

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 111/MP/2022**

**Along with**

**I.A. No. 36/IA/2022**

**Coram:**

**Shri I. S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri P. K. Singh, Member**

**Date of Order: 13<sup>th</sup> June, 2022**

**In the matter of:**

Petition under Section 79(1)(b) of the Electricity Act, 2003 read with Clause 5(b) of the Settlement Deed dated 3.1.2022 and Supplemental PPA dated 30.3.2022 entered into between the Petitioner and the Respondent in regard to the base rate as on 15.10.2018.

**In the matter of:**

Gujarat Urja Vikas Nigam Limited  
Sardar Patel Vidyut Bhawan,  
Race Course Circle,  
Vadodara-390 007

.....**Petitioner**

**Vs**

Adani Power (Mundra) Limited  
Shikhar, Near Mithakhali Circle,  
Navrangpura,  
Ahmedabad-380 009

.....**Respondent**

**Parties Present**

Shri M. G. Ramachandran, Sr. Advocate, GUVNL

Shri Anand K. Ganesan, Advocate, GUVNL

Ms. Swapna Seshadri, Advocate, GUVNL

Ms. Anushree Bardhan, Advocate, GUVNL

Ms. Tanya Sareen, Advocate, GUVNL

Ms. Srishti Khindaria, Advocate, GUVNL

Shri Amit Kapur, Advocate, AMPuL

Ms. Poonam Verma, Advocate, AMPuL

Shri Saunak Rajguru, Advocate, AMPuL

Shri S.K. Nair, GUVNL  
Shri Vipula Lathiya, GUVNL  
Shri Krishna Rao, AMPuL  
Shri Sameer Ganju, AMPuL  
Shri Malav Deeliwala, AMPuL  
Shri Tanmay Vyas, AMPuL  
Shri Mehul Rupera, AMPuL

## **ORDER**

The Petitioner, Gujarat Urja Vikas Nigam Limited (hereinafter 'GUVNL') has filed the present petition for placing on record the Supplementary Agreements dated 3.1.2022 to PPAs dated 2.2.2007 and 6.2.2007 entered into between the Petitioner and Adani Power (Mundra) Limited (APMuL), the Respondent herein and for determination of the Base Rate of imported coal used in Units 1 to 6 of the Mundra Power Project of APMuL as on 15.10.2008 taking into account the consumer interest and all relevant factors pleaded in the petition and recommend the Base Rate to the Government of Gujarat.

### **Background**

2. Based on tariff based competitive bidding, GUVNL and Adani Power (predecessor of APMuL) entered into two PPAs - PPA dated 2.2.2007 (hereinafter "Bid-2 PPA") for supply 1000 MW power from Units 5 and 6 and PPA dated 6.2.2007(hereinafter "Bid-1 PPA") for supply of 1000 MW power from Units 1 to 4 of Mundra Power Project. Bid-2 PPA was premised on availability of domestic coal by GMDC. On account of failure of GMDC to make the domestic coal available, APMuL terminated the Bid-2 PPA on 28.12.2009 to be effective from 4.1.2010. Termination of Bid-2 PPA was challenged by GUVNL before Gujarat Electricity Regulatory Commission (GERC) through Petition No.1000/2010. GERC in its order dated 31.8.2010 held the termination of the PPA as

illegal which was upheld by Appellate Tribunal for Electricity (APTEL) vide its judgement dated 7.9.2011 in Appeal No.184/2010. APMuL challenged the order of APTEL in Civil Appeal No. 11133/2011. In the meantime, the Units 1 to 6 of Mundra Power Project achieved commercial operation and supplied power to GUVNL in accordance with the PPAs by using imported coal from Indonesia.

3. On 23.9.2010, Minister of Energy and Mineral Resources, Republic of Indonesia promulgated “Regulation of Ministry of Energy and Mineral Resources No.17 of 2010” (hereinafter “Indonesian Regulations”) which aligned any sale of coal from Indonesia with Harga Batubara Acuan (HBA) price which was to be determined based on the international price of coal. APMuL approached the Commission by filing Petition No. 155/MP/2012 seeking to evolve a mechanism to restore APMuL to the same economic position as prevailing prior to promulgation of Indonesian Regulations. The Commission vide order dated 2.4.2013 decided that the Indonesian Regulations are neither covered under Change in Law nor under Force Majeure but directed for grant of relief in exercise of regulatory of the Commission under Section 79(1)(b) of the Act. Subsequently, the Commission vide order dated 21.2.2014 granted compensatory tariff to APMuL. The APTEL set aside the said orders of the Commission and held that the Indonesian Regulations constituted force majeure under the PPA. On appeal, Hon’ble Supreme Court vide its judgment dated 11.4.2017 in CA No. 5399-5400 of 2016 [Energy Watchdog vs Central Electricity Regulatory Commission & Ors., [(2017) 14 SCC 80] (hereinafter referred to as “Energy Watchdog Case”) decided that enactment of Indonesian Regulations did not constitute either a change in law or Force Majeure, as contractually specified under the respective PPAs.

4. Government of Gujarat vide its Resolution dated 3.7.2018 constituted a High Power Committee for resolution of the issues of imported coal based power projects located in the State of Gujarat. The High Power Committee submitted its report to the Government of Gujarat suggesting certain financial and commercial resolution packages. Before implementing the recommendations of the High Power Committee, Government of Gujarat and GUVNL sought a clarification from the Hon'ble Supreme Court whether any amendments to the PPAs in the light of the recommendations of the High Power Committee would be possible on the face of the judgment of the Hon'ble Supreme Court in Energy Watchdog Case. Hon'ble Supreme Court vide its order dated 29.10.2018 clarified that the judgment in the Energy Watchdog Case would not stand on the way of maintaining any application for amendment to the PPA before the Commission. Thereafter, Government of Gujarat issued the policy directive vide GR dated 1.12.2018 accepting some of the recommendations of the High Power Committee. Consequent to the issue of the policy directive, GUVNL and APMuL signed supplementary PPAs dated 5.12.2018 to Bid-01 and Bid-02 PPAs and approached the Commission through Petition No. 374/MP/2018 for approval of the supplementary PPAs. The Commission vide its order dated 12.4.2019 in Petition No. 374/MP/2018 approved the supplementary PPAs to Bid-01 PPA and Bid-02 PPA.

5. Hon'ble Supreme Court disposed of Civil Appeal No. 11133/2011 vide its judgment dated 2.7.2019 upholding the termination of Bid-02 PPA by APMuL w.e.f. 4.1.2010 and granting liberty to APMuL to approach the Commission for determination of compensation tariff from the date of supply of electricity to GUVNL. The Review Petition filed by GUVNL

against the judgement dated 2.7.2019 was dismissed by the Hon'ble Supreme Court. APMuL filed Petition No. 275/MP/2019 before the Commission for determination of tariff from the date of supply of electricity to GUVNL. GUVNL filed Curative Petition (C) No.34 of 2020 before the Hon'ble Supreme Court for reconsideration of the judgement dated 2.7.2019 in Civil Appeal No. 11133/2011. GUVNL also filed Petition No. 250/MP/2019 before the Commission for recall of the order dated 12.4.2019 in Petition No. 374/MP/2018. APMuL filed Petition No. 614/MP/2020 seeking direction to GUVNL to comply with the terms of Bid-01 PPA as amended by the supplementary PPA dated 15.10.2018 and pay the entire energy charges on account of actual cost of coal incurred for spot procurement of coal without any deduction or adjustment along with late payment surcharge.

6. While the above petitions were under consideration of the Commission, both APMuL and GUVNL signed a Settlement Deed dated 3.1.2022 setting out the terms and conditions of settlement of various outstanding issues, disputes and differences between them with regard to the generation and sale of electricity by APMuL to GUVNL under the Bid-01 and Bid-02 PPAs. Pursuant to the Settlement Deed, both APMuL and GUVNL filed a joint application namely, IA No. 1421/2022 in Curative Petition(C) No. 34/2020 before the Hon'ble Supreme Court placing the Settlement Deed on record and for passing orders for the disposal of the Curative Petition (C) No. 34 of 2020 in terms of the settlement. Hon'ble Supreme Court vide order dated 8.2.2022 disposed of the IA No. 1421/2022 along with Curative Petition No. 34/2020 with the following directions:

“During the pendency of the Curative Petition, the parties have settled the dispute.

The Petitioner and Respondent No. 1 have filed a joint application, I.A. No. 1421/2022, to place on record the deed of settlement dated 3.1.2022 entered between them, regarding the subject matter of the present petition. The Settlement Deed dated 3.1.2022 is taken on record.

In view of the above, we dispose of the present Curative Petition with the observation that the inter se relationship between the parties shall now be governed by the settlement deed dated 3.1.2022.

I.A. No. 1421/2022 and Curative Petition (C) No. 34 of 2020 are disposed of in the above terms.”

7. Both APMuL and GUVNL also filed Interlocutory Applications in Petition No. 250/MP/2019, 275/MP/2019 and 614/MP/2020 pending before the Commission for taking on record the Settlement Deed and for passing appropriate orders. The Commission vide its orders dated 21.2.2022 has disposed of the above mentioned petitions.

8. Government of Gujarat issued G.R. dated 25.2.2022 regarding signing of the Supplemental PPAs between GUVNL and APMuL and approaching the Commission for determination of base rate as on 15.10.2018 for the sub-parameters such as FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling Charges (in Rs./kWh) based on normative operating parameters as per provisions of SPPAs dated 5.12.2018. APMuL and GUVNL have entered into Supplementary Power Purchase Agreements dated 30.3.2022 in Bid-01 and Bid-02 PPAs incorporating the relevant terms and conditions of Settlement Deed 3.1.2022 and directions of Government of Gujarat in the G.R. dated 25.2.2022. The Petitioner, GUVNL has filed the present petition with the following prayers:

“(a) Take on record the Supplementary Power Purchase Agreements dated 30.3.2022 and the Settlement Deed dated 3.1.2022;

(b) Initiate a proceeding for determination of the Base Rate as on 15.10.2018 and recommend to the Government of Gujarat the Base Rate taking into account the relevant matters including those mentioned hereinabove in the present Petition and the paramount aspect of Consumer Interest; and

(c) Pass any further orders that this Hon'ble Commission may deem fit.”

### **Submission of the Petitioner**

9. The Petitioner, GUVNL has submitted that the generation and supply of electricity by APMuL to GUVNL shall be governed by the provisions of Bid-01 and Bid-02 PPAs as amended/modified by the Supplementary Power Purchase Agreements dated 5.12.2018 and Supplemental Power Purchase Agreements dated 30.3.2022.

10. The Petitioner has submitted that Clause 5(b) of the Settlement Deed inter alia provides as under:

“5. APMuL and GUVNL hereby mutually agree on the following terms in regard to the tariff admissible in modification and supersession of the terms contained in the PPA dated 2.2.2007 read with the related SPPA dated 5.12.2018 which shall be effective 15.10.2018 and govern the period till 9.7.2019 and thereafter from the date of the commencement of the supply under this Settlement for the entire duration and in PPA dated 6.2.2007 read with related SPPA dated 5.12.2018 which shall be effective 15.10.2018 and govern the entire duration.

.....

b. To avoid disputes in relation to energy payments and to ensure pass through of coal cost in a prudent and transparent manner, it is decided that the payment of energy charges shall be linked to the escalation rates notified by CERC from time to time for which the base rate is to be determined. GUVNL shall request CERC for determination of the base rate for following sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling Charges (in Rs./kWh) as on 15.10.2018 based on normative operating parameters as per provisions of SPPA dated 5.12.2018.”

11. The Petitioner has submitted that Government of Gujarat through its GR dated 25.2.2022 has issued the following resolution for signing of the Supplemental PPAs:

“Accordingly, GUVNL and Adani Power shall sign a Supplemental PPA with the following modifications:

1. The HBA index ceiling of FOB price of coal of USD 110/MT as per the Government of Gujarat as per the SPPAs dated 5.12.2018 and ceiling of USD 90/MT as per the Government guideline dated 12.6.2020 shall be deleted and the provision related to reset of the aforesaid ceiling from time to time shall also be deleted.
2. The existing provision in SPPA related to computation of energy charges and working of landed cost of fuel shall be modified and a provision shall be incorporated whereby energy charge shall be worked out considering the base rate recommended by Hon'ble CERC and finally approved by State Government for following sub-parameters as on 15.10.2018 viz. (i) FOB coal cost (in USD/kWh) for quality of coal consumed including other charges (ii) Ocean Freight (in USD/kWh) and (iii) Port Handling charges (in Rs./kWh), based on normative operating parameters as per provisions of SPPA dated 5.12.201. The base rate as approved by the State Government on 15.10.2018 shall be linked to the applicable escalation rates notified by CERC from time to time.
3. In addition to above applicable tax, duties and cess etc. on energy charges shall be payable as per the SPPA on reimbursement basis, for which separate invoices shall be raised, whereas other Change in Law shall be as per PPA with approval of CERC.
4. All other terms and conditions of PPA dated 6.2.2007 (Bid-01) and PPA dated 2.2.2007 (Bid-02) read with respective SPPAs dated 5.12.2018 including ceiling of Transportation charges and Port Handling Charges will remain unchanged. The rebate on payment of Monthly Invoices shall be as per PPAs dated 6.2.2007 (Bid-01) and PPA dated 2.2.2007 (Bid-02).
5. In view of the aforesaid and after signing of Supplemental PPA with Adani Power as per attached draft, GUVNL shall file a Petition before Hon'ble CERC for determination of the base rate as on 15.10.2018 for following sub-parameters viz. (i) FOB coal cost (in USD/kWh) for quality of coal consumed including other charges (ii) Ocean Freight (in USD/kWh) and (iii) Port Handling charges (in Rs./kWh), based on normative operating parameters as per provisions of SPPA dated 5.12.2018.
6. GUVNL shall thereafter submit the base rate as recommended by CERC to the Government of Gujarat for approval. Pursuant to the approval of the base rate by Government of Gujarat, the same shall be incorporated in the Supplemental PPA through the amendment to the SPPA and the same shall be final and binding on both the parties.
7. No claims/disputes shall be filed/raised by either parties related to the period prior to 15.10.2018 for PPAs dated 6.2.2007 (Bid-01) and PPA dated 2.2.2007 (Bid-02). Similarly, both parties shall not raise any claims for the period from 10.7.2020 till date of commencement of power supply under PPA dated 2.2.2007 (Bid-02).
8. The actual amounts paid by GUVNL to Adani Power under the PPAs dated 6.2.2007 (Bid-01) & PPA dated 2.2.2007 (Bid-02) read with the related SPPAs dated 5.12.2018 for the period from 15.10.2018 till date of settlement shall be adjusted against the



amount payable without interest as per the tariff to be reworked under the amended SPPA.

9. GUVNL shall submit the amended/modified SPPAs before CERC for allowing the aforesaid consequential changes/modification/amendments.”

12. The Petitioner has further submitted that the relevant provisions of the Supplemental PPAs dated 30.3.2022 (similar in both the SPPAs) signed between GUVNL and APMuL are as under:

“4.1 The following provisions in regard to the tariff admissible in modification and supersession of the terms contained in the PPA dated 6.2.2007 read with the related SPPA dated 5.12.2018 shall be effective from 15.10.2018 and govern the period for the entire duration of the PPA as provided in the SPPA dated 5.12.2018:

(1) The fixed or capacity charges shall be as per the terms of the PPA dated 6.2.2007 read with SPPA dated 5.12.2018 without any further change and the same shall be applicable throughout the duration of the PPA read with SPPAs.

(2) The Energy Charge Rate for determination of Energy Charges shall be determined based on a Base Rate to be determined as provided hereunder and the applicable escalation rates notified by the Central Electricity Regulatory Commission from time to time.

(3) Determination of Base Rate for Energy Charges: The Procurer shall request the Central Electricity Regulatory Commission for determination of the Base Rate for following sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling charges (in Rs./kWh) as on 15.10.2018 based on normative operating parameters as per provisions of SPPA dated 5.12.2018.

The Base Rate recommended by Central Electricity Regulatory Commission shall be submitted to the Government of Gujarat for approval. The Base Rate as per above would be finalised by the Government of Gujarat and the parties agree that they will abide by decision of the Government of Gujarat on the determination of the Base Rate mentioned above.

(4) In addition to the above, applicable tax, duties and cess etc. on energy charges shall be payable as per the SPPA dated 5.12.2018 on reimbursement basis, whereas other Change in Law shall be as per the PPA with approval of the Central Electricity Regulatory Commission. A separate Supplemental invoice as per PPA dated 06.02.2007 shall be raised for seeking reimbursement of approved Change in Law. There shall be no other consideration or claim for change in law in relation to variable/energy charges.

(5) Each of the sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh), and Port Handling

charges (in Rs./kWh) as on 15.10.2018 shall be thereafter escalated as per the applicable Central Electricity Regulatory Commission notified escalation rate from time to time related to imported coal. The month to month Energy charges based on Base Rate and escalation/adjustment provided by the Central Electricity Regulatory Commission shall apply for all intent and purposes for the period from 15.10.2018 onwards.

Base Rate for both escalable and non-escalable components of Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling charges shall be determined by the Central Commission subject to ceiling rate for each of them as per the SPPA dated 5.12.2018.

(6) The actual amounts paid by the Procurer to the Seller under the PPAs/SPPAs for the period from 15.10.2018 till date of settlement shall be adjusted accordingly without interest.”

7. For the purpose of working of monthly energy charges, the Article 3.2.3, 3.2.4, & 3.5.3 in both the SPPAs dated 5.12.2018 shall be substituted with the following:

Energy Charge shall be determined for each Month, as under:

Monthly energy charges for month ‘m’ will be calculated as under:

$$MEP_m = AEO_m \times MEP_n \text{ minus DT}$$

Where

$MEP_m$  is the monthly Energy Charges for the month ‘m’ (in Rs)

$AEO_m$  is the scheduled energy at the delivery point during the month ‘m’ (in kWh)

$MEP_n$  is the Energy Charge, in Rs./kWh (upto four decimal), and is the sum of (a) : (i) Escalable Fuel Energy Charges ( $MEFEP_n$ ) (ii) Escalable Transportation Energy Charges ( $METEP_n$ ) (iii) Escalable Fuel Handling Energy Charges ( $MEFHEP_n$ ) and (b): (i) Non Escalable Transportation Energy Charges ( $MNETEP_n$ ) (ii) Non Escalable Fuel Handling Energy Charges ( $MNEFHEP_n$ ) for the contract year ‘n’ in which Month ‘m’ occurs and computed as mentioned hereunder:

(a) Escalable Component of Energy Charge

- (i)  $MEFEP_n = BMEFEP_n \times p/q \times FX_n \text{ Rate}$
- (ii)  $METEP_n = BMETEP_n \times p/q \times FX_n \text{ Rate}$
- (iii)  $MEFHEP_n = BMEFHEP_n \times p/q$

(b) Non-Escalable Component of Energy Charge

- (i)  $MNETEP_n = BMNETEP_n \times FX_n \text{ Rate}$
- (ii)  $MNEFHEP_n = BMNEFHEP_n$

Where ,

BMEFEPn is the Base Escalable Fuel Energy Charges (in USD per kWh upto five decimal) on 15.10.2018 as recommended by Central Electricity Regulatory Commission and approved by Government of Gujarat.

BMETEPn is the Base Escalable Transportation Charges (in USD per kWh upto five decimal) on 15.10.2018 as recommended by Central Electricity Regulatory Commission and approved by Government of Gujarat.

BMEFHEPn is the Base Escalable Fuel Handling Energy Charges (in INR per kWh upto four decimal) on 15.10.2018 as recommended by Central Electricity Regulatory Commission and approved by Government of Gujarat.

BMNETEPn is the Base Non Escalable Transportation Energy Charges (in USD per kWh upto five decimal) as recommended by Central Electricity Regulatory Commission and approved by Government of Gujarat for the Contract Year 'n'.

BMNEFHEPn is Base Non Escalable Fuel Handling Energy Charges (in INR per kWh upto four decimal) as recommended by Central Electricity Regulatory Commission and approved by Government of Gujarat for the Contract Year 'n'.

p is the Escalation Index as per Schedule A at the beginning of Month 'm' (expressed as a number)

q is the Escalation Index as per Schedule A as on 15.10.2018 (expressed as a number)

FXn shall be the simple average of closing SBI TT Selling Rate (for Rs./US \$) for last fifteen (15) days prior to the first day of the Month 'm' for which such exchange rates are published by SBI

DT is discount in relation to Mining Profit as determined in Clause 3.3 of SPPA dated 5.12.2018.

For the avoidance of doubt, this discount (DT) will be determined and applied only in respect of Energy Charge in respect of actual power generation for Contracted Capacity as specified in the PPA dated 2.2.2007 and in respect only of such proportion of the Capacity that pertains to Contracted Capacity linked to imported coal as Fuel.

In addition to the above, applicable tax, duties and cess etc. on energy charges shall be payable as per the SPPA dated 5.12.2018 on reimbursement basis, whereas other Change in Law shall be as per the PPA with approval of the Central Electricity Regulatory Commission."

13. The Petitioner has prayed before the Commission for determination of the Base Rate and recommendation of the same to the Government of Gujarat to enable decision on the applicable Base Rate as on 15.10.2018 in regard to the payment of energy charges

under both Bid-01 and Bid-02 PPAs as amended/modified by the Supplemental Power Purchase Agreements dated 30.3.2022.

14. In connection with the determination Base Rates under both the SPPAs dated 30.3.2022, GUVNL has made the following submissions:

(a) The objective of the Supplemental PPAs dated 30.03.2022 is to allow pass through of prudent coal cost which APMuL is expected to incur. Only judicious and prudent coal cost should be considered while determining the Base Rate as it has a long term implication on the consumers since the Base Rate will be linked to the escalation index notified by the Commission from time to time.

