

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 54/MP/2024

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 5th April ,2024

In the matter of:

Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Article 12.3 of the Transmission Service Agreement dated 07.10.2022 executed between the Petitioner and Central Transmission Utility of India Limited, for seeking approval of Change in Law event due to increase in construction cost based on the increase in the Circle Rate for Khandukhal and Rampura.

And in the matter of:

Khandukhal Rampura Transmission Limited,
1st Floor, Urjanidhi, 1 Barakhamba Lane,
Connaught Place New Delhi, Delhi Central 110001

..... Petitioner

VERSUS

1. Central Transmission Utility of India Limited (CTUIL),
Saudamini", 1st Floor, Plot no.2, Sector -29,
Gurgaon 122001, Haryana
2. Power Transmission Corporation of Uttarakhand Limited (PTCUL),
Vidyut Bhawan, Near ISBT Crossing, Saharanpur Road, Majra,
Dehradun, 248002
3. PFC Consulting Limited (PFCCL),
9th Floor, A-Wing, Statesman House,
Connaught Place, New Delhi -110001.

..... Respondents

Parties Present

Shri Anuj Bhawe, Advocate, KRTL

Ms. Suriti Chowdhary, Advocate, KRTL



ORDER

Khandukhal Rampura Transmission Limited (KRTL) (hereinafter to be referred as 'Petitioner') an SPV of M/s Megha Engineering & Infrastructures Limited (MEIL) has filed the present Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Article 12.3 of the Transmission Service Agreement dated 07.10.2022 executed between the Petitioner and Central Transmission Utility of India Limited, for seeking approval of Change in Law event due to an increase in the construction cost based on the increase in the Circle Rate for Khandukhal and Rampura. The Petitioner has made the following prayers:

- (a) *Admit the Petition*
- (b) *Hold and declare that the increase in construction cost for establishing interconnection facilities based on the orders of the Government of Uttarakhand increasing the Circle Rate of Khandukhal and Rampura from Rs 530/- per sq. mtr. to Rs 556/- per sq. mtr. and from Rs 4200/- per sq. mtr. to Rs 10,780/- per sqmtr. respectively is an event of Change in Law under Article 12 of the TSA.*
- (c) *Restore the Petitioner to the same economic condition as that prior to the occurrence of the Change in Law event by way of adjustment in tariff in terms of Article 12 read with Schedule 9 of the TSA along with carrying cost as prayed in the present Petition.*
- (d) *Grant an in-principle approval in the form of revision in tariff due to the Change in Law event in case it leads to extension of Scheduled COD.*
- (e) *To pass such other and further order(s) as this Hon'ble Commission deems appropriate under the facts and circumstances of the present case.*

Submissions of Petitioner

2. Petitioner has made the following submissions:

(a) Petitioner is acting as the Transmission Service Provider for establishing the Transmission System for "400 kV Khandukhal (Srinagar)- Rampura (Kashipur) D/C Line" in TBCB mode.

(b) On 19.07.2022, a meeting through VC was held between the officials of Central Electricity Authority (CEA), CTUIL, PTCUL and PFCCCL regarding the tentative cost indicated by PTCUL for providing space for 400kV bays and switchable line reactors at Rampura (Kashipur) substations. Based on queries from bidders, PFCCCL vide letter dated 01.07.2022 had sought land details for the Project and whether they will be provided by PTCUL on a chargeable basis or free of cost. PTCUL replied vide letter dated 11.07.2022 to PFCCCL and



provided the tentative abstract cost of Rs 4,79,66,688/- and submitted that the tentative land cost had been derived based on current circle rates of the area and the final cost may change at the date of execution as per the prevailing rules and regulations. CTUIL stated in the meeting that as per the general practice adopted, land should be provided free of cost for the establishment of line bays, reactor bays or other transmission elements at the substation and that the cost of land at Khandukhal and Rampura must already have been capitalized in the transmission tariff by PTCUL, so PTCUL must not charge again for the land. PTCUL stated that the decision regarding providing the land free of cost would be taken up with the Board and agreed that based on the cost received for the land; they would get the transmission tariff revised by the Regulator.

