

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 179/MP/2023

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 10th March, 2025

IN THE MATTER OF:

Petition under Section 11(2) read with Section 79 of the Electricity Act, 2003, along with Regulation 111-113 of the CERC Conduct of Business Regulations, 1999 inter-alia seeking a declaration/direction with regard to the principles/methodology to be adopted for computation of the rate/compensation at which such supply of power to Respondent No.1 to 8 for the period between being 15.03.2023 to 16.06.2023 or such other period as extended by Ministry of Power from time to time, based on principles laid down with respect to Section 11(2) of the Electricity Act, 2003.

AND

IN THE MATTER OF:

Tata Power Company Limited
Through its Authorised Representative
Having its registered office at
Corporate Centre
34, Sant Tukaram Road
Carnac Bunder,
Mumbai-400009, Maharashtra.

...Petitioner

Versus

- 1. Gujarat Urja Vikas Nigam Limited**
Sardar Patel Vidyut Bhavan,
Race Course,
Vadodara- 390 007,
Gujarat
- 2. Punjab State Power Corporation Limited**
PP&R, Shed T-1, Thermal Design,
Patiala – 147 001



3. **Maharashtra State Electricity Distribution Company Limited**,
4th Floor, Prakashgad,
Plot No. G-9, Bandra (East),
Mumbai-400 051, Maharashtra
4. **Ajmer Vidyut Vitaran Nigam Limited**
Hathi Bhata, Old Power House,
Ajmer, Rajasthan.
5. **Jaipur Vidyut Vitaran Nigam Limited**
Vidyut Bhawan, Janpath,
Jaipur, Rajasthan.
6. **Jodhpur Vidyut Vitaran Nigam Limited**,
New Power House, Industrial Area,
Jodhpur, Rajasthan.
7. **Uttar Haryana Bijli Vitran Nigam Limited**,
Vidyut Sadan,
Plot No. C-16, Sector-6,
Panchkula-134112, Haryana.
8. **Dakshin Haryana Bijli Vitran Nigam Limited**,
Vidyut Nagar, Vidyut Sadan,
Hissar, Haryana-125005.
9. **Union of India, Ministry of Power**
Shram Shakti Bhawan,
Rafi Marg,
New Delhi – 110001

...Respondents

Parties present:

Shri Sajan Poovayya, Sr. Advocate, Petitioner
Shri Sanjay Sen, Sr. Advocate, Petitioner
Shri DivyanshKasana, Advocate, Petitioner
Ms Samprati Singh, Advocate, Petitioner
Ms Shubhi Sharma, Advocate, Petitioner
Ms. Kriti Soni, Advocate, Respondent No.1
Ms. Ranjitha Ramachandran, Advocate, Respondent No.1
Ms. Srishti Khindaria, Advocate, Respondent No.1
Shri M. G. Ramachandran, Sr. Advocate, Respondent No. 1, 2,7 & 8
Ms. AnumehaSmiti, Advocate, Respondent No. 2, 7 & 8
Shri Ravi Nair, Advocate, Respondent No.2
Ms. Poorva Saigal, Advocate, Respondent No. 2, 7 & 8
Ms. Shivani Verma, Advocate, Respondent No. 5 & 6
Shri Amal Nair, Advocate, Respondent No. 5 & 6
Ms. Swapna Seshadri, Advocate, Respondent No. 5 & 6
Shri Anand Ganesan, Advocate, Respondent No. 5 & 6



INTERIM ORDER

A. INTRODUCTION

The present Petition has been filed by Tata Power Company Limited (“**Petitioner/TPCL**”) under Section 11(2) read with Section 79 of the Electricity Act, 2003 (hereinafter referred to as “**the Act**”) *inter alia* seeking determination of suitable principles/methodology for the computation of the rate/compensation payable to the Petitioner towards supply of power to Respondent Nos.1 to 8 in terms of the directions dated 20.2.2023 issued by Ministry of Power (“**MoP**”) under Section 11(1) of the Act for the period between 1.3.2023 to 15.6.2023 and for such further period as may be applicable during the currency of the said directions. Pending the final adjudication of the dispute raised in the present petition, the Petitioner has also sought the following interim reliefs:

- a) *“Pending the final adjudication of the present Petition, direct the Respondent No. 1 to 8 to make timely and complete payments at the Interim / Provisional Tariff @ INR 6.25 per unit being the rate calculated as per the methodology adopted by the Hon’ble Commission through its Final Order dated 03.01.2023 in Petition No. 128/MP/2022;*
- b) *Pending the final adjudication of the present Petition, direct Respondent Nos. 7 and 8 to furnish an unconditional, irrevocable and revolving Letter of Credit (as per PPA) amounting to INR 5 Cr and further make payments towards the fixed charges for the availability declared by the Petitioner during the currency of Directions dated 20.02.2023 issued by Respondent No. 9 required to be furnished under the Directions dated 20.02.2023 read with Interim Order dated 13.09.2023 and Final Order dated 03.01.2023 issued by Hon’ble Commission in Petition No. 128/MP/2022;*
- c) *Pass any such further other orders or order as this Hon’ble Commission may deem just and proper in the circumstances of the case.”*

B. FACTUAL MATRIX

1st directions of the Ministry of Power dated 5.5.2022

2. Ministry of Power, Respondent No.9, issued the directions under Section 11(1) of the Act vide its letter dated 5.5.2022 (hereinafter “**2022 Directions**”) requiring the imported coal-based power plants to operate and generate power to their full capacity



and supply to the procurers of power purchase agreement ('PPA holders') in the first instance in view of the energy crisis being faced in the country. Subsequent to the 2022 Directions, the Ministry of Power issued further clarifications to address the implementation issues and remained in force from 6.5.2022 till 31.12.2022.

3. The Petitioner, after supplying power to the PPA holders in terms of the Directions 2022, filed a Petition No. 128/MP/2022 before the Commission under Section 11(2) of the Act seeking relief to mitigate the adverse financial impact of 2022 Directions. The Commission, vide its order dated 3.1.2023 in Petition No.128/MP/2022, determined the methodology to offset the adverse financial impact on the Petitioner on account of the supply of power in compliance with 2022 Directions and issued a slew of other directions dealing with various aspects raised by the Petitioner and Respondents in the said petition.

4. The Petitioner has filed an Appeal before APTEL challenging the order dated 3.1.2023 in Petition No.128/MP/2022 on those issues where reliefs were disallowed by the Commission. The Respondent Procurers have also challenged the order dated 3.1.2023 before APTEL, seeking a stay on the implementation of the said order. APTEL has granted an interim stay on the order dated 3.1.2023 subject to payment of 50% of the due towards the Petitioner in terms of the said order.

2nd directions of the Ministry of Power dated 20.2.2023

5. In view of the forecasted peak demand for electricity and in the likely scenario of a gap in the demand and supply of domestic and essential requirements to maintain coal stock at the generating station, the Ministry of Power issued another direction under Section 11(1) of the Act vide its letter dated 20.2.2023 requiring the imported coal-based power plants to operate and generate power to their full capacity and supply to the PPA holders at the first instance. The directions dated 20.2.2023 under



Section 11(1) of the Act were subsequently amended vide letter dated 31.3.2023 (hereinafter collectively referred to as “**2023 Directions**”).

6. The 2023 Directions recognised that the existing Power Purchase Agreements do not have adequate provisions for pass through of the entire increase in international coal price and accordingly provided that supply of power to the PPA holders shall be made at the rates to be mutually agreed or at the rates to be worked out by a Committee constituted by MoP to meet all the prudent costs of using imported coal. The operation of the 2023 Directions was initially for a period of three months from 16.3.2023 to 15.6.2023, which was extended from time to time, the latest being till 30.4.2025 vide letter No.23/13/2021-R&R (Pt-1) dated 28th February 2025. Directions 2023 containing the terms and conditions of supply of power are extracted as under:-

“2...India has touched its all time highest electricity demand met about 215 GW. It has been forecasted that the peak demand will reach up to 229 GW during April-23. To meet this demand, about 193 GW generation would be required from thermal generating stations. In the likely scenario of a gap in the demand and supply of domestic Coal and essential requirement of maintaining Coal stock at generating stations, the use of imported Coal needs to be increased by way of blending with domestic Coal in Domestic Coal based plants and also by ensuring optimum generation from ICB plants.

...

5. In the light of the above, to ensure availability of electricity to meet the anticipated demand the generation from ICB plants needs to be increased. Accordingly, in larger public interest, for ensuring optimum generation from ICB plants, the following directions are issued under Section 11 of the Electricity Act, 2003:

- (a) All ICB power plants shall operate and generate power to their full capacity. Where the imported coal based plant is under NCL T, the Resolution Professional shall take steps to make it functional.*
- (b) Considering the fact that the present PPAs do not have adequate provision for pass through of the present high cost of imported coal, the rates at which the power shall be supplied to PPA holders shall be worked out by a Committee, constituted by the Ministry of Power (MoP), with representatives from MoP, CEA and NTPC. This Committee shall ensure that the bench mark rates of power so worked out meets all the prudent costs of using imported coal for generating power, including the present coal price, shipping costs and O&M costs etc. and a fair margin.*
- (c) The fixed charge will be as per the Power Purchase Agreements, or as has already been agreed mutually between the generating company and the Procurers.*
- (d) The PPA holder shall have an option to make payment to the generating company according to the bench mark rate worked out by the Committee or at a rate mutually negotiated with the generating company.*



- (e) *These plants will supply power in the first instance to the PPA holders. Any surplus power left thereafter or any power for which there is no PPA will be sold to the Power Exchanges.*
- (f) *Where the plant has PPA with multiple DISCOMs, if one DISCOM does not schedule any quantity of power according to its PPA, that power will be offered to other PPA holder(s) and any remaining quantity thereafter will be sold through the Power Exchanges.*
- (g) *Where any DISCOM / State is not able to enter into mutually negotiated rates with the generating company and is also not willing to procure power at the bench mark rate worked out by the Committee; or is not able to make weekly payment, then such quantity of power shall be sold in the Power Exchanges.*
- (h) *If the PPA holder does not wish to requisition power from ICB plant for the following week/weeks, then it will inform the ICB plant at least three days in advance indicating the period of intended non-requisitioning. The minimum period of requisitioning/ non requisitioning shall be for a minimum of one week. Where a PPA holder does not send a requisition three days in advance for the following week, the ICB plant may generate and sell power to any other Distribution Licensee at the benchmark rate calculated by the Committee plus the fixed charge. In case of sale of power under above arrangement, the PPA holder shall not be liable to pay fixed charges for the duration of sale of power to any other distribution licensee. Once an intimation for not requisitioning power for a specified period as mentioned above, is given, the PPA holder shall not be entitled to get power from the ICB plant for that period.*
- (i) *If power is not scheduled by the procurer, the generator will bid the power in the power exchange, at the tariff to be determined by the Committee or at the mutually agreed tariff with the procurer. However, the bid will be cleared on MCP discovered on the power exchanges. In case the average MCP is less than the tariff determined by the Committee or the mutually agreed tariff with the procurer, then the generator will not be bound to sell power in the power exchange. However, if the average MCP is more than the tariff determined by the Committee or the mutually agreed tariff with the procurer, then the generator will mandatorily sell power in the power exchange.*
- (j) *The net profit, if any, by sale of power which is not sold to the PPA holder and is sold in the Power Exchanges, shall be shared between the generator and PPA holder in the ratio of 50:50, on a monthly basis.*
- (k) *As per the PPA, the Payment Security Mechanism (PSM) shall be maintained. A Letter of Credit (LC) is to be maintained by the procurer for the contracted power to be purchased. In case there is no LC, advance payment shall be made. The LC shall be unconditional. The LC shall be promptly encashed for payment and it should be timely recouped by the procurer for purchase of power from the generator. If there is no LC or advance payment or if the LC has not been recouped after encashment, then the generator will not schedule power to the procurer and will be entitled to sell the power in power exchanges. No formal consent from the procurer will be required for such sale. The net profit, if any, from such sale on power exchanges shall be shared with the procurer(s), on a monthly basis.*
- (l) *Payment by the procurer will be made on a weekly basis. A rebate in accordance with CERC norms or as per the PPA, whichever is higher shall be applicable.*
- (m) *The generator shall maintain coal stock as per the extant norms so that the plant operates at its full capacity.*



- (n) *The Generator shall submit a weekly report to MoP for the generation and sale of power from the ICB plants.*
- (o) *If the plant is made available as per the directions issued under Section 11 of the Act, no penalty can be imposed by the procurer on account of availability under PPA.*
- (p) *The plant will have to operate as per the directions, notwithstanding any prior outstanding dues of the generating company. Such outstanding dues shall be dealt with separately.*
- (q) *The Committee will calculate the benchmark ECR based on the index linked with lowest cost of imported coal.*
- (r) *The Committee will calculate the mining profit based on the index used for calculation of benchmark ECR. The generating company will deduct the mining profit, if the coal consumed by the ICB plants is sourced, from its own mines or owned by the group companies of the ICB plants.*
- (s) *The ECR will be capped to the benchmark ECR calculated by the Committee using the index linked with lowest cost of imported coal minus the mining profit (in case mines is owned by seller or its group companies) or actual ECR based on the price of the imported coal consumed by ICB plants, whichever is lower.*
- (t) *In case of non-compliance of the direction given by Ministry of Power, penalty shall be imposed as per the provisions of the Electricity Act, 2003.*
- (u) *The Bench-Mark rates worked out by the Committee shall be reviewed every 15 days, taking into consideration the change in the price of imported coal; shipping costs etc."*

7. Subsequently, the Ministry of Power, vide its letter dated 31.3.2023, amended the terms of the directions in Clauses 5(q), (r), and (s) as under: -

"(q) The ECR will be calculated as under: (i) the cost of coal based on the index linked with the lower cost of imported coal, (or) (ii) the cost of coal minus the mining profit as per the provision of 5 (r) (or) (iii) Actual ECR based on the price of imported coal provided by the seller. Whichever is lower.