(b) APMuL has been procuring coal through SPOT enquiries from limited parties, mainly from its group companies and not through a transparent tender process. The coal has been consistently sourced at price above the HBA derived price for the quality of coal consumed and also significantly higher than the price at which coal has been traded in Indonesia as per the rate published by indices of repute viz. Argus/Coalindo and S&P Global Platts and the rate at which coal has been sourced by other imported coal based projects located in the State. GUVNL has placed on record a Statement (Annexure 'F' to the Petition) showing the details of coal procured by APMuL vis-à-vis the coal procured by other imported coal based generator under PPA with GUVNL such as CGPL, HBA derived price and the rates published by indices of repute Argus/Coalindo and S&P Global Platts. GUVNL has submitted that if APMuL like other procurers of coal from Indonesia can secure

coal at a FoB price less than HPB derived price, there is no reason as to why the base rate should not be less than the HPB derived price.

(c) The Commission may consider the FOB price of coal as lowest of actual / HBA derived price for the quality of coal used by APMuL for generation of power at Mundra Power Project for supply of power to the Petitioner under the PPAs. However, for determination of the Base Fuel Energy Charge, only the prudent coal cost in line with the price at which coal was traded in Indonesia during the period, for the quality of coal consumed, should be considered.

(d) The Commission while deciding the Base Rate need to deduct the profit / margin paid by APMuL to its group companies as it is not appropriate that on the one hand, fuel cost is allowed as pass through in excess of the quoted tariff under PPA and on the other side, the group company makes profit towards supply of coal to the Respondents power plant.

(e) The Commission may consider the operational parameters as lower of actual and as per the Tariff Regulation of this Commission as on date of commissioning of the Units as per the SPPAs dated 5.12.2018 while determining the base Fuel Energy Charge as on 15.10.2018. The Base Rate for both escalable and non-escalable components of Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling charges shall be determined as on 15.10.2018 subject to ceiling rate for each of them as per the SPPA dated 5.12.2018 taking into consideration the operational parameters as lower of actual or as per Tariff Regulations whichever

is lower. In the SPPA dated 5.12.2018, the payment of both Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling Charges are subject to ceiling rates benchmarked with the CGPL bid. While determining the base rate for transportation charge and port handling charge as on 15.10.2018, the lower of the actual transportation cost incurred and the ceiling rate as per the SPPA dated 15.10.2018 to be considered to ensure that there is no adverse financial implication on the Petitioner and end consumers.

**Reply of Adani Power (Mundra) Ltd.(APMuL)**

15. The Respondent, APMuL vide its reply dated 26.4.2022 has submitted the following in response to the issues raised by GUVNL in its petition:

- (a) ***Coal procurement by APMuL at high prices:*** As per the 2018 and 2022 SPPAs, the energy charges formula as agreed therein is applicable from 15.10.2018 onwards (effective date). Prior to 15.10.2018, APMuL was entitled to energy charges as per quoted tariff under the PPAs. Subsequently, the 2018 SPPAs dated 5.12.2018 were signed. Article 3.2.4 of the 2018 SPPAs dated 5.12.2018 specifically allowed for a 'tolerance of maximum 10% over HBA price derived for a quality of coal'. This tolerance limit was provided admittedly because trades were taking place at a premium over the HBA prices which has been recorded by the Commission in its order dated 12.4.2019 in Petition No. 374/MP/2018. APMuL has always been prudently procuring coal. Prior to 15.10.2018, APMuL has been procuring coal at the HBA prices only. For the coal consumed in October 2018, APMuL had ordered/procured the same in August 2018 (2 vessels) and September

2018 (2 vessels). Since the 2018 SPPAs dated 5.12.2018 were signed only on 5.12.2018 i.e. much later to such coal procurement, APMuL was not aware of the energy charge pass-through mechanism or the premium of up to 10% agreed to in the 2018 SPPAs as on date of such procurement of coal. As such, there was no incentive (and no intention) for APMuL to procure coal at higher prices, as energy charges at the time of such procurement was payable at quoted tariff under the PPAAs. Post 15.10.2018, APMuL has strictly adhered to Article 3.2.4 of the 2018 SPPAs dated 5.12.2018 and procured coal priced within HBA price + 10% tolerance. Post 15.10.2018, APMuL claimed actual coal cost or HBA price + 10% tolerance whichever is lower.

(b) ***Coal Supply under Indonesian Regulations:*** For the entire period of power supply by APMuL since 2012, the pricing, export, restrictions of IUP licensees for steam coal etc. are governed by “Regulation of the Government of the Republic of Indonesia No. 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities” dated 1.2.2010 [“2010 Government Regulations”]. The Indonesian Regulations all along the period of supply of power by APMuL till date continue to mandate coal suppliers not to export coal at prices below HBA index price. APMuL has been consistently procuring imported coal in terms of the Indonesian Regulations as amended from time to time. None of the Indonesian Regulations extracted by GUVNL show that coal export can take place at price less than benchmark price. Regulations 35-37 of 2018 Regulations referred by GUVNL deals with certain types (fine coal, reject coal and coal with certain impurities) and certain purposes of coal [(i) used for own purpose, (ii) to increase

the value added of coal at mine mouth location or (iii) for development of under-developed areas around the mine]. Such types of coal are not suitable for power generation at APMuL's Mundra Power Project and hence was not used. As such, these Regulations have no relevance for fixation of base rate in the present context. The extracts of PWC report annexed to the Petition does not support GUVNL's case that export of coal from Indonesia can take place at price less than HBA price.

(c) **CGPL's coal procurement data:** CGPL's coal procurement data furnished by GUVNL is misleading and has no relevance to the present matter. Coal procurement price depends on various factors such as the date of placement of the order, payment terms and conditions etc. It is not possible for APMuL to ascertain whether the energy charges claimed by other generators is based on coal procurement prices actually incurred or the basis of such procurement. GUVNL has special knowledge of such information or documents but has not produced the same on record. The coal procurement by CGPL for 8 vessels was based on fixed HBA price as on the date of signing contract. HBA price agreed in contract remained constant irrespective of the HBA as on date of Bill of Lading. In the present case, for 8 vessels, CGPL had entered into contract in May 2018 was lower at 89.53 USD/MT. Thus, a premium of 4.50% was already built-up in the contract price itself. The trend of HBA Index was upward during the period of actual shipment which happened during August to November 2018. APMuL has submitted that even though it artificially appeared as if CGPL had procured coal at discounted price when fixed HBA price of 93.56 USD/MT as compared with Bill of



Lading HBA index of Aug-Nov 2018 which varied between 97.90 to 107.83 USD/MT but factually there was no discount. APMuL has placed on record a statement to that effect in Annexure-2 of its reply. APMuL has submitted that FoB base rate may be fixed by considering the applicable coal indices relevant for the coal consumed in October 2018 for supply of power under the 2018 SPPAs dated 05.12.2018. The other charges agreed in amended 2022 SPPAs should also be considered on normative basis at 3% of applicable FoB cost.

(d) ***Mines Profit to the Group Companies of APMuL:*** Since as per the Deed of Settlement dated 3.1.2022 and the 2022 SPPAs dated 30.3.2022, the payment of energy charges is linked to CERC escalation rates over base price, the issue of profit to group companies does not arise. This is because the CERC escalation rates over base price as on 15.10.2018 has co-relation with the actual cost at which coal was/to be procured. The present proceeding arises out of the Deed of Settlement dated 3.1.2022. Clause 6 of the Deed of Settlement dated 3.1.2022 required GUVNL and APMuL to withdraw all pending claims and that no claims as part of the then pending proceedings will be re-raised. GUVNL by re-agitating the past issues is in breach of Clause 6 of the Deed of Settlement, which is untenable.

(e) ***Operational parameters to be considered as lower of actual and as per Tariff***

***Regulations:*** GUVNL and APMuL have unequivocally agreed to consider the 'normative' operating parameters for determination of the base rate by the Commission as is evident from Clause 5(b) of the Deed of Settlement dated 3.1.2022, Hon'ble Supreme Court Order dated 8.2.2022 holding that "inter se

relationship between the parties shall now be governed by the settlement deed dated 3.1.2022”, provisions in the GoG GR dated 25.2.2022 for determination of base rate as per the ‘normative’ operating parameters, and Recital O(b) and Article 4.1.(3) of 2022 SPPAs mandating the determination of base rate as per the ‘normative’ operating parameters. The Commission while approving the 2018 SPPAs dated 5.12.2018 has already approved normative parameters of Station Heat Rate (2340 kCal/kWh for Bid-01 PPA and 2274 Kcal/kWh for Bid-02 PPA) and Auxiliary Energy Consumption (9% for Bid-01 PPA and 6.5% for Bid-02 PPA).

16. The Respondent APMuL has made the following additional submissions:

(a) **Other charges:** For determination of the base rate viz. the FoB coal cost (in USD/kWh) for quality of coal consumed shall also include other charges viz. Sampling, Inspection, Customs clearance, Forwarding Agency charge etc. as agreed to in the 2022 SPPAs dated 30.3.2022, Deed of Settlement, GoG GR dated 25.2.2022 etc. Considering the aforesaid charges, the Commission may allow these other charges on normative basis at 3% of applicable FoB cost as agreed in 2022 SPPAs.

(b) **Change in Law provision:** As per 2022 SPPAs dated 30.3.2022, applicable tax, duties and cess etc. on energy charges shall be payable as per 2018 SPPAs dated 5.12.2018 on reimbursement basis, whereas other Change in Law shall be as per the PPAs with approval of the Commission. Any further Change in Law events, except the events mentioned above, impacting the cost or revenue of APMuL shall also be as per the original PPAs with the approval of the Appropriate Commission.

(c) **Monthly Escalation Rates:** MoP has advised the Commission that the escalation index for imported coal be notified on monthly basis in addition to the present six-monthly escalation index. The monthly index can be used for existing PPAs with mutual consent of generating company and the procurer. APMuL has requested the Commission to approve adoption of monthly escalation index from the date the same is being notified by the Commission.

(d) **Ocean Freight and Port Handling Charges:** APMuL submits that as per Clause 4.1.5 of the 2022 SPPAs dated 30.3.2022, base rate for both escalable and non-escalable components of ocean freight and port handling charges shall be determined by the Commission subject to ceiling rate for each of them as per the 2018 SPPAs dated 5.12.2018. As per the 2018 SPPAs dated 5.12.2018, the escalable and non-escalable components of ocean freight are in the ratio of about 30:70. However, as per data received from Clarksons (an international agency offering inter alia port services support, agency, freight forwarding, supplies and tools for the marine and offshore industries), the escalable and non-escalable components of ocean freight are in the ratio of 56:9:43:1 for the month of October 2018 which may be taken into consideration in determination of base rate for ocean freight.

### **Rejoinder of the Petitioner**

17. The Petitioner in its rejoinder filed vide affidavit dated 3.5.2022 has submitted as under:

(a) It is essential that only judicious and prudent coal cost based on actual is considered by the Commission while determining the base rate as it has a long term implication on the consumers since the base rate will be linked to the escalation index notified by the Commission from time to time. The Supplementary PPAs dated 5.12.2018 entered into between GUVNL and APMuL in respect both Bid-01 and Bid-02 PPAs clearly provides for consideration of actuals when it states that FOB price of coal “shall be lower of the actual price or the HBA price” and GHR and Auxillary consumption “shall be lower of actual or normative”. The stipulation of ‘actual’ in each of the specific elements under the SPPAs dated 5.12.2018 clearly establish the contemporaneous intention and acceptance of both APMuL and GUVNL that each of the above component/element could be actually lower than the alternate provided against each of them as ceiling. It is therefore not correct on the part of APMuL to allege that only HBA or HPB price, derived from HBA, should be considered for determination of base rate ignoring the actual FOB price at which coal from Indonesia of the relevant grade was being exported during the relevant period. APMuL is first required to disclose in a transparent manner, supported by authenticated documents the actual FOB price at which the coal was exported to APMuL and/or its group companies during the September-October 2018 (even in the previous month) and such FOB price at which coal was being exported generally by others from Indonesia during the said period in order to establish the prudent price of export of coal from Indonesia during the relevant period.

(b) In its affidavit dated 26.4.2022, APMuL has disclosed that during the relevant period, coal was procured by APMuL from PT Kaltim Prima Coal which is a company in which Tata Power Limited has the equity stake. The procurement of coal by CGPL has been primarily from the said PT Kaltim prima coal mine. Therefore, it is not correct on the part of APMuL to claim that the price at which coal was being imported by CGPL is not the relevant material to be considered. As per the documents submitted by APMuL to GUVNL for claiming energy charge for October 2018 under the SPPA dated 5.12.2018, the sourcing of coal in the four vessels through its Group Company Adani Global Pte Ltd. was from PT Kaltim Prima Coal from which CGPL has been procuring its coal requirement and the price at which coal has been sourced by APMuL is significantly higher than the rate prevalent at that time and is also inclusive of the margin claimed by the Group Companies. Therefore, while determining the Base energy charge component, the Commission needs to consider the market rates notified by indices of repute viz. Argus/Coalindo and S&P Global Platts for the quality of coal consumed at the plant for supply. GUVNL has filed a compilation of rates notified by Argus/Coalindo and S&P Global Platts for various qualities of coal for the month of August to October 2018 as Annexure A to the rejoinder and has submitted that the price at which APMuL has procured coal excluding some odd instances is higher than the indices published by Argus/Coalindo and S&P Global Platts.

(c) In order to enable the Commission to decide on the Base Rate recommendations to the Government of Gujarat, APMuL in addition to the documents filed in the reply is required to provide the necessary and relevant documents viz. duly

authenticated invoices of fuel supplier, ocean freight and insurance, port/fuel handling charges and other charges, certificate for actual parameters of GHR and Auxiliary consumption for the month. The invoice price of coal raised by the Indonesian Coal mining company exporting the coal at the Indonesian port commonly known as FOB price of coal, duly authenticated along with the Bill of lading, the Certificate of Origin and Certificate of Sampling and Analysis from the Agency authorised by the Indonesian Government, invoices for ocean freight, marine insurance, commercial invoice etc. which are part of the shipping documents, and required for Letter of Credit to be opened in favour of Suppliers and for bill of entry by the Indian Customs Authorities are available with APMuL and need to be furnished to the Commission for determination of base rate. The actual price of other components forming part of ocean freight and insurance as provided in Article 3.2.4(I) of the SPPA dated 5.12.2018 need to be furnished. It is also necessary for APMuL to operate the power generating units as per the assumed bid parameters so as to ensure that the same are lower even with regard to normative parameters.

(d) APMuL in its reply has interpreted wrongly the implications of the Indonesian Regulations by saying that coal from Indonesia is not exported below HBA price or derived HPB price. The Indonesian Regulations and orders made thereunder from time to time allow export of coal at a discount or at a price lower than the derived price based on HBA such as HPB price published or otherwise allowed the relevant quality of coal exported (GCV) to be imported at a price to be mutually agreed subject only to the payment of Government Taxes at the notified prices. The SPPA

dated 5.12.2018 providing for the FOB cost as lower of actual price or the HBA price (HBA index derived price for the quality of coal) clearly establish that it is not open to APMuL to claim HBA price for the relevant GCV imported coal as the normative price, de hors the actual price. Relying on Articles 2 and 3 of the Ministerial Decree No.7 of 2017 enacted on 11.1.2017, it has been submitted that it is not necessary that coal export from Indonesia cannot be less than the HBA price or HPB index price. The HBA index price which is based on the international market price of major markets is only the starting point for the Indonesian Authorities to decide on the benchmarking of export price of coal. Based on the HBA price as the starting point, the Indonesian Authorities arrive at HPB price which takes into account host of relevant factors including and in particular, the relevant GCV of coal, the impurities, other quality aspects such as Sulphur, ash and moisture content. Therefore, the export price of coal can be less than the HBA index price/HPB price. The average prices of coal export from Indonesia of specified GCV and quality have been published by reputed agencies such as Argus/Coalindo and S&P Global Platts and the average price published from the month of August 2018 to October 2018 (filed as Annexure A to the Rejoinder) are lower than the HBA derived/HPB price and actual price at which APMuL has procured coal. The Indonesian Regulations providing for benchmark prices in regard to many grades of coal is to protect the quantum of royalties and statutory levies payable to the Indonesian Government on export of coal. Subject to the said requirement, the export of coal has not been prohibited at discounted prices by way of mutual agreement between the Indonesian Coal Mines and the Procurer of

coal from outside. GUVNL has also submitted two schematic diagrams- one pertaining to FOB price comparison of HPB Vs Indices Vs Claimed for the period April 2020 to March 2021 and other about the price of coal as per Global Coal New Castle, ICI-3 (5000 GAR), ICI-4 (4200 GAR), ICI(Argus/Coalindo) and QHD 5,500 NAR (RMB) given by M/s PT Adaro Energy TBK (miner). GUVNL has submitted the average price of coal in the reputed publications clearly indicates that there are significant quantum of coal of the relevant categories being exported from Indonesia at a price much lower than the average price and there are quantum of coal exported at a price higher than the average price. Adani Group has also specifically participated in number of transactions, including the bids called for by Central Public Sector Undertakings for the imported coal and had itself given a price below the HBA price and based thereon, had entered into contracts with commitment to supply. There is no basis for APMuL to claim that there is an embargo on the sale of coal below the HPB price. The reading of the Indonesian Regulations also indicate that particularly in the context of lesser GCV coal, the Indonesian Authorities had been allowing export at a much lower price than the HBA index derived price. In support of its contention, GUVNL has also placed on record a copy of an article published on 8.6.2020 by Jakarta Post on the Website of Indonesian Coal Mining Association in which it has been stated that due to Covid 19 pandemic, coal miner's burden has worsened by the disparities over the HPB price which is greater than the actual price of coal and the miners pay the royalty on HPB price which is much higher.



- (e) The Commission should not consider the “other charges” @ 3% of the FOB price while determining the Base Rate as all the cost upto the delivery of coal to the mother vessel is part of the FOB price.
- (f) The claims towards applicable Change in Law shall be governed as per the provisions of the PPAs and SPPAs thereto only after approval by the Commission.
- (g) The issue relating to applicability of Monthly escalation rate is not relevant for the purpose of determination of Base Rate by the Commission. However, GUVNL will make submission at the appropriate time as and when any changes in the existing methodology of notifying the escalation rates is proposed by the Commission.
- (h) The e-mail of Clarkson submitted by APMuL in its reply is contrary to the ceilings on ocean freight and fuel handling charges as specified in the SPPAs dated 30.3.2022 and therefore, the same should not be considered while determining the escalable and non-escalable components of the Base Rate for ocean freight and fuel handling charges.

18. The Petitioner has submitted its calculation of Base Rate for all sub-parameters of the Energy Charge as on 15.10.2018 for the PPAs under Bid-01 and Bid-02 which are extracted as under:

BID-1 PPA dated 06-02-2007

SR no.	Technical Parameters	Normative as per SPPA dated 05-12-2018	ACTUL claimed by Adani in Monthly billing Oct-2018	Min of ( Norm , Actual)	Remarks
1	SHR	2340	2330	2330	
	Auxiliary (%)	9.00%	8.18%	8.18%	
	GHR ( Kcal/ Kwh)	2571	2538	2538	
	Coal CGV coal consumed in OCT-18	4619	4619	4619	
	Speci. Coal Cons. (Kg/Kwh)	<b>0.5567</b>	<b>0.5494</b>	<b>0.5494</b>	
<b>Coal price published by ARGUS/Coalindo for September-2018</b>					
2	Date of Publications	4200	5000	Wt. Avg for 4619	
	07-09-2018	37.96	54.35	4200 - 47.63%	
	14-09-2018	38.39	54.06	5000 -52.38%	
	21-09-2018	38.72	53.59		
	28-09-2018	38.56	53.28		
	<b>Monthly Average</b>	<b>38.41</b>	<b>53.82</b>	<b>46.49</b>	
3	Base Rate for FOB (USD / Kwh)	( Specific coal consumption x (coal price in USD per MT /1000))		\$0.02554	
4	Ocean Freight & Insurance ( USD / MT)	Discriptions	ACTUAL (USD / MT)	Ceiling as per SPPA dated 05-12-2018 (USD/MT)	Min of ( Actual or Ceiling) (USD / MT)
		Non-Escalable	Not submitted	\$7.08450	to be determined by Hon'ble Commission based on submission of actual documents
	Escalable	Not submitted	\$3.11220		
	Base Rate for Ocean Freight & Insurance ( USD / Kwh)	Non-Escalable	-	\$0.00389	
Escalable		-	\$0.00171		
5	Port / Fuel Handling ( INR / MT)	Discriptions	ACTUAL (INR / MT)	Ceiling as per SPPA dated 05-12-2018 (INR/MT)	Min of ( Actual or Ceiling) (INR / MT)
		Non-Escalable	Not submitted	₹ 126.78	to be determined by Hon'ble Commission based on submission of actual documents
	Escalable	Not submitted	₹ 232.46		
	Base Rate for Fuel / Port Handling ( INR / Kwh)	Non-Escalable	-	₹ 0.0697	
Escalable		-	₹ 0.1277		

BID-2 PPA dated 02-02-2007						
SR no.	Technical Parameters	Normative as per SPPA dated 05-12-2018	ACTUAL claimed by Adani in Monthly billing; December-2018;	Min of ( Norm , Actual)	Remarks	
1	SHR	2274	2278.59	2274	Unit 5 & 6 under BID-2 PPA were not operational during the month of October -2018 & November -2018. The Operational DATA for Dec-2018 is considered when the plant become operational	
	Auxiliary (%)	6.50%	5.97%	5.97%		
	GHR ( Kcal/ Kwh)	2432	2423	2418		
	Coal CGV coal consumed in Dec-18	4076	4076	4076		
	Speci. Coal Cons. (Kg/Kwh)	<b>0.5967</b>	<b>0.5945</b>	<b>0.5933</b>		
<b>Coal price published by ARGUS/Coalindo for November-2018</b>						
2	Date of Publications	<b>4200</b>		Wt. Avg for 4076		
	02-11-2018	36.07				
	09-11-2018	34.64				
	16-11-2018	32.29				
	23-11-2018	29.87				
	30-11-2018	28.85				
	<b>Monthly Average</b>	<b>32.34</b>			<b>31.39</b>	
3	Base Rate for FOB (USD / Kwh)	( Specific coal consumption x (coal price in USD per MT /1000))		\$0.01862		
4	Ocean Freight & Insurance ( USD / MT)	Discriptions	ACTUAL (USD / MT)	Ceiling as per SPPA dated 05-12-2018 (USD/MT)	Min of ( Actual or Ceiling) (USD / MT)	
		Non-Escalable:	Not submitted	\$7.08450	to be determined by Hon'ble Commission based on submission of actual documents	
		Escalable:	Not submitted	\$3.11220		
	Base Rate for Ocean Freight & Insurance ( USD / Kwh)	Non-Escalable:	-	\$0.00420		Non-Escalable rate to be determined for each contract year seperately.
		Escalable:	-	\$0.00185		
5	Port / Fuel Handling ( INR / MT)	Discriptions	ACTUAL (INR / MT)	Ceiling as per SPPA dated 05-12-2018 (INR/MT)		Min of ( Actual or Ceiling) (INR / MT)
		Non-Escalable:	Not submitted	₹ 126.78	to be determined by Hon'ble Commission based on submission of actual documents	
		Escalable:	Not submitted	₹ 232.46		
	Base Rate for Fuel / Port Handling ( INR / Kwh)	Non-Escalable:	-	₹ 0.0752		Non-Escalable rate to be determined for each contract year seperately.
		Escalable:	-	₹ 0.1379		

**APMuL’s Reply in response to ROP of the Hearing dated 21.4.2022**

19. The Commission through RoP for the hearing dated 21.4.2022 directed APMuL to submit the following details/information:

“(i) Coal quantity consumed in October, 2018 for supply under SPPAs dated 5.12.2018 duly certified by Auditor;

(ii) GCV (quantity) of such quantity of coal consumed in October, 2018 for supply under SPPA dated 5.12.2018. In case of different GCV coal is consumed in October, 2018 for supply under SPPA dated 5.12.2018 by blending for otherwise and used for generation, the details of each such GCV and the quantity used thereof;

(iii) Coal Quantity and GCV (quantity) to be backed by certificate of analysis at both ends i.e. at load port end and at discharge port end for each shipment; and

(iv) Maximum coal stocking/storage capacity for Mundra Plant.”

