of GST as the overall tax under GST has only increased.

Analysis and Decision

16. We have considered the submissions of the Petitioner, TANGEDCO and perused the documents on record. The following issues arise for our consideration:

(a) Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission?

(b) Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA? and

(c) What relief should be granted to the Petitioner in the light of the above issues?

The above issues have been dealt with in the succeeding paragraphs.

Issue No. 1. : Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission?

17. The Petitioner has claimed relief under Article 12 (Change in Law) of the TSA. Article 12.3.1 of the TSA provides as under:

“12.3 Notification of Change in Law Event

12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Lead Long Term Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.

12.3.2 The TSP shall also be obliged to serve a notice to Lead Long Term Transmission Customer even when it is beneficially affected by a Change in Law.

12.3.3 Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the TSP.”

18. Under Article 12.3 of the TSA, if the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law, it shall give notice to the Lead Long Transmission Customers of any event of Change in Law as soon as reasonably practicable after becoming aware of the same. It further provides that any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide amongst other things, precise details of the Change in Law and its effect on the TSP. Such notice shall be a pre-condition to the affected party's entitlement to claim relief under the TSA.

19. The Petitioner gave Notice dated 18.4.2018 to the LTTC's including lead LTTC regarding land and corridor compensation in the districts of Rangareddy and Sangareddy about introduction of Goods and Services Tax w.e.f. from 1.7.2017.

However, no response was received by the Petitioner from the LTTCs in this regard. Thereafter, the Petitioner has approached the Commission by filing the present petition. In our view, the Petitioner has complied with the requirement of TSA regarding prior notice to the LTTCs regarding occurrence of change in law before approaching the Commission.

Issue No. 2 : Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?

20. The provisions of the TSA with regard to change in law are extracted as under:

“12.1 Change in law

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

- The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- A change in the interpretation or application of any Law by Indian Governmental Instrumentality having the legal power to interpret or apply such Law, on any Competent Court of Law;
- The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier:
- A change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents Clearances and Permits;
- Any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP:
- any change in the Acquisition Price; or
- any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.

21. A combined reading of the above provisions would reveal that the Commission has the jurisdiction to adjudicate upon the disputes between the Petitioner and the Respondents with regard to "Change in Law" which occur after the cut-off date which is seven days prior to the bid deadline. The events broadly covered under Change in Law are following:

- (a) Any enactment, coming into effect, adoption, promulgation, amendment, modification or repeal, of any Law;
- (b) Any change in interpretation of any Law by a Competent Court of law, or Indian Governmental Instrumentality having the legal power for such interpretation; or
- (c) Imposition of a requirement for obtaining any consents, clearances and permits which was not required earlier;
- (d) A change in terms and conditions prescribed or inclusion of any new terms and conditions for obtaining consents, clearances and permits or the inclusion of new terms and conditions for obtaining such consents, Clearances and Permits;
- (e) Any change in the Commission`s Transmission Licence Regulations;
- (f) Any change in the Acquisition price;
- (g) Any change in tax or introduction of any tax made applicable for providing transmission service by the TSP as per the terms of the agreement.

22. In the light of the provisions of change in law, the claims of the Petitioner which have occurred after cut off date during the construction and operating period have been examined as under.

(A) Promulgation of new set of compensation guidelines for the reorganized Rangareddy and Sangareddy districts in Telangana.

23. The Petitioner has submitted that on 11.10.2016, the Government of Telangana, vide the GO.Ms. No. 250, Revenue (DA-CMRF) Department, notified the reorganized

Rangareddy district and the Revenue Divisions, mandals, and villages therein. Pursuant to the said notification, the mandals which were earlier part of other districts came under the Rangareddy district. The Petitioner has further submitted that prior to the aforementioned reorganization, the MM Line was passing through various mandals falling under the Mahabubnagar, Vanaparathi Nagar, Kurnool and Rangareddy districts and the NS Line was passing through various mandals falling under the Nizamabad Shankarpalli, Kamareddy, Medak, Sangareddy and Rangareddy districts. As a result of the reorganization of the Rangareddy district, some of the mandals, which were earlier under the Mahabubnagar district, came under the reorganized Rangareddy district. Consequently, the guidelines/ notifications governing payment of compensation to land owners in lieu of constructing the transmission elements in Rangareddy district also became applicable to these mandals.

24. The Petitioner has submitted that it was faced with unjustified and unrealistic demands for compensation from the land owners in lieu of the construction of its transmission elements. Being aggrieved by such demands, the Petitioner filed a representation before the Collector, Rangareddy district, seeking orders with respect to the payment of compensation. The District Collector, Rangareddy district under its letter No. G1/3816/2016 dated 5.11.2016 issued an order determining the compensation to be awarded to the land owners.