(r) In case the coal is sourced from the country, in which the coal mine owned by the seller or its group company is located, the mining profit will be calculated based on the index used for imported coal from such country and the same will be deducted by the generating company.

(s) The Clause 5 (s) will be deleted."

8. The Petitioner commenced supplying power and declaring availability in terms of 2023 Directions with effect from 16.4.2023. The Ministry of Power, vide its letter dated 31.3.2023, notified the energy charge rate of Rs.4.52/kWh on a fortnightly basis starting from 16.3.2023 in respect of the generating station of the Petitioner. The 2023 Directions were extended by the Ministry of Power from time to time. The Petitioner



continued to comply with the 2023 Directions during an extended period and supplied power accordingly. The latest extension of the 2023 Directions was up to 30.4.2025.

C. SUBMISSIONS OF THE PETITIONER

9. The Petitioner has filed the present Petition seeking a determination of the energy charge rate during the operation of 2023 Directions under Section 11(2) of the Act to offset the adverse financial impact. The Petitioner has placed on record the following supporting calculations: -

- a) Details of the cost of generation and import of coal from Indonesia as Annexure P-12 to the petition.
- b) Computation of energy charge rate as per the methodology prescribed by the Commission in the order dated 3.1.2023 in Petition No.128/MP/2022 at Annexure P-13 to the petition.
- c) The Petitioner has sought an energy charge rate of Rs. 6.25 per unit, being the rate calculated as per the methodology adopted by the Commission through its Order dated 3.1.2023 in Petition No. 128/MP/2022 as interim relief.

10. The Petitioner has made the following submissions with regard to the ECR and other charges:-

Fixed Charges:

- a) For the power supplied under 2023 Directions, no Procurer be allowed to make any unilateral deduction to the fixed charges on the basis of the findings of the Commission in the order dated 3.1.2023. Since the 2023 Directions mandate the generators to generate and supply electricity at full capacity, the Petitioner may be allowed to recover capacity charges for 100% of the availability declared (without any incentive capping) or in the alternative towards incentive



for declaration of power above 85% as per the PPA. As regards the procurers who do not off-take declared available power by the Petitioner, they should be liable to pay the fixed charges.

Computation of ECR:

- b) FoB Cost of Coal: As per 2023 directions, the benchmark ECR shall be calculated based on the lower of (i) index with the lowest cost of coal; (b) cost of coal minus mining profit; (iii) actual cost of coal. The Petitioner has submitted that since it has procured coal on a spot basis from various countries in order to supply consistent and reliable power in terms of the intent of 2023 Directions, it may be allowed to recover the actual cost of coal as was allowed in case of imports from Indonesia and other countries in terms of the order dated 3.1.2023 in Petition No.128/MP/2024.
- c) Transportation Charges and Fuel/Port Handling Charges: In the order dated 3.1.2023 in Petition No.128/MP/2022, the Commission had allowed transportation cost on actual basis only for the coal procured from countries other than Indonesia wherein ocean freight was included in Cost and Freight (CFR)/Delivered at place (DAP) whereas for coal procured from Indonesia on FoB basis, such charges were directed to be capped as per the terms of the PPA. The Petitioner has submitted that capping the transportation and handling charges as per the PPA rates will lead to an under-recovery of the actual cost incurred for operating its plant during the currency of 2023 Directions. The Petitioner has, however, submitted that in the interim, transportation charges and fuel handling charges be allowed as per the order dated 3.1.2023 in Petition No.128/MP/2022.
- d) Other Charges: The Commission has disallowed the other charges in its order dated 3.1.2023 in Petition No.128/MP/2022 on the basis that the same has not



been quoted in the PPA. The said decision has been challenged by the Petitioner in its appeal before APTEL. The Petitioner has submitted that for supply in terms of and during the currency of the Directions, the Petitioner is entitled to be compensated based on the actual costs incurred by it.

- e) Operational Parameters: In the order dated 3.1.2023 in Petition No.128/MP/2022, the Commission capped the operational parameters to the normative parameters prescribed in the Tariff Regulations, 2009. The said decision has been challenged by the Petitioner in its appeal before APTEL. The Petitioner needs to be compensated based on actual operational parameters during the operation of 2023 Directions. The Petitioner has, however, submitted that in the interim, the Commission might allow operational parameters as per the principle adopted in the order dated 3.1.2023 in Petition No.128/MP/2022.
- f) Mining Profit: For the purpose of compensation for the adverse impact of 2023 Directions, there can be no question of deduction of mining profit as the same would violate the principle espoused by APTEL in GMR judgement.
- g) Rebate: Since payment is made on a weekly basis, 1/4th rebate under the PPA should be applied.
- h) The energy charge rate as determined by the Committee is to the tune of Rs 4.65/kWh being the average for the period 16.4.2023 to 30.4.2023, whereas the actual cost of generation and supply of power for the Petitioner is to the tune of INR 6.83/kWh for the same period.
- i) The petitioner submitted that since the Ministry of Power's rate is not adequate and does not consider the principles espoused in the order dated 3.1.2023 in Petition No.128/MP/2022, the Petitioner is being put in an adverse financial position and advanced for the interim tariff in consonance with the principle espoused in the order dated 3.1.2023 in Petition No.128/MP/2022.



Payment Security Mechanism

- h) The Petitioner submitted that the 2023 Directions require the Procurers to maintain adequate Payment Security Mechanism in terms of the Letter of Credit as per the PPA, which provides for unconditional, irrevocable, and revolving LC. The Commission, in its order dated 19.9.2022, which was further affirmed in an order dated 3.1.2023 in Petition No.128/MP/2022, decided that the Letter of Credit amount should be commensurate with the fixed charge and energy charge calculated as per Section 11 Directions.
- i) In the light of the *pari materia* terms being reiterated in 2023 Directions, the Petitioner issued a communication to all Procurers requesting them for maintenance of Letter of Credit for the supply of power during the currency of 2023 Directions. However, HPPC, on behalf of Respondent Nos. 7 & 8 did not respond to the Petitioner's letter dated 3.3.2023 on the ground that it would not requisite power under any terms other than the terms of the PPA.
- j) Pending final adjudication of the present petition, the Petitioner has prayed for directions to Respondent Nos.7 and 8 to furnish unconditional, irrevocable, and revolving LC amounting to Rs.5 crore.

Shortfall in Energy Charge Rate

- k) The Petitioner has submitted that though the 2023 Directions recognize the inadequacy of the PPAs to provide a complete pass through of prudent costs of coal procurement and aims to provide an ECR that covers all the prudent costs of using imported coal for generating power, including the present coal price, shipping costs, O&M costs etc. and a fair margin, the ECR notified by the Committee constituted by MoP falls grossly short of covering the actual cost of generation of power incurred by Petitioner.



- l) The Petitioner, vide its affidavit dated 25.8.2023, has submitted the ECR based on the actual cost of coal consumed, ECR determined in accordance with the principle decided in Commission's order dated 3.1.2023 in Petition No.128/MP/2022 and the benchmark ECR determined by the Committee for the months of April, May, June and July 2023. The Petitioner has computed the energy charge rate for the supply of power during the 2023 Directions @ Rs.6.25/kWh in terms of the order of the Commission dated 3.1.2023 in Petition No.128/MP/2022.
- m) The Petitioner, in its affidavit dated 4.3.2024, has submitted that the accumulated shortfall as on 31.1.2024 on account of complying with the 2023 Directions is INR 1229 Crore, which has exacerbated the severe cash flow issues being faced by Petitioner in running the Project.
- n) The Petitioner has submitted a tabular comparison of the MoP notified ECR, actual cost-based ECR, and ECR calculated in line with the methodology allowed by the Commission in the order dated 3.1.2023 in Petition No.128/MP/2022 along with the total shortfall in recovery of the cost of generation incurred by Petitioner for the period 16th Apr 2023 to 31st Jan 2024 as set out below:

Sales (SG)	MoP notified ECR (as per 20.02.2023 guidelines)	CERC ECR (as per CERC Order 128MP2022 3.1.2023)	Actual Cost Based ECR	MoP notified ECR (as per 20.02.2023 guidelines)	CERC ECR (as per CERC Order 128MP2022 3.1.2023)	Actual Cost Based ECR	Short - recovery of Revenue MoP vs. CERC ECR		Short - recovery of Revenue MoP vs. Actual Cost ECR	
							₹ /kWH	₹ Crore	₹ /kWH	₹ Crore
MUs		₹ /kWH			₹ Crore		₹ /kWH	₹ Crore	₹ /kWH	₹ Crore
(a)	(b)	(c)	(d)	(e) = (a * b)/10	(f) = (a * c)/10	(g) = (a * d)/10	(h) = (b - c)	(i) = (h * a)/10	(j) = (b - d)	(k) = (j * a)/10
15371	4.00	4.57	4.80	6149	7023	7378	-0.57	-874	-0.80	-1229



- o) The Petitioner has submitted that the grant of interim relief sought by the Petitioner is imperative to keep the Petitioner's Project running.

Representation of the Petitioner before the Ministry of Power

11. The Commission, vide RoP dated 15.12.2023, observed that "...keeping in view that the Committee constituted by the Ministry of Power, under Section 11 Directions, undertakes the determination of the benchmark rates on a fortnightly basis, the Petitioner ought to first take up the aspect of under-recovery of the cost of actual generation vis-à-vis the benchmark rates with such Committee and accordingly, the Petitioner was asked to approach the aforesaid Committee along with its representation and to file on affidavit, the outcome thereof, if any, within a week. In the said affidavit, the Petitioner may also indicate similar efforts undertaken by it, if any, in the past and the outcome thereof."

12. The Petitioner, in its affidavit dated 4.3.2024, has submitted that it took up the matter with the MoP vide its letter dated the letter dated 27.12.2023 and apprised about the liquidity and cash flow constraints impacting the Petitioner's ability to source coal and ability of the Petitioner to supply power under 2023 Directions. The Petitioner, in the said letter, also requested MoP that (i) the notified ECR be revised retrospectively to enable the Petitioner to recover the shortfall in actual cost generation accumulating since 16.4.2023 and (ii) the MoP notified ECR going forward should be reflective of the actual cost being incurred by the Petitioner for procurement of coal.

13. The issues raised by the Petitioner were discussed in the 'Meeting of the Committee constituted by Ministry of Power for finalising benchmark ECR of Imported Coal Based (ICB) plants held under the Chairperson, Central Electricity Authority on 26.12.2023 with ICB plants". The Committee, after taking into consideration the issues raised by various ICB plants, including the Petitioner, recommended a revised



methodology for the computation of benchmark ECR for ICB plants but clarified that the said methodology would be made applicable for the computation of benchmark ECR for ICB plants for the control period starting from 9.11.2023.

Submission of details of energy charge rate

14. The Commission, during the course of the hearing, has sought the details of coal price and energy charge rate calculation. The Petitioner has submitted the details as under:-

- a) Vide RoP dated 12.2.2024, the Commission directed the Petitioner to submit
- (a) month-wise, from 1.1.2023 to 31.12.2023, the quantity of coal, GCV, charges paid to the coal company, charges incurred for transportation through sea, inland transportation charges in the specified format: (b) Component-wise break-up of ECR (i.e., fuel cost, transportation for importing, inland transportation, mining profit etc.) for ECR notified by the Committee (if available), ECR notified as per Commission's order dated 3.1.2023, and actual ECR for the months of April 2023, May 2023, November 2023 and December 2023, among other information. The Petitioner has submitted the information in respect of (a) above at Annexure 5 to the Affidavit dated 4.3.2024. The Petitioner has also submitted the detailed ECR calculation on an actual cost basis for the months of April 2023, May 2023, November 2023, and December 2023 as under:

Detailed ECR Calculation on Actual Cost Basis

Sr No	Particulars	UOM	Formula	Apr-23	May-23	Nov-23	Dec-23
1	Allowed FOB Value	\$ /MT	a	125.80	122.41	91.80	94.41
2	Allowed Freight & Insurance Value	\$ /MT	b	18.71	14.67	8.03	9.32
3	Consumption Month CIF Value	\$ /MT	c = (a+b)	144.51	137.08	99.83	103.72
4	Allowed Total Other Charges	\$ /MT	d	2.22	1.60	0.21	0.22



Sr No	Particulars	UOM	Formula	Apr-23	May-23	Nov-23	Dec-23
5	Actual Forex Rate	₹/\$	e = Actual Forex rate	82.05	82.02	83.23	83.29
6	Consumption Month CIF Value	₹ /MT	f = ((c+d)*d)	12040	11375	8326	8657
7	Allowed Handling Charges	₹ /MT	g	1118	995	586	557
8	Taxes & duties at Actual	₹ /MT	h	1084	1115	927	926
9	Landed Cost for Coal Consumption	₹/MT	i = (f+g+h)	14242	13485	9839	10140
10	Heat Rate - Actual	kCal/kWh	j	2149	2131	2148	2158
11	APC - Actual	%	k	8.38%	7.88%	7.88%	7.92%
12	Actual Consumption GCV	kcal/kg	l	4891	5171	5219	5222
13	Net Specific Fuel Consumption (SFC)	kg/kWh	m = (j/(1-k)/i)	0.48	0.45	0.45	0.45
14	Energy Charges (ECR)	₹/kWh	n = (i*m/1000)	6.83	6.03	4.40	4.55
15	Mining Profit Sharing (MPS)	₹/kWh	o	-	-	-	-
	Net Energy Charges (ECR)	₹/kWh	p = (n-o)	6.83	6.03	4.40	4.55

b) The Petitioner has submitted that the details/component-wise break-up of ECR notified by the Committee constituted by MoP are not available to the Petitioner. However, the Petitioner has submitted the following information showing the comparison between the actual ECR, ECR notified by the Committee, and ECR calculated as per the order dated 3.1.2023 in Petition No.128/MP/2022 for the months of April, May, November, and December 2023 as under:

Comparison Between MoP, CERC & Actual ECR

Month	CERC ECR (As per order dated 3.1.2023)	Actual ECR	MoP ECR*
	(₹/Kwh)	(₹/Kwh)	(₹/Kwh)
Apr-23	6.25	6.83	4.64
May-23	5.61	6.03	4.64
Nov-23	4.23	4.40	3.97
Dec-23	4.37	4.55	3.97

*Net MOP ECR Rates are Weighted average



c) The Commission, vide RoP dated 15.3.2024, directed the Petitioner to clarify whether the differences between the rates fixed by MoP and rates claimed by the Petitioner are on account of coal or on account of other parameters such as freight, insurance, loading charges, etc. The Petitioner was to submit the month-wise details containing the difference in the coal prices based on the MoP rates and the rates claimed by the Petitioner after ignoring the other parameters. The Petitioner, vide its affidavit dated 18.4.2024, has submitted the information. The Petitioner has submitted that since the details or component-wise break-up of the ECR notified by the Committee constituted by MoP under 2023 Directions are not available with the Petitioner, the computation of MoP notified ECR provided at Annexure A-1, its affidavit dated 18.4.2024 is based on assumptions in relation to various components and the Petitioner has endeavoured to do a reverse calculation to arrive at the derived values for various components comprising the MoP ECR. The Petitioner has explained the reasons for the difference between the ECR based on actuals and the MoP notified as under:

Particulars	UOM	Actual Cost Based ECR (₹/kWh)	MoP ECR (Estimated based on MoP direction)	Variance	Reason for variation of consideration
FOB Value	\$ /MT	93	80	-14	<p>a) Coal GCV presently being considered by MOP was ICI3 5000, whereas CGPL utilises 5350 (combination), and to generate at full load, we require a GCV blend of 5350.</p> <p>b) Timing for Coal Sourcing and Consumption Mundra plant, plans coal sourcing in 45-60 days advance. The same is consumed over two-three months as per the coal blending plan.</p> <p>The FOB price of coal as per actual to be considered so that the ECR gap is reduced.</p> <p>Ⓒ) Coal FOB Cost – Actual FOB for</p>



Particulars	UOM	Actual Cost Based ECR (₹/kWh)	MoP ECR (Estimated based on MoP direction)	Variance	Reason for variation of consideration
					the month may be considered instead 4 weeks prior to the consumption month. We procure coal around 45-60 days in advance. d) Coal quality loss – Load port to discharge – Approx 72 (as per ISO/Actual). Impact in ECR is ₹0.40/kWh, and YTD impact is ₹745Cr e) FOB prices are considering some of the shipments have been procured on a CFR basis.
Freight & Insurance Value	\$/MT	13	8	-4	Freight being considered by MOP was based on indexed price, whereas CGPL operates on long-term contracts linked to PPA. Also, Ship nomination planning requires 45-60 days in advance. Whereas MOP considers spot freight. Impact in ECR is ₹0.10/kWh, and the YTD impact is ₹196Cr
Total Other Charges	\$/MT	0.45	0.00	-0.4	LC opening and Inventory carrying costs incurred while we need to carry stock for more than one month due to the blending process for the reliability of the plant. Impact in ECR is ₹0.02/kWh, and YTD impact is of ₹29Cr
Consumption Month CIF Value	\$/MT	106	91	-15	
Forex Rate	₹/\$	83	82	-0.39	It should be the SBI TT Buying rate of the last 15 days against RBI declared forex indices. Impact in ECR is ₹0.01/kWh, and YTD impact is of ₹16Cr
Consumption Month CIF Value	₹/MT	8806	7527	-1279	
Handling Charges	₹/MT	674	473	-201	It should be introduced on an actual against ad hoc basis. Mundra Port's higher handling cost as per Mundra port charges needs to be accommodated. Impact in ECR is ₹0.08/kWh, and YTD impact is ₹141Cr
Taxes & duties	₹/MT	955	763	-192	Actual Taxes and Duties are to be considered instead of normative based on normative GCV as we are using GCV in the range of 5350 kcal/kg. Impact in ECR is ₹0.07/kWh, and YTD impact is



Particulars	UOM	Actual Cost Based ECR (₹/kWh)	MoP ECR (Estimated based on MoP direction)	Variance	Reason for variation of consideration
					₹133Cr
Landed Cost for Coal Consumption	₹/MT	10435	8762	-1673	
Heat Rate	Kcal/Kwh	2141	2121	-20	
APC	%	7.940%	8.5%	0.01	
GCV (ARB Basis)	Kcal/kg	5135	5000	-135	
Net Specific Fuel Consumption (SFC)	kg/kWh	0.4533	0.4636	0.0103	
Energy Charges (ECR)	₹/kWh	4.72	4.04	0.67	
Mining Profit Sharing	₹/kWh	0.00	-0.021	0.0210	No mining profit sharing is applicable when the actual cost is being compensated under Section 11.
Net Energy Charges (NECR)	₹/kWh	4.72	4.02	0.69	The total financial impact from Apr'23 to Mar'24 is Rs. 0.69 / kwh, equivalent to ~ ₹ 1300 Cr.
Note: MOP ECR is computed based on backward calculation considering the MOP notified rate during YTD Mar'24					

- d) The Petitioner, vide its affidavit dated 18.4.2024, has computed the impact of the component-wise break-up of the ECR as under: -

Sr.No.	Particulars of Impact in Rs/kWh	UOM	Impact in Rs/kWh	(in Cr)
1	Coal FOB	Rs/kWh	0.40	745
2	Freight and Insurance	Rs/kWh	0.10	196
3	Coal Handling Charges	Rs/kWh	0.08	141
4	Taxes and Duties	Rs/kWh	0.07	133
5	Other Charges	Rs/kWh	0.02	29
6	Forex Rate	Rs/kWh	0.01	16
7	Mining Profit Sharing (MPS)	Rs/kWh	0.021	40
8	Total Impact	Rs/kWh	0.69	1300

Additional submissions by the Petitioner

15. The Commission vide RoP dated 27.09.2024 directed the parties to submit the summary of data furnished in compliance with the Record of Proceeding dated



12.2.2024 and the component-wise breakup of energy charge rate calculation to date. In response, the Petitioner submitted a summary of the Actual energy charge rate incurred by the Petitioner, its comparison with the MoP notified ECR and month-wise coal shipment details. The Petitioner further submitted the updated amount of under-recovery as INR 1662 Crore for the period 16th Apr 2023 to 30th August 2024 as per the energy charge rate worked out in line with the methodology allowed by the Commission in the order dated 3.1.2023 in Petition No.128/MP/2022 and actual energy charge rate as /set out below:-

Sales (SG)	MoP notified ECR (as per 20.02.2023 guidelines)	Actual Cost Based ECR	MoP notified ECR (as per 20.02.2023 guidelines)	Actual Cost-Based ECR	Short - recovery of Revenue MoP vs. Actual Cost ECR	
					₹ /kWH	₹ Crore
MUs	₹ /kWH		₹ Crore		₹ /kWH	₹ Crore
(a)	(b)	(c)	(d) = (a * b)/10	(e) = (a*c)/10	(f) = (d-e)	(g) = (f * a)/10
28243	3.98	4.57	11233	12895	-0.59	-1662

16. The Petitioner, in response to the submission of the GUVNL dated 25.10.2024, pointed out the mistake in the computation of GUVNL in relation to various parameters. GUVNL has taken the IC3I Index for 5000 GCV of the month itself (73.54\$/MT), whereas the MoP rate is considering prior to 4 weeks of the month stated and then the average of the previous 4 weeks (89.62 \$/MT) to reach the monthly ICI 3 price till October 2023. The GUVNL has considered PPA freight, whereas MoP has considered ocean freight as per the Clarkson index. MoP may have considered Handling charges on an ad hoc basis of ₹473/MT, whereas GUVNL has considered 12.24% of Tax in PPA handling charges (₹460/MT for Jul'23), which also is incorrect as consideration should be on 18% of Tax. GUVNL has considered SHR and APC% as 2050 kcal/kwh and 4.75%, respectively, which is erroneous, whereas MoP has considered SHR & APC% as 2121 kcal/kwh and 8.50%, respectively, as Normative values for operational parameters as per stated above values of MoP. As regards mining profit, the petitioner



has submitted that in the CERC Final Order, KPC consumption is to be considered, and the Petitioner has not consumed any KPC shipment in that Month. The petitioner has set out the corrected submission of GUVNL based on revised data as under:-

Comparison Table of GUVNL computation Vs MoP assumed computation (Without any CIL consideration)	Particulars	UOM	MoP July- 23	GUVNL Old (Jul-23) as supplied	GUVNL corrected computation with actual GCV (with Normative operating parameters & MoP) FOB
	Assumed FOB Value*	\$ /MT	89.62	73.54	90.48
Assumed Freight & Insurance Value	\$ /MT	10.00	16.28	15.51	
Total Other Charges	\$ /MT	0.00	0.00	0.00	
Consumption Month CIF Value	\$ /MT	99.62	89.82	105.99	
Forex Rate – Actual	₹/\$	82	81.3	82.0	
Consumption Month CIF Value	₹ /MT	8,169	7,302	8,691	
Assumed Handling Charges	₹ /MT	473.00	460.00	473.00	
Taxes & duties at actual	₹ /MT	808	765	835	
Landed Cost for Coal Consumption	₹/MT	9,450	8,527	9,999	
Heat Rate – Allowed	kCal/kWh	2121	2050	2121	
APC – Allowed	%	8.50%	4.75%	8.50%	
Actual GCV		5000.00	5048.00	5048.00	
Net Specific Fuel Consumption (SFC)	kg/kWh	0.4636	0.4264	0.4592	
ECR		4.38	3.64	4.59	
Mining Profit Sharing	₹/kWh	0.0000	0.0000	0.0000	
Net Energy Charges (ECR)	₹/kWh	4.38	3.64	4.59	

The petitioner, based on the above computation, submitted that the FOB computation, Freight, Handling charges, and Taxes & duties as reasoned above, if considered in GUVNL computation, the ECR of GUVNL ought to be ₹4.59/kwh instead of ₹3.64/kwh

17. The Petitioner has submitted that pending adjudication of the captioned petition, the Commission be pleased to direct the Respondent Nos.1 to 8 to make payment as per the ECR determined in terms of the methodology approved in the order dated 3.1.2023 in Petition No.128/MP/2022.



D. REPLY OF THE RESPONDENTS

(I) Respondent No.1, Gujarat Urja Vikas Nigam Ltd (GUVNL)

18. GUVNL has submitted that the Interim Prayer sought by TPCL by way of an increase in the provisional tariff amount fixed by the Committee appointed by the Central Government is misconceived and is liable to be rejected in limine for the reason that the relief sought is contrary to the scheme provided in Section 11 of the Act according to which there can only be final determination of adverse financial impact under Section 11(2) of the Act. Further, the benchmark rates fixed by the MoP, which is interim in nature, cannot be revised or varied in the absence of any extraordinary or exceptional proven circumstances. GUVNL has further submitted that there is no cause of action in law to consider the interim prayer as sought by TPCL when it has not placed the relevant actual coal cost, freight, insurance, handling charges, taxes, duties, etc., which are material facts to claim any order in tariff. In this connection, GUVNL has relied on the following judgements relating to the grant of interim relief:

- (a) Makers Development Services (P) Ltd. -v- M. Visvesvaraya Industrial Research & Development Centre, [(2012) 1 SCC 735]
- (b) T. Arivandandam -v- T.V. Satyapal, [(1997) 4 SCC 467];
- (c) Agriculture Produce Market Committee -v- Girdharbhai Ramjibhai Chhaniyara, [(1997) 5 SCC 468];
- (d) Arshad Zaheer -v- Municipal Corpn. of Greater Mumbai, [(2006) 5 SCC 282];
- (e) Abdul Karim and Ors. -v- State and Ors., [AIR 2006 J&K 97];
- (f) The Kerala High Court in Vellakutry -v- Karthyayani, [AIR 1968 Ker 179]
- (g) Gujarat Bottling Co. Ltd. -v- Coca Cola Co., [(1995) 5 SCC 545].



19. GUVNL has argued that TPCL has solely based its prayer for interim relief on order dated 03.01.2023 passed by the Commission in Petition No 128/MP/2022, which is erroneous since the methodology adopted in the said order proceeded on the basis that as per the Indonesian Regulations, the export of coal below the HBA derived prices, i.e., from 6322 kcal/kg is prohibited whereas the benchmark prices under the Indonesian Regulations are only for computation of royalties and taxes and the export price of coal is otherwise not subjected to benchmark prices under Indonesian Regulations. In support of its contention, GUVNL has submitted that TPCL has admittedly procured coal from Indonesia below HBA Price. (Para 6(a) of additional affidavit of the Petitioner dated 25.8.2023).

20. GUVNL has placed on record the following details and documents to establish the prudent cost to be allowed to the Petitioner under Section 11(2) of the Act to meet the Adverse Financial Impact:

- (a) Consolidated statement of energy charges worked out by GUVNL for the period from April 2023 to March 2024;
- (b) Detailed calculations for the computation of energy charges worked out by GUVNL for April, May, November, and December 2023;
- (c) Consolidated Statement of Premium Claimed by Tata Power;
- (d) Consolidated statement of shipment-wise details;
- (e) Consolidated statement of energy charges worked out by GUVNL for the period from April 2023 to February 2024;
- (f) Shipment-wise details of generation and procurement;
- (g) Coal Stock and coal consumption details;
- (h) Comparison of 5000 GCV prices published by Argus/Coallndo, S&P Global Platts in comparison with the HBA Price.



