

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 6/RP/2022

Subject : Petition under Section 94(1)(f) read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103(1) of the CERC (Conduct of Business) Regulations, 1999 for review of order dated 20.12.2021 of Central Electricity Regulatory Commission in Petition No. 157/MP/2015 along with IA No. 53 of 2021 and in Petition No. 121/MP/2017 along with IA No. 64 of 2021 filed by Coastal Gujarat Power Limited.

Review Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)

Respondents : Coastal Gujarat Power Limited (CGPL) and 7 Ors.

Review Petition No. 9/RP/2022

Subject : Petition under Section 94(1)(f) read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103(1) of the CERC (Conduct of Business) Regulations, 1999 for review of order dated 20.12.2021 of Central Electricity Regulatory Commission in Petition No. 157/MP/2015 along with IA No. 53 of 2021 and in Petition No. 121/MP/2017 along with IA No. 64 of 2021 filed by Coastal Gujarat Power Limited.

Review Petitioners : Ajmer Vidyut Vitaran Nigam Limited and 3 Ors.

Respondents : Coastal Gujarat Power Limited (CGPL) and 7 Ors.

Review Petition No. 10/RP/2022

Subject : Petition under Section 94(1)(f) read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103(1) of the CERC (Conduct of Business) Regulations, 1999 for review of order dated 20.12.2021 of Central Electricity Regulatory Commission in Petition No. 157/MP/2015 along with IA No. 53 of 2021 and in Petition No. 121/MP/2017 along with IA No. 64 of 2021 filed by Coastal Gujarat Power Limited.

Review Petitioners : Uttar Haryana Bijli Vitran Nigam Limited and Anr.

Respondents : Coastal Gujarat Power Limited (CGPL) and 7 Ors.

Date of Hearing : 26.4.2022

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

Parties Present : Shri Anand K Ganesan, Advocate, GUVNL
Shri Harsha Manav, Advocate, GUVNL
Ms. Shrishti Khindari, Advocate, GUVNL
Ms. Poorva Saigal, Advocate, Rajasthan & Haryana Utilities
Shri Shubham Arya, Advocate, Rajasthan & Haryana Utilities
Shri Ravi Nair, Advocate, Rajasthan & Haryana Utilities
Shri Amit Kapur, Advocate, CGPL
Shri Abhishek Munot, Advocate, CGPL
Shri Tushar Nagar, Advocate, CGPL
Shri Samikrith Road, Advocate, CGPL
Shri Abhay Kumar, Advocate, CGPL
Shri Girish Pednekar, Advocate, CGPL
Shri Prasad Bagade, Advocate, CGPL
Shri S.K.Nair, GUVNL
Shri Kripal Chudasama, GUVNL
Shri Sanjay Mathur, GUVNL

Record of Proceedings

Cases were called out for virtual hearing.

2. Learned counsel for the Review Petitioner, GUVNL submitted that the present Review Petition has been filed seeking review of the Commission's order 20.12.2012 ('Impugned order') in Petition No. 157/MP/2015 along with IA No. 53 of 2021 and Petition No. 121/MP/2017 along with IA No. 64 of 2021, passed in pursuance of the judgment of Appellate Tribunal of Electricity ('APTEL') dated 27.4.2021 in Appeal Nos. 172 of 2017 and 154 of 2018, to the extent it allows Change in Law on actual generation/injection after adjustment of RRAS and SCED without taking into consideration the scheduled generation. Learned counsel mainly submitted the following:

(a) The issue of consideration of actual or scheduled generation, whichever is lower, was decided by the Commission in its earlier order dated 17.3.2017 in Petition No. 157/MP/2015 and order 21.8.2018 in Petition No. 121/MP/2017. Though CGPL had filed appeals against the said orders, the above aspect was not challenged by CGPL in the appeals before the APTEL.

(b) Scope of the appeals as evident from the judgment of APTEL was limited to the Change in Law compensation related to coal-based levies computed on quantum of coal calculated on the basis of normative parameters instead of actual coal consumed. The reliance was placed on the judgment of APTEL dated 27.4.2021.

(c) When the said issue had not been raised by CGPL in the appeals and was not the subject matter of appeals, it could not have been the subject matter of remand. The Impugned order has travelled beyond the scope of remand.

(d) The Impugned order is also contrary to the pleadings of the parties and more particularly the pleading of CGPL and grants a relief beyond what CGPL had sought. In the remand proceedings, CGPL itself had proceeded on the basis that the generation has to be considered the lower of actual generation or scheduled generation. The only aspect for consideration was whether it has to be on 15 minutes time block basis or monthly/annual basis. Reliance was

placed on CGPL's rejoinder dated 21.9.2021 in IA No. 64 of 2021 and Written Note of Arguments dated 27.9.2021.

(e) There is no rationale to allow Change in Law for actual injection when the same is more than scheduled generation. The procurers are receiving energy only up to the schedule generation and thus, they cannot compensate CGPL in regard to generation not actually received by procurers.

3. Learned counsel for the Review Petitioners in Review Petition No. 9/RP/2022 and Review Petition No. 10/RP/2022 adopted the submissions made by the learned counsel for the Review Petitioner, GUVNL. Learned counsel further referred to Memorandum of Appeal No. 172 of 2017 filed by CGPL before the APTEL and submitted that the issue of actual generation or schedule generation had not been raised by the CGPL in the said appeals.

4. Learned counsel for the Respondent, CGPL opposed the admissibility of the Review Petitions and submitted that the Review Petitioners have failed to demonstrate any error apparent on the face of the Impugned order as contended. Learned counsel submitted that APTEL, in paragraph 101 to paragraph 109 of the judgment dated 27.4.2021, has clearly observed that the Change in Law relief has to be allowed on the actual consumption of coal. The Impugned order has been passed in accordance with the scope of remand and the Review Petitioners cannot be permitted to re-argue the matter. Learned counsel referred to paragraph 9.39 of the Memorandum of Appeal No. 172 of 2017 filed before APTEL and submitted that in the said appeal, CGPL had in fact argued that relief to CGPL be computed on the basis of actual consumption of coal. Learned counsel submitted that CGPL's actual injection after adjusting for RRAS-up and SCED is its scheduled generation and that the Petitioner is not supplying power to any third parties.

5. After hearing the learned counsel for the parties, the Commission reserved the order on the 'admissibility' of the Review Petitions.

By order of the Commission

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(T.D. Pant)
Joint Chief (Law)