

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 128/MP/2022**

- Subject : Petition under Section 11(2) of the Electricity Act, 2003 read with 79 of the Electricity Act, 2003, along with Regulation 111-113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 *inter alia* seeking directions to Respondent Nos. 1 to 8 to procure the power generated and supplied by the Petitioner from 6.5.2022 onwards in terms of directions as issued by Ministry of Power on 5.5.2022 under Section 11 of the Electricity Act, 2003 and also seeking a declaration/direction with regard to rate/compensation at which such supply of power to Respondent Nos. 1 to 8 for the period between being 6.5.2022 to 31.10.2022, 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.
- Date of Hearing : 7.6.2022
- Coram : Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Tata Power Company Limited (TPCL)
- Respondents : Gujarat Urja Vikas Nigam Limited (GUVNL) and 8 Ors.
- Parties Present : Shri Sajjan Poovayya, Advocate, TPCL  
Shri Shreshth Sharma, Advocate, TPCL  
Ms. Nehul Sharma, Advocate, TPCL  
Shri M. G. Ramachandran, Sr. Advocate, GUVNL  
Shri Anand Ganesan, Advocate, GUVNL  
Ms. Anushree Bardhan, Advocate, GUVNL  
Ms. Srishti Khindaria, Advocate, GUVNL  
Shri S. K. Nair, GUVNL  
Shri Kripal Chudasama, GUVNL  
Shri Shubham Arya, Advocate, HPPC and PSPCL  
Ms. Poorva Saigal, Advocate, HPPC and PSPCL  
Shri Ravi Nair, Advocate, HPPC and PSPCL  
Shri Nipun Dave, Advocate, HPPC and PSPCL  
Ms. Reeha Singh, Advocate, HPPC and PSPCL

**Record of Proceedings**

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking directions to Respondents 1 to 8 to procure power generated and supplied by the Petitioner from 6.5.2022 onwards in terms of directions

issued by the Ministry of Power ('MoP') on 5.5.2022 under Section 11 of the Electricity Act, 2003 ('the Act') and also a declaration/direction with regard to rate/compensation at which such supply of power to Respondents 1 to 8 for the period between 6.5.2022 to 31.10.2022 is to be made. Learned senior counsel for the Petitioner mainly submitted the following:

(a) The Petitioner has already started supply of power in terms of MoP directions dated 5.5.2022 issued under Section 11 of the Act.

(b) Accordingly, the interim reliefs prayed for by the Petitioner may be appropriately moulded. The Petitioner is now no longer seeking grant of an in-principle approval of generation of supply of power by the Petitioner to the Respondents. However, in lieu of above, the Commission may pass a direction that for supply of power by the Petitioner under the Section 11 of the Act, the parties will be governed by the provisions of the said Section and not by the terms and conditions of the PPA or the draft SPPA, which is still under negotiation.

(c) The Petitioner is not insisting upon the provision rate of Rs. 9.11/kWh at this stage and instead a direction may be issued to the Respondents to make the payments for supply of power by the Petitioner in terms of the benchmark rates notified by the Committee constituted in term of MoP's directions 5.5.2022 without any further deductions thereto, pending finalisation of rate/compensation by the Commission under Section 11(2) of the Act.

(d) Despite the Petitioner having raising the invoices for supply of power in terms of rates worked out by the Committee, the Respondent, GUVNL has proceeded to deduct an amount 20 paise/kWh from the fixed charges therein on the basis of terms and conditions being negotiated for the draft SPPA, which is yet to be executed. GUVNL has made further deduction by applying the rebate @ 2.15%. Such deductions by the Respondent are untenable and against the directions of the MoP under Section 11 of the Act.

(e) Similarly, instead of direction to the Respondents to cumulatively pay an amount of Rs. 450 crore in advance, each week for supply of power as per the direction dated 5.5.2022, a direction may be issued to the Respondents to open the Letter of Credit ('LC') considering the rates worked out by the Committee.

(f) On 20.5.2022, MoP has issued certain clarifications to the directions dated 5.5.2022, wherein the MoP has further directed that LC is to be maintained by the procurer for contracted power to be purchased and in case of no LC, advance payment is required to be made. It has also been directed that 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 on the procurer and will be entitled to sell the power in power exchange.