(c) On 20.07.2022, PTCUL informed PFCCL that the tentative total cost of land has been increased to Rs 5,02,70,932/- derived from the current circle rates of the area. MEIL was further informed of the said increase in the total cost of land by PFCCL vide letter dated 22.07.2022. This letter was in continuation of a letter dated 05.07.2022 in the form of additional clarifications issued by PFCCL to the queries raised by bidders on the RFP documents.

(d) On 12.01.2023 and 27.01.2023, this Commission by its Order granted the transmission license to KRTL and adopted the tariff determined through the competitive bidding so applied for.

(e) On 01.02.2023, PTCUL requested CTUIL to give necessary directions to MEIL for payment of rent for utilization of land at Kashipur substation by the TSP as per the Revenue Department.

(f) On 24.02.2023, a meeting through VC was held between the officials of CEA, CTUIL, PTCUL, PFCCL and MEIL regarding the tentative cost indicated by PTCUL. PTCUL stated in the meeting that as per the Audit Examination OM dated 16.01.2020, the substation land could not be given free of cost, and some utilization charges in the form of land usage charges should be taken from TSP. Therefore, the cost was estimated on the basis of the circle rate and was furnished to BPC. PTCUL further informed that in the absence of any prevailing

practice, the initial cost estimate of Rs 5,02,70,932/- for land, based on the circle rates, was furnished so that the same could be furnished to the bidders and the land would not be sold or transferred to the TSP. PTCUL has now decided that in place of the circle rate, they would be charging land usage charges or rent from the TSP. PTCUL also agreed to work out a revised value of rent/lease to be paid by TSP, keeping in mind that lease/rent charges for the use of substation land would not be equivalent to land cost estimated on the basis of the circle rate. It was decided in the meeting that PTCUL would provide the lease rental amount for the substation land within 15 days and would finalize the land lease agreement between PTCUL and TSP in consultation with the TSP. PTCUL would also facilitate construction activities by the TSP at the substations so that the Project is completed in time by the TSP.

(g) On 08.06.2023, a meeting through VC was held between the officials of CTUIL, PTCUL, PFFCL and MEIL regarding the utilization of land at Khandukhal (Srinagar) and Rampura (Kashipur). In the said meeting, PTCUL stated that the Lease Rent agreement is almost finalized; however, the circle rates have been revised with effect from 31.05.2023 and due to that, the cost of Rs. 5,02,70,932/-, which was provided earlier, has now increased to about Rs. 11 crores (for Kashipur only). Further, for land at Kashipur, the revenue department has informed that there are no prevailing rules for rent/lease of agricultural land and thereof the circle rates may be considered for lease/rent purposes. For Srinagar, it was informed that the substation land was transferred from the Forest department on lease, and it cannot be further put out on lease to another entity. CTUIL stated that if PTCUL seeks to charge for the cost of land in the substations, they must reduce the tariffs to that cost. It was proposed in the meeting that if PTCUL allows the TSP to utilize the land it may be through a Right of Use agreement. CEA also suggested that PTCUL may allow the utilization of land in their substations without levying any charges. It was decided in the meeting that PTCUL will discuss the issue of utilization of land at their substations with their management and provide details within 15 days. It was also decided that KRTL will have a physical meeting with PTCUL within a week and convey the deliberations held in the meeting to CTUIL/CEA.

(h) On 19.09.2023, PTCUL informed the CEA that as per the Government of Uttarakhand orders dated 16.02.2023 and 31.05.2023, Circle Rates for land had been revised for Khandukhal from Rs 530/- per sq. mtr. to Rs 556/- per sq. mtr and for Rampura from Rs 4200/- per sq. mtr. to Rs 10,780/- per sq. mtr. With the revised rates in force, the total cost of the land, which was earlier estimated to be Rs 5,02,70,923/- has now increased, working out to Rs 11,38,36,800/- for Rampura and Rs 22,35,120/- for Khandukhal. This increased amount does not include stamp duty and other charges to be paid at the time of registration.