25. The Petitioner has submitted that prior to the promulgation of the above order dated 5.11.2016, the land owners in the mandals which were earlier under the Mahabubnagar district were being paid crop compensation as per the provisions of the Indian Telegraph Act, 1885. Therefore, there was significant increase in the amount of

compensation to be paid by the Petitioner to the land owners pursuant to the reorganization of the Rangareddy district and the subsequent order issued by the Collector, Rangareddy district.

26. The Petitioner has submitted that land owners of Sangareddy district raised the demand for compensation for obtaining the Right of Way for the transmission elements in Sangareddy district. The Petitioner filed a representation before the District Collector, Sangareddy district. In response to the same, the District Collector, Sangareddy district, requested the CMD, TRANSCO, T.S., Hyderabad for fixing the guidelines for compensation. The Chief Engineer, Projects-I, TS TRANSCO communicated the compensation guidelines prevalent in the Rangareddy district to the District Collector, Sangareddy district. Accordingly, vide the communication being End. No. G1/25/2017 dated 20.04.2017, the District Collector, Sangareddy district notified and adopted the same compensation guidelines which were in force in the Rangareddy district for Sangareddy district after relying upon the orders issued by the Collector, Rangareddy district under letter No. G1/115/2014 dated 8.8.2014 and letter No. G1/3816/2016 dated 5.11.2016.

27. The Petitioner has submitted that pursuant to the orders dated 5.11.2016 and 20.4.2017 issued by the Collector, Rangareddy district and the District Collector, Sangareddy respectively, the compensation was payable by the Petitioner to farmers and land-owners in the Rangareddy and Sangareddy districts based on the parameters specified in the order dated 8.8.2014 issued by District Collector, Rangareddy.

28. According to the Petitioner, due to the above, the total compensation of Rs. 13,14,80,660 became due to be paid to the land owners. Out of the same, an amount of

Rs. 6,06,60,669 has been paid in Rangareddy district and Rs.7,08,19,991.77 in Sangareddy district on account of the escalation in the parameters for compensation payable in the aforementioned districts and that the Petitioner is required to be compensated for the same.

29. TANGEDCO has submitted that there is need to examine whether the impact on the project cost on account of orders issued by Government of Telangana vide GO MS No. 250, (DA-CMRF) Department dated 11.10.2016 is required to be recovered from the LTTCs under Change in Law. TANGEDCO has submitted that the orders of the District Collectors of Rangareddy and Sangareddy districts are not in line with the guidelines issued by the Ministry of Power, Gol, vide ref.No.3/7/2015-Trans. dated 15.10.2015 for determining compensation using uniform methodology throughout the country towards “damages” as stipulated in Sections 67 and 68 of the Electricity Act, 2003 read with Sections 10 and 16 of the Indian Telegraph Act, 1885 which will be in addition to the compensation towards normal crop and tree damages. TANGEDCO has submitted that the Petitioner should have approached the appellate authority / Hon’ble High Court for refixing the compensation as per the guidelines of MoP. TANGEDCO has submitted that Articles 5.1.4 (d) and 5.15 of the TSA provide that the TSP is responsible for paying any compensation on account of the damages to the land owners due to construction of the transmission lines. Since, the Petitioner has accounted all such expenditures during the bidding, it cannot pass on the burden and liability on the LTTCs and should comply with the provisions of the TSA. The petitioner has failed to act diligently and is now attempting to shift the responsibility on to LTTCs.

30. The Petitioner vide its rejoinder has submitted that TANGEDCO has not demonstrated how the District Collector Orders are contrary to the MoP guidelines. On this ground alone, TANGEDCO's contention deserves to be rejected in its entirety. The Petitioner has submitted that the contention of TANGEDCO seems to be premised on the belief that any change in law claim can be validly made only if the law in question is challenged and finally upheld by the highest judicial forum. Such an interpretation of change in law clauses would result in an absurdity and is belied by several orders of this Commission on materially similar change in law claims. The Petitioner has argued that there is no requirement under the TSA or under law for the Petitioner to challenge the validity of a law before it can claim change in law relief and all which is to be established is that there is a change in law after the cut-off date. The Petitioner's priority is to complete the Project in a timely manner and provide transmission services, not to run from pillar to post challenging the validity of every law that has a monetary impact on it. It was open to TANGEDCO to challenge the relevant District Collector Orders, which were in the public domain. The Petitioner is obligated to comply with any law, which is either specific to the geographical location of the Petitioner's Project or generally applicable across the country. The Petitioner has duly completed the Project well within the stipulated timelines. According to the Petitioner, Guidelines issued by the Ministry of Power being No. 3/7/2015-Trans dated 15.10.2015 are in the nature of a guiding document which is evident from the language of the said MoP Guidelines and it does not preclude the State Government to adopt different norms/rate.

