

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
**SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH**

Review Petition No. 08 of 2023  
in Petition No. 65 of 2022  
Date of Order: 23.11.2023

Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 64 of the PSERC (Conduct of Business) Regulations, 2005 for review of this Commission's Order dated 17.07.2023 in Petition No. 65 of 2022.

AND

In the matter of: Nabha Power Limited. Post Box No. 28, near Nalash, Rajpura, Punjab.

.....Review Petitioner

Versus

Punjab State Power Corporation Limited. The Mall, Patiala, Punjab-147001.

...Respondent

Commission: Sh. Viswajeet Khanna, Chairperson  
Sh. Paramjeet Singh, Member

Petitioner: Sh. Venkatesh, Advocate

Respondent: Ms. Poorva Saigal, Advocate  
Ms. Harmohan Kaur CE/ARR&TR

**ORDER**

1. M/s Nabha Power Limited (NPL) has filed the present review petition seeking review of the Commission's Order dated 17.07.2023 passed in Petition No. 65 of 2022 on the ground that it has erred in not addressing the pivotal aspect/issue of determining the 'threshold limit' for claiming the compensation on account of the 'Change in Law' during the Operating Period. It has been submitted that:

1.1 In Petition No. 65 of 2022 filed by NPL, the Commission *vide* Order dated 17.07.2023 has held that "*The claim of compensation*

*on account of the expenditure(s)/cost(s) (if any) towards usage of Biomass Pellets shall be considered by the Commission as per the provisions of the PPA subject to fulfilment of threshold limit stipulated therein".* However, the pivotal aspect/issue involved in the matter as to what will be the quantum of the 'threshold limit' for claiming compensation towards the Change in Law event during the Operating Period remains unsettled.

1.2 It is crucial to note that the Commission has acknowledged and even recorded in the Order dated 17.07.2023 the contrary pleadings and submissions made by NPL and PSPCL respectively *qua* determination of threshold criteria in term of Article 13.2(b) of the PPA, as follows:

*"2. The submissions of the Petitioner are summarized as under:*

*(...)*

*2.11 This Change in Law event has taken place during the Operating Period of the Project which achieved CoD on 10.07.2014. It is pertinent to submit that the Respondent has only provided a fortnightly Letter of credit of Rs. 153.65 Crore. Further, the Change in Law detailed in the present Petition entails a cumulative increase in cost to the Petitioner (i.e., the Seller) which is more than 1% of the Letter of Credit (i.e., Rs 1.53 Crore). Therefore, the Petitioner satisfies the 1% threshold limit prescribed under Article 13.2 (b) of the PPA.*

*(...)*

*4. PSPCL filed their reply on 18.01.2023, submitting as under:*

*(...)*

*4.9 PSPCL has provided a letter of credit of Rs.153.65 crore to NPL revolving fortnightly. The amount of letter of credit in aggregate for this contact year comes out to be Rs.153.65 x 24= Rs. 3687.60 crore.*

*Therefore, 1% threshold limit prescribed under Article 13.2(b) of the PPA comes out to be Rs.36.876 crore. NPL shall have to establish that the compensation sought exceeds 1% of the LC value in aggregate for the Contract Year.”*

In view of the above, it is amply clear that though the apparent contrary position of NPL and PSPCL *qua* determination of the threshold criteria specified in Article 13.2(b) of the PPA was acknowledged by the Commission, the issue has not been settled in the Order, as to what actually would be the ‘threshold limit’ for claiming the compensation on account of the Change in Law event during the Operating Period.

1.3 Further, on the issue of interpretation of the impugned issue of the threshold limit it is submitted that:

a) PSPCL’s contention that the term “*in aggregate for a Contract Year*” qualifies the Letter of Credit and thus, the threshold limit for claiming compensation for occurrence of Change in Law during Operating Period is Rs. 36.87 Crore, being 1% of Rs. 3687.60 crore, (which is 24 times the amount of the fortnightly Letter of Credit provided by PSPCL, i.e., Rs. 153.65 Crore) is absurd and in contravention of the explicit terms of the PPA as well as regulatory jurisprudence (*qua* threshold criteria stipulated under power purchase agreements for ascertaining claim of change in law during the operating period). In this regard, it is imperative to set out Article 11.4.1 and 11.4.1.4 of the PPA which read as follows:

*“11.4.1. Letter of Credit:*

*The Procurer shall provide to the Seller, **in respect of payment of its Monthly Bills**, a monthly unconditional, revolving and irrevocable letter of*

credit ("**Letter of Credit**"), opened and maintained by the Procurer, which may be drawn upon by the Seller in accordance with Articles 11.4.1.1 through 11.4.1.5.....

