

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 84 of 2022

Case of RattanIndia Power Limited for in-principle approval under the Change in Law provision of the PPA in respect of installation of additional systems in compliance with the Environment (Protection) Amendment Rules, 2015.

Coram

Sanjay Kumar, Chairperson
I.M. Bohari, Member
Mukesh Khullar, Member

RattanIndia Power Limited (RPL)Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) Respondent

Appearance

For the Petitioner : Adv. Vishrov Mukherjee
: Adv. Ashutosh Srivastava
: Shri. Himanshu Agarwal, RPL

For Respondent : Adv. Deepa Chawan
: Adv. Ravi Prakash
: Adv. Rahul Sinha, MSEDCL

ORDER

Date: 13 February, 2023

1. RattanIndia Power Limited (RPL) has filed this Petition being Case No. 84 of 2022, on 20 April, 2022 seeking in-principle approval under the Change in Law provisions of the Power Purchase Agreement (PPA) for installation of additional systems in compliance with the Environment (Protection) Amendment Rules, 2015.

2. Main Prayers of RPL are as follows:

“

- a. *Declare the MoEF&CC Notification dated 07.12.2015, MoEF&CC Notification dated 31.03.2021 read with MPCB’s letter dated 01.10.2021 as a Change in Law event under Article 10 of the PPA executed under Section 63 of the Act.*
- b. *Grant in-principle approval of the estimated capital cost for installation of FGD system in the Petitioner’s Project.*
- c. *Grant consequential relief on account of increase in Capital Cost, increased O&M cost and auxiliary power consumption; and degraded performance of the plant.*
- d. *Evolve a suitable mechanism to compensate the Petitioner for the impact of costs during the operation period of the Project and restore the Petitioner to the same economic position as if the MoEF&CC Notification read with MPCB’s letter dated 01.10.2021 i.e., Change in Law event had not occurred in terms of Article 10 of the PPAs;*
- e. *Direct respondents to make payment for any other claim that may arise in future for the change in law events not mentioned in this Petition but are incurred in compliance to the MoEF&CC Notification read with MPCB’s Letter dated 01.10.2021;*
- f. *Consider the plant deemed available for the purpose of computation of availability and grant the capacity charges for the duration of shut down and award compensation for Loss of revenue;*
- g. *Determine Compensation/Tariff /Annual Capacity Charges to be recovered from the MSEDCL by the Petitioner Company for the installation of the FGD System*
- h. *To allow the claim for carrying cost to the Petitioner for change in law events; and.....”*

3. RPL in its Petition has stated as under:

3.1 RPL and MSEDCL have executed two PPAs pursuant to Case-1 competitive bidding process initiated by MSEDCL, for supply of 1200 MW power to MSEDCL at levelized Tariff of Rs.3.260/kWh, for a period of 25 years. First PPA for supply of 450 MW power was executed on 22 April, 2010 and another PPA for supply of 750 MW power was executed on 05 June, 2010.

3.2 RPL’s all the five Units were commissioned during March 2013 to December 2015 as tabulated under:

Unit	Commissioning Date
Unit No. 1	25 March, 2013
Unit No. 2	17 February, 2014

Unit No. 3	29 January, 2015
Unit No. 4	4 March, 2015
Unit No. 5	3 December, 2015

3.3 On 07 December, 2015, Ministry of Environment, Forest & Climate Change (MoEF&CC) issued a Notification amending the Environment (Protection) Rules, 1986 by way of Environment (Protection) Amendment Rules 2015. As per the amended Rules, all new and existing thermal power stations are required to comply with the new norms within a period of two years from the date of the Notification of these Rules.

3.4 RPL's project comprises of five units of 270 MW capacity. As per the Notification dated 7 December, 2015 following norms are applicable to RPL's Units:

Year of Commissioning	SPM	SO _x	NO _x	Mercury
2004-2016	50 mg/Nm ³	200 mg/Nm ³	450 mg/Nm ³	0.03 mg/Nm ³

3.5 On 29 September, 2017, RPL's Power Plant was granted an exemption in a special TCC Meeting of Western Region Power Committee. It was recorded by WRPC in the minutes of the meeting that installation of FGD at RPL's Plant was not required since it was meeting all the revised emission notified norms without installation of the new Emission Control Systems.

3.6 RPL's Plant was duly complying with the revised norms till recent past due to the usage of washed coal. Therefore, it did not require installation of any new technology or equipment to maintain its emissions below the stipulated norms.

3.7 However, on 21 May, 2020, MoEF&CC issued a Notification in which it has withdrawn the conditions imposed upon TPPs for usage of washed coal by way of amending the Notification dated 02 January, 2014. Therefore, procurement of washed coal was no longer a Change in Law event.

3.8 The MoEF&CC, GoI vide its Notification dated 19 October, 2020 amended the Emission Norms of 300 mg/Nm³ to 450 mg/Nm³.

3.9 The MoEF&CC, GoI issued a new Notification on 31 March, 2021, amending its earlier Notification dated 07 December, 2015. As per the new Notification dated 31 March, 2021, thermal power plants are divided in three categories based on their location to comply with the revised emission norm within the timeline stipulated in it.

3.10 The Maharashtra Pollution Control Board (MPCB) issued letter on 31 March, 2021 seeking compliance of the revised emission norms and has given time till 31 December, 2024 to comply with the revised emission norms.

- 3.11 RPL informed MSEDCL on 20 January, 2022 regarding the event of change in law and its impact as per the provisions of Change in Law.
- 3.12 RPL has adopted the Wet Limestone based FGD (WFGD) to comply with the SO₂ norms as specified in the MoEF&CC Notification dated 07 December, 2015. Presently, the NO_x emissions are within the allowable limits. Therefore, there is no need to consider any emission control system for NO_x and SPM emission.
- 3.13 RPL is unable to approach lenders for debt facilities without in-principle approval of the Commission for the significant expenditure on the emission control system.
- 3.14 The retrofitting of Wet FGD system in RPL's Plant would result into following:
- (a) A Capital expenditure (including IDC & financing charges) to the tune of 1340 Crores. The actual cost may be at variance with finalization of the technology and the supplier.
 - (b) Loss of capacity charges under the PPAs due to disruption in power generation during the installation/commissioning works for FGD system.
 - (c) There would also be an increase in operating cost on account of increased auxiliary consumption and increase in operation and maintenance cost.
 - (d) There would be reduction in Ex-bus capacity due to increased auxiliary power consumption. Therefore, it will cause revenue loss to RPL for the entire remaining life of the Plant.
- 3.15 RPL is praying capital cost for FGD, deemed capacity charges during installation phase of FGD, additional 1% of auxiliary consumption and the carrying cost.

