

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**CASE No. 62 of 2024**

**Case of Maharashtra State Power Generation Company Limited (MSPGCL) seeking approval of change in law claims related to coal tolling arrangements carried out under CASE-IV, Phase III.**

**Coram**

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

Maharashtra State Power Generation Co. Ltd. (MSPGCL) .....Petitioner

V/s

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) ... Respondent

**Appearance**

For the Petitioner : Shri. Ramandeep Singh, (Repr.)

For the Respondent : Adv. Anup Jain, MSEDCL

**ORDER**

**Date: 03 March, 2025**

1. Maharashtra State Power Generation Company Limited (**MSPGCL**) has filed the Petition being Case No. 62 of 2024, on 2 April 2024 seeking approval of the change in law claims related to coal tolling arrangements carried out under Case IV Bidding Phase- III.
2. **Main Prayers of MSPGCL are as follows:**

“

- a) *Condone the delay in submission of the petition and admit the Petition as per the provisions of the Regulation 14 of the Maharashtra Electricity Regulatory Commission (Transaction of Business and Fees and Charges) Regulations 2022;*
- b) *Allow the Petitioner to claim the incremental cost of coal through notification of WCL dated 27.06.2022, 20.12.2022, 21.06.2023 and 14.12.2023 related to Surface Transportation Charges as “Change in Law” under Regulations 33.10 of MERC (State Grid Code) Regulations, 2020;*
- c) *Allow Petitioner to recover the amount of “Change in Law” claims, under Case-IV Phase-III coal tolling arrangement contract with M/s IEPL, from MSEDCL through FAC mechanism on lumpsum basis of Rs. 0.82 Crore for the period of 24.09.2022 to 31.12.2023, and on monthly basis from January 2024 onwards;*
- d) *Condone any error/omission and to give opportunity to rectify the same;*
- e) *Permit the Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time. ”*

### 3. MSPGCL in its Petition has stated as under:

- 3.1 The Central Electricity Authority (CEA) vide its Notification dated 8 June 2016, envisaged following five types for allowing flexibility of utilization of coal:
  - **Case-1:** Use of Coal aggregated with the State in its own State Generating Stations
  - **Case-2:** Use of Coal aggregated within one State in Generating Stations of other State’s utilities
  - **Case-3:** Use of Coal aggregated with State in Central Generating Stations and vice versa
  - **Case-4: Use of Coal by any State/ Central generating company in Private Generating Stations (IPPs)**
  - **Case-5:** Use of coal assigned to the Central Generating Company in their own plants or any other more efficient plants.
- 3.2 The Guidelines for Case - IV type bidding were issued by CEA on 20 February 2017. The Government of Maharashtra (GoM) vide its Government Resolution (GR) dated 15 May 2017 appointed MSPGCL as State Notified Agency.
- 3.3 Based on the guidelines issued by the Ministry of Power (MoP) on 20 February 2017 and its subsequent amendment dated 15 June 2018, 25 October 2018, 18 November 2020, 13 April 2022 and 20 April 2022 various features has been specified in the Methodology for use of coal by State in private Generating Stations (IPPs).
- 3.4 Post successful implementation of Phase I and Phase II, MSPGCL has floated tender vide RFP No. MSPGCL/FCS/380MW/RCD-T004 dated 02 March, 2022, under CASE - IV (Phase III) considering Ceiling Tariff of Rs.3.359/kWh for purchase of 380 MW

power on short term basis for a period of 12 months starting from 01 April, 2022 to 31 March, 2023 on Round the Clock (RTC) basis from IPP's considering the use of coal from Western Coal Fields Limited (WCL) mines.

3.5 Accordingly, NIT was issued on 28 February 2022 and Request for Proposal (RfP) was uploaded on MSTC DEEP Portal on 02 March, 2022. Initially, the last date for the Bid submission was 28 March 2022 which was further extended to 07 April 2022. The opening of Bids was kept on 29 March 2022 initially which was also extended to 08 April 2022.

3.6 The online Techno-Commercial Bids and physical support documents of the Tender were opened on 08 April 2022. Based on the scrutiny of the documents submitted by the bidders only one Bidder i.e., Ideal Energy Projects Limited (IEPL) was found technically qualified for opening the Financial Bid.