11.4.1.1..... The Letter of Credit shall have **a term of twelve (12) Months and shall be renewed annually**, for an amount equal to:

**for the first Contract Year**, equal to one point one (1.1) times the estimated average monthly billing based on Normative Availability;

**for each subsequent Contract Year**, equal to the one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year plus the estimated monthly billing during the current year from any additional Unit(s) expected to be put on COD during the current Contract Year based on Normative Availability."

**(Emphasis Supplied)**

From the perusal of the above, it is explicitly clear that the PPA provides for furnishing of a Letter of Credit against the Monthly Bills for a term of 12 months. The term of Letter of Credit shall be for 12 months covering the entire Contract Year. Moreover, Letter of Credit is also renewable on an annual basis only. Thus, there is a single Letter of Credit for the entire Contract Year and aggregation of the same is neither possible nor practical.

- b) In addition to the above, it is submitted that PSPCL has furnished a Letter of Credit for an amount equivalent to 50% of the average of monthly billing against the requirement of 1.1 times of average of the Monthly Tariff Payments of the previous Contract Year. Thus, PSPCL cannot be allowed to take advantage of its own wrong by furnishing fortnightly Letter of Credit and then multiply the Letter of Credit amount by 24. It

is reiterated here that Letter of Credit is for the entire Contract Year and not for a particular month and once, there is a default on the part of PSPCL, the same can only be encashed for one time. Thus, the entire premise of PSPCL's aggregation is misplaced and fundamentally flawed.

- c) It is NPL's case (and rightly so) that the term "*in aggregate for a Contract Year*" is to be read in context of "*increase/ decrease in revenues or cost*" and not "*in excess of an amount equivalent to 1% of the Letter of Credit*". Meaning thereby, that the cumulative impact of Change in Law event(s), i.e., aggregate of the different Change in Law claims being raised, during a particular Contract Year is required to be more than 1% of the amount of the Letter of Credit. The aforesaid submissions are also strengthened by the following orders of the Hon'ble CERC, whereby similar provisions in other thermal power purchase agreements have been interpreted:

(i) *Coastal Gujarat Power Limited v. Gujarat Urja Vikas Nigam Ltd. and Ors.*, 157/MP/2015, Order dated 17.03.2017:

"54. The petitioner has submitted that the minimum value of "Change in Law" should be more than 1% of the Letter of Credit amount in a particular year. .... The petitioner has submitted that amount of Letter of Credit upon commissioning of all five units of the plant was Rs. 606.2538 crore and 1% of aggregated letter of credit is about Rs. 6.0625 crore. Since, the aggregate amount claimed for "Change in Law" is about Rs. 25,96,00,000 crore, it is more than the threshold amount prescribed under Article 13.2 (b) of the PPA and the petitioner is entitled to be compensated for the same. The Petitioner has further submitted that it may be permitted to claim from the procurers,

*compensation that would be equivalent to the financial impact of the “Change in Law” on the cost and revenue of the petitioner.”*

*(ii) Sasan Power Limited v. M.P. Power Management Company Limited & Ors., 16/MP/2017, Order dated 17.02.2017:*

*“35. The petitioner has submitted that the minimum value of Change in Law should be more than 1% of the Letter of Credit amount in a particular year. ....The Petitioner has further submitted as under:*

*(a) The peak tariff of the project is approximately Rs. 1.32 per unit. At 80% Normative Availability of total capacity, the total units will be about 26,086 million units.*

*(b) Consequently, the average aggregate monthly bill based on the aforesaid Normative Availability will be Rs. 286.9 crore. The Letter of Credit amount which is 1.1 times the estimated average monthly billing based on Normative Availability is about Rs. 315.6 crore.*

*(c) As per Article 13.2(b) of the PPA, the threshold amount beyond which compensation for change in law can be claimed is 1% of the aggregate letter of credit amount for a Contract year which will amount to about Rs. 3.1 crore.*

*(d) Since the aggregate amount claimed for Changes in Law is approximately Rs. 101 crore, it is more than the threshold amount prescribed under Article 13.2(b) of the PPA and the petitioner is entitled to be compensated for the same.”*

d) Hon’ble APTEL in its judgment dated 18.10.2022 in Appeal No. 263 of 2018 titled *Rattan India Power Limited v. Maharashtra Electricity Regulatory Commission (MERC) & Anr.*, wherein the modality of calculation (of threshold for allowing Change in Law compensation based on similar Change in Law provision as in the present case) adopted by MERC was not in question, was

taken note of without any objection/observation to the contrary, which read is as follows:

“13. On the date of applicability, the Commission has observed and held as under:

*20.1. In its Petition and during these proceedings, RPL has presented its computations of the impacts of some of the Change in Law events considering both the PPAs. For each of the PPAs, it needs be ensured that, **in aggregate (i.e., for all the approved Change in Law events taken together), the financial impact of the events approved as Change in Law in this and earlier Orders exceeds 1% of the LC amount in the relevant Contract Year, as required under Article 10.3.2 of the PPAs.**”*

(Emphasis Supplied)

From a perusal of the above, it is apparent that the term “*in aggregate for a Contract Year*” qualifies the “*increase/ decrease in revenues or cost*” and not “*the Letter of Credit*”. The threshold is always calculated as 1% of the monthly Letter of Credit amount as been suggested by NPL and the aggregate/cumulative impact of different Change in Law event(s) being raised in a particular Contract Year is taken into account for the purpose of crossing the aforesaid threshold amount.

1.4 It is reiterated that PSPCL has contended that the threshold criteria of 1% of the Letter of Credit in aggregate for a Contract Year laid down in Article 13.2(b) of the PPA is Rs. 36.868 Crore, as opposed to NPL’s legitimate claim that threshold criteria of 1% of the Letter of Credit in aggregate for a Contract Year in terms of the PPA is Rs. 1.53 Crore. Thus the issue of quantification of ‘*threshold limit*’ specified in Article 13.2(b) of the

PPA remains a materially significant issue on which arguments/contentions were duly raised before the Commission which has not been addressed in the Order dated 17.07.2023. This tantamounts to '*ignorance of material pleading*' and thus is an error apparent on the face of the record in light of the lack of clarity therein. Non consideration of the material facts and arguments that were raised by NPL has caused grave injustice to NPL. The law is well settled in this regard, that non-consideration of material facts by the Court, and any order passed inconsistent with the facts on record constitutes just and proper grounds for review. Therefore, the Order dated 17.07.2023 is liable to be reviewed.

1.5 In view of the facts and circumstances enumerated above, it is prayed that the Commission may be pleased to:

- (i) Admit the Review Petition;
- (ii) Review the findings in Order dated 17.07.2023 in Petition No. 65 of 2022, and thereby settle the issue and/or provide much needed clarity *vis-a-vis* the determination of quantum equivalent to threshold criteria of 1% of the Letter of Credit in aggregate for a Contract Year under Article 13.2(b) of the PPA; and
- (iii) Pass such other order(s) as this Commission may deem fit and proper in the facts and circumstances of the case.

2. In the hearing on admission held on 27.09.2023, the Counsel for PSPCL pointed out that a similar issue had been decided by the Commission in Petition No. 2 of 2023 in the case titled TSPL Vs PSPCL. However, the Counsel for NPL asserted that since NPL had not been a party in that case and had not been heard, they would



want to present their arguments before the Commission for an independent decision. After hearing the parties, the Review Petition was admitted with directions to PSPCL to file its reply to the review petition and NPL to file its rejoinder to the reply filed by PSPCL within one week thereafter.

**3. PSPCL filed its reply on 19.10.2023, submitting as under:**

3.1 PSPCL in its Reply to the Petition No. 65 of 2022 filed on 17.01.2023, had expressly stated that the amount of Letter of Credit (LC) in aggregate for the contact year works out to Rs.153.65 x 24 = Rs. 3687.60 Crore and that accordingly the 1% threshold criteria prescribed under Article 13.2(b) of the PPA is Rs. 36.876 Crores. However, NPL in its Rejoinder filed on 29.03.2023 to PSPCL's reply has neither disputed nor raised any objections with respect to the threshold criteria prescribed under Article 13.2(b). Even during the course of the arguments, on 24.05.2023, NPL did not raise any objections on the quantum of the threshold criteria and had only submitted that the cost to be incurred by NPL would exceed the limit prescribed under Article 13.2(b) of the PPA. Accordingly, it is not open to NPL to belatedly change its stance and seek review of the Order dated 17.07.2023. It is a settled principle that if an averment remains uncontroverted, then there is a deemed acceptance of the same.

3.2 During the course of the arguments in the hearing held on 24.05.2023 wherein the Order was reserved by the Commission, NPL had sought to rely on a tabular statement dealing with the cost of biomass pellet procurement, etc. A limited liberty was sought to present the same by way of an Affidavit. No liberty was sought by either of the parties to file Written Submissions. It was

only by way of a Short Written Submission dated 06.06.2023 that NPL sought to belatedly raise the issue of the threshold criteria. It was in response to the said Short Written Submission that PSPCL filed its Written Submissions dated 08.07.2023. It is a settled principle of law that there is no hiatus between the stages of reserving orders for judgment and pronouncing the judgment and such time is only for the convenience for this Commission to pass the judgment. In the interregnum period, no such additional claims can be entertained by the Commission. In this regard reliance is placed on the Hon'ble Supreme Court in the case of *Andhra Pradesh Southern Power Distribution Power Company Limited and Ors. v. Hinduja National Power Corporation Limited and Ors. (2022) 5 SCC 484*.

3.3 In view of the absence of any pleadings with respect to the issue of threshold criteria under the PPA, apart from the Short Written Submissions dated 06.06.2023 (which was filed after Order was reserved in the matter), there cannot be said to be any conflict in the interpretation between NPL and PSPCL. The reliance on the decision in the case of the Karnataka High Court is misconceived since there were no admissible material pleadings made by NPL that have not been considered in the Impugned Order.

3.4 Therefore, there is no error apparent in the Impugned Order since the issue was never raised by NPL during the proceedings in Petition No. 65 of 2022. Otherwise also, the Commission has clarified the position of law with respect to the threshold amount for entitlement of compensation in its Order dated 21.09.2023 in Petition No. 02 of 2023 filed by M/s Talwandi Sabo Power Limited.

3.5 Further, without prejudice to the above, it is submitted that:

- a) A plain reading of the proviso to Article 13.2 (b) makes it clear that the interpretation sought to be made by NPL, namely, that “*in aggregate for a contract year*” is to be made applicable only to “*increase/ decrease in revenue or cost to the Seller,*” is misconceived. If that were the intent, then the proviso to Article 13.2(b) would have been read in a manner that compensation shall be payable only if the increase/ decrease in the revenue or cost in aggregate for a contract year is in excess of 1% of the LC. It is a settled principle of interpretation that the words of a contract must be taken in their ordinary and natural sense unless such literal interpretation results in an absurdity.
- b) Further, the threshold criteria in the proviso to Article 13.2(b), i.e., 1% of the LC in aggregate for a contract year is also in consonance with a similar threshold criteria given under Article 13.2(a) for computing the impact of Change in Law during the construction period.
- c) The reliance placed on Orders of the Central Commission is also misplaced, the same are not binding upon this Commission. Without prejudice to the same, it is submitted that NPL has only relied on the submissions made by the petitioners in the respective cases and the same are not the observations/findings of the Central Commission in the said matters. The relevant extracts from the said Orders read as under:

- (i) Order dated 17.02.2017 in Petition No. 16/MP/2017 – Sasan Power Limited v. M.P. Power Management Company Limited and others:

*“37. The Commission has not computed the threshold value for eligibility of getting compensation due to Change in Law during Operation period. However, the petitioner shall be eligible to get compensated if the impact due to Change in Law exceeds the threshold value as per Article 13.2(b) during Operation period. Accordingly, the compensation amount allowed shall be shared by the Procurers based on the scheduled energy.”*

- (ii) Order dated 17.03.2017 in Petition No. 157/MP/2015- Coastal Gujarat Power Limited v. Gujarat Urja Vikas Nigam Limited and others:

*“56. The Commission has not made computation of the threshold value based on the claims for Change in Law allowed in this order. The Petitioner shall calculate the threshold value as per Article 13.2 (b) of the PPA and if the impact due to Change in Law exceeds the threshold value, the Petitioner shall be entitled to raise the supplementary bills as per the PPA.”*

- d) Further, the reliance on the Order dated 18.10.2022 passed by Hon’ble Appellate Tribunal in Appeal No. 263 of 2018 is also misplaced since the issue being decided by Hon’ble Appellate Tribunal in Para 13 and 14 is the Carrying Cost and not the scope of Article 10.3.2 of the PPA.

4. The Review Petitioner filed its rejoinder on 31.10.2023 to PSPCL’s reply. While reiterating the earlier submissions, it was further submitted that:

4.1 In its reply, PSPCL has contended that the Commission has clarified the position of law with respect to the threshold amount for entitlement of compensation in its Order dated 21.09.2023 in Petition No. 02 of 2023. It is imperative to highlight certain erroneous submissions made by PSPCL which may have become the foundation of the Order passed by the Commission:

a) The Commission relying upon Hon'ble Tribunal's Judgment dated 27.04.2021, in Appeal No. 172 of 2017 titled **Coastal Gujarat Power Ltd. v. CERC & Ors.**, has held that it also reiterates that "*such compensation is to be payable where the impact of CIL is in excess of 1% Letter of Credit (LC) in aggregate for a contract year*". However, the Commission has inadvertently omitted the next line of the same para which reads that, "*It is not in dispute that in the case at hand the impact of the CIL events which are referred to has crossed the threshold limit (1% of LC).*" The entire relevant extract is reproduced hereunder:

*"24.The contract (PPA) expressly provides for restitution for CIL, by Article 13.2(b), for the Construction Period, as also for Operation Period, it being contingent for "Operation Period" on (i) determination of compensation for any increase/decrease in revenues/cost to the seller by CERC and (ii) such compensation to be payable where the impact of CIL is in excess of 1% Letter of Credit (LC) in aggregate for a contract year. It is not in dispute that in the case at hand the impact of the CIL events which are referred to has crossed the threshold limit (1% of LC)."*

b) It is further pertinent to mention that the said appeal before Hon'ble Tribunal arose from the Order of Hon'ble CERC dated 17.03.2017 in Petition No. 157/MP/2015 titled *Coastal Gujarat Power Limited vs. Gujarat Urja Vikas Nigam Ltd.*

Wherein, under Para 54 it had recorded that:

*“54.....The Petitioner has submitted that amount of Letter of Credit upon commissioning of all five units of the plant was Rs. 606.2538 crore and 1% of aggregated letter of credit is about Rs. 6.0625 crore. Since, the aggregate amount claimed for “Change in Law” is about Rs. 25,96,00,000 crore, it is more than the threshold amount prescribed under Article 13.2 (b) of the PPA and the petitioner is entitled to be compensated for the same....”*

It is evident that the threshold limit was explicitly clear between the parties to be 1% of aggregated letter of credit i.e., about Rs. 6.0625 Crores and the same was not in dispute as recorded by Hon'ble Tribunal.

4.2 Notably, PSPCL was a party to CGPL's petition as well as the Appeal and it has not disputed the interpretation as to calculation of 1% of the letter of credit as presented by the petitioner in that case. In fact, PSPCL has not disputed the threshold limit of Rs. 6.0625 Crore in the CGPL's case. However, in the present case involving similar clause with same wordings, PSPCL has taken a contrary stand. It is well settled proposition of law that the Governmental instrumentalities cannot be allowed to take contrary stands in different cases.

4.3 The contention of PSPCL that the Petitioner has neither disputed nor raised any objections with respect to the threshold criteria prescribed under Article 13.2(b) is totally erroneous and misplaced. The aforesaid matter was heard by the Commission on 24.05.2023 and Order was reserved. During the hearing, it was clear that there is a disagreement between the Petitioner and PSPCL with respect to the interpretation of threshold limit.

The said fact is also evident from the Written Submissions filed by the Petitioner, though the same were not taken on record.

- 4.4 It was only when the Petitioner observed that the issue of threshold limit, despite noting the submissions of the parties, stands unresolved in the Order under Review, the Petitioner has approached this Commission seeking review of the aforesaid Order. It is it is the Petitioner's case that the term "*in aggregate for a Contract Year*" is to be read with "*increase/decrease in revenues or cost*" and not with "*in excess of an amount equivalent to 1% of the Letter of Credit*".
5. The petition was taken up for arguments on 01.11.2023. Wherein, both the parties reiterated their written submissions. Ld. Counsel of PSPCL, while reiterating that that the reliance placed by NPL on Hon'ble APTEL/CERC orders is misplaced as the issue of threshold limit was not dealt therein and as such there was no cause of raising any objection/disputing the same. Further, on the issue raised by NPL that PSPCL has furnished a LC only for an amount equivalent to 50% of the average of monthly billing against the requirement of 1.1 times of average of the Monthly Tariff Payments of the previous Contract Year and thus it cannot be allowed to take advantage of its own wrong by multiplying the said LC amount by 24 times, Ld. Counsel of PSPCL submitted that the amount of LC will vary depending upon whether it is weekly, fortnightly, monthly, bimonthly, six monthly or yearly, therefore the face value of LC actually maintained cannot be a basis for assessing the 1% threshold. It has to be aggregated for the year to determine the threshold limit. After hearing the parties, the Order was reserved.

