

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 30/RP/2020**

in

**Petition No. 168/MP/2019**

**Coram:**

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

**Date of Order: 16<sup>th</sup> August, 2021**

**In the matter of:**

Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure ("CPC") and Regulation 103 of CERC (Conduct of Business) Regulations, 1999 for seeking review of this Commission's Order dated 22.06.2020 in Petition No. 168/MP/2019.

**And**

**In the matter of:**

Coastal Gujarat Power Limited,  
C/o The Tata Power Company Limited,  
34, Sant Tuka Ram Road, Carnac Bunder,  
Mumbai - 400 021

**.....Review Petitioner**

Vs

1. Gujarat Urja Vikas Nigam Limited,  
Sardar Patel Vidhyut Bhavan, Race Course,  
Vadodara-390007, Gujarat.
2. Maharashtra State Electricity Distribution Company Limited,  
4th Floor, Prakashgad, Plot No. G-9, Mumbai-400051
3. Ajmer Vidyut Vitaran Nigam Limited,  
Hathi Bhata, Old Power House, Ajmer, Rajasthan.
4. Jaipur Vidyut Vitaran Nigam Limited,  
Vidyut Bhawan, Janpath, Jaipur, Rajasthan.
5. Jodhpur Vidyut Vitaran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur, Rajasthan.

6. Punjab State Power Corporation Limited,  
PP&R, Shed T-1, Thermal Design, Patiala-147001
7. Uttar Haryana Bijli Vitran Nigam Limited,  
Vidyut Sadan, Plot No. C-16, Sector-6,  
Panchkula-134112, Haryana
8. Dakshin Haryana Bijli Vitran Nigam Limited,  
Vidyut Nagar, Vidyut Sadan,  
Hisar, Haryana-125005
9. Central Electricity Authority,  
Sewa Bhawan, R.K. Puram, Sector-1,  
New Delhi-110066

...Respondents

**Parties Present:**

Shri Amit Kapur, Advocate, CGPL  
Shri Abhishek Munot, Advocate, CGPL  
Shri Kunal Kaul, Advocate, CGPL  
Shri Samikrith Rao, Advocate, CGPL

**ORDER**

The Review Petitioner, Coastal Gujarat Power Limited (CGPL) has filed this Review Petition seeking review of the Commission's order dated 22.6.2020 in Petition No. 168/MP/2019, to the limited extent that this Commission has permitted pass-through of Change in Law impact towards installation of FGD, pro-rated to 4,000 MW of capacity while the impact of installation of FGD would be computed on the basis of installed capacity of 4150 MW. The Review Petitioner has made the following prayers:

*“(a) Review its Order dated 22.06.2020 in Petition No. 168/MP/2019 to the extent stated in the present Petition,*

*(b) Hold and Direct that CGPL be restituted on account of incurring of additional capital and operating expenditure incurred by it on account of installation of FGD.*

*(c) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.”*

## **Brief Background**

2. CGPL owns and operates a 4150 MW (830 MW X 5) supercritical Ultra-Mega Power Plant located at Mundra (in short, "the Project"). On 22.04.2007, CGPL executed a Power Purchase Agreement ("PPA") with the Distribution Companies across five States, namely Gujarat, Maharashtra, Rajasthan, Haryana and Punjab (in short, "the Procurers") for sale of 'Contracted Capacity' of 3800 MW from the Project to the Procurers.

3. Ministry of Environment, Forest and Climate Change, Government of India ("MoEF&CC") vide notification dated 7.12.2015 (hereinafter referred to as "the 2015 Notification") inter-alia specified revised emission standards applicable to thermal generating stations. The Petitioner filed Petition No. 168/MP/2019 under Article 13 of the PPA claiming compensation on account of Change in Law, which was disposed by the Commission vide impugned order dated 22.06.2020.

4. Aggrieved by the impugned order dated 22.6.2020 (specifically paragraphs 55 and 56), the instant Review Petition has been filed by CGPL to the limited extent that this Commission has permitted pass-through of Change in Law impact towards installation of FGD system, pro-rated to 4,000 MW of capacity while the impact of installation of FGD would be computed on the basis of installed capacity of 4150 MW.

## **Submissions of the Review Petitioner**

5. The Review Petitioner has submitted as under:

- a) This Commission vide impugned order dated 22.06.2020 in Petition No. 168/MP/2019, inter-alia, approved certain additional costs (capital and

operational) proposed to be incurred by CGPL for installing FGD system. As regards pass-through of said additional costs, the Commission vide impugned order held that the Procurers are liable to pay these costs on pro-rata basis corresponding to the capacity of 4000 MW whereas the cost for CGPL would be considered on capacity of 4150 MW.

b) Apart from there being an error apparent on the face of record, sufficient cause exists for reviewing the impugned Order dated 22.06.2020. The Commission erred in holding that granting relief on the basis of capacity of 4150 MW would amount to altering the PPA terms. In this regard, the Request for Proposal (“RFP”) provided that, the bidders will be selected for developing the project with the contracted capacity of minimum of 3500 MW and maximum of 3800 MW. Accordingly, CGPL quoted its tariff based on the contracted capacity of 3800 MW. The PPA was executed between CGPL and the Procurers for sale of Contracted Capacity of 3800 MW and not 4000 MW as wrongly considered by the Commission. The rights and liabilities of the parties are related to the Contracted Capacity and not the Installed Capacity. The obligation to provide the Contracted Capacity of Power is independent of the installed capacity of the Plant. Thus, it was incorrect to suggest that granting relief on the basis of capacity of 4,150 MW would tantamount to amendment/ altering the terms of the PPA.

c) The FGD system to be installed is based on flue gases and SO<sub>2</sub> concentration in it, which depends on quantum of coal consumed in a selected boiler and Sulphur content in the coal. The Commission has failed to appreciate that increase in installed capacity from 4000 MW to 4150 MW was not on account of change in boiler design, which determines the amount of coal consumption and resultant emissions of flue gas. In other words, the increase of capacity from 4000 MW (800 MW X 5) to 4150 MW (830 MW X 5) does not lead to any increase in coal consumption and resultant emission of additional flue gases. Thus, the size of FGD system with the installed capacity of 800 MW or 830 MW would have remained the same. Consequently, no additional capital cost for installing FGD system or operating cost on account of increased

auxiliary consumption for running FGD would be incurred on account of installation of FGD system with the installed capacity of 4,150 MW.

d) As regards non-usage of additional coal (on account of the increase in installed capacity from 4000 MW to 4150 MW), the Commission failed to take note of the fact that on 26.01.2011, CGPL made an application to MoEF&CC seeking amendment to its Environmental Clearance for increasing the installed capacity of the Project from 4000 MW to 4150 MW. In the said letter, CGPL had specifically stated that there would not be any increase in consumption of coal on account of increased capacity. On 26.04.2011, MoEF&CC amended the Environment Clearance issued to CGPL by noting that the installed capacity of CGPL is 4150 MW instead of 4000 MW. While doing so, MoEF&CC had also stated that increase in installed capacity does not lead to increase in burning of coal. Thus, there is no additional emission of SO<sub>2</sub> on account of increase in installed capacity from 4,000 MW to 4,150 MW.

e) Even otherwise, CEA itself believes that there would not be any additional capital expenditure for a plant with installed capacity of 800 MW vis-à-vis a plant with installed capacity of 830 MW. This is evident from the CEA norms for installing Ammonia based FGD system and Sea Water Based FGD system applicable from 20.03.2019, which prescribes the base capital expenditure of Rs. 27 lakhs per MW for installing the FGD system with installed capacity between 800 MW to 830 MW.

f) The Commission's finding has denied CGPL its legitimate claim of restitution in accordance with Article 13 of the PPA. No prejudice/ additional financial burden would be passed on to the Procurers on account of increasing the installed capacity from 4000 MW to 4150 MW. On the contrary, if the capital and operating expenditure incurred by CGPL for setting up of a FGD system for an installed capacity of 4150 MW is pro-rated to the installed capacity at 4000 MW, for computing the compensation payable by the Procurers, it would defeat the principle of restitution under Article 13 of the PPA.

### **Hearing on 18.6.2021**

6. The Review Petition was heard on admission through video conferencing on 18.6.2021. During the hearing, the learned counsel for the Review Petitioner circulated note of arguments and made detailed submissions. The Commission after hearing the learned counsel for the Review Petitioner reserved its order on the admissibility of the review petition.

### **Analysis and Decision**

7. The issue of installed capacity of the Project was raised by the respondents and the Review Petitioner (Petitioner therein) in Petition No. 168/MP/2019. The Commission after considering and analyzing the submissions of the parties with regard to installed capacity has specifically addressed the issue of whether capacity of 4150 MW or 4000 MW is to be considered towards expenditure/relief for installation of FGD system. The Commission in paragraphs 54 to 56 of the impugned order dated 22.06.2020 in Petition No.168/MP/2019 had observed as under:

***“Issue No.3: Whether capacity of 4150 MW or 4000 MW is to be considered towards expenditure/ relief for Installation of FGD system?”***

