



applicable Carrying Cost) which is required to be reimbursed by the Respondent to the Petitioner. Further, a Carrying Cost shall be applicable on the above amount as per the observation of this Hon'ble Commission in its Order dated 29.05.2020 at actual interest rate paid by the Petitioner for arranging Working Capital funds or the rate of Interest on Working Capital as per Generation Tariff Regulations 2019, whichever is lower, till the date of actual payment made by the Respondent. Accordingly, the total compensation on account of Change in Law events (including Carrying Cost) works out to ₹ 0.30 Crores, which is summarized in the following Table.

TABLE 2: CLAIM DUE TO INCREASE IN CG ENVIRONMENT AND DEVELOPMENT CESS (INCLUDING APPLICABLE CARRYING COST) FOR FY 2019-20

₹ Crores	
<b>Claim due to increase in CG Environment &amp; Development Cess (Including applicable Carrying Cost) - FY 2019-20</b>	
Particular	FY 2019-20
A. Total Claim due to increase in CG Environment & Development Cess	0.27
B. Applicable Carrying Cost on above	0.02
<b>Total amount claimed by DIL including Carrying Cost</b>	<b>0.30</b>
<b>Note:</b> The total amount claimed by DIL under Change in Law events for FY 2019-20 have been computed (including applicable Carrying Cost) till 30.09.2020.	

#### Record of Proceedings

11. The Commission heard the matter on 17.06.21 and directed NPCL to file its reply and Petitioner to file its rejoinder. NPCL filed its reply dated 22.07.21 and Petitioner filed its rejoinder on 30.07.21. Shri Rama Shankar Awasthi's, as intervener, filed an impleadment application dated 23.07.21. The Commission, during hearing on 05.08.21 allowed impleadment application with no objection from the Petitioner. The Commission also allowed Shri Awasthi to file reply and Petitioner to file rejoinder. The Commission during the hearing on 14.09.21 sought clarification from the Petitioner that coal price increase through index does not cover the change in law impact covered by Notifications referred to in the Petition. The Intervener has preferred not to file any reply in the matter. The Petitioner has made submission on 18.10.21 regarding the Commission's query. The Commission concluded the hearing on 30.11.21 and reserved order in the matter.

#### NPCL reply dated 22.07.21

12. Neither is SECL an Indian Government Instrumentality in terms of the PPA and nor is it the competent Authority to impose/levy any such Cess. The Petitioner in Paragraph 13 of the captioned Petition has submitted that the CG Development Cess and CG Environment Cess



are levied in accordance with the principles of the Chhattisgarh (Adhoshanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005 ("**CG Adhiniyam, 2005**"), however, the Petitioner has not placed on record any such amendment/changes in the CG Adhiniyam, 2005 which had led to revision in the rates of CG Development Cess and CG Environment Cess from Rs. 7.50/Tonne to Rs. 11.25/Tonne. Therefore, unless the Petitioner/DIL can produce the Statue/Notification of a competent Authority increasing the rates of such Cess, the Petitioner/DIL's 'Change in Law' claim cannot be adjudicated upon by this Hon'ble Commission merely on the basis of a notification released by SECL.

**DIL rejoinder dated 30.07.21**

13. The Hon'ble Appellate Tribunal for Electricity ("**Hon'ble Tribunal**") has vide its Judgement dated 21.12.2018 in **I.A. No. 449 of 2018 and Appeal No. 193 of 2017: GMR Kamalanga Energy Limited vs CERC & Ors** in Paragraphs 26-29 concluded that Departments, Corporations/Companies like Coal India Limited ("**CIL**") or Indian Railways formed under different Statutes are construed as Indian Governmental Instrumentalities. Further, CIL being an Indian Governmental Instrumentality cannot issue any Notification without the consent of the Government of India and such Notifications carrying any executive instruction to be implemented in order to fructify any governmental decision, ought to be considered as 'Law' as per Article 1.1 of the NPCL PPA.