(i) The Petitioner had not contemplated the revised Circle Rate at the time of bid submission. The increase in the circle rate will have a huge impact on the actual cost of procurement of land for the construction of interconnection facilities, which was beyond the control of Petitioner.

(j) On account of the revised Circle Rate, the total cost of the land, which was earlier estimated to be Rs 5,02,70,923/- for both bay extension works, has now increased to Rs 11,38,36,800/- for Rampura and Rs 22,35,120/- for Khandukhal separately excluding the stamp charges and other charges to be paid at the time of registration.

(k) The Commission may recognize and declare the rate of increase in the Circle Rate for Khandukhal and Rampura as a Change in Law under Article 12 read with Schedule 9 of the TSA for the purpose of a claim for adjustment/ recovery in tariff on account of the aforesaid Change in Law event.

(l) In terms of Article 12.2, read with Schedule 9 of the TSA, KRTL is entitled to be compensated for an Event of Change in Law. In doing so, this Commission has the power to:

- a) Acknowledge the event of Change in Law.
- b) Award suitable compensation to the affected party, including the date from when such compensation will come into effect.

(m) The orders of the Government of Uttarakhand increasing the Circle Rate of Khandukhal and Rampura is pursuant to enactment by an Indian Government

Instrumentality, which qualifies as an event of Change in Law according to Article 12.2 of the TSA.

(n) As per settled law, the Petitioner is also entitled to carrying cost over the payment of compensation for Change in Law under the present Petition.

(o) Determinately, the change in law has had a financial impact on the costs and revenues of KRTL. The said change by an act of the sovereign is beyond the control and could not be envisaged by KRTL at the time of bid submission. KRTL had based its bid on the cost structure informed to it at the time of the bid submission and is now being saddled with an additional cost. KRTL is entitled to be compensated for this Change in Law in terms of Article 12 of the TSA along with carrying cost.

Hearing dated 05.03.2024:

3. During the hearing dated 05.03.2024, the learned counsel for the Petitioner submitted that the present petition had been filed seeking a declaration that the increase in construction cost for establishing interconnection facilities based on the orders of the Government of Uttarakhand increasing the Circle Rate of Khandukhal and Rampura is a Change in Law event under Article 12 of the TSA. The learned counsel for the Petitioner prayed to grant in-principle approval in the form of revision in tariff due to the said Change in Law event. Considering the submissions of the Petitioner, the Commission reserved the matter for order.

Analysis and Decision

4. We have considered the submissions of the Petitioner and perused the documents available on record.
5. The Petitioner is establishing the Transmission System for “400 kV Khandukhal (Srinagar) - Rampura (Kashipur) D/C Line in TBCB mode. The Scheduled Commercial Operation Date (“SCOD”) of the Transmission System is 30.09.2024. The Petitioner has to establish one 400 kV bay and upgrade one existing 400 kV bay at Rampura (Kashipur), where the substation at Rampura



is owned by PTCUL. The Petitioner is also required to Upgrade existing 400 kV bays at Khandukhal (Srinagar), where the Khandukhal substation is owned by PTCUL.

6. Petitioner is seeking in-principle declaration of “increase in construction cost for establishing interconnection facilities because of the orders of the Government of Uttarakhand increasing the Circle Rate of Khandukhal and Rampura” as a change in law event and subsequent relief with carrying cost and revision in tariff. Petitioner has submitted that on account of the revised Circle Rate, the total cost of the land, which was earlier estimated to be Rs 5,02,70,923/- for both bay extension works, has now increased to Rs 11,38,36,800/- for Rampura and Rs 22,35,120/- for Khandukhal separately excluding the stamp charges and other charges to be paid at time of registration.
7. We have considered the submissions of the Petitioner. We have perused relevant provisions under Article 12 of the TSA for Change-in-Law as under:

“ARTICLE 12: CHANGE IN LAW

12.1 Change in Law

12.1.1 *Change in Law means the occurrence of any of the following after the Bid Deadline resulting into any additional recurring / non-recurring expenditure by the TSP or any savings of the TSP:*

- *the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law, subject to the provisions under Article 12.1.2;*
- *a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- *the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits;*
- *any change in the licensing regulations of the Commission, under which the Transmission License for the Project was granted if made applicable by such Commission to the TSP;*
- *change in wind zone; or*
- *any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.*

12.1.2 *Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change: a) Taxes on corporate income; and b) Withholding tax on income or dividends distributed to the shareholders of the TSP.*



12.2 Relief for Change in Law

12.2.1 During Construction Period, the impact of increase/decrease in the cost of the Project on the Transmission Charges shall be governed by the formula given in Schedule 9 of this Agreement.

12.2.3 For any claims made under Articles 12.2.1 and 12.2.2 above, the TSP shall provide to the Nodal Agency documentary proof of such increase/ decrease in cost of the Project/ revenue for establishing the impact of such Change in Law.

12.3 Notification of Change in Law:

12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Nodal Agency of such Change in Law as soon as reasonably practicable after becoming aware of the same.

12.3.3 Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its estimated impact on the TSP.

It is submitted that as per Clause 12.3.1 of the TSA quoted above, the Petitioner was obligated to give notice to the Nodal to Agency of such Change in Law as soon as reasonably practicable after becoming aware of the same and such notice served pursuant to Articles 12.3.1 and 12.3.2, amongst other things, shall have precise details of the Change in Law and its estimated impact on the TSP. However, the Petitioner has not filed any such notice issued to the Nodal agency. We note that as per the scope of work of the subject transmission scheme under the TSA, the PTCUL was to provide the space for 400kV bays at Rampura (Kashipur) along with the space for switchable line reactors. Further, Petitioner is required to upgrade the existing 400 kV bays at Khandukhal (Srinagar), where the Khandukhal substation is owned by PTCUL. PTCUL is the State transmission Utility of Uttarakhand State and owns various substations across the Uttarakhand State.

8. The detailed scope of works of the transmission scheme covered under the present Petition is as under:

Transmission System for 400 kV Khandukhal (Srinagar) - Rampura (Kashipur) D/C Line		
S. No.	Name of Transmission Element	Scheduled COD in months from Effective Date
1.	400 kV D/C Khandukhal (Srinagar) – Rampura (Kashipur) line (Twin HTLS*)	
2.	1x80MVAr switchable line reactor at Rampura (Kashipur) end on each circuit of Khandukhal (Srinagar) - Rampura (Kashipur) line	

	<ul style="list-style-type: none"> Switching equipment for 420 kV 80 MVAR switchable line reactor –2 nos. 420 kV, 80 MVAr Switchable line reactor- 2 nos. 	Matching time frame of commissioning of Vishnugad Pipalkoti HEP (29.10.2024) of THDC or Tapovan Vishnugad HEP (30.09.2024) of NTPC, whichever is earlier i.e. 30.09.2024.
3.	1 no. of 400 kV line bay at Rampura (Kashipur) S/s <ul style="list-style-type: none"> 400 kV line bay -1 no. 	
4.	Upgradation of existing 400kV bays at Khandukhal (Srinagar) <ul style="list-style-type: none"> Upgradation works for 400 kV line bays -2 nos. 	
5.	Upgradation of existing 1 no. of 400 kV diameter comprising line bay and ICT bay along with associated Tie Bay at Rampura (Kashipur) <ul style="list-style-type: none"> Upgradation works for 400 kV line bay – 1 no. Upgradation works for 400 kV ICT bay – 1 no. Upgradation of Tie Bay -1 no. 	

**With a minimum capacity of 2100 MVA on each circuit at nominal voltage.*

Note:

(i) PTCUL to provide space for 400kV bays at Rampura (Kashipur) along with the space for switchable line reactors.