Based on the above, GUVNL has submitted that the ECR calculated by GUVNL would be nowhere near the exorbitant per kWh price claimed by the Petitioner and, in fact, would be less than the provisional tariff fixed by the Committee. GUVNL has also made a counter-claim of Rs.112.82 crores from the Petitioner on account of the alleged breach of 2023 Directions for not supplying the power from 16.03.2023 to 18.04.2023.

21. GUVNL has submitted that while determining the adverse financial impact of Section 11 Directions, the Commission needs to factor in the following:

- (a) The parameters on SHR, Auxiliary Consumption, Specific Oil consumption, etc., on an actual basis as per Tata Power Disclosure itself is favourable as compared to normative and has resulted in substantial savings;
- (b) The mining profits need to be adjusted to the full effect;
- (c) The components of freight, insurance, and handling charges have not been affected by the Indonesian Regulations, nor has anything been otherwise placed by TPCL to show that they have increased significantly to what was factored in by Tata Power itself while submitting the bid and the same has been set out in Schedule VII to the PPA;
- (d) There has been a material breach on the part of TPCL in following the direction issue under section 11 in the public interest to maximise generation and compensation, therefore, is payable by TPTCL;
- (e) There are other counter-claims of GUVNL of a monetary nature, which are required to be set off against the amount determined as Adverse Financial Impact.

Additional submissions by the Respondent No.1 GUVNL

22. Respondent No.1 made their additional submission vide affidavit dated 5.10.2024 in pursuance to the hearing dated 27.09.2024. Respondent No.1, in its submission,



has referred to its earlier submission, which is not repeated herein. The GUVNL further submitted that—

- a) the claims made by Tata Power under the interim orders sought are far in excess of the admissible computation under the applicable parameters under Section 11 directions notified by the Central Government on 20.02.2023.
- b) The FOB price of coal needs to be computed with reference to indices of Argus, which reflects the market price of coal in Indonesia. Tata Power cannot also claim any such thing as Argus plus premium and thereby arbitrarily inflate its claim substantially as to the FOB price of coal admissible. There is no basis for claiming any premium. The provisional tariff allowed by the Committee is on Argus and the same has been considered by GUVNL.
- c) Tata Power cannot claim any amount towards Ocean freight, insurance, or other charges, Station Heat Rate arbitrarily, and the same need to be based on accepted parameters and any savings on an actual basis qua the applicable parameters to be considered in favour of the Procurers. There Respondent No. 1 also made their submission with regard to other elements.

23. Respondent No.1 further submitted from April 2023 to March 2024 they paid an additional Rs. 215 crores to Tata Power by way of provisional tariff under the Committee determination and entitled for adjustment in addition to claims related to non-supply of power by Tata Power. Respondent No.1 submitted the component-wise explanatory note in its affidavit dated 5.10.2024. Respondent No.1 made further submission vide affidavit dated 14.11.2024 in pursuance to the hearing dated in pursuance to the hearing dated 28.10.2024, reserving the decision on the Interim



Orders sought by the Petitioner. Respondent No.1 submitted that the relief sought is liable to be rejected with exemplary cost on many counts as set out under different propositions below: -

- a. Section 11 of the Electricity Act, 2003 contemplates only final determination by the Hon'ble Commission and not grant any interim orders over and above the methodology specified by the Central Government for devising the provisional tariff
- b. There is a flaw in the basis of the claim made by the petitioner as it is evident from the annual report that the Petitioner was in a position to import coal at \$83.7/tonne from its own mine.. However, coal is procured from other expensive sources and claimed a much higher price of coal from the Procurers in the present proceedings.
- c. It is clear and accepted by the Central Government and this Hon'ble Commission that the Benchmarked prices under the Indonesian Regulations export of coal from Indonesia governed by Indonesian Regulations is only for computation of Royalties and taxes. The export price of coal is otherwise not subjected to benchmark prices under Indonesian Regulations and is to be considered as per the indices such as Argus, etc.
- d. Respondent No.1 relied on the clarification dated 31.03.2023 by the Ministry of Power wherein it was mentioned that *the cost of coal based on the index linked with the lower cost of imported coal*. Such basis cannot be modified/alterd or changed by the Hon'ble Commission while deciding the adverse financial impact under Section 11(2) as a part of the final order. The petitioner submits that this basis cannot be modified/alterd or changed by the Hon'ble Commission while deciding the adverse financial impact under Section 11(2) as a part of the final order and has no power to vary the same, even for the purposes of interim orders.



The Respondent No.1, in favour of the consideration of the Argus index, strongly argued on the Order dated 23.12.2013 passed by this Commission in Suo-Moto Petition No. 308/SM/2013 in the matter of 'Development of Modified Composite Index for Imported Coal for Payment Purposes',

- e. The admissible adverse financial impact can in no event be more than the relevant market indices, such as Argus. In fact, Tata Power is required to give in a transparent manner the FOB price of coal at which PT Kaltim Prima Coal was required to export coal to Tata Power subject to the maximum of the market indices published by Argus etc. Tata Power is, therefore, not entitled to proceed on the basis of HBA derived prices as per the order dated 03.01.2023 and then compare the spot market purchases to claim the price of coal. Similarly, the Insurance and Shipping charges, as well as the unloading charges, cannot be more than the normative indexation prices. The claim made by Tata Power based on the order dated 03.01.2023 and the claim as per the Argus and/or PPA is submitted up to August 2024 by Respondent No.1 in the statement of Comparison claim by TPCL vis-à-vis admissible as per ARGUS and/or PPA.
- f. There is, therefore, no cause of action in law to consider the interim prayer as sought by Tata Power when Tata Power has not placed the relevant actual coal cost, freight, insurance, handling charges, taxes duties, etc., which are material facts which need to be placed to claim any order in tariff. The Tata Power has not placed the cause of action for making any interim relief and as per the Respondent No. 1, the Tata power has not submitted documents such as Invoice raised by the coal mining company, the authentication by the port authorities in the country of export, bill of lading at load port, Bill of Entry certified by the Indian Custom Authority (entire document), name of the supplier of coal, Certificates in regard to quality, quantity, nature, specification of the coal covered under the bill



of lading (by certifier registered with Indonesian Government), Invoices raised on Tata Power for freight and insurance, as well as the handling charges, Coal running account providing the opening stock and closing stock at every 15 days interval, along with independent Auditors certificate, Availability of coal from PT Kaltim Prima Coal and price of such coal, Auditors' Certificate for actual applicable tax & Royalty to PT Kaltim Prima Coal (KPC) Mine to determination of effective tax rate for computation of Mining Profit.

- g. GUVNL has placed sufficient material to show that (a) the determination by the Committee itself is more than what Tata Power is entitled to and (b) the claim of Tata Power is far in excess of the determination by the Committee and is unsubstantiated.
- h. Tata Power ought to have procured coal from PT Kaltim Prima Coal, etc., and in the event of procurement from other sources/countries, the amount payable should be restricted to the actual FOB price of PT Kaltim Prima Coal, subject to the maximum of Argus Indices price
- i. Audited Accounts of Tata Power itself indicate no irreparable loss/equity for grant of any interim order
- j. Respondent No.1 has raised the objection on conduct that Tata Power does not wish to give the details of the actual cost with supporting documents and wants an increase in the provisional tariff based on unsubstantiated data without actual facts and documents placed on record in a transparent manner.

24. Respondent No.1 submitted the calculation of July 2023 to demonstrate the alleged over-recovery of the energy charge rate, which was corrected by Tata Power. However, Respondent No.1 again rebutted the submission of the Petitioner and set forth the revised calculation to justify their stand as under:-



Particulars	Unit	Written Submission of TPCL dated 16.05.2024			GUVNL's Submission in its Pleadings				
		MoP July-23	GUVNL OLD (Jul-23 as supplied)	GUVNL corrected computation with actual GCV (with normative operating parameters & MOP FOB)	Affidavit dated 04.10.2023 (Page No. 2034)	Affidavit dated 13.03.2024 (Page No. 4844)	Affidavit dated 04.05.2024 (Page No. 5008)	Affidavit dated 04.05.2024 (Page no. NA)	Written Submissions dated 14.05.2024 (Pg. 66)
FOB cost	USD/MT	89.62	73.54	90.48	73.54	73.54	73.54	Since TPCL has submitted the coal consumption details for April-23, May-23, November-23 & December-23, GUVNL has not worked out ECR based on B/L month of coal consumed vessels for July -23	84.38
Freight & Insurance charge	USD/MT	10.00	16.28	15.51	16.28	16.28	15.6		15.6
Other charge	USD/MT	0.00	0.00	0.00	0.00	0.00	0.00		0.00
CF (USD/MT)	USD/MT	99.62	89.82	105.99	89.82	89.82	89.14		99.97
Forex rate	INR/USD	₹ 82.00	₹ 81.30	₹ 82.00	₹ 81.30	₹ 81.65	₹ 81.65		₹ 81.65
CIF (INR/MT)	INR/MT	₹ 8,169	₹ 7,302	₹ 8,691	₹ 7,303	₹ 7,334	₹ 7,287		₹ 8,163
Handling charges	INR/MT	₹ 473	₹ 460	₹ 473	₹ 460	₹ 460	₹ 460		₹ 460
Applicable tax & duties	INR/MT	₹ 808	₹ 765	₹ 835	₹ 765	₹ 767	₹ 767		₹ 808
Landed cost of coal	INR/MT	₹ 9,450	₹ 8,527	₹ 9,999	₹ 8,528	₹ 7,561	₹ 8,505		₹ 9,431
Heat rate	kcal/kWh	2121	2050	2121	2050	2050	2050		2050
APC	%	8.50%	4.75%	8.50%	4.75%	4.75%	4.75%		4.75%
Actual GCV	kcal/kg	5000	5048	5048	5048	5048	5048		5048
Net Specific Fuel consumption (SFC)	kg/kWh	0.4636	0.4264	0.4592	0.4264	0.4264	0.4264		0.4264
ECR	INR/kWh	₹ 4.38	₹ 3.64	₹ 4.59	₹ 3.64	₹ 3.65	₹ 3.63		₹ 4.02
Mining Profit sharing	INR/kWh	₹ 0.00	₹ 0.00	₹ 0.00	₹ 0.00	₹ 0.00	₹ 0.00		₹ 0.00
Net Energy charges (ECR)	INR/kWh	₹ 4.38	₹ 3.64	₹ 4.59	₹ 3.64	₹ 3.65	₹ 3.63		₹ 4.02
					Note: Ocean freight was revised from 16.28 to 15.60 due to the impact of BCD given in the PPA tariff				



(II) Respondent No.2, Punjab State Power Corporation Limited (PSPCL)

25. PSPCL has submitted that the Petitioner has not made out a case for a grant of interim relief and has advanced similar reasons and judicial authorities in support of its contention as that of GUVNL, which are not repeated for the sake of brevity. PSPCL has further submitted that there are specific directions in the 2023 Directions in regard to the indices to be considered and mining profits to be adjusted, which need to be factored while determining the Adverse Financial Impact under section 11(2) and the interim order cannot be passed without considering the same. The average price, as disclosed by Indices such as Argus should therefore be considered as the prudent price at which the coal could be procured by Tata Power from Indonesia. This is particularly true when Tata Power has a long term arrangement for procuring coal on a committed basis from PT Kaltim prima coal with significant equity investment therein, and Tata Power could purchase coal lower than the average price disclosed by the indices.

(III) Respondent No.3, Maharashtra State Electricity Distribution Company Ltd.

26. MSEDCL has contended that PPA holders who are not scheduling power from TPCL during the currency of 2023 Directions cannot be saddled with liabilities to pay fixed charges as the said Directions provide that ECR should allow the pass through of the actual cost of imported coal but the fixed charges have been stipulated as per the PPA which entails that the liability to pay fixed charges only accrues when the capacity is declared as per the PPA. Liability for payment of fixed charges cannot accrue when no power is availed under 2023 Directions; MSEDCL has submitted that TPCL is required to share 100% of the mining profits earned by PT Kaltim Prima Coal with the procurers towards power supplied under 2023 Directions. MSEDCL has further submitted that the operational and technical parameters with respect to the



TPCL plant should be considered in terms of the judgement of the Hon'ble Supreme Court dated 3.3.2023 passed in Civil Appeal No.684 of 2021 (MSEDCL Vs. Adani Power Maharashtra Limited & others), i.e., SHR and Auxiliary Consumption be considered as lower of actual or parameters applicable as per the Tariff Regulations of the Commission.

27. MSEDCL has submitted their additional reply vide affidavit dated 14.11.2024 in pursuance to the hearing dated in pursuance to the hearing dated 28.10.2024, reserving the decision on the Interim Orders sought by the Petitioner. The MSEDCL submitted that the relief sought is liable to be rejected with exemplary cost on many counts as set out under different propositions. These propositions are as submitted by Respondent No.1 and, hence, not repeated again.

(IV) Respondent Nos.4, 5 & 6, Rajasthan Discoms

28. Rajasthan Discoms have adopted the submissions of GUVNL on factual aspects of the claim and have submitted that the prayer of the Petitioner for interim reliefs is not tenable in law or on facts. Rajasthan Discoms have submitted that the well-settled principles for consideration for the grant of any interim relief, i.e. (a) Prima-facie case of the Petitioner to succeed on merits; (b) Balance of convenience in favour of the Petitioner and against the Respondents; and (c) Irreparable loss or injury to be caused to the Petitioner if the interim relief is not granted, are not satisfied in this case. Rajasthan Discoms have further submitted that in the present case, the relief being sought is in the form of a mandatory injunction, which requires a much stricter test as held by the Hon'ble Supreme Court in the case of Dorab Cawasji Warden v. Coomi Sorab Warden and Ors., [(1990) 2 SCC 117]. Rajasthan Discoms have submitted that apart from the fact that there is no prima facie case made out (which is, in fact, required of a much higher standard), there is no question of any serious injury being caused



which cannot be compensated in monetary terms and that the balance of convenience is not in favour of the Petitioner. Rajasthan Discoms have submitted that the prayer of the Petitioner for interim relief has no basis and therefore, is not maintainable.