**Commission's analysis and decision**

14. The coal and freight cost for supply of coal under FSA during any specific period is based on notified rates by the coal company under Coal India Limited along with applicable taxes, duties, freight charges and other ancillary components as per prevailing law. Pertinently, various components of Coal and Freight Charges for the supply of power by the Petitioner/DIL to the Respondent/NPCL under NPCL PPA have undergone several changes due to occurrence of various events from 26.10.2015 till date.
15. The Commission vide Order dated 29.05.2020 in Petition No. 1440/2019 approved majority of the events occurred from the period after cut-off date (26.10.2015) till 31.03.2018. Subsequently, Petitioner filed Petition No. 1654/2020 for true-up of claim on account of such approved Change in Law events. The Petitioner has claimed through supplementary bills an amount of Rs. 3.66 Crore for FY 2019-

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20 under 'Change in Law' events. The Commission vide its order dated The summary of total claim amount under all 'Change in Law' events for FY 2019-20 is shown in the following table:

**TABLE 3: TOTAL APPROVED AMOUNT UNDER 'CHANGE IN LAW' EVENTS DURING FY 2019-20**  
₹ Crores

Total approved amount under 'Change in Law' Events during FY 2019-20	
Change in Law Events	FY 2019-20
Clean Energy/Environmental Cess	11.24
DMF @ 30% on Royalty	2.25
NMET @ 2% on Royalty	0.15
Stowing Excise Duty	-0.56
Excise Duty	-3.22
Central Sales Tax	-1.36
IGST for Coal Charges	3.87
Busy Season Charges	-6.51
Development Surcharge	-3.22
Coal Terminal Surcharge	0.00
Service Tax/IGST on Freight Charges	0.65
Claim for Cost of use & procurement of Washed Coal	0.37
<b>Total Claim approved under 'Change in Law' Events - FY 2019-20</b>	<b>3.66</b>

16. The Chhattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005 ("**Chhattisgarh Act**") issued under Gazette Notification dated 27.05.2005 provides for the levy of cess on land for raising funds to implement infrastructure development projects and environmental improvement projects by the holders of mining lease. The relevant provisions from the said Act are reproduced hereunder:

*"Preamble:*

*An Act to provide for levy of cess on land for raising funds to implement infrastructure development projects and environment improvement projects.*

*Whereas it is expedient to provide for additional resources for augmenting the development activities and improvement of environment in the State.*

*Be it enacted by the Chhattisgarh Legislature in the fifty sixth year of the Republic of India as follows: -*

**Section 3-Infrastructure development cess**

- (1) *On and from the date of commencement of this Act, there shall be levied and collected an infrastructure development cess on all lands on which land revenue or rent by whatever name called is levied.*



*Provided that Infrastructure development cess shall not be levied on land which for the time being is exempt from payment of land revenue or rent, as the case may be.*

(2) *The Infrastructure development cess shall be levied at the rate specified in Schedule.*

#### **Section 4- Environment Cess**

(1) *On and from the commencement of this Act, there shall be levied and collected an environment cess on all lands on which land revenue or rent, by whatever name called, levied:*

*Provided that environment cess shall not be levied on land which for the time being is exempt from payment of land revenue or rent, as the case may be.*

(2) *The environment cess shall be levied at the rate specified in Schedule-II.*

#### **Section 7- Assessment and Collection of cess**

(1) *Cess levied under Section 3 and 4 of the Act shall be assessed in such manner as may prescribed.*

(2) *The cess levied under this act shall be collected as an arrear of land revenue and provision of the Chhattisgarh Land Revenue Code, 1959 (No. 20 of 1959) shall apply mutatis mutandis for such collection and recovery.*

#### **Section 8- Amendment of Schedules**

(1) *The State Government may, by a notification to be published in the Official Gazette, amend any Schedule to this Act for revising the rate of any cess;*

*Provided that the rate of any cess shall not be revised more than once in any consecutive period of three years:*