(g) Accordingly, the procurers are now required either to pay for supply of power in advance or to open the LC for such supply considering the rates as worked out by the Committee. The said LC is the primary source of payment for supply of power under the directions dated 5.5.2022. LC amount in terms of the rates worked out by Committee would be Rs. 903 crore (for GUVNL) as against Rs. 105 crore as per the PPA rates.

(h) Though, the Respondent, GUVNL in its reply has, *inter-alia*, contended that the Indonesian Regulations do not prohibit the export of coal at a price less than HBA

derived price for relevant quality of coal. While the Petitioner strongly objects to the said submission, it is not necessary to go into the aforesaid aspect at this stage of the grant of interim reliefs to the Petitioner.

(i) Thus, the interim reliefs prayed for by the Petitioner may be granted as it has strong *prima facie* case and the balance of convenience is also in its favour. Moreover, in absence of such reliefs, it would suffer irreparable losses in supply of power in term of directions dated 5.5.2022 issued under Section 11 of the Act.

(j) The aforesaid prayers are without prejudice to its rights to seek determination rate/ compensation under Section 11(2) of the Act to offset the adverse financial impact of the directions dated 5.5.2022 under Section 11(1) of the Act.

(k) The Petitioner may be permitted to file rejoinder to the reply filed by the Respondent, GUVNL.

3. In response to the specific query of the Commission regarding clarifications issued by MoP on 20.5.2022 providing for payment security mechanism as per the PPA and also for rebate, learned senior counsel for the Petitioner submitted that LC to be provided as per paragraph 2(a) is against the supply of power under the directions dated 5.5.2022 and therefore, it has to be at the rates for such supply (i.e. rates worked out by the Committee) and not as per the PPA rates. Learned senior counsel further submitted that as per paragraph 2(b), if the payment is made by the procurer within 5 days of presentation of weekly bill, then rebate of 0.375% on weekly basis in accordance with CERC norms or as per the PPA, which is higher shall be applicable. He further added that rate of rebate provided in the PPA is for the monthly payments of invoice and not for the weekly payments as envisaged in the MoP directions and therefore, GUVNL could not have claimed rebate beyond 0.375% provided the payment is made within 5 days of the presentation of bill.

4. Learned counsel for the Respondent, GUVNL mainly submitted as under:

(a) The Respondent is complying with the directions issued by MoP and has paid the Petitioner for supply of power under Section 11 of the Act strictly as per the directions of MoP dated 5.5.2022.

(b) Energy charge rate has been paid by the Respondent in accordance with the rate worked out by the Committee constituted under the directions dated 5.5.2022.

(c) As regards fixed charges, the Committee has stated that it will be as per the PPA or as has been already agreed mutually between the generating company and the procurers. Thus, the mutually agreed rate between the generating company and the procurer has been specifically recognised therein.

(d) As regards deduction of Rs.0.20/kWh from fixed charge, such deduction as hair cut by lenders has been specifically agreed between the parties as recorded in the minutes of the meeting held on 17.3.2022.

(e) Similarly, clarification issued by MoP on 22.5.2022 provides for rebate of 0.375% on weekly basis in accordance with CERC norms or as per the PPA, whichever is higher. Accordingly, the rebate provided in the PPA has been applied on the invoices raised by the Petitioner.

(f) The Respondent may also be permitted to file its submission on the aspects of the payment of fixed charge and rebate as raised by the Petitioner only during the course of hearing.

5. Learned counsel for the Respondent, MSEDCL adopted the submission made by the learned counsel for GUVNL and sought liberty to file its reply in the matter. The learned counsel further submitted that as far as the rate of rebate is concerned, its impact would remain same irrespective of billing cycle whether on monthly or weekly basis.

6. Learned counsel for the Respondents, PSPCL and Haryana Utilities sought time to file reply to interim as well as the main prayers made by the Petitioner. The learned counsel submitted that the Respondents have not scheduled/availed any supply from the Petitioner in terms of the directions under Section 11 of the Act. Accordingly, the learned counsel requested that if at all the Commission considers it appropriate to allow any interim reliefs as prayed for by the Petitioner, the Commission may clarify that they would not apply to the Respondents.

7. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondents, the Commission directed the Respondents, MSEDCL, PSPCL and Haryana Utilities to file their reply within a week with copy to the Petitioner who may file its rejoinder, if any, within a week thereafter.

8. Subject to the above, the Commission reserved the order in the matter.

**By order of the Commission**  
**Sd/-**  
**(T.D. Pant)**  
**Joint Chief (Law)**