4. MSEDCL in its reply dated 8 July, 2022 has stated that:

- 4.1 RPL having been mandated under its environment clearance dated 27 February, 2009 to make provision for FGD including funds as well as space thereof is not entitled for declaration that the MOEF& CC Notification dated 07 December, 2015 and 31 March, 2021 read with MPCB letter dated 01 October, 2021 constitute a Change in Law Event under Article 10 of the PPAs dated 22 April, 2010 and 05 June, 2010 executed between the parties.
- 4.2 Therefore, RPL is not entitled for any in-principle approval of the Commission for any estimated capital cost for installation of FGD system, which was required to be factored in by RPL much prior to the date contemplated under the Change in Law covenants of the PPAs. Therefore, the Notification is not satisfying all the conditions as stipulated in Clause 10.1.1. of the PPAs to be declared as a Change in Law event.
- 4.3 In a similar case of JSW Energy Limited vs. MSEDCL, the Commission vide its Order dated 25 May, 2011 in Case No. 99 of 2010 had dismissed the case of JSW holding that there is no change in law event due to the subsequent Notifications in respect of installation of FGD and was also mandated similarly under the Environmental Clearance

granted to it by the MOEF&CC. An appeal was preferred in the said JSW matter (Supra) by JSW before the APTEL in Appeal No. 105 of 2011. The APTEL vide its Judgement dated 21 January, 2013 dismissed the said appeal, holding that mere confirmation of requirement of installation of FGD system cannot be regarded as a Change in Law.

- 4.4 The Commission in its Order dated 06 February, 2019 in Case No. 300 of 2018 has clearly ruled that “The MoEF & CC Notification dated 7 December, 2015 is an event of Change in Law. However, the Commission vide the same Order has further directed that the additional capital and operation expenditure and other consequential impacts shall be considered on actual basis for reimbursement under Change in Law subject to prudent check.
- 4.5 RPL has failed to provide any documentary proof to justify the rates of the particulars stated in the Report. Further, these rates have not been audited and the Report is merely based on presumptions. Therefore, the said Report lacks any sort of credibility and cannot be relied upon for considering any payment towards alleged change in law event.
5. At the time of hearing dated 12 July, 2022, the Commission asked RPL to provide cost implication of use of washed coal vis-à-vis FGD for meeting emission norms notified by Environment Ministry. Further while computing cost implication, RPL shall also factor in other benefit of washed coal appropriately. Also, RPL shall explain how it has arrived at the proposed technology of FGD to be installed among many options available for installing FGD.
6. **RPL in its Re-joinder dated 25 August, 2022 has stated as under:**
- 6.1 EC issued in year 2009 could not have factored in the capital, operation and maintenance cost associated with the installation of the Wet FGD system and/or SNCR system. If it was compulsory, without any punitive action, EC would not have been extended to RPL which was for 5 years in the initial stage. The only requirement in respect of FGD, imposed upon RPL, was to keep adequate space for installing/retrofitting FGD system at a later date, if warranted under environmental Regulations.
- 6.2 EC granted to RPL is completely different from the case of JSW wherein at second condition it was mandated for JSW to install FGD whereas in RPL’s case no such condition with respect to the installation of FGD has been imposed. Therefore, the APTEL Judgment in JSW’s Case is not applicable to RPL. RPL has placed reliance of *Talwandi Sabo Power Ltd. v. Punjab State Electricity Regulatory Commission & Anr.*, Appeal No. 21 of 2019 in support of its claim.
- 6.3 RPL has engaged the services of Development Consultants Pvt. Ltd., an independent consultant company that specializes in providing detailed reports to Power Plants on procurement and installation of FGD systems. Further, RPL has intimated the Central Electricity Authority regarding the status of FGD installation on 27 July, 2022. Hence, RPL is taking all prudent steps required for installation of FGD in a transparent and

economical manner. Therefore, the contention of MSEDCL that report lacks sanctity is misleading.

7. At the hearing held on 22 November, 2022:

7.1 RPL Reiterated its submissions made in the Petition. Counsel for MSEDCL reiterated its submission made in its Reply.

7.2 Having heard both the parties the Commission directed the Petitioner to make written submission covering its argument during the hearing and following aspects within a week:

- a. Cost effectiveness analysis of installing FGD vis -s-vis use of washed coal for emission control. Other benefits of washed coal shall be quantified and included in this analysis.
- b. Detailed analysis / study of the selection of FGD technology (Wet/ dry/ semi dry) considering various parameters such as Size of the Plant, Size of Units, PLF of the Units, cost effectiveness of the technology.
- c. What are the implications on cost on account of installation as well as non-installation of FGD.
- d. What are the current levels of the emissions.
- e. Number of incidences of the emission norms violations.

7.3 MSEDCL was allowed to file its say, if required, on the RPL's said written submission within a week thereafter.

8. RPL in its written submission dated 13 December, 2022 has stated that:

8.1 Cost effectiveness analysis of installing FGD vis -a-vis use of washed coal for emission control:

- a. The question of cost effectiveness analysis of installation of FGD technology vis-à-vis use of washed coal for emission control does not arise in the present facts and circumstances.
- b. On 2 January, 2014, the MoEF&CC, in exercise of its powers under Section 3, 6 and Section 25 of the Environment (Protection) Act, 1986 read with Rule 5 of Environment (Protection) Rules, 1986, enacted Environment (Protection) Amendment Rules, 2014 directed that certain coal based TPPs shall be supplied with, and shall use, raw or blended or beneficiated coal with ash content not exceeding thirty four percent. RPL's Amravati Power Plant fell under the categories as mentioned in the amended Rules and therefore, was being supplied

washed coal with ash content not exceeding thirty four percent. This led to RPL's power Plant being able to consistently maintain its emissions within the prescribed norms.

- c. On 21 May, 2020, the MoEF&CC, in exercise of its powers under the Environment (Protection) Act, 1986 and Environment (Protection) Rules, 1986, issued another Notification and in essence withdrew the Notification dated 2 January, 2014 and amended the conditions imposed upon Power Plants for usage of washed coal. The MoEF&CC dispensed away with the need of supplying coal with ash content not exceeding thirty four percent to thermal power Plants. Thus, direction to use washed coal was revoked and therefore, same cannot be given pass through in the Tariff. This change in the policy of MoEF&CC was necessitated by the MoEF&CC Notification dated 07 December, 2015 and the challenges faced in securing washed coal.
- d. On 07 December, 2015, the MoEF&CC, in exercise of its powers under Section 6 and Section 25 of the Environment (Protection) Act, 1986, had introduced revised emission standards for all the thermal power Plants. These norms were applicable to the existing as well as upcoming thermal power Plants. It is pertinent to mention that on the basis of the MoEF&CC Notification dated 2 January, 2014, RPL was using washed coal and to a large extent was able to meet even the revised emission norms.
- e. Further, on 31 March, 2021, the MoEF&CC, in addition to the stipulations provided in its Notification dated 07 December, 2015, categorised all the TPPs in three categories. The MoEF&CC prescribed a definite timeline for compliance of revised emission norms for all the TPPs in India based on their geographical location. RPL's power Plant falls in the Category C of the Notification.
- f. The Notification dated 31 March, 2021 also prescribes penalties by way of environment compensation on the thermal power Plants that do not comply with the norms specified in the notification, which is as follows:

Non-Compliant Operation beyond the timeline	Environment Compensation (Rs. Per unit electricity generated)		
	Category A	Category B	Category C
0-180 days	0.10	0.07	0.05
181-365 days	0.15	0.10	0.075
366 days	0.20	0.15	0.10

- g. On 1 October, 2021, the Maharashtra Pollution Control Board, in the light of the changed circumstances, issued a letter to RPL directing it to comply with the directives of MoEF&CC and install FGD system by 31 December, 2024. The relevant extract of the letter is as under:

“AND WEHREAS, CPCB Task Force committee has done categorization of Thermal Power plant as per amendment notification 31.03.2021 and your thermal power plant/Captive Thermal Power plant under Category C & timeline for compliance up to 31st December 2024 as mentioned in above table.

NOW THEREFORE, in view of the above, you are hereby directed to submit status of for upgradation of existing ESP, installation of FGD and installation of low NOx burners, providing over fire air (OFA) etc. with time bound program as per amended notification no. G.S.R. 243 (E) dtd. 31/03/2021 within next 15 days.

In case, you fail to comply with the aforesaid amended notification, the Board will have no option than to levying environment compensation on thermal power plant as mentioned in said notification, which please note.”

- h. Thus, due to the Notifications dated 7 December, 2015, 21 May, 2020, 31 March, 2021 read with MPCB’s letter dated 1 October, 2021, RPL does not have any option but to install FGD system in its Plant to comply with the new environmental norms.
- i. It is submitted that in view of the withdrawal of the Notification dated 2 January, 2014, it is not required to use washed coal. The MoEF&CC has in explicit terms elaborated in Notification dated 21 May, 2020 that the usage of washed coal is costlier and has detrimental impact on Environment.
- j. Thus, in view of the aforesaid, the exercise of cost effectiveness analysis of installation of FGD vis-à-vis use of washed coal is of no consequence as RPL, in law has now been directed to implement the FGD system.
- k. Without prejudice to the above, it is submitted that the installation of FGD vis a vis usage of washed coal, would results as under:

Particulars	UoM	Existing Tariff Charged (from Nov 2022)	Estimated Tariff with FGD Installation without Washed Coal	Estimated Tariff without FGD but with Washed Coal
Fixed Cost	Rs/kWh	0.78	0.78	0.78
Estimated Fixed Cost-FGD	Rs/kWh	-	0.37	-
Variable Cost	Rs/kWh	2.45	2.45	2.45
Estimated Additional Variable Cost-Washed Coal	Rs/kWh	-	-	0.52
Total Tariff	Rs/kWh	3.23	3.60	3.74

- l. It is submitted that aforesaid impact is calculated based on the estimated basis, actual amount may vary depending on the actual FGD cost and washery cost discovered through competitive bidding.
- m. There will be estimated increased tariff impact of Rs. 0.37, from the current rate of Tariff, in case, RPL installs FGD. In case, RPL utilizes the washed coal without the installation of FGD, there will be estimated increased tariff impact of Rs 0.52/kWh. There is difference of Rs. 0.15 therefore, installation of FGD is economically justified option.

8.2 Detailed analysis/ study of the selection of FGD technology (Wet/ dry/ semi dry) considering various parameters such as Size of Plant, Size of Units, PLF of the Units, cost effectiveness of the technology:

- a. The MoEF&CC Notification dated 7 December, 2015, specified the SO_x emissions norms for Units less than 500 MW capacity and commissioned between 1 January, 2004 to 31 March, 2016 is to be limited to 600 mg/Nm³.
- b. The selection of FGD technology depends on various factors including technical suitability, economic aspects, and commercial considerations.
- c. RPL had engaged the services of Development Consultants Pvt. Ltd. for deducing the utility of different technologies.
- d. There are a wide range of technologies to reduce SO₂ emissions, which have been studied in detail by RPL.
- e. There are certain advantages of Dry FGD system, however, it may only be adopted if the Unit sizes are small. The Dry FGD technology is not suitable for power Plants with large Unit sizes due to requirement of multiple modules, higher reagent cost and limited choices of by-product utilization.
- f. Another technology is ammonia based FGD technology. Though there are certain advantages of having it in comparison to Limestone based wet FGD, RPL has not considered it due to the following reasons:
 - i. The technology is yet to be proven in large unit sizes.
 - ii. Ammonia is hazardous and has to be handled very carefully.
 - iii. Ammonia's storage requires high pressure at normal temperature or refrigerated at atmospheric pressure.
 - iv. Any slippage of ammonia is hazardous and carcinogenic.
 - v. While the by-product can be used as fertilizer, however, the industry demands blending as per market demand.

