

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 256/MP/2023**

Subject : Petition under Rule 3(7) and Rule 3(8) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 read with Article 12 of the Transmission Service Agreement dated 23.04.2019 executed between Lakadia-Vadodara Transmission Project Limited/Petitioner and its Long-Term Transmission Customers and Sections 61 and 63 of the Electricity Act, 2003 seeking verification of the calculation of the impact due to change in law events on the cost of implementation of the Petitioner's transmission project, and consequent adjustment in the monthly transmission charges.

Petitioner : Lakadia-Vadodara Transmission Project Limited (LVTPL)

Respondents : Adani Wind Energy Kutchh One Limited and Ors.

**Petition No. 131/MP/2024**

Subject : Petition under Rule 3(7) and Rule 3(8) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 read with Article 12 of the Transmission Service Agreement dated 07.12.2018 executed between Mumbai Urja Marg Limited/Petitioner and its Long-Term Transmission Customers, and Sections 61 and 63 of the Electricity Act, 2003, seeking verification of the calculation of the impact due to change in law events on the cost of implementation of the Petitioner's transmission project, and consequent adjustment in the monthly transmission charges.

Petitioner : Mumbai Urja Marg Limited (MUMML)

Respondents : Maharashtra State Electricity Distribution Co. Limited and Ors.

Date of Hearing : **29.4.2024**

Coram : Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member

Parties Present : Shri Basava Prabhu Patil, Sr. Advocate, LVTPL  
Shri Geet Rajan Ahuja, Advocate, LVTPL  
Shri Deep Rao, Advocate, LVTPL  
Shri Parth Parikh, Advocate, LVTPL  
Ms. Harneet Kaur, Advocate, LVTPL  
Ms. Anisha Chopra, LVTPL  
Shri TAN Reddy, LVTPL  
Shri Aryaman Saxena, LVTPL  
Ms. Ranjita Ramachandran, Advocate, GUVNL  
Ms. Srishti Khindaria, Advocate, GUVNL

Shri Anand Ganesan, Advocate, GUVNL  
Ms. Kriti Soni, Advocate, GUVNL  
Shri Gajendra Sinh, NLDC  
Shri Vyom Chaturvedi, Advocate, MSEDCL  
Shri Anup Jain, Advocate, MSEDCL

### **Record of Proceedings**

During the course of the hearing, the learned senior counsel for the Petitioner, LVTPL, and the learned counsels for GUVNL, in Petition Nos. 256/MP/2023 and 131/MP/2024 made detailed submissions on the primary issues as to the scope of the present proceedings under Rule 3(7) and 3(8) Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules') and the role of the Commission thereof. Learned senior counsel for the Petitioner, LVTPL mainly submitted as under:

(a) As per the scheme of the Change in Law Rules, the 'other party' referred to in Rule 3(2) of the Change in Law Rules means the LTTCs under the TSA executed by the Petitioner.

(b) Keeping in view that the Change in Law claims of the Petitioner had not been disputed by the Other Party/LTTCs, pursuant to the issuance of notices in terms of the Change in Law Rules, the role of the Commission in the present proceedings, in terms of Rule 3(8), is limited to verification of the calculation and adjustment of the amount of the Change in Law impact in the monthly tariff/charge. The Rules do not provide for the Commission to undertake the adjudication of Change in Law claims in the present proceedings.

(c) Merely because the LTTCs /renewable energy generators are exempted from the payment of transmission charges under the extant regulatory framework does not disqualify them from being the 'Other Party' from whom the costs due to Change in Law are to be recovered. The Petitioner cannot make any party other than LTTCs an 'Other Party' as envisaged in the Change in Law Rules. If the submission that who is required to pay the transmission charges is to be treated as Other Party, then the transmission charges payable to the Petitioner are payable by all India DICs and consequently, each and every DIC would be allowed to question the Change in Law claims of the Petitioner, which clearly is not the intent of the Change in Law Rules.

(d) Reliance was also placed on some discussions regarding the scope of The CIL Rules in the judgment of the APTEL dated 5.4.2022 in OP No. 1/2022 and batch (NRSS XXIX Transmission Ltd. v. CERC and Ors.) ('NRSS Judgment') to point out the scope of the Change in Law Rules and the role of the Commission thereunder as detailed in the said Judgment.

2. In response, the learned counsels for Respondent, GUVNL mainly submitted as under:

(a) Change in Law Rules proceed for a timely recovery of costs on a premise that the parties are *ad-idem* on the occurrence of change-in-law.. The Rules, as such, do not dispense with the requirement of the Petitioner to plead and establish the existence of a Change in Law but only provide for the manner of recovery of Change in Law.

(b) The Commission is first required to decide whether the claims made by the Petitioner are covered under Change in Law or not.

