

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 275/MP/2019  
along with I.A No. 9/2020**

Subject : Petition pursuant to the directions of the Hon'ble Supreme Court vide its Order dated 2.7.2019 in Civil Appeal No. 111133 of 2011 and applicable provisions of the Electricity Act, 2003 including Sections 62 and 79(1)(b)

Petitioner : Adani Power (Mundra) Limited

Respondent : Gujarat Urja Vikas Nigam Limited

Date of hearing : **21.8.2020**

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

Parties present : Shri Amit Kapur, Advocate, AP(M)L  
Ms. Poonam Verma, Advocate, AP(M)L  
Shri Saunak Rajguru, Advocate, AP(M)L  
Ms. Adishree Chakraborty, Advocate, AP(M)L  
Shri M.R. Krishna Rao, AP(M)L  
Shri Tanmay Vyas, AP(M)L  
Shri Malav Deliwala, AP(M)L  
Shri Kumar Gaurav, AP(M)L  
Shri Sameer Ganju, AP(M)L  
Shri Mehul Rupera, AP(M)L  
Shri M.G. Ramachandran, Senior Advocate, GUVNL  
Ms. Ranjitha Ramachandran, Advocate, GUVNL  
Ms. Anushree Bardhan, Advocate, GUVNL  
Shri Shubham Arya, Advocate, GUVNL  
Ms. Tanya Sareen, Advocate, GUVNL  
Shri S.K. Nair, GUVNL  
Shri K.P Jangid, GUVNL

**Record of Proceedings**

The matter was heard through video conferencing.

2. In continuation with his submissions made during previous hearing dated 20.7.2020, the learned Senior counsel for the Respondent, GUVNL submitted as under:

- (a) There is a clear agreement on the part of the Petitioner to restrict the capacity/ fixed charges as a whole to the quoted tariff of Re. 1 per kWh during the duration of the PPA. Hence, there is no basis for the Petitioner to claim the determination of the capacity charges afresh in terms of the other provisions of the applicable Tariff Regulations;



- (b) The Commission may only consider the additional expenditure arising as a result of the need for the Petitioner to use imported coal/alternate coal in place of GMDC coal and expenses directly related or associated with the same and not any other expenditures related to capital cost or determination of capacity/fixed charges;
- (c) A supplementary PPA was signed between the Petitioner and GUVNL on 18.4.2007 implementing the change of the Power Project from Chhattisgarh to Mundra, Gujarat. The Petitioner had pursued for allocation of coal from GMDC, even after the shifting of the said Power Project from Chhattisgarh, till the termination of the PPA by letter dated 28.12.2009;
- (d) The Petitioner had agreed to supply electricity to GUVNL from Mundra Power Project, even after shifting from Chhattisgarh, by use of the GMDC coal at the quoted tariff. The non-availability of coal from GMDC can only lead to a claim to be considered in terms of Section 62 read with Section 64 of the Electricity Act, 2003 and the Tariff Regulations notified by the Commission, limited to the increase in the landed cost of alternative coal at Mundra station minus the landed cost of GMDC coal;
- (e) The quoted energy charges are based on a competitively bid tariff and hence, the Petitioner was not entitled to claim energy charges over and above Rs.1.3459 per kWh. The compensation should therefore be limited to the difference between the landed cost of GMDC coal at Mundra Station (which should be taken as covered by the quoted energy charges) and the landed cost of alternative coal;
- (f) The landed cost of imported coal is to be based on the cost of transportation of coal from Indonesian mines to Mundra Port and thereafter to Mundra power station, besides the coal cost, which should be restricted to the actual coal cost or the coal cost as per the HBA Index, specifying the benchmark price for export of coal from Indonesia, whichever is lower;
- (g) The Petitioner has not given the requisite details for computation of the compensatory amount in terms of the order dated 2.7.2019 passed by the Hon'ble Supreme Court in regard to the landed cost of imported coal as per the restitutionary principles to be applied;
- (h) The Petitioner is required to give break-up of the imported coal purchased from the related parties, the invoices raised by the Indonesian coal mine company on the sale of coal to the first intermediary company for eventually making available the imported coal to the Petitioner;
- (i) While the coal has been shown to be invoiced to the Petitioner from Adani Enterprises Limited and in turn Adani Enterprises Limited had purchased coal from its other subsidiaries such as Adani Global PTE Limited (Singapore), Adani Global (Mauritius), PT Adani Global (Indonesia), the shipment of the coal has been directly from Indonesia to Mundra Port in India;
- (j) Notwithstanding the fact that the cost has been incurred by the Petitioner to the extent contained in the audited accounts, the Commission has the power and duty to undertake prudence check to ascertain whether the said cost has been incurred



prudently. The fact that the coal cost is a pass through, cannot be a ground for the Commission to allow the same as a pass through, without any prudence check. [SC judgment in WBERC v CESC Ltd (2002 8 SCC 715), Judgment of APTEL in KSEB v KSERC (2009 SCC On Line APTEL 122), KSEB v KSERC (2011 SCC On Line APTEL 7) and APTEL judgment dated 6.10.2009 in Appeal No. 36/2008 (BRPL v DERC & ors) were referred to];