- g. Considering the aforesaid, the only techno-economic feasible options available are Wet Limestone based FGD system or Sea Water based FGD system. Since the Sea Water based FGD is only applicable to costal power stations, it has not been considered.
- h. In view of all these issues RPL has selected the Wet Limestone based FGD system for its Plant.

8.3 What are the implications on cost on account of installation as well as non-installation of FGD.

- a. RPL may not meet the requirement of Capital expenditure in the absence of certainty over Tariff. RPL's Plant was a stressed asset and has recently undergone onetime settlement facilitated by its lenders.
- b. Regulatory certainty of recovery of the capital expenditure, fixed cost recovery for shut down period, additional operation & maintenance expenditure and additional auxiliary power consumption are the concerns of RPL without which it is not in position to secure external financial assistance.
- c. RPL prayed to the Commission to exercise its regulatory power under Section 86(1) (b) to grant recovery of additional capital expenditure towards installation of FGD system to comply with the MoEF & CC Notification. In this regard, reliance is placed upon the Judgment of Hon'ble Supreme Court in the case of Energy Watchdog v. CERC, (2017) 14 SCC 80.
- d. The Central Electricity Regulatory Commission (CERC) in its Order dated 23 April, 2020 in Petition No. 71/MP/2019 in the matter of Sasan Power Limited v. MP Power Management Company Limited has accorded in-principle approval of capital cost for installation of FGD system observing that approval of provisional capital cost is required to extend comfort to the financial institutions.
- e. The impact /expenditure for the installation of FGD is as follows:
 - i. Wet FGD system installation would require a Capital expenditure (including IDC & financing charges) approximately around Rs. 1340 Crores. The actual cost may vary after finalisation of the technology and the supplier.
 - ii. There will be loss of capacity charges under the PPAs due to disruption in power generation during the installation/commissioning phase of FGD system.
 - iii. There would also be increase in operating cost also on account of following:
 - a) Increased auxiliary consumption.
 - b) Procurement cost of consumables i.e., Limestone, etc.
 - c) Expenditure towards the disposal of by-product.
 - d) Escalation in operation and maintenance cost of FGD system.
 - e) Incremental increase in interest on working capital on account of increase in costs.

- f) There would be reduction in Ex-bus capacity due to increased auxiliary power consumption.
- g) RPL has considered auxiliary consumption of 9.5% i.e., 8.5% without FGD and additional 1% with FGD.
- f. RPL is also seeking carrying cost for the period between expenditure incurred by RPL and reimbursement by MSEDCL and interest on working capital. In this regard, reliance is place upon the Judgment of Hon'ble the Appellate Tribunal for Electricity in the case of M/s SLS Power Limited v. Andhra Pradesh Electricity Regulatory Commission & Ors.,2012 SCC Online APTEL 2019.
- g. RPL has assessed the additional financial implication to the tune of Rs. 1340 Crore which includes insurance, applicable taxes, contingencies and Interest during Construction. The estimated amount of capital expenditure has been considered based on discussions with potential vendors and similar bids tendered in recent times.

Implications of non-installation of FGD:

- h. As per the MoEF&CC Notification dated 31 March, 2021, there shall be environmental compensation levied after the date specified in the Notification, as per the rates specified in the table as under:

Non-Compliant Operation beyond the timeline	Environment Compensation (Rs. Per unit electricity generated)		
	Category A	Category B	Category C
0-180 days	0.10	0.07	0.05
181-365 days	0.15	0.10	0.075
366 days	0.20	0.15	0.10

- i. RPL's Plant falls under Category C and hence the Environmental compensation for per unit electricity generated to the tune of Rs. 0.05 will be levied in case of delay in compliance of emission norms is within 180 days, Rs. 0.075 in case delay is within the period of 181-365 days and Rs. 0.10 in case delay is of more than 366 days.
- j. In addition to the above, Non-compliance of the MoEF&CC Notification dated 7 December, 2015 read with Notification dated 31 March, 2021 would lead to disastrous situation as the said Notification is issued under Section 6 of the Environment Protection Act, 1986 read with Rule 3 of the Environment Protection Rules, 1986. The consequences of non-compliance are statutorily provided under Section 15 & 16 of the Environment Protection Act.

- k. Therefore, RPL has to take all necessary steps to comply with the MoEF&CC Notifications and MPCB's letter dated 1 October, 2021 to avoid any punitive action.
- l. In addition to the strict nature of the MoEF&CC Notification, even the Hon'ble the Supreme Court of India is monitoring the progress of the implementation of Revised Emission Norms and has taken cognizance of MoEF&CC Notification dated 7 December, 2015 in W.P. 13029 of 1985.

8.4 What are the current levels of the emissions:

- a. RPL has conducted a study through a consultant for preparation of Detailed Project Report, wherein the emissions at best, moderate and worst coal were calculated. The findings of the said study are as follows:
 - i. Worst Coal: Average value of SO₂ concentration in flue gas has been calculated as 1750 mg/Nm³ (with 10% margin) wet, actual O₂ basis corresponding to Sulphur content in worst coal as 0.4% for 270 MW unit under BMCR condition (max. 1800 mg/Nm³ at 6% O₂ dry basis);
 - ii. Moderate Coal: Average value of SO₂ concentration in flue gas has been calculated as 1450 mg/Nm³ (with 10% margin) wet, actual O₂ basis corresponding to Sulphur content in design coal as 0.35% for 270 MW unit under TMCR condition (max. 1400 mg/Nm³ at 6% O₂ dry basis); and
 - iii. Best Coal: Average value of SO₂ concentration in flue gas has been calculated as 1650 mg/Nm³ (with 10% margin) wet, actual O₂ basis corresponding to Sulphur content in best coal as 0.45% for 270 MW unit under TMCR condition (max. 1600 mg/Nm³ at 6% O₂ dry basis).
- b. Thus, the requirements and combustion calculation based on worst coal having 0.4% Sulphur content, design coal having 0.35% Sulphur content and best coal having maximum 0.45% sulphur content, FGD system is proposed be installed to reduce the SO₂ emission by around 71.82%, 64.27% and 68.32% respectively for 270 MW Unit.
- c. Further, the Consent to Operate permission granted by the Maharashtra Pollution Control Board (MPCB) for the year 2022-23, records that it would forfeit Bank Guarantee due to non-compliance of emission norms of the previous year.