20. APMuL vide its affidavit dated 26.4.2022 has made the following submissions with regard to the queries raised:

(a) ***Coal quantity consumed in October 2018 for supply under SPPA dated***

**5.10.2018:** Units 5 & 6 were not in operation during the period 15.10.2018 to 31.10.2018 for supply of power under the 2018 SPPA dated 5.12.2018 to Bid-02 PPA and hence there was no coal consumed in Units 5 & 6. Following details of coal consumption in October 2018 (from 15.10.2018 to 31.10.2018) in respect of Units No.1 to 4 for supply of power under the 2018 SPPA dated 5.12.2018 to Bid-01 PPA are as below:

Vessel Name	Coal Consumed (MT)
MV ORANGE TIARA	16738
MV STAR GWYNETH	26518
MV NAVIOUS ASTER	115750
MV GOLDEN FENG	107194
TOTAL	266200

(b) **GCV of coal consumed in October 2018:** The details of load port and discharge port GCV of coal consumed during October 2018 (as received basis) as under:

Vessel Name	Vessel Quantity (MT)	Coal Consumed (MT)	Load Port GCV (Kcal/kg)	Discharge Port GCV (kcal/kg)
MV ORANGE TIARA	163972	16738	2858	2824
MV STAR GWYNETH	80157	26518	4843	4829
MV NAVIOUS ASTER	164244	115750	4691	4662
MV GOLDEN FENG	159305	107194	4760	4741

(c) **Coal quality and quantity backed by certificate of analysis at both ends:**

Certificates load port and discharge port GCV of the vessels from which coal is consumed during October 2018 for supply of power under 2018 SPPAs dated 5.12.2018 have been submitted.

(d) **Maximum coal stocking and storage capacity for Mundra Plant:** APMuL's

Mundra thermal generating station has an installed capacity of 4620 MW (4X330 MW & 5X660 MW) and the coal requirement per day is about 50,000 MT. Coal received is being unloaded at West Port and stacked at the designated coal yards for Mundra thermal generating station i.e. C, D, E & F, having a capacity of 12 Lakh MT. The above coal is being reclaimed from the designated coal yard and moved to Mundra thermal generating station through a conveyor system for consumption at Mundra plant. Further, a coal storage capacity 3.17 Lakh MT is available at Mundra thermal generating station. Therefore, the total capacity available for storage of coal for operating 4620 MW Mundra thermal generating station is 15.17 Lakh MT. Considering the normative level of generation, Mundra thermal generating station has storage capacity to meet the coal requirement for

30-35 days. Drawing of West Basin Block and Coal Yard has been placed on record.

**GUVNL's Additional Affidavit dated 9.5.2022**

21. GUVNL in its additional affidavit dated 9.5.2022 has submitted as under:

(a) While GUVNL in the statement had dealt with 35 shipments of the coal imported by CGPL from Indonesian mines of GCV ranging from 6320 kCal/kg to 4032 kCal/kg, APMuL in its statement has selectively dealt with only 8 shipments without any rationale, reason or justification. Since APMuL has pleaded the existence of a firm contract of CGPL in May 2018, it is for APMuL to disclose the source of its information on the said alleged firm contract of CGPL and further produce the firm contract of CGPL in support of its plea and prove the same to the satisfaction of the Commission. Adani Power cannot refer to a specific plea of the existence of firm contract of CGPL without producing the same. The judgement of the Hon'ble Supreme Court in Sushil Kumar vs Rakesh Kumar [(2003) 8 SCC 673] relied on by APMuL instead of supporting its contention supports the stand of GUVNL.

(b) The plea taken by Adani Power that CGPL did not procure coal from Indonesia at a price less than HPB is wrong and misleading. GUVNL had analyzed the Statement in the reply of APMuL in regard to 8 shipments vis-à-vis the balance 27 shipments. The analysis by GUVNL shows that APMuL has deliberately selected 8 shipments where the HPB based fixed contract price is equal to the FOB Price of coal so that it could plead that the FOB price of coal imported from Indonesia is at par with the HPB price, by indicating in the last column of the first statement as

the difference being “0%”. GUVNL has further submitted that in the second statement, APMuL is claiming that in May 2018 the contract price has been arrived at with a premium of 4.50% which is wrong as the HBA price at 89.53 is related only to 50% of the contract price to be settled, the balance 30% to be considered with reference to the HBA price of April 2018 and 20% of March 2018.

(c) If the balance 27 shipments as contained in the reply filed by GUVNL are considered on the same principle of calculation adopted by APMuL for 8 shipments, it will be seen that there has been large number of shipments where the HPB price is higher than the contract price establishing clearly that there has been sale with FoB price below the HPB price. GUVNL has submitted that the following table indicates the consistent sale of coal at FoB price at lower than the HBA/HPB derived price:

S.No.	Vessel Name	GCV @ Load Port	HBA price for 6322 kCal /kg for May 2018 (USD/ MT)*	Derived HPB Price as per the assumption taken by Adani Power (USD/ MT)	Price Claimed by CGPL (USD/ MT)	Difference in Price claimed v. HPB Price (USD/MT) Claimed (Prem / Disc.) respect to HBP Price	
				A	B	(A-B)	
						USD/ MT	%
1.	Frontier Phoenix	5219	93.56	69.84	69.84	0.00	0.00%
2.	Kiran Turkiye	4119	93.56	49.17	48.05	1.12	-2.28%
3.	Suigo	4224	93.56	50.97	43.55	7.42	-14.56%
4.	FPMC B Majesty	5235	93.56	69.89	69.89	0.00	0.00%
5.	Cape Sun	4155	93.56	48.84	47.49	1.35	-2.76%

6.	Mineral Themse	5157	93.56	68.58	68.58	<b>0.00</b>	<b>0.00%</b>
7.	Frontier Neige	5213	93.56	69.05	65.66	<b>3.39</b>	<b>-4.91%</b>
8.	Cape Normandy	4234	93.56	50.79	43.65	<b>7.14</b>	<b>-14.06%</b>
9.	Anangel Courage	5137	93.56	68.51	68.51	<b>0.00</b>	<b>0.00%</b>
10.	Baltic Wolf	4136	93.56	49.30	48.25	<b>1.05</b>	<b>-2.13%</b>
11.	Hanna Oldendorff	5155	93.56	68.57	68.57	<b>0.00</b>	<b>0.00%</b>
12.	Cape Sunrise	4229	93.56	50.79	40.28	<b>10.51</b>	<b>-20.69%</b>
13.	Frontier Kotobuki	5134	93.56	68.04	68.04	<b>0.00</b>	<b>0.00%</b>
14.	Frontier Island	4215	93.56	50.08	42.65	<b>7.43</b>	<b>-14.84%</b>
15.	Lan May	5165	93.56	69.43	69.43	<b>0.00</b>	<b>0.00%</b>
16.	Cape Harmony	4037	93.56	46.39	46.14	<b>0.25</b>	<b>-0.54%</b>
17.	Mineral Haiku	4149	93.56	49.95	48.40	<b>1.55</b>	<b>-3.10%</b>
18.	Golden Horizon	5219	93.56	69.76	69.76	<b>0.00</b>	<b>0.00%</b>
19.	Gulf Petrochem FCG	5311	93.56	69.28	66.24	<b>3.04</b>	<b>-4.39%</b>
20.	PT KPC	5167	93.56	68.86	58.49	<b>10.37</b>	<b>-15.06%</b>
21.	PT AGM	4209	93.56	50.45	40.09	<b>10.36</b>	<b>-20.54%</b>
22.	PT KPC	5389	93.56	72.74	61.01	<b>11.73</b>	<b>-16.13%</b>
23.	Indo International	6320	93.56	88.07	79.99	<b>8.08</b>	<b>-9.17%</b>
24.	Mina Oldendorff	5415	93.56	73.97	61.30	<b>12.67</b>	<b>-17.13%</b>
25.	Genco London	4171	93.56	49.87	40.22	<b>9.65</b>	<b>-19.35%</b>
26.	Ping May	5306	93.56	71.84	60.07	<b>11.77</b>	<b>-16.38%</b>
27.	Frontier Youth	4032	93.56	46.42	46.08	<b>0.34</b>	<b>-0.73%</b>
28.	Frontier Lodestar	5292	93.56	71.47	59.91	<b>11.56</b>	<b>-16.17%</b>
29.	C Utopia	4049	93.56	46.96	33.74	<b>13.22</b>	<b>-28.15%</b>



30.	Frontier Expedition	4947	93.56	64.76	46.50	<b>18.26</b>	- <b>28.20%</b>
31.	CPO Europe	5271	93.56	71.34	59.67	<b>11.67</b>	- <b>16.36%</b>
32.	Lady Charme	4226	93.56	50.39	31.19	<b>19.20</b>	- <b>38.10%</b>
33.	Cape Lily	4997	93.56	66.45	46.97	<b>19.48</b>	- <b>29.32%</b>
34.	Qing May	5253	93.56	69.95	59.47	<b>10.48</b>	- <b>14.98%</b>
35.	Frontier Phoenix	4138	93.56	48.45	34.48	<b>13.97</b>	- <b>28.83%</b>

\* Based on the assumption taken by Adani Power

(d) GUVNL has filed 'Annexure-II' alongwith the affidavit showing the comparison of FoB price in the commercial invoice of CGPL vis-à-vis the term contract vis-à-vis the HPB price of the month of the bill of lading of the certain shipments, from the data available with GUVNL, as submitted by CGPL in its supplementary invoices towards Change in Law.

(e) An analysis of the Indonesian Regulations clearly shows that where the coal of relevant GCV is exported at a price less than the benchmark prices/reference prices, the royalty, taxes, obligatory contribution to state revenue shall be done with reference to benchmark price/reference price and there is no specific mandate or express stipulation in regard to non-export of coal at price less than the benchmark price/reference price. The High Power Committee in paras 2.6.2 and 2.6.3 of report has specifically interpreted that the amendment to the Indonesian Regulation primarily aimed to increase the government revenue by way of the royalties received from the coal producers. GUVNL has further relied on a report on "Mining in Indonesia Investment and Taxation Guide June 2019, 11th Edition"

by PWC in support of its contention that HBA/HPB is the floor price of Government duties and in case, the sale price is lower than HPB, tax has to be calculated on HPB.

(f) With regard to the ocean freight, Annexure B to the SPPA dated 5.12.2018 providing for the maximum ceiling based on the CGPL bid is also relevant to give an effect to and it is not open to APMuL to claim that the same needs to be ignored and actual price claimed by Adani Power should be allowed. Even the Government of Gujarat G.R. dated 25.02.2022 which is a part and parcel of the SPPAs dated 30.03.2022 also specifically provides that the ceiling of Transportation charges and Port Handling Charges as per SPPAs dated 5.12.2018 shall remain unchanged.

(g) The Supplementary PPA dated 5.12.2018 clearly envisages that the pricing will be on the components of FoB price of coal, ocean freight and other charges. Having so specified, it is not open to APMuL to claim that the procurement was on CIF basis and therefore, it is not required to provide the FoB price of coal separately with due authentication and documents from concerned authorities.

**APMuL's Affidavit dated 9.5.2022**

22. The Commission in its Record of Proceedings of the Hearing dated 05.05.2022 directed APMuL to submit the following details/information:

- (a) FOB price of coal in USD per MT;
- (b) Ocean Freight and Insurance in USD per MT;
- (c) Port/Fuel Handling Charges in Rs per MT; and
- (d) Other Charges in USD per MT.

23. APMuL vide its affidavit dated 9.5.2022 has furnished the details of actual amount incurred under various heads of landed cost of coal consumed in Units 1 to 4 of Mundra Power Station for supply of power to GUVNL during the period from 15.10.2018 to 31.10.2018 duly supported by Auditor's Certificate:

Vessel Name	Vessel Qty	Coal Cons. under Stage-I	FOB price of coal	Ocean Freight	Other Charges	Port/ Fuel Handling Charges
Text	MT	MT	USD/MT	USD/MT	USD/MT	Rs/MT
A	B	C	D	E	F	G
MV ORANGE TIARA	163972	16738	24.16	10.30	0.53	375.00
MV STAR GWYNETH	80157	26518	72.02	10.35	2.42	375.00
MV NAVIOS ASTER	164244	115750	66.62	10.40	2.21	375.00
MV GOLDEN FENG	159305	107194	68.14	10.30	1.13	375.00
<b>Total</b>		<b>266200</b>				
<b>Wt. Avg. w.r.t Col.(C)</b>			<b>65.1002</b>	<b>10.3485</b>	<b>1.6904</b>	<b>375.00</b>

24. APMuL has also placed on record the details regarding (i) the amount claimed by the Respondent from the Petitioner in the Monthly Bill of Oct-2018 and (ii) the amount admitted by the Petitioner against the claim of Respondent for the period 15.10.2018 to 31.10.2018 as per the SPPA dated 05.12.2018 under various heads of landed cost of coal as under:

- (a) Components of landed cost of coal claimed by APMuL for the period from 15.10.2018 to 31.10.2018 as per the ceiling provided for FoB price of coal, Ocean freight and Port/Fuel Handling charges in SPPAs dated 05.12.2018-

Vessel Name	Vessel Qty	Coal Consumed under Stage-I	FOB price of coal	Ocean Freight	Other Charges	Port/ Fuel Handling Charges
Text	MT	MT	USD/MT	USD/MT	USD/MT	Rs/MT
A	B	C	D	E	F	G
MV ORANGE TIARA	163972	16738	24.16	10.1967	0.53	359.24
MV STAR GWYNETH	80157	26518	72.02	10.1967	2.42	359.24
MV NAVIOS ASTER	164244	115750	66.62	10.1967	2.21	359.24
MV GOLDEN FENG	159305	107194	68.14	10.1967	1.13	359.24
<b>Total</b>		<b>266200</b>				
<b>Wt. Avg. w.r.t Col.(C)</b>			<b>65.1002</b>	<b>10.1967</b>	<b>1.6904</b>	<b>359.24</b>

(b) Components of landed cost of coal admitted and paid by GUVNL for the period from 15.10.2018 to 31.10.2018: -

Vessel Name	Vessel Qty	Coal Consumed under Stage-I	FOB price of coal	Ocean Freight	Other Charges	Port/ Fuel Handling Charges
Text	MT	MT	USD/MT	USD/MT	USD/MT	Rs/MT
A	B	C	D	E	F	G
MV ORANGE TIARA	163972	16738	24.16	10.1967	0.53	359.24
MV STAR GWYNETH	80157	26518	71.73	10.1967	2.42	359.24
MV NAVIOS ASTER	164244	115750	64.85	10.1967	2.21	359.24
MV GOLDEN FENG	159305	107194	68.14	10.1967	1.13	359.24
<b>Total</b>		<b>266200</b>				
<b>Wt. Avg. w.r.t Col.(C)</b>			<b>64.3024</b>	<b>10.1967</b>	<b>1.6904</b>	<b>359.24</b>

**GUVNL's Affidavit dated 11.5.2022**

25. GUVNL vide its affidavit dated 11.5.2022 has filed its response to the affidavit of APMuL dated 9.5.2022 as under:

(a) Perusal of the Auditor's Report as a whole indicates that the Auditor did not verify anything other than what was provided APMuL. In note 3 of the Statement at Annexure A states that "the Company purchases the coal on CIF basis. The cost components of CIF price into FOB price, freight and other charges is obtained by the Company from the supplier as disclosed above." Therefore, there cannot be any reliance placed on Annexure-A to the Auditor's Report as certifying the individual components of FoB price, freight and other charges, as disclosed in the table.

(b) The analysis of the data at the said Annexure A to the report shows that out of 5,67,678 MT received for the period from 15.10.2018 to 31.10.2018, the weighted average FoB price of the entire quantum is 54.99 USD/MT whereas APMuL has used 2,66,200 MT for consumption at Units 1 to 4 of the Mundra Power Plant, and the blending of various grades of coal has been done in such a manner that the weighted average FoB price of the coal actually used is 64.30 USD/MT. This is evident from the table as under:

S. No	Vessel Name	Coal Procurement					Coal allocated to Units – 1 to 4 under Bid-1 during 15-10-2018 to 31-10-2018 as claimed by ADANI			Coal price published by ARGUS/COALINDO for respective B/L month			Coal price published by ARGUS/COALINDO for Oct -2018				
		B/L Month	HBA rate for B/L month (USD/ MT)	Vessels Quantity (MT)	Billed GCV (kCal/ kg)	HBA derived HPB price (USD/ MT)	MT	GCV (kCal/ kg)	HBA derived HPB price (USD/ MT)	Notified GCV (kCal/ kg)	Rate (USD/ MT)	coal blending to derived equivalent consumed GCV	Coal price of Consumed GCV (USD/ MT)	Notified GCV (kCal/ kg)	Rate (USD/ MT)	coal blending to derived equivalent consumed GCV	Coal price of Consumed GCV (USD/ MT)
1	MV STAR GWYNETH	Aug-18	107.83	80,157	4843	71.72	26,518	4843	71.72	5000	57.95	96.86%	56.13	5000	52.84	96.86%	51.18
2	MV NAVIOS ASTER	Sep-18	104.81	1,64,244	4691	64.85	1,15,750	4691	64.85	5000	53.82	61.38%	47.87	5000	52.84	61.38%	47.18
										4200	38.41	38.63%		4200	38.19	38.63%	
3	MV ORANGE TIARA	Aug-18	107.83	1,63,972	2858	24.16	16,738	2858	24.16	3400	25.65	84.06%	21.56	3400	23.66	84.06%	19.89
4	MV GOLDEN FENG	Sep-18	104.81	1,59,305	4760	68.14	1,07,194	4760	68.14	5000	53.82	70.00%	49.20	5000	52.84	70.00%	48.45
										4200	38.41	30.00%		4200	38.19	30.00%	
				5,67,678	4202 (Weighted Average)	54.99 (Weighted Average)	2,66,200	4619 (Weighted Average)	64.30 (Weighted Average)				47.57 (Weighted Average)				46.37 (Weighted Average)

- (c) Coal through Vessel Name MV Orange Tiara of 163972 MT is indicated to be FoB price of 24.16 USD/MT and CIF price is 34.99 USD/MT in Annexure A. The GCV value of the above coal is 2858 kCal/kg. The coal has been imported from Bunyu Island belonging to Adani Group's step-down subsidiary in which Adani Enterprises Limited, the ultimate holding company, effectively controls 100% shareholding of the mining company in Bunyu Island, Indonesia. Considering the quality of the above coal, the Indonesian Authorities were not applying the requirement of HBA/HPB derived price of coal even in regard to the royalties and obligatory contribution to state revenue.
- (d) APMuL's claim for other charges separately over and above the FoB price of coal is wrong as there is no authentication of such other charges besides such FoB price of coal. The Commission should not consider the "other charges" @ 3% of FOB price while determining the Base Rate since all cost upto the delivery of coal to the mother vessel is part of the FOB price.
- (e) Procurement of coal from the coal mines in Indonesia has all been routed through other group companies of Adani Power/Adani Enterprises Limited, though the shipment of coal has been directed to Mundra Port in India. APMuL has not disclosed the margin, which has been charged by such group companies. Such margin, in any event, ought to have been deducted from the price claimed by APMuL. The various documents such as Bill of Lading and other export documents from Indonesia are duly available with the Adani Group and there is no reason as to why the same has not been made available to the Commission and to GUVNL, despite the specific directions in the record of proceedings dated 5.5.2022.

