

**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.
- Date of Hearing : **3.1.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Lakadia-Vadodara Transmission Project Limited.
- Respondents : Adani Wind Energy Kutchh One Limited and 3 Others.
- Parties Present : Shri Sanjay Sen, Sr. Advocate, LVTPL
Ms. Ruth Elwin, Advocate, LVTPL
Ms. Neha Dabral, Advocate, LVTPL
Shri Deep Rao, Advocate, LVTPL
Ms. Harneet Kaur, Advocate, LVTPL

Record of Proceedings

At the outset, the learned senior counsel for the Petitioner submitted that the present Petition has been filed *inter alia* seeking verification of the calculation for the impact due to certain Change in Law events on the cost of implementation of the Petitioner's transmission project, and consequent adjustment of the monthly transmission charges to offset the financial impact of such Change in Law events, in terms of Rule 3(7) and Rule 3(8) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('CIL Rules'). Learned counsel further submitted that these 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 CIL Rules i.e., 22.10.2021, which have caused the Petitioner to incur additional expenditure towards the Project during its construction period.

2. In response to a specific query of the Commission, as to whether the Petitioner has complied with the Change in Law Rules, learned counsel replied in

positive and submitted that though the Petitioner has complied with the CIL Rules but did not receive any response from the other side.

3. In response to further query of the Commission regarding any other claims of the Petitioner viz. Change in Law and force majeure under the TSA besides the one involved in the present matter, the learned senior counsel for the Petitioner submitted that so far, the Petitioner has not filed any Petition in regard to the force majeure and/or other Change in Law claims. Learned senior counsel further submitted that the Change in Law events in respect of which the Petitioner is seeking the verification of the calculation of their impact under CIL Rules are post the notification of CIL Rules, which as such do not apply to the events which have occurred prior to their notifications.

4. In response to the observation of the Commission that since the Project of the Petitioner has already achieved the commercial operation, it would be proper to deal with the Petitioner's claims of Change in Law events (as occurred during the Construction Period) and the force majeure events together, the learned senior counsel submitted that while the Petitioner would file its Petition in regard to its force majeure and/or *residual* Change in Law claims, if required, it may not be tagged with the present Petition as it would be adjudicatory proceedings, whereas the scope of the present matter is limited to the verification of the calculation of the impact due to certain Change in Law events under the CIL Rules.

5. In response to another query of the Commission regarding the impleadment of the Western Region beneficiaries, learned senior counsel submitted that while the Commission may invite their comments/objections as objectors in the matter, they may not be impleaded as party Respondents, as the scope of the present proceedings is not an adjudicatory one.

6. After hearing the learned senior counsel for the Petitioner, the Commission observed that it would be better to hear/adjudicate the entire claims of the Petitioner i.e. of Change in Law claims and Force Majeure claims comprehensively. Hence, the present Petition, along with the Force Majeure petition (which will be filed by the Petitioner soon), will be heard together as the claims of the Petitioner are related to the same project.

7. The Commission observed that the Petitioner has already started the recovery of the alleged Change in Law claimed in the instant Petition from the ISTS charges Pool billed to distribution licensees of all India, without any approval by this commission, . The Commission directed the NLDC to file the clarifications on an affidavit within two weeks on what basis did NLDC include the alleged claim of the Petitioner under bills for distribution licensees of India for such an additional amount?

8. The Commission further directed as under:

(a) Admit.

(b) The Petitioner is to implead NLDC and Western region beneficiaries as respondents to the present Petition and file a revised memo of parties within in two days.

(c) Issue notice to the Respondents as well as Western Region beneficiaries.

(d) The Petitioner is to serve a copy of the Petition on the Respondents as well as the Western Region beneficiaries, who may file their reply and/or comments to the Petition, if any, within two weeks after serving a copy of the same to the Petitioner, who may file its rejoinder within two weeks thereafter.

9. The Petitioner was directed to submit the following information on an affidavit within two weeks:

(i) The category under which the Change in Law event claimed by the Petitioner, falls as per definition 2(c) of the CIL Rules.

(ii) As per Rule 3(2) of the CIL Rules, the affected party which intends to adjust and recover the costs due to Change in Law, is required to give three weeks prior notice to the 'other party' about the proposed impact in tariff or charges. Clarify who are the 'other parties' in the instant case.

(iii) Whether the Petitioner has served the notice to the 'such other parties' from whom the Petitioner intends to recover the charges due to 'Change in Law' in terms of Clause 3(2) of the CIL Rules.

(iv) When did the Petitioner actually start the recovery of the alleged Change in Law claimed in the instant Petition? Clarify whether it had approached this Commission within the timeframe as mentioned in Rule 3(8) of the CIL Rules and the reasons for the delay, if any.

(v) Whether there is any additional claim of the Petitioner with respect to the 'Change in Law' post the notification of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021, in addition to that already claimed in the present petition.

10. The Petition will be listed for hearing on **7.2.2024**.

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