*54. The Commission vide order dated 19.9.2007 in petition no.18/2007 in regard to adoption of Tariff for the Mundra UMPP observed as under:*

*“3. The Central Government has been facilitating development of a number of Ultra Mega Power Projects by using the economies of scale which aims at making available comparatively cheaper power to more than one state. Mundra Ultra Mega Power Project (4000 MW) in the state of Gujarat has been conceived with the purpose of supplying power to the following distribution licensees (also referred to as the procurers) of the beneficiary*

- (i) Gujarat Urja Vikas Nigam Ltd.*
- (ii) Maharashtra State Electricity Distribution Co. Ltd.*
- (iii) Ajmer Vidyut Vitran Nigam Ltd.*
- (iv) Jaipur Vidyut Vitran Nigam Ltd.*
- (v) Jodhpur Vidyut Vitran Nigam Ltd.*
- (vi) Punjab State Electricity Board.*
- (vii) Haryana Power Generation Corporation Ltd.”*

55. It is noticed that capacity recognized under the PPA dated 22.4.2007 is 4000 MW whereas the contracted capacity in the said PPA is 3800 MW. In the bid itself, the auxiliary consumption was recognized as 200 MW, equivalent to about 5%. It is admitted that the Petitioner itself had sought the expansion of Mundra UMPP. Further, the petitioner in its affidavit dated 14.10.2013 in petition 159/MP/2012 submitted that auxiliary consumption was assumed as 4.75% in its bid and installed capacity of 4000 MW. The impact of the additional capital expenditure and operating expenditure is considered within the PPA. The installed capacity of 4000 MW was one of the bid considerations at the time of entering into PPA that has not been amended or altered till today. Therefore, any consideration of impact based on installed capacity of 4150 MW would tantamount to alter the provision of PPA. Further, there will be impact on the CAPEX and auxiliary power consumption by considering the higher installed capacity of 4150 MW. The Mundra UMPP is a case-2 project, wherein the bidder is awarded the project based on the quoted tariff by the Petitioner.

56. We also take notice of the submission of the Petitioner that the FGD system has been designed for 4150 MW capacity and the costs have been accordingly claimed. It has contended that the capital cost of the project for 4000 MW capacity would not proportionately come down and, therefore, it would also be incorrect to consider a proportionate reduction. The emission of SO<sub>2</sub> is dependent on amount of coal to be fired and Sulphur content in the coal. The installation of 4150 MW plant capacity in place of 4000 MW by CGPL is to cater to the power consumption requirement of electrical motor driven BFPs keeping same contractual output of 3800 MW to procurers. Selection of 4000 MW plant with turbine driven BFP would have accounted for higher heat rate which in turn would have required higher coal consumption and higher SO<sub>2</sub> emission for the same contractual output. **However, we note that the Petitioner has not explained the rationale for such assertions. Moreover, this Petition has been filed for claim of costs related to installation of FGD system. Any claim of the Petitioner for granting costs for 4150 MW is not subject matter of this Petition. Accordingly, we hold that the calculations for capital expenditure, operating expenditure and auxiliary power consumption shall be done corresponding to installed capacity of 4150 MW, but the Respondents shall be liable to pay the expenses on pro-rata basis corresponding to 4000 MW in terms of PPA”.**

8. Thus, the issue of installed capacity and liability of the Procurers has been discussed in detail and after considering the submissions of the stakeholders, the Commission has taken a view. The Review Petitioner has claimed that there is error apparent on face of the record and prayed for review of the impugned order. However, it has not pointed out the claimed error apparent on the face of the record in the impugned order. In our view, the Commission has duly considered the contentions of the parties that were raised in Petition No. 168/MP/2019 and came to a finding. The Review Petitioner is trying to re-agitate the matter that has already been

settled in the impugned order and the same is not allowed in a Review Petition. Therefore, the prayer of the Review Petitioner for review of the impugned order dated 22.6.2020 in Petition No.168/MP/2019 on this count is, therefore, rejected.

9. The Review Petitioner has further contended that as regards installation of FGD system, norms of CEA do not distinguish between a plant with installed capacity of 800 MW vis-à-vis a plant with installed capacity of 830 MW. The Review Petitioner has relied upon such norms of CEA recommended in case of Ammonia based FGD system and Sea Water Based FGD system applicable from 20.03.2019, which prescribes the base capital expenditure of Rs. 27 lakhs per MW for installing the FGD system with installed capacity between 800 MW to 830 MW. In our view, the Petitioner is attempting to argue the case on merits and the same is not permissible in a Review Petition. Therefore, no ground for review is made out.

10. Review Petition No.30/RP/2020 is disposed of in terms of the above.

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

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