

**BEFORE THE NATIONAL GREEN TRIBUNAL
MEMORANDUM OF APPLICATION**

(Under Section 18(1) read with Sections 14, 15, 16 of National Green Tribunal
Act 2010)

Application No. 26 of 2013 Etc.

Between:

Janajagrithi Samithi Applicant

Versus

The Union of India & Ors Respondents

Memo filed on behalf of the applicant

The applicant respectfully submits as follows:

1. The respondent thermal power plant (UPCL) has filed its objections to the joint committee's report as well as the carrying capacity study submitted by the state of Karnataka. It is submitted that these objections have no merit and are dealt with in detail in the following paragraphs.

Environmental carrying capacity study submitted by State of Karnataka

2. It is relevant to note that this Hon'ble Tribunal in its judgment dated 14.03.2019, apart from holding that all clearances obtained by UPCL were illegal, also found UPCL guilty of serious violations in its establishment and operation. In so far as the proposal for expansion is concerned, the Hon'ble Tribunal suspended the Environmental clearance dated 01.08.2017 (See para 151-153 of the judgment) and directed that

“(i) Baseline data of the area in relation to the existing project of 2x600 MW shall be scrupulously collected;

(ii) In addition to the above, the State of Karnataka shall get a carrying capacity study of the area carried out.

(iii) The baseline data and the carrying capacity study shall be considered as components for studying the impact in relation to the proposed expansion;

(iv) Fresh public hearing shall be conducted strictly in accordance with the procedure laid down in Appendix IV of EIA Notification, 2006 ensuring wide participation of the people affected by the project.

125. After completion of the above, report shall be submitted to the MoEF&CC to be placed before the Expert Appraisal Committee for appraisal as required under stage IV of the EIA Notification, 2006."

3. It is submitted that the carrying capacity study prepared by the state of Karnataka is to be considered by the EAC/MoEF as components for studying the impact of the expansion proposal. However, UPCL has submitted its objection dated 14.03.2022 to the carrying capacity study submitted by the Karnataka Government, perhaps because the report has brought to light major violations being committed by UPCL in the operations of its existing plant.
4. Firstly, it is necessary to point out that NABET accreditation is only required for preparation of EIA reports for the purpose of obtaining environmental clearance under the EIA Notification. The carrying capacity study is not an EIA study of a specific project and hence the accreditation is not a pre-requisite. EMPRI was established by the State government as an autonomous institute established by Government of Karnataka on 17th September 2002 under the Department of Forest, Ecology and Environment. The Institute undertakes applied and policy research and also endeavours to provide capacity building trainings on concurrent environmental issues relevant to the society. EMPRI and the individuals who

drafted the CCR possess satisfactory qualifications, preparing a number of other environmental studies relating to environmental matters in the State of Karnataka, as seen from EMPRI's website. UPCL's attempt to attack the agency that has prepared the report, instead of addressing the findings in the report, is an obvious attempt to distract from serious issues / violations in the existing plant.

5. Second, the objections of UPCL claims the CCR is defective because the CCR does not include enough information about other sources of environmental impacts in the area. For example: Page 5 of the Objections claims that: "CCR doesn't address environmental indicators projection until year 2035;" Page 6 of the Objections claims that: "There is no discussion on real scenario of other industries, commercial areas, dumpsites, landfill sites, sewage treatment plants, water treatment plants, discussion with government officials, and tourists etc.;" Page 12 of the Objections claims that: "Emission inventory sources like biomass burning, open waste burning, stubble burning and construction activities is not carried out per CPCB methodology;" Page 16 of the Objections claims that: "DG set emission, emission from coal based tandoors, construction activities, open burning, transport (commercial & local) biomass burning, road dust, crematoria's, residential and incinerators are not identified."
6. However, if EMPRI had done all of what UPCL claims that EMPRI should have done – "address environmental indicators projection until year 2035," "discuss real scenario of other industries, commercial areas, dumpsites, landfill sites, sewage treatment plants, water treatment plants," "inventory sources like biomass burning, open waste burning, stubble burning and construction activities," identify DG set emission, emission from coal based tandoors, construction activities, open burning, transport (commercial & local) biomass burning, road dust, crematoria's, residential and incinerators." – then the CCR would have been a more inclusive report and, therefore, would have shown that the impacts of the 2x600 MW Udupi

Power Plant, along with the additional named activities, exceed to an even greater extent the carrying capacity of the area. This aspect will not help UPCL in any manner with regard to its pollution footprint or its violation.