29. Rajasthan Discoms have submitted their additional reply vide affidavit dated 14.11.2024 in pursuance to the hearing dated in pursuance to the hearing dated 28.10.2024, reserving the decision on the Interim Orders sought by the Petitioner. The MSEDCL submitted that the relief sought is liable to be rejected with exemplary cost on many counts as set out under different propositions. These propositions are similar to that of Respondent No.1 and hence, not repeated again.

(V) Haryana Power Purchase Centre (HPPC) on behalf of Respondent Nos.7 & 8

30. HPPC has submitted that Haryana Utilities cannot be saddled with any liability to pay the fixed charges, considering that it has been made clear as far back as 14.03.2023 that Haryana Utilities would not be willing to offtake any power under Section 11 Directions. Other procurers, namely, the utilities from the States of Gujarat, Maharashtra, Punjab, and Rajasthan, have already consented to offtake Haryana's share of power during the subsistence of the Section 11 Directions.

31. HPPC has submitted that by order dated 3.1.2023 in Petition No.128/MP/2022, the Commission had determined the adverse financial impact payable to TPCL in terms of Section 11(2) of the Act for the period from 5.5.2022 till 31.12.2022. The Commission had also held that even the procurers, such as the Haryana Utilities that had not requisitioned any power under the Section 11 dispensation, would be required to pay fixed charges to the extent of their contracted capacity. Appeal No. 171 of 2023 was filed by the Haryana Utilities challenging the said order dated 3.1.2023 passed by the Commission, to the extent of the liability of the Haryana Utilities to pay deemed fixed charges to TPCL for the contracted capacity of 380 MW under the Power



Purchase Agreement dated 22.04.2007. The Hon'ble Appellate Tribunal vide order dated 18.04.2023 in IA No. 590 of 2023 (application for interim directions and stay) in Appeal No. 171 of 2023 stayed the applicability of the order dated 03.01.2023 passed in Petition No. 128/MP/2022, subject to the payment of 50% of the total fixed charges raised by TPCL. The amount in compliance with the above order has already been deposited by the Haryana Utilities in favour of the Petitioner.

32. HPPC has submitted that after the issue of 2023 Directions, the Haryana Utilities, while not off-taking the power, have, however, made a payment of Rs. 207.71 crores till 31.03.2024 for the fixed charges allegedly payable in terms of the 2023 Directions, under protest and without prejudice to its rights and contentions in the present Petition and in Appeal No. 171 of 2023. HPPC has submitted that Haryana Utilities have also opened a weekly Letter of Credit (LC) amounting to Rs. 2.66 crores (and has consistently maintained) for the fixed charges allegedly payable in terms of the 2023 Directions, under protest and without prejudice to its rights and contentions in the present Petition and in Appeal No. 171 of 2023.

33. Haryana Utilities have submitted that in terms of Clause 5(h) of 2023 Directions, as read with the letter dated 14.03.2023 issued by the Haryana Utilities and the CEA Meeting dated 19.04.2023, TPCL can offer the 380 MW of Haryana's share (or a proportion thereof) to the other procurers or in the alternative sell the same in the power exchange. In the alternative, if there is no willing procurer, TPCL may be directed not to declare availability to the extent of 380 MW under the Section 11 Directions.

34. As regards the legality of the interim relief claimed by the Petitioner, HPPC has made submissions similar to that of GUVNL and the said submissions are not repeated for the sake of brevity. Further, HPPC has submitted their additional reply vide affidavit



dated 14.11.2024 in pursuance to the hearing dated in pursuance to the hearing dated 28.10.2024, reserving the decision on the Interim Orders sought by the Petitioner. The HPPC submitted that the relief sought is liable to be rejected with exemplary cost on many counts as set out under different propositions. These propositions are similar to those of Respondent No.1 and, hence, not repeated again.

D. Relief Sought by the Petitioner

35. The Petitioner has submitted that since the Commission, by way of the order dated 3.1.2023 in Petition No.128/MP/2022, has already established the principles under which claims under Section 11(2) of the Act would be admitted, the Petitioner has made claims in accordance with the said settled principles in the captioned petition. The Petitioner has submitted that it has been consistently seeking redressal of its grievances relating to the under-recovery of ECR before the Commission as well as before the Committee appointed by MoP. The Petitioner has submitted that as per the Committee, the benchmark tariff is being computed for facilitating the smooth running of the ICB plants in the absence of mutual agreement between the ICB plants and the beneficiaries. However, the Committee noted that there is a provision under Section 11(2) of the Act whereby the ICB plants can approach the appropriate Commission to set off any adverse financial impact.

36. The Petitioner has submitted that its claim is not unreasonable or unjustified as the Respondent Procurers are procuring more expensive power on a short-term bilateral basis and through power exchanges. The Petitioner has submitted that GUVNL has attempted to wrongfully and selectively pick data to demonstrate that the Petitioner is recovering more than its actual ECR. The Petitioner has further submitted that the value of the Argus index taken by GUVNL is incorrect since the applicable



index would depend on the specific GCV of the shipments while the coal consumption (around 5220-5350 GCV for plant sustainability), which is arrived at through blending.

E. Analysis and Decision

37. In this order, the Commission is considering the prayer of the Petitioner for the grant of interim relief. From the pleadings of the parties, the following issues arise for our consideration:

- a) Whether the Petitioner's case fulfills the conditions for the grant of interim relief?.
- b) If the answer to (a) above is in the affirmative, what should be the quantum of interim relief to be granted to the Petitioner?
- c) Whether any direction is required to be issued to Haryana Utilities with regard to the opening of LC for fixed charges?

Issue No.1: Whether the Petitioner's case fulfills the conditions for the grant of interim relief?

38. The Petitioner has submitted that as per the 2023 Directions, the benchmark ECR is determined based on the lower of (i) index with the lowest cost of coal, (ii) cost of coal mining profit, and (iii) actual cost of coal. Since the Petitioner has procured coal on a spot basis from various countries in order to supply power under 2023 Directions, the Petitioner has prayed to be allowed the actual cost of coal in terms of the order dated 3.1.2023 in Petition No. 128/MP/2022. As regards the transportation and fuel/port handling charges and operational parameters, the Petitioner has prayed that in the interim, these charges may be allowed in terms of the order dated 3.1.2023 in Petition No.128/MP/2022. The Petitioner has submitted that the accumulated shortfall in energy charge rate recovered as decided by the Committee, and the actual cost of energy charge rate was Rs. 1,300 Crore till 31.1.2024 which increased to Rs. 1,662 Crore till 31.8.2024. The Directions 2023 were continued in operation till 31.12.2024.



The Petitioner has prayed that the other charges be allowed on actuals since the same was not allowed in the Order dated 3.1.2023 in Petition No.128/MP/2022. As an interim relief, the Petitioner has prayed for directions to Haryana Utilities (Respondent No. 7 and 8) to furnish unconditional, irrevocable, and revolving LC amounting to Rs. 5 Crore.

39. The Respondents have vehemently opposed the maintainability of the prayers of the Petitioner for interim relief on the following grounds:-

- a) The 2023 Directions and the ECR rates fixed by the Committee are interim in nature, and therefore, there can be no further prayer for interim relief. The 2023 Directions contemplate only the final determination by the Hon'ble Commission and not the grant of any interim orders over and above the methodology specified by the Central Government for devising the provisional tariff.
- b) The Commission has already rejected the prayer of the Petitioner for interim relief vide its RoP dated 18.8.2023, and the prayer for interim relief cannot be sustained unless there are compelling circumstances warranting the same, which do not exist in this case,
- c) The prayer of the Petitioner does not fulfil the well-settled principles of the grant of interim relief, which include the consideration of (i) prima facie case, (ii) balance of convenience and inconvenience, and (iii) irreparable, irretrievable loss and injury, and (iv) conduct of parties for grant of interim relief, and therefore, the prayer should be rejected.
- d) The Respondents have submitted that the interim prayer sought by the Petitioner seeking an increase in the benchmark tariff fixed by the Committee appointed by the Central Government is misconceived as there cannot be



consideration of any claim for further interim relief, and there is only the final determination of Adverse Financial Impact in terms of section 11(2) of the Act.

- e) The Respondents have submitted that the Petitioner needs to place all material facts constituting the cause of action and, further, in the case of any interim application, place the cause for the grant of interim orders based on concluded rights with material facts and details and supporting documents. There is a need to establish a prima facie case to the satisfaction of the court. Tata Power has, however, failed to place on record the relevant documents

Re: Power to grant interim order

40. We have considered the rival submissions of the Petitioner and the Respondents. In terms of Section 94(2) of the Act, the Commission has been vested with the power to grant appropriate interim order in any proceedings, which reads as under:

“(2) The Appropriate Commission has the power to pass such interim order in any proceeding or hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.”

The power of the Commission to pass an interim order in any proceeding hearing or matter under the Act is unfettered. An interim order will come into existence only when the Commission passes an Order in any proceeding to that effect. The Petitioner has asked for interim relief as part of its petition. Since the Commission has not passed any order adopting the provisional tariff fixed by the Committee and notified by the Government as an interim tariff, the provisional tariff fixed by the Government on recommendations of the Committee cannot be considered as an interim relief granted by the Commission. Therefore, the Petitioner’s prayer for interim relief made in the petition cannot be considered as a prayer for “further interim relief,” as contended by the Respondents.



41. The Respondents No. 7 & 8, particularly HPPC, have submitted that the Commission rejected the Petitioner's prayer for interim relief vide its Record of Proceedings dated 18.8.2023, and since there has been no change in circumstances or any undue hardship being caused to TPCL on account of the Order dated 18.08.2023, the prayer of the Petitioner for interim relief does not satisfy the test for modification, as laid down in the Proviso to Order 39 Rule 4 of the Code of Civil Procedure Code, 1908.

42. Order 39 Rule 4 of the Code of Civil Procedure Code, 1908 provides as under:

"4. Order of injunction may be discharged, varied or set aside.- Any order for an injunction may be discharged, or varied, or set aside by the Court, on an application made thereto by any party dissatisfied with such order:

XX
Provided further that where an order for injunction has been passed after giving a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party."

The above provisions of the CPC enable a court to discharge, vary, or set aside an order of injunction only when it is necessitated by a change in circumstances or on account of undue hardship to the party.

43. In the Record of Proceedings dated 18.8.2023, the Commission had observed the following:

"5. Considering the submissions made by the learned senior counsel and learned counsel for the parties, the Commission ordered as under:

(a) Admit. Issue notice to the Respondents;

(b) The Respondents to file their replies to the Petition, if any, within three weeks from the receipt of the details under (b) above with copy to the Petitioner, who may file its rejoinder, within two weeks thereafter; and



(c) Insofar as the interim directions/reliefs as prayed for by the Petitioner, the Commission did not find it proper to issue any such direction at this stage."

Perusal of the Record of Proceedings as quoted above clearly reveals that the Commission neither granted nor denied any interim relief to the Petitioner. The Commission only observed that it did not "find it proper to issue any directions at this stage." In other words, the Commission did not grant interim relief pending completion of pleadings without providing opportunity to the Respondents. Therefore, the Commission's refusal to grant interim relief pending completion of pleadings cannot be construed as rejection of the prayer of the Petitioner for interim relief. Since neither the interim relief was granted nor was denied vide the RoP dated 18.8.2023, Proviso to Order 39 Rule 4 of the Code of Civil Procedure Code, 1908 relating to modification of interim relief is inapplicable in the facts of the case.

44. The next objection of the Respondents is that the Petitioner's case does not satisfy the established principles for the grant of interim relief. The Hon'ble Supreme Court in **Makers Development Services (P) Ltd. v. M. Visvesvaraya Industrial Research & Development Centre, [(2012) 1 SCC 735]** has laid down the tests for grant of interim relief as under:

"11. It is settled law that while passing an interim order of injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, the court is required to consider three basic principles, namely, (a) prima facie case, (b) balance of convenience and inconvenience, and (c) irreparable loss and injury. In addition to the abovementioned three basic principles, a court, while granting injunction must also take into consideration the conduct of the parties."

45. The grant of interim relief is governed by three well-established principles viz. (1) whether the Petitioner has made out a prima facie case; (2) whether the balance of convenience is in favour of the Petitioner, i.e., whether it would cause greater inconvenience to the Petitioner if interim relief is not granted than the inconvenience



which the Respondents would be put to if it is granted; and (3) whether the Petitioner would suffer irreparable injury. With the first condition as a *sine quo non*, at least two conditions should be satisfied conjunctively, and a mere proof of fulfilment of one of the three conditions does not entitle a party to the grant of interim relief in its favour.

Re: Prima facie case for interim order

46. The first element of the test to be satisfied for the grant of interim relief is whether a prima facie case is made out by the Petitioner. A finding on “prima facie case” is a finding of fact. While arriving at such a finding of fact, the court must arrive at a conclusion that a case for further examination has been made out [**M.Gurudas v. Rasaranjan, (2006) 8 SCC 367**]. In the present case, the Petitioner has been directed by MoP under Section 11 of the Act (2023 Directions) to operate and generate electricity to its full capacity and supply to the PPA holders, i.e., Respondents, in the first instance. Further, the 2023 Directions recognized that the cost of imported coal is not a pass through as per the provisions of the PPA and further provided that the rate at which power is to be supplied shall be worked out by a committee that shall ensure that the benchmark rates of power so worked out meet all the prudent costs of using imported coal for generating power, including the present coal price, shipping costs, O&M costs, etc., and a fair margin. The Committee has been notifying the benchmark ECR for various generating stations, including that of the Petitioner, on a fortnightly basis. It is the case of the Petitioner that the benchmark ECR determined by the Committee does not fully cover the actual cost for procurement of imported coal. The Commission advised the Petitioner to take up the matter with the Committee, which the Petitioner did. According to the Petitioner, the Committee did not fully redress the grievance of the Petitioner and advised the generators, including the Petitioner, to approach the Appropriate Commission under Section 11(2) of the Act. The Committee,



through Respondent No. 9, did not make a submission with regard to their stand. The Petitioner has approached the Commission under Section 11(2) of the Act which provides that the Commission may offset the adverse financial impact of the directions under Section 11(1) in such manner as it considers appropriate. Thus, the moment directions are issued under Section 11(1) of the Act, a legal right accrues in favour of the Petitioner to offset the adverse financial impact by the Commission.