31. With regard to the contention of TANGEDCO that as per Article 5.1.4 (d) of the TSA, any compensation amounts payable to the land owners for constructing the Project ought to have been factored in the bid by the Petitioner, the Petitioner has

submitted that its obligation is restricted to factoring in the costs of establishing the Project as per the law prevalent at the time of bidding. The Petitioner cannot be expected to foresee and factor for all changes in any laws for the entire Project life. If TANGEDCO's argument were to be accepted, Article 12 of the TSA would be rendered a nullity and no event would ever qualify as a change in law event. Article 5.1.4(d) does not stipulate that the Petitioner must bear the cost of all changes in the rates of legally determined compensation. The District Collectors have passed their orders in accordance with law and determined area-wise compensation rates for tower location and line corridor areas.

32. We have considered the submissions of the Petitioner and TANGEDCO. According to the Petitioner, its project elements i.e Nizamabad-Shankarpalli transmission line (140 kms) passes through districts of Nizamabad Shankarpalli, Kamareddy, Medak, Sangareddy and Rangareddy. The Masheshwaram-Mahboob Nagar transmission line (90 km) passes through districts of Mashoob Nagar, Vanaparathi, Nagar Karnul and Rangreddy. Special Chief Secretary, Govt. of Telangana vide its order dated 11.10.2016 issued the notification re-organising the Rangareddy district. Relevant portion of the said notification dated 11.10.2016 is extracted as under:

“Notification
Form II

In exercise of the powers conferred under Section 3 of the Telangana District (Formation) Act, 1974, the Governor of Telangana. In the interest of better administration and development of the area concerned, after taking into consideration of the objections and suggestions received from various people and public representatives, by altering the boundaries of existing District (s), i.e as specified in Section 3 of the Central Act No. 6 of 2014 and its Revenue Divisions and Mandals and Villages do hereby notify, the new Districts, Revenue Divisions and Mandals and Villages as specified in the Schedules below, with effect from 11.10.2016.

Formation of new Districts, Revenue Divisions, Mandals and Villages will not have any effect on the existing elected bodies of Zilla Parishads, Mandal Parishads and Gram Panchayats and their jurisdiction over the areas covered by the existing districts, as specified in Section 3 of the Central Act No. 6 of 2014 till the new ZPs, MPs and GPs are constituted, in accordance with law.”

33. The Petitioner made a representation dated 1.10.2016 before the Collector, Rangareddy district seeking order with regard to payment of the compensation. The Collector vide its letter dated 5.11.2016 issued an order determining the compensation to be awarded to the land owners. The above letter is extracted as under:

“Government of Telangana
Ranga Reddy District

Lr. No. G1/3816/2016 Dated 5.11.2016

Sub: Construction of 400 kV Transmission Lines-Maheshwaram Transmission Limited (MTL) is constructing 400 k V D/C Transmission lines from Nizamabad to Shankarpally (Yeddumailram) & Maheshwaram to Mahabubnagar- To Co-ordinate and facilitate to complete the work-Regarding.

Ref:- 1.R/o Neelesh Mehta, AGM Projects, Sterlite Power, Maheshwaram Transmission Limited, Hyderabad, dated 1.10.2016.
2. Collector, R.R. District, Proceedings No. G1/115/2014, dated 8.8.2014.
3. This office Lr. Even dated 28.10.2016
4. Representation from Sri M.Mohan Reddy & others for Devunipadakal Village, Talakondapally Mandal dated 29.10.2016.
5. Representation of Devunipadakal Village, Talakondapally Mandal dated 3.11.2016.

I invite your attention to the reference 1st cited, wherein a representation was filed by Sterlite Power, Maheshwaram Transmission Limited (MTL) stating that Maheshwaram Transmission Limited (MTL) is constructing 400 kV D/C Transmission Lines from Nizamabad to Shankarpally (Yeddumailaram) & Maheshwaram to Mahabubnagar District. During construction of the subject transmission lines they are facing acute way leave problem with huge un-realistic compensation demand from different land owners. Therefore, requested to provide orders, if any issued relating to payment of compensation in this regard.

It is reference 4th&5th cited, the villagers of Devunipadaka (V) of Talakondapally (M) have also filed representations for payment of Compensation for the lines & towers laid in their land.