8.5 Number of incidences of the emission norms violations:

- a. The past SO_x levels have varied from 500 to 1200 mg/Nm³. The table showing number of incidences of violations is provided below:

Sampling parameter	Acceptable limit as per MOEF&CC norms	Total number of samples collected by MPCB since last CTO permission	Total number of samples exceeding limits since last CTO permission
SO ₂	600mg/Nm ³	33	4

- 8.6 The CERC has in numerous Orders granted in-principle approval to the power producers on account of the fact that the TPPs are required to meet the revised stringent norms for the entire duration of the life of the TPP.
- 8.7 The CERC in its Order in Petitions No. 501/MP/2019 & Batch also took note of the fact that Emission Control Systems including WFGD are not only designed on current emission levels but also are designed for emissions corresponding to worst coal likely to be encountered during the operation of the Plant.
- 8.8 The MoEF&CC Notifications dated 7 December, 2015, 31 March, 2021 and MPCB Letter dated 1 October, 2021, all being issued by 'Indian Government Instrumentality' comes under the definition of 'law', thereupon binding upon RPL, and therefore, clearly falls within the ambit of Change in Law as per the terms of the PPA.
- 8.9 The issue of recognizing the MoEF&CC Notification dated 7 December, 2015 as Change in Law Event is no more res integra, in view of the findings rendered by the Commission in following cases:
- a. Order dated 11.05.2021 in Case No. 11 of 2021 - Sai Wardha Power Generation Limited v. Maharashtra State Electricity Distribution Company Limited.
 - b. Order dated 06.02.2019 in Case No. 300 of 2018 - Adani Power Maharashtra Limited v. Maharashtra State Electricity Distribution Co. Limited.
- 8.10 RPL's Response to MSEDCL's contentions:
- a. MSEDCL's contention that RPL was mandated under EC dated 27 February, 2009 to make provision for FGD, including funds as well as space does not hold water as the same contention had been raised by MSEDCL's in other identical case of Adani Power Maharashtra Ltd. v. MSEDCL wherein the Commission vide its Order dated 6 February, 2019 rejected the same while holding that condition of providing space in EC for retrofitting FGD in future dates does not necessarily mean that FGD has to be installed.
 - b. Further the Commission in the case of Sai Wardha Power Generation Limited v. MSEDCL has again rejected the contention of MSEDCL, that EC had mandatory provision for FGD, including for funds as well as space. It is pertinent to note that EC in the referred case was also carrying the same provision qua allocation of separate funds for implementation of environmental protection measures as is relied upon by MSEDCL in the present case. Therefore, the contentions of MSEDCL in this regard are misconceived and liable to be rejected.
 - c. Further, reliance placed upon by MSEDCL on the JSW Judgment is grossly misplaced as the Hon'ble the APTEL has distinguished its JSW Judgment in a

subsequent Judgment dated 28 August, 2020 in Talwandi Sabo Power Ltd. v. PSERC, Appeal No. 21 of 2019 (“Talwandi Judgment”). It is submitted that rather than JSW Judgment, it is Talwandi Judgment that will hold ground and is applicable to the present facts and circumstances of the case.

- d. In Case of JSW, because of the habitat of fisheries and Alphonso Orchids, in the surroundings areas of the proposed development of the JSW’s Plant, Krishi Vidyapith was requested to study the environmental impact on account of JSW’s Plant within 10 km radius. This study led to requirement of installation of FGD system and requirement of funds was mandated. It was JSW itself which undertook to comply with the conditions recommended by Krishi Vidyapith’s Report for controlling the impact of emissions by the Power Plant. Whereas in RPL’s case, there is no such circumstance compelling it to have provision for space for FGD as well as requirement of funds. Therefore, no such condition was imposed in the EC granted to it, which is being dealt with in the next head.
 - e. RPL submits that its case is similar to Talwandi’s but different from JSW’s case.
 - f. In case of JSW, the FGD was required to be installed prior to the commissioning of the power project in terms of the 2nd EC dated 16 April, 2010. However, in RPL’s Case it is Post Commissioning. The FGD is now required to be retrofitted post commissioning of the power project in terms of the MoEF&CC Notifications dated 7 December, 2015 and 31 March, 2021 read with MPCB’s letter dated 1 October, 2021. The FGD is to be installed before 31 December, 2024.
 - g. The EC granted to RPL is completely different from JSW and thus, JSW’s Judgment is not applicable to the present case. Therefore, the reliance of MSEDCL upon the JSW’s case, based on its misplaced understanding of facts and law, cannot be sustained.
9. Belatedly on 31 January 2023, MSEDCL has filed additional submission raising new issues. As RPL has not got opportunity to respond on the same, the Commission deems it appropriate to not take on record such new submission of MSEDCL.

Commission’s Analysis and Ruling:

10. RPL has filed the present Petition under Section 86 and 63 of the Electricity Act, 2003 read with Article 10 of the PPAs dated 22 April, 2010 & 5 June, 2010 executed with MSEDCL seeking declaration of MoEF& CC Notification dated 7 December, 2015 & 31 March, 2021 as a Change in Law event praying for the following reliefs:
 - a. Declaration of the MoEF&CC Notification dated 7 December, 2015, MoEF&CC Notification dated 31 March, 2021 read with MPCB’s letter dated 1 October, 2021 as a Change in Law event under Article 10 of the PPAs executed under Section 63 of the Electricity Act, 2003.

