

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Review Petition No. 20/RP/2020 and 25/RP/2020

**in
Petition No. 446/MP/2019**

Coram:

**Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member**

Date of Order: 02.08.2021

Review Petition No. 20/RP/2020

In the matter of:

Review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 23.4.2020 in Petition No. 446/MP/2019

And in the matter of:

Haryana Power Purchase Centre,
Shakti Bhawan, Sector 6,
Panchkula-134109, Haryana.

.....Review Petitioner

Versus

1. Sasan Power Limited,
Reliance Power Limited,
3rd Floor, Reliance Energy Centre,
Santa Cruz East, Mumbai-400 055.
2. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Jabalpur-482 008, Madhya Pradesh.
3. Paschimanchal Vidyut Vitran Nigam Limited,
Victoria Park, Meerut-250 001, Uttar Pradesh.
4. Purvanchal Vidyut Vitran Nigam Limited,
Hydel Colony, Bhikaripur,
Post-DLW, Varanasi-221 004, Uttar Pradesh.
5. Madhyanchal Vidyut Vitran Nigam Limited,
4A- Gokhale Marg, Lucknow- 226 001, Uttar Pradesh.
6. Dakshinanchal Vidyut Vitran Nigam Limited,



220 kV, Vidyut Sub-Station,
Mathura Agra By-Pass Road,
Sikandra, Agra-282 007, Uttar Pradesh.

7. Ajmer Vidyut Vitran Nigam Limited,
Hathi Bhata, City Power House,
Ajmer 305001, Rajasthan.
8. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Jaipur-302005, Rajasthan.
9. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
Jodhpur-342003, Rajasthan.
10. Tata Power Delhi Distribution Limited,
Grid Sub-Station Building, Hudson Lines,
Kingsway Camp, New Delhi -110 009.
11. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place, New Delhi-110 019.
12. BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma, Delhi-110 092.
13. Punjab State Power Corporation Limited,
The Mall, Patiala-147 001, Punjab.
14. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun- 248001, Uttarkahand.

.....Respondents

Review Petition No. 25/RP/2020

In the matter of:

Review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 23.4.2020 in Petition No. 446/MP/2019

And in the matter of:

1. Ajmer Vidyut Vitran Nigam Limited,
Hathi Bhata, City Power House,
Ajmer 305001, Rajasthan.
2. Jaipur Vidyut Vitran Nigam Limited,



Vidyut Bhawan, Jaipur – 302005, Rajasthan.

3. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
Jodhpur-342003, Rajasthan.

Through:

Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Janpath,
Jyoti Nagar, Jaipur- 302005.

.....Review Petitioners

Versus

1. Sasan Power Limited,
Reliance Power Limited,
3rd Floor, Reliance Energy Centre,
Santa Cruz East, Mumbai–400 055.
2. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Jabalpur-482 008,
Madhya Pradesh.
3. Paschimanchal Vidyut Vitran Nigam Limited,
Victoria Park, Meerut-250 001,
Uttar Pradesh.
4. Purvanchal Vidyut Vitran Nigam Limited,
Hydel Colony, Bhikaripur,
Post-DLW, Varanasi-221 004,
Uttar Pradesh.
5. Madhyanchal Vidyut Vitran Nigam Limited,
4A- Gokhale Marg, Lucknow- 226 001,
Uttar Pradesh.
6. Dakshinanchal Vidyut Vitran Nigam Limited,
220kV, Vidyut Sub-Station,
Mathura Agra By-Pass Road,
Sikandra, Agra-282 007, Uttar Pradesh.
7. Tata Power Delhi Distribution Limited,
Sub-Station Building, Hudson Lines,
Kingsway Camp, New Delhi -110 009.
8. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place, New Delhi-110 019.
9. BSES Yamuna Power Limited,



Shakti Kiran Building,
Karkardooma, Delhi-110 092.

10. Punjab State Power Corporation Limited,
The Mall, Patiala-147 001, Punjab.
11. Haryana Power Purchase Centre,
Shakti Bhawan, Sector 6,
Panchkula – 134109, Haryana.
12. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun- 248001, Uttarkahand.

.....**Respondents**

For Petitioner : Ms. Ranjitha Ramachandran, Advocate, HPPC & RUVNL
Ms. Srishti Khindaria, Advocate, HPPC & RUVNL

For Respondent : Shri Mansoor Ali Shoket, Advocate, TPDDL
Shri Kunal Singh, Advocate, TPDDL
Ms. Shefali Sobti, TPDDL

ORDER

Haryana Power Purchase Centre (HPPC) has filed Petition No.20/RP/2020 and Ajmer Vidyut Vitran Nigam Limited (AVVNL), Jaipur Vidyut Vitran Nigam Limited (JVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JhVVNL) through Rajasthan Urja Vikas Nigam Limited (RUVNL) (collectively referred to as “Rajasthan Discoms”) have filed Petition No.25/RP/2020 seeking modification/ clarification of the order dated 23.4.2020 in Petition No. 446/MP/2019 under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. The grounds for modification/ clarification raised and the prayers made by the Rajasthan Discoms and HPPC are almost similar and, therefore, the instant two petitions are dealt together.