9. BPC, i.e. PFCCCL vide letter dated 22.07.2022, issued a clarification to the bidders regarding the tentative cost of the land for 400 kV bays at Rampura (Kashipur) quoted as follows:

10.

*“Additional clarification dated 22.7.2022 on RFP documents for selection of bidder as Transmission Service Provider (TSP) to establish inter-state Transmission system for 400KV Khandukhal (Srinagar)-Rampura (Kashipur) D/C Line **

Sl. No	Clause No. and Existing provision	Clarification required	Clarifications
1.	RFP & clarification dated 13.06.2022 Section-1, clause 1.2 Scope of Project & RFP clarification sl no.173	<p>As the land for all the termination bays at existing substations shall be provided to TSP free of cost and O&M for these termination bays shall be in the scope of TSP.</p> <p>We understand that existing owner shall provide the free access to TSP for operation & maintenance of its bays. Please confirm our understanding.</p> <p>Further BPC is also</p>	<p>In continuation to the clarification provided at sl. No.15 dated 5.7.2022, PTCUL vide letter dated 20.7.2022 (copy attached at Annexure-A) has communicated the tentative cost of Rs. 5,02,70,932/- (five crore two lakh seventy thousand nine hundred thirty two only) of the land for providing space for 400 kV bays at Rampura (Kashipur) alongwith the space for switchable line reactors and bays at</p>



		<p>requested to please share latest UERC tariff regulations based on which various charges to be finalized.</p> <p>Bidder needs information for proper estimation.</p>	<p>Khandukhal (Srinagar).</p> <p>Bidder are advised to include the above cost in their bid</p>
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PTCUL letter dated 20.07.2022 referred to in the above clarification is quoted as follows:

"In reference to the meeting with CEA officers on 19.07.2022 through VC and your Letter No. 4 dated 01.07.2022 addressed to Managing Director, PTCUL and which was further forwarded to this office for providing the land details along with the cost for bays. In compliance to instructions given by Managing Director. PTCUL in continuation to our office letter no.-359 Dated 11.07.2022. Please find enclosed herewith the tentative abstract cost of Bay at 400KV Rampura-Kashipur & Khandukhal-Srinagar (copy enclosed) as requested to be appraised to the bidders. This is tentative cost of land derived from the current circle rates of the area. The final cost may change at the date of execution as per prevailing rules and regulations of corporation and Government of Uttarakhand

Tentative Abstract cost of 02 No. line & 01 No. Reactor Bay at 400KV S/s Rampura-Kashipur & 02 No. Bays at 400KV Khandukhal-Srinagar

Sr. No.	Description	Area	Amount
01	Land requirement for 02 No. Bay & 01 No. Reactor Bay at Rampura-Kashipur	10560Sq Mtr.	
02	Circle rate of the land @ Rs.4200/Sq. mtr. (as per land circle rates of the area)	-	4200*10560=4,43,52000
03	Land requirement for 02 No. bays at Khandukhal-Srinagar	4020/Sq Mtr.	
04	Circle rate of the land @ Rs.540/Sq. mtr. (as per land circle rates of the area)		530* 4020= 21,30,600
06		Total	4,43,52000+21,30,600 = 4,64,82,600
07	Cost of establishment audit & Accounting @ 5%	-	+5% of 4,64,82,600 =4,88,06,730
08	Contingency @ 3%		+3% of 4,88,06,730 =5,02,70,932
09	Total cost of land at Rampura & Khandukhal-Srinagar line.	Total	5,02,70,932/- (Five Crore Two Lac Seventy Thousand Nine Hundred Thirty Two only).

"



As per above, PTCUL communicated the tentative cost of Rs. 5,02,70,932/- for the land for providing space for 400 kV bays at Rampura (Kashipur) and bays at Khandukhal (Srinagar).