- b. In principle approval of the estimated Capital cost for installation of FGD System.
 - c. Consequential reliefs on account of additional capital cost, increased operation & maintenance cost, auxiliary power consumption and degraded performance of the Plant.
 - d. Suitable mechanism to compensate RPL for the impact of costs during the operation period of the Project and restore it to the same economic position as if the Change in Law event had not occurred in terms of Article 10 of the PPAs.
 - e. To approve deemed capacity charges for the period during installation of FGD.
 - f. To approve carrying cost if MSEDCL failed to pay reimbursement of the capital expenditure within time.
11. MSEDCL has opposed the claim on the grounds that RPL has been mandated under its environment clearance (EC) dated 27 February, 2009 to make provision for FGD including funds as well as space. Hence, it is evident that RPL was aware since 2009 of the prospective implementation of the FGD and much prior to submitting its bid. The requirement was therefore factored in by RPL in its Bid. MSEDCL has also relied upon the Commission's earlier Order in the matter of *JSW Energy Limited vs. MSEDCL* wherein the Commission has rejected JSW's claim of Change in Law for installation of FGD.
12. The Commission notes that any event can be said to be 'Change in Law Event', only if it satisfies the provisions stipulated under the PPA. Relevant part of PPAs dealing with provisions of Change in Law are reproduced below:

“Article 1.1 Definitions

.....

“*Bid Deadline*” shall mean the last date and time for submission of the Bid in response to the RFP;

“*Change in Law*” shall have the meaning ascribed thereto in Article 10.1.1 of this Agreement;

“*Law*” Shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;

“Indian Government Instrumentality” Shall mean the Government of India, Governments of State (s) of Maharashtra and any other ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above State Government(s) or both , any political subdivision of any of them including any court or Appropriate Commission (s) or tribunal or judicial or quasi judicial body in India but excluding the seller and the procurer

10 ARTICLE 10: CHANGE IN LAW

10.1 Definitions

In this Article 10, the following terms shall have the following meanings:

10.1.1 “Change in Law” means the occurrence of any to the following events after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non –recurring expenditure by the seller or any income to the Seller:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- a change in the terms and conditions prescribed for obtaining any Consents Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;*
- any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of the Agreement.*

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.”

10.2 Application and Principles for computing impact of Change in Law

10.2.1 While determining the consequence of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred.

10.3 Relief for Change in Law

.....

10.3.2 *During Operating Period*

The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or Increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year.

10.3.3 For any claims made under Articles 10.3.1 and 10.3.2 above, the Seller shall provide to the Procurer and the Appropriate Commission documentary proof of such increase/ decrease in cost of the Power Station or revenue/ expense for establishing the impact of such Change in Law.

10.3.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 10.3.1 and 10.3.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to right of appeal provided under applicable Law.

10.4 Notification of Change in Law

10.4.1 If the Seller is affected by a Change in Law In accordance with Article 10.1 and the Seller wishes to claim relief for such a Change in Law under this Article 10, it shall give notice to the Procurer of such Change In Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change In Law.

10.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve a notice to the Procurer under this Article 10.4.2, even if it is beneficially affected by a Change In Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material.

Provided that in case the Seller has not provided such notice, the procurer shall have the right to issue such notice to the Seller.

- 10.4.3 Any notice served pursuant this Article 10.4.2 shall provide, amongst other things, precise details of:*
- (a) the Change in Law; and*
 - (b) the effects on the Seller.*

10.5 Tariff Adjustment Payment on account of Change in Law

10.5.1 Subject to Article 10, the adjustment in Monthly Tariff Payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or*
- (ii) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.*

10.5.2 The payment for Changes in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.”

Thus, the Change in Law provisions of the PPA have the following ingredients, and the evaluation of whether or not an event qualifies as a Change in Law or not, and its consequences, has to be addressed accordingly:

- a. The definition of ‘Law’ under the PPA is an inclusive definition and contemplates all laws applicable in India in various forms. However, for an event to be considered a ‘Change in Law’ event requires that it be caused by the operation of law or by an Indian Governmental Instrumentality;
- b. The term ‘Indian Governmental Instrumentality’ covers GoI, GoM and any Ministry, Inspectorate, Department, Agency, Body, Authority or Legislative body under their direct or indirect control;
- c. ‘Change in Law’ encompasses introduction, increase, or modification of any law after cut-off date (which is August, 2009 in this case) which results in additional expenditure to the Power Producer, or an increase or decrease in revenues or cost to it;

- d. The expenditure or income or decrease in cost must be on actual basis and must financially impact the Power Producer;
- e. The object of the 'Change in Law' provision is to compensate the Party affected by such an event which was beyond its control so as to restore it, to the same financial position as if such Change in Law event had not occurred.

These are the guiding principles for ascertaining whether or not the events claimed as 'Change in Law' by Power Producers are to be treated as such under the PPA.

- 13. Based on the above understanding, the Commission frames following issues for its consideration in the present matter:
 - a. Whether MoEF & CC Notification dated 7 December 2015 & 31 March, 2021 read with the MPCB letter dated 1 October, 2021 qualifies as Change in Law event?
 - b. Whether other consequent relief sought in the present Petition can be allowed at this point of time?

The Commission is addressing above issues in the following paragraphs.

- 14. **Issues A: Whether MoEF & CC Notification dated 7 December, 2015 & 31 March, 2021 read with the MPCB letter dated 1 October, 2021 qualifies as Change in Law event?**

14.1 RPL has submitted that Capital expenditure (including IDC & Financing Charges) to the tune of 1340 Crores would be required for implementation of Wet FGD system at its Power Station as a compliance with MoEF & CC Notification dated 7 December, 2015 and has requested the Commission to declare this notification as Change in Law event. RPL has further submitted that the actual cost may be at vary until finalization of the Technology and the Supplier.

14.2 While opposing RPL's claim, MSEDCL has stated that RPL has been mandated under its environment clearance dated 27 February, 2009 to make provision for FGD including funds as well as space; therefore RPL is not entitled for declaration that the MOEF notifications dated 7 December, 2015 and 31 March, 2021 read with MPCB letter dated 1 October, 2021 constitute a Change in Law Event. Further, RPL has admittedly not incurred any expenditure as such, and reimbursement claims can only be considered on actual basis along with the presence of material evidence supporting it. MSEDCL has also relied upon Commission's Order in JSW matter wherein the Commission has rejected JSW's claim of Change in Law for installation of FGD; said Order of the Commission was also upheld by the ATE.

