

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

**Review Petition No. 21/RP/2020
in Petition No. 446/MP/2019**

Coram:

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

Date of Order : 31.07.2021

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:

Sasan Power Limited,
C/o- Reliance Power Limited,
3rd Floor, Reliance Energy Centre,
Santacruz East, Mumbai-400055

.....Review Petitioner

Versus

1. MP Power Management Company Limited,
Shakti Bhawan, Jabalpur,
Madhya Pradesh-482008.
2. Paschimanchal Vidyut Vitran Nigam Limited,
Victoria Park,
Meerut-250001, Uttar Pradesh.
3. Purvanchal Vidyut Vitran Nigam Limited,
Hydel Colony, Bhikaripur,
Post-DLW,
Varanasi-221004, Uttar Pradesh.
4. Madhyanchal Vidyut Vitran Nigam Limited,
4A-Gokhale Marg,
Lucknow-226001, Uttar Pradesh.
5. Dakshinanchal Vidyut Vitran Nigam Limited,
220 kV Vidyut Sub-Station,
Mathura Agra By-Pass Road,
Sikandra, Agra-282007, Uttar Pradesh.



6. Ajmer Vidyut Vitran Nigam Limited,
Hathi Bhata, City Power House,
Ajmer-305001, Rajasthan.
7. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan,
Jaipur-302005, Rajasthan.
8. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
Jodhpur-342003, Rajasthan.
9. Tata Power Delhi Distribution Limited,
Grid Sub-station Building,
Hudson Lines, Kingsway Camp, New Delhi-110009.
10. BSES Rajdhani Power Limited,
BSES Bhawan,
Nehru Place, New Delhi-110019.
11. BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma, Delhi-110092
12. Punjab State Power Corporation Limited,
The Mall, Patiala-147001, Punjab
13. Haryana Power Purchase Centre,
Room No. 239, Shakti Bhawan,
Sector 6, Panchkula-134109, Haryana.
14. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun-248001, Uttarakhand

.....Respondents

For Petitioner : Shri Vishrov Mukerjee, Advocate, Sasan Power Limited
Shri Janmali Manikala, Advocate, Sasan Power Limited
Shri Girik Bhalla, Advocate, Sasan Power Limited

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



ORDER

The Review Petitioner, Sasan Power Limited (SPL), has filed the instant review petition seeking review 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 Commission in order dated 23.4.2020 allowed O&M Expenses @2% of the capital cost of the FGD system against the Review Petitioner's claim of Rs. 202.56 crore towards O&M Expenses in the first year of operation. Aggrieved with the disallowance of O&M Expenses as claimed by the Review Petitioner, the Review Petitioner has filed the instant Review Petition. The Review Petitioner has made the following prayers:

- “(a) Admit the present Review Petition;*
- (b) Review/modify the Order dated 24.04.2020 in Petition No. 446/MP/2019 in terms of the submissions made in the present Review Petition and provisionally approve O&M Expenses as Rs. 202.56 Crore per annum in the first year of operation as sought in the Petition No. 446/MP/2019.*
- (c) Pass such other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.”*

2. The matter was heard through video conference on 20.7.2021 and the order was reserved on admission.

Submissions of the Review Petitioner

3. The Review Petitioner has made the following submissions in support of the Review Petition:

- a) The Review Petitioner 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 norms prescribed by Ministry of Environment, Forest and Climate Change, Government of India vide the Environment (Protection) Amendment Rules, 2015 (in short, “MoEFCC Notification”). The Commission vide order dated 23.4.2020 has inter-alia provisionally allowed O&M Expenses @ 2% of the capital cost of the FGD system.



b) The O&M Expenses was erroneously restricted to 2% of the capital cost of the FGD system based on the findings in order dated 28.3.2018 in Petition No. 104/MP/2017 pertaining to Adani Power Limited. FGD system of Adani Power Limited is based on sea-water technology which is different from the Review Petitioner's FGD system which is based on wet limestone technology. FGD system based on limestone includes purchase of raw material i.e. limestone and other consumables which are not used for FGD systems based on seawater. Therefore, allowing O&M Expenses @ 2% for FGD system for wet limestone technology based on the order dated 28.3.2018 is an error apparent on the face of record.

c) The operational expenses includes limestone, water, waste water treatment, Gypsum disposal, O&M Expenses (such as manpower, spares, services) etc. estimated at Rs. 202.56 crore per annum in the first year of operation or approximately 12% of the capital cost of Rs.1663 crore to be incurred for operating the FGD system.

d) CEA has recognized that O&M Expenses for wet limestone based FGD system include reagent, additional auxiliary power, additional clarified water, additional operating cost of waste water treatment plant, annual fixed O&M cost (O&M manpower, services, maintenance, etc.) and cost of disposal of the by-product gypsum. This aspect was recognised by the Commission in order dated 11.11.2019 in Petition No. 152/MP/2019. However, the Commission did not consider the recommendations of CEA and erroneously applied its findings in order dated 28.3.2018 in Petition No. 104/MP/2017.