In this regard it is informed that, vide reference 2nd cited, the then Collector, Rangareddy District issued proceedings vide No. G1/115/2014 dated 8.8.2014

by fixing the compensation to the farmers who are affected due to the laying of the 400 k V Towers and 400 k V Transmission Lines in their land by T.S Transco as per the Electricity Act, 2003 and Indian Telegraph Act, 1885 (copy enclosed).

The Government of Telangana vide G.O.Ms No. 250, Revenue (DA-CMRF) Department dated 11.10.2016 have issued orders for reorganization of districts in Telangana State and Talakondapally, Kothus, Kondurg, Kadtal, Keshampet, Amangal, Madgul, Chowdergudem, Shadnagar from erstwhile Mahbubnagar District were included in Rangareddy District.

Therefore, the proceedings issued by the then Collector, Rangareddy vide No. G1/115/2014, dated 8.8.2014 will now apply to the reconstituted Rangareddy District including the mandals from erstwhile Mahabubnagar district.

Therefore, all the Revenue Divisional Officers/Tehsildars in Rangareddy District are hereby directed to follow the above instructions in all mandals of the district.

Sd/-
Collector
Rangareddy District”

34. It is noted from the above that the Collector, Rangareddy District directed that the order dated 8.8.2014 issued by District Collector & District Magistrate, Rangareddy District would apply to the reconstituted Rangareddy District including the mandals from erstwhile Mahabubnagar district. Relevant portion of the said order dated 8.8.2014 is extracted as under:

**“PROCEEDINGS OF THE COLLECTOR & DISTRICT MAGISTRATE
RANGA REDDY DISTRICT**

SRI. N. SREDHAR, I.A.S

No. G1/115/2014

Dated: 8.8.2014

Sub: ROW- Right of way-R.R. District- 400 kV Power Transmission Lines through lands in HMDA/GHMC in Ranga Reddy District-Diminution of land value- Payment of compensation to the affected farmers covering all the damages- Committee Constituted for fixing the compensation to the affected farmers- Orders issued- Regarding.

Ref:- 1. R/o/ ChimpulaSatyaNarayana Reddy- Secretary Federation of Farmers Association Hyderabad, dated-6.1.2014.

2. D.O. Lr. No. CE/ 400kV-1/ Const/ D.No.46/2014, dated-11.2.2014 from Chairman & Managing Director, Transmission Corporation of Andhra Pradesh Limited.

3. Lr. No. SE/ 400kV/ L&SS/ FC/MC. Hyd/ F.-NWSL/ D. No. 1223/13, dated 7.3.2014 from Superintending Engineer, 400 kV/ L&S/ FC/ MC/ Hyd.
4. Superintending Engineer, Operation, R.R. South Circle, Lr. No. SE/ Op/ RRC (S) Tech/ D. No. 234/14, dated 10.6.2014.
5. D.O. Lr. No. CE/400kV-I/ Const/D/ No. 163/2014, dated 23.4.2014 from Chairman & Managing Director, Transmission Corporation of Andhra Pradesh Limited.
6. Minutes of the Meeting held on 11.7.2014, 14.7.2014, 18.7.2014, 24.7.2014 and 31.7.2014.

ORDER:

In the reference 1st cited the Federation of Farmers Association Hyderabad submitted a representation stating that the valuable lands of the farmers in the Mandal of Ranga Reddy District are being affected due to construction of 400 k V High tension Transmission lines by TS TRANSCO in their land located in between Shankarpally and Yacharam Mandals of Ranga Reddy District and requested for payment of suitable compensation to the affected farmers.

In the reference 2nd cited, Chairman and Managing Director of Transmission Corporation of Telangana State Limited informed that they are constructing 400 k V Line from Suryapet 400 k V SS to Shankarpally 400 KVSS which is passing through Yacharam, Kandukur, Shabad, Chevella and Shankarpally Mandals of Ranga Reddy District. There is no necessity for acquiring the land or to take the consent of the owner/occupier before laying transmission lines as per the Act. However, compensation towards damaged crops/trees is being paid to the land owner from TS Transco as per the assessment made by Revenue Authorities following the procedure in vogue:

In this context, a committee was formed under the Chairmanship of Dr. M.V.Reddy, Joint Collector-II, Ranga Reddy District with TS TRANSCO, Agricultural Department Officials in response to the representations from Federation of Farmers Association and other various farmers organization to resolve the issue of farmers and duly negotiating with their to fix up the compensation to the farmers who are affected to the laying the 400 k V Towers and 400 k V Transmission lines in their land by T.S Transco.

The Committee had conducted several meetings with the affected farmers and also with the representatives of the farmer`s organization and examined their grievances and other aspects thoroughly.

