

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, MADHYA MARG, SECTOR 18-A, CHANDIGARH**

Petition No. 28 of 2014

(Suo-Motu)

Date of Order: 09.04.2021

Petition (Suo-Motu) to comply with Judgment dated 23.04.2014 passed by the Hon'ble APTEL in Appeal No.207 of 2012 impugning Order dated 01.10.2012 in Petition No.38 of 2011.

AND

In the matter of: Nabha Power Limited, Aspire Tower, 4th Floor, Plot No. 55, Industrial and Business Park, Phase-I, Chandigarh -160 002.

L&T Power Development Limited, Powai Campus, Gate No.1, C Building, 1st Floor, Saki Vihar Road, Mumbai- 400072.

Versus

Punjab State Power Corporation Limited, The Mall, Patiala.

ORDER

1. Nabha Power Limited (NPL) filed petition No. 38 of 2011 for adjudication of the dispute arising under the Power Purchase Agreement dated 18.01.2010 executed between NPL and Punjab State Power Corporation Limited (PSPCL) inter alia on account of the NPL's claim for increase in capital cost of the project on account of changes required in the railway siding due to the change in the approval of the Railway authorities. The petition was dismissed by the Commission vide Order dated 01.10.2012. Aggrieved by the

Order, NPL filed appeal No. 207 of 2012 before the Hon'ble APTEL. The Hon'ble APTEL disposed of the Appeal vide Order dated 23.04.2014, partially allowing the appeal, the relevant extract of the order is as under:

Para 54. *“The railway siding scheme as intimated in the bid documents to the prospective bidders cannot be covered under Disclaimer Clause or clause regarding due diligence and verification of the information by the prospective bidder as stipulated in the bidding documents. This is because the railway siding scheme was supported by the “In-Principle” approval of the Northern Railway in the bid documents. The verification or due diligence of the railway siding scheme by the Appellant at the time of submitting the bids would not have resulted in any change in the railway siding scheme as at that time it was not known either to the Procurer of Power or the bidders or the Railway that the alignment of the proposed DFC would be interfering with the railway siding of the project.*

Accordingly, this issue is decided in favour of the Appellants. The State Commission is directed to examine the proposal of the Appellant No. 1 as a result of change in approval of railway siding granted by the Northern Railways and allow the same after prudence check as per the terms of the PPA.....

Para 56 (ii). *“The approval of the Railway siding of the Project by the Railway is an approval by the Government Instrumentality under the law. The change in scope of the Railway Siding as a result of the approval by the competent authority in Railway with respect to the “In Principle” approval leading to change in cost of the project will be covered under “Change in Law” under the PPA. Therefore, the Appellant is entitled to claim increase in project cost due to change in scope of work of the Railway Siding due to additional works as a result of change in condition of approval by the Railway as per the provisions of the PPA under Article 13. However, the Appellant is not entitled to claim cost escalation, if*

any, in the works envisaged in the “In-Principle” approval of the Railway which formed part of the bid documents.”

2. In compliance of the Order passed by the Hon’ble APTEL, the Commission initiated proceedings in Suo-Motu petition No. 28 of 2014 wherein among other submissions, NPL submitted that there have been issues in relation to the acquisition of some of the land which is required for construction of the ROR flyover and the railway authorities are considering modification in the railway siding alignment and therefore, the cost implications on account of the change in scope of work cannot be ascertained at the stage. The Commission, therefore, vide Order dated 20.06.2014 adjourned the proceedings sine-die and filed IA No. 274 of 2014 for granting extension of time to pass consequential Order. The Hon’ble APTEL vide order dated 24.07.2014 extended the time to pass the consequential Order after filing of the application by NPL for increase in the cost of the Railway Siding.

3. In August, 2017, NPL approached the Commission stating that it had taken steps to complete the railway siding by executing an emergency cross over. It filed submissions stating that bulb portion alongwithRoR flyover could not be implemented as the acquisition of land required for construction is under challenge and pending litigation before the Hon’ble Punjab and Haryana High Court since June 2012. NPL in its submission dated 09.08.2017, requested the Commission to approve the recovery of Rs. 208.23 crore in order to recompense NPL on account of the ‘Change in Law’ event for carrying out the necessary adjustment in the tariff in compliance of

the Hon'ble APTEL's judgment dated 23.04.2014. PSPCL filed its reply and NPL its rejoinder on 09.11.2017 & 10.01.2018 respectively.

4. The Commission during the hearing held on 17.01.2018 directed NPL to submit the component wise break-up of railway siding works. NPL filed an affidavit dated 12.03.2018 but failed to provide the details as sought by the Commission. The Commission during the hearing held on 11.04.2018 observed that the information submitted by NPL was not complete to the satisfaction of the Commission and directed NPL to submit the same. NPL filed further submissions dated 07.06.2018 and 15.10.2018. The Commission heard the matter on 13.12.2018 wherein it was observed that NPL has failed to provide the details of work in the original scheme and the enhanced scope of work. NPL requested to implead RITES as a party to the petition which was allowed by the Commission. However, during the hearing held on 13.02.2019, RITES informed that it was neither involved by NPL in the original detailed report nor in the preparation of the tender document and therefore its name should be excluded from the list of the parties. This was allowed by the Commission. NPL sought more time to file the requisite details. On 21.08.2019, the matter was heard but NPL again sought time to file the requisite details. The Commission granted a last opportunity to NPL for filing the clarifications asked by the Commission. In the next hearing held on 13.11.2019, NPL stated that RITES has prepared a draft report and that NPL required 2-3 weeks for submission of the final report and therefore requested extension of time by 1 month. The same was granted by the Commission. NPL submitted the 2019 RITES Report on 06.12.2019. PSPCL submitted its comments on the

UTES report on 31.01.2020. The matter was listed for hearing on 05.02.2020 however NPL requested to adjourn the hearing and the hearing was therefore re-scheduled on 04.03.2020 allowing NPL to file its rejoinder. However, NPL filed its rejoinder only on 01.06.2020. The Commission vide its Order dated 25.08.2020 sought clarification on a number of issues from NPL.

5. NPL on 19.10.2020 filed an IA No. 8 of 2020 seeking adjournment of the proceedings till the finalization of the revised layout/ESP of the Railway siding scheme for the project for the period of 3 months without submitting the clarifications asked for. On the Commission's insistence, NPL vide submissions dated 10.11.2020 filed its response to the queries raised on 25.08.2020. On 17.12.2020, NPL filed a written note of arguments. The Commission heard the parties at length on 21.12.2020 and vide Order dated 23.12.2020 directed both the parties to file written submissions by 24.12.2020. Both NPL and PSPCL then filed final written submissions on 24.12.2020.

6. NPL's Submissions

6.1. NPL, in its submission dated 11.08.2017 stated that in compliance with the Commission's Order dated 20.06.2014, NPL has taken steps towards early implementation of the Railway siding and executed the same through the emergency crossover. NPL submitted that this has been done in view of the delay due to the litigation in the acquisition of the land required for setting up the bulb portion and RoR Flyover. It was stated that NPL is seeking recovery of the cost incurred in the construction of the Railway Siding (except RoR

Flyover and bulb portion) which has been operational since 04.02.2016 as the major construction of the Railway Siding has already been undertaken and the coal is now being transported to the unloading point at the Project Site only through railway rakes and the road transportation from MandiGobindgarh / Chandigarh to the Project Site has completely stopped. NPL submitted that the denial of such legitimate expenditure to NPL will not only cause severe prejudice but also will have a direct impact on the consumers of Punjab, since the recovery of such cost at a belated stage will also be subject to carrying cost as per the terms of the PPA.

6.2. NPL submitted that it has incurred a capital cost of Rs. 569.84 crore (including IDC) in implementing the Railway Siding (excluding the bulb portion and ROR flyover) as against the cost of Rs. 361.61 crore including IDC set out in the 2008 RITES Report, thus resulting in an effective increase of Rs. 208.23 crore. NPL requested the Commission to approve the recovery of Rs. 208.23 crore in order to compensate NPL on account of the Change in Law event. NPL further requested the Commission to allow it to approach the Commission for seeking true-up and final recovery upon implementation of the finalized layout including the bulb portion and RoR flyover pursuant to resolving of the land acquisition dispute.

6.3. The details of the capital cost claimed by NPL vis a vis indicated in 2008 Rites Report are as under:

(Rs. crore)

Sr. No.	Headings	As per 2008 RITES Report	As Claimed	
			2011	2015
1	Civil Engineering Works	171.00	213.93	213.18
2	S&T Works	8.00	28.54	49.69
3	OHE Works	22.50	34.89	36.51
4	GE Works		4.26	2.93
Sub Total		201.50	288.74	302.31
5	Land Price	24.70	67.00	104.70
6	Codal Charges	8.06	11.55	29.93
7	Locomotives	15.00	18.00	7.97
8	Over Heads	17.13	24.54	17.99
9	Design, Approval, Commissioning & Project Management incl. Service Tax	30.71	44.00	40.63
10	Road	20.00	20.00	0.00
11	IDC	44.52	Not furnished	66.31
Total		361.61	473.83*	569.84

*Excluding IDC

6.4. The Commission on 17.01.2018 asked NPL to indicate within a month the scope of work component wise and revisions attributable to the change in the alignment of the DFC along with costs and any other details required for a prudent scrutiny. Complete details were not given by NPL and in the next hearing more time was given for the submission of the same. NPL in its submissions dated 07.06.2018 in compliance to the Commission's Order dated 13.04.2018 stated that

the actual cost incurred by NPL is Rs. 568.40 crore as one of the component i.e. Foot Over Bridge has not yet been constructed and a cost of approximately Rs. 1.43 crore has been reduced from the earlier claimed amount of Rs. 569.84 crore. Consequently, the difference amount now being claimed is Rs. 206.79 crore.

6.5. On 08.06.2018, NPL submitted that it has constructed the railway siding for Rajpura Thermal Power Project in terms of ESP dated 26.11.2012 and 11.12.2014 which has been jointly approved by the Indian Railways and Dedicated Freight Corridor Corporation of India Ltd. NPL compared the cost of works as per 2008 RITES Report with the derived values in 2015 RITES Report and showed the actual cost incurred. However, NPL also stated that

(a) It is not feasible to segregate the change in scope of works due to change in alignment of DFC from the scope of work required by Indian Railways.

(b) NPL did not undertake competitive bidding for the award relating to the railway siding work and the contract was awarded to L&T Railway Business Unit and that, PSPCL never raised any requirement of selection of Contractor through competitive bidding.

6.6. NPL in its submissions on 15.10.2018 emphasized that the basic scheme to be considered for ascertaining the change in scope of work should be the 2008 RITES Report. NPL denied PSPCL's contention that the 2008 RITES Report was only a feasibility report and not a detailed project report and that when the In-Principle approval is converted to Engineering Scale Plan (ESP) drawing which is finally approved; the same involves detailed engineering and

detailed scope of works which cannot be considered as change in approvals.

6.7. The Commission asked for details of rates, costs and scope of work so that a comparison could be made to arrive at a decision. NPL asked for RITES to be impleaded as a party in the matter. This was allowed, but RITES requested that they be removed from the list of respondents as they had not been under contract with NPL to prepare the same, which the Commission allowed. NPL however did approach RITES to give a report which was finally submitted on 06.12.2019. NPL in its submissions dated 01.06.2020 again stated that the component wise cost break-up and comparative analysis thereof is based on derived figures. It is the RITES Report 2019, which represent the correct figures.

7. PSPCL's submissions

7.1. PSPCL vide its submissions dated 09.11.2017 stated that the emergency crossover is not a part of the changed scope of the railway siding and the additional cost of Rs. 208 crore claimed by NPL does not pertain to the emergency crossover, which is the only work completed by NPL. Until the completion of the railway siding, NPL cannot claim any increase in costs. In order to substantiate its stance, PSPCL quoted the Case of Ratnagiri Gas and Power Pvt. Ltd Vs CERC &Ors in Appeal No. 130 of 2009 dated 25.03.2011 wherein it was held by Hon'ble APTEL that as the LNG Terminal is not commissioned therefore, its cost cannot be loaded on to electricity tariff causing undue burden to the consumers for a facility not put to use. PSPCL also quoted the case of Haryana VidyutPrasaran Nigam

Ltd Vs HERC in Appeal No. 02 of 2013 dated 06.09.2013 wherein Hon'ble APTEL has held that return is to be allowed only on such assets that are commissioned and put to use and not on the works which are in progress and are not put to use.

7.2. PSPCL denied the contention of NPL that the delay in land acquisition for ROR & Bulb portion is due to PSPCL and submitted that as per the Request for Proposal, it was the bidders responsibility to acquire the land for the railway siding. PSPCL stated that the Govt. of Punjab acquired the land for the railway siding on behalf of NPL and not on behalf of PSPCL. Further, PSPCL submitted that the Supreme Court in its Order dated 05.10.2017 in civil appeal no. 179 of 2017 in case of NPL Vs PSPCL did not consider the issue of whose obligation it was to provide the land for railway siding, and therefore if there was a delay it should not be attributed to the PSPCL.