- (f) The information given by Adani Power has been restricted to the coal procured and consumed in Units 1 to 4 of the Mundra Power Project, and the same does not cover the coal price and details for Units 5 and 6.

**APMUL's Affidavit dated 11.5.2022**

26. APMuL in its reply to the additional submissions dated 9.5.2022 has made the following submissions:

- (a) In response to the submissions of GUVNL that APMuL has dealt with only 8 vessels of CGPL out of the 35 vessels submitted by GUVNL, APMuL has submitted that APMuL is not privy to the contracts of CGPL and cannot make submissions with respect to each vessel. Based on the limited information that could be gathered, APMuL demonstrated that HBA index was higher during the period of actual shipment which happened during August to November 2018 than the HBA index relatable to the date of contract. GUVNL has not produced any data/document to show that APMuL's submissions made in relation to CGPL's coal procurement data is factually incorrect. Though GUVNL has special knowledge of complete details qua imported coal procurement by CGPL and is in possession of the certified copies of the invoices and coal procurement contracts of CGPL, GUVNL has failed to produce the same on record. Therefore, the entire reference to CGPL's coal procurement data needs to be rejected.

- (b) In response to GUVNL submission that APMuL should disclose the source of firm contract of CGPL and produce the firm contract in support of its plea, APMuL has submitted that GUVNL relied upon the data pertaining to CGPL in



the first place and made averments qua coal procurement by APMuL at a higher price as compared to CGPL. In terms of Section 106 of the Evidence Act, 1872, the burden of proving such fact within the special knowledge of GUVNL is on GUVNL alone. If APMuL's submissions that coal procurement by CGPL for 8 vessels was based on fixed HBA is incorrect, it is incumbent on GUVNL to produce relevant contract documents to establish its averment.

(c) GUVNL has considered the information furnished by APMuL for 8 vessels of CGPL and applied it to the remaining 27 vessels of CGPL to contend that for the remaining vessels, the coal procurement price of CGPL is lower than HBA index price. GUVNL has not produced any document to substantiate that the contract month and basis for procurement for the 8 vessels is the same as the remaining 27 vessels of CGPL. Without appropriate information produced on record by GUVNL, no inference can be drawn qua APMuL's coal procurement at a price higher than CGPL. GUVNL's comparison of FOB price in the commercial contract of CGPL vis-à-vis the term contract vis-à-vis the HBA price for the month of the bill of lading of certain shipments is not supported by any document or basis in this regard.

(d) None of the Indonesian Regulations extracted/referred to by GUVNL shows that coal export can take place at a price less than the benchmark price. The provisions relied upon by GUVNL with respect to royalty, taxes etc. does not take away the binding mandate on IUP holders to refer to benchmark prices while exporting Indonesian coal. The HPC report, PWC report, news articles etc. are extraneous to the provisions of Indonesian Regulations and cannot be read to interpret and alter the Indonesian Regulations.

- (e) APMuL is not disputing GUVNL claim that the overall figure for ocean freight is to be linked with the ceiling provided in Annexure B of the 2018 SPPAs. APMuL is only praying for the escalable and non-escalable components of the ocean freight to be considered by the Commission in the ratio of 56.9 : 43.1 as per information received from Clarkson (an international agency providing port services support, agency, freight forwarding, supplies and tools for the marine and off-shore industries) for the month of October 2018 while determining the base rate as on 15.10.2018.
- (f) To meet the GUVNL's requirement that pricing will be on the components of FoB price of coal, ocean freight and other charges as per the SPPA, APMuL has been ensuring that commercial invoices/addendum from coal suppliers bifurcate CIF price into the FoB price + ocean freight + other charges. This position was acceptable to GUVNL till the sudden change in August 2020. Based on the very same documents, GUVNL has paid energy charges to APMuL for more than one year (October 2018 to November 2019) without raising any dispute qua the ocean freight charges. Since August 2020, GUVNL has started insisting on submission of separate ocean freight invoices as per Article 3.2.4(III)(iii) of the SPPA as a pre-requisite for processing the energy charge claims of APMuL in spite of being aware that such separate ocean freight invoices are not available for procurement of coal on CIF basis.

**GUVNL's Affidavit dated 25.5.2022**

27. The Commission vide its Record of Proceedings dated 19.5.2022 directed GUVNL to clarify the statement of APMuL in its affidavit dated 9.5.2022 that GUVNL

has admitted and paid energy charges considering FOB price of coal as per HBA index (HPB) (without tolerance) for the period from 15.10.2018 to 31.10.2018 vis-à-vis their statement during the hearing that the same was on provisional basis.

28. GUVNL vide its affidavit dated 25.5.2022 has submitted as under:

- (a) The supplementary invoice for the period from 15.10.2018 to 31.3.2019 were raised together by APMuL on 15.4.2019 only after the Commission passed the order dated 12.4.2019 in Petition No.374/MP/2018 approving the SPPAs dated 5.12.2018. Prior to that, APMuL was being paid as per the respective tariffs under the PPAs dated 6.2.2007 and 2.2.2007. Article 3.2.4 of the SPPA dated 5.12.2018 would show that there was no admission of GUVNL in the basic contractual document of payment of FoB cost of coal equivalent to the HBA index (HPB) only.
- (b) The supplementary invoice dated 15.4.2019 was raised by APMuL based on the CIF value of the landed cost of coal without furnishing all the requisites. Further, the said supplementary invoice was not with reference to HBA index but an amount having paid to the intermediary procurer of coal which are Adani Group Companies. GUVNL vide its letters dated 25.4.2019 and 31.5.2019 disputed the amount cleared by APMuL in its supplementary invoice dated 15.4.2019 and sought for various documents/information/details including and in particular the document of the coal supplier from Indonesia indicating the actual FOB price of the coal. The payments were made by GUVNL to APMuL under protest without prejudice to the rights and contentions of GUVNL that the invoices are not in accordance with SPPA dated 5.12.2018.

- (c) It is necessary for APMuL to place on record in a transparent manner the documents relating to the actual FOB price of coal at which the coal was exported by the coal mining company in Indonesia supported by authenticated documents of the Custom Authorities of Indonesia, including the complete copy Bill of Lading etc.
- (d) When the Deed of Settlement dated 3.1.2022 and the SPPAs dated 30.3.2022 were finalized, the parties had not agreed on the coal price being as per HBA Index (HPB) but had specifically referred to the determination of the Base Rate, which is obviously considered to be something different than the said HBA Index (HPB). This is particularly in the context of GUVNL having consistently raised the aspect that APMuL should disclose the actual FOB price of coal and further that the FOB price at which the coal could be exported can be lower than the HBA Index (HPB) in accordance with the Indonesian Regulations, except that royalties and obligator contribution to the state revenue (of Indonesia) to be computed on the said HBA Index (HPB) when the export price is lower than such HBA Index (HPB).
- (e) The escalation in the imported coal price is being considered by the Commission based on published indices such as Argus/Coallindo and S&P Global Platts in regard to Indonesian Coal. Thus, there is a clear recognition of the market price at which coal is being exported from Indonesia at a price lower than the HBA Index (HPB) when such indices are considered. There cannot be any dispute that the export of coal from Indonesia has been permitted below the HBA Index (HPB).

**APMuL's Affidavit dated 25.5.2022**

29. The Commission vide its Record of Proceedings of the hearing dated 19.5.2022 had directed APMuL to respond to the contention of GUVNL that by virtue of disproportionate allocation of blending of GCV coal received during month of August and September 2018 (four shipments), the weighted average GCV of coal is arrived and claimed as 4619 kCal/kg with weighted average price shown as \$64.30/MT as against the achievable weighted average GCV coal at 4202 kCal/kg with weighted average price workable as \$54.99/MT. APMuL in response to the above query has submitted as under:

(a) GUVNL is considering the receipt quantity of coal instead of consumed quantity of coal by the APMuL which is against the principle followed by GUVNL for payment of energy charge under 2018 SPPAs. Both GUVNL and APMuL have agreed to consider the consumed quantity of coal in the Deed of Settlement dated 3.1.2022 and SPPAs dated 30.3.2022. APMuL has submitted that it is no longer open to GUVNL take the stand that allocation of coal has been done disproportionately.

(b) Coal availability during the period 15.10.2018 to 31.10.2018 was allocated and used keeping in view the technical consideration of the generating units of Mundra Power Project. Except the vessel named MV ORANGE TIARA, all other vessels contained coal of GCV more than the weighted average GCV arrived based on consumed quantity of coal. The GCV of coal consumed during 15.10.2018 to 31.10.2018 would have been lower if APMuL would have consumed more coal from the vessel named ORANGE TIARA.

**I.A. No. 36/IA/2022 and GUVNL's Additional Affidavit dated 26.5.2022**

30. GUVNL has filed through I.A. No.36/IA/2022 an affidavit dated 26.5.2022 to bring on record the Certificate dated 28.11.2018 issued by SRBC & Co LLP, the Chartered Accountant, to APMuL with regard to the details of coal consumed vessel-wise in the entire month of October, 2018 in connection with the claim for Change in Law. GUVNL has submitted that APMuL vide its affidavit dated 9.5.2022 had filed another certificate dated 13.4.2019 from the same Auditor in respect of 4 vessels only as against 15 vessels given in Certificate dated 28.11.2018 for coal consumed from 15.10.2018 to 31.10.2018:

<b>Coal Consumed in MUNDRA POWER PROJECT during the OCTOBER -2018</b>						
<b>Discrepancy in Independent Auditor's Report Submitted by APMuL</b>						
<b>SR No.</b>	<b>Name of Vessels</b>	<b>GCV of Coal (Kcal/Kg)</b>	<b>Vessels Quantity</b>	<b>Phase -1 &amp; 2 under BID-1 PPA</b>		<b>Discrepancy (Coal consumed in 16 days is higher than 30 days)</b>
				<b>Coal consumed during 01-10-18 to 31-10-2018 as per Change in Law (CIL) Invoice</b>	<b>Coal consumed during 15-10-18 to 31-10-2018 as per differential claim for OCT-2018</b>	
				<b>Auditor Certificate dated 28-11-2018</b>	<b>Auditor Certificate dated 13-04-2019</b>	
1	MV Star Gwyneth	4829	80,157	10,027.15	26,518.00	<b>16,490.85</b>
2	MV Narious Aster	4662	1,64,244	62,104.96	1,15,750.00	<b>53,645.04</b>
3	MV Golden FENG	4741	1,59,305	60,237.40	1,07,194.00	<b>46,956.60</b>

4	MV Frontier Explorer	4757	82,500	31,195.41	-	-
5	MV Frontier Explorer	4757	82,499	31,195.03		
6	MV AANYA	4703	1,64,999	51,323.98		
7	MV Orange Tiara	2824	1,63,972	3,928.88	16,738.00	<b>12,809.12</b>
8	MV West Trader	2867	1,61,500	36,829.29		
9	MV Orange Tiger	2849	1,65,000	14,311.54		
10	MV NAVIOUS Ray	4046	1,64,000	30,714.02		
11	MV Golden Shui	4217	73,200	17,813.27		
12	MV Golden Shui	4085	86,300	21,001.16		
13	Cape Fusion	4963	1,57,637	13,074.30		
14	MV Nord Destiny	5073	81,157	25,630.79		
15	MV Minon Flame	5589	70,554	11,444.87		
		<b>4188.6 (Weighted Average)</b>	<b>18,57,024</b>	<b>4,20,832.05</b>	<b>2,66,200</b>	<b>1,29,902</b>

31. By comparing the two auditor certificates, GUVNL has sought to show that there is significant discrepancy between the two certificates in the coal consumed for Units 1 to 4 as under:

(a) In respect of the shipment MV Star Jwyneth, the coal consumed for the entire month of October, 2018 for the Units 1 to 4 is 10,027.15 MT as per the certificate dated 28.11.2018 while for the part period from 15.10.2018 to 31.10.2018, the

quantum of coal from the said vessel for Units 1 to 4 has increased to 26,518 MT as per the certificate dated 13.4.2019.

(b) In respect of shipment of MV Narious Aster, the coal consumed for the entire month of October, 2018 for the Units 1 to 4 is 61,104.96 MT as per the certificate dated 28.11.2018 while for the part period from 15.10.2018 to 31.10.2018, the quantum of coal from the said vessel for Units 1 to 4 has increased to 1,15,750 MT as per the certificate dated 13.4.2019.

(c) In respect of shipment of MV Golden FENG, the coal consumed for the entire month of October, 2018 for the Units 1 to 4 is 60,237.4 MT as per the certificate dated 28.11.2018 while for the part period from 15.10.2018 to 31.10.2018, the quantum of coal from the said vessel for Units 1 to 4 has increased to 1,07,194 MT as per the certificate dated 13.4.2019.

(d) In respect of shipment of MV Orange Tiara, the coal consumed for the entire month of October, 2018 for the Units 1 to 4 is 3,928.88 MT as per the certificate dated 28.11.2018 while for the part period from 15.10.2018 to 31.10.2018, the quantum of coal from the said vessel for Units 1 to 4 has increased to 16,738 MT as per the certificate dated 13.4.2019.

GUVNL has submitted that the coal consumption for the whole month of October, 2018 for Unit 1 to 4 is significantly lesser than the coal consumed for the part of the month i.e. 15.10.2018 to 31.10.2018. If the coal consumption for the entire month of October, 2018 is taken even as per the Auditor's Certificate dated 28.11.2018, the weighted average GCV of coal works out to 4188.6 kCal/kg.



**APMuL's Affidavit dated 2.6.2022**

32. In response to affidavit filed by GUVNL vide I.A. No.36/IA/2022, APMuL vide its affidavit dated 2.6.2022 has submitted that both the Auditor's Certificate 28.11.2018 and 13.4.2019 were available with the Petitioner at the time of filing of this petition. The Petitioner chose not to rely on these certificates either in its petition or in the subsequent pleading/proceedings. The Petitioner by filing these certificates at this belated stage when the order is reserved in the present petition and is trying to prejudice the Commission. On merit, the Petitioner has submitted as under:-

- (a) 2018 SPPAs were signed on 5.12.2018 and as per the said SPPAs, there was no requirement to claim change in law compensation subsequent to the date of signing because the pass through formula allowed in the 2018 SPPAs was subject to certain caps/ceilings as provided in SPPAs.
- (b) APMuL had therefore raised Change in Law claims separately on GUVNL upto October, 2018 only. In fact, the Change in Law claim for October 2018 was submitted to GUVNL on 28.11.2018 along with the Auditor Certificate dated 28.11.2018 i.e. prior to signing of 2018 SPPAs on 5.12.2018. No Change in Law claims were submitted to GUVNL after signing of 2018 SPPAs. Since the 2018 SPPAs were effective from 15.10.2018, even the Change in Law amount claimed for the period 15.10.2018 to 31.10.2018 was refunded to the Petitioner by giving credit in the differential invoice raised on 15.4.2019. The amount of Rs. 14,68,54,467/- has been refunded to GUVNL as shown at Sl. No. 7 of the invoice.

- (c) From perusal of Auditor Certificate dated 28.11.2018, evidently coal quantity mentioned therein is based on a particular allocation basis and not on unit-wise actual consumption basis.
- (d) This fact has been clearly mentioned in the Auditor Certificate dated 28.11.2018 in the Note "1. Imported Coal Quantity allocated to GUVNL Bid-1 PPA is based on allocation of heat required from imported coal to the shipments from which coal was consumed in the respective months" being submitted to GUVNL till October, 2018.
- (e) So far as Auditor Certificate dated 13.4.2019 is concerned, the vessel wise coal quantity mentioned therein is in accordance with SPPAs dated 5.12.2018. Since Article 3.2.4 of the 2018 SPPAs stipulates actual coal consumption to be considered, therefore, APMuL for the purpose of energy charge claim for the period 15.10.2018 to 31.10.2018 has considered actual quantity of coal consumed based on the Books of Accounts in its Auditor Certificate dated 13.4.2019. The quantity shown in the Auditor Certificate dated 13.4.2019 was not based on any allocation methodology as against the Auditor Certificate dated 28.11.2018.
- (f) GUVNL was aware of the methodology being followed for Change in Law claims prior to 2018 SPPAs and for monthly energy charge claim under the 2018 SPPAs.
- (g) GUVNL had raised various objections on the energy charges claim submitted for October 2018 pursuant to approval of the 2018 SPPAs by the Commission

by Order dated 12.4.2019 in Petition No. 374/MP/2019 (GUVNL Vs. APMuL & Ors.). However, GUVNL never raised any objection regarding:

(1) Coal quantity considered in the monthly invoice of October 2018 and made payment based on weighted average landed coal cost based on actual coal consumption.

(2) Difference between coal quantity mentioned in Auditor Certificate dated 28.11.2018 and 13.4.2019.

The above is evident from GUVNL's letter dated 25.4.2019 and 31.5.2019.

### **Analysis and Decision**

33. We have perused the pleadings and documents on record and have heard the extensive arguments of the parties. The present petition has been filed by GUVNL under Section 79(1)(b) of the Act to take on record the Settlement Deed dated 3.1.2022 and the Supplementary Power Purchase Agreements dated 30.3.2022 between GUVNL and APMuL and to determine and recommend to the Government of Gujarat the Base Rate as on 15.10.2018 for the purpose of working of monthly energy charges under Bid-01 PPA and Bid-02 PPA read with respective SPPAs dated 5.12.2018 and SPPAs dated 30.3.2022 after taking into account the relevant factors including those mentioned in the Petition. Therefore, the scope of the present petition is confined to determination of the Base Rate as on 15.10.2018 in the light of the relevant provisions of the Deed of Settlement dated 3.1.2022 and Supplemental Power Purchase Agreements dated 30.3.2022.

34. Para 5 of the Settlement Deed dated 3.1.2022 between GUVNL and APMuL provides as under: -

“5. APMuL and GUVNL hereby mutually agree on the following terms in regard to the tariff admissible in modification and supersession of the terms contained in the PPA dated 2.2.2007 read with the related SPPA dated 5.12.2018 which shall be effective 15.10.2018 and govern the period till 9.7.2019 and thereafter from the date of the commencement of the supply under this Settlement for the entire duration and in PPA dated 6.2.2007 read with related SPPA dated 5.12.2018 which shall be effective from 15.10.2018 and govern the entire duration.

- a. The fixed or capacity charges shall be as per the terms of the PPA dated 2.2.2007 read with the related SPPA dated 5.12.2018 and as per PPA dated 6.2.2007 read with related SPPA dated 5.12.2018 respectively without any further change and the same shall be applicable throughout the duration mentioned above;
- b. To avoid disputes in relation to energy payments and to ensure pass through of coal cost in a prudent and transparent manner, it is decided that the payment of energy charges shall be linked to the escalation rates notified by CERC from time to time for which the base rate is to be determined. GUVNL shall request CERC for determination of the base rate for following sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling charges (in Rs./kWh) as on 15.10.2018 based on normative operating parameters as per provisions of SPPA dated 5.12.2018.

The base rate recommended by CERC shall be submitted to the Govt. of Gujarat for approval.

In addition to above, applicable tax, duties and cess etc. on energy charges shall be payable as per the SPPA on reimbursement basis, whereas other Change in Law shall be as per PPA with approval of CERC.

- c. The base rates as per above would be finalized by the Government of Gujarat and the parties agree that they will abide by decision of the Government of Gujarat on the determination of the base rates mentioned above.
- d. In addition to the above, the applicable tax, duties, cess etc. on energy charges shall be payable as per the SPPA on reimbursement basis. Whereas other Change in Law shall be as per PPA read with SPA dated 5.12.2018 with approval of Central Electricity Regulatory Commission. There shall be no other consideration or claim for change in law in relation to variable/energy charges.
- e. Each of the sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh), and Port Handling Charges (in Rs./kWh) as on 15.10.2018 shall be thereafter escalated as per the applicable Central Electricity Regulatory Commission notified escalation rate from time to time related to imported coal. The month to month Energy charges based on base energy charges and escalation/adjustment provided by the Central Commission shall apply for all intent and purposes for the period from 15.10.2018 onwards.”

35. In para 6 of the Settlement Deed dated 3.1.2022, APMuL and GUVNL have further agreed to the withdrawal of the pending cases, petitions, appeals and claims in relation to both PPAs/SPPAs before the Hon'ble Supreme Court, APTEL and the Commission. APMuL and GUVNL filed a joint application, IA No. 21/2022 in Curative Petition (Civil) No. 34/2020 in Review Petition (Civil) No. 2012/2019 in Civil Appeal No. 11133 of 2011. The Hon'ble Supreme Court in its order dated 8.2.2022 disposed of the said IA with the following observations:

“In view of the above, we dispose of the present Curative Petition with the observation that the inter se relationship between the parties shall now be governed by the settlement deed dated 3.1.2022.”

In the light of the observation of the Hon'ble Supreme Court, the inter-se relationship between GUVNL and APMuL shall be governed by the Settlement Deed of 3.1.2022. APMuL and GUVNL also withdrew their respective pending petitions before the Commission viz. Petition Nos. No.275/MP/2019, 250/MP/2019 and 614/MP/2020 which were allowed by the Commission vide orders dated 21.2.2022.

36. Government of Gujarat vide its Resolution dated 25.2.2022 has resolved as under:

“In view of the above, after careful consideration, Government of Gujarat has accorded approval for allowing modification in the Supplemental PPAs (for both Bid-1 & Bid-2 PPA) dated 5.12.2018 between GUVNL & Adani Power (Mundra) Ltd. whereby the payment of energy charges shall be linked to the escalation rates notified by CERC from time to time for which the base rate is to be recommended by CERC for following sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling Charges (in Rs./kWh) as on 15.10.2018 based on normative operating parameters as per provisions of SPPA dated 5.12.2018. This will ensure pass through of coal cost in a prudent & transparent manner, avoid any future disputes between the parties in computation of the energy charges”

In the said Resolution, Government of Gujarat has directed GUVNL and APMuL to sign a Supplemental PPA with certain modifications.