After elaborate discussions and examining their claims especially, the location of their land in and around Hyderabad City in HMDA areas cultivation of Vegetables, Flowers, orchids, etc. the Committee taking the following parameters into consideration and arrived at the compensation covering all the damages caused to the farmers, in addition to Crop damages.

1. The 400 KV lines are passing in Ranga Reddy District through Shankarpally, Chevella, Shabad, Maheshwaran, Kandukur and Yacharam Mandals. All these Mandals are covered under HMDS limits, where there is a possibility of rapid development in future resulting in escalation of land values, which are already high.
2. Since many of the lands are covered under residential zones/near to the housing lay-outs, the prevailing value of land is found to be very high.
3. Many of the farmers are the small land holders solely depending on the lands for their livelihoods.

4. Even the selling value of the rest of the land after laying the 400 KV towers will come down drastically. Keeping in view the payout/construction restrictions by HMDA/DTCP.

The Committee after through examinations of all above aspects has come to the conclusion and arrived at the following compensations to the farmers for laying 400 KV towers and Transmission lines in Ranga Reddy District jurisdiction.

The land damage for placing the tower is broadly categorised in two types depending on the area covered by the tower.

The type of land is also broadly categorised in two types depending on the nearness to the Highway roads (upto 0.50 KM distance) and interior lands.

After careful examination of the recommendations of the Committee and keeping in view the Section 164 of the Electricity Act, 2003 read with section 10 of the Indian Telegraph Act, 1855 and Part VIII Section 68, sub section 6 of the IE Act, 2003.

The following compensation amounts are arrived based on the above parameters as per the committee report dated 07.08.2014.

A. FOR TOWER LOCATION AREA

Sl. No.	Type of land	Category-I. The area of damage upto 350 sq. yds., (A.B&C Type tower)	Category-II. Area of damage above 350 sq. yds., (D Type tower)
1.	a) Land facing to High Ways, (upto 0.5 km distance) b) Nearer to the Housing layouts /Indl., Areas/ Commercially developed Area. c) Lands through which more than one transmission line is passing. Rate @ Rs. 1000/- per sq. yrd.	3.50 lakhs per tower	4.5 lakhs per tower
2.	Interior lands (All other lands) Rate @ Rs. 700 per sq. yards.	2.45 lakhs per tower	3.15 lakhs per tower

B: FOR LINE CORRIDOR AREA:

The farmers lands even underneath the transmission line conductors between tower to tower, are affected, where he can't further construct any structures and even they can't grow any long trees.

However to cover all the damages to the land owner under the line corridor for a width of 20 meters (10 meters on either side from the centre of the line) for the existing span between tower to tower shall be assessed at Rs. 60 per Sq. Meter and paid to the respective land owners as per the extent of land affected.

If any fruit bearing tree other than crops are required to be cut under the transmission line, conductors, the compensation shall be paid extra based on the assessment by the Horticulture department.

Therefore, the compensation amounts covering all the damages to the affected farmers in laying of 400KV transmission lines in HMDA / GHMC area of Ranga Reddy District by TS TRANSCO are hereby ordered for payment to the affected farmers as indicated above at Item A & B by the TS TRANSCO.

Sd/-
Collector
Rangareddy District”

35. The Petitioner has contended that prior to issue of notification dated 11.10.2016 by the Special Chief Secretary, Government of Telengana, the land owners in the mandals which were earlier under the Mahabubnagar district were being paid crop compensation as per the provisions of the Indian Telegraphs Act, 1885. However, pursuant to the re-organization of the Rangareddy district and order issued by the Collector, Rangareddy district, there was significant increase in the amount of compensation as per the above parameters.

36. Pursuant to the demand of compensation raised by the land owners for obtaining ROW for the transmission elements in Sangareddy district, the Petitioner made a representation dated 3.1.2016 to the District Collector, Sangareddy for fixation of compensation to be paid to the farmers/land owners whose lands are affected in laying transmission line. In response, the District Collector, Sangareddy vide its letter dated 20.4.2017 adopted the same compensation guidelines which were in force in the Rangareddy district for Sangareddy district after relying on the order dated 8.8.2014 and letter dated 5.11.2016 issued by the Collector, Rangareddy. Relevant portion of the said letter dated 20.4.2017 is extracted as under:

“In the reference 1st cited, the AGM, Projects Maheshwaram Transmission Limited has submitted a representation in this office stating that some of the land owners during the construction of 400 kV transmission lines are not allowing to work and demanding huge crop compensation and requested that the Collector & District Magistrate to fix up the compensation to be paid to the farmers/land owners whose lands are affected in laying aforementioned high tension line.

In this regard, vide references 2nd cited, the CMD, TRANSCO, T.S Hyderabad was requested to issue guidelines for fixing up the compensation.

The Chief Engineer, Project-I, TS TRANSCO, Vidyut Soudh, Hyderabad vide reference 3rd cited, has communicated the procedures followed by TS TRANSCO towards paying crop compensation. The procedure followed by TSTRANSCO for construction of Transmission lines is as follows:

- (i) and (ii)
- (ii) In HMDA/GHMC areas of Rangareddy districts, based on the proceedings issued by the District Collector, Rangareddy vide G1/115/2014, dated 8.8.2014 compensation amounts cover in all the damages to the affected farmers in laying of 400 k v transmission lines is being paid by TRANSCO.

The Chief Engineer, Project-I, TS TRANSCO has cited the Proceedings of District Collector, Rangareddy District vide No. G1/115/2014, Dated 8.8.2014. Further, it came to notice that, the subsequent Collector of Rangareddy also issued letter in this regard.

The guidelines issued by the Collector, Rangareddy District are as follows:

.....

In view of the above, taking the proceedings of District Collector, Rangareddy District, dated 8.8.2014, and letter dated 5.11.2016 into consideration, you may proceed further for construction of transmission lines duly sorting out the issues like compensation in the aforementioned manner.

Sd/-
District Collector
Sangareddy"

37. The question arises whether (i) Government of Telengana notification dated 11.10.2016 re-organising the Rangareddy district and the revenue divisions, mandals, and villages due to which certain mandals which were earlier under the Mahabubnagar district in the State of Andhra Pradesh came under the re-organised Rangareddy district, (ii) Letters dated 5.11.2016 and 20.4.2017 issued by the Collector, Rangareddy district and District Collector, Sangareddy respectively fixing the compensation for land owners, are covered under change in law provisions of the TSA. It is noted that Collector, Rangareddy district and District Collector, Sangareddy vide their letters dated 5.11.2016 and 20.4.2017 while disposing of the representations of the Petitioner fixing compensation for land owners to fulfil their demands, have relied upon the previous order dated 8.8.2014 issued by District Collector & District Magistrate, Rangareddy district.

38. In our view, Change in law relief is allowable if there is any imposition of a new requirement of obtaining any consents, clearances and permits which was not required earlier or a change in the terms and conditions prescribed earlier or introduction of any new terms and conditions for obtaining the consents, clearances and permits after the cut-off date. However, in the present case, at the time of bidding, the Petitioner was aware about the order dated 8.8.2014 issued by the District Collector & District Magistrate, Rangareddy district fixing the compensation for land owners. Based on the representation of the Petitioner that the landowners are demanding huge compensation, District Collector, Rangareddy District vide letter dated 5.11.2016 decided that the proceedings issued by the then Collector, Rangareddy vide No. G1/115/2014, dated 8.8.2014 will apply to reconstituted Rangareddy District including erstwhile Mahabubnagar district. After issue of the said letter, District Collector, Sangareddy District directed, vide its letter dated 20.4.2017, the Petitioner to pay the compensation as per the said order. It is noted that order dated 8.8.2014 was issued prior to the bid deadline i.e. 15.9.2014. Therefore, this cannot be considered as Change in terms and conditions of the consents, clearances and permits. Persual of the both letters reveals that the Collector, Rangareddy district and District Collector, Sangareddy did not change the base rate of compensation and directed the Petitioner to pay the compensation to land owners already prevailing before the bidding. Since, as on cut-off date i.e. 15.9.2014, there was already provision for compensation to land owners fixed by the District Collector, Rangareddy district vide its order dated 8.8.2014 which was followed by the Collector, Rangareddy district and District Collector, Sangareddy without any change. Since, there is no change in base rate of compensation, the letters dated 5.11.2016 and 20.4.2017 issued by the District Collector, Rangareddy district and

District Collector, Sangareddy district is not covered under change in law and therefore, claim in this regard is not allowable since, in the facts of the case, there is no change in rate of compensation.

(B) Promulgation of GST w.e.f. from 1.7.2017

39. The Petitioner has submitted that the Parliament and Legislative Assemblies, in order to introduce a unified indirect tax structure, has introduced a fresh set of taxation laws, which has replaced various Central and State level taxes, through the various enactments, namely (i) Central Goods and Services Tax, Act, 2017, (ii) Integrated Goods and Services Tax Act, 2017, (iii) Union Territories Goods and Services Act, 2017 and (iv) Goods and Services Tax (Compensation to States) Act, 2017. The Petitioner has submitted that the GST Laws came into effect from 1.7.2017. The Petitioner is a transmission licensee that has executed a TSA dated 10.6.2015 in accordance with tariff based competitive bidding process. Since, the cut-off date under the TSA was 15.9.2014. The promulgation of the GST Laws constitutes a Change in Law under the Petitioner's TSA which resulted in additional recurring and non-recurring expenditure.