47. The Petitioner has placed on record a statement supported by an Auditor's Certificate that the rates fixed by the Committee fall short of the actual cost of generation by Rs. 1,229 Crore till 31.1.2024 and Rs. 1,663 crore till 31.8.2024. We have considered the actual calculation placed on record by the Petitioner and also sought the component-wise break-up along with the reasons for under-recovery. The Petitioner, in response to the RoP dated 27.09.2024, submitted the amount of under-recovery as Rs. 1,662 Crore for the period from 16.04.2023 to 30.08.2024 as per the energy charge rate worked out in line with the methodology allowed by the Commission in the Order dated 3.1.2023 in Petition No. 128/MP/2022, and the actual energy charge rate. The Respondents, particularly GUVNL, have placed their own calculation on record and have argued that the benchmark price determined by the Committee caters to the expenditure actually incurred by the Petitioner. Respondents have submitted that the claim of the Petitioner is excessive.

48. The Respondents have contended the consideration of the premium amount on the FOB price claimed by the petitioner, and the relief cannot be granted on this count without examination. Therefore, it is not appropriate to grant the interim relief based on the differential amount with respect to the actual cost as submitted by the Petitioner.

49. The Commission issued the order dated 3.1.2023 in respect of the 2022 Directions which was *pari materia* to the 2023 Directions. We have considered the comparison



of the energy charge rate with reference to the relief granted by the Commission in the Order dated 3.1.2023.

Month	CERC ECR (As per order dated 3.1.2023)	Actual ECR claimed by Petitioner	MoP ECR*
	(₹/Kwh)	(₹/Kwh)	(₹/Kwh)
Apr-23	6.25	6.83	4.64
May-23	5.61	6.03	4.64
Nov-23	4.23	4.40	3.97
Dec-23	4.37	4.55	3.97

*Net MOP ECR Rates are Weighted average

It is observed that there is a significant difference between the energy charge rate as paid by the PPA holders based on the rate notified by the Committee and the energy charge rate worked out as per the methodology decided by the Commission in the order dated 3.1.2023. The Petitioner, in response to the directions of the Commission, submitted the component-wise break-up of the under-recovery of energy charges. This component-wise breakup indicates under-recovery in respect of the various components of the energy charge rate. Some of the components of the energy charge rates are recovered as per the PPA. Therefore, after considering the documents and calculation on record, the Commission is of the view that there is, *prima facie*, a significant difference between the benchmark rates determined by the Committee and the actual cost claimed to have been incurred by the Petitioner to source imported coal from different countries to meet its obligations under the 2023 Directions. Since the Petitioners incurred the expenditure consistently each month in the procurement of coal to supply power to the Procurers, such a major shortfall would affect the financial viability of the Petitioners to generate and supply electricity pursuant to the directions issued under Section 11(1) of the Act. In our view, the Petitioner has a strong prima



facie case for interim relief to compensate the expenditure actually incurred for the procurement of coal.

Re: Balance of convenience

50. After a prima facie case is made out, the second component of the test is the “balance of convenience”, which must also be in favour of granting the interim relief. The Court/Tribunal, while granting or refusing to grant interim relief, is expected to exercise sound judicial discretion to ascertain the amount of substantial mischief or injury that is likely to be caused to the parties if interim relief is refused and compare it with that which is likely to be caused to the other side if the interim relief is granted. The Court/Tribunal must satisfy itself that the comparative hardship, mischief, or inconvenience that is likely to occur from withholding the grant of interim relief will be greater than that which would be likely to arise from granting it (Dalpat Kumar v. Prahlad Singh), [(1992) 1 SCC 719: AIR 1993 SC 276)]. The basic principle for the grant of an interlocutory order is to assess the right and need of the Petitioner, as against that of the Respondents, and the determination as to where the balance of convenience lies is a duty incumbent on the courts/tribunals. (Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1).

51. In the present case, the Petitioner is required to incur considerable expenditure to generate and supply power as per the 2023 Directions. Unless the financial distress caused to the Petitioner due to under-recovery of the generation cost is mitigated through suitable interim relief, the Petitioner will not be financially viable to arrange imported coal and supply power to the Respondents. In other words, denial of interim relief would erode the financial viability and, consequently, the ability of the Petitioner to procure coal to supply power for the entire duration of the 2023 Directions. On the other hand, the failure of the Petitioner to generate and supply power to the



Respondents will force the Respondents to purchase costly power to meet the needs of their consumers as the shortage has been recognised by MoP while issuing directions to Petitioner under section 11. Therefore, the balance of convenience lies in favour of the Petitioner as the consequence of the denial of interim relief will cause injury to the Petitioner and the Respondents.

Re: Irreparable injury

52. As the grant of interim relief is discretionary, the exercise of such discretion is subject to the court/tribunal satisfying itself that its interference is necessary to protect the party from injury that cannot be adequately compensated by way of damages. In other words, irreparable injury would ensue before the legal right would be conclusively established. (Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719). The third component of the test for the grant of interim relief is that the Court/Tribunal should satisfy itself that non-interference would result in “irreparable injury” to the party seeking relief and that such party needs protection from the consequences of such injury. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages.

53. Section 61(d) of the Act provides that tariff determination should ensure “safeguarding consumer’s interest and, at the same time, recovery of the cost of electricity in a reasonable manner.” The purpose of this guiding principle is that the generating company should make a recovery of the cost of electricity in a reasonable manner so that it is not out of pocket to meet the expenditures to arrange materials and services to generate and supply electricity. If the Petitioner is not paid the reasonable cost of generation of electricity, it will not be able to discharge its obligations to meet the 2023 Directions. The Petitioner has been discharging its



obligations by supplying power at a benchmark price even though it is not able to recover its cost of production. It may be argued that the Petitioner would be able to recover the shortfall after the adverse financial impact is conclusively determined. However, denial of interim relief would adversely affect the Petitioner's ability to generate and supply electricity which cannot be compensated by payment of shortfall tariff with interest subsequently.

54. Since all the tests for grant of interim relief are satisfied in this case, the Commission is of the view that the Petitioner is entitled to protection by way of interim relief.

Issue No.(b) If the answer to (a) above is in the affirmative, what should be the quantum of interim relief to be granted to the Petitioner?

55. The benchmark energy charge rate is being determined by the Committee as per the 2023 Directions on a fortnightly basis for weekly payment by the Procurers, including the Petitioner. It is observed that the Committee has mainly considered the Gross Calorific Value, FOB Price, Ocean Freight Charges, Port Handling Charges, Operational Parameters, and Mining Profit to work out the benchmark ECR rate. The Committee has fixed the benchmark rates on a fortnightly basis with effect from the fortnight starting 16.3.2023.

56. The Petitioner has computed the energy charge rate in terms of the principles decided in the Commission's order dated 3.1.2023 in Petition No.128/MP/2022 which pertained to the determination of the adverse financial impact of the 2022 Directions applicable for the period from 6.5.2022 till 31.12.2022. The Petitioner has submitted vide its affidavit dated 4.3.2024, a comparative chart containing the energy charge rate calculation as per the Committee, as per the order of the Commission dated 3.1.2023 in Petition No.128/MP/2022 and the actual cost incurred by the Petitioner. The table



containing the above rates has been extracted in para 9 of this order. The Petitioner has sought the energy charge rate under different heads by way of interim relief as under:-

- a) Cost of coal: The Petitioner has sought the cost of coal as per the order dated 3.1.2023 in Petition No.128/MP/2022, which provided that for coal imported from Indonesia, the FoB price of coal would be computed on the basis of HPB based on HBA index or the actual, whichever was lower whereas for the coal received from countries other than Indonesia, CIF price would be considered.
- b) Transportation and Fuel Handling Charges: The Petitioner has sought transportation and fuel handling charges in terms of the principle decided in the order dated 3.1.2023 in Petition No.128/MP/2022, i.e., as per the rates quoted in the PPA.
- c) Other Charges: The Petitioner has sought reimbursement of other charges on an actual basis. It is pertinent to note that other charges were not allowed in the order dated 3.1.2023 in Petition No.128/MP/2022 on the ground that PPA did not have any provision for other charges.
- d) Operational Parameters: The Petitioner has urged for consideration of the operational parameters in accordance with the principle decided in the order dated 3.1.2023 in Petition No.128/MP/2022, which provided that the heat rate and APC would be as per the Tariff Regulations 2009 which was prevalent on the date of commercial operation or the actuals, whichever is lower.

57. The petitioner has claimed the energy charge rate as per the Commission's order dated 3.1.2023 in Petition No.128/MP/2022. The Petitioner has submitted that for the fortnight basis from 16.4.2023 till 30.4.2023, the Committee recommended energy charge rate was Rs.4.65/kWh, whereas the actual ECR was Rs.6.83/kWh and the



ECR as per the order dated 3.1.2023 in Petition No.128/MP/2022 works out to Rs.6.25/kWh.

58. The Respondents have raised the dispute on individual parameters, whereas there is an agreement on some of the parameters, such as the price of GCV of blended coal, loss of GCV during transit and handling, ocean freight, and handling charges as per the PPA. The Commission, in view of the complexity involved in computation, feels that it may not be advisable to go into detailed computation for the purpose of interim relief. An attempt has been made to analyse and compare elements of the energy charge rate as submitted by the Petitioner and the Respondent GUVNL *vis-à-vis* the rate notified by the Committee.

59. The Petitioner, on the directions of the Commission, vide Record of Proceedings dated 15.12.2023, approached the Committee with regard to its claim of under-recovery of the cost of actual generation *vis-à-vis* the benchmark rates fixed by the Committee. The Committee after consideration of the concerns of the Petitioner and other ICB plants, has conveyed its decision through the minutes of the meeting dated 26.12.2023, which has been placed on record. Briefly, the decisions of the Committee on various aspects as applicable in the case of the Petitioner are as under:

- (a) The Committee decided to take the lower of Platts and Argus Indices for computation of coal price without considering the premium or discount on coal price.
- (b) The Committee decided to use imported coal prices of 5000 kCal/kg for computation of benchmark energy charge rate, and for any variation in coal grade, ICBs are required to approach the Appropriate Commission.



- (c) The Committee decided to consider the transit time of six weeks for the import of coal and, accordingly, coal prices as per the index prevailing in the previous 7th and 8th week prior to the start date of the control period (on a fortnightly basis).
- (d) Ocean freight: The Committee decided to continue with the practice of considering the weekly Clarkson index.

60. The Petitioner, in compliance with the directions of the Commission vide Record of Proceedings dated 12.2.2024 and 15.3.2024, submitted a comparison of the energy charge rate as notified by the MOP, based on actual coal consumed and energy charge rate calculated in line with the principles decided by the Commission in its order dated 3.1.2023 in Petition No.128/MP/2022. The Petitioner has also submitted a component-wise break-up of the energy charge rate on actuals and a component-wise break-up of the energy charge rate notified by the Committee on the basis of its own assumption due to the non-availability of the necessary data from the Committee.

61. The Commission has analysed the component-wise details of the energy charge rate claimed by the Petitioner, as notified by the Committee, and the energy charge rate computed by the Respondent No.1 GUVNL for the purpose of interim relief with reference to the energy charge rate for the Month of November, 23. Our observations have been dealt with under different heads hereinafter.

(I) Price of imported Coal, including Gross Calorific Value

62. A brief comparison of the factors considered by the Committee, the Petitioner, and the Respondent No.1 GUVNL in respect of coal price is summarized as under: -



Description	As per the MOP Committee	As per the Petitioner	As per the Respondent No.1 GUVNL
FOB CoalPrice	Lower (Argus ICI 3, Platts) for 5000 kCal/Kg	Blended Price for 5291 kCal/Kg (shipment--wise)	Argus ICI 3 (5000 GCV) Price extrapolated to 5291 kCal/Kg
Transit Time	4 th week (initial) 7 th /8 th week as per minutes of meeting dated 26.12.2023	After 8 th week	Not considered
Premium on Argus Index Price	Not considered	Considered	Not considered
Actual GCV of coal	5000 kCal/kg without loss. If actual GCV varies from 5000 kCal/kg, relief for such variation is to be decided by the Commission	5291 kCal for/kg less 72 kCal/kg towards loss)	5291 kCal for/kg less 72 kCal/kg towards loss)

(I) FoB Price of blended coal

63. The Commission observes that the Committee has considered the GCV of 5000 kCal/Kg (ICI 3) while working out the benchmark energy charge rate. Further, the Committee in para 5(2) of the Minutes of the meeting dated 26.12.2023, while considering the GCV value of 5000 kCal/kg (ICI 3), has noted the following with regard to the coal having variation in GCV:-

“(2) The Committee decided to use imported coal prices of 5000 kcal/kg for computation of benchmark ECR and for any variation in coal grade, the ICB can get the relief for appropriate commission.”

Therefore, the Committee has left it to the Appropriate Commission to decide any variation in coal grade from the GCV of 5000 kCal/kg (ICI 3). The Petitioner has computed on the basis of higher GCV of coal (5291 kCal/kg) based on the design parameters of its plant (i.e.5350 kCal/kg) and actual consumption of coal during the month of November 2023. The Respondent GUVNL has considered the same blended



GCV of 5291 kCal/kg and has computed the FoB price of coal on the basis of Agrus ICI 3 index price (5000 GCV) by extrapolating the same to the blended GCV of 5291 kCal/kg.

