

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.374/MP/2018

Subject :Petition under Section 79 (1)(b) of the Electricity Act, 2003 read with Article 18.1 of the Power Purchase Agreements (PPAs) dated 6.2.2007 and 2.2.2007 under 1000 MW Bid-1 and 1000 MW Bid-2 respectively, executed between Gujarat Urja Vikas Nigam Limited and Adani Power (Mundra) Limited for approval of amendments to the PPAs by way of Supplemental PPAs.

Date of Hearing : 8.2.2019

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member
Shri I.S. Jha, Member

Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)

Respondents : Adani Power (Mundra) Limited and Others

Parties present : Shri Hemant Sahai, Advocate, GUVNL
Shri Nitish Gupta, Advocate, GUVNL
Ms. Himangini Mehta, Advocate, GUVNL
Shri S.K. Nair, GUVNL
Shri Amit Kapoor, Advocate, AP(M)L
Ms. Poonam Verma, Advocate, AP(M)L
Ms. Abiha Zaidi, Advocate, AP(M)L
Shri Harish Pariyani, AP(M)L
Shri Jaginesh Langalia, AP(M)L
Shri Tanmay Vyas, AP(M)L
Shri M.G. Ramachandran, Advocate, Prayas
Ms. Ranjitha Ramachandran, Advocate, Prayas
Ms. Tanya Sareen, Advocate, Prayas
Shri Shubham Arya, Advocate, Prayas
Shri Anshu, Prayas
Shri Anil Kumab, Energy Watchdog

Record of Proceedings

At the outset learned counsel for Prayas in his rebuttal clarified that Prayas has not challenged the maintainability of the Petition and made its submission on the factual and legal aspects as to why the proposed amendments are not in public interest and should not be permitted. Learned counsel submitted that the contention of GUVNL that the Govt. of Gujarat Resolution (GR) is a policy direction and the Commission has to follow it, unless it is non-transparent or arbitrary, is wrong. The GR is not a direction to the Commission to approve the amendment but a direction to GUVNL to seek approval of the Appropriate Commission. Learned counsel further submitted that the intent of the policy and regulatory regime under the Electricity Act, 2003 is to distance State Government from tariff matters. While the Central Government has the responsibility to notify National Electricity Policy and Tariff Policy under Section 3 of the Act, the State Government has

been completely insulated from tariff setting process. In this regard, learned counsel relied on the Statement of Object and Reason of the Act, provisions stipulated in Sections 61, 62(6), 65, 107 and 108 of the Act, Para 5.2 of Tariff Policy, 2006 Supreme Court judgement in the case of BSES Limited and Tata Power Co. Ltd. and others and Appellate Tribunal's Judgement in Polyplex Corporation Limited vs Uttarakhand Electricity Regulatory Commission & Ors. Learned counsel submitted that approval of PPAs under SHAKTI policy by the Commission cannot be compared with the amendment proposed in the present petition as the bidding criteria in the SHAKTI policy was discount on tariff and competitive tariff remained unaltered. Learned counsel made extensive arguments on the commercial aspects of the amended PPAs and submitted that the amendment, if allowed, should be on revenue neutrality principles to protect consumer interest.

2. Learned counsel for GUVNL reiterated that the present petition and proposed amendments to the PPA constitute a part of the entire rehabilitation package recommended by the High Power Committee which is being implemented pursuant to the policy decisions of the Govt. of Gujarat vide GR dated 1.12.2018. Learned counsel submitted that GUVNL has always contended that only the Commission has the power to allow amendment to the PPA and not otherwise. Learned counsel further submitted that SHAKTI is a policy by Ministry of Coal analogous to GR policy direction and the amendment was allowed by the Commission for Section 63 PPA.

3. After hearing the learned counsel for Prayas and GUVNL, the Commission directed the Petitioner and the Respondents to file their written submissions within 15 days with copy to each other.

4. Subject to the above, the Commission reserved order in the Petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**