40. The Petitioner has submitted that the Commission in its order dated 10.1.2018 in Petition No.1/SM/2018 has held that in all cases concerning transmission licensees who have executed TSAs as a result of a Tariff Based Competitive Bidding (TBCB) process, the promulgation of GST Laws would be a Change in law in accordance with the TSA where the cut-off date under the TSA is prior to 30.6.2017. The Petitioner has submitted that it has executed a TSA dated 10.6.2015 in accordance with a TBCB process. The Petitioner has submitted that since, the cut-off date under the TSA was 15.9.2014, promulgation of GST laws w.e.f. from 1.7.2017 constitutes a change in law event.

41. TANGEDCO vide its reply has submitted that the Petitioner's claim on account of promulgation of GST is not sustainable as the construction of Nizamabad Yeddumailaram (Shankarpalli) Line and Maheshwaram-Mahabubnagar Line were completed on 14.10.2017 and 15.12.2017 respectively, i.e. soon after the promulgation of GST. Therefore, GST is not applicable for the portions of project like supply of materials, laying of foundation, erection of towers and stringing of lines which were completed ahead of 14.10.2017 and 15.12.2017.

42. We have considered the submissions of the Petitioner and TANGEDCO. Change in Law has been defined in Article 12.1.1 as "the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP". Thus, any of the occurrences specified in the bullets under Article 12.1.1 which have occurred after the date which is seven days prior to the bid deadline and which result into any additional recurring or non-recurring expenditure to the TSP or income to the TSP shall be covered under Change in Law. This issue was considered by the Appellate Tribunal in its judgment dated 14.8.2018 in Appeal No. 119 of 2016 (M/s. Adani Power Rajasthan Ltd. Vs. Rajasthan Rajya Vidyut Vitran Nigam Limited) where a similar issue arose for interpretation in the context of PPA for generation and sale of electricity by a generating company to distribution companies. The relevant portion of the said judgment is extracted as under

"11. (c) Before discussing the issues there is a need to address a common issue raised by the Discoms related to allowance of tax under Change in Law in terms of the PPA. According to the Discoms that as per the 5th bullet of the Article 10.1.1 of the PPA change in tax or introduction of any new tax is only applicable to supply of power which also means sale of power if definition of supply is taken in terms of the Act. The Discoms have contended that if there is specific provision dealing with the tax under Change in Law then other provisions of Change in Law Article are not allowed to deal with the tax

and as such no other tax implications are allowed to be covered under Change in Law under the PPA. The Discoms have also relied on some judgements of Hon`ble Supreme Court on this issue. We have gone through the said judgements and we observe that according to the judgements relied by the Discoms, the taxes dealt in a particular clause of a contract then there is no scope for considering taxes under other clauses of a contract.

d) APRL has submitted that the generator undertakes many activities to ensure supply of power to the Discoms. APRL has relied on the judgement of Hon`ble Supreme Court in case of State of A.P. v. NTPC (2002) 5 SCC 203 wherein it has been held that the production (generation), transmission, delivery and consumption are simultaneous, almost instantaneous. According to the said judgement, the applicable taxes on inputs for generation of power can be construed to be taxes on supply of power. APRL has further contended that if the contention of the Discoms is accepted then the Change in Law provision would be applicable during the Operating Period and the applicability of the said provision will become redundant during Construction Period. There is some strength in the contention of APRL as there will be no applicability of Change in Law provisions if there are changes in tax/duties/levies etc. rates or imposition of new tax/duties/levies etc. during Construction Period and on input costs related to power generation.

(e) APRL has further contended that the reliance of the Discoms on the maxim „expressumfacitcessaretactium” meaning when express inclusions are specified, anything which is not mentioned explicitly is excluded is misplaced as the Hon`ble Supreme Court in case of Assistant Collector of Central Excise Calcutta Division v. National Tobacco Company of India Ltd. (1972) 2 SCC 560 has held that the rule of prohibition by necessary implication could be applied only where a specified procedure is laid down for performance of duty or where there is an express prohibition.

(f) The Discoms have also reproduced the definition of Change in Law under different PPAs under Section 63 of the Act. We have gone through the said provisions and we find that the other provisions of the PPA are similar to that in the other PPAs under Section 63 of the Act except the fifth bullet which is additional specifically covering tax on supply of power. The judgements of the Hon`ble Supreme Court relied upon by the Discoms were under different context and could not be equated to the scheme of power procurement by Discoms under Section 63 of the Act which is based on guidelines issued by GoI under different scenarios wherein the treatment of taxes depends upon the specific conditions of the RFP and tariff quotes by the bidders.

