

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 533/MP/2020
and
Petition No. 538/MP/2020**

**Coram:
Shri P.K.Pujari, Chairperson
Shri I.S.Jha, Member
Shri Arun Goyal, Member
Shri P.K.Singh, Member**

Date of order: 22nd December, 2021

Petition No. 533/MP/2020

In the matter of

Petition under Section 79(1)(d) and (f) of the Electricity Act, 2003 read with Regulation 5(3) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 seeking compensation/relief for increased construction cost due to certain events of Change in Law as per the applicable provisions of Transmission Service Agreement dated 24.6.2015.

And

In the matter of

Raipur-Rajnandgaon-Warora Transmission Limited,
C-105, Anand Niketan,
New Delhi – 110 019.

.....Petitioner

Vs.

1. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 4th Floor, Bandra (East),
Mumbai – 400 051.

2. Chhattisgarh State Power Distribution Company Limited,
P.O. Sunder Nagar, Dangania,
Raipur – 492 013, Chhattisgarh.



3. Gujarat Urja Vikas Nigam Limited,
Vidyut Bhawan, Race Course,
Vadodara – 390 007.

4. Madhya Pradesh Power Management Company Limited,
Block No. 11, Ground Floor, Shakti Bhawan,
Vidyut Nagar, Rampur,
Jabalpur – 482 008, Madhya Pradesh.

5. Electricity Department,
Government of Goa, Aquem Alto Margaon,
Goa – 403 601.

6. DNH Power Distribution Corporation Limited,
66kV, Amlı Ind. Estate, Silvassa – 396 230,
Dadar Nagar Haveli.

7. Electricity Department, Administration of Daman and Diu,
Plot No. 35, OİDC Complex, Near Fire Station, Somnath,
Daman – 396 210.

8. Power Grid Corporation of India Limited,
Saudamini, Plot No.2, Sector 29,
Gurgaon-122 001.

9. Central Electricity Authority,
Sewa Bhawan, R.K.Puram, Sector-1,
New Delhi-110 066.

....Respondents

Petition No. 538/MP/2020

In the matter of

Petition invoking Section 79(1)(d) and (f) of the Electricity Act,2003 read with Regulation 5(3) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 seeking compensation/relief for increased construction cost due to certain Change in Law as per the applicable provisions of Transmission Service Agreement dated 24.6.2015.

And

In the matter of

Chhattisgarh WR Transmission Limited,
C-105, Anand Niketan,
New Delhi – 110 019.

.....Petitioner



Vs

1. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 4th Floor, Bandra (East),
Mumbai – 400 051.

2. Chhattisgarh State Power Distribution Company Limited,
P.O. Sunder Nagar, Dangania,
Raipur – 492 013, Chhattisgarh.

3. Gujarat Urja Vikas Nigam Limited,
Vidyut Bhawan, Race Course,
Vadodara – 390 007.

4. Madhya Pradesh Power Management Company Limited,
Block No. 11, Ground Floor, Shakti Bhawan,
Vidyut Nagar, Rampur,
Jabalpur – 482 008, Madhya Pradesh.

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Plot No. 35, OI DC Complex, Near Fire Station, Somnath,
Daman – 396 210.

8. Power Grid Corporation of India Limited,
Saudamini, Plot No.2, Sector 29,
Gurgaon-122 001.

9. Chhattisgarh State Power Transmission Company Limited,
Energy Info Tech Centre.
Daganiya, Raipur-492 013, Chhattisgarh.

10. Central Electricity Authority,
Sewa Bhawan, R.K.Puram, Sector-1,
New Delhi-110 066.

....Respondents

Parties present:

Shri Amit Kapur, Advocate, RRWTL
Ms. Poonam Verma, Advocate, RRWTL
Ms. Aparajita Upadhyay, Advocate, RRWTL
Ms. Sakshi Kapoor, Advocate, RRWTL



Ms. Gayatri Aryan, Advocate, RRWTL
Shri Ravi Sharma, Advocate, MPPMCL
Shri Rahul Sinha, Advocate, MSEDCL
Shri Samir Malik, Advocate, MSEDCL
Shri PallavMongia, Advocate, PGCIL
Ms. Tanishika Khatana, Advocate, PGCIL
Shri Bhavesh Kundalia, RRWTL
Shri Anindya Khare, MPPMCL
Shri Prashant, PGCIL
Shri Chandrashekhar, PGCIL
Shri Arjun Malhotra, PGCIL

ORDER

Petition No. 533/MP/2020

The Petition No. 533/MP/2020 has been filed by the Petitioner, Raipur-Rajnandgaon-Warora Transmission Limited (RRWTL) under Section 79(1)(d) and Section 79(1)(f) of the Electricity Act, 2003 seeking compensatory relief under Article 12 of the Transmission Service Agreement (TSA) dated 24.6.2015 on account of Change in Law events, which according to the Petitioner have adversely affected the cost of its project. The Petitioner, Raipur-Rajnandgaon-Warora Transmission Limited (RRWTL) has made the following prayers:

“(a) Allow the present Petition;

(b) Grant relief to the Petitioner, Raipur-Rajnandgaon-Warora Transmission Limited under Article 12.2.1 of the Transmission Service Agreement dated 24.06.2015 for the Change in Law events specified in the present Petition along with carrying cost/interest;

(c) Hold that the compensation for such Chang in Law events shall be effective from the date when such Change in Law events were brought into force by the Indian Governmental Instrumentalities;

(d) Grant interim relief to the Petitioner as prayed at paragraph 107 hereinabove pending final adjudication of the Petition by this Commission; and

(e) Grant liberty to the Petitioner to approach this Commission at the appropriate time, for seeking compensation for Change in Law events which are not claimed in the present Petition.”