37. Pursuant to the above, APMuL and GUVNL have entered into Supplemental Power Purchase Agreements dated 30.3.2022 to Bid-01 PPA and Bid-02 PPA. Para 4.1 of the Supplemental Agreement to Bid-01 PPA provides as under:

“4.1 The following provisions in regard to the tariff admissible in modification and supersession of the terms contained in the PPA dated 6.2.2007 read with the related SPPA dated 5.12.2018 shall be effective from 15.10.2018 and govern the period for the entire duration of the PPA as provided in the SPPA dated 5.12.2018.

- (1) The fixed or capacity charges shall be as per the terms of the PPA dated 6.2.2007 read with SPPA dated 5.12.2018 without any further change and the same shall be applicable throughout the duration of the PPA read with SPPAs.
- (2) The Energy Charge Rate for determination of Energy Charges shall be determined based on a Base Rate to be determined as provided hereunder and the applicable escalation rates notified by the Central Electricity Regulatory Commission from time to time.
- (3) Determination of Base Rate for Energy Charges: The Procurer shall request the Central Electricity Regulatory Commission for determination of the Base Rate for following sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling Charges (in Rs./kWh) as on 15.10.2018 based on normative operating parameters as per provisions of SPPA dated 5.12.2018.

The Base Rate recommended by Central Electricity Regulatory Commission shall be submitted to the Government of Gujarat for approval. The Base Rate as per above would be finalized by the Government of Gujarat and the parties agree that they will abide by decision of the Government of Gujarat on the determination of the Base Rate mentioned above.

- (4) In addition to the above, applicable tax, duties and cess etc. on energy charges shall be payable as per the SPPA dated 5.12.2018 on reimbursement basis, whereas other Change in Law shall be as per the PPA with approval of the Central Electricity Regulatory Commission. A separate Supplemental invoice as per PPA dated 6.2.2007 shall be raised for seeking reimbursement of approved Change in Law. There shall be no other consideration or claim for change in law in relation to variable/energy charges.
- (5) Each of the sub-parameter viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling Charges (in Rs./kWh) as on 15.10.2018 shall be thereafter escalated as per the applicable Central Electricity Regulatory Commission notified escalation rate from time to time related to imported coal. The month to month Energy Charges based on Base Rate and escalation/adjustment provided by the Central Electricity Regulatory Commission shall apply for all intent and purposes for the period from 15.10.2018 onwards.

Base Rate for both escalable and non-escalable components of Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling Charges shall be determined by CERC subject to ceiling rate for each of them as per the SPPA dated 5.12.2018.

- (6) The actual amounts paid by the Procurer to the Seller under the PPA/SPPA for the period from 15.10.2018 till date of settlement shall be adjusted accordingly without interest.”

Para 4.1 of the Supplemental Agreement to Bid-02 PPA provides as under

“4.1 The following provisions in regard to the tariff admissible in modification and supersession of the terms contained in the PPA dated 2.2.2007 read with the related SPPA dated 5.12.2018 shall be effective from 15.10.2018 and govern the period till 9.7.2019 and thereafter from 15.3.2022 being the date of the commencement of the supply under the Deed of Settlement for the entire duration of the PPA as provided in the SPPA dated 5.12.2018.

- (1) The fixed or capacity charges shall be as per the terms of the PPA dated 2.2.2007 read with SPPA dated 5.12.2018 without any further change and the same shall be applicable throughout the duration of the PPA read with SPPAs.
- (2) The Energy Charge Rate for determination of Energy Charges shall be determined based on a Base Rate to be determined as provided hereunder and the applicable escalation rates notified by the Central Electricity Regulatory Commission from time to time.
- (3) Determination of Base Rate for Energy Charges: The Procurer shall request the Central Electricity Regulatory Commission for determination of the Base Rate for following sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling Charges (in Rs./kWh) as on 15.10.2018 based on normative operating parameters as per provisions of SPPA dated 5.12.2018.

The Base Rate recommended by Central Electricity Regulatory Commission shall be submitted to the Government of Gujarat for approval. The Base Rate as per above would be finalized by the Government of Gujarat and the parties agree that they will abide by decision of the Government of Gujarat on the determination of the Base Rate mentioned above.

- (4) In addition to the above, applicable tax, duties and cess etc. on energy charges shall be payable as per the SPPA dated 5.12.2018 on reimbursement basis, whereas other Change in Law shall be as per the PPA with approval of the Central Electricity Regulatory Commission. A separate Supplemental invoice as per PPA dated 2.2.2007 shall be raised for seeking reimbursement of approved Change in Law. There shall be no other consideration or claim for change in law in relation to variable/energy charges.

(5) Each of the sub-parameter viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling Charges (in Rs./kWh) as on 15.10.2018 shall be thereafter escalated as per the applicable Central Electricity Regulatory Commission notified escalation rate from time to time related to imported coal. The month to month Energy Charges based on Base Rate and escalation/adjustment provided by the

Central Electricity Regulatory Commission shall apply for all intent and purposes for the period from 15.10.2018 onwards.

Base Rate for both escalable and non-escalable components of Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling Charges shall be determined by CERC subject to ceiling rate for each of them as per the SPPA dated 5.12.2018.

- (5) The actual amounts paid by the Procurer to the Seller under the PPA/SPPA for the period from 15.10.2018 till date of settlement shall be adjusted accordingly without interest.

The parties have agreed to the continued validity of the PPA dated 2.2.2007 in terms of the Deed of Settlement and the supply of power by Seller to Procurer has been restored from 15.3.2022 and the Seller to Procurer has been restored from 15.3.2022 and the Seller shall duly declare availability against the Contracted Capacity to the Procurer from Units 5 & 6 on sustained basis in terms of the PPA read with this Supplemental Agreement and the Deed of Settlement.”

38. The Deed of Settlement dated 3.1.2022 executed between GUVNL and APMuL and Government of Gujarat G.R. dated 25.2.2022 shall be read as an integral part of the Supplemental PPA dated 30.3.2022. Further Article 7 of the Supplemental PPA provides for the formula for calculation of monthly energy charges in supersession of Articles 3.2.3, 3.2.4, and 3.5.3 of the SPPA dated 5.12.2018.

39. Para 4.1 of the Supplemental Agreement dated 30.3.2022 to Bid-02 PPA provides as under:

“4.1 The following provisions in regard to the tariff admissible in modification and supersession of the terms contained in the PPA dated 02.02.2007 read with the related SPPA dated 05.12.2018 shall be effective from 15.10.2018 and govern the period till 09.07.2019 and thereafter from 15.03.2022 being the date of the commencement of the supply under the Deed of Settlement for the entire duration of the PPA as provided in the SPPA dated 05.12.2018.

- (1) The fixed or capacity charges shall be as per the terms of the PPA dated 02.02.2007 read with SPPA dated 5.12.2018 without any further change and the same shall be applicable throughout the duration of the PPA read with SPPAs.
- (2) The Energy Charge Rate for determination of Energy Charges shall be determined based on a Base Rate to be determined as provided hereunder and the applicable escalation rates notified by the Central Electricity Regulatory Commission from time to time.



- (3) Determination of Base Rate for Energy Charges: The Procurer shall request the Central Electricity Regulatory Commission for determination of the Base Rate for following sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling Charges (in Rs./kWh) as on 15.10.2018 based on normative operating parameters as per provisions of SPPA dated 5.12.2018.

The Base Rate recommended by Central Electricity Regulatory Commission shall be submitted to the Government of Gujarat for approval. The Base Rate as per above would be finalized by the Government of Gujarat and the parties agree that they will abide by decision of the Government of Gujarat on the determination of the Base Rate mentioned above.

- (4) In addition to the above, applicable tax, duties and cess etc. on energy charges shall be payable as per the SPPA dated 5.12.2018 on reimbursement basis, whereas other Change in Law shall be as per the PPA with approval of the Central Electricity Regulatory Commission. A separate Supplemental invoice as per PPA dated 2.2.2007 shall be raised for seeking reimbursement of approved Change in Law. There shall be no other consideration or claim for change in law in relation to variable/energy charges.
- (5) Each of the sub-parameter viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling Charges (in Rs./kWh) as on 15.10.2018 shall be thereafter escalated as per the applicable Central Electricity Regulatory Commission notified escalation rate from time to time related to imported coal. The month to month Energy Charges based on Base Rate and escalation/adjustment provided by the Central Electricity Regulatory Commission shall apply for all intent and purposes for the period from 15.10.2018 onwards.

Base Rate for both escalable and non-escalable components of Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling Charges shall be determined by CERC subject to ceiling rate for each of them as per the SPPA dated 5.12.2018.

- (6) The actual amounts paid by the Procurer to the Seller under the PPA/SPPA for the period from 15.10.2018 till date of settlement shall be adjusted accordingly without interest.”

The parties have agreed to the continued validity of the PPA dated 02.02.2007 in terms of the Deed of Settlement and the supply of power by Seller to the Procurer has been restored from 15.03.2022 and the Seller shall duly declare availability against the Contracted Capacity to the Procurer and undertake generation and supply to the Procurer from Units 5 and 6 on sustained basis in terms of the PPA read with Supplemental Agreement and the Deed of Settlement.”

40. The Deed of Settlement dated 3.1.2022 executed between GUVNL and APMuL and Government of Gujarat G.R. dated 25.2.2022 shall be read as an integral part of the Supplemental PPA dated 30.3,2022. Further Article 7 of the Supplemental PPA

provides for the formula for calculation of monthly energy charges in supersession of Articles 3.2.3, 3.2.4, and 3.5.3 of the SPPA dated 5.12.2018.

41. In the light of the provisions of the Deed of Settlement dated 3.1.2022 which has been accepted by the Hon'ble Supreme Court to govern the inter se relationship between the parties, Government of Gujarat G.R. dated 25.2.2022 and the Supplemental Agreements dated 30.3.2022 to the SPPAs dated 5.12.2018 and Bid-01 and Bid-02 PPAs, the mandate of the Commission in the present Petition is to recommend the following to the Government of Gujarat for the purpose of determination of energy charges for supply of electricity from Units 1 to 6 of Mundra Power Project of APMuL to GUVNL:

- (a) Base Rate for the FOB coal cost (in USD/kWh) consumed including other charges as on 15.10.2018;
- (b) Base Rate of Ocean Freight (in USD/kWh) as on 15.10.2018
- (c) Base Rate of Port Handling Charges (in Rs./kWh) as on 15.10.2018

The above sub-parameters have to be determined based on the normative operational parameters and the quality of coal consumed.

42. Before we proceed to decide the base rates, the following issues need to be addressed:

- (a) Effective Date of Base rate.
- (b) Operational Parameters.
- (c) Quality of Coal consumed.

### **Effective Date of Base Rate**

43. As per the Deed of Settlement and Supplemental PPAs, Base rate for energy charge is to be determined for a specific date i.e. as on 15.10.2018 and no other date. However, the Petitioner in its rejoinder dated 3.5.2022 has placed two computations of base rates for all sub-parameters wherein the data in respect of Bid-02 PPA has been taken with reference to December 2018.

44. The Deed of Settlement dated 3.1.2022 reads as under:

“4. Effective 15.10.2018 and for the entire duration as mentioned in the SPPAs dated 05.12.2018 related to both PPAs dated 02.02.2007 and 06.02.2007 (excluding the period as mentioned above in relation to PPA dated 02.02.2007), the tariff admissible to APMuL shall be as per PPAs read with related SPPAs as amended and modified by this Settlement only.

- (a) For the period of Supply from Unit 5 and 6 from 15.10.2018 to 09.07.2019 the admissible compensation towards energy charges under the SPPA dated 05.12.2018 shall be reworked to the extent and in terms of the methodology provided in this Settlement, in modification to the terms provided in the PPA dated 02.02.2007 and SPPA dated 05.12.2018.
- (b) For the period of supply from Units 1 to 4 from 15.10.2018 onwards the admissible compensation towards energy charges under the SPPA dated 05.12.2018 shall be reworked to the extent and in terms of the methodology provided in the Settlement, in modification to the terms provided in the PPA dated 06.02.2007 and SPPA dated 05.12.2018.
- (c) The actual amounts paid by GUVNL to APMuL under the PPA dated 02.02.2007 read with the related SPPA dated 05.12.2018 and also under the PPA dated 06.02.2007 read with the related SPPA dated 05.12.2018 for the period from 15.10.2018 till date of settlement shall be adjusted accordingly.”

In the SPPAs dated 30.3.2022, ‘Base Rate’ has been defined as under:

“3. (i) “Base Rate” shall mean the Rate as on 15.10.2018 as recommended by Central Electricity Regulatory Commission and approved by the Government of Gujarat in terms of the Deed of Settlement.”

45. Thus, as per the Deed of Settlement and SPPAs, the effective date for the Base Rate is 15.10.2018.

### **Operating Parameters**

46. As regards operating parameters, GUVNL has submitted that the Commission may consider the operational parameters as lower of actual and as per the Tariff Regulation of the Commission as on date of commissioning of the Units as per the SPPA dated 5.12.2018 while determining the base Fuel Energy Charge as on 15.10.2018. GUVNL has submitted that the stipulation of 'actual' in each of the specific elements earlier in SPPA dated 05.12.2018 clearly establishes the contemporaneous intention and acceptance of both Adani Power and GUVNL that each of the operational parameters could be lower than the alternate provided against each of them as ceiling.

47. **Per Contra**, APMuL in its reply dated 26.04.2022 has submitted that Clause 5(b) of the Deed of Settlement specifically records the agreement of the parties for determination of base rate as per the 'normative' operating parameters. Even GoG GR dated 25.02.2022 requires the determination of base rate as per the 'normative' operating parameters. Further, SPPAs entered into in 2022 also mandate the determination of base rate as per the 'normative' operating parameters. Therefore, GUVNL and APMuL have unequivocally agreed to consider the 'normative' operating parameters for determination of the base rate by the Commission. Hon'ble Supreme Court in the order dated 8.2.2022 has held that the inter-se relationship between the parties shall now be governed by the settlement deed dated 03.01.2022. GUVNL is, thus, acting in contravention of the 2022 SPPAs, Deed of Settlement, Hon'ble Supreme Court's Order, GoG GR dated 25.02.2022, which is untenable, and ought to be rejected.

48. We have considered the submissions made by the Petitioner and the Respondent. We observe that Clause 5(b) of the Settlement Deed dated 3.1.2022 and

Para 4.1 (3) of the SPPAs dated 30.3.2022 provide that Base rate needs to be determined based on normative operative parameters. The relevant extract of Clause 5(b) of the Settlement Deed is as under:

“5. APMuL and GUVNL hereby mutually agree on the following terms in regard to the tariff admissible in modification and supersession of the terms contained in the PPA dated 02.02.2007 read with the related SPPA dated 05.12.2018 which shall be effective 15.10.2018 and govern the period till 09.07.2019 and thereafter from the date of the commencement of the supply under this Settlement for the entire duration and in PPA dated 06.02.2007 read with related SPPA dated 05.12.2018 which shall be effective 15.10.2018 and govern the entire duration.

.....  
b. To avoid disputes in relation to energy payments and to ensure pass through of coal cost in a prudent and transparent manner, it is decided that the payment of energy charges shall be linked to the escalation rates notified by CERC from time to time for which the base rate is to be determined. GUVNL shall request CERC for determination of the base rate for following sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (in USD/kWh) and Port Handling charges (in Rs./kWh) as on 15.10.2018 **based on normative operating parameters** as per provisions of SPPA dated 05.12.2018”

Government of Gujarat GR and SPPA dated 30.3.2022 also provide that while determining the base rate normative parameters are to be considered.

49. Through SPPA dated 5.12.2018 the following definition was added:

“**3.1 (iv) “Tariff Regulations”** shall mean the regulations of the Appropriate Commission specifying the terms and conditions for determination of tariff, as applicable at the time of COD of the Project.”

The now withdrawn clause 3.2.4 “General Principles for determination of LPPF “of SPPA dated 05.12.2018 had provision for the parameter Transit Losses: Actual or 0.2%, whichever is lower. The same now as per settlement deed dated 03.01.2022 would be on normative basis and by virtue of definition 3.1 (iv) of SPPA dated 05.12.2018 would be 0.2% as per provision 21 (7) of Tariff Regulations, 2009 (applicable regulation as all the six units – Unit 1 to 4 covered by Bid 01 and Unit 5&6

covered by Bid 02 were declared Commercial in 2009-14, thus project COD happening in 2009-14 tariff period). Regulation 21(7) of Tariff Regulations, 2009 is as under:

“21 (7) The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail / road or any other means, and, for the purpose of computation of energy charge, and in case of coal/lignite shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal or lignite dispatched by the coal or lignite supply company during the month as given below :

Pithead generating stations: 0.2%

Non-pithead generating stations: 0.8% “

50. Further, Article 3.2.3 of the SPPA 2018 for Bid-01 and Bid-02 PPA provided for the normative parameters which have been modified by SPPAs dated 30.3.2022 as under:

**“Bid -01**

3.2.3 Energy Charge shall be determined for each Month, as under:

(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the Month in kWh.}

Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to four decimal places in accordance with the following formulae:

$ECR = \{GHR \times LPPF / CVPF\} \times 100 / (100 - AUX)$  minus DT

Where:

~~AUX = Lower of actual or~~ normative auxiliary energy consumption of 9% as specified in the tariff regulations as defined therein

~~GHR = Lower of actual or~~ Gross station heat rate of 2340 in kCal per kWh as specified in the Tariff Regulations as defined herein.

**Bid -02**

3.2.3 Energy Charge shall be determined for each Month, as under:

(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the Month in kWh.}

Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to four decimal places in accordance with the following formulae:

$ECR = \{GHR \times LPPF / CVPF\} \times 100 / (100 - AUX)$  minus DT

Where:

~~AUX = Lower of actual or~~ normative auxiliary energy consumption of 6.50% as specified in the tariff regulations as defined therein

~~GHR = Lower of actual or~~ Gross station heat rate of 2274 in kCal per kWh as specified in the Tariff Regulations as defined herein

Operating parameters in terms of settlement deed, as is mutually agreed, is to be on normative basis as per provisions of SPPA dated 05.12.2018.“

51. If the contention of GUVNL is to be accepted, it would have sufficed to use ‘based on operating parameters as per provisions of SPPA dated 05.12.2018’. GUVNL’s argument also renders the use of word ‘normative’ in the Deed of Settlement redundant which could not be the case. The inclusion of ‘**normative**’ ought to be with the intent to compute the base rate based on normative parameters as noted in the SPPA dated 5.12.2018.

52. In view of the above, we conclude that through Settlement Deed 03.01.2022 read with SPPA dated 05.12.2018 and 30.03.2022, the applicable normative parameters for energy charge base rate would be as follows:

Sr No.	Operating Parameter	Normative value for BID – 01 PPA	Normative value for BID – 02 PPA
1	SHR	2340 kCal/kWh	2274 kCal/kWh
2	AUX	9.0%	6.50%
3	Transit Losses	0.2%	0.2%

### **Quality of coal consumed**

53. As regards quality of coal, the Commission vide RoP for the hearing dated 21.4.2022 had directed APMuL to submit the following:

- (i) Coal quantity consumed in October, 2018 for supply under SPPA dated 5.12.2018 duly certified by Auditor;
- (ii) GCV (quality) of such quantity of coal consumed in October, 2018 for supply under SPPA dated 5.12.2018. In case of different GCV coal is consumed in October, 2018 for supply under SPPA dated 5.12.2018 by blending or otherwise and used for generation, the details of each such GCV and the quantity used thereof;

54. APMuL vide its affidavit dated 26.4.2022 submitted the information certified by its auditor as under:

Sr No	Vessel Name	Vessel Qty (MT)	GCV AT LOAD PORT	GCV at Discharge Port	Coal Consumed in Oct 2018 (15-10-2018 to 31-10-2018) Bid 01
1	MV Star Gwyneth	80157	4843	4829	26518
2	MV Navious Aster	164244	4691	4662	115750
3	MV Orange Tiara	163972	2858	2824	16738
4	MV Golden Feng	159305	4760	4741	107194
	<b>Total</b>	<b>567678</b>			
	<b>Total Consumed in Oct 2018 in MT</b>				<b>266200</b>
Weighted Average GCV of coal consumed				<b>4594.88</b>	<b>kCal/Kg</b>

55. Further, in response to the information sought by the Commission during the hearing held on 5.5.2022, the Respondent APMuL vide affidavit dated 9.5.2022 placed on record an auditor certificate dated 13.4.2019 certifying the quantity consumed and actual cost of imported coal incurred in Unit 1 to 4 for the period 15.10.2018 to 31.10.2018 as under:

Vessel Name	Vessel Qty	Coal Cons. under Stage-I	FOB price of coal	Ocean Freight	Other Charges	Port/ Fuel Handling Charges
Text	MT	MT	USD/MT	USD/MT	USD/MT	Rs/MT
A	B	C	D	E	F	G
MV ORANGE TIARA	163972	16738	24.16	10.30	0.53	375.00
MV STAR GWYNETH	80157	26518	72.02	10.35	2.42	375.00
MV NAVIOS ASTER	164244	115750	66.62	10.40	2.21	375.00
MV GOLDEN FENG	159305	107194	68.14	10.30	1.13	375.00
<b>Total</b>		<b>266200</b>				
<b>Wt. Avg. w.r.t Col.(C)</b>			<b>65.1002</b>	<b>10.3485</b>	<b>1.6904</b>	<b>375.00</b>

56. GUVNL vide its affidavit dated 11.5.2022 has contended that the analysis of the data provided in the auditor certificate dated 13.4.2019 shows that out of 5,67,678 MT



received for the period from 15.10.2018 to 31.10.2018, the weighted average FoB price of the entire quantum is 54.99 USD/MT. However, Adani Power has used 2,66,200 MT for consumption at Units 1 to 4 of the Mundra Power Plant, and the blending of various grades of coal has been done in such a manner that the weighted average FoB price of the coal actually used is 64.30 USD/MT as under:

S. No.	Vessel Name	Coal Procurement					Coal allocated to Units – 1 to 4 under Bid-1 during 15-10-2018 to 31-10-2018 as claimed by ADANI		
		B/L Month	HBA rate for B/L month (USD/ MT)	Vessels Quantity (MT)	Billed GCV (kCal/ kg)	HBA derived HPB price (USD/ MT)	MT	GCV (kCal/ kg)	HBA derived HPB price (USD/ MT)
1	MV STAR GWYNETH	Aug-18	107.83	80,157	4843	71.72	26,518	4843	71.72
2	MV NAVIOS ASTER	Sep-18	104.81	1,64,244	4691	64.85	1,15,750	4691	64.85
3	MV ORANGE TIARA	Aug-18	107.83	1,63,972	2858	24.16	16,738	2858	24.16
4	MV GOLDEN FENG	Sep-18	104.81	1,59,305	4760	68.14	1,07,194	4760	68.14
				<b>5,67,678</b>	<b>4202 (Weighted Average)</b>	<b>54.99 (Weighted Average)</b>	<b>2,66,200</b>	<b>4619 (Weighted Average)</b>	<b>64.30 (Weighted Average)</b>

57. GUVNL has argued that there is no reason for Adani Power to claim the computation on the basis of the weighted average FoB price of 64.30 USD/MT when the coal has been procured and ought to have been considered to have been consumed with the weighted average FoB price of 54.99 USD/MT. GUVNL has further submitted that the information given by Adani Power has been restricted to the coal

procured and consumed in Units 1 to 4 of the Mundra Power Project- Phase 1, and the same does not cover the coal price and details for Units 5 and 6.