11. We observe that during the meeting dated 24.02.2023 held in CEA, the issue of cost indicated by PTCUL for providing space for 400 kV bays at Rampura (Kashipur) S/s was discussed, wherein PTCUL intimated that it had been agreed by their management that the land would be given on lease basis for about 35 years and lease agreement would be signed between the developer and PTCUL. Accordingly, it was agreed that PTCUL should finalize the land lease agreement to be executed between PTCUL and TSP (MEIL) in consultation with the Petitioner. However, during another meeting held on 08.06.2023 in CEA, PTCUL stated that the Lease Rent agreement is almost finalized; however, the circle rates have been revised with effect from 31.05.2023 and due to the cost of Rs. 5,02,70,932/- which was provided earlier has now increased to about Rs. 11 crores (for Kashipur only). Further, for land at Kashipur S/s, the revenue department has informed that there are no prevailing rules for rent/lease of agricultural land and thereof the circle rates may be considered for lease/rent purposes. For Srinagar, it was informed that the substation land was transferred from the Forest department on lease and it cannot be further put out on lease to another entity. Accordingly, on the issue of non-availability of land lease/rent details at Kashipur S/s as the land is agricultural land and also for Srinagar as the land is already on lease from the forest department, PFCCL(BPC)/CTUIL proposed that PTCUL may allow the TSP to utilize the land through a Right of Use agreement.
12. We have perused the PTCUL letter dated 19.09.2023 to CEA, quoted as follows:

"This is to bring your kind notice that this organization vide letter No. 385 dated 20.07.2022 had furnished the tentative extract of cost for the 400 kV bay at Khandukhal-Srinagar-Rampura-Kashipur substation for Rs. 5,02,70,932.00 (Rs Five Crore Two Lakh Seventy Thousand Nine Hundred & Thirty Two only). This amount was derived at by using the Circle Rate of Rs. 530/- per sq. mtr. for Khandukhal and Rs. 4200/- per sq. mtr. For Rampura which were the prevailing Circle Rates as notified by the Government of Uttarakhand at that time. These were tentative cost provided by the PTCUL for purpose of Bid....."

As per the Standard Commercial practices of the Bid the rent, rates and taxes as determined either by the Union of India or the State Government are levied on all the commercial transactions at the rate prevalent at the date of transaction.

The Government of Uttarakhand vide their order no. 371/pauri/2022-23/ (copy enclosed as Annexure-2) dated 16.02.2023 and 9805/5-stamp/ 2022-23 dated 31.05.2023 (copy enclosed as Annexure-3) have revised the Circle Rate of Khandukhal from Rs.530/- per sq. Mtr. To Rs.556/- per sq. Mtr. and the rates of Rampura have also been revised upwards from Rs.4200/-per sq. Mtr to Rs. 10,780/- per sq. Mtr respectively. After the bidding process, M/s Megha Engineering & Infrastructure Ltd. (MEIL) emerged as a successful bidder and they had been issued a letter of intent by PFC Consulting Ltd. (PFCCL) vide their Ref. No. 04/20-21/IITP-53/RFP on 7.9.2022 (copy enclosed as Annexure-4). Had they deposited the amount as per the letter of intent in time the firm ought to have deposited Rs.5,02,70,923.00 (Rs. Five Crore Two Lakh Seventy Thousand Nine Hundred & Thirty Two only) But due to the delay on the part of the MEIL the order of the Government of Uttarakhand came into force revising the Circle Rate upwards

With the revised rates the amount now does not include works out to be Rs. 11,38,36,800.00 (Rs. Eleven Crore Thirty Eight Lakh Thirty Six Thousand & Eight Hundred only) for Rampura and Rs. 22,35,120/- (Rs. Twenty Two Lakhs Thirty Five Thousand and one Hundred & Twenty only). This amount does not include the stamp and other charges which shall have to be paid by the party at the time registration.