64. The petitioner, vide affidavit dated 18.4.2024, has submitted that the Committee has considered the FOB price of coal for the month of November 2023 as 78 USD/Ton for GCV of 5000 kCal/kg) whereas the actual price of coal consumed by TPCL is 91.80 \$/ton (based on blended GCV of 5291/kCal/kg). On the other hand, the Respondent No.1 GUVNL has considered the FOB price of coal ex-Indonesia as 84.35 USD/ton for GCV of 5291/kCal/kg by applying pro-rata ARGUS Index of 5000 GCV. In our view, the reasons for the difference in the FoB price of coal between the Committee, the Petitioner, and GUVNL are as under:

- a) The Petitioner has submitted that the Committee has considered the FoB price of coal on ICI 3 for GCV of 5000 kCal/kg as USD 78/MT. The design parameter of the Petitioner's plant is 5350 kCal/kg. As per the Petitioner, the GCV of blended coal used in November 2023 is 5291 kCal/kg.
- b) The Respondent GUVNL has considered USD 79.91/MT with GCV of 5000 kCal/kg (ICI 3) to arrive at the FoB price of blended coal, ignoring the transit and storage time. By extrapolating the said rate with the actual GCV of coal consumed during November 2023, the FoB price of coal for GCV of coal with GCV of 5291 kCal/kg is worked out to USD 84.35/MT $[(5291/5000) \times 79.71 = 84.35 \text{ \$/ton}]$.
- c) The Petitioner has calculated the FoB price of coal based on the actual cost of coal as USD 91.80 kCal/kg by taking the weighted average GCV and price of coal for each shipment. The methodology adopted by the Petitioner for



computation of the FoB price of blended coal during the month of November 2023 is extracted as under:

As submitted by the Petitioner for November, 23				
Shipment No.	Vessel name	Consumption Qty [MT]	Consumption GCV (Kcal/Kg)	FOB Value [USD/MT] (CFR changed to FOB level)
643	XXX	22,207	5,585	78.39
647	XXX	33,233	4,793	74.38
649	XXX	80,848	4,125	54.37
650-B	XXX	25,906	4,474	66.48
651	XXX	37,747	5,721	107.12
655	XXX	63,320	6,303	118.07
648	XXX	79,945	4,010	54.64
654	XXX	64,672	6,040	123.72
656	XXX	94,760	4,873	82.03
653	XXX	79,057	6,433	123.23
662	XXX	10,475	5,720	111.35
663	XXX	88,841	4,610	91.92
657	XXX	44,028	6,473	124.78
Total		7,25,039	5,219	91.80 *

(XXX – Vessel Name omitted * weighted average price)

- d) The Petitioner has explained the methodology to apply the index value as under:

“...However, consumption of coal during any month would be varied as the quantum of coal consumed varies month on month. For e.g. One shipment arrives from Country A and another from Country B having 5500 GCV and 4800 GCV, respectively. The applicable Index would depend on the specific GCV of the shipments while the coal consumed required to have a particular GCV depending on the coal consumption (around 5200-5350 GCV (for plant sustainability), which is arrived through blending. Hence, the value of Argus Index taken by GUVNL is incorrect.”

Thus, while the Petitioner has considered the weighted average GCV and the actual price of each shipment of coal to arrive at the FoB price of blended coal, the GUVNL has considered the coal price of the blended coal with reference to only Argus ICI 3 index (5000 GCV) without working out the weighted average price



of each shipment during the month. As a result, the FoB price worked out by GUVNL cannot be said to be the representative FoB price of blended coal being consumed by the Petitioner.

e) For the purpose of comparison only, we have worked out the FoB price of coal based on the actual GCV of coal(blended coal) consumed quantity and quality submitted by the Petitioner and based on reference indices as under:

Shipment No.	Vessel name	Consumption Qty [MT]	Consumption GCV (Kcal/Kg)	FOB Price (Pro-rata a with reference to ICI 3) (5000 GCV)	FOB Price (Pro-rata with reference to nearest ICI Index			FOB Value [USD/MT] (CFR changed to FOB level)
					GCV	Index Price	Revised Index Price at actual GCV	
1	2	3	4	5	6	7	8	9
643	XXX	22,207	5,585	78.28	5800	86.25	83.05	78.39
647	XXX	33,233	4,793	69.49	5000	72.49	69.49	74.38
649	XXX	80,848	4,125	62.21	4200	54.06	53.09	54.37
650-B	XXX	25,906	4,474	64.86	4200	52.23	55.64	66.48
651	XXX	37,747	5,721	88.13	5800	91.61	90.36	107.12
655	XXX	63,320	6,303	91.38	6500	115.79	112.28	118.07
648	XXX	79,945	4,010	64.47	4200	60.25	57.52	54.64
654	XXX	64,672	6,040	99.83	5800	96.96	100.97	123.72
656	XXX	94,760	4,873	79.57	5000	81.64	79.57	82.03
653	XXX	79,057	6,433	99.09	6500	120.52	119.28	123.23
662	XXX	10,475	5,720	93.40	5800	96.5	95.17	111.35
663	XXX	88,841	4,610	72.79	4200	57.64	63.27	91.92
657	XXX	44,028	6,473	106.99	6500	122.02	121.51	124.78
Total		7,25,039	5,219	81.39*			83.41*	91.80*

(*Total GCV and FOB price for the month is on weighted average based on shipment-wise quantity. XXX – Vessel Name omitted.)

f) It is seen from column (5) of the table above that while the price of coal increases with an increase in quality, the actual consumption of coal, i.e., the quantity of coal required to produce one unit of electricity, gets reduced. Hence, the energy charge rate will remain unchanged up to the pro-rata increase of coal price on account of blending if the Argus ICI 3 index is taken as a reference, which is similar to the approach taken by the Respondent GUVNL for computation of FoB



price of coal. However, it is noticed from column (6) of the table above that by considering the nearest Index price of coal, the weighted average price of coal based on individual shipments works out to 83.41 \$/MT, which can further increase if the shipment of higher GCV coal is consumed.

- g) The weighted average FOB price of blended coal of GCV 5291 kCal/kg has been worked out as 81.39 \$/MT with reference to the ICI 3 index (applicable to GCV of 5000 kCal/kg). This method does not capture the variation in index price between high and low-quality coal. But if we consider the nearest Argus Index of 5800 GCV and 6400 GCV for higher quality coal, the weighted average FOB price of blended coal of GCV 5291 kCal/kg has been worked out as 83.41 \$/Ton.
- h) The Commission, in para 6.3 of order in 12/SM/2023, has already recognized the decoupling of high CV and mid-CV Coal in the International Coal index, i.e., Argus, Platts, etc. It implies that the rate of increase of International Index price with an increase of quality is non-linear, and hence, the blending of coal based on a weighted average of quantity and shipment-wise price of higher quality coal leads to a higher weighted average coal price. The petitioner has used the higher GCV blended coal of more than 5000 GCV due to technical requirements. Thus, prima facie, there is a case for allowing ECR based on the higher FOB price of the blended coal compared to the pro-rata FOB price of coal worked out by the Committee with reference to the Argus ICI3, which is for 5000 GCV.

65. The Petitioner, the Respondent, and the Committee have applied a different methodology for arriving at the FoB price of blended coal as discussed above. Respondent No.1 GUVNL submitted the calculation vide affidavit dated 13.3.2024. The Petitioner submitted the calculation as per the CERC order, actual cost, and as per the Committee vide affidavit dated 18.4.2024. The impact of FOB price on per unit



energy charge as per the calculation submitted by the Petitioner and the Respondent No.1 worked out for the month of November, 2023 as under:-

	As per the Committee	As per the Respondent No.1 GUVNL	As per the Petitioner	As per CERC Order dated 3.1.2023	As per actual cost
SHR (kCal/kWh)	2121	2050	2148	2121	2148
GCV (kCal/kg)	5000	5219	5219	5219	5219
GCV diff (in handling)	-	72	-	-	-
Total GCV	5000	5291	5219	5219	5219
Aux (%)	8.50%	4.75%	7.88%*	7.88%	7.88%
Specific Coal Consumption (kg/kWh)	0.46	0.41	0.45	0.44	0.45
FoB price (\$/MT)	78.00	79.71	91.80	91.80	91.80
Ex Rate	83.00	82.80	83.23	82.80	83.23
FoB Price (Rs/MT)^	6474	6600	7641	7601	7641
ECR (Rs/unit)^	2.98	2.71	3.44	3.34	3.44

(* As per actual, which is less than normative. **FoB price worked out as per nearest index price in Para 64(e) of this order. ^FoB Price (Rs/MT) and ECR (Rs/Unit) have been calculated)

(II) Transit time

66. The petitioner, in its affidavit dated 18.4.2024, considered timing for Coal Sourcing and Consumption at the Mundra plant in 45-60 days in advance and the same being consumed over two-three months as per the coal blending plan. The Committee, in its minutes of the meeting dated 26.12.2023, also allowed the transit time of the 7th/8th week. The Respondent GUVNL opposed the claim of the Petitioner along with the time-wise flow of coal, which required further examination. Since the Committee has considered the 7th/8th week after November 2023, this effect is not factored in for the energy charge rate determined from April 2023 to November 2023. It appears that had the Committee considered the 7th/8th week from the beginning of the 2023 Directions, the energy charge rate notified by the Committee and paid by the Respondents would have been different. We have observed the downward and upward trend of the Index price. On 14th April 2023, the Index price was 94.48 \$/Ton, which was reduced to



67.42 \$/Ton on 30th June 2023 but subsequently increased to 79.35 \$/ton as on 29th December 2023 for 5000 kCal/Kg in 26 weeks. Since overall there is a downward trend, it can be concluded that the energy charge rate would be marginally higher if the transit time were considered. For the purpose of computation of energy charge rate, the Commission, accordingly, allows a time gap of eight weeks between the loading port and discharge port or the actual freight time, whichever is less as considered by the Committee.

(III) Premium on Argus Index Price

67. During the hearing on 15.3.2024, the Respondents GUVNL, PSPCL & HPPC submitted that TPCL is claiming higher costs by charging a higher premium. There is a disagreement between the Petitioner and the Respondents with regard to the basis of arriving at the FoB price, particularly on the index to be used and whether a premium quality is applicable if the Argus Index price is used. The Petitioner, in para 18 of its Written Submission dated 16.5.2024, has submitted as under:

“18. The Respondents have also alleged that the Petitioner has not computed the ECR on current HBA index and instead has gone to the previous index which is no longer applicable. It is submitted that majority of the coal is now being procured based on the Argus index plus premium, at relevant grade. Further, even for procurement from Indonesia under the spot market, the Petitioner’s data is benchmarked based on the Argus index plus premium, at relevant grade.”

68. The Commission, in the order dated 3.1.2023 in Petition No.128/MP/2022, had adopted the HBA price or the actual price of coal, whichever is lower, while deciding the FoB price of coal in connection with the determination of the adverse financial impact of 2022 Directions. The Petitioner has calculated the adverse financial impact in terms of the principles decided in the said order and has sought the reimbursement of ECR accordingly by way of interim relief. However, in its submission as quoted above, the Petitioner has admitted that it is procuring coal on Argus index plus



premium at the relevant grade and not on the basis of the HBA index as submitted by the Petitioner in connection with 2022 Directions. Therefore, the determination of adverse financial impact in connection with the 2023 Directions will no longer be with reference to HPB price based on the HBA index since the Petitioner is admittedly procuring coal at Argus index plus premium. Moreover, the HBA index has been supplemented by the HBA1 and HBA2 index since March 2023 and the HBA3 index since August 2023, linking the indices to the different grades of coal being exported from Indonesia.

69. The existing HBA index used 4 indices, namely the Globalcoal Newcastle Index (GCNC), Newcastle Export Index (NEX), Platts Index, and Indonesia Coal Index (ICI), with each having a weighted average of 25%. Since the existing HBA formula was more inclined to follow the price of high-calorie coal produced abroad and did not reflect the ground conditions in the Indonesian coal market, which produces low-calorie coal, the Government of the Republic of Indonesia modified the HBA index and added HBA1, HBA2, and HBA3 indices. According to the attachment to Minister of Energy and Mineral Resources No. 41 of 2023 (of the Government of the Republic of Indonesia), there are three HBA formulas that refer to the average selling price of coal with certain calories in the previous month (Pm) and the average selling price of coal with certain calories in the previous two months (Pm-1). The formulas are as under:

$$(a) \text{ HBA} = (0.7 * P_m) + (0.3 * P_{m-1}) \text{ [US\$/tonne]}$$

Where,

Pm is the average selling price of coal with calories of 6,200-6,400 kcal/kg GAR the previous month.

Pm-1 is the average selling price of coal with 6,200-6,400 calories from the previous two months.



(b) $HBA1 = (0.7 \cdot P_m) + (0.3 \cdot P_{m-1})$ [US\$/tonne].

Where,

P_m is the average selling price of coal with calories of 5,100-5,300 kcal/kg GAR the previous month.

P_{m-1} is the average selling price of coal with 5,100-5,300 calories from the previous two months

(c) $HBA2 = (0.7 \cdot P_m) + (0.3 \cdot P_{m-1})$ [US\$/tonne].

Where,

P_m is the average selling price of coal with calories of 4,100-4,300 kcal/kg GAR the previous month.

P_{m-1} is the average selling price of coal with 4,100-4,300 calories from the previous two months.