3.7 Based on the qualification of single bidder, i.e. Ideal Energy Projects Limited, the Opening of Initial Price offer (IPO) was undertaken through DEEP portal on 27 April 2022. The result of the Initial Price offering was as follows:

<b>Price Header</b>	<b>Ideal Energy Projects Limited</b>
Bid-Qty-MW	180
Ceiling Tariff	3.359
Bid Price-Rs/unit	3.358
Min. Order Qty-MW	180

3.8 Thereafter, MSPGCL had filed the Petition being Case No. 112 of 2022, on 9 June 2022 seeking approval of the Commission to enter into Power Purchase Agreement (PPA) with Ideal Energy Projects Ltd. (IEPL) and a Tri Partite Agreement (TPA) with MSEDCL & IEPL (being a single bidder) pursuant to Case IV Bidding Phase- III. The Commission vide its Order dated 8 July 2022 has accorded its approval of the bidding process and selection of single bidder.

3.9 Based on the approval of the Commission in Case No. 112 of 2022, Letter of Award was issued on 11 July 2022 for Procurement of 180 MW Power for Short Term under Case – IV (Phase – III) Flexibility in Utilisation of Coal in IPP Stations.

3.10 Subsequently, the Tripartite Agreement (TPA) (between MSEDCL, MSPGCL and Successful IPPs) as well as the Detailed Procedure Agreement (DPA) (between MSPGCL and Successful IPPs) was signed on 03 August 2022 with IEPL for coal tolling arrangement till 31st March 2023.

3.11 Post the completion date of the Contract i.e. 31 March, 2023, the Contract was extended by 6 months i.e., till 31st September, 2023 on same terms and conditions of DPA and TPA vide Addendum Agreement dated 15 March, 2023.

3.12 Further, vide Addendum-II to TPA and DPA was signed on 15 September, 2023 and the contract is extended further by 3 months till 31 December, 2023 on same terms and conditions of DPA and TPA.

3.13 Subsequently, vide Addendum-III to TPA and DPA was signed on 15 December, 2023 and the Contract is extended further by 3 months till 31 March, 2024 on same terms and conditions of DPA and TPA.

3.14 It is relevant to submit that at the time of the Bidding the Surface Transportation Charges were considered as per WCL circular dated 29 December, 2021. These Surface Transportation Charge as per WCL circular dated 29 December, 2021 as on bid date was as shown below:

Distance Slab (km)	Rate (Rs./Te)
0 to 3	34
3 to 10	73
10 to 20	125
Above 20	Actual STC +10%

3.15 As per terms of the PPA, all the existing coal price, taxes and duties prevailing at the time of submission of the Bid shall be paid by seller and any increase in price of coal or duties and taxes during contract period needs to be borne by MSPGCL and to be pass on to MSEDCL for recovery under FAC mechanism.

3.16 As per various WCL circulars dated 27 June, 2022, 25 December, 2022, 21 June, 2023 and 14 December, 2023, Surface Transportation charges were revised as shown below:

Surface Transportation Charge (Rs. /Te)						
Date of Notification	29-12-2021	27-06-2022	20-12-2022	21-06-2023	14-12-2023	Diff
Effective from		25-06-2022	25-12-2022	25-06-2023	25-12-2023	
	A	B	C	D	E	F = E - A
0 TO 3 KM	34	39	39	42	46	12
3 TO 10 KM	73	73	74	74	80	7
10 TO 20 KM	125	125	134	134	134	9
ABOVE 20 KM	110%	110%	110%	110%	110%	0

3.17 MSPGCL submits that post submission of the Bids, following changes in the rate of Surface Transportation Charges have been notified by WCL.