Accordingly to the AG Audit Para Book No.958 Audit Examination OM No.17 dated 16.01.2020 has already directed to the substation land could not be given free of cost. Some utilization charges in form of land usages charges should be taken from the TSP for implementation of 400kV bays work at Kashipur s/s (copy enclosed as Annexure -5)

Since this is a commercial organization that has to be abide by the Rules & Regulations as prescribed by the Government of Uttarakhand, consequently this corporation does not have any discretionary power. As a Regulator, if you feel that as per the mandate of the Regulations, the Company should accept the particular amount then please issue an order to this effect which shall facilitate this Company to persuade the Board of Directors to accept the rate that has not been prescribed by the Government of Uttarakhand.”

As per the above, PTCUL has stated that had MEIL deposited the amount (~Rs 5 crore) in time, the issue of the increased amount would not have arisen. Due to a delay on the part of MEIL, the orders of the Government of Uttarakhand to revise the circle rate upwards have come into force.

13. We observe that the Petitioner has referred to the orders of the Government of Uttarakhand increasing the Circle Rate of Khandukhal and Rampura from Rs 530/- per sq. mtr. to Rs 556/- per sq. mtr. and from Rs 4200/- per sq. mtr. to Rs 10,780/- per sq.mtr. respectively is an event of Change in Law under Article 12 of the TSA. However, the applicability of these Government Orders as an event of Change in law needs to be seen in light of the following:

- (a) During the meeting held on 19.7.2022, CTUIL suggested, as per general practice adopted, that land should be provided free of cost for the establishment of line bays, reactor bays or other transmission elements at the substation and that the cost of land at Khandukhal and Rampura must already have been capitalized in the transmission tariff by PTCUL, so PTCUL must not charge again for the land. In response, PTCUL stated that the decision regarding providing the land free of cost would be taken up with the Board and agreed that based on the cost received for the land; they would get the transmission tariff revised by the Regulator.
- (b) PTCUL, vide its letter dated 20.07.2022, has conveyed to PFCCL and CEA the tentative cost of the land, which was subsequently issued by PFCCL to the bidders as an additional clarification on 22.07.2022. PTCUL has also conveyed that the tentative cost of land was derived from the current circle rates of the area. The final cost may change at the date of execution as per prevailing rules and regulations of the corporation and the Government of Uttarakhand.
- (c) As per the meeting held in CEA on 24.2.2023, it was agreed that PTCUL shall finalize the land lease agreement to be executed between PTCUL and TSP (MEIL) in consultation with the Petitioner.
- (d) In the meeting dated 8.6.2023 at CEA, PTCUL informed that for the Kashipur S/s the land is agricultural land and hence lease/rent details are not available and for the Srinagar substation, the land is already on lease from the forest department and cannot be leased again. In view of these points raised by PTCUL, PFCCL(BPC)/CTUIL proposed that PTCUL may allow the TSP to utilize the land through a Right of Use agreement.
- (e) The PTCUL letter dated 19.9.2023 to CEA where PTCUL stated that had MEIL deposited the amount (~Rs 5 crore) in time, the issue of the increased amount would not have arisen. Due to a delay on the part of MEIL, the orders of the Government of Uttarakhand to revise the circle rate upwards have come into force.

14. From the above, we observe that Petitioner is yet to enter into an agreement with PTCUL for bays at Rampur and Srinagar. It is not clear on what terms and conditions, it will enter into such an agreement, which may be at some rate or free of cost (as suggested by CTUIL). PTCUL has observed that MEIL has not

deposited the amount in time. Due to a delay on the part of MEIL, new State Government Orders revising the circle rates upwards have come into force. Further, we also observe that Petitioner has not given any notice to the Nodal Agency under Article 12.3.1 of the TSA. We are of the view that the present Petition is premature, and no view on the claimed Change-in-Law event may be taken at this stage. We observe that Petitioner's Project is still under implementation with a scheduled COD of 30.09.2024. We direct the Petitioner to complete the project within the specified timelines, and after completing the project, the Petitioner is at liberty to approach the Commission to seek appropriate relief for Change in Law in accordance with law under the provisions of TSA and other applicable provisions of the Law, Rules and Regulations.

15. This order disposes of Petition No. 54/MP/2024.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(Jishnu Barua)
Chairperson