58. In response to the query raised by the Commission vide RoP of the Hearing dated 19.5.2022 regarding disproportionate allocation of coal, APMuL vide its affidavit dated 25.5.2022 has submitted that GUVNL is considering the receipt quantity of coal instead of consumed quantity of coal by the APMuL. Such conduct is wholly erroneous and against the principle being followed by GUVNL itself for payment of energy charges under the 2018 SPPAs (dated 05.12.2018). APMuL has contended that GUVNL and APMuL have unequivocally agreed to consider the 'consumed quantity of coal' in the Deed of Settlement dated 03.01.2022 and the SPPAs 2022 (dated 30.03.2022) for determination of the Base Rate by the Commission. APMuL has submitted that it is no longer open for the Petitioner GUVNL to take the stand that the allocation of coal has been done by Respondent disproportionately. APMuL has also denied the contention of the Petitioner that Respondent has disproportionately allocated coal available out of 4 vessels. APMuL has submitted that the coal available during the period 15.10.2018 to 31.10.2018 was allocated and used keeping in the view the technical considerations of the Respondent's generating units. Except the vessel named "MV ORANGE TIARA", all other vessels contained coal of GCV more than the weighted average GCV arrived based on consumed quantity of coal. The GCV of coal consumed during 15.10.2018 to 31.10.2018 could have been lower, if Respondent would have consumed more coal from the vessel named "MV ORANGE TIARA". However, such higher consumption from the vessel named "MV ORANGE TIARA" could not be done between 15.10.2018 to 31.10.2018 and was practically not feasible because of two reasons (1) Firstly, the assumption of Petitioner that coal in

the vessel named “MV ORANGE TIARA” was not consumed prior to 15.10.2018 and entire vessel was available for utilization during the 17-day period (i.e. 15.10.2018 to 31.10.2018) under consideration is wholly baseless. As a matter of fact, the entire stock as was available from this low GCV vessel named “MV ORANGE TIARA” during 15.10.2018 to 31.10.2018 has been consumed by Respondent during such period. (2) Secondly, even otherwise, the coal in the vessel named “MV ORANGE TIARA” had moisture content of more than 52%. Such high moisture coal cannot be blended in high proportion as it would result in choking of coal pipe and low mill outlet temperature. Such technical constraints would have potential scope for disruption in generation. Therefore, such low GCV coal had to be blended optimally taking various factors into consideration.

59. Vide RoP of the Hearing dated 19.5.2022, the Commission also sought clarification from GUVNL regarding statement made by APMuL that GUVNL has admitted and paid energy charges considering FOB Price of coal as per HBA index (HPB) (without tolerance) for the period from 15.10.2018 to 31.10.2018 vis a vis their statement during the hearing that the same was on provisional basis. GUVNL in its affidavit dated 25.05.2022 has submitted that APMuL has misrepresented the aspect in regard to GUVNL having admitted the liability to pay the energy charges to APMuL based on HBA (HPB) for any period much less for the period 15.10.2018 to 31-10-2018. Further, relying on pleadings in Petition No. 614/MP/2020 and Review Petition No. 20/RP/2021, GUVNL has stated that the alternative recorded in Para 4 (a) of the ROP dated 19.05.2022 that GUVNL’s statement that any payment made was on a provisional basis is the true and correct statement.

60. Further, vide its additional affidavit dated 26.5.2022, GUVNL has placed APMuL's auditor certificate dated 28.11.2018, which was given by APMuL to GUVNL for the purpose of claiming change in law. The said certificate provides the details of vessel wise coal quantity (15 vessels) consumed in the entire month of October 2018. GUVNL has compared this certificate with auditor certificate dated 13.04.2019 submitted by APMuL vide affidavit dated 9.5.2022 for 4 vessels only depicting coal consumed for the period from 15.10.2018 to 31.10.2018. GUVNL has indicated the discrepancy that quantum of coal shown to be consumed in respect for the whole month of October 2018 for units 1 to 4 as per certificate dated 28.11.2018 is significantly lesser than coal shown to be consumed as per certificate dated 13.4.2019 for part of the month from 15.10.2018 to 31.10.2018. Further, GUVNL has submitted that if the coal consumption for entire month of October 2018 is taken as per statement dated 28.11.2018, the weighted average GCV of coal works out to 4188.6 Kcal/Kg.

61. ***Per Contra***, APMuL vide its affidavit dated 2.6.2022 has submitted that the Change in Law claim for October 2018 was submitted to the Petitioner GUVNL on 28.11.2018 along with the Auditor Certificate dated 28.11.2018 i.e., prior to signing of 2018 SPPAs on 05.12.2018. APMuL has clarified that coal quantity mentioned in certificate dated 28.11.2018, submitted with change in law claims, is based on a particular allocation basis and not on unit-wise actual consumption basis. However, SPPAs were signed on 05.12.2018 and as per the said SPPAs there was no requirement to claim Change in Law compensation subsequent to signing of the 2018 SPPAs. As regards Auditor Certificate dated 13.04.2019, APMuL has submitted that the vessel wise coal quantity mentioned therein is in accordance with SPPAs dated 05.12.2018. Since Article 3.2.4 of the 2018 SPPAs stipulates that the actual coal

consumption to be considered, therefore, Respondent APMuL for the purpose of energy charge claim for the period 15.10.2018 to 31.10.2018 has considered actual quantity of coal consumed based on the Book of Accounts in its Auditor Certificate dated 13.04.2019. The quantity shown in the Auditor Certificate dated 13.4.2019 was not based on any allocation methodology as in the case of the Auditor Certificate dated 28.11.2018. APMuL has submitted that the Petitioner was aware of the methodology being followed for Change in Law claims prior to 2018 SPPAs and for monthly energy charge claim under the 2018 SPPAs. However, the Petitioner did not raise these objections along with various objections on the energy charges claim submitted for October 2018 pursuant to approval of the 2018 SPPAs by the Commission by Order dated 12.04.2019 in Petition No. 374/MP/2019 (GUVNL vs. APMuL & Ors.).

62. We have considered the submissions made by the Petitioner and the Respondent. It is undisputed that while signing the SPPAs dated 30.3.2022, both the parties were aware of the changes being made for computation of energy charges in the SPPA dated 5.12.2018 with emphasis on quality of coal consumed. Clause 4.1(3) of the SPPAs dated 30.3.2022 provides as under:

“(3) Determination of Base Rate for Energy Charges: The Procurer shall request the Central Electricity Regulatory Commission for determination of the Base Rate for following sub-parameters viz. FOB coal cost (in USD /kWh) **for quality of coal consumed** including other charges, Ocean Freight.....”

Further, both the parties were aware of the fact that only units 1 to 4 were in operation on 15.10.2018. Even the weighted average GCV of coal consumed was available to both parties at the time of signing of deed of settlement for which differential bill had been raised on 15.04.2019 as submitted by GUVNL through its affidavit dated 25.5.2022 and no dispute had been raised as regards the consumed GCV.

63. We note that up to 14.01.2018, the terms of the supply were governed by original PPAs and from 15.10.2018, new terms as per SPPA dated 5.12.2018 (energy charges as pass through w.e.f. from 15.10.2018 and Change in law not applicable as the energy charges converted from quoted to formula based) took effect based on understanding reached between the parties and which was approved by the Commission through its order dated 12.04.2019 in Petition No. 374/MP/2018. The CA certificate dated 28.11.2018 was prior to SPPA dated 5.12.2018 wherein for the purpose of change in law computations for the month of October 2018 were done using allocation principles. Subsequently, since 15.10.2018 became the effective date based on SPPA dated 5.12.2018 (date later than the CA certificate dated 28.11.2018), the amount of Rs. 14,68,54,467/- claimed earlier towards Change in Law was refunded as is reflected in APMuL Invoice attached in submission dated 25.05.2022 of GUVNL.

64. In light of submissions as above, GUVNL's suggestion to consider GCV value of 4202 kCal/kg, for determination of base rate, based on the weighted average of 'billed value' of GCV at load port by considering the coal quantity received in 4 vessels indicated in the Auditor Certificate dated 13.4.2019 and also its suggestion to consider GCV value of 4188.60 kCal/kg, for determination of base rate, based on the weighted average of 'received value' of GCV at discharge port by considering the coal quantity received in 15 vessels indicated in the Auditor Certificate dated 28.11.2018 has been analyzed in the paragraphs 66 to 68.

65. Since the case in hand is for determination of base rate as on 15.10.2018, any reference to the period prior to 15.10.2018 is not relevant and hence, the working of weighted average GCV of 4188.6 kCal/kg calculated on received basis by GUVNL

cannot be considered. Further, GCV of 4202 kCal/kg cannot also be considered as it is worked out on the basis of billed value at load port, which does not represent the quality of coal consumed as required under the Settlement Deed dated 3.1.2022 and SPPAs dated 30.3.2022. There is loss of heat value between the loading port and unloading port (discharge port) as has been recognized by both the parties earlier in SPPAs dated 5.12.2018 and therefore, the GCV of coal at discharge port represents the true value for the purpose of computation of quality of coal consumed. [Consumed GCV value cannot be more than as received value in case the received value is lower than the billed value]. Accordingly, the GCV value of 4202 kCal/kg as suggested by GUVNL cannot be accepted for determination of base rate.

66. For ensuring that the auditor certified claimed value of consumed GCV of 4594.88 kCal/kg [being a result of blending] to be considered for determining the base rate in case of both Bid 01 and Bid 02, after going through the facts and submissions of both the parties, the Commission decided to peruse the findings of the technical expert in the Deepak Parekh Committee Report [relevant for Bid 02 in respect of Units 5 and 6] referred to in order dated 21.2.2014 in Petition No.155/MP/2012. As per the Committee Report, the technical expert had recommended coal GCV, to be used by blending, to be near the boiler Design coal of GCV 4500 Kcal/kg. Studies conducted by the technical expert and tabulated in the Committee Report indicates that any use of inferior coal than the design coal will result in performance deterioration in terms of Station Heat Rate, Aux consumption and to an extent Generation. The same is reproduced below:

Blended GCV of Coal	Station Heat Rate (Kcal/kWh)	Aux. loss	Generation (MW)	Blending Ratio (Melawan:Bunyu) by Weight
Design GCV (4500 Kcal/Kg)	2354	6.5%	660	70:30
Case I: 4275 Kcal/Kg	2382	7.05%	640	60:40
Case II: 4200 Kcal/Kg	2400	7.15%	620	55:45

67. With regards to Units 1 to 4, we observe that the Gujarat Electricity Regulatory Commission in its order dated 21.10.2011 in Petition No 1080/2011 and Order dated 07.01.2013 in Petition No 1210/2012 considered the technical particulars as under:

Particular	UOM	U1&2	U3&4	U5&6
Turbine Cycle Heat rate	Kcal/Kwh	1916	1916	1946
Boiler efficiency	%	89.4	83.14	90.5
Guaranteed SHR at Full Load	Kcal/Kwh	2143.177	2304.547	2150.276
Weighted Average		2223.8616		

68. From the table in paragraph 67 above, it can be seen that the Guaranteed SHR at Full Load in case of Unit 1&2 and that of Unit 5&6 are almost the same. For Units 1 to 4 combined, the Weighted Average value of Guaranteed SHR differs from that of Units 5 & 6 in an acceptable range of deviation of 3.4%.

69. From the analysis made in paragraphs 66, 67 and 68 above, we observe that the actual consumed GCV value [4594.88 Kcal/Kg] is almost in sync with the design coal value [4500 Kcal/Kg] in respect of both the Bids. Therefore, for sustained operation over the project PPA life, as agreed between the parties, and that too at enhanced availability of 90%, it is imperative that GCV of coal consumed needs to be close to the design value so that the operational parameters of SHR and Aux consumption as agreed in the SPPA dated 30.3.2022 do not get adversely affected.



We would like to reiterate here that units in actual can be run with coal of GCV on both lower or higher side, but running of units in deviation to value of design coal in case of blending has an adverse impact on GSHR, aux consumption and generation which in the context of Base rate determination are getting fixed.

70. From the discussion above, it can be clearly inferred that GUVNL had not raised any dispute earlier as regards the GCV of coal consumed in October, 2018 but rather had a dispute regarding their liability to pay for the same on HBA (HPB) rates. Further, the suggestion by GUVNL in the present petition now, to consider computation of GCV of coal consumed by assuming blending of the coal consumed to be in proportion of their receipts rather than the disproportionate blending as done by APMuL so that the suggested weighted average GCV values is arrived which in turn could result in lesser FOB values though the lesser FOB rates now calculated by GUVNL are still on HBA (HPB) in regards to which they had raised disputes earlier.

71. Therefore, from above discussions, we tend to safely conclude that the GCV value of the actually consumed coal (as certified by the auditor's Certificate dated 13.4.2019 for the period from 15.10.2018 to 31.10.2018) is 4594.88 kCal/kg and. the same is in acceptable range of design GCV of coal of 4500 kCal/kg as discussed in paragraph 66 and 67. Thus, GCV of 4594.88 kCal/kg is being considered for the purpose of determination of Base rates in respect of both the Bids.

### **Determination of Base Rates**

72. The mandate of the Commission in the present Petition is to determine and recommend the following to the Government of Gujarat for the purpose of

determination of energy charges for supply of electricity from Units 1 to 6 of Mundra Power Project of APMuL to GUVNL:

- (a) Base Rate for the FOB coal cost (in USD/kWh) consumed including other charges;
- (b) Base Rate of Ocean Freight (in USD/kWh)
- (c) Base Rate of Port Handling Charges (in Rs./kWh)

73. We have carefully perused the pleadings and arguments of the parties and examined the documents placed on record as well as documents available in public domain with a view to make appropriate recommendations to the Government of Gujarat.

#### **FOB Cost of Imported Coal**

74. The Petitioner, GUVNL has submitted that only judicious and prudent coal cost should be considered while determining the base rate as it has long term implication on the consumers. The Petitioner has submitted that APMuL has been procuring coal through spot enquiries from limited parties and not through transparent tendering process. The main concern of GUVNL is that coal has been consistently sourced by APMuL at price above the HBA derived price for the quality of coal consumed and the coal cost is significantly higher than the price of coal traded in Indonesia as per the rates published by indices of repute such as Argus/Coalindo and S&P Global Platts and the rate at which coal has been sourced by generators like CGPL. In Annexure F to the Petition, GUVNL has placed a statement of 35 vessels of coal imported by CGPL calculated on the basis of HBA derived price (HPB Price), Indonesian coal index such as Argus and S&P Global vis-à-vis the claims of APMuL and has submitted that other generators like CGPL have procured coal from Indonesia at prices lesser than HBA

derived price. GUVNL has further submitted that under Indonesian Regulations, coal is being traded at prices below the HBA derived price. Accordingly, GUVNL has prayed that FOB price of coal may be considered as lowest of the actual or HBA derived price for the quality of coal used by APMuL for generation of power at Mundra Power Project for supply of power under the PPAs. On the other hand, APMuL has submitted that prior to 15.10.2018 i.e. date on which SPPA dated 5.12.2018 came into effect, it was entitled to energy charges as per the quoted tariffs under the PPAs and as such there was no incentive or intention to buy coal at higher prices. APMuL has further submitted that for the coal consumed in October 2018, APMuL had ordered or procured coal in August 2018 (two vessels) and September 2018(2 vessels). As regards the sale of coal below benchmark price under Indonesian Regulations, APMuL has submitted that none of the Indonesian Regulations permit that coal export can take place at price less than the benchmark price. As regards the CGPL's coal procurement data furnished by GUVNL, APMuL after analysing eight vessels has submitted that these vessels were on term contracts entered into in May 2018 and has no relevance to the spot price prevailing in October, 2018 for which base price is to be determined based on the coal consumed for supply of power to GUVNL.

75. The following issues arise for our consideration from the competing claims of GUVNL and APMuL:

(a) Issue No.1: Whether export of coal from Indonesia is permissible at a price below the HBA Index or HPB price under the Indonesian Regulations?

(b) Issue No.2: Whether the data pertaining to the import of coal by CGPL for consumption in its project during October, 2018 as furnished by GUVNL are

relevant for the purpose of determination of based price of coal for supply of power by APMuL to GUVNL?

(c) Issue No.3: What methodology should be adopted by the Commission to determine the base rate of coal as on 15.10.2018 keeping in view the provisions of the Deed of Settlement, SPPA dated 30.2.2018 and the actual coal consumed at the Mundra Power Project?

**Issue No. 1: Whether export of coal from Indonesia is available at a price below the HBA Index or HPB price under the Indonesian Regulations?**

76. GUVNL has submitted that the relevant Regulation No. 7 of 2017 concerning the Method of Determining the Standard Selling Price of Metallic Mineral and Coal came into force on 11.1.2017 and the said Regulation was amended vide Regulation 44 of 2017 of Minister of Energy and Mineral Resources, Government of Indonesia. Article 8 of Regulation 44 of 2017 provided that the HPB of steam coal (Thermal) shall be determined based on the variables such as Coal Calorific Value, HBA of Steam, Water content, sulphur content and ash content. On 3.5.2018, Regulation 25 of 2018 was enacted by the Minister of Energy and Mineral Resource. In the said Regulations, “Coal Benchmark Price (HPB) or Harga Potukan Batubara shall mean the price of coal determined at the sale point on a Free on Board basis.” Article 33 of Indonesian Regulations 25/2018 provides that the IUP and IUPK in selling the price shall be guided by Coal Benchmark Price. Article 33(2) thereof provides that HPB is the price of the lower limits in the calculation of production fee payment. Article 35 of Regulation 25/2018 provides that the Minister shall establish the selling price formula of specific types of coal and coal for specific purposes. Relying on the above provisions, GUVNL has submitted that HBA index price which is based on international market price of

major markets was only a starting point for the Indonesian Authorities to decide on the benchmarking of the export price of coal. Based on the HBA price, the Indonesian Authority arrives at HPB derived price which takes into account host of relevant things. GUVNL has submitted that the export price of coal can be less than the HPB derived price. GUVNL has submitted that the average prices published by M/s Argus/Coalindo and M/s S&P Global Platts are significantly lower than the HPB price. GUVNL has submitted that in October 2018, the HBA for coal having 6322 kCal/kg was USD 100.89 per MT, the FOB price as per Argus Coalindo was USD 52.84 per MT for 5000 GVC, USD 38.19 per MT for 4200 GCV and USD 23.66 for 3400 GCV. GUVNL has submitted that as per Indonesian Regulations, Indonesian Authorities have been allowing the export at a much lower price than the HPB derived price. GUVNL has concluded that while the Indonesian coal companies will be required to pay the royalty and taxes based on such reference value, there is no prohibition in regard to export of coal at the FOB price agreed to between the parties lesser than the reference value.

77. APMuL has submitted that with effect from 11.1.2017 onwards, the imported coal prices were governed by Regulation No.23 of 2010 of Government of Indonesia, Regulation 7 of 2017 of Minister of Energy and Mineral Resources and Regulation 25 of 2018 of Minister of Energy and Mineral Resources. Article 85(1) of Regulation 23 of 2010, Article 2(1) of Regulation 7 of 2017 and Article 33 of Regulation 25 of 2018 mandate IUP holders that export of coal must refer to the benchmark price. As per Article 8(6) of Regulation 7 of 2017, HBA of steam coal is derived based on four coal indices namely, Indonesian Coal Index/Argus Coalindo, New Castles Export Index, Platts and Global New Castles Index. Each of the above indices is given weightage in equal proportion of 25%. Article 8(3) of Regulation 7 of 2017 provides that while

determining benchmark price (HPB), multiple variations such as steam coal prices, GCV, water content, sulphur content and ash content need to be accounted for. Article 9 of Regulation 7 of 2017 provides the exception that certain types and certain purpose of coal can be exported from Indonesia at rates below benchmark prices. Such certain types of coal are neither suitable nor used at APMuL's Mundra Thermal Power Station. Article 110(1) of Regulation 23 of 2010, Article 12.1 of Regulation 7 of 2017 Regulations and Article 40(1) of Regulation 18 of 2018 provide that even any IUP licence holder violates the mandate qua no-adherence to the benchmark prices for export of coal, there shall be imposition of administrative sanctions. APMuL has submitted that coal suppliers in Indonesia continue to be mandated not to export coal below HBA Index price and GUVNL is referring to non-applicable provisions of the Indonesian Regulations to contend that coal may be sold below benchmark price. APMuL has further submitted that GUVNL has made an erroneous comparison of CGPL data with Argus/Coalindo and S&P Global Platts to contend that APMuL has been procuring coal at high price.