## 6. Analysis/Observations and Decision of the Commission:

The Commission has examined the submissions and counter submissions made by the parties. The review Petitioner is seeking review of the Commission's Order dated 17.07.2023 in Petition No. 65 of 2022 with the plea that the related issue of threshold criteria for claiming compensation for any change in the costs due to the Change in Law under Article 13.2(b) of the PPA is also required to be settled. Whereas, PSPCL though opposing the plea for the review has pointed out that the impugned issue of the 'threshold limit' stands dealt by the Commission in its Order dated 21.09.2023 passed in Petition No. 02 of 2023 filed by M/s TSPL.

The Commission observes that the impugned issue of interpretations w.r.t. the 'threshold criteria/limit', though mentioned by the parties during the proceedings, was not a part of the prayers made in the petition. Accordingly, no specific order was passed on these submissions by the Commission. Since the issue has now been raised in review seeking a clarification, the Commission decides to clarify the issue. Accordingly, the impugned issue of the 'threshold limit' has been examined afresh for NPL and independently of the TSPL Order in Petition No. 02 of 2023 as requested by the counsel for NPL, since it was asserted that the Review Petitioner NPL had not been heard while the issue was decided in TSPL's case. The analysis/observations and decision of the Commission is as under:

6.1 NPL has submitted that the term "*in aggregate for a Contract Year*" is to be read in context of "*increase/ decrease in revenues or cost*" and not to "*an amount equivalent to 1% of the Letter of*



*Credit*” and has placed its reliance on the following orders of the Hon’ble APTEL/CERC:

- a) Hon’ble APTEL judgment dated 18.10.2022 in Appeal No. 263 of 2018 titled *Rattan India Power Limited v. MERC*;
- b) CERC’s Orders in *Coastal Gujarat Power Limited v. Gujarat Urja Vikas Nigam Ltd. & Others* (157/MP/2015- Order dated 17.03.2017) and *Sasan Power Limited v. M.P. Power Management Company Limited & Others* (16/MP/2017- Order dated 17.02.2017).

NPL has also stated that PSPCL, which was a party in these cases, never raised any objection to the said interpretation of the ‘threshold criteria’, but is now taking a contrary stand in the present case involving a similar clause with the same wordings.

On the contrary, PSPCL contends that the reliance placed by NPL on the above referred Orders of Hon’ble APTEL/CERC is misplaced as the issue of computation of the threshold limit was not under consideration therein and the citations professed by NPL are part of submissions by the petitioners in that case and not the observations/findings of the Central Commission. As such there was no reason to raise any objection by PSPCL.

The Commission has perused the above Orders cited by the review Petitioner and is in agreement with PSPCL that the reliance placed on the same is misplaced. As per NPL’s own admission, the modality of calculation of threshold for allowing Change in Law compensation was not in question in Appeal No. 263 of 2018 titled *Rattan India Power Limited v. MERC* before Hon’ble APTEL. As regard the issue of CERC’s Orders, the

citations quoted by NPL are part of the petitioner's submissions and not the observations/findings by the Central Commission. In fact, in these Orders, the Central Commission has not interpreted or determined what the threshold value is but simply referred to the relevant Article 13.2(b) of the PPA.