70. As per the design parameters of the Petitioner's plant, coal with a GCV of 5291 kCal/kg is suitable for the generation of electricity. Coal with a GCV of 5291 kCal/kg falls within the specifications provided for the HBA1 index. Accordingly, we have made a comparison of HBA1 with Platts and ICI 3 as under:

5000 kCal/Kg GAR)	Jan-24	Feb-24	March-24
Platts	78.24	78.26	78.40
HBA 1 *	84.00	84.28	85.36
Argus ICI-3	79.40	78.95	78.92
Diff (HBA1 & Platts)	6.86%	7.14%	8.15%
Diff (HBA1 & Argus ICI-3)	5.48%	6.32%	7.54%

(*Derived based on 5200 kCal/Kg GAR Index)

It is noticed that HBA 1, which is one of the official indices notified by the Government of the Republic of Indonesia and which approximates the design parameters of the Petitioner's plant, is higher than Platts and Argus by USD 4 to 5/MT in these months. The Petitioner has submitted that it has procured coal on the Argus index with a premium. However, the Petitioner has not furnished any data with regard to the premium actually paid. It is also pertinent to note that the MoP appointed Committee,



vide para 5(1) of the minutes of the meeting held on 26.12.2023, recognized the premium on Argus index but did not crystallise the rate of premium by observing as under:-

“...On the issue of premium being paid by ICB Plants, the Committee noted that sometimes imported coal is available on discount and sometimes on premium. Accordingly, the Committee decided only to consider the index value.”

In the absence of relevant data with regard to the premium actually paid over and above the FoB price of coal, the Commission is not in a position to take any view on the issue of premium at the stage of grant of interim relief.

71. As discussed above, prima facie, there is a case for allowing energy charge rate on account (i) a higher FOB price of the blended coal compared to the pro-rata FOB price of coal worked out by the Committee with reference to the ICI 3, (ii) marginally higher energy charge rate if the transit time considered is more. We are not inclined to consider the claim on account of the premium at this stage. Based on the data submitted by the petitioner for November 2023, we have made a sample check on the impact on FOB price after excluding the premium. The actual FOB price of coal for November 2023, submitted by the Petitioner, was USD 91.80 per ton, whereas the pro-rata FOB price of blended coal for GCV of 5291 kCal/kg is USD 83.41 per ton worked out based on the ARGUS index with GCV of 5000 kCal/Kg as given in Para 64(e) of this order. The difference between the actual FOB price and the FOB price worked out based on the Index works out to USD 8.39 per ton. If we assume a premium of USD 4 per ton, there will be a difference of about USD 4.39 per ton after adjustment of premium in the difference between the actual FOB price and pro-rata FOB price worked out above, which is approximately 52% of the differential amount. This may undergo change on a month-to-month basis due to variations in the price



and quantity. It implied that there is merit in providing interim relief on account of the FOB price of coal even after capping at the ARGUS index price.

(IV) Loss of GCV during Transit

72. The Petitioner has claimed GCV 72 kCal/Kg as transit loss. GUVNL, in its calculation has also considered the transit loss of GCV 72 kCal/Kg. However, the Committee has not considered the impact of transit loss on the energy charge rate. There is a prima facie case to consider the transit loss of GCV as part of ECR while granting interim relief. We observe that there would be an impact of transit loss in the differential amount of the energy charge rate on account of the FOB price of coal, which may vary on a month-to-month basis due to variations in the FOB price of coal.

(V) Operational parameters

73. The Petitioner has submitted in the main petition that the operational parameters (Heat Rate and Auxiliary Consumption), as allowed in the order dated 3.1.2023 in Petition No.128/MP/2022, may be considered for the purpose of interim relief. In the order dated 3.1.2023, the Commission allowed the operational parameters as per the Tariff Regulations, 2009. GUVNL has submitted that relief should be granted as per bid parameters, i.e., SHR of 2050 kCal/kWh and Auxiliary Power Consumption of 4.5%. It is pertinent to note that GUVNL has relied upon the order dated 6.12.2016 in Petition No. 159/MP/2012 in which the Commission had considered SHR of 2050 kCal/kWh and Auxiliary Power Consumption of 4.5% while granting the compensatory tariff. However, GUVNL's similar contention in Petition No.128/MP/2022 was not accepted by the Commission in its order dated 3.1.2023 with the following observations:

“109. We have considered the submissions of TPCL and GUVNL. The operational/technical parameters in terms of the order dated 6.12.2016 in Petition



No.159/MP/2012 was in the context of the compensatory tariff which was being granted as a package to TPCL. However, while deciding the adverse financial impact of Section 11 Directions which has to cover the variable cost of generation and a reasonable margin as per the Appellate Tribunal's judgement in GMR case, we are not inclined to adopt the operational parameters in the present case which was approved in order dated 6.12.2016 in Petition No.159/MP/2012. In our view, the operational parameters such as heat rate and APC should be lower of the actual or as worked out in accordance with Tariff Regulations, 2009 which was in force at the time of commercial operation of the generating station of the Petitioner. Heat Rate and APC worked out on the basis of Tariff Regulations, 2009 are 2121 kCal/kg and 8.50% respectively.....”

It is noted that the Commission has differentiated the operational parameters considered in the order dated 6.12.2016 in Petition No.159/MP/2012. Accordingly, we do not accept the submission of GUVNL with regard to Heat Rate and Auxiliary Consumption.

74. The Petitioner, through its affidavit dated 18.4.2024, has submitted the data regarding actual SHR and Auxiliary Power Consumption from April 2023 to March 2024 as under:-

Particulars	Heat Rate (kCal/kWh)	APC I (%)
Apr-23	2149	8.38%
May-23	2131	7.88%
Jun-23	2141	8.09%
Jul-23	2180	8.18%
Aug-23	2149	7.89%
Sep-23	2145	7.81%
Oct-23	2130	7.85%
Nov-23	2148	7.88%
Dec-23	2158	7.92%
Jan-24	2129	7.86%
Feb-24	2124	7.85%
Mar-24	2121	7.79%

75. The Commission, while framing Terms and Conditions of Tariff Regulations every five-year period, arrives at the operational parameters based on the past performance of the various generating stations and in consultation with various stakeholders. Thus,



the operational norms determined under the Terms and Conditions of Tariff Regulations reflect achievable norms. We are of the view that the decision taken in its order dated 3.1.2023 in Petition No. 128/MP/2022 balances the interest of all the stakeholders and addresses the concerns of Respondent No.1. Therefore, the station heat rate and auxiliary power consumption for the purpose of arriving at the energy charge rate should be lower than the actual or as worked out in accordance with CERC (Terms and Conditions of Tariff) Regulations, 2009, which was in force at the time of commercial operation of the generating station of the Petitioner.

76. In light of the above data, we are inclined to adopt our decision in the order dated 3.1.2023 in Petition No.128/MP/2022 with regard to the SHR and Auxiliary Power Consumption while computing the ECR, i.e., the actual or as worked out in accordance with Tariff Regulations, 2009, whichever is lower.

(VI) Ocean freight Charges

77. The Petitioner, vide affidavit dated 4.3.2024, submitted the minutes of the meeting of the Committee held on 26.12.2023. It is observed from the minutes that the Committee has considered the ocean freight based on the Clarkson index and port handling charges based on industry inputs, whereas the petitioner, in its calculation of ECR has considered it based on the actual cost.

Description	As per MOP Committee	As per Petitioner	As per Respondent
Ocean Freight Price	Clarkson Index	Actual	As per PPA
Port Handling Charges	Industry Inputs	Actual	As per PPA

78. Respondent No.1 GUVNL, vide affidavit dated 13.3.2024, considered the transportation charges based on PPA as 14.67 \$/ton on the ground that transportation



charges are not affected by an increase in coal prices on account of Indonesian Regulations. The Petitioner, vide affidavit dated 18.4.2024, submitted the computation of the energy charge rate by the Committee constituted by the MOP wherein the ocean freight and insurance value was considered as 11 \$/ton for November 2023. If we consider the transportation charges as per PPA worked out by Respondent No.1, it appears that the transportation charges as 14.67 \$/ton and considered by the Committee as 11 \$/ton for November 2023 as submitted by the Petitioner based on simulation, there is a difference of about 2.67 \$/ton in the PPA rate and the rates considered by the Committee. The Petitioner has further submitted a brief on price consideration in the long term transportation contract vide affidavit dated 16.5.2024, which states that the long term transportation contract takes into consideration the base freight rate from Tanzum Bara Coal Terminal (TBCT) Indonesia, which is the load port to Mundra West Port, India which is the discharge port, CERC LSFO Bunker rate, estimated vessel disbursement charges as applicable at load port as well as discharge port, charter liability insurance and cost of armed guards. We are not inclined to go into the details of the long term transportation contract at this stage. Since the Petitioner in the main petition has claimed the transportation charges as per the PPA by way of interim relief, which is also the view of the Respondent No.1 GUVNL as well as consistent with the principle laid down under order dated 3.1.2025 in Petition No. 128/MP/2022, we have considered the transportation charges at the PPA rate for the purpose of interim relief.

(VII) Port handling charges

79. As per the submission of the petitioner, the Committee has considered Rs 473 per ton towards port handling charges. The petitioner has submitted that the actual port handling charges vary from Rs 500 to Rs. 800 per ton due to fixed cost components



in their contract. However, the Petitioner in the main petition has requested that for the purpose of interim relief, ocean freight charges and port handling charges be considered as per the order dated 3.1.2023 in Petition No.128/MP/2022, wherein these charges were allowed as per PPA for Indonesian coal and on CIF basis for coal sourced from countries other than Indonesia. The Respondent No.1 GUVNL has also considered port handling charges as Rs 463 per ton as per PPA. Accordingly, we hold that for the purpose of interim relief, the Petitioner shall be entitled to claim the transportation and port handling charges as per the PPA.

(VIII) Mining Profit

80. As regards mining profit, the petitioner has submitted that in the CERC Final Order, KPC consumption is to be considered, and the Petitioner has not consumed any KPC shipment. The issue whether or not the mining profit is applicable for the coal consumed from sources will be examined at the time of final order. Prima facie, based on the records placed by the petitioner, the mining profit is not considered for the purpose of interim relief.

(VIII) Letter of credit against fixed charges

81. Another prayer for interim relief by the Petitioner is that the Haryana Utilities, which are not off-taking power, open LC for Rs.5 crore towards the fixed charges. Haryana Utilities have submitted that after the issuing of 2023 Directions, they have made a payment of Rs. 207.71 crores till 31.03.2024 for the fixed charges allegedly payable in terms of the 2023 Directions, under protest and without prejudice to their rights and contentions in the present Petition and in Appeal No. 171 of 2023. HPPC, on behalf of Respondents 7 & 8, has submitted that Haryana Utilities have also opened and consistently maintained a weekly Letter of Credit (LC) amounting to Rs. 2.66 crores for the fixed charges allegedly payable in terms of the 2023 Directions, under protest



and without prejudice to their rights and contentions in the present Petition and in Appeal No. 171 of 2023. Since the matter regarding payment of fixed charges and opening of LC for an amount equivalent to LC is presently *sub-judice* in the appeals filed in the APTEL against the decision of this Commission in the context of 2022 Directions and also considering the fact that Haryana Utilities have been paying 50% of the fixed cost and maintaining LC for the equivalent amount, the Commission is not inclined to issue any interim direction on this prayer of the Petitioner.

82. In light of the above discussion, the Petitioner's claim for interim relief has merit on certain counts only, as discussed below:

- a) The Petitioner and the Respondents have a dispute mainly on consideration of the premium on the ARGUS index price. Since there is a difference between the actual price and the ARGUS index price of similar quality coal even after excluding the premium amount. It is mainly on account of the fact that the ARGUS index price is non-linear with the increase of quality as discussed in Para 64 of this order, i.e., the actual index price of high-quality coal (say 5500 kCal) is higher than the FOB price worked out based on 5000 kCal quality of coal on pro-rata basis. Hence, the petitioner is entitled to relief on account of the FOB price of coal. The issue of admissibility of the premium on the ARGUS Index price and the mining profit will be dealt with in the final order.
- b) Apart from the above, the Committee, while considering the FOB price of coal, has changed the transit time to the 7/8th week from November 2023 onwards, replacing the 4th week. We have discussed the impact of the transit time on the FOB price of coal and allow a time gap of eight weeks between the loading port and discharge port or the actual freight time, whichever is less, as considered



by the Committee. Since the trend of the Index price was downward, the transit time has an impact on the FOB price of coal.

- c) As regards the loss of GCV during transit, it is observed that the Petitioner and the Respondents both have agreed on the consideration of loss of GCV during transit whereas the MOP Committee has excluded the same. The impact on the specific coal consumption and energy charge rate due to the loss of 72 kCal/Kg is considered for interim relief.
- d) As regards the transportation charges and Port Handling Charges, there is broad agreement between the Petitioner and the Respondents on consideration of the transportation charges and port handling charges as per the PPA, which is higher than as considered by the MOP Committee. Accordingly, the impact on this count is considered for interim relief.
- e) It is pertinent to note that the Commission has allowed the interim relief in line with the order dated 3.1.2023 in Petition No. 128/MP/2022 and some of the aspects accepted by the Committee and Respondents. Some of the issues, such as premium and mining profit, wherein Respondents have strong contention, the effect of these factors cannot be included in interim relief without detailed examination on merit. Accordingly, following a cautious approach, the Commission has allowed the interim relief of –
 - i) fifty percent of the difference in the energy charge rate on account of the FOB price of coal between the energy charge rate as the methodology decided in the CERC order dated 3.1.2023 as claimed by the petitioner (duly certified by the Auditor) and as worked out by the Committee on account of the Coal price along with corresponding taxes & duties on a monthly basis during the operation of the 2023 Directions.



- ii) the transportation charges and Coal Handling Charges as per the PPA after adjustment of the amount recovered as per the MOP Committee rate on this count.

83. The Petitioner is allowed to recover the arrears on account of the interim relief as decided in para 81 above in three equal monthly instalments. The interim tariff granted through this order is subject to adjustment on the basis of the final determination of the adverse financial impact of the 2023 Directions by the Commission.

84. This order disposes of the interim prayer in Petition No. 179/MP/2023 in terms of the above. The Petitioner shall be listed for final hearing in due course.

**Sd/-
(Harish Dudani)
Member**

**Sd/-
(Ramesh Babu V.)
Member**

**Sd/-
(Jishnu Barua)
Chairperson**