Background

2. Sasan Power Limited (SPL) filed Petition No. 446/MP/2019 for provisional



approval of capital cost and operational cost of the FGD system to be installed in compliance of the revised Emission Control Norms (ECNs) prescribed by Ministry of Environment, Forest and Climate Change, Government of India (“MoEFCC”) vide the Environment (Protection) Amendment Rules, 2015 (“MoEFCC Notification”). The Commission vide order dated 23.4.2020 has provisionally approved the capital cost of the FGD system. The Rajasthan Discoms and HPPC have sought modification/clarification of the impugned order dated 23.4.2020 on allowance of O&M Expenses at 2% of the capital cost, opportunity cost, expenses towards Project Management and Engineering Services and mechanism for compensation.

3. The Rajasthan Discoms and HPPC have made the following prayers:

- “(a) Allow the Review Petition and modify/clarify the Order dated 23.04.2020 passed in Petition No. 446/MP/2019 to the extent stated in the present Review Petition;*
- (b) pass any such further order or orders as this Hon’ble Commission may deem just and proper in the circumstances of the case.”*

4. The matter was heard through video conference on 20.7.2021 and the order was reserved on admissibility.

Submissions of Rajasthan Discoms and HPPC

5. The Review Petitioners have made the following submissions in support of their prayers:

- a) SPL filed Petition No. 446/MP/2019 for provisional approval of the additional capital and operational expenditure on account of installation of Flue Gas Desulphurizer (FGD) and the Commission provisionally approved the following:
 - i. Base cost of FGD Main Package and site specific requirements of Rs.1663 core on the basis that the same is aligned to the CEA indicative costs;



- ii. IDC, taxes and duties, FERV, project management and engineering services on actuals subject to prudence check;
- iii. Pre-operative expenses to be considered after proper justification and prudence check;
- iv. Provisional O&M Expenses at 2% of the capital cost per annum with direction to submit actual expenses;
- v. Auxiliary Power Consumption provisionally at 1%; and
- vi. Opportunity cost to be considered on actual number of days of shut down and the SPL was directed to synchronise the inter-connection of FGD system with annual overhaul.

b) O&M Expenses were allowed @ 2% of capital cost of the FGD system based on wet limestone FGD technology. However, the revenue generated from the sale of byproduct (gypsum) which would reduce the O&M Expenses was not considered. The Commission has proceeded on the basis that there is no quantification of the additional O&M Expenses. However, the Commission should have considered the quantification provided by CEA in case of CGPL for allowing O&M Expenses @2% of the base cost. Though the Commission observed that the actual O&M Expenses would be considered finally, the provisional O&M Expenses approved is important for consideration of prudence check as well as the fact that the said costs would be payable until finalisation of O&M Expenses. The non-consideration of CEA report (in the case of CGPL) for allowing O&M Expenses and lack of clarity on the issue of revenue from sale of by-product of limestone (i.e., gypsum) is error apparent on the face of the record and sufficient reason for review.

c) There is an uncertainty in the case of opportunity cost as the Commission held that it is not considering the opportunity cost at this stage and at the same time held that it will consider the same on actual number of days subject to certain conditions. The Commission has not considered the issues and objections of the Respondents with regard to opportunity cost. Therefore, it may be clarified that the admissibility of the opportunity cost has not been decided. Further, the opportunity cost is not a cost which can be claimed under "change in law" and is not part of capital cost. Mere terming as 'cost' would not



make it a cost. The costs are required to be incurred for the same to be considered and the alleged “opportunity costs” cannot be considered. Moreover, there is no provision in the PPA for opportunity costs. Further Article 18.17 of the PPA specifically provides that no indirect or consequential loss can be claimed. The shut-down should be done during the annual overhaul. The contradiction on the opportunity costs and non-consideration of the contentions of the Procurers are errors on record and otherwise constitute sufficient reasons for review.

d) The Commission allowed the cost of Project Management and Engineering Services without any discussions on the same. The Commission has rightly not considered the pre-operative expenses as there was no justification for the same. However, the cost of Project Management and Engineering Services was allowed without any justification, which is an error apparent in the face of the record and sufficient reason for review.

e) The PPA provides for a mechanism for compensation for increase in capital cost. Generally, there is no increase in the capital cost during operation period. However in the present case, the capital cost is being claimed and, therefore, the mechanism provided in the PPA for dealing with increase in capital cost should have been adopted. When a specific formula has been provided in the PPA for consideration of changes in capital cost, the same cannot be ignored. Since the Commission has directed to initiate a process for devising a mechanism for compensation, the Respondents/ procurers/ stakeholders may be given the liberty to submit comments, including the formula given in the PPA for compensation mechanism.