- (k) It is incumbent on the Petitioner to place on record all relevant information and details pertaining to the cost elements and opportunity is to be given to the Procurers and other interested parties to consider such details and documents and furnish their objections/suggestions etc. [Commission's Order dated 19.2.2016 in Petition No. 33/MP/2014 (TPDDL v NTPC Ltd) was referred to].
- (l) In case of fuel and other related costs, the Tariff Regulations provide for the actual cost of the fuel to be considered. The aspect whether such actual cost has been prudently incurred or not is again to be considered at the stage of the truing-up or at such time when it is raised before the Commission by the Procurers;
- (m) The present proceedings is for consideration of the actual cost incurred by the Petitioner, subject to prudence check, with transparent disclosure of all relevant documents by the Petitioner, as per the principles laid down in the various cases. [APTEL judgment in TPCL V MERC (2009 SCC On Line APTEL 122) was referred to];
- (n) The requirement of scrutiny of the cost elements as claimed by the Petitioner is as per mandate provided in Section 61 of the Electricity Act, 2003 for safeguarding consumer interest [SC judgment in All India Power Engineer Federation v Sasan Power Ltd (2017) 1 SCC 487), NTPC V MPEB [(2011) 15 SCC 580] and APTEL judgments in HVPNL v HERC (2013 SCC On Line APTEL 126) were referred to];
- (o) it is not open to a party to oppose the evidence to be brought on record on ground that the same will not be relevant or be inadmissible. The decision on the admissibility or relevance cannot be raised to block the evidence to be placed on record [SC judgment in Bipin Shantilal Panchal v State of Gujarat [(2001) 3 SCC 1], State of Gujarat v Ashulal Nanji Bisnoi [(2001) SCC On Line Guj 204], BSES v DERC & ors were referred to];
- (p) One of the important principles of law to be considered for electricity tariff determination is the aspect of 'related party transactions' and 'lifting of the corporate veil' in the context of the electricity tariff determination [SC judgments in Ramchand Jagdish Chand v UOI (1962) 3 SCR 72, CIT v Glaxo Smithkline Asia (P) Ltd (2010) 15 SCC 150, State of U.P v Renusagar Power Co (1988) 4 SCC 59, CIT v Sri Meenakshi Mills Ltd (1967) 1 SCR 934, LIC v Escorts Ltd (1986) 1 SCC 264, APTEL judgments in BRPL v DERC, Maharashtra State Electricity, Power Trading Corporation Pvt Ltd v Central Electricity Regulatory Commission, 2009 SCC On Line APTEL 69 and Commission's order dated 3.9.2019 in Petition No. 21/MP/2013 & 390/MP/2018 (SPL v MPPMCL) were referred to]. Accordingly, when the Petitioner is seeking payment from GUVNL on the basis of such alleged coal cost, it is essential that all the transaction documents are submitted to ensure that only reasonable costs are allowed.



3. Due to paucity of time, the learned Senior counsel for the Respondent GUVNL could not complete his arguments. Accordingly, the Commission adjourned the matter.

4. Matter is Part-heard. The Petition along with IA shall be listed for hearing in due course, for which separate notice will be issued to the parties.

5. In the context of the information furnished by the Petitioner earlier as per the direction of the Commission, the Commission further directed the Petitioner to submit clarification on the following, on or before 31.8.2020 with copy to the Respondent, who may file its response by 5.9.2020:

*a) The type of condenser cooling system installed i.e. Open Cycle or Closed Cycle Cooling system;*

*b) Justification for the additional capitalization claimed for the 2012-19 tariff period along with the relevant provisions of the applicable Tariff Regulations;*

*c) Details of the LDO and HFO separately in the format in Form-15 along with copy of the bills for the months of January, 2012, March, 2014 and December, 2018;*

By order of the Commission

**Sd/-**

(B. Sreekumar)  
Deputy Chief (Law)