78. The Commission has analysed the relevant Indonesian Regulations placed on record. The Indonesian Regulations for the relevant periods are as under:

(A) For the period starting from September, 2011 to 10.1.2017, the imported coal prices were governed by the Government Regulations of 23 of 2010 read with following sub-delegated Regulations:

(a) The Regulation of the Minister of Energy and Mineral Resources on the Determination Procedure on the Benchmark Price of Mineral and Coal Sales ("*2010 Minister Regulations*") (17 of 2010) dated 23.09.2010.

(b) Regulation of the Director General of Minerals dated 24.03.2011 (“2011 DG Regulations”).

(c) Regulation of Director General of Coal and Minerals dated 30.5.2014 (“2014 DG Regulations”).

(B) From 11.1.2017 onwards, the imported coal prices were governed by the Government Regulations of 23 of 2010 read with following sub-delegated Regulations:

(a) The Regulations of Minister of Energy and Mineral Resources regarding Procedures for determination of Reference Prices for Metal Minerals and Coal” dated 11.1.2017 (“2017 Minister’s Regulations”).

(b) Regulation of Minister of Energy and Mineral Resources regarding minerals and coal mining business (“2018 Minister’s Regulations”) dated 3.5.2018.

79. At this stage, it is pertinent to set out few details *qua* each of the aforesaid Indonesian Regulations hereinbelow:

(I) The Government Regulations 23 of 2010 aimed at carrying out policies which give priority to the use of coal for domestic interests. The said enactment envisaged control on production and sale of coal, with the intention to prioritize domestic interests. Article 85(1) provides that coal production operation mining permit holders that export coal produced by them must refer to the benchmark prices. Article 85(2)(a) provides that the benchmark prices shall be determined by the Minister for Minerals and Coal. Article 85(3) provides that the benchmark prices shall be determined by market mechanism and/or by following prices generally prevailing in the international market. According to Article 110(1), Mining Permit holders or Special Mining Permit holders violating Article 85 shall

be imposed administrative sanctions in the form of (a) written warning or (b) suspension of mineral and coal production operation mining permits and/or (c) revocation of mining permits or special mining permits.

(II) The 2010 Minister Regulations set out benchmark price determination for sale of Minerals and Coal. According to Article 11, the Director General on behalf of the Minister sets a benchmark price for steam (thermal) coal and coking (metallurgical) coal every month based on a formula that refers to the average coal price index in accordance with the market mechanism and or appropriate with prices generally accepted in the international market. The benchmark price of coal shall be used as a reference of coal price by the IUP and IUPK of production operation permit holders in conducting coal sales. Coal Benchmark price is the price of coal at sale point on a free on vessel. As per Article 18, sale of coal can be done in the form of direct sale (spot) and/or term sales based on the agreements between the IUP and IUPK of production operation permit holders with the coal buyers. Coal price in direct sales (spot) refers to the benchmark price of coal in the month in which coal shipment was conducted and coal price in term sales refers to benchmark price of coal occurred in the last three months. Article 21 envisages that certain types of coal used in the country can be sold at a price below the coal price reference approved by the Director General on behalf of the Minister. As per Article 21(2), 'certain type coal' includes fine coal, reject coal and coal with certain impurities.

(III) The 2011 DG Regulations defined Coal Benchmark Prices [HPB] and the reference coal price [HBA]. DG was required to determine the benchmark price of coal for steam (thermal) coal and coking (metallurgical) coal every month



based on a formula that refers to the average coal price index in accordance with market mechanisms and/or in accordance with generally accepted prices in the international market. As per Article 2(2),, the benchmark price of coal was required to be used as a reference for coal prices for IUP Holders for sale of coal. The reference coal price, referred as HBA, is the average price of coal price index in the previous month. HBA of steam (thermal) coal for the relevant month is calculated in the coal quality equivalent to 6322 kcal/kg Gross as Received (GAR). The DG Regulations also refer to 4 coal price indices for HBA of steam (thermal) coal i.e. (i) Indonesian Coal Index/Argus Coalindo, (ii) New Castle Export Index, (iii) Platts, and (iv) Global New Castle Index. Attachment-1 to DG Regulation, 2011 specifically mandates for references being made to each of indices in four equal proportions i.e., @25% each. Article 3(2) refers to multiple variables to be accounted, while determining Benchmark prices [HPB] viz. (i) steam coal prices, (ii) GCV, (iii) water content, (iv) Sulphur content, and (v) ash content.

(IV) The 2014 DG Regulations: Article 2 of 2014 DG Regulations provides that coal of certain types includes fine coal, reject coal and coal with certain impurities. Fine coal is a by-product of coal mining and its diameter is less than 2 millimetre and sold separately. Reject coal is a by-product of coal mining with certain content of impurities due edging with the layer of soil or rock or waste of washing from plant or other process of production. Coal with certain impurities is coal as main product from coal mining with unusual specifications that makes it unacceptable in the market because of the high contents of sulphur, ashes, and/or sodium. Article 3 and 4 deal with determination of benchmark price of

certain types of coal. Article 5 of 2014 DG Regulations provides that the “certain types” of coal used in the country shall be sold at price below reference price of coal after having been approved by the Director General on behalf of the Minister. Regulation 6 provides that the Coal for certain purpose includes: (a) coal used by Company for its own purpose in the process of coal mining; (b) coal used by Company in order to increase the value added of coal at mine mouth location; and (c) coal used for the development of under-developed areas around the mine.

(V) The 2017 Minister Regulations revoked the Minister’s 2010 Regulations. It defines Coal Standard Price abbreviated as HPB as the price of coal determined on sale point on Free on Board (FoB). It also defines Coal Price Reference abbreviated as HBA as the price which is obtained from price index average of coal in previous month. Article 2(1), mandates that IUP and IUPK holders shall be guided by HPB while selling the produced coal. It provides that HPB shall be determined based on the market mechanism and/or in accordance with prices generally prevailing in the international market. Article 8(2) provides that HPB for steam (thermal) coal shall be determined based on such variables as (a) calorific value of coal, (b) HBA of steam (thermal) coal, (c) moisture content, (d) sulphur content, and (e) ash content. Article 8(6) provides that size of HBA shall be determined by referring to the coal price index such as (a) Indonesian Coal Index/Argus Coalindo; (b) New Castle Export index,(c) Global coal New Castle Index, (d) Platts Index, (e) Energy Public Coking Coal Index and (f) HIS Market Index. Article 9 provides that IUP and IUPK holders may sell certain types of coal below HPB such as fine coal, reject coal and coal with

certain impurities. Chapter V deals with 'Administrative Sanctions' so far as IUP holders are concerned. IUP of Production Operation holders in violation of Article 2(1) and 3 viz. non-adherence to HPB for export of coal, shall be charged with administrative sanctions viz. (a) Written warning or (b) Temporary halting of a part or the entire mining business activities or (c) Revocation of Production Operation IUP or Production Operation IUPK.

(VI) The 2018 Minister Regulations define Coal Benchmark Price ("HPB") as the price of coal determined at sales point on FoB basis. Article 33(1) provides that IUP and IUPK in selling the coal produced shall be guided by the Coal Benchmark Price (HPB). Article 33(2) provides that HPB is the 'lower limit price' in the calculation of production fee payment. Article 33(3) provides that HPB shall be stipulated by the Minister. Article 40 provides that the holders of IUP and IUPK which do not comply with Article 33(1) are subject to administrative sanctions in the form of written warning, temporary suspension of business activities and/or revocation of permission. Regulation 35 provides that the Minister shall establish the selling price for specific types of coal and specific purpose of coal. Specific types of coal take the form of fine coal, reject coal and coal with impurities. Specific purpose takes the form of: (a) coal which is utilised for the mine mouth power plant; (b) coal which can be utilised by the company for own purposes in the process of coal mining; (c) coal which is utilised by the company in the framework of enhancement of added value of coal at mines mouth; (d) coal which is utilised for the development of under-developed region around the mine.

80. Thus, it emerges from the above that as on 15.10.2018, the Regulations which governed the export of coal from Indonesia are the Government Regulations 23 of

2010 supplemented by 2017 Minister Regulations and 2018 Minister Regulations. Article 85(1) of the Government Regulations 23 of 2010 mandates that the holders of coal IUP production operation for export of the coal produced by them must refer to the benchmark price which shall be determined by the Minister based on the market mechanism and/or following prices generally prevailing in the international market. The 2010 Minister Regulations also requires the IUP and IUPK of production operation holders to sell their produced coal by referring to the benchmark price both for domestic sales and export. Regulation 7 of the 2017 Minister Regulations provides that HPB of Steam (Thermal) Coal shall be determined by the Director General based on such variables as calorific value of coal, HBA of steam (Thermal) coal, moisture content, sulphur content and ash content. In other words, HBA is the reference price based on the average of four international indices for 6322 kcal/kWh coal with 25% weightage for each of the indices whereas HPB is the benchmark price which is the derivative price from the HBA or reference price in respect of various grades of GCV after factoring in a number of relevant factors such as calorific value of coal, water content, sulphur content, ash content and sodium content of coal. If any IUP and IUPK of production operation holders violates the mandate *qua* non-adherence to benchmark prices for export of coal, there is provision for mandatory imposition of administrative sanctions in terms of Article 110(1) of the 2010 Government Regulations. Article 12(1) of the 2017 Minister Regulations and Article 40(1) of the 2018 Minister Regulations which includes revocation of mining permit.

81. Thus, a plain reading of the Minister Regulations shows that it is not permissible to export coal below the benchmark price failing which the coal company shall be subjected to administrative sanctions. GUVNL has relied on Regulation 35 of

Indonesian Regulation 25/2018 to contend that coal can be exported from Indonesia below HBA price. However, as already noted, such coals are of certain types and for specific purposes which do not meet the requirement of APMuL for generation of electricity from Units 1 to 6 of Mundra Power Project.

**Issue No. 2: Whether the data pertaining to the import of coal by CGPL for consumption in its project during October, 2018 as furnished by GUVNL are relevant for the purpose of determination of based price of coal for supply of power by APMuL to GUVNL?**

82. GUVNL has placed on record a statement showing the details of coal procured by APMuL vis-à-vis the coal import by CGPL, HBA derived price and the rate published by Argus/Coalindo and S&P Global Platts and has contended that coal is purchased at price lesser than the HBA price. GUVNL has not provided any documentary proof as regards FSA/coal contracts of CGPL, invoices of CGPL, coal invoices/bill of lading of CGPL etc.

83. APMuL has submitted that it is the responsibility of GUVNL to provide such documentary evidence. APMuL has submitted that CGPL had procured imported coal with an upfront premium of 4.50% as compared to the HPB price of coal applicable as on the date of signing the contract for purchase of coal. In support of this argument, APMuL has provided a statement indicating the details of the HBA/HPB coal price applicable as on May-2018 being the month in which coal supply of contract was entered into by CGPL, the HPB price claimed by CGPL from the Petitioner etc. APMuL has further submitted that on an analysis of the data submitted with respect to CGPL reveals that the coal procurement by CGPL for 8 vessels was based on fixed HBA price of USD 89.53/MT as on the date of signing of term contract in May 2018. The trend of HBA Index was upward during the period of actual shipment which took place

between August and November, 2018 when the rates were varying between USD 97.90 to 107.83 per MT.

84. As regards above averments of APMuL and in response to the specific query of the Commission, GUVNL informed that it had not examined this aspect and sought liberty to submit the factual position in this regard, as recorded in the Record of Proceedings for the Hearing dated 5.5.2022. In response GUVNL filed affidavit dated 9.5.2022 but did not submit any document to refute the averment of APMuL. On the other hand, GUVNL again filed different data for all 35 vessels assuming the contract date for all the vessels as May 2018. GUVNL has submitted that APMuL deliberately selected 8 shipments where HPB based fixed contract price is equal to FOB price of coal. GUVNL submitted that it has analysed the balance 27 shipments on the same principle of calculation adopted by APMuL for 8 shipments and has submitted that there has been large number of shipments where the HPB price is higher than the contract price establishing that there has been sale with FOB price below the HPB price. However, GUVNL has not submitted any documents to the Commission to substantiate its claim that for the balance 27 vessels the contract date was May 2018 and coal was procured by CGPL at discounted price to the HPB price.

85. From the submissions of parties, we observe that both GUVNL and APMuL have made submissions based on their respective data with regard to the shipments of coal to CGPL without any supporting documents. Both the parties have pleaded that the other party is required to prove its point by producing the relevant evidence/documents. In this connection, Section 106 of the Indian Evidence Act, 1872 is relevant which provides as under:

“106. Burden of proving fact especially within knowledge.- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him”

86. In the present case, it is GUVNL which has submitted that CGPL is buying coal at price lower than HPB price. Therefore, the burden of proof is on GUVNL to substantiate its claim on the basis of the documents including contracts for coal, the invoices and bill of lading etc. and GUVNL has failed to do so. While taking the stand that it is not possible for APMuL for make any submission on the contention of GUVNL based on incomplete data, APMuL has submitted a statement explaining that coal procurement by CGPL on 8 vessels was based on fixed price as on the date of signing of the contract. APMuL has also not substantiated its computation backed by any documentary evidence.

87. Since neither party has discharged its burden of proof with reference to the data submitted, the Commission does not consider it appropriate to rely on the statement and data of both GUVNL and APMuL for the purpose of working out the FOB cost of coal consumed by APMuL for generation and supply of electricity to GUVNL during the period 15.10.2018 to 31.10.2018.

88. GUVNL has submitted that the FOB price of coal should be fixed with reference to the indices of Argus Coalindo and S&P Global Platts. Without being influenced by the contentious submissions of GUVNL and APMuL, the Commission has carried out an independent analysis of the data furnished by GUVNL in respect of the 35 vessels of coal imported by CGPL as furnished in Annexure F to the Petition as given in the table below:

DATA IN RESPECT OF CGPL CLAIMED VALUES VERSUS ARGUS/PLATTS VALUES AS FURNISHED BY GUVNL IN ANNEXURE F OF PETITION 111/MP/2022								
SrNo	Vessel Name	Billed GCV at Load Port	B/L Month	Claimed	Argus	S&P	Prem to Argus	Prem to S&P
1	Frontier Phoenix	5219	Aug-18	69.84	60.49	59.96	13.4%	14.15%
2	Kiran Turkiye	4119	Aug-18	48.05	38.83	38.56	19.2%	19.75%
3	Suigo	4224	Aug-18	43.55	39.82	39.54	8.6%	9.21%
4	FPMC B Majesty	5235	Aug-18	69.89	60.67	60.14	13.2%	13.95%
5	Cape Sun	4155	Sep-18	47.49	38.00	38.09	20.0%	19.79%
6	Mineral Themse	5157	Sep-18	68.58	55.51	54.20	19.1%	20.97%
7	Frontier Neige	5213	Sep-18	65.66	56.11	54.79	14.5%	16.55%
8	Cape Normandy	4234	Sep-18	43.65	38.72	38.81	11.3%	11.09%
9	Anangel Courage	5137	Sep-18	68.51	55.29	53.99	19.3%	21.19%
10	Baltic Wolf	4136	Oct-18	48.25	37.61	37.64	22.1%	21.99%
11	Hanna Oldendorff	5155	Oct-18	68.57	54.48	54.31	20.5%	20.80%
12	Cape Sunrise	4229	Oct-18	40.28	38.45	38.48	4.5%	4.47%
13	Frontier Kotobuki	5134	Nov-18	68.04	49.92	50.05	26.6%	26.44%
14	Frontier Island	4215	Nov-18	42.65	32.46	31.65	23.9%	25.79%
15	Lan May	5165	Nov-18	69.43	50.22	50.35	27.7%	27.48%
16	Cape Harmony	4037	Nov-18	46.14	31.08	30.32	32.6%	34.29%
17	Mineral Haiku	4149	Nov-18	48.4	31.95	31.16	34.0%	35.62%
18	Golden Horizon	5219	Nov-18	69.76	50.75	50.87	27.3%	27.08%
19	Gulf Petrochem FCG	5311	Dec-18	66.24	49.60	49.23	25.1%	25.68%
20	PT KPC	5167	Dec-18	58.49	48.26	47.9	17.5%	18.11%
21	PT AGM	4209	Dec-18	40.09	30.27	30.27	24.5%	24.49%
22	PT KPC	5389	Dec-18	61.01	50.33	49.96	17.5%	18.11%
23	Indo International	6320	Dec-18	79.99	59.03	58.59	26.2%	26.75%
24	Mina Oldendorff	5415	Jan-19	61.3	53.08	54.00	13.4%	11.91%
25	Genco London	4171	Jan-19	40.22	31.55	32.61	21.6%	18.92%
26	Ping May	5306	Jan-19	60.07	52.01	52.91	13.4%	11.92%
27	Frontier Youth	4032	Jan-19	46.08	30.50	31.53	33.8%	31.58%
28	Frontier Lodestar	5292	Jan-19	59.91	51.87	52.77	13.4%	11.92%
29	C Utopia	4049	Jan-19	33.74	30.63	31.66	9.2%	6.16%
30	Frontier Expedition	4947	Feb-19	46.50	53.52	54.81	-15.1%	-17.87%
31	CPO Europe	5271	Feb-19	59.67	57.02	58.40	4.4%	2.13%
32	Lady Charme	4226	Feb-19	31.19	35.53	36.58	-13.9%	-17.28%
33	Cape Lily	4997	Feb-19	46.97	54.06	55.37	-15.1%	-17.88%
34	Qing May	5253	Feb-19	59.47	56.83	58.20	4.4%	2.14%
35	Frontier Phoenix	4138	Feb-19	34.48	34.79	35.81	-0.9%	-3.86%



89. The analysed data in respect of claimed value of CGPL vis-à-vis prices of Argus and S&P Global Platts for the corresponding period show that the claimed values in case of 31 vessels (barring vessel no. 30,32,33 and 35) are at a premium and there is wide variation in the percentage of premium even for shipments during the same month. Thus, the indices of Argus and S&P cannot be considered appropriate for the purpose of determination of base price.

90. Further, the Commission has also gone through some of the orders of Maharashtra Electricity Regulatory Commission (MERC) available in the public domain which pertain to the procurement of imported coal by Tata Power Company Limited for its generating station in Mumbai for supply of electricity to TPC-D.

**(a) Post facto approval of TPC-D's Fuel Adjustment Charges (FAC) for the period of April, 2019 to June, 2019 vide order dated 27.7.2020 in Ref. No. MERC/FAC/2019-20/E-Letter**

Month	2 May-19	21 May-19	30 May-19	Remark
Exchange Rate	69.54	69.73	69.79	Verified from SAP Entry
Supplier	PT ADARO	PT ADARO	PT ADARO	Verified from Invoice
Vessel Name	THARKEY	DUBAI CROWN	NATHAN BRANDON	Verified from Invoice
HBA	81.86	81.86	81.86	Submitted by TPC-G
Coal Qty (MT)	77772.00	50000.00	48922.00	Verified from Invoice
GCV (kcal/kg)	4907.00	4872.00	4909.00	Verified from Invoice
Moisture (%)	28.41	28.65	28.19	Verified from Invoice
Ash (%)	1.92	1.76	1.76	Verified from Invoice
Sulphur (%)	0.11	0.10	0.10	Verified from Invoice
HPB	57.43	57.02	57.71	Calculated
Premium	0.50	0.50	0.50	Verified from Invoice
FOB (USD/MT)	57.93	57.52	58.21	Verified from Invoice
FOB Rs./MT	4028.56	4010.82	4062.20	Calculated
Base Price in USD	4505331.96	2876000.00	2847749.62	Verified from Invoice
Base Price in INR	313309344.63	200540891.60	198730776.78	Verified from SAP Entry
Avg Base Price in Rs./MT			4032.85	Calculated

**(b) Post facto approval of TPC-D's Fuel Adjustment Charges (FAC) for the period of July, 2019 to September, 2019 vide order dated 26.9.2020 in Ref. No. MERC/FAC/20182019/E-Letter**

Month	8 Aug-19	17 Aug-19	28 Aug-19	Remark
Exchange Rate	70.96	71.29	71.73	Verified from SAP Entry
Supplier	PT ADARO	PT ADARO	PT ADARO	Verified from Invoice
Vessel Name	AVRA COMMODITIES	PT KIDECO JAYA A	PT ADARO	Verified from Invoice
HBA	72.67	72.67	72.67	Submitted by TPC-G
Coal Qty (MT)	49300.00	50045.00	49950.00	Verified from Invoice
GCV (kcal/kg)	5162.00	4935.00	4842.00	Verified from Invoice
Moisture (%)	26.31	25.14	28.86	Verified from Invoice
Ash (%)	4.28	3.11	1.91	Verified from Invoice
Sulphur (%)	0.20	0.10	0.11	Verified from Invoice
HPB	54.21	53.71	51.03	Calculated
Premium	-	-	-	Verified from Invoice
FOB (USD/MT)	54.21	53.71	51.03	Verified from Invoice
FOB Rs./MT	3846.49	3828.84	3660.21	Calculated
Avg Base Price in Rs./MT			3778.51	Calculated

**(c) Post facto approval of TPC-D's Fuel Adjustment Charges (FAC) for the period of January 2020 to March, 2020 vide order dated 28.2.2021 in Ref. No. MERC/FAC/2020-2021/E-Letter**

Month	2 Feb-20	4 Feb-20	16 Feb-19	29 Feb-20	Remark
Exchange Rate (\$ to Rs)	71.51	71.14	71.39	71.19	Verified from SAP Entry
Supplier	PT KIDECO JAYA A	PT ADARO	PT ADARO	PT KIDECO JAYA	Verified from Invoice
Vessel Name	OCEAN OPAL	SAGAR MOTI	CRIMSON KNIGHT	CL GEMMA	Verified from Invoice
HBA (\$/MT)	66.89	66.89	66.89	66.89	Submitted by TPC-G
Coal Qty (MT)	79510.00	57914.00	57932.00	62679.00	Verified from Invoice
GCV (kcal/kg)	4942.00	4805.00	4820.00	4953.00	Verified from Invoice
Moisture (%)	27.99	29.39	28.96	24.41	Verified from Invoice
Ash (%)	3.32	1.64	1.51	3.18	Verified from Invoice
Sulphur (%)	0.09	0.11	0.09	0.08	Verified from Invoice
FOB (USD/MT)	50.14	47.12	47.62	50.67	Verified from Invoice
FOB Rs./MT	3585.49	3351.88	3399.43	3657.84	Calculated
Avg Base Price in Rs./MT		3498.66			Calculated

91. It is noticed from the above tables that the FOB price of coal is either at HPB (derived from HBA) or with a premium but not less than HPB. Thus, the data pertaining to CGPL placed before us by GUVNL is of no avail for the purpose of determination of base price of coal as on 15.10.2018. The issue is answered accordingly.