6. During the hearing on 20.7.2021, the learned counsel appearing for HPPC and RUVNL reiterated the submissions made in the instant petitions. She further submitted that the Commission has already issued a staff paper and the Review Petitioners have submitted their observations/ comments on the staff paper and the same may be taken into consideration independent of any observation made in the



impugned order. She also submitted that the conclusions drawn in the impugned order dated 23.4.2020 should not be binding and conclusive on the parties.

Analysis and Decision

7. We have considered the submissions made by the Review Petitioner in the instant review petitions, perused the documents on record and heard learned counsel for the Rajasthan Discoms and HPPC. The Rajasthan Discoms and HPPC have sought modification/clarification on four issues in order dated 23.4.2020 in Petition No.446/MP/2019. These issues are dealt with in the following paragraphs.

8. The Review Petitioners have contended that non-consideration of the CEA's report given in the case of CGPL while allowing O&M Expenses and lack of clarity on the issue of revenue from sale of by-product of gypsum is an error apparent on the face of the record and sufficient reason for review. The Commission observes that it has been clearly stated in order dated 23.4.2020 that the O&M Expenses are allowed on a provisional basis. The relevant portion of the order dated 23.4.2020 is as follows:

“34. It is observed from the above that CEA has provided the factors to be considered for additional O&M but has not provided the quantification of the additional O&M in regard to SPL. Therefore, the claim of the petitioner for allowing O&M expenditure is provisionally allowed @2% of the capital cost of FGD system at this stage. We direct the petitioner to submit the O&M expenses relating to FGD system on actual basis at the time of filling the petition for determination of tariff on commissioning of the FGD system.”

9. As the O&M Expenses were allowed on provisional basis and it is subject to reconsideration on actual basis, we are of the view that there is no error on this account.

10. The Review Petitioners have contended that there is uncertainty as the Commission held that it is not considering the opportunity cost at this stage and has



observed that it will consider the same on actual number of days. The Commission observes that in the order dated 23.4.2020, the opportunity cost has not been allowed and it will be allowed on the basis of the actual number of days of shutdown and on prudence check. The relevant portion of the order dated 23.4.2020 is extracted hereunder:

“36.....The Commission is of the view that beneficiaries and the petitioner shall plan the interconnection of FGD system with main plant by synchronizing it with annual overhaul. Therefore, the Commission is not considering the opportunity cost at this stage. However, the same would be considered on actual number of days of shutdown after prudence check to the effect that the Petitioner has tried to synchronize the interconnection of FGD system with annual overhaul and has consulted the beneficiaries in this respect.

11. Thus, we are of the view that there is no ambiguity on the aspect of opportunity cost which has not been allowed and it will be allowed on the basis of the actual number of days of shutdown and on prudence check. Therefore, there is no need for any further clarification in this regard.

12. The Review Petitioners have contended that the cost of Project Management & Engineering Services was allowed without any justifications. The Commission observes that Petition No.446/MP/2019 was filed for provisional approval of the capital cost of the FGD systems by SPL and accordingly, in the impugned order dated 23.4.2020, the cost of Project Management & Engineering Services was allowed on provisional basis and it was clearly stated that the same will be allowed based on actuals after commissioning of the FGD system after prudence check. The relevant portion of the order dated 23.4.2020 is reproduced hereunder.

“30. The Commission also allows the petitioner to claim expenditure towards IDC, taxes & duties, FERV (if any) and expenditure towards project management & engineering services at actuals after commissioning of the FGD system, which may be allowed after prudence check. As regards pre-operative expenses, the cost may be allowed subject to proper justification for such expense and after prudence check by the Commission.”



13. Therefore, we are of the view that there is no error in approving the Project Management & Engineering Services on provisional basis subject to prudence check on the basis of the actuals after the commissioning of the FGD system.

14. The Review Petitioners have contended that the compensation mechanism should be as per the provisions of PPA. However, as the Commission has already initiated the process for putting in place a mechanism for working out compensation, the Review Petitioners should be given the liberty to present their views including the application of the provisions of the PPA. The Review Petitioners have also contended that their comments may be considered independent of any observations made in the impugned order and the observations of the Commission in the impugned order dated 23.4.2020 should not be binding and conclusive on the parties. We have considered the submissions of the Review Petitioner. There is no bar on the procurers/stakeholders, including the instant Review Petitioners, to offer their comments/ observations (within the given timelines) on the proposal for working out mechanism for working out compensation in Petition No. 6/SM/2021. The learned counsel for the Review Petitioners submitted that they have already submitted their comments on the Commission's proposal. Needless to mention, the Commission will consider comments of the Review Petitioners on their merits while finalizing the proposal on mechanism for working out compensation.

15. In view of the above findings and discussions, we are of the view that there are no errors in order dated 23.4.2020 in Petition No.446/MP/2019 nor there is any need to issue any clarification in order dated 23.4.2020 in Petition No.446/MP/2019.



Accordingly, Review Petition No. 20/RP/2020 and Review Petition No. 25/RP/2020 are disposed of at admission stage.

sd/-
(I.S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson

