

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 161/MP/2022

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with Section 11(2), along with Regulation 111-113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 *inter-alia* seeking pass through of energy charges (ECR) for the power supplied to the Respondent No. 1/ TANGEDCO under the Power Purchase Agreement dated 19.12.2013, in terms of the directions dated 5.5.2022, 13.5.2022, 20.5.2022 and 27.5.2022 issued by the Ministry of Power, Government of India under Section 11(1) of the Electricity Act, 2003.
- Petitioner : Coastal Energen Private Limited (CEPL)
- Respondents : Tamil Nadu Generation and Distribution Co. Ltd. (TANGEDCO) and Anr.

Petition No. 162/MP/2022

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with Section 11(2), along with Regulation 111-113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 *inter-alia* seeking pass through of energy charges (ECR) for the power supplied to the Respondent No. 1/ TANGEDCO under the Power Purchase Agreement dated 12.12.2013, in terms of the directions dated 5.5.2022, 13.5.2022, 20.5.2022 and 27.5.2022 issued by the Ministry of Power, Government of India under Section 11(1) of the Electricity Act, 2003.
- Petitioner : IL &FS Tamil Nadu Power Co. Limited (IL&FS)
- Respondents : Tamil Nadu Generation and Distribution Co. Ltd. (TANGEDCO) and Anr.
- Date of Hearing : 5.7.2022
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Parties Present : Shri Sanjay Sen, Sr. Advocate, CEPL and IL&FS
Shri Hemant Singh, Advocate, CEPL and IL&FS
Shri Lakshyajit Singh Bagdwal, Advocate, CEPL and IL&FS
Ms. Lavanya Panwar, Advocate, CEPL and IL&FS
Shri Mridul Chakravarty, Advocate, CEPL and IL&FS



Record of Proceedings

Cases were called out for virtual hearing.

2. Learned senior counsel for the Petitioners submitted that the present Petitions has been filed, *inter alia*, seeking pass through of actual energy charges for the power supplied to the Respondent No.1, TANGEDCO under the Power Purchase Agreements dated 19.12.2013 (in Petition No. 161/MP/2022) and 12.12.2013 (in Petition No. 162/MP/2022) in terms of the directions dated 5.5.2022, 13.5.2022, 20.5.2022 and 27.5.2022 ('the directions') issued by the Ministry of Power, Government of India under Section 11(1) of the Electricity Act, 2003 ('the Act'). Learned senior counsel mainly submitted the following:

(a) Ministry of Power, in view of the energy crisis being faced by the country, issued the directions dated 5.5.2022 under Section 11(1) of the Act whereby all imported coal based power plants have been required to operate and generate the power to their full capacity. The directions also recognise that the present PPAs do not provide for the pass through of present high cost of imported coal and as such constituted a committee to work out the benchmark rate of power to meet all prudent cost of using imported coal for generating power including the present coal price, shipping costs and O&M costs, etc. and a fair margin.

(b) In terms of the above, the benchmark Energy Charge Rate (ECR) is being worked out by the Committee on time to time basis. However, the said benchmark ECR as recommended by Committee does not reflect the actual ECR and results in under recovery of cost to the Petitioners. The Petitioners had also written to the Ministry of Power in this regard vide its letters dated 19.5.2022 and dated 16.5.2022. Accordingly, the Petitioners have invoked the jurisdiction of this Commission under Section 11(2) of the Act for off-setting the adverse financial impact on account of the directions issued under Section 11(1) of the Act.

(c) The Petitioners have furnished the details of ECR calculations based on the prevalent imported cost, demonstrating the ECR of Rs. 8.70 per unit (CEPL) / Rs.8.4444 per unit (IL&FS) and in the interim, have also prayed to allow such ECR, on provisional basis, for power supplied/to be supplied in terms of the said directions of Ministry of Power till the pendency of the present Petitions. Notice to TANGEDCO may also be issued on the aforesaid interim prayer of the Petitioners.

(d) The Petitioner, CEPL is currently undergoing the corporate insolvency resolution process under the provisions of the Insolvency & Bankruptcy Code, 2016. It does not have the working capital and is financially stressed due to non-receipt of timely payment of dues from TANGEDCO for the power supplied to it under the PPA. There has been long standing pending dues which have not yet been cleared by TANGEDCO in terms of the power supplied by the Petitioners under the PPAs [in case of CEPL - Rs. 371.22 crore undisputed and Rs. 409.85 crore under reconciliation and in case of IL&FS approx. Rs. 3100 crore].

(e) Accordingly, the Petitioner, CEPL has prayed for appropriate direction upon TANGEDCO to forthwith release an amount of Rs. 300 crore to the Petitioner, which would be extremely crucial for arranging the coal, O & M charges etc. and to supply the power in terms of MoP directions. Whereas in case of Petitioner, IL&FS, directions has been sought upon TANGEDCO to forthwith release an amount of Rs. 2547 crore towards power supplied under the PPA dated 12.12.2013.

3. After hearing the learned senior counsel for the Petitioners, the Commission ordered as under:

- (a) Admit. Issue notice to the Respondents.
- (b) The Petitioners to serve copy of the Petition on the Respondents and the Respondents to file their reply within three weeks after serving copy of the same to the Petitioners, who may file their rejoinder within two weeks thereafter.
- (c) The Petitioners to submit the following information on affidavit within two weeks:
 - (i) Details of fixed charges and energy charges (ECR) being billed to the beneficiaries as per PPA prior to 5.5.2022 from 1.4.2021, along with relevant PPA clauses, applicable escalation indices for the fuel cost and norms of operation considered;
 - (ii) Monthly quantum of power supplied to the Respondents from 1.4.2021 to 5.5.2022 and from 6.5.2022 till date along with the ECR.
 - (iii) Basis of claim of higher ECR, than the ECR recommended by committee constituted by Ministry of Power vide letter dated 27.5.2022, duly supported by data and calculations completely certified by an Auditor (All the data/calculations should be in MS Excel sheet linking all the details).
- (d) The Petitioners to submit the information on affidavit within two weeks as per Annexure attached to this ROP.
- (e) Parties to comply with the above directions within the specified timeline and no extension of time shall be granted.

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

By order of the Commission

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

Annexure

A] Details of Coal received – Shipment-wise

Sr No	Vessel Name	Vessel Invoice date/Bill of Lading date	Vessel Qty (MT)	GCV at load Port kCal/kg	GCV at Discharge Port kCal/kg	TM %	Ash %	Sulphur %	FOB Cost in [USD/MT]	Other Charges [USD/MT]	Ocean Freight [USD/MT]	Insurance [USD/MT]	Total CIF Value [USD/MT]	Exchange rate & its basis [USD to INR]	Total CIF Value [INR/MT]	Port/Fuel Handling Charges [INR/MT]	Transit Loss % - Actuals	Accounted for in Coal stores Ledger on date
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NOTE:

- GCV at Load Port and Discharge Port to be supported by CERTIFICATE OF ANALYSIS.
- In case of Ocean Freight and Port Handling charges breakup depicting Fixed and escalable component, if any.
- Source-Own Mine/Other Than own mine [Schedule 5 of PPA]
- Through FSA or otherwise [Schedule 5 of PPA]
- Show applicable taxes and duties against each shipment

B] Consumption and Other Details

Sr No	Week		Generation achieved [Mus]	Generation Supplied [Mus]			Sold at Exchange [Mus]	Sale value in Rs/kWh	Energy Charge Rate - Rs/kWh	Coal Quantity Consumed in MT	GCV of coal consumed - kCal/kg	Technical Particulars as achieved		Weighted Average Price of Coal for ECR in Rs/MT
	From	To		Tamil Nadu	Other PPA beneficiary with Name	Others-Outside PPA, if any (with details)						Gross Station Heat Rate [kCal/kWh]	Auxiliary Consumption %	
1	06-05-2022	12-05-2022												
2	13-05-2022	19-05-2022												
3	20-05-2022	26-05-2022												
4	27-05-2022	02-06-2022												
5	03-06-2022	09-06-2022												
6	10-06-2022	16-06-2022												

And so on for further weeks till the date of submission of data

NOTE:

- In case coal consumed is by way of blending for the purpose of generation achieved in that case details of each such coal GCV and its quantity used be provided.

C] Detailed computation of mining profit, as applicable to the extent of share of ownership in mines and its weekly allocation in case of above weeks.

D] Stores Priced Ledger (Coal) as on 5.5.2022 [more precisely before supplies started under Section 11] indicating opening quantity available in stock, its weighted average GCV and its weighted average price.

All above information be provided duly audited by an Auditor.

E] In relation to Petition No. 161/MP/2022, enclose [Legible copy] of quoted tariff sheet – Tariff Table in Schedule 8

F] Status of opening of LCs by procurers as per direction given by Ministry of Power under Section 11 of the Act.

