

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 250/MP/2019

Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 for recall of the order dated 12th April, 2019 passed by the Commission in Petition No. 374/MP/2018 granting approval to the Supplementary Agreements (two) dated 5.12.2018.

Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)

Respondents: Adani Power (Mundra) Limited (APMuL) and Government of Gujarat (GoG)

Petition No. 275/MP/2019 along with IA No. 9/2020

Subject : Petition pursuant to the directions of the Supreme Court vide Order dated 2.7.2019 in Civil Appeal No. 11133 of 2011 and applicable provisions of the Electricity Act, 2003 including Section 62 and 79 (1)(b).

Petitioner : Adani Power (Mundra) Limited

Respondent : Gujarat Urja Vikas Nigam Limited

Date of Hearing : 28.5.2020

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

Parties present : Shri M. G. Ramachandran, Sr. Advocate, GUVNL
Ms. Ranjitha Ramachandran, Advocate, GUVNL
Ms. Anushree Bardhan, Advocate, GUVNL
Shri Shubham Arya, Advocate, GUVNL
Shri Amit Kapur, Advocate, APMuL
Ms. Poonam Verma, Advocate, APMuL
Shri Saunak Rajguru, Advocate, APMuL
Ms. Vasundhara Nagrath, Advocate, APMuL
Ms. Adishree Chakraborty, Advocate, APMuL
Shri Mehul Rupera, APMuL
Shri Malav Deliwala, APMuL
Shri Tanmay Vyas, APMuL
Shri Basava Prabhu Patil, Sr. Advocate, GoG
Shri Anand K Ganesan, Advocate, GoG
Shri Ashwin Ramanathan, Advocate, GoG
Shri Geet Ahuja, Advocate, GoG



Record of Proceedings

The matters were listed for hearing through video conferencing.

2. Learned senior counsel for Gujarat Urja Vikas Nigam Limited (GUVNL) requested for four weeks' time to file reply to the details/information furnished by Adani Power (Mundra) Limited (APMuL) vide its affidavit dated 5.3.2020 in Petition No. 275/MP/2019 and prayed for adjournment in Petition No. 250/MP/2019 and Petition No. 275/MP/2019. Learned senior counsel submitted as under:

(a) Pursuant to the Commission's direction dated 12.2.2020, APMuL, vide its affidavit dated 5.3.2020, has placed on record voluminous additional information/ documents, running into more than 600 pages, containing the financial details relating to both fixed charges and energy charges as claimed by them.

(b) Perusal of these documents reveals that there are various data gaps/issues therein. For instance, APMuL has claimed the coal cost forming the part of energy charges from the date of Commercial Operation Date (COD) of the two units of the generating station till July, 2019 i.e. when the order of Hon'ble Supreme Court was passed, at a constant energy rate of Rs. 2.327/kWh for the financial years 2011-12 to 2013-14, Rs. 2.302/kWh for the financial years 2014-15 to 2018-19 (coal cost being considered as Rs. 4539.49/tonne during entire 5 year period). While the cost of Indonesian coal varied from time to time and even on month to month basis, there is no explanation as to why the claim for landed cost of coal is constant in the documents filed by APMuL.

(d) APMuL is also claiming the cost of coal to be considered based on HBA price, whereas the coal is being exported from Indonesia at a price much lower than HBA index price as is indicated in the leading international price reporting agency such as M/s Argus/Coalindo and M/s S&P Global Platts. Further, the coal price claimed by AMPuL is also higher than the coal price claimed by the other generator, namely, Coastal Gujarat Power Limited for coal with the same/comparative GCV and imported from Indonesia.

(e) Accordingly, the additional information/documents furnished by APMuL require detailed analysis. However, on account of nation-wide lockdown due to COVID-19 and the consequent travel restrictions, officials of GUVNL have not been in a position to complete the analysis/study of the above documents and give necessary instructions to the counsel to deal with the issue arising thereof.

(f) Contention of APMuL that GUVNL is delaying the proceedings as well as implementation of Judgment of Hon'ble Supreme Court is misplaced.



Pursuant to the judgment of Hon'ble Supreme Court dated 2.7.2019 in Civil Appeal No.11133 of 2011, APMuL filed the Petition only in September, 2019 and that too without furnishing the details in requisite tariff formats. The details/data in the tariff formats were filed by APMuL on 30.10.2019. Further, despite repeated requests and filing of IA No.9/2020, APMuL has not placed on record the actual data pertaining to energy charges. It is only vide affidavit dated 5.3.2020, APMuL bridged further data gaps as per the Commission's direction dated 12.2.2020. Thus, there is no delay on part of GUVNL.

(g) While determining the compensatory tariff under Section 62 of the Electricity Act, 2003 ('the Act') read with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ('Tariff Regulations'), proper and effective prudence check of APMuL's claims (of over Rs.10,000 crore) is required in order to safeguard the interest of consumers. APMuL has to justify its claims for the past period on the basis of available actual data/details.

(h) The Commission in its order dated 19.2.2016 in Petition No. 33/MP/2014 along with IA No. 62/2014 (Tata Power Delhi Distribution Limited v. NTPC Limited and Ors.) has observed that in terms of Regulation 21(6) of the 2009 Tariff Regulations, generating companies are required to furnish, *inter-alia*, details of parameters of GCV and price of fuel including the copies of bills to the beneficiaries/procurers in order to bring transparency in energy billing. In the present case, APMuL has only placed on record the invoices/bills for procurement of imported coal from group companies/intermediary and has not placed on record the details of transactions carried out by the group companies/intermediary with Indonesian Coal Companies.