14.3 Regarding MSEDCL's reliance on JSW order, the Commission notes that factual aspects in JSW matter were different from those of the present case. In JSW's case,

because of the habitat of fisheries and Alphonso Orchids, in the surroundings areas of the proposed development of the JSW's Plant, Krishi Vidyapith was requested to study the environmental impact on account of JSW's Plant within 10 km radius. This study led to requirement of installation of FGD system and earmarking of funds was mandated. Whereas in RPL's case, there is no such circumstance. Hence, Order in the matter of JSW cannot be used in the present matter.

14.4 The Commission notes that MSEDCL's contention that RPL is mandated to maintain separate funds for environmental protection activities is based on the following provisions of Environmental Clearances dated 27 February, 2009 and 15 July, 2010 granted to RPL:

“
“3. *The proposal has been considered by the Expert Appraisal Committee for Thermal Power and Coal Mine projects and Ministry of Environment & Forests hereby accords environmental clearance to the said project under the provisions of Environment Impact Assessment Notification, 2006 subject to implementation of the following terms and conditions:*

.....
(vii) Space provision shall be kept for retrofitting of FGD, if required at a later date.

.....
(xviii) Separate funds shall be allocated for implementation of environmental protection measures along with item wise break up. These costs shall be included as a part of project cost. the funds earmarked for the environmental protection measures shall not be diverted for other purpose and year-wise expenditure should be reported to ministry.”

It is important to note that above provisions of Environmental Clearance was based on the then applicable provisions. Hence, it would be incorrect to assume that RPL should have incorporated the expenses towards achieving environmental norms notified on subsequent date i.e., 7 December 2015. Hence, MSEDCL's contention in this regard cannot be sustained.

14.5 The Commission also notes that Ministry of Power in its letter dated 30 May, 2018 addressed to the Central Electricity Regulatory Commission (CERC) has directed under Section 107 of the EA, 2003 as follows:

“
Ministry of Environment, Forest and Climate Change (MoEFCC) has notified the Environment (Protection) Amendment Rules, 2015 on 7th December, 2015 thereby introducing revised emission standards for Thermal Power Plants (TPPs). The revised emission standards are applicable to existing as well as upcoming TPPs. To meet the revised emission standards, the TPPs would have to install or upgrade various emission control systems like Flue-gas desulfurization (FGD) system, Electro-Static Precipitators (ESP) system etc.

...

4. *In view of the nature of cost involved in implementation of revised standards of emission and the provisions of Power Purchase Agreement, there is a need to develop the appropriate regulatory framework specifying the mechanism or enabling guidelines for providing regulatory certainty to the TPPs about recovery of such additional costs through tariff. It is important to ensure implementation of the revised standards of emission for TPPs for controlling pollution level in the larger public interest.*

5. *After considering all aspects and with due regard to the need for safeguards against environmental hazards, and accordingly to ensure timely implementation of new environment norms, the Central government has decided that*

5.1 *The MOEFCC Notification requiring compliance of Environment (Protection) Amendment Rules, 2015 dated 7th December, 2015 is of the nature of Change in law event except in following cases:*

(a) *Power purchase Agreements of such TPPs whose tariff is determined under section 63 of the Electricity Act 2003 having bid deadline on or after 7th December, 2015; or*

(b) *TPPs where such requirement of pollutions control system was mandated under the environment clearance of the plant or envisaged otherwise before the notification of amendment rules;*

5.2 *The additional cost implication due to installation or up-gradation of various emission control systems and its operational cost to meet the new environment norms, after award of bid or signing of PPA as the case may be, shall be considered for being made pass through in tariff by Commission in accordance with the law.*

The respective TPPs may approach the Appropriate Commission for approval of additional capital expenditure and compensation for additional cost on account of this Change in law event in respect of the Power Purchase Agreement entered under section 62 or section 63 of the Electricity act 2003.

....”

Admittedly, bid deadline for RPL's PPAs is before the 7 December, 2015 and hence, above letter of Ministry of Power is applicable to the RPL.

14.6 The Notification dated 7 December, 2015 has been notified by the Ministry of Environment, Forest & Climate Change (MoEF &CC), Government of India (GoI) on 7 December, 2015. This notification is subsequent to cut off date in the PPA. Under the provisions of PPA, an event arising from the actions of an authority covered within the definition of 'Indian Governmental Instrumentality' is "Change in Law". "Indian

Government Instrumentality' as defined under the PPA includes any Ministry of the Government of India. The Ministry of Environment, Forest & Climate Change being Ministry under the Government of India is satisfying the requirement of 'an Indian Government Instrumentality' under the PPA. Further as per Energy *Watchdog* Judgment of the Supreme Court, if there is a change in any consent, approval or license available or obtained for the Generation Project, which results in a change in the cost of generation and supply of the contracted power, it would be governed by the Change in Law provisions of the PPA.

14.7 Accordingly, the Commission rules that MoEF & CC Notification dated 7 December, 2015 which has changed the environmental norms for Thermal Power Plants is a Change in Law event under the PPA.

15. Issues B: Whether other consequent relief sought in the present Petition can be allowed at this point of time?

15.1 The Commission notes that RPL has issued Change in Law notice dated 20 January, 2022, (post receipt of letter on 31 March 2021 from MPCB seeking compliance of emission norms till 31 December 2024) to MSEDCL in relation to the MoEF & CC Notification. Accordingly, RPL has complied with mandatory requirement under Article 10.4 of PPA relating to intimating Change in Law event through Notice to the buyer.