e) The Commission has held that the norms for additional O&M Expenses are yet to be finalized and the same would be considered on the basis of actuals at the time of determination of tariff on commissioning of the FGD System.

f) Norms for O&M Expenses are to be notified in terms of Regulation 35(7) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short "2019 Tariff Regulations"). The 2019 Tariff Regulations and the CEA recommendations recognize O&M Expenses in addition to the capital cost and the Commission in the case of Maithon Power Ltd. recognized that O&M Expenses would be allowed at actuals. Accordingly, the Review Petitioner's claim of Rs. 202.56



crore of O&M Expenses, in the first year of operation, should have been allowed at actuals subject to prudence check.

g) In-principle approval of O&M Expenses @ 2% of the estimated capital cost of the FGD System amounting to Rs.33.26 crore per annum against claim of Rs.202.56 crore per annum in the first year of operation would lead to under-recovery of O&M Expenses resulting in the Review Petitioner not being restored to the same economic position contrary to Article 13 of the PPA. It is settled position of law that party impacted by change in law is to be restored to the same economic position as if such change in law did not take place.

h) Absence of approval for recovery of O&M Expenses would lead to uncertainty for the lenders. The Commission in the impugned order recognised that the one of the purposes of the order is to provide enough comfort to financial institutions. However, this purpose will get defeated if under-recovery on account of lower O&M expenses in the impugned order is not rectified.

4. Learned counsel of the Review Petitioner, during the hearing on 20.7.2021 reiterated the submissions made in the review petition.

Analysis and Decision

5. We have considered the submissions of the Review Petitioner and perused the material on record. O&M Expenses were allowed @ 2% of the capital cost of the FGD system based on wet limestone technology on provisional basis in order dated 23.4.2020.

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.”

6. The Review Petitioner has contended that the Commission has not recognised the CEA recommendations and its own order dated 11.11.2019 in Petition No. 152/MP/2019



dated 11.11.2019 about the additional O&M Expenses in case of FGD based on wet limestone technology. However, it is noticed that the Commission in the impugned order observed that though CEA has identified the factors to be considered for additional O&M Expenses, CEA has not quantified the additional O&M Expenses and, therefore, the Commission provisionally allowed O&M Expenses @ 2% of the capital cost of FGD system. Therefore, there is no merit in the Review Petitioner's contention that the Commission has not considered the CEA's recommendations and its own earlier order dated 11.11.2019 in Petition No. 152/MP/2019.

7. The Review Petitioner's contention that non-approval for recovery of actual O&M Expenses would lead to uncertainty for the lenders and would not provide enough comfort to financial institutions is far-fetched because the Commission in the impugned order observed in unambiguous terms that the O&M Expenses allowed is on provisional basis and that the Review Petitioner has to submit the O&M expenses relating to FGD system on actual basis at the time of filing the petition for determination of tariff on commissioning of the FGD system.

8. The Review Petitioner has further contended that the MoEFCC Notification regarding revised ECS norms being a "change in law", the Review Petitioner should be restored to its original position as provided in Article 13 of the PPA and settled principles of law. The basic grievance of the Review Petitioner is that it was erroneously granted O&M Expenses of Rs. 33.26 crore per annum (@2.0% of the capital cost of the FGD system) against claim of Rs. 202.56 crore per annum in the first year of operation.

9. As pointed out earlier, the O&M Expenses allowed in the impugned order is on provisional basis in the absence of any norms and the Review Petitioner has been directed



to submit the O&M Expenses relating to FGD system on actual basis at the time of filing the petition for determination of tariff on commissioning of the FGD system. Thus, the Review Petitioner's claim of O&M Expenses has not attained finality and it is to be reconsidered on an application by the Review Petitioner.

10. The Petitioner has referred to Regulation 35(7) of the 2019 Tariff Regulations. However, the tariff in respect of generating station of the Petitioner has been determined in terms of Section 63 of the Electricity Act, 2003 and any comparison of norms of O&M Expenses with generating stations whose tariff is determined under Section 62 of the Electricity Act, 2003 is incorrect. Even otherwise, there are similar provisions in Regulation 35(7) of the 2019 Tariff Regulations for generating stations whose tariff is determined under Section 62 of the Electricity Act, 2003 that provides that additional O&M Expenses on account of implementation of revised emission standards "*shall be 2% of the admitted capital expenditure (excluding IDC and IEDC) as on its date of operation, which shall be escalated annually @3.5% during the tariff period ending on 31st March 2024*". Therefore, we are of the view that there is no error in the order dated 23.4.2020.

11. In view of the above discussions, Review Petition No. 21/RP/2020 is disposed of at admission stage.

**sd/-
(I.S. Jha)
Member**

**sd/-
(P. K. Pujari)
Chairperson**