Petition No. 538/MP/2020

2. The Petition No. 533/MP/2020 has been filed by the Petitioner, Chhattisgarh WR Transmission Limited under Section 79(1)(d) and Section 79(1)(f) of the Electricity Act, 2003 seeking compensatory relief under Article 12 of the Transmission Service Agreement (TSA) dated 24.6.2015 on account of Change in Law events, which according to the Petitioner have adversely affected the cost of its project. The Petitioner, Chhattisgarh WR Transmission Limited has made the following prayers:

“(a) Allow the present Petition;

(b) Grant relief to the Petitioner, Chhattisgarh WR Transmission Ltd. under Article 12.2.1 of the Transmission Service Agreement dated 24.06.2015 for the Change in Law events specified in the present Petition along with carrying cost/interest;

(c) Hold that the compensation for such Change in Law events shall be effective from the date when such Change in Law events were brought into force by the Indian Governmental Instrumentalities;

(d) Grant interim relief to the Petitioner as prayed at paragraph 107 hereinabove, pending final adjudication of the Petition by this Hon'ble Commission;

(e) Grant liberty to the Petitioner to approach this Hon'ble Commission at the appropriate time, for seeking compensation for Change in Law events which are not claimed in the present Petition;

(f) Grant exemption to the Petitioner from filing duly attested Affidavit supporting the present Petition, in view of the movement restrictions due to the spread of COVID-19;

(g) Pass such other and further order or orders as this Hon'ble Commission deems appropriate under the facts and circumstances of the present case.”

3. The cases were called out through virtual hearing on 21.12.2021. Both the petitions are being disposed by a common order, agreed to by the Petitioners since the similar set of facts and law were to be decided.

4. During the course of hearing, the learned counsel for the Petitioners submitted that the Commission vide its order dated 7.11.2021 in Petition No. 533/MP/2020 has held that the said Petition is maintainable and thereby rejected the objections of the Respondent, MP Power Management Company Limited regarding maintainability on the grounds of limitation. The learned counsel submitted that the said decision squarely applies to the Petition No. 538/MP/2020 also.

5. The learned counsel for the Petitioners further submitted that except for imposition of new requirement of erecting 'D'-'D' type towers for obtaining power line crossing approval, all other Change in Law claims raised by the Petitioners in the present case stand allowed by the Commission in its earlier orders including order dated 16.6.2021 in Petition No. 453/MP/2019 (Sipat Transmission Limited v. MSEDCL and Ors.). The learned counsel submitted that as regards requirement of erecting 'D'-'D' type towers for obtaining power line crossing, as on cut-off date, there was no mandatory notified technical requirement for 'D'-'D' tower configuration at both sides of power line crossing. To buttress his submission, the learned counsel referred to the Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010, 'Manual on Transmission Lines' issued by the Central Board of Irrigation and Power, Request for Proposal issued for the Projects, IS 802: Use of Structural Steel in Overhead Transmission Line Towers and User Manual of Construction of Transmission Lines issued by PGCIL. The learned counsel submitted that the imposition of requirement to use 'D'-'D' type tower for obtaining power line crossing has been imposed subsequently in terms of direction of CEA and thus, constitutes Change in Law event under the TSA. The learned counsel submitted that the above aspects were not brought to the notice of the Commission in Petition No. 453/MP/2019, wherein the Commission did not

recognize the imposition of new requirement of using 'D'-'D' type towers for obtaining power line crossing as Change in Law. Accordingly, the learned counsel submitted that the Commission may observe that the said order might not come in a way when the Petitioners approach the LTTCs/beneficiaries as per the provisions of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as 'the Change in Law Rules').

6. The learned counsel for the Respondents, PGCIL, MPPMCL and MSEDCL opposed the aforesaid submissions made by the learned counsel for the Petitioners and submitted that the decision of the Commission dated 16.6.2021 in Petition No. 453/MP/2019 squarely covers the said issue.

7. In response to the Commission's observation regarding the Change in Law Rules and the Petitioners, therefore, being required to follow the process specified thereunder, the learned counsel for the Petitioners submitted that if the Commission disposes of the Petitions in terms of the Change in Law Rules, the filing fees paid in the Petitions be adjusted against the Petitions to be filed in future.

8. We have considered the submissions made by the learned counsel for the Petitioners. Relevant portion of Change in Law Rules notified by the Ministry of Power, Government of India, are extracted as under:

"2(c) "change in law", in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes—

(i) -----

(ii) -----

(iii) -----

3. *Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.*

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated-

(a) where the agreement lays down any formula, in accordance with such formula; or

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be—

(a) in case of generation project, within a period of one-hundred eighty months; or

(b) in case of recurring impact, until the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”

9. As per the above-quoted provisions, on occurrence of a Change in Law, the affected party, in the present case the Petitioner, and other parties, in the present

case the Respondents/LTTCs/beneficiaries, are to settle the Change in Law claims amongst themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

10. In view of the foregoing discussion, the Petitioners may approach the LTTCs/beneficiaries for settlement of Change in Law claims among themselves in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

11. As prayed by the Petitioners, the filing fees paid in these Petitions shall be adjusted against the Petitions to be filed by the Petitioners in future.

12. Accordingly, the Petition No. 533/MP/2020 and Petition No. 538/MP/2020 are disposed of in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P.K.Pujari)
Chairperson