7.3. PSPCL emphasized that only the additional works due to the change in the conditions of approval by the Railways due to DFC needs to be considered, as the changes in scope of work which could have been discovered by NPL through due diligence were not due to any change in alignment of DFC. PSPCL stated that the comparison given by NPL does not indicate the changes due to the DFC. NPL was supposed to provide a schematic diagram of the scope of work and ESP as per the In-Principle Approval and scope of work as per the changed approval. However, NPL has claimed that there was no ESP as per the In-Principle approval of the Indian Railways, however there was a route plan in the Feasibility Report/2008 RITES Report.

PSPCL alleged that NPL has changed the route plan for the lead line as well as for the In-Plant lines based on its own convenience and this change was not a requirement of the Railways. The Railways is only concerned with the compliance of its technical requirements. Therefore, the contention of NPL that every work in the ESP is a requirement of the Railways is incorrect. NPL has after finalizing the BTG Island, Chimney, Ash dyke, Water reservoir etc. finalized the layout for In-Plant railway siding and prepared the ESP accordingly for approval from the Railways. The change in the requirement of land is due to shifting of part of the railway line from inside the plant to outside the plant.

7.4. PSPCL also stated that the 2008 RITES Report was merely a feasibility report which was made available to the bidders and was not approved by the Northern Railways. It was the responsibility of NPL to consider the In-Principle Approval and not blindly consider the feasibility report, which was only one of the proposed schemes. PSPCL stated that article 5.2 of the PPA provides as under:

“5.2 The Site

The Seller acknowledges that, before entering into this Agreement, it has had sufficient opportunity to investigate the Site and accepts full responsibility for its condition (including but not limited to its geological condition, on the Site, the adequacy of the road and rail links to the Site and the availability of adequate supplies of water and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site for whatever reason.

The State Government authorities would be implementing the resettlement and rehabilitation package ("R&R") in respect of the Site for the Project, for which the costs is to be borne by the Seller. The Procurer shall endeavour to ensure that the State Government implements such R&R ensuring that land for different construction activities becomes available in time so as to ensure that the Power Station and each Unit is commissioned in a timely manner. Assistance of the Seller may be sought, which he will provide on best endeavour basis, in execution of those activities of the R&R package and as per estimated costs, if execution of such activities is in the interest of expeditious implementation of the package and is beneficial to the Project affected persons."

The aforementioned Article 5.2 of the PPA specifically refers to the rail links when it states that the Seller (NPL) has acknowledged that it had sufficient opportunity to investigate and is accepting full responsibility for its condition.

7.5. The 2008 RITES Report was only a feasibility report which required detailed engineering and detailed scope of work, which would result into a Detailed Project Report which ideally would be a basis for ESP drawings. Further, PSPCL submitted that NPL is seeking to misinterpret the Order of the Hon'ble APTEL which does not state the change in scope of works is to be considered vis-à-vis 2008 RITES Report. The Hon'ble Tribunal has also not rejected the contention of PSPCL with regard to the detailed engineering etc. The Hon'ble Tribunal has clearly referred to change in approvals as change in law. The RITES Report is not an approval of Railways. Further, ESP is not a modification of the conditions but a drawing prepared by NPL detailing the work planned to be carried out and the

Railways only confirms whether the scheme is acceptable in conformance with the technical standards. NPL chose to run a parallel track to the existing track for a fair distance rather than the route earlier proposed. This was a decision of NPL and is not due to any change in the conditions of approvals by the Railways or DFCCIL. It was submitted that with or without the current alignment of DFC, the route layout as per the feasibility report was possible. NPL decided the plant layout and the route of the lead line and not the Railways.

7.6. PSPCL stated that the RITES Report 2008, 2011, 2015 and 2019 are not relevant as they are neither consents nor approvals of the Railways and that NPL is trying to confuse RITES with Railways. PSPCL submitted that Hon'ble APTEL had proceeded only on the basis of change in law due to change in alignment of DFC and for no other works. The Order of the Hon'ble APTEL has to be read in a contextual manner and it cannot be that NPL can claim any expenditure as change in laws which are not reflected in the Order. The claim of NPL that there was a shift in take off point by 2 km north is unsubstantiated. NPL has not produced any evidence or supporting documentation to the same. Secondly the alleged shift in the take off point is not related to the DFC at all. 2008 RITES report was also an indicative, preliminary, feasibility report which was subject to changes. The change in track length etc. was due to the decision of NPL and not due to any compulsion of the Railway Authority. The 2019 RITES Report is not reliable and cannot be considered for deciding any claim of NPL. The PPA under Clause 13.2(a) provides

for the methodology for recovery of capital cost and the same is to be applied in the present case. However since the capital expenditure can be recovered only when the asset is commissioned/completed and put to use, therefore the increase in tariff in terms of Clause 13.2 (a) would be from the date of completion of the railway siding. PSPCL further submitted that NPL has failed to substantiate its claim for change in law. The impact of the DFC as per the decision of Hon'ble APTEL is actually a reduction in the scope of work which is in favour of PSPCL. The alleged additional work envisaged has not been done by NPL and in fact may not be required. All other claims of NPL are not tenable. PSPCL emphasized that the change in law as held by the Hon'ble APTEL is only related to the change in the alignment of DFC and cost escalation is specifically excluded by Hon'ble APTEL.

7.7. In its final submissions, while reiterating the above, PSPCL has stated that any change in track length is due to NPL's decision and not any approval of the Railway authority. The following objections have been made:

- (i) PSPCL has opined that the 2019 RITES Report is erroneous and flawed. A number of discrepancies have been pointed out (a) in terms of the length of the track in the plant yard and lead line and station (b) sheds, amenities, bridges/culverts (c) between the various reports by Rites in terms of rates and quantities. As per PSPCL, RITES Report -19 is extraneous and cannot be the basis for a change in law.
- (ii) NPL's contention that PSPCL cannot object to this report at this stage was countered by stating that merely because

NPL was permitted to file a report does not mean that it was sought by PSERC and in any case PSPCL had specifically contended that the RITES report could not be the basis of any claim.

- (iii) PSPCL has also questioned the amount of Rs 361 cr used by NPL as the base price. PSPCL has maintained that 2008 RITES Report was a feasibility report and it has been clearly stated that detailed engineering would be required which would lead to changes in the financial estimates.
- (iv) On the issue of land, PSPCL has stated that the entire land acquisition did not change due to the change in alignment of the DFC. It has been stated that this is a not a Cost plus Project and if acquisition rates have gone up to Rs. 1 crore per acre, these are not for PSPCL to pay.
- (v) PSPCL pointed out that in some cases there has been a reduction of work which should go in favour of PSPCL viz *reduction of 1 UP line, and reduction of 2 bridges (ROR and the additional bridge)*.
- (vi) It has also been stated that if an asset has not been put to use, no recovery of its cost can be claimed.
- (vii) With reference to the station building, PSPCL has stated that the 2008 RITES Report did mention a change in the location of the station building and this has also not been claimed by NPL before the Tribunal in the 2011 RITES Report, therefore it cannot now be claimed. Provisions for platforms etc. was made in the 2008 RITES Report.

- (viii) PSPCL has denied NPL's claim for the more expensive IOCL bridge on the lead line stating that the change to a steel girder bridge instead of a box culvert cannot be assigned as a change required due to the DFC route.
- (ix) The change in number of bridges, staff quarters, in plant works, locomotive sheds, heavy and light goods stores in the plant yard, R&D cabin were similarly denied.
- (x) NPL's claim for OHE & lighting & S&T Works has been disputed stating that these are all obvious parts of the Railway Tracks which have nothing to do with the DFC. Any change in material for the track in terms of soil blanketing etc. can also not be accepted on similar grounds. Shifting of lines has also not been substantiated.
- (xi) PSPCL has stated that NPL's payment of codal charges at 6.25% to the Railway cannot be accepted because the original scheme provided for 4% and there is no change in law on this count. Codal charges have also been applied on land and locomotives without reason. NPL has chosen not to get the work done by an approved Railway consultant and therefore the addl. cost has to be borne by NPL.
- (xii) Similarly on Project Management Costs, as there is no link between increase in cost and change in approvals, this cannot be accepted. NPL has also willingly chosen not to accept the reduction of cost due to the share of Railways, from the cost of the Railway siding as provided for in the Railway Freight Marketing circular No 1 of 2012 and has given no reason for doing so.

NPL's claim for increased costs, IDC and carrying cost has been denied by PSPCL stating that the delay is of NPL's own making and the original petition does not ask for either interest or carrying cost. PSPCL stated that the alleged change in law was during the construction period therefore Recovery of capital cost can only be done after an asset has been put on use.

8. Commission's Analysis & Decision

The Commission has examined the submissions made by the parties, the documents adduced on the record and after hearing the parties decides as under:

8.1. Nabha Power Limited (NPL) and L&T Power Development Limited (LTPDL) filed petition no. 38 of 2011 before the Punjab State Electricity Regulatory Commission (Commission) claiming increased costs of the project on account of change in law in respect of the applicable seismic zone of the Project site and change in location of the railway siding. The claim of NPL was not accepted by the Commission vide its Order dated 01.10.2012. NPL and LTPDL jointly filed an appeal in Hon'ble APTEL (Appeal no. 207 of 2012) impugning the said Order. The relevant submissions of NPL as mentioned in the judgment of Hon'ble APTEL and its findings dated 23.04.2014 are as under:

"2.h) Another claim made by the Appellants in its petition before the State Commission was for increase in capital cost of the project on account of change in approval of Railway authorities in relation to the railway siding. The RFP provided that the land for railway siding and rail lines from nearby Sarai Banjara station of the project site which framed part of the project, had to be acquired by the selected

bidder. The Feasibility Report of December 2008 by M/s. RITES, the consultants, which was made available to the bidders provided essential information regarding location of railway siding and track alignment and estimated cost of railway siding infrastructure including the “In-Principle” approval of railway siding based on the Feasibility Report. Subsequently, at the project implementation stage due to change in the position of the Dedicated Freight Corridor of the Railway one major bridge has to be constructed on the main line and another major bridge has to be constructed to pass through the Dedicated Freight Corridor lines. The Appellants claimed additional capital cost of rail siding infrastructure required on account of Railway’s approval now given to them which was not envisaged in the Feasibility Report of 2008 of M/s. RITES which included “In-Principle” approval of railway siding by the Railway authorities, under ‘Change in Law’ provision of the PPA.

.....

35.

e) After the project was handed over to the Appellant no.1 for execution, there was a change in the location of Dedicate Freight Corridor line and related railway infrastructures, which led to an alteration/change in the conditions attached to the In-principle approval of the Northern Railway. In March 2010, during discussions with Northern Railway it was made known that the Dedicated Freight Corridor line of the Indian Railways was coming up North of the existing railway line and that the railway alignment planned in 2008 RITES report was to be reassessed.

f) Thereafter, the Appellant no.1 approached M/s. RITES, the consultants, for reassessment for the railway siding arrangement for the project and a review report was prepared in January 2011 capturing change in scope of work of the

project on account of the modifications introduced by Northern Railway.

g) Accordingly, the change in condition of the In-principle approval on account of the signed minutes of the meeting held on 3.9.2010 falls within the ambit of “Change in Law” provision of the PPA. The “Change in Law” event involves financial implication as it has resulted in increase in the cost of construction of the project by Rs. 178.11 crores and therefore, requisite steps envisaged under Article 13 are required to be taken to mitigate the effect of such increase in the cost. The 2011 RITES Report has proposed changes requiring greater height clearance, increase in track length, earthwork modification at Sarai Banjara station such as high level platforms, station building and a bridge on account of change in location of the Dedicated Freight Corridor line, etc.

h) The Appellants are not claiming reimbursement of any cost increase over the estimated cost indicated in the 2008 RITES Report on account of merely executing the work in accordance with the 2008 RITES Report. Instead the Appellants are claiming increase in cost occurred by the change of scope of work on account of change in the conditions of “In-Principle” approval by the Northern Railway.

.....

49. The 2008 RITES Report envisaged commissioning of the Dedicated Freight Corridor (“DFC”) of the Railway in future and considered the distance from the coal mine to the power project by the existing route and the distance after commissioning of the DFC. However, the railway siding scheme in the Report did not envisage crossing of the future DFC with the up and down railway lines connecting the power plant yard to the main railway line. It is the contention of the Appellant that the DFC alignment as now intimated by the

Railway would result in additional works to be undertaken by them at additional cost. The major changes envisaged in the railway siding scheme are an additional bridge of 45 meters span due to induction of DFC, increase in span of bridge envisaged in the 2008 RITES Report from 18 meters to 30.5 meters due to crossing of DFC and increase in track length. (Emphasis supplied).

50. We also find the 2008 RITES Report stipulates as under regarding the alignment with respect to the DFC lines.

“In view of decision of the minutes of the meeting and relevant engineering parameters of Railway Engineering Code, details of Rail connectivity from Sarai Banjara station to plant site shown in the enclosed drawing no. RITES/T&E/PFCL/ RTPP RAJPURA /PLAN-01(R-2), dated: April, 2008. Feasibility of proposed rail flyover on the existing main line and necessary provision for future DFC lines has been considered while designing the proposed alignment. Further provisions for 4 loop lines i.e. 2 DN lines & 2 UP lines at Sarai Banjara station have been proposed for controlling the movement of rakes.”

Thus, the railway siding plan and the cost estimates were prepared in the 2008 RITES Report considering the alignment of DFC at the time of preparation of the Report. Thus, the induction of the DFC in the railway siding scheme due to the alignment of DFC now proposed by the Railway and consequent requirement of the additional infrastructure is a subsequent development.

51. We find that during the meeting with the Railway in March 2010 by the Appellant it was informed by the Railway officers that the DFC is planned North of the existing railway line which would result in changes in

the railway siding scheme and provision of the additional flyover to cater to DFC and making provision in upside flyover for 2 lines of DFC would have to be made. Hence the proposal of rail infrastructure suggested in 2008 RITES Report has undergone inevitable change and revised proposal has been worked out fulfilling Railway requirement.

52. Accordingly, the Appellants have prepared the DPR for railway siding for the project which has been approved by the Northern Railway vide letter dated 19.9.2011.

....

54. The verification or due diligence of the railway siding scheme by the Appellant at the time of submitting the bids would not have resulted in any change in the railway siding scheme as at that time it was not known either to the Procurer of Power or the bidders or the Railway that the alignment of the proposed DFC would be interfering with the railway siding of the project.

55. Accordingly, this issue is decided in favour of the Appellants. The State Commission is directed to examine the proposal of the Appellant No. 1 as a result of change in approval for railway siding granted by the Northern Railway and allow the same after prudence check as per the terms of the PPA.”

Thereafter Hon'ble APTEL summarized its findings as under:

“56. Summary of our findings:

.....

ii) The approval of the Railway siding of the Project by the Railway is an approval by the Government Instrumentality under the law. The change in scope of the Railway Siding as a result of the approval by the competent authority in Railway with respect to the “In Principle” approval leading to change in

cost of the project will be covered under “Change in Law” under the PPA. Therefore, the Appellant is entitled to claim increase in project cost due to change in scope of work of the Railway Siding due to additional works as a result of change in condition of approval by the Railway as per the provisions of the PPA under Article 13. However, the Appellant is not entitled to claim cost escalation, if any, in the works envisaged in the “In-Principle” approval of the Railway which formed part of the bid documents.

57. The Appeal is allowed in part and the impugned order is set aside to that extent. No order as to costs. The State Commission is directed to pass consequential order at the earliest preferably within 3 months of receipt of a copy of this judgment”.

8.2. NPL approached the Commission although it had not completed the entire work of the railway siding (ROR and bulb portion). NPL contended that the railway siding constructed by it is now being used for transporting coal to the plant site and if the compensation for this portion was not allowed the consumers would be paying interest on the same. However, PSPCL referred to the various Orders of the Hon’ble APTEL and contended that until the completion of the railway siding, NPL cannot claim any increase in costs.

The Commission notes that the case laws referred by PSPCL in support of its contention i.e. Ratnagiri Gas & Power Pvt. Ltd. Vs CERC & Ors. in appeal no. 130 of 2009 and Haryana Vidyut Prasaran Nigam Ltd Vs HERC in appeal no. 2 of 2013 are related to non-commissioning of the assets and therefore its cost should not be loaded on to consumers till it is put in use. In the

instant matter, after the execution of emergency cross over the entire coal for the Project is being delivered to the Project Site by rail and therefore the asset has been put to use. The Commission has, therefore considered the case for compensation to be allowed to NPL for those assets which have been put to use.

8.3. NPL has submitted its claims for Land for Railway Siding, Works at Sarai Banjara Station, Lead line and In-Plant yard along with project management and codal charges, based on the Reports prepared by RITES in 2008, 2011, 2015 and 2019. PSPCL has objected to the use of these reports stating that the same are not synonymous with approvals of the Railways authorities. PSPCL has also questioned the amount of Rs. 361.61 crore used as a reference point for calculating the additional cost claimed by NPL.

8.4. Before proceeding further the Commission therefore examined the issue of the various reports given by RITES.

A. The 2008 RITES Report (hereinafter called R-8) listed as the final feasibility report was prepared before bidding. The Report contains the in principle approval of the Railway authority given vide No 86/T/377/TGP Nabha dated 5th Nov 2008. The cost estimates given therein excluding IDC of Rs. 44.52 crore is as follows:

Sr. No.	Description	Cost (Rs. Crore)
1	Civil Engineering Works	171.00
2	S&T Works	8.00
3	OHE Works	22.50

Total (A)		201.50
4	Over Heads and General charges @ 8.5 %*A	17.13
Total (B)		218.63
5	i)Project Management Charges @ 12.5%*B	27.33
	ii) Service Tax @ 12.36*(i)	3.38
	iii) Railway Codal Charges @ 4%*A	8.06
6	Land Price	24.70
7	Locomotives	15.00
8	Road	20.00
Total		317.09

R-8 is the document which was made available by erstwhile PSEB now PSPCL to bidders including L&T PDL (now NPL) and contains the in-principle approval of Railway authority, therefore the Commission considers it fit to use R-8 as the starting point.

B. The RITES Report 2011 (hereafter called R-11), emerged when subsequent to the R-8 and L&T's (now NPL) bid being accepted, certain developments took place which impacted the overall rail infrastructure required for the project. Based on the discussions with the Ambala Railway Div. Office regarding the DFC coming up North of the existing Railway line from Shambhuto Ludhiana and the creation of capacity along this critical corridor for future rail requirements, the Railway siding layout planned earlier by RITES was reassessed and a revised layout was designed to cater to the take off point and entry point of the Railway siding. In this report the cost enhancement on account of:

- (i) The DFC provisions is Rs 65.38 crore hard cost and with other charges Rs.101.11 crore,

- (ii) Requirements not envisaged in Feasibility Report 2008 is Rs.21.86 crore hard cost and with other charges Rs 55.63 crore.

The total cost was assessed at Rs. 473.83 crore against the original cost of Rs. 317.09 crore. In this proposal the cost of land had been increased to Rs. 50 lakhs per acre and the amount of land required had increased from 98.80 acres to 134 acres.

R-11 is an estimate of the costs to be incurred taking into consideration the revised scope due to change in alignment of DFC and addition/deletion of works from those originally envisaged in R-8 as per the detailed engineering scale plan. It is seen that the entire scope of work was included in the ESP approved on 26.11.2012. Revision 1 was done in September 2013 to bring out the non-exclusive usage of one UP line and two DN loop lines on Railway land at Sarai Banjara Station for which no land license fee were to be charged from the Siding owner and Revision 2 was done in December 2014 which broadly pertains to the interim arrangement for receiving maximum three rakes per day and only the return line was to be utilized for train movement between the Sarai Banjara Station and NPL Railway siding. The Commission notes that the physical scope remained the same as per ESP approval granted by Railways in November, 2012. Therefore the Commission considers it prudent to use R-11 to determine change in scope of works due to change in alignment of DFC.

The Engineering Scale Plan (ESP) bearing No N.R.H.Q.E UMB/11/11-2012/R-I/P2 was certified in December 2011 and

approved by Railways Authority on 26.11.2012 with the following notes:

1. All the dimensions shown in this drawing are in meters if not specified.
2. The party will bear the entire cost for any modification or development by railway in NPL siding.
3. The GAD for L-Xing, Bridges, Rubetc. will be submitted by the party for approval of railway separately.
4. Work will be done by the party with their own cost under the supervision of Railway authority within railway premises.
5. 13 Quarters for traffic staff will be provided at strn. as under: SS(Type-IV)-1, SM/ASM (Type-III)-4 pointman and gateman (Type-II)-8.
6. (i) Requirement of staff quarters other department will be conveyed later on
(ii) and inside plant quarters will be provided in NPL colony as required by Railways.
7. More than 5.5 cures will be provided with cheek rails.
8. All levels are in meters above M.S.L of 267.62 meter at SBJ. (Rail top of mainline in front of SBJ St. Building, whereas the DFCC level at the same location is $269.148+0.698=269.846$
9. This plan is based on NR. DIVL. Plan No.Y-340/SBJ-2003/UMB & NR.HQE. Plan No. UMB/08/09-2005.
10. On DN side NPL shall construct two lines of CSR of 750 M each for stabling two trains at UMB end. These lines shall have connectivity with IR at both ends once DFCC in this section gets commissioned. The line No. 7 shall become part of DFCC yard.
11. NPL shall also construct one hot XLE siding having CSR of 120.00 M on UP side of the yard and emergency cross over between IR's UP & DN main lines at UMB end.
12. This plan has been developed based on discussions of Northern Railway Officials with Officials of DFCCIL.

13. The land required to provide the connectivity of return line of NPL to DFCC proposed yard shall be acquired by railways.

14. The land between the DFCCIL boundary and proposed boundary of land acquisition notified by NPL/L&T should be acquired by NPL/L&T.

15. Revised project sheet of affected area indicating revised gradients i.e. longitudinal/cross formation levels of N&T crossing yard shall be submitted by the party and got approved from DFC before execution.

16. DFCC is requiring land on behalf of Indian Railways any construction within the Railway land/land acquired by DFCC will need approval of concerned Railway Authority. The terms and conditions at which any private party will be permitted to do any construction work within this land shall be decided and processed by Northern Railway.

17. **TRACK STRUCTURE:-**

1. Rails-60 KG.T-12/90 UTS 1st quality at SBJ & 60 Ks I.U for siding.

2. Sleepers:- Mono block PSC with 1660 Nos. per KM at SBJ and 1540 Nos. per KM for siding.

3. Points and crossing:- 60 KG (1 in 12) curved switch with CMS crossing on PSC sleepers (Fan shaped layout).

4. All fitting to confirm to IRS specification.

5. Track structure shall be for 25 T AXLE load approved by RDSO.

6. Bridges and formation shall be for 32.5 T AXLE load (DFC).

18. During and after the execution work of project, the project will be inspected by higher officials of the railway time to time for which a suitable vehicle will be permanently provided by the party to the Railway at the cost of the party.

SIGNAL & TELECOMMUNICATION:-

19. Due to insertion of new cross-over at chainage 0/973.66, the first stop Sig. of SBJ is getting shifted towards RPJ. This requires balancing of inter signal distance between auto section SBJ-RPJ (DN:) & RPJ-SBJ (UP). The cost of this shifting shall

be borne by the NPL as deposit work.

20. Following S&T staff quarters are required at SBJ for maintenance & inspection of S&T gears.

i) Type –IV -01 No.

ii) Type-III – 01 No.

iii) Type-II – 03 No.

21. Following TRD staff quarters are required at SIR for maintenance of TAD Gears

i) Type-IV -02 Nos.

ii) Type-III – 05 Nos.

iii) Type-II – 10 Nos.

22. This plan supersedes NRDIVL Plan Y-282/SBJ-2011/UMB, NRHQE Plan No. UMB/03/03-2012, Sheet No. 1 (Sarai Banjara Stn.).

23. Mode of execution of work will be framed and approved separately by the competent authority of Railway.

24. There are certain OHE Portals/Masts marked with green ink which to be dismantled. The final dismantling of OHE structures will be worked out after final marking. The OHE work in station area shall be done by Railways.”

Further, Revision (R-1) was carried out in September 2013 as under:

“25. As per noting on PP-25-29 of file no.86-T/377/TPG/Sarai Banjara/Nabha/UMB/PT-II approval has been accorded by General Manager under Railway board’s policy circular no. 96/TT(1)/10/ACC/IIR/ 3C dated 23/10/1997 for non exclusive usages of one UP line and two DN loop lines created on Rly. land at Sarai Banjara Station for which no land license fee will be charged from the siding owner.”

Revision (R-2) was carried out for interim arrangement in December, 2014 as under:

“1. Nomenclature of DN loop 5, 6 & 7 has been changed to DN loop cum up reception line 5, 6 & 7 respectively as per Dy. Com/Plg. Letter no. 86-T/377/T&P/Sarai Banjara/Nabha/UMB/PT.II dated 24-11-2014.

2. Proposed change is done as an interim arrangement for receiving maximum three (3) coal rakes per day with an additional condition that party shall furnish a bank guarantee for the construction of the via duct. CCTPM letter no. 86-T/377/TGP/ Sarai Banjara/Nabha/ UMB/ PT.II dated 22.9.2014 & 23.09.2014.