(c) In Petition No. 131/MP/2024, wherein GUVNL is an LTTC, there is no admission of Change in Law by it. Whereas in Petition No. 256/MP/2023, GUNVL has been impleaded as per the direction of the Commission and LTTCs are the renewable energy generators, who are admittedly not liable to pay any transmission charges of the Petitioner and hence, they cannot be Other Party from whom the costs due to Change in Law impact is to be recovered as envisaged in Rule 3(2) of Change in Law Rules.

(d) In the alternate, , Rule 3(8) of Change in Law Rules, wherein the Commission is also required to adjust the amount of impact in the monthly tariff or charges, would permit the Commission to examine if the event is Change in Law or not.

(e) In the NRSS Judgment, the issue before the consideration of the APTEL was whether the Change in Law Rules would apply to the events that occurred prior to the notification of Rules and not the ones that arose in the present proceedings.

3. On the Change in Law claims, learned senior counsel for the Petitioner, LVTPL submitted that vide present Petition, the Petitioner is seeking the verification of calculation of the impact on the costs and consequently the adjustment in its monthly transmission charges on account of 2 Nos. of Change in Law events, namely, (i) Additional expenditure for securing RoW, and (ii) Change in rate of compensation for loss of trees, fruits, and crops, have occurred after the cut-off date (9.7.2019 i.e. 7 days prior to the Bid Deadline) and post the coming into effect of the Change in Law Rules i.e., 22.10.2021. Learned senior counsel further submitted as under:

(a) The Energy and Petrochemicals Department, Government of Gujarat issued a Resolution dated 14.08.2017 ('2017 Resolution') laying down the guidelines for the payment of compensation to the affected persons (farmers/ landowners) towards the depreciated value of land and damages caused to the crops, fruits, and trees, on account of the installation of transmission lines and transmission towers. Jantri rates are the index of base market values determined by the Government of Gujarat from time to time and the Jantri rates prevalent at the time of the bidding were taken into consideration by the Petitioner to quote its bid for the Project in line with the 2017 Resolution.

(b) When the Petitioner approached the concerned District Collectors/ Magistrates ("DC/DM") for resolution of the issues raised by the farmers, several orders were passed by the DC/DMs directing the Petitioner to pay compensation to the farmers/landowners based on a jantri rate much higher than the prescribed jantri rate. Subsequently, on 31.12.2021, the Government of Gujarat issued certain amendments to the 2017 Guidelines vide revised guidelines dated 31.12.2021 ("2021 Guidelines/Revised Guidelines"). The 2021 Guidelines *inter alia* modified the rate at which compensation was required to be paid for the reduction in value of the land due to the RoW corridor.

(c) In terms of the 2021 Guidelines, the methodology to compute the compensation was changed. While computing compensation, instead of 7.5% of the value of land, 15% of the value of land was to be taken into account. The Revised Guidelines also stated that to assess the value of land, compensation was to be computed by considering the Jantri rates at a compounding increased rate of up to 10% per annum. Accordingly, the Petitioner has paid all RoW compensation to the concerned landowners /farmers in terms of the 2021 Guidelines.

(d) At the time of the bidding, in terms of the 2017 Guidelines, the compensation towards loss of land/crop/fruit/trees including banana plantation was required to be

made as per the rates decided by the Agriculture Produce Market Committee (“APMC”), and their valuation was required to be certified by the Sarpanch, Talati, Mamlatdar or concerned Revenue Officer.

(e) However, after the cut-off date, the 2021 Guidelines were issued by the Government of Gujarat vide which the manner of computing compensation for loss of fruit trees and other trees was modified. It was now required to be paid as per a circular dated 12.01.2021 issued by the Revenue Department (“2021 Revenue Circular”) as well as revised circulars issued from time to time. Accordingly, the 2021 Revenue Circular was made applicable for computing the compensation for loss of fruit trees and other trees.

(f) The Petitioner has furnished the detailed calculations along with the relevant documents in respect of the aforesaid Change in Law claims along with the Petition, which was also referred to and relied upon. The Petitioner will also provide any further details/ information as may be required by the Commission for carrying out the exercise under Rule 3(8) of the Change in Law Rules.

(g) Insofar as the delay in achieving the Commercial Operation Date by the Petitioner is concerned, Article 12.2 of the TSA which deals with the relief for Change in Law during the Construction Period, which has been defined under the TSA to mean the period from the Effective Date of the TSA up to the COD of the Element of the Project and not the SCOD of the Project. Thus, the Petitioner is entitled to claim the Change in Law relief for any Change in Law events occurring upto COD of the Project.

4. Learned counsel for Respondent, GUVNL submitted that Respondent is not only contesting the claims on merit but has, in its reply, pointed out the various details / information yet to be furnished by the Petitioner in support of its claims/calculations.

5. Due to a paucity of time, the submissions of both sides could not be concluded. The Commission, however, after considering the submissions of learned senior counsel and learned counsel for the parties, directed the Petitioner, LVTPL to submit the following details/clarification, on an affidavit, on or before **6.5.2024**.