7. Third, the objections of UPCL do not deny key findings of the CCR, such as:
 - Coal dust from the power plant deposits on plants and agricultural crops. CCR at pages 98-99 and Figure 6.58 (Coal Dust from UPCL Thermal Power Plant on Banana Leaves) and Figure 6.59 (Black ash emitted by the UPCL);
 - UPCL's Ambient Air Quality Monitoring Stations are blocked or surrounded by vegetation, rendering these stations incapable of providing accurate measurements of ambient air quality. CCR at page 169 and Figure 6.56.
 - UPCL's effluent discharge pipeline is broken, releasing effluent near the shore itself. CCR at page v and Figure 6.65 (Broken Effluent Discharge Pipeline of UPCL as on 23/02/2021). Black colour effluent being discharged into the stream.
8. It is submitted the UPCL has also not denied that on the date of the monitoring i.e 3.04.2021, the emissions of SO₂ from the stack exceeded parameters fixed under the Environment (Protection) Rules, 1986. The real time stack emission data is available with the KSPCB and the same needs to be filed before this Hon'ble Tribunal. It is submitted that modelling based on which clearances are issued, become redundant when emissions exceed the predicted / legally permissible emission levels. UPCL has a single stack and such high emissions of SO₂ will result in increased GLC's not forecasted in the EIA reports and add to the pollution load of the region.
9. The above violations make out a clear ground for the closure of the thermal power plant. They do not have any right to continue the operations of their plant. Their operations are clearly in violation of the clearances and consents issued.
10. Moreover, UPCL claims that its plant has a functional FGD system - if this is the case, then the emission levels of SO₂ cannot be as high as the values

recorded in the CCR (more than 600 mg/Nm³). It is clear proof that UPCL has not been operating its pollution control systems like FGD.

11. It is submitted that the impact of violations recorded in the CCR are significant and vindicate the complaints of the people in the area. It is relevant to point out that this Hon'ble Tribunal in its judgment dated 14.03.2019 had taken note of the CES technical report by IISC and the violations pointed out therein. The present report also records the same kind of pollution being caused by UPCL.
12. The impact on surrounding area due to ash, coal dust, saline mist, discharge into water courses, groundwater contamination from the ash pond are serious issues - UPCL has no right to operate its power plant whilst causing such pollution. There is no vested interest to pollute. The plant has not even been operating at full capacity and throughout the year and power from the plant is not essential to the State of Karnataka for its energy security. The pollution being caused is only for the profit and benefit of a private corporation.
13. It is submitted that the excess pollution noticed by EMPRI was when the plant was operating below normal capacity, at a reduced plant load factor. If they plant operates at its maximum PLF, the emissions will be much higher.
14. It is submitted that a more comprehensive study, as indicated in the CCR needs to be carried out to assess the impacts caused by the existing plant. UPCL has no right to violate the law and continue its operations and is guilty of suppression of facts before this Hon'ble Tribunal - they claimed to be in compliance with the law and mislead this Hon'ble Tribunal, while egregious violations like discharging hot water on the shore were being perpetrated. Severe penalties have to be levied on the defaulting unit.
15. It is of major concern that the TCLP results of flyash exceeded the limits prescribed under the Hazardous Waste Management Rules, 2016. In light

of this finding, the ash from UPCL cannot be treated as high volume, low impact waste that is inert and a suitable mode for disposal of the same has to be evolved. Capping and growing plants does not solve the issue of leaching from the pond. Heavy metal contamination of groundwater near the ash pond was also recorded in the EIA report prepared by UPCL for its expansion. It is an issue of major concern that the ash pond is evidently leaching heavy metals into the environment. This fact cannot be denied by UPCL as their own EIA report records this contamination.