3. Dead end to be retained at CH. 487.68 m on UMB end of line No.1.

4. Track portion beyond DE at CH. 487.68 m upto NPL siding shall not be connected.

5. Block working between SBJ & NPL siding shall not be provided.

6. Return line only shall be utilised for train movements between SBJ & NPL siding.(Emphasis provided)

7. This revision is for all the five sheets of this plan.

8. DRM/UMB will ensure the cap. of ‘maximum 3 rakes per day’ and appropriate “bank guarantee” from Nabha Power Ltd, before commissioning on the interim arrangement.”

C. The RITES Report 2015 was commissioned by NPL, before the work had even been completed. This report was submitted to the Commission in August 2017. It is again an estimation of the costs for completion of works.

D. During the course of the proceedings, the Commission sought information again and again because NPL could not specify either the changed scope of work only on account of change in alignment of DFC or the escalation in cost of the works already envisaged in R-8 while executing the works and claiming that the extra cost of Rs. 156.74 crore (473.83 - 317.09) excluding IDC was computed by

deriving figures. After the Commission agreed to the RITES prayer that it should not be impleaded as a party in the petition, NPL approached the RITES to provide a detailed item-wise cost breakup of the scope of work of Railway Siding as per 2008 Report, cost estimate of bulb portion and ROR flyover as per 2008 Report, which formed a part of overall cost estimate of Rs. 317.09 crore (excl.IDC); item-wise comparison of the cost estimates of original scope of works as per R-8 and actual cost of construction of Railway Siding as per revised scope of works at the same rates that existed in 2008. RITES formulated a report and NPL submitted the same as 2019 RITES report. It needs to be noted that in 2019 RITES report some of the figures given were at variance with those given in the earlier RITES Reports.

In view of the contradictions in various reports submitted by NPL, the Commission decides to rely mainly on contents of R-11 i.e. the report which was submitted to the Hon'ble APTEL for consideration of its appeal to examine the NPL's claim for increase in the cost of the railway siding on account of change in alignment of the DFC. Exhibit III in R-11 indicates the changes envisaged due to inclusion of DFC and is placed as Annexure-I of this Order. **The Commission therefore decided to use R-8 as the base reference point and R-11 as the document where the changes over the original scheme have been spelt out.**

The Commission considers it prudent to consider the proposition in two parts as given below:

A. Change in scope of works due to change in DFC Alignment.

B. Compensation allowable on account of (A)

A) Change in Scope of works due to change in DFC Alignment

NPL has emphasized that its claim cannot be limited to only the additional scope of works necessitated due to the change in the alignment of DFC. NPL pointed out that the Hon'ble APTEL has formulated a wider legal issue for adjudication i.e. whether change in scope of works envisaged in the earlier approval by way of a subsequent approval by the competent Railway authority would constitute Change in Law under the provisions of the PPA. Therefore, the variation is not limited to the change in scope due to the change in the alignment of DFC. The changes envisaged at time of ESP amounting to Rs. 21.86 crore in R-11 include 9 minor bridges for road crossings and drains and one major bridge for IOCL pipeline crossing.

Whereas, PSPCL has consistently been emphasizing the fact that the additional works on account of change in condition of approval by the Railways only due to DFC needs to be considered. It was also submitted that the changes in scope of work which could have been discovered by NPL through due diligence and were not due to change in alignment of DFC, need not be considered.

The Commission notes that in R-8 it has been clearly stated in Chapter 7 (Abstract of Cost Estimates) that at the time of detailed engineering there may be changes in the cost estimates. Further in Note C to the abstract it was specifically mentioned that this cost inter alia does not include the cost of any additional works which may crop

up during construction period. Also, the letter dated 08.09.2009 sent by PSPCL to all the bidders specifically stated as under:

“.....Bidders are free to firm up and select their scheme of coal transportation from Sarai Banjara railway station to the plant site.

The above information may be taken indicative only.”

NPL would therefore, while bidding, have carried out its own due diligence. Further there was an element of uncertainty in this estimate of works and costs which was accepted by the successful bidder i.e. NPL vide Article- 5.2 of the PPA as given under:

“5.2 The Site

The Seller acknowledges that, before entering into this Agreement, it has had sufficient opportunity to investigate the Site and accepts full responsibility for its condition (including but not limited to its geological condition, on the Site, the adequacy of the road and rail links to the Site and the availability of adequate supplies of water and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site for whatever reason.

The State Government authorities would be implementing the resettlement and rehabilitation package ("R&R") in respect of the Site for the Project, for which the costs is to be borne by the Seller. The Procurer shall endeavour to ensure that the State Government implements such R&R ensuring that land for different construction activities becomes available in time so as to ensure that the Power Station and each Unit is commissioned in a timely manner. Assistance of the Seller may be sought, which he will provide on best endeavour basis, in execution of those activities of the R&R package and as per

estimated costs, if execution of such activities is in the interest of expeditious implementation of the package and is beneficial to the Project affected persons.”

The Commission is of the view that in such capital intensive projects, the Detailed Engineering/Engineering Scale Plan (ESP) would always lead to certain additionalities/reductions from the broad scope of works envisaged in a feasibility report and NPL was well aware of the fact.

It needs to be noted that the Railway line had to cross IOCL pipeline as per route envisaged in R-8. NPL is claiming this cost as change in Law. The IOCL has its policy regarding crossing of its pipeline. The type of bridge to be used for the crossing of the pipeline cannot be stated to be a change in law. It also needs to be noted that, had the change in alignment of DFC not taken place, NPL would have carried out the entire work at its own cost. **Further, the Hon'ble APTEL in its Order dated 23.04.2014 in appeal no. 207 of 2012 has specifically mentioned *the major changes envisaged in the railway siding scheme are an additional bridge of 45 meters span due to induction of DFC, increase in span of bridge envisaged in the 2008 RITES Report from 18 meters to 30.5 meters due to crossing of DFC and increase in track length.***

In view of the above, the Commission after considering the aforementioned aspects is inclined to consider only the change in scope of works related to change in alignment of DFC for determination of compensation after prudence check, in accordance with the Hon'ble APTEL Order dated 23.04.2014.

A1. Sarai Banjara Station

NPL has shown the following item wise costs for the reconstruction of Sarai Banjara Station as per the various RITES Reports and its claim in the Table-1 below:

Table-1: Sarai Banjara Station

			2008			2011 RITES Report			2015			Claim			
			NPL submission dt. 06.12.2019			NPL submission dt. 06.12.2019			NPL submission dt. 06.12.2019			NPL submission dt. 06.12.2019			
Discipline	Item	Description	Qty	UOM	Amount (Rs.)	Qty	UOM	Amount (Rs.)	Qty	UOM	Amount (Rs.)	Qty	UOM	Amount (Rs.)	
Civil Engg	P-Way		5.03	ETkm	13,10,82,613	6	ETkm	15,68,59,473	7.2	ETkm	18,73,04,392	7.2	ETkm	17,02,11,887	
	Earth Work	Soil	95,152	Cum	2,64,90,183	1,40,000	Cum	3,79,40,000	50,934	Cum	1,68,88,750	50,934	Cum	1,78,40,188	
		Blanketing	17,918	Cum	2,64,39,801	6,300	Cum	96,01,200	23,779	Cum	4,20,14,165	23,779	Cum	4,47,02,774	
	Minor Bridges	335 335 A & SBJ	-	Nos.	-	5	Nos.	7,74,04,228	5	Nos.	8,58,95,493	5	Nos.	10,16,49,801	
	Building Structure and other amenities	Station building at SBJ	-	Sq.m.	-	250	Sq.m.	37,50,000	767.55	Sq.m.	1,15,13,250	767.55	Sq.m.	1,20,25,485	
		HL Platform Up & Down	2	Nos.	90,00,000		Sq.m.	2,10,00,000	2	Nos.	2,10,00,000	2	Nos.	1,86,00,568	
		FOB (across 7 lines)	-	Nos.	-	2.5 x 54m	Sq.m	1,18,00,000	3.2 x 72m	Sq.m	2,01,03,703	-	Nos.	-	
		Staff Quarters	-	Sq.m.	-	1575	Sq.m.	2,36,25,000	2,718.67	Sq.m.	4,07,80,050	43	Sq.m.	3,31,56,414	
		Sheds & other platform amenities	-	LS	1,31,00,000	-	LS	1,50,00,000	-	LS	1,50,00,000	-	LS	80,10,315	
Sub-Total							20,61,12,597			35,69,79,901			44,04,99,803		40,61,97,432
S&T		New SSI for 7 line station	5.03	ETkm	2,97,56,066	New for 7 line	ETkm	10,81,69,000	7.2	ETkm	12,98,02,800	7.2	ETkm	13,31,14,617	
OHE		Modification & 7.2 km new track OHE	5.03	ETkm	2,51,24,848	6	ETkm	5,52,00,000	7.2	ETkm	6,62,40,000	7.2	ETkm	4,78,47,071	
GE		Platform lighting etc	-	LS	-	-	LS	2,10,00,000	-	LS	2,10,00,000	-	LS		
Total							26,09,93,511			54,13,48,901			63,65,42,603		5871,59,120

The Commission notes that the Northern Railway vide its letter no. 86-T/377/TGP/Nabha dated 05.11.2008 issued the In-Principle approval for the Railway Siding for the Thermal Project to be set-up at Rajpura (Punjab), as under:

“...In Principle” approval for the rail siding for Thermal Power House proposed to be set up at Rajpura, Punjab by Nabha Power Ltd., Patiala/PSEB based on Feasibility Report submitted by RITES as referred above and revised plan submitted by RITES vide their letter No. RITES/T&E/PFC/Nabha/2007 dated 17.10.08 is approved subject to the following conditions:

- Sarai banjara station to be provided with 2 UP and 2 DN Loop lines at Party’s cost. The loop line proposed to be provided outside the Gate Cabin may be dropped.*
- The proposed flyover on LDH end to be fully provided at Party’s cost.*
- 3 Shunting Locomotives (2 for rake handling + 1 as maintenance spare) will be provided. All the 3 Shunting Locos must be either WDS-6 or WDM-2 with adequate hauling capacity. In case, in future, a need is felt for any additional Shunting locomotives, the same may be provided to ensure that railway wagons are not detained unnecessarily inside the plant.*
- 4 Wagon Tiplers to be provided with an arrangement that 3 tiplers would be functional at a time.*
- In case, the station building is required to be shifted on the UP side for accommodating the connectivity and 2 UP Loop lines, the*

cost for the same will have to be borne by the party including land acquisition, if any.

- *The proposed loop lines at the station and the pre tipping and post tipping lines inside the plant yard should not be less than 720 m each.*
- *The Arm Charges for all 4 Wagon tippers should be of a minimum of 30 wagon capacity.*
- *The capacity of the Conveyor belt system should be such that it should be feasible to simultaneously tipple 3 rakes on 3 tippers and coal unloaded from wagons of these 3 rakes should be easily transported by the Conveyor belt attached to each tippler. Thus, the capacity of individual conveyor belt should not be less than 1000 tonnes per hour with proper arrangement down the conveyor belts for adequate evacuation of coal so that tipping operation is done smoothly without causing any detention to wagons.”*

The main claim is for extra track length (7.2 – 5.03 = 2.17 Km), station building, staff quarters, Foot over Bridge (FoB), extra cost for higher level of platforms and platform lighting. It is necessary to examine this issue in detail. The change in track length as indicated by NPL in its submissions is as under:

Location	R-2008 (Derived)	R-2011	R-2015	R-2019
Sarai Banjara Station	5.03	6	7.20	7.20
Lead Line	15.72	22	15.00	15.00
In-Plant Yard	24.30	15	26.94	26.94
Total	45.05	43	49.14	49.14

It needs to be noted that the derived figures of track lengths submitted by NPL for R-8 i.e. the Final Feasibility Report made available to the bidders for firming up their bids, are not in line with the figures given for track length in the R-8.

The relevant extract regarding track length in R-8 is as under:

“6.5.2.....The total length of the UP line from Take Off point to plant is 10.563 KM and DN line length is 8.164 Km.

6.5.3..... The total track length of the in plant calculated on the basis of the recent additions & modification carried out in the plans as per discussions held with Railways, has been assessed at 26kms and overall track length from take-off point to plant and including all loop-lines & siding lines in this proposal comes to about 45 km.”

Therefore, the breakup as per R-8 would be as under:

Line length in km	
UP Lead Line	10.563
DN Lead line	8.164
In-plant yard	26.000
Total	44.727

It is clear that the lead line includes loop lines at SBJ station and bulb portion/RoR. When these discrepancies in length of the track were pointed out, NPL requested the Commission to go by the total track length of the line which NPL stated was 49.14 km against the original 45 km.

NPL while deriving the figures of track length at Sarai Banjara Station has submitted the track length as 5.03 km in R-8, 6 km in R-11 and 7.2 km in R-15 & R-19. It is evident that NPL has taken RoR and bulb portion of 3.74 km in track length at SBJ and reduced the same from the lead line. The length of lead line in R-8 was 10.563 km +8.164 km i.e. 18.727 km including bulb and RoR portion. If we reduce the bulb and RoR portion of 3.74 km, the track length of lead line becomes 14.987 km or 15 km as

claimed by NPL. The Commission observes that as per conceptual layout plan submitted by NPL in petition no. 38 of 2011 filed with PSERC depicting the original & revised schematic for Sarai Banjara Station due to DFC inclusion, the track length for 2 UP and 2 Down loop lines as per original scheme worked out to $4 \times 0.720 = 2.88$ km and the revised track length of 1 UP and 2 Down loop lines with inclusion of DFC came to $3 \times 0.760 = 2.28$ km. Therefore, there has been reduction of track length for the UP and Down loop Lines at SBJ. Moreover, no increase in cost against track length at Sarai Banjara Station has been shown in Exhibit-III in R-11 on account of DFC.

The RoR and bulb portion included in the track length at SBJ are yet to be constructed and therefore any increase in track length on account of DFC cannot be considered at this stage in the track length at SBJ.

Thus, the Commission is of the view that no increase in the track length has taken place at SBJ stations on account of DFC. However, the Commission is of the view that the raised levels of platforms etc. necessitated due to higher level of the DFC, compensation for station building, staff quarters and associated works is required to be considered for compensation.

A2. Lead Line

NPL has mentioned the item wise works and costs for the Lead line in the Table 2 below as:

Table-2: Lead Line

Discipline	Item	Description	2008 NPL submission dt. 06.12.2019			2011 RITES Report			2015 NPL submission dt. 06.12.2019			Claim		
			Quantity	UOM	Amount (Rs.)	Quantity	UOM	Amount (Rs.)	Quantity	UOM	Amount (Rs.)	Quantity	UOM	Amount (Rs.)
Civil Engg	P-Way		11.98	ET km	19,18,35,663	22	ET km	49,78,69,951	15	ET km	27,90,58,439	15	ET km	34,09,84,928
	Earth Work	Soil	5,25,443	Cum	14,72,57,386	12,96,000	Cum	33,82,56,000	6,65,762	Cum	19,48,30,889	6,65,762	Cum	18,16,31,141
		Blanketing	45,422	Cum	6,70,24,703	64,138	Cum	9,77,46,312	68,837	Cum	12,16,25,342	68,837	Cum	7,86,07,662
	Minor Bridges		-	Nos.	-	12	Nos.	18,57,70,148	23	Nos.	15,21,57,168	23	Nos.	18,26,75,438
	Building Structure	R&D Cabin	2	Nos.	1,41,92,148	166	Sqm	26,56,576		Nos.	-	-	Nos.	
	Level Crossing		7	Sqm	22,40,000	-	Sqm	-	-	Sqm	-	-	Sqm	
	Major Bridges		-		-	3	LS	27,46,00,000	1	LS	9,46,00,000	1		6,46,67,967
	Misc.		-	LS	1,15,00,000	-		2,36,73,117	-		2,36,73,117	-	LS	1,37,79,504
Sub-Total					43,40,49,900			1,42,05,72,104			86,59,44,955			86,23,46,640
S&T			-	ET km		-	ET km	8,08,10,532	15	ET km	5,50,98,090	15	ET km	61,91,643
OHE			11.98	ET km	5,98,40,096	-	ET km	16,69,91,892	15	ET km	11,38,58,108	15	ET km	9,27,32,336
GE			-	LS		-	LS	1,26,00,000		LS	1,26,00,000	-	LS	1,85,33,211
Total					49,38,89,996			1,68,09,74,528			1,04,75,01,153			97,98,03,830

NPL has shown the track length for the lead line as 22 km in R-11, later changed to 15 km in R-15 & R-19 against the 14.987(10.563+8.164-3.74) km excluding bulb and RoR envisaged in R-8. Therefore apparently there has been no increase in track length of lead line.

However, if there has been any increase in the track length on the lead line, the same is due to change in route of the lead line. No doubt, the railway authorities have approved the ESP, but there is no document on record to show that railway authorities wanted NPL to change the route of the line originally envisaged. The bidders were free to firm up and select their scheme for coal transportation from Sarai Banjara station to the Plant. It is also pertinent to mention that the record shows that there were other options available to NPL. Had a cheaper option been accepted by NPL leading to a savings related to the estimated cost of the railway siding, NPL would have been unlikely to have offered a reduced tariff.

Thus, the Commission is of the view that no increase in track length of lead line has taken place on account of change in alignment of DFC.

A3. In-Plant Yard

NPL has mentioned the following item wise works and costs for the in-plant yard in the Table 3 as under:

Table-3: In-Plant Yard

Discipline	Item	Description	2008 NPL submission dt. 06.12.2019			2011 RITES Report			2015 NPL submission dt. 06.12.2019			Claim		
			Quantity	UOM	Amount (Rs.)	Quantity	UOM	Amount (Rs.)	Quantity	UOM	Amount (Rs.)	Quantity	UOM	Amount (Rs.)
Civil Engg	P-Way		24.3	ETkm	46,37,15,862	15	ETkm	33,94,56,785	26.94	ETkm	55,22,21,816	26.94	ETkm	47,69,79,593
	Earth Work	Soil	5,20,100	Cum	14,75,95,539	1,64,000	Cum	2,68,96,000	2,37,210	Cum	6,94,14,762	2,37,210	Cum	6,37,48,200
		Blanketing	1,25,482	Cum	18,51,61,239	50,535	Cum	4,65,35,340	1,34,849	Cum	23,82,59,304	1,34,849	Cum	18,52,25,457
	Minor Bridges		-	Nos.		-	Nos.		3	Nos.	1,33,01,037	3	Nos.	67,85,442
	Building Structure	Loco Shed, Light Goods Store, Heavy Goods Store	1	Nos.	99,60,900	-	Nos.	2,01,90,786	3	Nos.	2,01,90,786		Nos.	9,55,27,854
	R&D Cabin (in-plant Cabin)		200	Sqm	54,00,000	-	Sqm		247	Sqm	70,00,000	247	Sqm	2,06,14,182
	Drain work		-	LS	36,82,824	-	LS		-	LS	50,00,000		LS	
Sub-Total					81,55,16,364			43,30,78,911	-		90,53,87,705			84,88,80,728
S&T			24.3	ETkm	5,02,48,642	-	ETkm	9,63,08,273	26.94	ETkm	17,29,69,658	26.94	ETkm	35,75,62,041
OHE			24.3	ETkm	12,13,78,493	-	ETkm	12,67,02,785	26.94	ETkm	22,75,58,202	26.94	ETkm	22,45,64,129
GE				LS		-	LS	90,00,000	-	LS	90,00,000		LS	1,07,87,959
Total					98,71,43,499			66,50,89,969			1,31,49,15,565			1,44,17,94,857

NPL has claimed a change in the In-Plant Yard works due to increase in track length from 24.30km in R-8 to 15 km in R-11 which was changed to 26.94 Km in R-15 & R-19 and associated costs. As per the final feasibility report 2008 supplied to the bidders, the track length of the In- plant yard was assessed as 26 KM. The relevant extract from 2008 RITES Report is reproduced as under:

“0.29 The total length of the rail infrastructure in the in plant is assessed at 26 kms and the total length is assessed at 45 kms.”

The Commission notes that NPL during the adjudication of Petition No. 38 of 2011 by the Commission, submitted the original conceptual layout plan and the revised schematic of Sarai Banjara Railway Station, due to the inclusion of DFC, vide its submissions dated 15.09.2011. As per the layout plan, the major changes envisaged in the Railway siding works for induction of DFC did not include any change in the In-plant yard.

There is nothing in the approvals given by the Railways which indicate that the change in the alignment of the DFC impacted the layout or design or the cost of the layout in the Plant. Any change made in the in plant layout was at the instance of NPL. L&T RBU, NPL's sister company was an approved Railway contractor and would have been aware of the detailing required over the original Feasibility Report. Claims for large and small sheds for storage or R&D cabins or staff quarters for the Railway personnel would have been part of the original scope. The Commission observes that NPL's decision to change the layout of track within the Plant area was a commercial decision and hence cannot be attributed to change in alignment of DFC. **In view of the above, the Commission does not find merit in the said claim.**

A4. RoR& Bulb portion

The Commission notes that the RoR including bulb portion is not constructed / operational and NPL has not claimed the same.

The Commission on prudence check observed that as per the Minutes of Meeting dated 17.08.2010 held between Northern Railway, DFCCL and L&T Limited, the following was recorded:

“The comparative cost of the proposal given by RITES i.e. flyover at Sarai Banjara station and creating infrastructure including new lines at Sarai Banjara will be much higher than constructing a line between Rajpura and Sarai Banjara. This point was discussed in detail with the representatives of L&T who did not agree to this. The representatives of L&T has insisted to make the flyover at Sarai Banjara crossing both the main lines to go to the Power House and have also agreed to make another flyover over DFC (keeping provision of 2 DFC lines) to bring the empty rakes in DN yard at Sarai Banjara for dispatch.

The proposal which has been put forward and insisted further by the L&T, is much costlier than the proposal given by Railways. Since the party i.e. L&T has not agreed to the proposal given by the Railways in consultation with DFCCL, the existing feasibility report of RITES may be processed further. The party may be asked to submit a DPR for the proposal given in the feasibility report prepared by RITES. Special mention may be made in the letter to ensure space for two lines under the flyover in DN direction to adjust the DFCCL alignment.”

In view of the above, the Commission opines that NPL could have opted for the cheaper option as suggested by the Railways i.e. constructing a line between Rajpura and Sarai Banjara, thereby avoiding the cost of Flyovers. Had NPL opted for that scheme, there was no requirement of bulb portion including RoR nor would there have been any additional cost.

Further, NPL has in its latest submissions, highlighted that fresh modifications by DFCCIL are presently being considered by the Indian Railways in terms of which the requirement of constructing RoR Flyover and bulb portion is likely to be dropped permanently.

In view of the above, the Commission decides that no compensation is required to be determined on account of bulb portion including ROR at this stage.

B) Compensation allowable to NPL on account of (A)

The Commission notes that the Hon'ble APTEL in its judgment dated 23.04.2014 in appeal no. 207 of 2012 has specifically mentioned that the major changes envisaged in the railway siding scheme are an additional bridge of 45 meters span due to induction of DFC, increase in the span of bridge envisaged in the 2008 RITES Report from 18 meters to 30.5 meters due to crossing of DFC and increase in track length. Further, the Hon'ble APTEL has also specifically excluded the cost escalation in the work, which was already envisaged in the in-Principle approval of the Railways.

The Commission has therefore to consider the compensation based on allowable components, actual expenditure incurred and has to exclude the cost escalation as per the directions of the Hon'ble APTEL. As explained earlier, NPL has submitted its claim based on estimates of expenditure.

B1. Cost escalation

It needs to be noted that NPL entered into a Railway Siding Contract with its sister concern L&T-RBU on 08.06.2011 at a contract price of Rs. 360 crore [inclusive of Excise duty, Education cess, VAT (Sales Tax)] while the proceedings in the petition no. 38 of 2011 were going on.

It is noted that the scope of work mentioned in the Railway Siding Contract was as under:

“5.1 The Contractor shall carry out and complete the Works covering design, engineering, obtaining necessary approvals from Railways and others, procurement, supply, transportation, unloading, storage, execution of civil works, project management, inspection, erection, successfully carrying Tests on Completion and commissioning and other services as many necessary or expedient for construction of a Railway Siding according to the Specifications and requirements of the Owner and the Railways including provision of earth work, track work, signaling and telecom (S&T), bridges, culverts, overhead electrification (OHEs) and general electrification of In-Plant yard and Services Buildings (which shall include Railway Station Building at Sarai Banjara, Loco-Shed with inspection pits washable aprons & fuel filling station, maintenance workshop & office, In-Plant cabin) based on construction drawings, to be Railways, according to the norms and acceptable criteria for all of the foregoing works by the Railways as summarized in Appendix-1 hereto and the Specifications and Drawings attached thereto (“Works”), according to the terms & conditions of this Agreement and the CC. The Contractor shall carry out and complete Phase I of the Works so as to facilitate movement of coal traffic on the laid tracks to the Project Site latest by 31st May, 2013.

5.2 The Contractor hereby warrants and undertakes that the Works shall be executed according to the Applicable Laws, Codes, quality standards and statutory requirements to the complete satisfaction and requirements of the Railways and the Owner and when completed shall be fit for the purpose set out in the Contract Documents.

5.3 The Contractor shall be deemed to have ascertained the nature and extent of and risks involved in Works to be carried out by the Contractor and also obtained all information, documentation, design or Drawings necessary to enable the Contractor to perform such Works, including but not limited to information as to the design of the

Works, tracks to be laid, earthwork to be executed, their load bearing capacity, the nature and character of various buildings, sheds, workshops, pits, aprons, cabins and other infrastructure to be executed by the Contractor, local conditions & facilities, safety requirements, ground conditions, hydrographical, hydrological, climatic and physical conditions affecting the Works, structural design & drawings, soil & sub-soil conditions, treatment of antiquities, environmental matters, legislative and fiscal requirements, and approvals and Permits to be had for carrying out such Works from the Railways and all Statutory and Local Authorities.”

The exclusions mentioned in the Railway siding contract are as under:

- “...i) Land acquisition, obtaining lease/license for such land from the Government or private agencies.*
- ii) Supply of Locomotives.*
- iii) Unloading arrangement by Wagon Tipplers.*
- iv) Operation & Maintenance of Railway Siding.*
- v) Staff Quarters for Railway/Plant staff. However, construction of staff quarters required for Railway staff at Sarai Banjara station is included in Contractor’s scope.*
- vi) Tower Wagon for Overhead Electrification maintenance.*
- vii) All statutory charges payable to Railways, Electricity Board, Telecom Department, Road Authorities, Forest Department and any other Government agencies, which shall be to the account of and borne by the Owner.*
- viii) Procurement, supply and erection of weigh bridge.”*

The Contract Price was to remain fixed throughout the term of the Contract, subject to such adjustment and variations as expressly provided for in the Contract. The scope of works / services covered in the Contract Price was

to fulfil all Railway requirements to ensure smooth operation of the 2x700 MW Rajpura Thermal Power Plant. The Contract Price included the cost of all deposit works being carried out for Railways. Further, it was mentioned in the said contract that the variation in contract price on account of NPL for any reasons will have to be paid / recovered to the contractor on pro rata basis from the above contract price. However, initial 5% variation in quantities as per the details provided in the Contractor's offer dated 16.11.2010 would be absorbed by the Contractor.

The Commission notes that it was mentioned in the said Contract that the Contract Price shall be subject to the price variation set out in the 'Price Adjustment Formulae' as under:

- i) For the first 2.25% variation (increase/decrease), no price adjustment will be admissible. Beyond the first 2.25% and maximum up to 11.25%, price adjustment formulae will apply and the contract price will accordingly be increased or reduced based on such price adjustment formulae.*
- ii) When the variation exceeds maximum 11.25%, the adjustment of the contract price will be subject to a ceiling of 9% (i.e. difference between 2.25% and 11.25% shall only be payable) and any excess variation thereof shall be absorbed by the Contractor.*

As per the conditions of the Contract, the Contractor was required to provide documentary evidence for any additional claims to NPL's satisfaction. However, it is noted that the Contractor (L&T- RBU) raised two bills dated 24 Jun 2013 and 22 Feb 2014 amounting to Rs. 13.01 crore towards price variation, which were not accepted by NPL.

The Railway Siding was commissioned on 04.02.2016. A change Order was signed thereafter between NPL and L&T Rail Construction Business Unit on 01.10.2016 wherein it was recorded as under:

“As per contract executed between NPL and L&T on 08.06.2011, The amount of Rs. 295211020 has been reduced due to reduction in scope on account of the bulb portion including ROR as this portion is under litigation. The amount of Rs. 124639296 has been increased due to increase in scope on account of increase in quantity of bridges, P-way, OHE, other civil work and project management charges.

Sr. No.	Contract	Original Contract Price	Change order price dtd. 01.10.2016	Revised contract Price
01	Railway siding contract	Rs. 3600000000	Rs.(-170571724)	Rs. 3429428276

Thus, the final contract value for railway siding work was revised from Rs. 360 crore to Rs. 342.94 crore after deducting Rs. 29.52 crore on account of ROR and bulb portion and adding Rs. 12.46 crore for additional works as per above details. It is seen that no price variation has been applied on the Contract value.

The Commission notes that no escalation was awarded by NPL to its sister concern L&T RBU over the 2011 contract. All costs have, therefore been worked out at 2011 level. RITES in its 2019 report has worked out the average cost escalation for the period 2008 to 2014, per year as 2.62% in Exhibit 4 of R-19. The Commission has applied this to bring costs in R-8 to 2011 level wherever required.

B2. NPLs claim on hard costs for Sarai Banjara Station, Lead line and In-plant yard

Against a hard cost of Rs. 201.50 crore indicated in R-8 report, NPL has indicated a cost of Rs.288.74crore in R-11 which was changed to Rs.

302crore in R-15 & R-19. To examine the same, the Commission asked NPL to submit the component wise break-up of railway siding works along with component wise revisions attributable to the change in the alignment of the DFC and the rates/cost of the same for a prudent scrutiny. In response, NPL submitted that, it is not feasible to segregate the change in scope of works due to change in alignment of DFC. However, NPL submitted the comparison of the costs by deriving the figures for R-8 in R-15 and R-19. NPL also emphasized that the basic scheme to be considered for ascertaining the change in scope of work should be the R-8. NPL has not given a clear cut detailed bifurcation of works and costs attributable to DFC and works and costs already envisaged in R-8 to enable the Commission to work out works on which no escalation is to be given, in spite of repeated queries by the Commission on the same. The Hon'ble APTEL has also specifically excluded the cost escalation in the works, which were already envisaged in R-8 at the time of in-Principle approval of the Railways. Therefore the Commission has been constrained to carry out this exercise based on the information available with it.

As per R-11, NPL's claim is of Rs. 288.74 crore as hard cost (Civil Engg. + S&T + OHE + GE) for the total works carried out by it including foot over bridge at an estimated cost of Rs. 1.18 crore at Sarai Banjara Station and Rs. 29.52 crore for the RoR and bulb portion.

The hard cost of the railway siding works in the R-8 was estimated as Rs. 201.50 crore at price levels of FY 2008. However, to bring these works to 2011 price levels average cost escalation per year of 2.62% as worked out by RITES in Exhibit-4 of R-19 is considered for two and half years. Considering this escalation the works would notionally amount to

Rs.214.98crore at 2011 price levels. Therefore, the claim of NPL for hard costs works out to Rs.43.06 crore (288.74-1.18-29.52-214.98)

B3. Compensation for works not attributable to DFC

It needs to be noted that the estimated hard costs of Rs. 288.74 crore (Civil Engg. + S&T +OHE+ GE) as per R-11 included the costs attributable to change in alignment of DFC of Rs. 65.38 crore and the additional cost due to works not envisaged in R-8 feasibility report but which at the time of preparation of the ESP amounted to Rs. 21.86 crore (2011 price levels). The amount of Rs. 21.86 crore included a major bridge for the IOCL pipeline and 9 minor bridges for road crossings and road work, LT crossing & drains. As explained in Para A1 of this Order, cost of works not attributable to DFC cannot be considered for awarding compensation. Therefore if cost of works envisaged at time of ESP but not related to change in alignment of DFC i.e. Rs. 21.86 crore is taken out from the claim of Rs. 43.06 crore the balance claim for hard cost works out to Rs. 21.20 crore.

B4. Compensation for Sarai Banjara Station

The hard cost for Sarai Banjara Station as per NPL's submission given in Table-1 is as under:

(Rs. crore)

	R-2008	R-2011	Claim
Station building	2.21	16.18*	17.34*
Track length	23.89	36.78	41.37
Total	26.10	52.96	58.71

*excluding foot over bridge (not constructed).

a) Claim for Station building

The Commission has observed earlier that in view of the raised levels necessitated due to higher level of the DFC, compensation for the station building, staff quarters and platforms etc. is required to be considered. NPL has indicated Rs. 16.18 crore in R-11 against a cost of Rs. 2.21 crore envisaged in R-8. Since the R-8 costs were at 2008 price levels, the cost of the works comes to Rs. 2.36 crore at 2011 price levels. **The hard cost to be considered for compensation is, therefore, Rs. 16.18 crore –Rs. 2.36 crore =Rs. 13.82 crore.**

b) Claim for change in track length at Sarai Banjara Station

The Commission has observed under the foregoing para that there is no increase in the track length on account of DFC at SBJ station. Thus no compensation is allowable in the track length at Sarai Banjara Station.

B5. Compensation for lead line

The Commission has observed under the foregoing para that in view of the fact that neither the RoR bridges for UP & Down lines nor the bulb portion has been constructed, the Commission decides not to entertain the NPL's claim for any increase in cost due to increase in track length at this stage. However, NPL shall be at liberty to claim compensation, if any, on this account as and when full line is constructed and put to use.

B6. Compensation for in-plant Yard

As explained in Para A3, the Commission observes that NPL's decision to change the layout of track within the Plant area was a

commercial decision and hence not covered under change in law due to DFC alignment. In view of the foregoing, the Commission does not find merit in the said claim.

B7.Overhead and General charges

The overhead charges were taken @ 8.5% on the hard cost in R-8 as well as R-11. Therefore the allowable additional overhead charges admissible are as under:

(Rs. crore)		
Hard Cost	Overhead charges	Total
13.82	1.17	14.99

B8.Project Management Charges

PSPCL in its submission dated 20.07.2018 stated that NPL's contention that the project management costs are a percentage of the project cost cannot be accepted as these are actual costs and there is no link to increase in costs due to change in approval. In the 2008 RITES Report the Project Management Charges have been calculated as 12.5% of the project cost. Considering that the volume of works increased on account of change in law, correspondingly the Project Management Charges have increased. The Commission is of the view that Project management charges have to be considered @12.5% on hard cost + Overhead Charges as envisaged in the R8 and R-11 report. Also service Tax @12.36% are to be allowed on these additional Project Management Charges.

Therefore the allowable additional project management charges and service Tax on thereof are Rs. 1.87crore (12.5%*14.99) and Rs. 0.23 crore(12.36%*1.87) respectively.

B9. Codal Charges

The Codal Charges as claimed by NPL, estimated in 2008 RITES Report, as per 2011 RITES Report submitted to APTEL and 2015 RITES Report are as under:

Railway Codal charges	2008 RITES Report	2011 RITES Report	2015 RITES Report	Claim
(%)	4	4	6.25	6.25
(Rs. crore)	8.06	11.55	32.16	29.93

In the 2008 RITES Report and 2011 RITES Report, the codal charges are mentioned as 4% payable to the Railway on the Project Cost. In the 2015 RITES Report, the codal charges are mentioned at 6.25% payable to the Railway on the complete Project Cost including land and locomotive price.

The Commission vide its interim Order dated 25.08.2020 sought the following clarification from NPL on this aspect:

“11. As per the Freight Marketing Policy Circular No. 01 of 2012 on Siding Matters:

4.3 In case the siding owner desires to bear the capital cost of traffic facilities to expedite commissioning of siding, the following will be permissible:

.....

(iii) No license fees will be charged on the common user traffic facility at the station from the siding owner.

.....

9. Detailed Instructions for Sidings:

.....

(ii) Regarding expenditure to be incurred on account of construction of the new siding, the private entrepreneur shall get detailed estimate of their Siding vetted by the division concerned.

The detailed estimate shall include the break-up of their share as also Railways share of the total expenditure. The detailed estimate of Railways shall be according to standardized cost of superstructure per km of track as issued by Civil Engg Dept. Separate Cost shall be laid down for steel girders and PSC girders in case of bridges. [Emphasis Supplied]

(iii) No supervision, inspection or establishment charges shall be payable by the siding owner for the above work, since in that case the expenditure incurred for these aspects would have to be paid back to them by Railways.” [Emphasis Supplied]

(i) In view of the above:

a) A copy of the estimates approved by Railways be provided.

b) The break-up of NPL and the Railways share of the total expenditure be provided.

c) In view of (iii) above, the Payment of Codal charges to Railways be justified.

d) The applicable Codal Charges for works excluding OHE& S&T works by party (NPL) are 6.25% (as claimed by NPL) as against 4% if carried out by Railway approved Consultant. Payment of higher charges need to be justified.

(ii) As the railway siding work estimates were to be approved by the Railway authorities and the work was to be carried out under their supervision, the payment of Rs. 40.63 crore as Project Management charges to L&T-RBU be justified by NPL.

Thus, NPL has firstly paid higher codal charges of 6.25% rather than 4% to the Railways and secondly has paid Project Management charges amounting to Rs. 40.63 crore to its sister concern for the same work. NPL needs to justify this claim.

12. *The Railway Codal Charges in 2011 RITES report were Rs.11.55 crore whereas now Rs. 29.925 crore has been claimed. These codal charges have been paid @ 6.25% on the project cost of Rs. 478.80 crore on the demand of Northern Railways vide letter no.15W/949/Plan dated 10.10.2013 which includes codal charges on Project Management, Service Tax, Cost of Land, Locomotives, Others/Overhead charges etc also. NPL to justify the payment of codal charges on such like components since previously these were payable only on the hard cost comprising Civil, S&T, OHE and GE works @ 4% as mentioned in 2008 & 2011 RITES Report.”*

In response, NPL vide its submissions dated 10.11.2020 stated that the amount claimed by NPL towards codal charges have already been paid by NPL to the Northern Railways. NPL further submitted that as there was an urgency in operationalising the Railway Siding for the project to avoid extra road transportation cost and as the charges were imposed by Indian Railways which is under the Ministry of Railways, Govt. of India, therefore, NPL could not challenge the amount claimed by Indian Railways on account of codal charges. Further, NPL has admitted in its submission that it does not dispute that as per the Policy Circular, in case railway siding work is carried out by the owner through a railway approved consultant, then the codal charges payable for works excluding OHE and S&T is 4% as against 6.25% payable if the project is executed by the party. NPL paid codal charges at the rate of 6.25% for all works, despite the fact that L&T RBU is a railway approved consultant.

The perusal of Freight Marketing Policy Circular No. 01 of 2012 on Siding Matters of Ministry of Railways depicts that the Railway Codal charges payable in case the siding work is executed by Approved Consultant / Agency is lower than the charges for execution of work by the party itself. The same is evident from the following table:

Purpose	Executing Agency	Codal Charges	
Departmental Charges (inclusive of cost of tools & plant and establishment supervision)	Railway	12.5%	% of Cost of Project excluding cost of OHE and S&T Works
	Party	6.25%	
	Approved Consultant	4%	
Departmental Charges for OHE and S&T Works (incl. of cost of tools & plant and establishment supervision)	Railway	12.5%	% of Cost of OHE and S&T Works for Railway's mandatory supervision
	Party	6.25%	
	Approved Consultant	6.25%	

NPL has submitted that as per the Freight Marketing Circular No. 1 of 2012 dated 30.01.2012, Indian Railways share in a private siding is only with respect to the capital cost for traffic facilities in terms of paragraph 4.2 of the Policy Circular. In terms of para 4.3 of the Policy Circular, the siding owner may bear the capital cost of traffic facilities to expedite commissioning of siding. If a party undertakes to construct the siding in order to achieve expeditious commissioning of the same, it has to proceed under paragraph 4.3 of the Policy Circular and in such a case, such party only, needs to bear the entire cost of railway siding including specifically cost of traffic facilities as well.

The Commission is of the view that the applicable Codal Charges should have been 4% for the Project excluding cost of OHE and S&T Works only which has been also admitted by NPL. NPL preferred to get the work on its own and did not challenge the excess charges claimed by Railways which led to a substantial increase, which is not justified and such additional expenses cannot be passed on to the consumers of the State.

Accordingly, it is fair to conclude that NPL has paid excess codal charges to Railways and therefore codal charges are allowed @ 4%,calculated only on the cost of works.

Thus, the Codal charges @ 4% on additional Rs. 13.82crore allowable to NPL works out to Rs. 0.55 crore.

B10.Compensation for Land

NPL has also claimed the increase in project cost due to increased land requirement as well as change in the land acquisition rate for the railway siding. However, PSPCL opposed the same on various counts. PSPCL submitted that, the area of land and costs indicated in the 2008 RITES Report provided to the bidders was only indicative. The bidders were required to firm up their bid proposal after due diligence and verification of the information. PSPCL has cited Article 5.2 of the PPA stating that the Seller (NPL) has acknowledged that it had sufficient opportunity to investigate and is accepting full responsibility for its condition. PSPCL submitted that, even without considering the change in alignment of DFC, the Detailed Engineering/Engineering Scale Plan (ESP) would have led to certain changes during the construction stage which are envisaged in such capital intensive projects. PSPCL further stated that, the entire land acquisition did not increase due to the change in alignment of the DFC; the increase in the requirement of land is due to shifting of part of the railway line from inside the plant to outside and the changed layout of the lead line. As per PSPCL, this was a decision of NPL, taken for its own convenience and not necessitated on account of change in the alignment of the DFC.

The Commission notes that as per the RFP document, the bidders had to firm up their own scheme for coal transportation. Further, for the land for railway siding and rail lines, the RFP document provided as under:

<i>B. Other Project Related Activities/Milestones</i>			
<i>Sl.No.</i>	<i>Project Inputs/Clearances</i>	<i>Parameters</i>	<i>Status for activities/milestones</i>
<i>1.</i>	<i>Land</i>		
	<i>ii. Railway sidings and rail lines from nearby stations to site</i>		<i>To be acquired by Selected Bidder as per requirement. Govt. of Punjab will facilitate acquisition of land as desired by the Selected Bidder.</i>

Further, the letter dated 08.09.2009 issued to the bidders at the time of bidding stated as under:

“Railway siding and Rail corridor:

The land requirement for rail corridor (approx. 98.8 acres) is indicated in the feasibility report prepared by M/s RITES and the copy of the same is already made available to the bidders for reference and perusal. Land for Railway siding and corridor is required to be acquired by the Bidders as per the requirement, however if requested by the bidder Govt. shall acquire land under the provisions of the Land Acquisition Act. Estimated approximate cost of land and all other railway siding, rail corridor works etc. as Rs. 311,92,00,000/- (Rs. Three hundred eleven crore ninety two lacs only) including R&R cost. Bidders are free to firm up and select their scheme of coal transportation from Sarai Banjara railway station to the plant site.

The above information may be taken indicative only.”

Also, all the bidders were required to submit an undertaking as per Annexure 6 (Format 1) as under:

“We have submitted the Bid on the terms and conditions contained in the RFP and we hereby confirm our acceptance of all the terms and conditions of RFP.”

The Commission further notes that in the PPA executed by NPL under Article 3 (Conditions Subsequent to be satisfied by the Seller and the Procurer), the following was mentioned:

“3.1.2 The Seller agrees and undertakes to duly perform and complete the following activities within (i) 06 months from the Effective Date.....

vi. the Seller shall have taken the possession of the land for the Power Station and have paid the remaining Declared Price of the Land, if any to the State Government authority acquiring the land.”

Further, the definition of ‘Power Station’ in the PPA provides as under:

“Power Station means the:

(a) domestic coal based power generation facility comprising of any or all the Units;

(b) any associated fuel handling, treatment or storage facilities of the power generation facility referred to above;.....”

a) Increase in area of Land for Railway Siding

The statement showing details of land requirement for Rail Siding annexed as Annexure- 6.5 of 2008 RITES Report is as under:

Type of Land	Area (sq.m)
Private Land for UP single line	1,24,439
Private Land for double line	1,89,315
Private Land for DN single line	80,156
Total	3,93,910 (~ 40 Ha) [98.8 acre]

The Commission notes that, against the indicative requirement of 98.8 Acre shown in the final feasibility report made available to the bidders before bidding, NPL has shown the land requirement for railway siding as 134 Acre in R-11 and 110.8 Acre (excluding bulb portion) in R-15 & R-19. As per its latest submissions, NPL has so far acquired/taken possession of 104.68 Acre. However, the land for ROR and bulb portion has not yet been acquired due to litigation.

As brought out in foregoing paras, no increase in track length is allowable at this stage. As such, no requirement of additional land on account of change in alignment of DFC is established at this stage. Further, the Commission observes that the down line from the Plant to Sarai Banjara Station is now complete and functional and is being used for transporting the coal from Sarai Banjara station to the generating station, as also for the return of empty rakes. However, the RORs and bulb portion to be constructed in lead lines over the proposed DFC line has not been constructed. Also, the UP line from Sarai Banjara station to the generating station is not complete/being put to use and the compensation for land for these incomplete/not being put to use assets would have to be deferred till it is put to use.

The land requirement for the UP line as per the R-8 report was indicated as 124439 sqmt.or 30.74 acre. The Commission is, therefore, constrained to defer the compensation for 30.74 acre and the cost compensation for land is to be given for 68.06 (98.8-30.74) acre.

b) Increase in acquisition rates of Land for Railway Siding

NPL has shown the acquisition rate of Rs. 1.2 Crore/Acre (including consultancy charges) in R-15 & R-19. As per its latest submissions, NPL has so far acquired/taken possession of 104.68 Acre at a total price of Rs. 104.68 Crore i.e @ Rs. 1 Crore/Acre. NPL has also quoted that the Govt. of Punjab in its affidavit to the Hon'ble High Court in civil writ petition no. 11956 of 2012 stated that the Punjab Govt. has accepted its representation for acquisition of land for the railway siding for NPL and the same was also mentioned by the Hon'ble Supreme Court in its Order dated 05.10.2017. However, PSPCL maintained that there was no obligation on PSPCL to acquire the land. PSPCL also submitted that, this is a not a Cost plus project and if acquisition rates have gone up, these are not for PSPCL to pay. PSPCL also referred to the Hon'ble APTEL Order stating that, the Appellant is not entitled to claim cost escalation, if any, in the works envisaged in the "In-Principle" approval of the Railway which formed part of the bid documents.

The Commission has noted that, NPL acquired 15 acres of private land itself during the period May, 2013 to September, 2014. The Commission also observes that, the issue of NPL's claim of increase in cost of the railway siding on account of change in acquisition rates for the land has not been referred as change in law event by the Hon'ble APTEL. However, the Commission has examined the issue of land cost as under:

The Commission notes that, the indicative cost for land of 98.8 Acre was shown as Rs. 24.70 crore (i.e. @ Rs. 25 Lacs/Acre) in the final feasibility report made available to the bidders before bidding. However, in another document contained in the convenience compilation submitted by NPL vide submissions dated 17.12.2020, Govt. of Punjab (Power Branch) letter No. 5/10/2007-Ad6/582 Dated: 07.11.2008 specifies the acquisition rate for acquiring 1078.16 acre land for this project has been prescribed as Rs. 24 lakh per acre apart from 30% solatium, 12% interest, 15 % non-litigation benefit and compensation for Relief & Rehabilitation @ Rs. 2/3 Lac for owners of upto 2 acre /above 2 acre of land, which works out to be Rs. 51.70 lakh/acre as under:

S.No.	Particulars	Lakh per acre
1	Cost of land	24.00
2	Solatium @ 30%	7.20
3	Interest @ 12 % for 5 yrs.(up to acquisition)	14.40
4	15 % non-litigation benefit	3.60
5	R&R	2.50
6	Total	51.70

Thus, the fact that Rs. 51.70 lakh/acre was the prevalent acquisition rate for the project and the same would have to be paid for acquisition of the land for the siding, was known to the bidders at the time of bidding. Therefore, they would have factored in the same while bidding for the project. As brought out in the foregoing para, the land being put to use comes to 68.06 (98.8-30.74) acre.

The Commission observes that as per the documents submitted by NPL, it has acquired/taken possession of 104.68 acre at the total price of Rs. 104.68 crore i.e. at an average rate of Rs. 1 crore/acre. The rates paid were as per acquisition rates notified by the competent authority and the court orders. Therefore, the Commission is of the view that since, much of the land for the railway siding was acquired on NPL's behalf by the State Govt., justice demands that actual acquisition rates be considered for the same.

The cost of land for 98.8 acre at applicable acquisition rates of 51.70 lakh per acre works out to Rs. 51.08 crore. Whereas, the actual acquisition cost of 68.06 acre being put to use @ 1 (one) crore per acre works out to be Rs. 68.06 crore. Accordingly, the additional compensation works out to 16.98 crore.

B11. Compensation for Locomotives

NPL has claimed that it has spent Rs.7.97 crore for locomotives against the envisaged amount of Rs.15 crore for 3 locomotives in the R-8 report. Therefore, the compensation recoverable on this account works out to Rs.7.03 crore.

B12. Compensation for IDC

NPL has sought Rs. 66.31 crore as IDC charges against Rs. 44.52 crore shown on the hard cost of 317.09 crore indicated in R-8 report.

Accordingly, the additional IDC on the additional cost compensation of Rs. 27.59 crore on proportionate basis comes to Rs.3.87 crore.