15.2 The Commission notes that RPL's submission that its Plant was duly complying with the revised norms till the recent past due to the usage of washed coal. It is also noted that that RPL's Power Plant was granted an exemption in a special TCC Meeting of Western Region Power Committee on 29 September, 2017. It is noted that as per WRPC meeting, installation of FGD at RPL's Plant was not required since it was meeting all the revised emission notified norms without installation of the new Emission Control Systems. However, on 21 May, 2020, MoEF&CC issued a Notification in which it has withdrawn the conditions imposed upon TPPs for usage of washed coal by way of amending the Notification dated 02 January, 2014. Therefore, washed coal procurement is no more mandatory for RPL. Thus, RPL is suggesting use of raw coal and installation of FGD for meeting emission control norms. In the opinion of the Commission, as RPL in the past has been able to meet revised emission norm by use of washed coal, going forward, it has two options for meeting emission norms viz (a) continue use of washed coal and (b) use raw coal and install FGD for emission control. Most economical option shall be selected for final implementation. The Commission notes that RPL has estimated an increase in fixed cost of Rs. 0.37 per unit, in case of installation of FGD, whereas in case of use of washed coal without installation of FGD, RPL has estimated increase in variable cost of Rs 0.52 per unit. As impact of installation of FGD is lower, RPL has proposed to install FGD for complying with emission norms. On this estimation of impact, RPL has not shared detailed computation and hence the Commission is not able to scrutinise the same. But it is evident that in impact estimation for installation of FGD, RPL has not included

possible increase is variable cost. In the present petition, RPL has requested to allow implication of FGD installation such as increase in Aux consumption, increased O&M expenses, cost of reagent (i.e. limestone) and degraded performance of the plant as passthrough etc. all of which lead to increase in variable cost, but same has not been included in the estimated impact of FGD installation. Similarly, RPL may have not appropriately factored in other benefits of washed coal which would reduce variable cost. Factoring all these impacts may change estimated impact of use of FGD or washed coal. RPL needs to recompute the same and take informed decision of installing FGD for meeting emission norms only if it is cost effective than use of washed coal. While doing such re-computation of impact analysis, RPL shall also consider impact of increased variable cost due to FGD installation on its position on Merit Order Stack which decides dispatch instructions to their generating units.

- 15.3 The Commission also notes that although MoEF & CC Notification dated 7 December, 2015 has specified norms for different parameters, RPL is already complying with revised norms for some of the parameters such as Suspended Particulate Matter, Mercury level and Water consumption limit and hence no additional expenditure is required for the same. RPL has also not claimed the same.
- 15.4 RPL has submitted that in order to meet the revised norms as prescribed in MoEF & CC Notification, 2015, substantial investment is required to be carried out on retrofits and installation of additional equipment apart from its impact on the Operation & Maintenance costs, plant efficiency parameters such as Auxiliary Consumption, etc. RPL has stated that it is important not only to have certainty of regulatory treatment of these costs and charges, but an in-principle regulatory approval would be critical for arranging funds from the lenders.
- 15.5 The Commission notes the submission of RPL that its Plant falls under Category C and hence the Environmental compensation for per unit electricity generated to the tune of Rs. 0.05 will be levied in case of delay in compliance of emission norms is within 180 days, Rs. 0.075 in case delay is within the period of 181-365 days and Rs. 0.10 in case delay is of more than 366 days. The Commission notes that apart from the penalty in financial term, the Non-compliance of the MoEF&CC Notification may also attract punitive action under Section 15 & 16 of the Environment Protection Act.
- 15.6 RPL in its additional submission upon a query of the Commission has stated that 'Wet limestone based FGD Technology' is best suitable for its plant as per the Study report prepared by the consultant. Accordingly, the indicative CAPEX for FGD installation of FGD system as estimated by RPL Rs. 0.99 Crores/ MW (base cost excluding opportunity cost and taxes & Duties). Therefore, RPL has requested to grant in-principal approval for the capital expenditure of FGD system.
- 15.7 Whereas, MSEDCL has contended that RPL has failed to provide any documentary proof to justify the said rates of the particulars stated in the Report. Further, these rates have not been audited and are merely based on presumptions. Therefore, the said

Report lacks any sort of credibility and cannot be relied upon for considering any payment towards alleged change in law event.

- 15.8 The Commission notes that the principle for computation of relief under Change in Law is that the party affected by Change in Law shall have to be restored to the same economic position as if the Change in Law had not occurred. Further, all the units of the RPL have achieved their commercial operation. Therefore, the compliance of revised environment norms shall be implemented during the operating period. As per provisions of PPAs, the increase or decrease in the revenue or cost shall be determined and effective from such dates as may be decided by this Commission. Further PPA also provides for the adjustment in the monthly tariff to be effective from “the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law”. Therefore, provisions of the PPA enable the Commission not only to declare an event as Change in Law but also to determine the increase or decrease in revenues or cost to the Seller on account of operation of Change in Law keeping in view the restitution principle and the effective dates from which such compensation can be paid. However, there is no concept of in-principle approval in the PPA.
- 15.9 Under such circumstances as there is no provision under the PPA for provisional / in-principle approval of estimated impact of Change in Law event, the Commission cannot allow request of RPL to approve provisional impact of MoEF & CC notification dated 7 December, 2015. The additional capital and operation expenditure and other consequential impacts shall be considered on actual basis for reimbursement under Change in Law subject to prudent checks.
- 15.10 Accordingly, post execution of measures for complying with MoEF & CC notification dated 7 December, 2015, RPL shall approach the Commission with actual cost and increased expenses on account of Change in Law event. However, while doing so, RPL shall ensure the following:
- a. Option of installing FGD shall be resorted to only if it is clearly demonstrated to be more economical than use of washed coal.
 - b. Comply with CEA guidelines regarding installation of FGD.
 - c. Technology including its capacity and scale in proportion to the adherence to norms in all time blocks considering the plant load factor and which is the most economical shall be selected.
 - d. Contracts shall be awarded through transparent competitive bidding process.
 - e. Ensure that utmost care be taken, within the provisions of law, for procuring and contracting in this project. Best Industrial practice be followed to reduce the impact of the Change in Law, to the extent possible.

- f. Any financial implication on account of delay by RPL to take appropriate measures to reduce the emissions as per the applicable norms before the deadline of December, 2024 shall be borne by RPL.

16. Hence following Order.

ORDER

1. Case No. 84 of 2022 is partly allowed.
2. MoEF &CC Notification dated 7 December, 2015 qualifies as an event of Change in Law.
3. The additional capital and operation expenditure and other consequential impact shall be considered on actual basis for reimbursement under Change in Law subject to prudence checks and fulfilling criteria mentioned in para 15.10 above.

Sd/
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/
(Sanjay Kumar)
Chairperson