16. Infact, apart from the air pollution, underground water and soil contamination, crop losses etc. even the laying of the intake and discharge pipelines and building roads has been undertaken without considering the impacts and the harm it could cause to the large agricultural fields and human health - this clearly establishes the need to shut the plant down with immediate effect. Agricultural lands in Yermal and other villages of Udupi district are routinely submerged as the pipelines and roads constructed by UPCL through the lands block the flood water and keep the newly planted crops underwater for weeks and months sometime. This has been going on for years since operation of the Plant. A newspaper report of this has also been provided at figure 6.51 of the CCR.

17. The CCR clearly records ash and coal dust deposition in the nearby lands. The CCR also records discharge of effluents. The CCR also exposes the falsity of the claims of UPCL regarding R&R on account of the project. No equities lie in favour of this industry - in order to meet climate change targets, it is essential to reduce emissions and not to permit emissions with impunity.

Expert committee report

18. With regard to the expert committee report, it is submitted that there is undeniable, clear and established evidence of damage caused to crops and livelihood. Committee focused only on the assessment of the Environmental Compensation for the health impacts of airborne diseases within 10km radius from UPCL and based on the information provided by the Government health centres in the area. The amount also does not include any compensation for deaths caused by the aforesaid diseases. Without working out the appropriate compensation for crop losses incurred by the farmers the report is not complete. The objections raised by UPCL to the expert committee report are untenable in light of the fact that their violations of law are a matter of record. UPCL is the only industry in the region with a large environmental footprint. There are no other major industries in the vicinity of the plant for UPCL to attempt shifting the blame. The entire contents of the objections filed by UPCL are denied and are without merit.
19. It is submitted that even the CCR has recorded the impact on surrounding agricultural lands. The CES report, which was accepted by this Hon'ble Tribunal also has detailed evidence of impact on agricultural lands. The committee is yet to submit its report in accordance with the directions of this Hon'ble Tribunal. They may be directed to compute compensation payable to farmers for crop loss and damage caused to their lands on account of the pollution caused by UPCL and its operations.
20. Reconstituted Committee reported that the power generation is down to 21% as the State has other cheaper sources. As a matter of fact, the plant remained shut down for major part of the year since the beginning 2020. The State now being a surplus power State with 30,799.85MW generation capacity that includes 19,172.55 MW of Renewables i.e., Wind 5,095.44MW, Solar 7,505.46 MW, Hydro 3,798 MW, Co-generation 1731.16 MW, Mini-Hydel 903.46 MW and Biomass 139.03 MW. The State has Renewable Energy Potential of 155,074 MW out of which 36,916.85 MW already

allotted and 15,374.55 MW commissioned. The present need of the State is around 25,000 MW and the State is totally generating 29,599.85 MW excluding the TPP of UPCL. As such there is absolutely no need for this Red Category hazardous coal based TPP of UPCL in an ecologically sensitive region.

21. UPCL is now attempting to sell its power to neighbouring States with new transmission lines through the agricultural and forest lands in the coastal belt causing more harm in the region. Earlier the Transmission lines were installed by destroying wildlife corridors and cutting thousands of trees in the Western Ghats and the same is being repeated once again. It is submitted that the EC for the existing plant was not issued for a thermal plant that generates power and transports it to other states - the impact of transmission corridors have to be studied as part of the EIA itself (Please see the sector specific manual).

22. It is submitted that UPCL has no right to claim that it can continue operating and generating profits at the cost of the environment, especially in light of the fact that they have been violating the very permissions issued to them. It is in the interest of justice that the plant be directed to be shut down in light of the violations brought on record, which were not available when this Hon'ble Tribunal passed its judgment on 14.03.2019. Such an order will help farmers resume their profession of cultivation as at present they fear that the Plant operation would destroy the crops and as such are scared to continue farming. Appropriate disbursement of the compensation for crop loss and health impacts etc would do justice to the suffering villagers and restore the majesty of the law.

Dated this the 4th day of April, 2022 at Chennai



Counsel for the Applicant

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Through

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Counsel for the Applicant