<b>Date</b>	<b>Action</b>
07 April, 2022	Submission of RFP Bids
27 June, 2022	WCL circular for change in Surface Transportation Charges vide circular no. NGP/WCL/M&S/216 (w.e.f. 25.06.2022)
20 December, 2022	WCL circular for change in Surface Transportation Charges vide circular no. NGP/WCL/M&S/504 (w.e.f. 25.12.2022)
21 June, 2023	WCL circular for change in Surface Transportation Charges vide circular no. NGP/WCL/M&S/306 (w.e.f. 25.06.2023)
14 December, 2023	WCL circular for change in Surface Transportation Charges vide circular no. NGP/WCL/M&S/Oprn./ 2023/1076 (w.e.f.25.12.2023)

3.18 As per 5.2.7 of DPA dated 03 August, 2022 signed between MSPGCL and IEPL, any increase in cost of coal, duties and taxes on coal shall be borne by MSPGCL during the contract and rate of power need to be revised accordingly under MoD principle. Relevant Clause of DPA is reproduce below:

*“5.2.7. Any increase in cost of coal, duties and taxes on coal and the railway freight charges under Change in Law, post the date of submission of bid as per the bidding documents and its amendment thereof, shall be borne by MSPGCL during the contract period for which the rate of power needs to be revised accordingly under MoD principle.”*

3.19 As per clause 5.2.7 of DPA, the increase in price of coal to be borne by MSPGCL during contract period and accordingly rate of power needs to be revised under MoD principle. Accordingly, as per June 2022, the impact of the price change is marginal and below 1 paise per unit. Hence the MoD rate considered for Case-IV contract Phase III was the quoted Tariff i.e. Rs. 3.358/kWh.

3.20 However, as per the latest notification from WCL, the change in the surface transportation charges w.e.f. 25 December, 2023 has resulted in 1 paise per unit and accordingly, the same has been factored in MoD rate from January 2024. The detail calculation of the impact of the change in surface transportation charges is outlined as below:

Particulars	Units	Bid Price	Post Bid Price			
		As on 07.04.202 2	w.e.f. 27.06.20 22	w.e.f. 25.12.20 22	w.e.f. 25.06.20 23	w.e.f. 25.12.20 23
SHR	kcal/kWh	2,787	2,787	2,787	2,787	2,787
Aux. consumption	%	10.96%	10.96%	10.96%	10.96%	10.96%
Net SHR	kcal/kWh	3,130	3,130	3,130	3,130	3,130
GCV <sub>ARB</sub> at loading point	kcal/kg	3,445	3,445	3,445	3,445	3,445
Stacking Loss	kcal/kg	85	85	85	85	85
GCV <sub>ARB</sub>	kcal/kg	3,360	3,360	3,360	3,360	3,360
Price of Coal incl. Transport	Rs./MT	3,607	3,612	3,612	3,615	3,620
Transit Loss	%	0.80%	0.80%	0.80%	0.80%	0.80%
Price of Coal incl. Transport and Transit loss	Rs./MT	3,636.00	3,641.30	3,641.30	3,644.47	3,648.71
Generation Cost of Fuel	Rs./kWh	3.304	3.308	3.308	3.311	3.315
Generation Cost of Oil	Rs./kWh	0.055	0.055	0.055	0.055	0.055
Total Generation Cost	Rs./kWh	3.358	3.363	3.363	3.366	3.370
<b>Difference</b>	<b>Rs./kWh</b>		<b>0.005</b>	<b>0.005</b>	<b>0.008</b>	<b>0.012</b>

3.21 Based on the above submission, the summary of the coal quantity dispatched to IEPL from 24 September 2022, the yearly claim of the change in coal cost due to change in surface transportation charges is outlined in the following table:

Financial Year	Lifted Quantity	STC Charges as per bid documents	STC Charges as per various WCL notification	Difference	GST	Total Claim of Change in Law
FY 2022-23	5,08,452.69	1,88,51,101.92	2,12,05,617.25	23,54,515.33	1,17,725.77	24,72,241.10
FY 2023-24	7,61,133.08	2,58,89,244.26	3,13,32,601.09	54,43,356.83	2,72,167.84	57,15,524.67
<b>Total</b>	<b>12,69,585.77</b>	<b>4,47,40,346.18</b>	<b>5,25,38,218.34</b>	<b>77,97,872.16</b>	<b>3,89,893.61</b>	<b>81,87,765.77</b>

3.22 As per above, since the additional costs for increased surface transportation charges for the coal supplied to IEPL are to be borne by MSPGCL and ultimately to be pass on to MSEDCL under FAC mechanism, it was communicated to MSEDCL that proposed MoD rate from January 2024 will be Rs. 3.37/kWh for the Case-IV Phase III contract vide email dated 12 January 2024.