In view of the above, the Commission determines the allowable compensation as under:

Table - Allowable Compensation (Rs. crore)

Component	RITES Report 2008	RITES Report 2011	Claimby NPL	Allowable additional cost compensation
I	II	III	IV	V
A. Civil Engg + S&T + OHE + GE	201.50	288.74	300.88	13.82
B. Overhead & General charges (8.5% of A)	17.13	24.54		1.17
C. Total	218.63	313.28	300.88	14.99
D. Project Management Charges (12.5 % of C)	27.33	39.16	40.63 (37.61 @ 12.5%)	1.87
E. Service Tax (12.36% on D)	3.38	4.84	4.65	0.23
F. Cost of Land	24.70 (@0.25 for 98.8 Acre)	67.00 (@0.50 for 134 Acre)	104.68 (@1 for 104.68 Acre)	16.98
G. Locomotives	15.00	18.00	7.97	(7.03)
H. Total	289.03	442.28	454.17	27.04
I. Codal Charges (@ 4% of A)	8.06	11.55	29.93	0.55 (4% of A)
J. Cost of Service Road	20.00	20.00	-	-
K. Total	317.09	473.83	484.10	27.59
L.IDC	44.52	65.89	66.31	3.87 (proportionate basis)
M. Grand Total	361.61	539.72	568.40	31.46

8.5. Over payment of Charges to NPL

While conducting a prudence check as per the directions of Hon'ble APTEL, an issue has come up for consideration of the Commission. While Unit 1 of the power plant was commissioned on 01.02.2014 and Unit 2 on 10.07.2014, the Railway Siding came up (with temporary arrangement of emergency crossover) on 04.02.2016 but without the construction of bulb

portion and ROR portion. Thus it transpires that the siding costing Rs. 361.61 crore (including Rs. 44.52 crore IDC) as estimated in 2008 RITES Report and factored in by the bidders during their bidding was not put to use up till 04.02.2016.

NPL has contended that the delay is due to the land acquisition delay/litigation involved with the land required for setting up the bulb portion and RoR flyover which are attributable to the Govt. of Punjab. NPL has further contended that the responsibility to acquire land was that of the Government of Punjab. Thus the delay cannot be attributed to NPL.

PSPCL has submitted that as per the bid documents, the land for railway siding was to be acquired by the selected bidder/NPL. NPL sought the assistance of Govt. of Punjab for acquisition of land and thus the acquisition was on behalf of NPL and not of PSPCL. Govt. of Punjab provided facilitation to NPL by acquiring the land on its behalf as per the land acquisition act.

The Commission is of the view that the question here is not of delay or the responsibility for the delay. The question is when was the Railway siding put to use. This happened only on 04.02.2016. NPL has been charging quoted non-escalable capacity charges in terms of Schedule 11 of the PPA, including the said asset of Railway Siding which was under construction for 2 years even after commissioning of the project. Therefore, the cost of the Railway siding should not have been included in the fixed cost charged to PSPCL upto 03.02.2016. Thus, the quoted non-escalable capacity charges (Rs./kWh) paid by PSPCL to NPL on account of railway siding which had not been put to use for the period of 01.02.2014 to 03.02.2016 are recoverable. Additionally there is a portion which has not

yet been constructed or put to use i.e. the UP line between the station and the plant and the Bulb portion including RoR. The cost of this portion should also not form part of the fixed cost at the moment. These charges will be payable only when these facilities are put to use.

The petition as well as IA No. 8 of 2020 are disposed of in terms of above.

Sd/-

(Paramjeet Singh)
Member

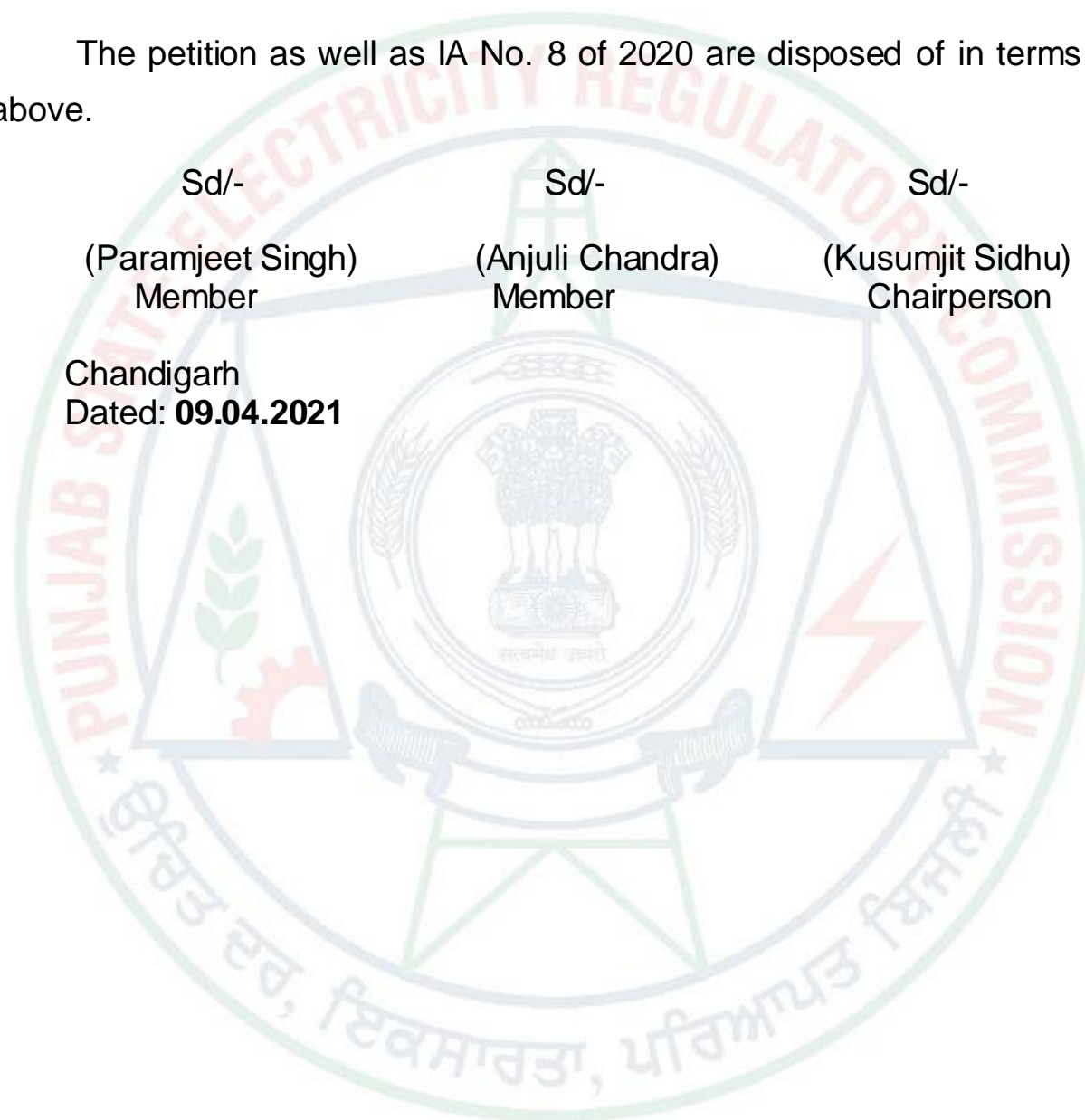
Sd/-

(Anjali Chandra)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: **09.04.2021**



Annexure-I



Review of Study Report in Line with Dedicated Freight Corridor for
Proposed Rail Connectivity for Rajpura TPP 2 x 700 MW

EXHIBIT - III

COST ESTIMATE FOR RAJPURA RAIL CONNECTIVITY PROJECT

Location	Discipline	Item	Description	Overall		On account of DFC			On account of Railway Requirements not Envisaged in RITES FR		
				Approx Qty.	Estimated Cost	Description	Approx Qty.	Estimated Cost	Description	Approx Qty.	Estimated Cost
SBJ ST.	Civil Engineering	P-way		6 ETKM	156,859,473			Nil			
		Earth work	Soil	140000 cum	37,940,000			Nil			
			Blanketing	6300cum	9,601,200			Nil			
		Building Structure	Station Building at SBJ ST.	250 Sqm	3,750,000	Due to the up-coming DFC the section is proposed with Automatic signalling. Hence no modification in existing signalling is permitted by Railways.	250 Sqm	3,750,000			
		Minor Bridges	335 335 A and sub way	5 nos	77,404,228		5 nos	77,404,228			
	Major Bridges	No Major Br.	Nil				Nil				
	S&T	S&T	New SSI for 7 line station	New for 7 line St.	108,169,000			108,169,000			
	OHE	OHE	Modifications & 6 km new track OHE	6 ETKM	55,200,000	Modifications in OHE		39,935,893			
	GE	GE	Platform lighting, ST, building etc		21,000,000	Platform lighting, ST, building etc		21,000,000			
	Additions after discussion with Ambala Division	HL platform Up and Down		8784 Sq m	21,000,000			12,000,000			
		FOB (2.5 m wide)	Across seven lines	2.5mx54m	11,800,000			11,000,000			
		Staff Quarters (around 20 nos at station & 15 nos at inplant)		1575 Sq m	23,625,000	Due to construction of HL plat form and FOB the existing Staff Quarters need to be dismantled and constructed new.	1575	23,625,000			
		Sheds and other platform amenities			15,000,000			15,000,000			



Location	Discipline	Item	Description	Overall		On account of DFC			On account of Railway Requirements not Envisaged in RITES FR		
				Approx Qty.	Estimated Cost	Description	Approx Qty.	Estimated Cost	Description	Approx Qty.	Estimated Cost
Lead line	Civil Engineering	P-way		22 ETKM	497,869,951	As the return line has to pass over the DFC to meet that height requirement, the track length has increased both Up and Down lines as follows. (i) Entry line: Ch 2.9 Km - 2.689 Km = 0.211 Km (ii) Return line: Ch 2.494 Km - Ch 1.79 Km = 0.704 Km. Thus total increase in track length due to DFC = 0.211 + 0.704 = 0.915 Km	0.915	20,706,864			
			Soil	1,296,000	338,256,000	(i) For entry line on account of increase in height of rail flyover due to DFC(8.1 - 6.35=1.75 m) (ii) For return line has to be elevated for leaving a passage for DFC	464146	123,567,020	Major bridge for IOCL pipeline crossing	70000	11,480,000
			Blanketing	64138	97,746,312	Due to extra Track length	11250	17,145,000			
		Building Structure	R&D Cabin	166	2,656,576						
		Minor Bridges		12	185,770,148	Extra cost due to higher bank for Br No 5, 5A, 6, 7 & 8		10,153,332	9 minor bridges for road crossings and drains		112,302,394
		Major Bridges	Two for DFC & one for IOCL	3	274,600,000	BR-No-16, BR No-9 (Extension)		137,300,000	major bridge for IOCL pipeline crossing		73,226,667
		Miscellaneous	Roadwork & Drainwork		23,673,117	Drain work at SBJ for return line	1.8 Km	10,000,000			
	S&T			80,810,532	Due to extra Track length		12,000,000				
	OHE			166,991,892	Due to extra Track length		10,248,000				
	GE		LT crossing		12,600,000				LT crossing		12,600,000



Location	Discipline	Item	Description	Overall		On account of DFC			On account of Railway Requirements not Envisaged in RITES FR		
				Approx Qty.	Estimated Cost	Description	Approx Qty.	Estimated Cost	Description	Approx Qty.	Estimated Cost
In-plant Yard	Civil Engineering	P-Way		15 ETKM	339,456,785						Nil
			Soil	164,000	26,896,000						
			Blanketing	30,535	46,535,340						
			Building Structure	480	20,190,786						Nil
			Minor Bridges		Nil						Nil
		Major Bridges		Nil						Nil	
		S&T				96,308,273					Nil
	OHE				126,702,785					Nil	
	GE				9,000,000						9,000,000
				Total Estimated Cost as per RITES FR							
A	Total cost of Proposal (civil Engg.+S&T+OHE+GE)		2,015,000,000	43.3%	2,887,413,399		74.9%	653,804,338		25.1%	218,609,061
B	Add for overhead & general Charges @ 9.5% on 'A'		171,275,000		245,430,139			55,573,369			18,581,770
C	Total (A+B)		2,186,275,000		3,132,843,538			709,377,707			237,190,831
D	Project Management @ 12.5% on 'C'		273,284,375		391,605,442			88,672,213			29,648,854
E	Service Tax		33,777,949		48,402,433			10,959,886			3,664,598
F	Railway's Codal Charges @ 4% 'A'		80,600,000		115,496,536			26,152,174			8,744,362
G	Cost of Locomotives		150,000,000		180,000,000			Nil		Extra cost for procurement of Diesel Electric shunting loco motives.	30,000,000
H	Cost of Land		247,000,000		670,000,000			176,000,000		Prevailing market rate is Rs 50 lakhs/Acre whereas RITES assumed Rs 25 Lakhs/Acre.	247,000,000
				134 Acre of land at an average rate of Rs 50 lakh per Acre			35.2 Acre			Extra land reqd. is 35.2 Acre @ Rs 50 lakh per Acre.	Addl. Cost for 98.8 Acre
I	Cost of Service Road (strengthening of existing road and construction of new road)		200,000,000		200,000,000			Nil			Nil
J	GRAND TOTAL		3,170,937,324	49.4%	4,738,347,949		64.5%	1,011,161,980		35.5%	556,248,646