(a) The Petitioner has submitted the expenditure incurred towards the land for securing RoW as follows for PKG-1 (sample data):

Package	Particular	RoW compensation as per GOG 2017 Resolution (in Rs)	RoW compensation as per GOG 2021 Resolution (in Rs.)
PKG-1	Land 15% Corridor	1,27,66,651.00	66,5,63,421.00
PKG-1	Land 85% Tower Footing	28,50,154.00	7,05,83,882.00

The Petitioner to Submit the detailed calculation for the above-mentioned sample data for PKG-1.

(b) The district-wise information with respect to the RoW compensation claimed by the Petitioner for different pieces of land:

RoW Compensation payable as per GoG Resolution of 2017, GoG Resolution of 2021 as applicable and the actual payment.							
District	Area of land (Sq.	Jantri Rates (per Sq.	Amount of Compensation payable as per GoG	Actual Amount of compensation paid	Date of disbursement	Whether GoG Resolution	

		mtr.)	mtr.)*	2017 resolution or GoG 2021 resolution (in INR)				2017 applicable or GoG Resolution 2021 is applicable
				Payable Under GoG resolution 2017	Payable Under GoG resolution 2021	Amount paid prior to GoG resolution 2021	Amount paid post GoG resolution 2021	
Tower Footing								
RoW Corridor								

**Note:** \*Submit a copy of all orders passed by the District Collector for each district (with English translation) in which the land is acquired by the Petitioner regarding the payment of compensation to the land owners before and after the issuance of 2021 Resolution in support of the above information.

(c) The district-wise area of land and payment made prior to GOG Resolution 2021 and the district-wise area of land and payment made after GOG Resolution 2021.

(d) The copy of the price of trees as decided by the concerned Land Acquisition Officer (LAO) in terms of the Revenue Circular dated 12.1.2021 ( in the matter of determination of the value of trees under the fair compensation and transparency in land acquisition, rehabilitation, and resettlement Act 2013).

(e) The district-wise payment made towards the value of trees prior to Revenue Circular dated 12.1.2021 and after Revenue Circular dated 12.1.2021'

(f) A copy of Revenue Circular No. L.AQ;-2278/4945/GH, dated 23.1.1993 as referred in the Revenue Circular dated 12.1.2021.

(g) Clause 2(2) of the GoG order dated 31.12.2021 states that *"The provisions of this resolution shall apply to the work of the new transmission line and all the transmission lines which are in progress. But, the provisions of this resolution will not apply in cases where the amount of compensation has been fixed"*. Provide the details of the compensation which was fixed before 31.12.2021, and which was not fixed before 31.12.2021. Further, the reasons to consider such an amount which was fixed prior to 31.12.2021, keeping in view the SCOD of the Petitioner's project as 31.12.2020.

(h) Tower-wise details of the date when "40% amount after completion of the transmission towers foundation work" was released under Clause 3 of GoG Circular dated 14.8.2017.

(i) Relief for Change in Law has been claimed under article 12.2.1 of TSA i.e, during construction period. As per the TSA, [Article 4 -Clause 4.1(b)] the Petitioner was required to complete the construction and commissioning of the project "not later than SCOD as per Schedule 3 of the Agreement". The reasons for claiming events which occurred after such SCOD of 31.12.2020 (as per Schedule 3 of the TSA) under Change in Law when SCOD is still 31.12.2020?

(j) Whether the Petitioner obtained any extension under Clause 4.4 of Article 4 of the TSA of its SCOD of 31.12.2020? Whether the Petitioner made any

payment under Article 6.4 of the TSA to its LTTCs, due to delay in achieving COD?

6. Respondent Nos.1 to 3 is directed to submit the following information on an affidavit on or before 6.5.2024:

(a) Confirm the details of payment received under Article 6.4 of the TSA due to delay in achieving the COD from the Petitioner? If such payment has not been made by the Petitioner, whether Article 6.4.4 has been invoked to encash the Contract Performance Guarantee? The status of Contract Performance Guarantee as on date?

(b) A copy of the verification made pursuant to the Notice dated 24.2.2023 and 24.3.2023 received from the Petitioner, under CIL Rules, 2021.8. **In Petition No. 131/MP/202**, the Lol has been placed to the Petitioner on 2.3.2020. Further, the revised rates of Net Present Value (NPV) for the diversion of forest land were notified by the MOEFCC on 6.1.2022, and prior to that the old rates as per the MOEFCC notification dated 5.2.2019 were applicable. The Petitioner to clarify on or before 6.5.2024 when he had approached the forest authority for the diversion of the forest land and the reasons for such delay in getting forest land diversion.

7. The Petitions remained part-heard and will be listed for hearing on **8.5.2024 at 2.30 P.M.**

**By order of the Commission**  
**Sd/-**  
**(T.D. Pant)**  
**Joint Chief (Law)**