3.23 As per MERC (State Grid Code) Regulations 2020 (MEGC, 2020) in case of claim of for un-approved change in law, generating company shall file Petition before the Commission with its claim within one months from the first occurrence.

3.24 Since the latest surface transportation charges dated 25 December, 2023 has resulted into the impact of Re.0.01/unit, MSPGCL submitted this petition requesting the Commission to approve the Change in Surface Transportation charges vide notification dated 27 June, 2022, 20 December, 2022, 21 June, 2023 and 14 December, 2023 as 'Change in law' event for the Case-IV Phase III contract between MSPGCL, MSEDCL and IEPL.

3.25 MSPGCL seek condonation of delay for filing the Petition for approval of change in law claim with respect to the change in surface transportation charges for the following reasons:

- a) Though change in surface transportation charges was applicable from September, 2022 vide various notifications dated 27 June, 2022, 20 December, 2022 and 21 June, 2023, the resultant impact was Rs. 0.005/unit, Rs. 0.005/unit and Rs. 0.005/unit, respectively, which were below Rs. 0.01/unit.
- b) Latest surface transportation charges, vide notification dated 14 December, 2023, have significant impact resulting in Rs. 0.012/unit.
- c) To quantify the actual impact, it was required to collate data from Coal office, Nagpur regarding coal quantity lifted and distance of coal mines to the IPP, followed by the reconciliation process. Also, the reconciliation process of verification of data from Coal office to ascertain the actual impact has taken some additional time.

3.26 It is submitted that, in case the Case - IV was not implemented, such change in charges against the procurement of coal would have been borne by MSPGCL in business-as-usual case and ultimately the impact needs to be passed on to MSEDCL under FAC Mechanism as per MYT Regulations 2019. Therefore, such additional charges are in the nature of change in coal price whereby the additional impact of coal cost has been occurred post the date of the submission of bid and is a pass through as per the provisions of the PPA as well as the policy issued by MoP.

3.27 In the context of Phase-III of Case-4 coal tolling contracts, MSPGCL may be presently allowed to recover Rs. 0.82 Crores under FAC mechanism towards the impact on account of change in price of coal due to surface transportation charges supplied to IEPL for the period from 24 September, 2022 to 31 December, 2023.

3.28 Also, further allow MSPGCL to claim similar claims of "Change in Law" impact for Case-IV Phase-III contract with IEPL, from January 2024 onwards, on monthly basis under FAC mechanism based on the revision in surface transportation charges.

**4. During the first e-hearing held on 1 October, 2024:**

- 4.1 Since MSEDCL was not a party in the matter initially, MSPGCL was directed to implead MSEDCL as a party in the matter and serve a copy of the Petition to MSEDCL.
- 4.2 The Commission further directed MSPGCL to make detailed submission on following queries in 15 days:
- a) whether the contract was awarded through a competitive bidding process.
  - b) clarify whether the first Notification of WCL was issued after the Case -IV Bidding Phase -III.
  - c) Why the contract was extended with IEPL for another year when there was increase in expenses on account of Change in Law event.
  - d) Why fresh tender was not floated for procurement of power under Case -IV before end of contract period i.e., 31 March, 2023.
  - e) MSPGCL to submit the Case Laws demonstrating the Notifications of WCL as Change in Law.
5. **MSPGCL in its additional submission dated 24 October, 2024 has stated as under:**
- 5.1 MSPGCL has impleaded MSEDCL as a party in the matter.
- 5.2 Whether the contract was awarded through a competitive bidding process: The contract was awarded to IEPL through competitive bidding process.
- 5.3 Clarify whether the first Notification of WCL was issued after the Case -IV Bidding Phase -III: The bid submission date was 7 April, 2022. The first notification from WCL regarding the change in coal prices was issued on 27 June, 2022. Therefore, it is evident that WCL's first notification was released after the last date of bid submission for Case-IV Phase-III bidding.
- 5.4 Why the contract was extended with IEPL for another year when there was increase in expenses on account of Change in Law event and why fresh tender was not floated for procurement of power under Case -IV before end of contract period i.e., 31 March, 2023: As per DPA, the period of Agreement was for 12 months and was valid till 31 March, 2023. MoP Guidelines dated 15 June, 2018 allows that such agreement may be mutually extended for period of additional period up to one year. There was no significant rise in coal prices. With mutual consent of all the three parties, the Agreement was further extended after 31 March, 2023. Thereafter, the NIT was published on 27 July, 2023 for further Phase -IV contract. The Phase -IV Contract was signed on 28 March, 2024. MSPGCL submits that after the increase in coal prices, issuing fresh tender would have not resulted in lower Tariff.
- 5.5 MSPGCL to submit the Case Laws demonstrating the Notifications of WCL as Change in Law: The increase in coal prices due to WCL's Notifications has already been recognized as a Change in Law by the Commission in its Orders in Case No. 127 of 2021, 128 of 2021. The APTEL in its Judgment in Appeal No. 237 of 2023 ruled that the imposition of evacuation facility charges by coal India qualifies as Change in Law.