(g) In view of our discussions as above and after duly considering the earlier judgements of this Tribunal, we are of the considered opinion that any change in tax/levies/ duties etc. or application of new tax/levies/ duties etc. on supply of power covers the taxes on inputs required for such generation and supply of power to the Discoms.”

43. Therefore, as per the above judgment, “any change in tax/levies/ duties etc. or application of new tax/levies/ duties etc. on supply of power covers the taxes on inputs required for such generation and supply of power to the Discoms”. Similarly, any

change in taxes, duties or cess or imposition of new taxes, duties or cess covers the inputs required for providing transmission services. The transmission Project has been built by the Petitioner for the purposes of providing the "Transmission Service" to the various LTTCs with whom the Petitioner has entered into the TSA. The Petitioner cannot provide the transmission service without establishing the transmission project that in turn requires paying statutory taxes and duties on the material, equipment and services during the construction period. Therefore, all expenditures incurred for establishing the transmission project go towards providing the transmission services to the LTTCs. If recurring or non-recurring expenditure is required to be incurred by the Petitioner on account of occurrences of the events covered under Article 12.1.1 of the TSA, then such expenditure will be admissible under change in law to the Petitioner as they are necessary input costs for providing transmission services.

44. As on cut-off date i.e. 15.9.2014, there was no Goods and Services Tax. Subsequently, the Parliament and State Legislature Assemblies, in order to introduce a unified indirect tax structure, has introduced a fresh set of taxation laws, which has replaced various Central and State level taxes, through various enactments collectively referred to as the GST Laws which came into effect from 1.7.2017. Since the additional recurring and non-recurring expenditure which has been incurred by the Petitioner is through an Act of Parliament after the cut-off date, i.e. 15.9.2014, the same is covered under Change in Law. The relief for additional expenditure incurred by the Petitioner due to introduction of GST shall be admissible on the capital expenditure incurred as on the commercial operation of the project within the original scope of work.

45. The Petitioner has submitted that the total impact on the Petitioner on account of the promulgation of the GST Laws amounts to Rs. 1.27 crore and has placed on record

a detailed tabular representation of the impact of the GST Laws on the Petitioner during the construction phase of its elements as well as after the commissioning of its elements. The Petitioner vide its affidavit dated 6.11.2018 has placed on record, Auditor's certificate certifying the detailed computation for the increase in tax separately for Service Tax and GST worked out on the original estimated cost after deducting the estimated exclusions for which the taxes are not applicable. Therefore, the Petitioner is directed to produce the invoices for GST paid duly supported by a statutory auditor certificate to the LTTCs for claiming the compensation.

46. The Petitioner vide the said affidavit dated 6.11.2018 has submitted that even though Service Tax, State VAT, Special Additional Duty of Customs, Central Sales Tax, Central Excise Duty, Additional Duties of Customs (Commonly known as CVD), have been subsumed by GST Laws, there are no savings on account of these taxes having ceased to operate as the overall tax under GST has only increased. It is clarified that since the GST Acts came into force with effect from 1.7.2017, relief for payment of GST shall be admissible in respect of expenditure incurred post 1.7.2017.

Issue No. 3: What relief should be granted to the Petitioner in the light of the above issues?

47. Relief under Change in Law during the Construction Period is provided in Article 12.2 of the TSA. The relevant provisions are extracted as under:

“12.2 Relief for Change in Law

12.2.1 During Construction Period: During the Construction 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 One Crores Twenty Four Lakhs (Rs. 1.24 crore) 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 0.313 percent (0.313%) of the Non-Escalable Transmission Charges.

12.2.3 For any claims made under Article 12.2.1 and 12.2.2 above, the TSP shall provide to the Long Term Transmission Customers and the Appropriate Commission documentary proof of such

increase/decrease in cost of the Project/revenue for establishing the impact of such Change in Law.

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., and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to the rights of appeal provided under applicable Law.”

48. As per the above provisions, compensation for every Rs.1.24 crore of expenditure incurred under Change in Law during the Construction Period shall be compensated by increase of 0.313% of Non-Escalable Transmission Charges. Impact of GST in terms of our order shall be done after the proof of payment is made available to LTTCs.

49. The Petition No. 199/MP/2018 is disposed of in terms of the above.

Sd/-

(Dr. M. K. Iyer)
Member

sd/-

(P. K. Pujari)
Chairperson