(i) In view of the above circumstances and considering the exhaustive nature of the Petition, the Commission may grant four weeks' time to file reply to the additional documents furnished by APMuL in Petition No. 275/MP/2019 and both Petitions, namely 250/MP/2019 and 275/MP/2019 be listed for hearing together thereafter.

(j) Taking into account the prevailing circumstances due to COVID-19, the Hon'ble Supreme Court, vide its order dated 23.3.2020, has also extended the period of limitation in all the proceedings w.e.f. 15.3.2020 till further order.

3. In response to the specific query of the Commission regarding the relevance of the various details/data gaps pointed out by GUVNL while determining the compensatory tariff under Section 62 of the Act read with the 2009 Tariff Regulations, learned senior counsel submitted that the compensatory tariff to APMuL cannot be on projection basis but has to be supported/justified by actual data/details



for past period similar to the truing-up exercise carried out by the Commission under Section 62 of the Act.

4. Learned counsel for APMuL opposed the request of GUVNL for adjournment and submitted as under:

(a) Seeking additional time to file reply in Petition No. 275/MP/2019 has no relevance with Petition No. 250/MP/2019 filed by GUVNL for recall of the Commission's order dated 12.4.2019 in Petition No. 374/MP/2018 approving the Supplemental Power Purchase Agreements (SPPAs) dated 5.12.2018. Accordingly, the Commission ought not to grant adjournment in Petition No. 250/MP/2019 and ought to reject the said Petition filed by GUVNL.

(b) The Hon'ble Supreme Court in its judgment dated 2.7.2019 in Civil Appeal No. 11133 of 2011 has, *inter-alia*, held that termination notice dated 28.12.2009 issued by APMuL, under PPA dated 2.2.2007, was valid and therefore, APMuL is entitled to adjustment of cost of project and interest on expenditure incurred by it for completion of the Project, expenditure towards running of Project after obtaining coal from open market and interest on delay of payment at the rate determined by the Commission. Further, in terms of the said judgment, the Commission was required to determine the compensatory tariff under Section 62 of the Act read with applicable Tariff Regulations within a period of three months from APMuL's approaching the Commission.

(c) APMuL filed the instant Petition on 2.9.2019 along with requisite documents/information and tariff filing formats necessary for determination of compensation in terms of Hon'ble Supreme Court judgment. Thereafter, also in terms of the directives of the Commission, APMuL has furnished the additional details on 31.10.2019, 7.1.2020 and 5.3.2020. Vide Record of Proceedings dated 12.2.2020, GUVNL was required to file its reply to additional information furnished by APMuL vide affidavit dated 5.3.2020 by 10.3.2020. However, GUVNL did not file its reply. Based on the request of GUVNL, the Commission, vide RoP dated 12.3.2020, granted additional two weeks' time to GUVNL to file its reply. However, GUVNL once again has failed to file its reply and is now seeking additional four weeks' time.

(d) Contention that on account of lockdown and travel restrictions, the additional data furnished by APMuL could not be verified/examined by GUVNL and accordingly briefed to the counsel is misplaced. GUVNL had ample opportunity to analyse the additional documents submitted by APMuL along with affidavit dated 5.3.2020. Adjournment request of GUVNL is nothing but the dilatory tactic and an attempt to delay the implementation of the Hon'ble Supreme Court's judgment, which ought not to be allowed.

(e) It is for the Commission to satisfy itself with the information and documents submitted by APMuL for determination of compensatory tariff. APMuL has filed all the relevant and requisite details in terms of the



applicable Tariff Regulations and as per the Commission's directives. GUVNL cannot make roving inquiries/ undertake investigation relating to the various data/details which are not at all required under applicable Tariff Regulations for determination of compensatory tariff.

(f) GUVNL's request for additional four weeks' time, if considered, should be subject to an interim direction to GUVNL to release some payments towards APMuL's claims.

5. The Commission observed that the Hon'ble Supreme Court vide its judgement dated 2.7.2019 has directed the Commission to determine tariff for 1000 MW capacity of APMuL which was subject matter of the appeal before the Supreme Court as per CERC Tariff Regulations, 2009, within three months of filing of the Petition by APMuL. The Commission further observed that the Petition was filed by APMuL on 7.9.2019 and pleadings have not yet been completed. GUVNL has sought four weeks' time to file its response to the affidavit of APMuL dated 5.3.2020. The Commission emphasised that there is a need for filing of the relevant information in accordance with the applicable Tariff Regulations and completion of the pleadings in a time bound manner, so that the matter of determining the tariff in compliance with the directions of the Hon'ble Supreme Court can be expedited. .

6. Learned senior counsel for GUVNL submitted that he would file reply to the additional documents furnished by APMuL within four weeks. Considering the circumstances prevalent during the last two months and relying on the submissions of the senior counsel, the Commission granted four weeks time to GUVNL to file its response to the affidavit of APMuL dated 5.3.2020. The Commission clarified that the Petitions shall be heard on merit on the next date of hearing and no further adjournment shall be granted in the matters.

7. The Petitions shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Law)**