Further, the Commission notes that the provision for "Application and Principles for computing impact of Change in Law" specified in Article 13.2 of NPL's PPA is same as that of TSPL's PPA dealt in Petition No. 02 of 2023, wherein, after referring to the same, the Commission has observed as under:

**"9.7 Threshold amount for entitlement of Compensation:**

*..... The Commission refers to the Article "13.2 of the PPA, which reads as under:*

***"13.2 Application and Principles for computing impact of Change in Law:***

*While determining the consequence of Change in Law under this Article 13, 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 payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.*

*.....*

***b) Operation Period***

*As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Appropriate Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law. Provided that the above mentioned compensation shall be payable only if and for*

*increase/ decrease in revenues or cost to the Seller is in excess of an amount equivalent to 1% of the Letter of Credit in aggregate for a Contract Year.”*

The Commission observes that the said provision is quite unambiguous and self-explanatory. The interpretation sought to be made by the Petitioner that the term ‘in aggregate for a contract year’ applies to the ‘increase/decrease in revenue or cost’ and not ‘LC’ is misplaced. It is a settled principle of interpretation that the words of a contract must be taken in their ordinary and natural sense unless such literal interpretation results in an absurdity. Hon’ble APTEL Judgment dated 27.04.2021, in Appeal No. 172 of 2017 titled *Coastal Gujarat Power Ltd. v. CERC & Ors.*, as cited by the Petitioner also reiterates the provision of the PPA that, “such compensation is to be payable where the impact of CIL is in excess of 1% Letter of Credit (LC) in aggregate for a contract year.

***Thus, the Commission is in agreement with PSPCL that in order to determine the threshold amount for entitlement of the compensation payable on account of the ‘Change in Law’ in terms of the PPA, the LC maintained by it on fortnightly basis is required to be aggregated for the full contract year.”***

6.2 NPL has also made a plea that certain erroneous submissions made by PSPCL may have become the foundation of the Order passed by the Commission in Petition No. 02 of 2023 by placing reliance upon Hon’ble Tribunal’s Judgment dated 27.04.2021 in Appeal No. 172 of 2017 titled *Coastal Gujarat Power Ltd. v. CERC & Ors.*

The Commission refers to the relevant extract of the Order in Petition No. 02 of 2023 reproduced in the preceding para. As is evident, the said Order by Hon’ble APTEL was cited by the

Petitioner (TSPL), not PSPCL, and it did not form the foundation of the Commission's Order. The reference to the same was made only after the Commission's observations on the impugned issue, which reads as under:

*"It is a settled principle of interpretation that the words of a contract must be taken in their ordinary and natural sense unless such literal interpretation results in an absurdity".*

The reference to the same is in fact the Commission's observation that indicates that the said citation does not support the TSPL's case as this order also reiterates the provision of the PPA that, *"such compensation is to be payable where the impact of CIL is in excess of 1% Letter of Credit (LC) in aggregate for a contract year"*.

Further, on the plea of the Petitioner that the Commission has erred in omitting the following line of Hon'ble APTEL Order mentioning that *"It is not in dispute that in the case at hand the impact of the CIL events which are referred to has crossed the threshold limit (1% of LC)"*, the Commission observes and is of the view that the inclusion of the same would also not have contributed positively or supported the case of the Petitioner.

6.3 Further, on the plea that PSPCL has furnished an LC only for an amount equivalent to 50% of the average of monthly billing against the requirement of 1.1 times of average of the Monthly Tariff Payments of the previous Contract Year and thus it cannot be allowed to take advantage of its own wrong by multiplying the said LC amount by 24 times, the Commission observes that the actual amount of LC furnished by PSPCL to NPL is a separate

issue, which has been accepted between the parties, and is not a subject matter of the present dispute.

However, the Commission is in agreement with PSPCL's submission that, since the amount of LC will vary with different tenures depending upon whether it is maintained weekly, fortnightly or monthly, bimonthly, six monthly or yearly, therefore the face value of LC actually maintained cannot be a basis for assessing the 1% threshold. It has to be aggregated for the year as clearly mandated in clause 13.2(b) of the PPA to determine the threshold limit. The amount aggregated for the year irrespective of the term of LC will always remain the same.

As pointed out by both NPL and PSPCL in their submissions, this 'calculation' formula also holds good even if the reverse threshold is calculated. The change in costs will have to exceed the 1% of the LC in aggregate for a contract year for passing/claiming of any compensation/reduction in charges on account of any Change in Law by PSPCL to/from the Petitioner.

**In light of the above analysis and observations, the Commission disposes the instant review petition in terms of the Commission's decision contained in Para 9.7 of the Commission's Order dated 21.09.2023 in Petition No. 02 of 2023.**

Sd/-  
(Paramjeet Singh)  
Member

Sd/-  
(Viswajeet Khanna)  
Chairperson

Chandigarh  
Dated: 23.11.2023