**6. MSEDCL in its reply dated 28 November 2024 has stated that:**

6.1 MSPGCL has filed the present Petition belatedly on 02 April, 2024, claiming change in law pursuant to notifications dated 27 June, 2022, 20 December, 2022, 22 June, 2023 and 14 December, 2023.

6.2 Regulation 33.10 of MERC (State Grid Code) Regulations, 2020 mandates to file a Petition claiming change in law within reasonable time period not exceeding period of one month from the date of its first occurrence.

6.3 Therefore, no indulgence should also be granted to MSPGCL for the reason that despite pleading of a negligible impact pursuant to the impugned first three notifications, yet MSPGCL through the present Petition though belatedly filed by relying upon a considerable impact through the impugned fourth notification, seeks to take advantage of such prior inaction by claiming the impact arising out of the first three notifications as well. As such, MSPGCL is not entitled for any relief qua the impact concerning the first three impugned notifications dated 27 June, 2022, 20 December, 2022 and 22 June, 2023.

6.4 The claim qua the incremental cost of coal through various notifications of WCL related to Surface Transportation Charges as change in law claims under Regulations 33.10 of MERC (State Grid Code) Regulations, 2020 and qua the recovery of the amount of “Change in Law” claims, under Case-IV Phase-III coal tolling arrangement contract with IEPL, from MSEDCL through FAC mechanism on lumpsum basis of Rs. 0.82 Crore for the period of 24 September, 2022 to 31 December, 2023, and on monthly basis from January 2024 onwards which has been sought for, needs prudent check by the Commission duly considering terms and conditions of Tripartite Agreement (TPA) (between MSEDCL, MSPGCL and Successful IPPs) as well as the Detailed Procedure Agreement (DPA) (between MSPGCL and Successful IPPs) as well as by considering the submissions as advanced above on the issue of limitation, particularly non-grant of relief qua first three impugned notifications.

6.5 The TPA entered into was valid through extensions only up to 31 March, 2024 and as such, the claims under the present Petition for any consideration, subject to above submissions is to be only up to 31 March, 2024.

7. At the E- hearing held on 3 December, 2024 MSPGCL reiterated its submission as made in the Petition. MSEDCL made its submission. The Commission heard and reserved the matter for Order.

**Commission’s Analysis and Ruling:**

8. The Commission notes that the present Petition has been filed by MSPGCL on 2 April, 2024 seeking approval of Change in Law claims related to Coal Tolling arrangement with Ideal Energy Projects Ltd. pursuant to Case IV Bidding Phase- III under Coal Tolling Arrangement for the period of 01 April, 2022 to 31 March, 2024.

9. MSEDCL contended that as per the provisions of MERC (State Grid Code) Regulations, 2020, MSPGCL was supposed to file its Petition before the Commission with its claim for the Change in Law within a period of one month from the date of first occurrence of such event. However, MSPGCL had not approached the Commission within the time as specified in the Grid Code Regulations.
10. The Commission notes MSPGCL's submission that seeking condonation of delay for filing petition for approval of change in law claim with respect to the change in surface transportation charges for the following reasons:
  - a) Though change in surface transportation charges was applicable from September, 2022 vide notification dated 27 June, 2022, 20 December, 2022 and 21 June, 2023, the resultant impact was Rs. 0.005/unit, Rs. 0.005/unit and Rs. 0.005/unit, respectively, which were below Rs. 0.01/unit.
  - b) Latest surface transportation charges, vide notification dated 14 December, 2023, have significant impact resulting in Rs. 0.012/unit.
  - c) To quantify the actual impact, it was required to collate data from Coal office, Nagpur regarding coal quantity lifted and distance of coal mines to the IPP, followed by the reconciliation process. Also, the reconciliation process of verification and finalization of data from Coal office to ascertain the actual impact has taken some additional time.
11. The Commission notes the submission of MSPGCL for condonation of delay on account of the negligible impact in initial period of three Notifications. The Commission notes that after the fourth Notification dated 14 December, 2023 it was communicated to MSEDCL that proposed MoD rate from January 2024 will be Rs. 3.37/kWh for the Case-IV Phase III contract vide email dated 12 January, 2024 within a month.
12. In view of the above, the Commission is inclined to accept the submission of MSPGCL regarding the maintainability of the Petition on issue of delay in filing the Petition raised by MSEDCL. Accordingly, the Commission decides to adjudicate the Petition and frames and addresses the following three issues in the case to be decided based on the submissions made by the parties:

**Issue No. 1:** Whether the claim made by MSPGCL qualifies for "Change in Law" and whether relief can be granted in the present matter?

**Issue No. 2:** If the claims made by MSPGCL qualifies for "Change in Law" then what should be the amount of claim to be allowed?

**Issue No. 3:** What would be the recovery mechanism for the amount allowed as a pass through?

Above issues are analyzed in the subsequent paragraphs

**13. Issue No. 1: Whether the claim made by MSPGCL qualifies for “Change in Law” and whether relief can be granted in the present matter?**

13.1 The Commission notes MSPGCL’s submission that after following due E-tendering process, it had issued Letter of Award to IEPL issued on 11 July, 2022 for Procurement of 180 MW Power for Short Term under Case – IV (Phase – III).

13.2 After the bid submission date i.e., 7 April, 2022, there were the following changes in the price of coal on account of revision of the charges by the WCL:

- a) Surface Transportation Charges (w.e.f. 27 June, 2022),
- b) Surface Transportation Charges (w.e.f. 20 December, 2022),
- c) Surface Transportation Charges (w.e.f. 21 June, 2023),
- d) Surface Transportation Charges (w.e.f. 14 December, 2023).

13.3 The Commission notes that there are four-time revision of the Surface transportation charges on which MSPGCL has claimed the Change in Law as under:

- i) MSPGCL submitted that the rate of the Surface Transportation Charges as on the date of Bidding (i.e., 7 April, 2022) was applicable as per the WCL circular dated 29 December, 2021.
- ii) After the Bid submission date, the rate of the Surface transportation charges was increased vide the Notification dated 27 June, 2022, 20 December, 2022, 21 June, 2023, and 14 December, 2023.
- iii) As per various WCL circular dated 27th June, 2022, 25th December, 2022, 21st June, 2023 and 14th December, 2023, Surface Transportation charges was revised as shown below:

<b>Surface Transportation Charge (Rs. /Te)</b>						
<b>Date of Notification</b>	<b>29-12-2021</b>	<b>27-06-2022</b>	<b>20-12-2022</b>	<b>21-06-2023</b>	<b>14-12-2023</b>	<b>Diff</b>
<b>Effective from</b>		<b>25-06-2022</b>	<b>25-12-2022</b>	<b>25-06-2023</b>	<b>25-12-2023</b>	
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F = E - A</b>
0 TO 3 KM	34	39	39	42	46	12
3 TO 10 KM	73	73	74	74	80	7

Surface Transportation Charge (Rs. /Te)						
Date of Notification	29-12-2021	27-06-2022	20-12-2022	21-06-2023	14-12-2023	Diff
Effective from		25-06-2022	25-12-2022	25-06-2023	25-12-2023	
10 TO 20 KM	125	125	134	134	134	9
ABOVE 20 KM	110%	110%	110%	110%	110%	0

iv) The Commission notes that there is increase in the Surface transportation charges after the submission of the Bid. This change in the rate of Surface Transportation charges was after the submission of the Bid and hence qualifies for Change in Law.

v) MSPGCL has submitted that as per Case IV Guidelines, any increase in cost of coal, duties and taxes on coal after bid submission date shall be borne by the Buyer during the contract period. Therefore, this is Change in Law and hence the claim for adjustment of additional costs (Change in Law) to be borne by MSPGCL is to be passed on to MSEDCL.

13.4 MSEDCL has in principle, not objected to the claim of CIL of MSPGCL on account of these Notifications or revisions in the charges by WCL on account of these four revisions of the Surface transportation charges.

13.5 The Commission notes that all these Notifications are notified after the submission of the Bid date 7 April, 2022.

13.6 The Change in Law Provisions of MYT Regulations, 2019 is reproduced below:

*“2.(15) "Change in Law" means occurrence of any of the following events:*

- a. enactment, bringing into effect or promulgation of any new Indian law; or*
- b. adoption, amendment, modification, repeal or re-enactment of any existing Indian law; or*
- c. change in interpretation or application of any Indian law by a competent court, Tribunal or Indian Governmental Instrumentality, which is the final authority under law for such interpretation or application; or*
- d. change of any condition or covenant by any competent statutory authority in relation to any consent or clearances or approval or License available or obtained for the Project; or*
- e. any change in taxes or duties, or introduction of any taxes or duties levied by the Central or any State Government.” [emphasis added]*

13.7 The Commission also notes that as per Case IV Bidding Guidelines, issued by MoP, any increase in cost of coal, duties and taxes on coal after the Bid submission date shall be borne by the Buyer during the contract period. The relevant abstract of the Case -IV Guidelines dated 20 February, 2017 issued by MoP is as under:

**“8.2 .....**

***viii Any increase in cost of coal, duties, and taxes on coal shall be borne by the Buyer during the Contract period.”***

13.8 The Commission notes that the bids were called vide RfP dated 2 March, 2022 2017 and the last date of submission was 7 April, 2022. It is pertinent to note that after resorting to e-tendering process on National e-Bidding DEEP portal by MSPGCL and after approval of the Commission, it had issued Letter of Award to IEPL on 11 July, 2022. Accordingly, the CIL events specified above in paragraph 14.2, 14.3 are after the bid submission date.

13.9 The Commission also notes the submission of MSPGCL that the increase in coal prices due to WCL’s Notifications has already been recognized as a Change in Law by the Commission in its Orders in Case No. 127 of 2021, 128 of 2021. The APTEL in its Judgment in Appeal No. 237 of 2023 ruled that the imposition of evacuation facility charges by coal India qualifies as Change in Law.

13.10 Therefore, the Commission is inclined to accept the submission of MSPGCL that the changes in the surface transportation charges were after the submission of the Bids by the Bidders. Therefore, the Commission in-principle accepts the Change in Law claim of MSPGCL.

**14. Issue No. 2: If the claims made by MSPGCL qualifies for “Change in Law” then what should be the amount of claim to be allowed?**

14.1 The Commission is of the opinion that the objective of coal tolling arrangement is to optimize the cost of generation and therefore it is necessary to ensure that the overall costs of power supplied under tolling arrangement is lower than the cost of generation from MSPGCL stations considered for tolling. Such optimization of the cost is on account of the efficient operational parameter and the reduction in landed cost of coal due to lower transit / transportation cost, whereby the coal procurement cost remains unaffected.

14.2 The Commission is of the view that before passing on the complete Change in Law adjustments for tolling arrangement, it needs to be ensured that the overall costs of power supplied under tolling arrangement is lower than the cost of generation approved by the Commission from MSPGCL stations considered for tolling. Hence, it would be appropriate to allow MSPGCL to raise the full claim for CIL only after the prudence check.

14.3 MSEDCL also in its submission has stated that the claim of the Change in law needs the prudence check in terms of the provisions of the tripartite agreement and intention of coal tolling arrangement under Case IV bidding which is to optimize utilisation of coal.

14.4 The Commission notes the submission of MSPGCL where in it has made the summary of the coal quantity dispatched to IEPL from 24 September, 2022 to 31 December, 2023, the yearly claim of the change in coal cost due to change in surface transportation charges is outlined in the following table:

Financial Year	Lifted Quantity	STC Charges as per bid documents	STC Charges as per various WCL notification	Difference	GST	Total Claim of Change in Law
FY 2022-23	5,08,452.69	1,88,51,101.92	2,12,05,617.25	23,54,515.33	1,17,725.77	24,72,241.10
FY 2023-24	7,61,133.08	2,58,89,244.26	3,13,32,601.09	54,43,356.83	2,72,167.84	57,15,524.67
<b>Total</b>	<b>12,69,585.77</b>	<b>4,47,40,346.18</b>	<b>5,25,38,218.34</b>	<b>77,97,872.16</b>	<b>3,89,893.61</b>	<b>81,87,765.77</b>

14.5 The Commission also notes that MSPGCL has not submitted final reconciliation of the Phase -III Case IV bidding arrangement to carry out the prudence check and analysis on the operational parameters and also the impact on tariff for power supplied under coal tolling arrangement.

14.6 Actual reconciliation of heat energy on the basis of efficient operational norms (i.e., SHR, Auxiliary Consumption, etc. as per Bid) need to be carried out for computation of coal quantum under the arrangement.

14.7 The Commission notes that the Agreement was extended up to 31 March, 2024. However, MSPGCL has sought to recover quantified amount of Rs. 0.82 Crores towards the impact on account of change in price of coal due to surface transportation charges supplied to IEPL for the period from 24 September, 2022 to 31 December, 2023.

14.8 The Commission notes that the almost 10 months have passed since the conclusion of the Agreement on 31 March, 2024 but still MSPGCL has not made any submission of the final reconciliation of the Agreement for arrangement to carry out the prudence check final settlement.

14.9 Therefore, the Commission provisionally allows Rs. 0.82 Crores towards the impact on account of change in price of coal due to surface transportation charges supplied to IEPL for the period from 24 September, 2022 to 31 December, 2023. However, it would not be appropriate to conclude this issue in this proceeding without carrying out prudence check on the actual parameters. Therefore, MSPGCL shall submit actual benefits on account of Coal Tolling arrangement with complete details and impact on tariffs for

power supplied under coal tolling arrangement in Separate Petition. Accordingly, the issue -II is disposed of.

**15. Issue No. 3: What would be the recovery mechanism for the amount allowed as a pass through?**

15.1 The provisional amount of Rs. 0.82 crore is for the period of 24 September 2022 to 31 December 2023. Presently, the MYT proceedings are in progress and hence the Commission deems it fit to allow this amount as Change in Law and allows the recovery of such expenses in its ongoing Multi Year Tariff (MYT) Petition.

15.2 The Commission notes that MSPGCL has included this claim in its ongoing MYT Petition. Accordingly, MSPGCL is allowed to claim the amount of Rs. 0.82 Crore in its MYT Petition.

15.3 The Commission, therefore, allows the amount of Rs. 0.82 Crore as a Change in Law claim to MSPGCL for IEPL Case IV Phase -III coal tolling arrangement.

16. Hence, the following Order:


**ORDER**

- 1. The Petition in Case No. 62 of 2024 is partly allowed.**
- 2. MSPGCL shall file details of actual benefits accrued on account of Coal Tolling arrangement with complete details and impact on tariffs after conclusion of the Agreement in a separate Petition.**
- 3. The Commission allows the amount of Rs. 0.82 Crore provisionally as a Change in Law claim to MSPGCL for IEPL for the period of 24 September 2022 to 31 December 2023 under Case IV Phase -III coal tolling arrangement.**
- 4. MSPGCL is allowed to claim this amount of Rs. 0.82 Crores in its ongoing MYT Petition.**

Sd/-  
(Surenra J. Biyani)  
Member

Sd/-  
(Anand M. Limaye)  
Member

Sd/-  
(Sanjay Kumar)  
Chairperson

  
(Dr. Rajendra G. Ambekar)  
Secretary

