

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.131/MP/2022

- Subject : Petition seeking implementation of Commission's order dated 7.1.2022 in Petition No. 283/MP/2019 and for directions to the Respondents to make payments towards additional expenditure incurred / to be incurred on account of increased auxiliary consumption, O&M expenditure, consumption of raw material & waste/contaminated water disposal cost and additional working capital costs.
- Petitioner : Jhajjar Power Limited
- Respondents : UHBVNL & 4 ors
- Date of Hearing : **25.4.2023**
- Coram : Shri Jishnu Barua, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member
- Parties Present : Shri Sajan Poovayya, Senior Advocate, JPL
Ms. Janmali, Advocate, JPL
Shri Damodar Solanki, Advocate, JPL
Shri Abhishek Kakkar, Advocate, JPL
Ms. Raksha Aggarwal, Advocate, JPL
Ms. Bitika Kaur, JPL
Ms. Sriya P, JPL
Shri Rajneesh Setia, JPL
Shri M.G. Ramachandran, Senior Advocate, HPPC
Ms. Poorva Saigal, Advocate, HPPC
Shri Ravi Nair, Advocate, HPPC
Ms. Reeha Singh, Advocate, HPPC
Shri Venkatesh, Advocate, TPTCL
Shri Jatin Ghuliani, Advocate, TPTCL
Shri Mohit Mansharamani, Advocate, TPTCL
Ms. Molshree Bhatnagar, Advocate, TPDDL
Shri Rishab Sehgal, Advocate, TPDDL

Record of Proceedings

During the hearing, the learned Senior counsel for the Petitioner circulated 'aide memoire' containing the background of the case and made detailed oral submissions, mainly as under:

- (a) The Commission vide its order dated 7.1.2022 in Petition No.283/MP/2019, had allowed JPL's claim for compensation on account of additional expenditure incurred for continuous operation of FGD system in accordance with the mechanism in order dated 13.8.2021 in Petition No.6/SM/2021. These orders have not been challenged and hence binding on the parties.



- (b) The Commission's order dated 7.1.2022 satisfies the elements of a 'decree' in terms of Section 2(2) of the CPC, 1908 and its is impermissible to go behind the said order. Once normative approach has been adopted by the Commission in accordance with order dated 13.8.2021 in Petition No. 6/SM/2021, there cannot be any further adjustments, based on actual expenses, on account of it being less or more.
- (c) In terms of the orders dated 7.1.2022 and 13.8.2021, JPL's contracted capacity with Haryana Discoms and TPTCL has been revised from 1113.50 MW to 1101.62 MW and 123.72 MW to 122.40 MW, respectively, with effect from 1.4.2022. Thus, no compensation on account of additional capacity charges due to additional auxiliary energy consumption (ACC_e) has been claimed by JPL till March, 2022, but has been claimed from April, 2022 onwards.
- (d) TPTCL is obligated to compensate JPL for any change in law event in terms of Article 13.4 and Article 11.8 of the TPTCL PPA.
- (e) There is no bar on the generating stations to install FGD system prior to the revised timelines. CPCB vide its letter dated 1.12.2017 had specifically directed JPL to install FGD system at its power plant by 31.1.2019.

2. Accordingly, the learned Senior counsel submitted that the Commission may direct the Respondents to comply with the Commission's order dated 7.1.2022 read with order dated 13.8.2021 and compensate JPL for the additional expenditure incurred.

3. The learned Senior counsel for the Respondent, HPPC made detailed oral submissions, mainly as under:

- (a) The Commission vide its order dated 7.1.2022 in Petition No.283/MP/2019, while holding that the MOEF&CC Notification dated 7.12.2015 is a change in law, had, however, disallowed the additional capital expenditure incurred on account of installation of the FGD system as being duly covered under the previous approval of MOEF&CC dated 16.3.2010. The parties were directed to proceed in terms of the Change in law Rules, 2021.
- (b) JPL cannot seek the implementation of the order dated 7.1.2022. For implementation of an order, there has to be a decree passed in favour of JPL.
- (c) There was no adjudication by this Commission in regard to the additional expenditure incurred by JPL on the operation of the FGD system. The claim of JPL needs to be first adjudicated by this Commission, in view of the Change in law Rules being held not applicable, having no retrospective operation.
- (d) No part of the capital expenditure on FGD can be claimed by JPL as additional expenditure on account of MOEF&CC Notification dated 7.12.2015, as in the case of JPL's project, the previous approval of MOEF&CC, on 16.3.2010 provided for installation of FGD and therefore there is no implication of change in law. This has been decided in order dated 7.1.2022.



- (e) In terms of the technical description of FGD submitted by JPL while seeking MOEF &CC approval on 16.3.2010, it had envisaged all costs/inputs associated with the installation of the existing FGD system.
- (f) The Commission's order dated 13.8.2021 in Petition No.6/SM/2021 cannot be applied to the facts of this case. The said order deals with the mechanism for compensation for generating companies that had installed the FGD system in terms of the MOEF &CC notification dated 7.12.2015.
- (g) JPL has only provided a summary of its claims in the form of monthly statement for the period from February, 2019 to April, 2022, while claiming Rs 120.31 crore, which was revised to Rs 177.25 crore. No auditors certificate, invoices, O&M contract or any other documentary evidence has been provided.

4. The learned counsel for the Respondent, TPTCL also made detailed oral submissions in the matter. While adopting the submissions of the Respondent HPPC, the learned counsel also pointed out that the contention of JPL that the existing FGD was meant for continuous operation, and hence, the additional capital expenditure is required to be allowed, had already been rejected by the Commission vide its order dated 7.1.2022 in Petition No.283/MP/2019 and the Petitioner cannot be permitted to raise the same issue again.

5. The learned counsel for the Respondent, TPDDL adopted the submissions of the Respondents, HPPC and TPTCL. She however stated that the reply filed by the Respondent may be considered while disposing the matter.

6. In response to the above, the learned Senior counsel for the Petitioner mainly reiterated his submissions, as in the 'aide memoire'. He however pointed out that JPL has a right to be restored to the same economic position as if change in law had not taken place.

7. The Commission after hearing the parties, directed the Petitioner to following additional information by **2.6.2023** after serving a copy to the Respondents;

- a. *Details of the additional expenditure claimed (up to April 2022) in accordance with the Commission's Suo Motu order dated 13.8.2021 in Petition No.6/SM/2021;*
- b. *Details of the actual O&M expenses pertaining to FGD incurred prior to and after issuance of MoEF&CC notification.*

8. The Respondents shall file their replies, on the said information, on or before **15.6.2023** after serving copy to the Petitioner, who may file its rejoinder, if any, by **26.6.2023**. The parties shall ensure the completion of the submissions within the due dates mentioned and no extension of time shall be granted for any reason.

9. It was agreed by the learned counsels that no further hearing was required in the matter. Accordingly, order in this petition was reserved.

By order of the Commission

Sd/-
(B. Sreekumar)
Joint Chief (Law)