*Provided further that the rate of any cess shall not be increased by more than fifty percent of the existing rate by any notification to be issued under this sub-section.*

(2) *Every notification issued under sub section (1) shall be laid immediately before the Legislature Assembly of the State if it is in session, and if it is not in session, in the session immediately following the date of such notification.*



**Schedule I**  
(See Section 3)

S. No.	Classification of Land	Rate of Development Cess
1.	On land covered under coal, and iron ore mining leases	Rupee 5 on each tonne of annual dispatch of mineral
2.	On land covered under mining leases other than (1) above	5 percent of the amount of royalty payable annually
3.	On land other than land covered under (1) and (2) above	5 percent of the amount of land revenue or rent, as the case may be, payable annually.

**Schedule II**  
(See Section 4)

S. No.	Classification of Land	Rate of Environment Cess
1.	On land covered under coal, iron ore mining leases	Rupee 5 on each tonne of annual dispatch of mineral
2.	On land covered under mining leases other than (1) above	5 percent of the amount of royalty payable annually
3.	On land other than land covered under (1) and (2) above	5 percent of the amount of land revenue or rent, as the case may be, payable annually

17. Subsequently, the Government of Chhattisgarh, in exercise of the powers conferred under Section 8(1) of the Chhattisgarh Act, amended Schedule I and Schedule II of the Chhattisgarh Act thereby revising the rates of CG Development Cess and CG Environment Cess from ₹ 5/Tonne to ₹ 7.50/Tonne vide Notification No. F 4-09/Seven-I/2015 dated 16.06.2015 as under:

**Schedule I**

S. No.	Classification of Land	Rate of Development Cess
1.	On land covered under coal, iron ore, lime stone, bauxite and dolomite mining leases	Rupee 7.50 on each tonne of annual dispatch of mineral
2.	On land covered under mining leases other than 1 above	7.50 percent of the amount of royalty payable annually
3.	On land other than land covered under (1) and (2) above	7.50 percent of the amount of land revenue or rent, as the case may be, payable annually

**Schedule II**

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S. No.	Classification of Land	Rate of Environment Cess
1.	On land covered under coal, iron ore, lime stone, bauxite and dolomite mining leases	Rupee 7.50 on each tonne of annual dispatch of mineral
2.	On land covered under mining leases other than 1 above	7.50 percent of the amount of royalty payable annually
3.	On land other than land covered under (1) and (2) above	7.50 percent of the amount of land revenue or rent, as the case may be, payable annually

18. Thereafter, the Government of Chhattisgarh once again, in exercise of the powers conferred under sub-Section (1) of Section 8 of the Chhattisgarh Act amended Schedule I and Schedule II revising the rates of CG Development Cess and CG Environment Cess from ₹ 7.50/Tonne to ₹ 11.25/Tonne respectively vide Notification No. F 09/2015/Seven-I dated 04.09.2019 as under:

**Schedule I**

S. No.	Classification of Land	Rate of Development Cess
1.	On land covered under coal, iron ore, lime stone, bauxite and dolomite mining leases	Rupee 11.25 on each tonne of annual dispatch of mineral
2.	On land covered under mining leases other than 1 above	11.25 percent of the amount of royalty payable annually
3.	On land other than land covered under (1) and (2) above	11.25 percent of the amount of land revenue or rent, as the case may be, payable annually

**Schedule II**

S. No.	Classification of Land	Rate of Environment Cess
1.	On land covered under coal, iron ore, lime stone, bauxite and dolomite mining leases	Rupee 11.25 on each tonne of annual dispatch of mineral
2.	On land covered under mining leases other than 1 above	11.25 percent of the amount of royalty payable annually
3.	On land other than land covered under (1) and (2) above	11.25 percent of the amount of land revenue or rent, as the case may be, payable annually

19. Thus, it is evident that State Government of Chhattisgarh, vide above Gazette Notifications issued under Sections 3 and 4 read with Schedule I and II of the Chhattisgarh Act and its subsequent amendments.