

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.453/MP/2019

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Transmission Service Agreement dated 24.6.2015 entered into between the Petitioner and the Respondents seeking Change in Law compensation.

Date of Hearing : 22.12.2022

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

Petitioner : Sipat Transmission Limited (STL)

Respondents : Maharashtra State Electricity Distribution Co. Ltd. and 6 Ors.

Parties Present : Shri Gopal Jain, Sr. Advocate, STL
Shri Sourav Roay, Advocate, STL
Shri Prabudh Singh, Advocate, STL
Shri Vishal Malik, Advocate, STL
Shri Kaushal Sharma, Advocate, STL
Shri Afak Pothiawala, STL
Shri Ravi Prakash, Advocate, MSEDCL
Ms. Nikita Choukse, Advocate, MSEDCL
Shri Pallav Mongia, Advocate, PGCIL
Shri Tushar Srivastava, Advocate, PGCIL
Shri V. C. Sekhar, PGCIL
Shri Prashant Kumar, PGCIL

Record of Proceedings

During the course of hearing, learned senior counsel for the Petitioner circulated note of arguments and made detailed submissions on the issues under remit, namely, (i) change in configuration of towers to 'D'-'D' type towers on both sides of power line crossing being a Change in Law event, and (ii) carrying cost. Learned senior counsel, *inter-alia*, submitted that the inputs/comments of CEA as well as the affidavit filed by PGCIL dated 19.12.2022 clearly indicate that as on cut-off date, there was no requirement under either the CEA Regulations or the Indian Standards or the RfP documents to install 'D'-'D' type towers at both sides of the power line crossing and the said requirement was standardized by CEA in a meeting held on 16.9.2016 (after the cut-off date) and therefore, imposition of such condition in the case of the Petitioner amounts to Change in Law. Learned senior counsel further submitted that in terms of the judgment of Appellate Tribunal for Electricity dated 15.9.2022 in Appeal No. 256 of 2019 ("Parampujya Case"), wherein the APTEL has held that word 'relief' is of widest amplitude, the Petitioner is entitled to carrying cost on its Change in Law claims as the Article 12.2 of the TSA also uses the word 'relief' therein.

2. Learned counsel for the Respondent No.1, MSEDCL and Power Grid Corporation of India Limited (PGCIL) made their detailed submissions. Learned counsel for PGCIL referred to PGCIL's affidavit filed in compliance of the Record of Proceeding dated 12.12.2022 and submitted that PGCIL has been using 'D'-'D' configuration with necessary extension for crossing of power lines and only in some exceptional cases where constraints were faced during detailed survey with regard to the diversion angle, PGCIL has used D-A-D type tower configuration instead of D-D. Learned counsel for MSEDCL, *inter-alia*, submitted that change in configuration of towers to 'D'-'D' type towers on both sides of power line crossing would not amount to a Change in Law event under TSA. Learned counsel further submitted that as per the RfP and TSA, the onus of obtaining power line crossing as well as confirming the tower configuration for such crossing was on the Petitioner and it cannot amount to Change in Law. Learned counsel further submitted that the claim of the Petitioner for carrying cost is not maintainable as the judgment of APTEL in Parampujya is distinguishable. Learned counsel added that the wordings "provide relief" appearing in the PPAs in cases before the APTEL, basis which the APTEL has considered the carrying cost relief, are not there in the TSA.

3. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondents, the Commission ordered as under:

(a) The Petitioner to serve copy of the Petition on CSPDCL and CSPDCL to file its reply within a week and the Petitioner to file rejoinder thereof within a week thereafter.

(b) The Petitioner to furnish the following details/ clarifications on affidavit within a week:

(i) Whether the Petitioner at pre-bid stage while carrying out its own independent enquiry and/or survey as per the RfP and/or TSA had approached the concerned licensee(s) in relation to the necessary tower configurations for its power line crossing? If yes, the details thereof.

(ii) The type tower configuration for power line crossing considered by the Petitioner at the time of submission of bid. Basis for opting/considering types tower configuration for power line crossing other than 'D'-'D' type as prevalent for power line crossing.

(iii) Copy of line crossing approval granted by PGCIL and CSPTCL/CSPDCL for crossing of their lines.

(iv) Whether the Petitioner approached CSPDCL with regard to the requirement of 'D'-'D' tower configuration for crossing of its 132 kV and 220 KV lines after the meeting of CEA dated 16.9.2016 wherein CEA specifically observed that crossing of 220 kV and 132 kV lines could be done with angular type tower as per requirement. The communications received from CSPTCL/CSPDCL before and after CEA meeting denying power line crossing with tower other than DD type towers.

(v) How many towers have been changed to D-D type tower, at what voltage levels and the method of calculation of D-D tower claim?

(vi) Any other information relevant to the matter.

(vii) Rate of Interest for carrying cost being claimed by the Petitioner

(c) PGCIL and CSPTCL/CSPDCL to clarify the basis on which the Petitioner was asked to use 'D'-'D' type tower configuration for power line crossing within a week.

(d) Parties are permitted to file their response on the details to be furnished by the other side, if any, within two weeks. The parties are also at liberty to file their written submissions if any within two weeks.

4. Subject to the above the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**