**Issue No.3: What methodology should be adopted by the Commission to determine the base rate of coal as on 15.10.2018 keeping in view the provisions of the Deed of Settlement, SPPA dated 30.2.2018 and the actual coal consumed at the Mundra Power Project?**

92. In the SPPAs dated 05.12.2018, both the parties had come before the Commission with clear understanding and plea of using HBA Index with certain caveats [lower of actual price or the HBA price]. In the present Petition, the Petitioner has prayed for determination of Base rate by the Commission as on 15.10.2018. Both the parties GUVNL and APMuL now want the Base Rate for determination of energy charges to be dealt in a particular manner. APMuL has suggested HBA/HPB, may be indirectly worked out based actual CIF cost. GUVNL, on the other hand, is suggesting the use of Argus ICI3/S&P Platts and in case of HPB derived on HBA basis, FOB price of coal, with an understanding that sale on HPB can be lower than the computed HPB as per the Indonesian Regulations.

93. Based on the analysis made in Issue 1 and Issue 2 above, we are of the considered view that neither HBA index (as relied upon by APMuL) nor the Argus Coalindo index nor S&P Global Platts (as relied upon by GUVNL) can be used exclusively for determination of base rate of imported coal as required under SPPAs dated 30.3.2022 for the following reasons:

(a) The dispute whether export of coal from Indonesia is allowed at less than Benchmark price was pending between the Petitioner and the Respondent prior to signing of the present supplemental PPA. Now, the Petitioner and Respondent have entered into a settlement with an understanding that both parties would withdraw all pending cases pertaining to both the PPAs and the connected SPPAs.

(b) There is no agreement between the parties with regard to the methodology for determination of base rate. The main objective of entering into settlement is

to avoid future disputes. That being the case, the new SPPAs cannot start with dispute.

(c) Once the parties are in agreement to adopt CERC escalation rate for imported coal which is based on four (4) international indices such as (i) API 4 (Price of South African Coal), (ii) Global Coal (Price of Australian Coal), (iii) Argus ICI3 (price of Indonesian coal) and (iv) Platts CI (Price of Indonesian Coal) in proportion of 25% each, it would be illogical to determine the base rate for the FOB Coal as on 15<sup>th</sup> October 2018 based on only two of the indices as pleaded by GUVNL or on the basis of HPB as pleaded by APMuL.

94. Therefore, we find it appropriate to make use of the methodology used for determination of CERC composite index decided vide order dated 23.12.2013 in Petition No.308/SM/2013 for the following reasons:

(a) Vide the said order dated 23.12.2013, CERC has adopted composite index instead of country specific index, the rationale being to induce efficiency in procurement and diversification of supplies. The term of Bid-01 and Bid-02 PPAs are for a period of 25 years with option to extend by another 10 years in terms of the SPPAs dated 5.12.2018. Though APMuL has imported coal primarily from Indonesia for generation and supply of electricity from Units 1 to 6 of Mundra Power Project, the possibility of importing coal from other countries in future cannot be ruled out. Therefore, the composite index will be appropriate for determination of base rate as on 15.12.2018.

(b) Both GUVNL and APMuL have agreed in the Deed of Settlement and Supplemental PPAs that while the determination of base rates is left to the discretion of this Commission, the Petitioner and Respondent are in full agreement to apply CERC escalation rates over the base rates for determination of energy charge payable for the period from 15<sup>th</sup> October 2018 onwards.

95. The Commission in order dated 23.12.2013 in Suo Motu Petition No. 308/SM/2013 in the matter of “Development of Modified Composite Index for Imported Coal for payment purpose, after considering the views and the composition of steam coal imports into India and the importance and acceptability of indices in international contracts, decided that the weights assignments of different coal and corresponding indices shall be as under:

“

*(A) Weight Assignments: The weights of different coal in the composite index shall include 25% Australian Coal, 25% South African Coal, and 50% Indonesian Coal. Australian coal has been retained in the composite index despite very low volume of consumption in India due to its liquidity, acceptability for contracts, and possibility of increased use of Australian coal in future.*

*(B) Indices: The following indices shall be used for computing escalation rates for imported coal:-*

*(a) South African Coal: API4, a well-established index, and used widely for contracts, shall continue to be used as the representative index for South African Coal with weightage of 25%.*

*(b) Australian Coal: In case of Australian Coal, NEX index (also referred as Coalfax), which had a 12.5% weight in the existing composite index, is no more relevant due to its low liquidity. The other Australian Coal Index, Global COAL, 6000 Kcal/ kg on NAR basis also has 12.5% weight in the existing composite index. Actual coal imports in Asian countries are around 5500 Kcal/kg or lower (on NAR basis). Correlation between prices of higher calorific value Australian Coal and low calorific value Indonesian coal is weak, and therefore, availability of low calorific value Australian Index was also explored. From the information made available to the Commission by index publishers (Platts, Argus, and IHS McCloskey), the following low calorific value indices are available;*

(i) API5 index launched by Argus and IHS McCloskey in May 2012, evaluated on 5500 Kcal/ Kg NAR basis.

(ii) Platts Newcastle index 5500 kcal/kg NAR basis, launched in January 2012, primarily in response to Chinese imports of Australian Coal.

Considering that both indices are of recent origin, it is considered prudent to watch their performance and acceptability over a period of time before a switch over can be made. Accordingly, Current GlobalCOAL Newcastle index shall continue to be used with the 25% weight assigned to Australian coal.

(C) Indonesian Coal: The following relevant indices are available for Indonesian coal:

(i) Argus: Indonesian Coal Index (ICI3), 5000 Kcal/kg GAR, launched in June 2006. Argus has other Indonesian coal indices as well, including ICI4, 4200 Kcal/kg GAR, launched in August 2008, and ICI5, 3400 Kcal/kg GAR coal launched in November 2011.

(ii) Platts: FOB Kalimantan 5000 kcal/kg GAR, launched in 2006 and FOB Kalimantan 4200 kcal/kg GAR, launched in June 2012.

(iii) IHS McCloskey: Indonesian Sub-bituminous marker, 4900 Kcal/kg NAR, launched in 2002.

(iv) Government of Indonesia: HBA Index 6322 Kcal/kg GAR, available since January 2009.

Considering the relative merits of the above indices, the indices published by Platts (5000 Kcal/kg GAR) and Argus (ICI3, 5000 Kcal/kg GAR) shall be included for the Indonesian coal for 25% each.

Two other issues for which clarification was provided in the context of the composite index as decided by the Commission in its order are quoted:

(a) Coal measurement: We notice that NAR (net as received) is now most internationally used as the basis for coal pricing. Though GAR (gross as received) is more in use in Indonesia, it is noticed that Indonesia has adopted NAR while selling coal to China and Korea, who prefer NAR as the basis. API4 (South African coal index) and globalCOAL (Australian Coal Index), both constituents of the composite index, also use NAR as the basis. Therefore, to maintain consistency across indices being used, and considering international trend, NAR shall be used as a basis for the indices.

*(b) Calorific value harmonization across indices and normalization: Calorific values shall be harmonized across indices by normalizing the values for 5000 Kcal/Kg by assuming a linear trend across indices of different calorific value of coal.”*

96. In course of consultative process for the above order, some stakeholders had suggested to use country specific indices. The Commission after due consideration of the said suggestions decided that country specific indices may not always be available or reliability could be an issue. Moreover, the rationale for using composite index instead of country specific index was to induce efficiency in procurement and diversification of supplies.

97. In the present case, the terms of the PPAs are for twenty five years each with an option of extended term of 10 years. Considering that the supplies from these units started between Oct 2009 to March 2012, the balance period of original term of the PPAs still remains 12 to 15 years as on today. The following condition has been stipulated in SPPA dated 5.12.2018:

“It is decided that in the 10th year from the date of signing of the supplemental PPA, if energy charges of these respective projects [includes Project of APMuL] under the PPA(s) is higher than marginal coal based thermal power stations having 50 % schedule or immediate below, as the case may be, during the previous financial year under merit order of GUVNL, GUVNL shall have a right to terminate the PPA. In the event of termination pursuant to this decision, neither party shall be liable for any damages or penalty of any kind to the other party.”

Even if we consider the above provision permitting GUVNL to terminate the PPA after 10 years reckoned from 5.12.2018, still more than six years of balance period is left from the date of SPPA dated 30.3.2022.

98. There have been instances in the past as brought to the notice of Commission through other petitions where shipments from countries other than Indonesia were

received and its possibility in future cannot be overlooked by the Commission while fixing the base. Therefore, Base Rate on the basis of CERC composite index would ensure pass through of coal cost in a prudent and transparent manner, avoid any future disputes between the parties in computation of the energy charges as has been stated in the GOG G.R. dated 25.2.2022.

99. Further, from the SPPA dated 5.12.2018, it is noted that balance capacity available in the installed capacity [For Bid 01 it is 200 MW and For Bid 02 it is 234 MW] is additionally contracted over and above the 1000 MW initially contracted through the original PPA by GUVNL in a particular manner (Payment of Fixed charges, penalty etc). The recovery of Fixed charges are pegged at achieving 90% availability.

100. To generate and supply to GUVNL at contracted capacity including additional contracted capacity in both Bids(Bid 01 and Bid-02 PPAs) at GCV consumed value of 4594.88 Kcal/Kg as on 15.10.2018, as concluded in paragraph 71 of this order, the monthly requirement of coal is 860112.72 MT [4,36,796.19 for Bid-01 + 4,23,316.53 for Bid -02] [values vary depending on GCV of coal ] as shown in the table below.

<b>Name of Company : Adani Power (Mundra) Ltd.</b>				
<b>Name of Station : Mundra UMPP</b>				
Particulars	Year	Year	Year	
	01-04-20xx	01-04-20xx	01-04-20xx	
	31-03-20xx	31-03-20xx	31-03-20xx	
	Bid 1 U-1 to 4	Bid 2 U 5&6	Haryana PPA U7 to 9	
Capacity (MW) - Installed	1,320.00	1,320.00	1,980.00	Contracted cap though is less in PPA U-7 to 9
Target Availability (%)	90.0000%	90.0000%	80.0000%	
Hours in a Day	24.00	24.00	24.00	
Days in the Year	366	365	365	
Annual Hours of Operation	8,784.00	8,760.00	8,760.00	
Energy Generated (MU)	10435	10407	13876	
Aux. Power Consumption	9.0000%	6.5000%	6.5000%	Considered same in 660 MW



Aux. Power Consumption (MU)	939.19	676.45	901.93	
Energy Sent Out (MU)	9,496.21	9,730.43	12,973.91	
Gross Station Heat Rate (kCal/kwh)	2,340	2,274	2,274	Considered same in 660 MW
Specific Oil Consumption (ml/kwh)				
<b>Coal Details</b>				
Weighted Avg. GCV of Coal (kCal/kg)	4594.88	4594.88	4594.88	As consumed figure of Oct 18
Heat Contribution by Coal (kCal/kwh)	2340.00	2274.00	2274.00	
Specific Coal Consumption (kg/kwh)	0.559	0.543	0.543	
Annual Requirement of Coal (MT)	5829827.933	5649917.662	7533223.55	
Coal Stock 30 days (MT)	4,36,796.19	4,23,316.53	5,64,422.03	14,24,534.75
with 4202 Coal GCV (MT)	4,77,635.91	462895.9162	617194.555	15,57,726.38
with 4188.6 Coal GCV (MT)	4,79,163.94	4,64,376.79	6,19,169.06	15,62,709.79

101. For ensuring 100% generation of the contracted capacity under Bids-01 and Bid-02 PPAs, the procurement of coal is required to be lined up in such a manner that eventuality of any disruption in supply chain either at place from where coal is getting imported or at place where coal is unloaded and stored, are factored in. The factors which can affect the supply chain are as under:

(a) NOR [The Notice of Readiness]- NOR is the document used by the Ship Master, to notify his ship readiness, in every respect, to load and/or unload the goods during the period of his charter. NOR is an extremely important document as it triggers the commencement of lay time.

(b) Laycan [**Laydays and Cancelling Date**]- The time window in which the charterers are obliged to accept the vessel in the loading port which is dependent on Berth availability at loading/unloading port, If the vessel arrives before the first date agreed, the vessel may have to wait.

(c) Loading time- Loading time at load port is, inter alia, dependent on loading facilities at the Barge/Anchorage/Port etc. and based on it, loading number of days get decided.

(d) Sailing time- Sailing time is dependent on from which place the ship sails [port/country] and the distance in nautical mile and the speed of travel from loading port to discharge port.

(e) Un-Loading time including waiting time for draft survey- Unloading time is at unloading port, inter alia, dependent on un-loading facilities at the Port etc. and based on it un-loading number of days get decided.

102. The distance between frequently and commonly used Barge/Anchorage/Port in Indonesia/Australia/South Africa and the discharge port Mundra is in the range of 4400 to 7500 nautical miles. A list of commonly used major ports with distances in nautical miles is as under:

[http://ports.com/]			
		<b>Nautical Miles</b>	
Tanjung Bara Terminal	East Kalimantan	4458	
Bunyu Anchorage	East Kalimantan	4575	Bunyu islands
Richards Bay	SA	4612	
Port Elizabet	SA	5079	
Port of Durban	SA	4697	
Port of Cape Town	SA	5529	
Port of Newcastle	Australia	7384	
Kembla	Australia	7591	
Abbot point	Australia	6434	

The shipment time required is about 15-30 days based on the average speed of Bulk Carrier in the range of 13-15 nm/hour (Quora.com) [which in 2018 was 11.1 nm/hour- Statista.com]. Loading and unloading even at the fastest pace can require

6-13 days. Laycan expected is of the duration of 8-15 days. Additionally, few hours to few days are required from the unloading port to the plant site depending on distance and mode of transport. Further, availability of suitable ships, be it Panamax or Capesize, is an important factor as they have different carrying capacities. Depending upon the size of ship, to bring minimum 860112.72 MT of coal for Bid 01 and Bid 02 only, it will require about 5 Capesize or 10 Panamax size ships. The number would increase if we take 4202 GCV or further lower GCV coal is considered.

103. For ensuring 100% generation of contracted capacity under Bid-01 and Bid-02 PPAs, the required quantity of imported coal is required to be bought, shipped and stored. Even If the coal GCV of 4202 Kcal/Kg as suggested by GUVNL is assumed for all contracted capacity including 1424 MW from Units 7, 8 and 9 supplied to Haryana Utilities and is generated on imported coal only, the quantum of coal required for entire contracted capacity of 4064 MW will be about 1260021 MT. The information as furnished by APMuL towards stocking capacity available at Mundra Port + Power Station vide its affidavit dated 26.4.2020 is 15,17,000 MT. Thus, there is sufficient storage capacity for 30 days coal stock available at Mundra Power Project.

104. In view of the above, it can be concluded that to achieve the desired level of availability of plant keeping all the above factors into consideration, the plant must have at least 30 days of stock available at its end before it starts generating and it must have placed orders keeping in mind the minimum cycle of 30 days for procurement. Since the effective date being considered as 15.10.2018, the orders have to be placed in such a sequence that first order gets booked minimum 60 days prior to 15.10.2018 i.e. on 14.8.2018.

105. The applicable regulation as per SPPAs dated 5.12.2018 i.e. Regulation 18 (1)(a) of Tariff Regulations, 2009 envisages two months of coal stock for non-pit head generating stations for generation corresponding to the normative annual plant availability factor of 85%. This being an imported coal based plant, considering the lead time as discussed above and with the expected availability of 90% to be ensured as against 85% as per Tariff Regulations, 2009, the coal stock of actual 30 days with balance 30 days stock in transit has been considered for determining the base rate without getting into actuals.

106. Keeping in view the above consideration and along with the use of Composite index of CERC for reasons already stated, the Base FOB Price is worked out as USD 64.06/MT for GCV of 4594.88 Kcal/kg (compared to the value claimed on actuals by APMuL of USD 64.30/MT) as given in the table below:

Notified weekly values				
Week Start Date	GCNC 6000 NAR	API4 6000 NAR	ICI3 5000 GAR	Platts 5000 GAR
10-08-2018	118.29	101.62	59.98	59.50
17-08-2018	117.68	98.16	58.18	56.75
24-08-2018	117.39	95.66	55.88	55.75
31-08-2018	118.73	94.91	54.69	54.00
07-09-2018	114.48	97.35	54.35	52.75
14-09-2018	115.74	100.30	54.05	52.25
21-09-2018	113.01	97.33	53.59	52.25
28-09-2018	113.58	98.01	53.28	53.25
05-10-2018	113.98	100.75	53.61	53.06
12-10-2018	108.81	99.55	53.46	52.92
<b>Average</b>	<b>115.17</b>	<b>98.36</b>	<b>55.11</b>	<b>54.25</b>

A	Average of Notified weekly values during the period under consideration				25% Each @5000 NAR				D	E	F=Round (D*E/5300,2)
	B				C						
Procurement Period	Global coal New castle 6000 NAR	API 4 6000 NAR	ICI3 5000 GAR/ 4600 NAR	PLATTS 5000 GAR/ 4700 NAR	Round (25%* 115.17 *5/6,2)	Round (25%* 98.36* 5/6,2)	Round (25%* 55.11*5 0/46,2)	Round (25%* 54.25*5 0/47,2)	CERC indexed 5000 NAR- USD/MT	GCV GAR (Consumed Coal) kCal/kg	CERC indexed for 4594.88 GAR (Consumed Coal)-USD/MT
14 Aug 2018 to 14 Oct 2018	115.17	98.36	55.11	54.25	23.99	20.49	14.98	14.43	73.89	4594.88	64.06

107. The Base FOB Price worked out as USD 64.06/MT for GCV of 4594.88 kCal/kg is lower than the value claimed on actuals by APMuL at USD 64.30/MT. Therefore, the Base FOB Price of USD 64.06/MT for GCV of 4594.88 kCal/kg is considered for working out the FOB Price in USD/kWh for recommendation to the Government of Gujarat in terms of the Settlement Deed dated 3.1.2022, GOG G.R. dated 25.2.2022 and SPPAs dated 30.3.2022.

### **Other Charges**

108. GUVNL has submitted that APMuL has not submitted any documents in support of payment of other charges in the reply filed before the Commission. GUVNL has denied that any other charges are applicable on procurement of imported coal in case of FOB (Free on Board) procurement. All the cost upto the delivery of coal to the mother vessel is part of the FOB price. In this regards, GUVNL has requested to refer to the definition of FOB according to Incoterms 2010.

109. "Free on Board" means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. Under FOB terms the seller bears all costs and risks up to the point the goods are loaded on board the vessel. The seller's responsibility does not end at that point unless the goods are "appropriated to the contract" that is, they are "clearly set aside or otherwise identified as the contract goods. Therefore, FOB contract requires a seller to deliver goods on board a vessel that is to be designated by the buyer in a manner customary at the particular port. In this case, the seller is also required to arrange for export clearance. On the other hand, the buyer pays cost of marine freight transportation, bill of lading fees, insurance, unloading and transportation cost from the arrival port to destination. Since Incoterms 1980 introduced the Incoterm FCA,

FOB should only be used for non-containerized sea freight and inland waterway transport. However, FOB is commonly used incorrectly for all modes of transport despite the contractual risks that this can introduce. In some common law countries such as the United States of America, FOB is not only connected with the carriage of goods by sea but also used for inland carriage aboard any "vessel, car or other vehicle".

110. GUVNL has submitted that APMuL's claim for other charges separately over and above the FoB price of coal is wrong as it is clear that there is no authentication of such other charges besides such FoB price of coal. In view of above, GUVNL has prayed that Hon'ble Commission should not consider the "other charges" @ 3% of FOB price while determining the Base Rate.

111. APMuL has submitted that for determination of the base rate viz. the FoB coal cost (in USD/kWh) for quality of coal consumed shall include Other Charges viz. *Sampling, Inspection, Customs clearance, Forwarding Agency charge etc.* and as agreed to in the SPPAs dated 30.3.2022, Deed of Settlement dated 3.1.2022, GoG GR dated 25.2.2022. Therefore, the Commission is requested to allow these Other Charges on normative basis at 3% of applicable FoB cost as agreed in amended 2022 SPPAs. APMuL has submitted that after having agreed in the 2022 SPPAs and also in the Deed of Settlement, GUVNL at this stage, cannot argue that 'other charges' will not be considered for payment of energy charges. Other charges are not part of FoB cost or ocean freight. Apart from FoB and Ocean Freight, the CIF cost also includes other charges which supplier has to incur on each shipment. Other charges are primarily on account of (1) Coal Sampling & Inspection at Load Port – Certification by internationally accredited agency to ascertain the quality and quantity of coal loaded

in the vessel for determining the amount payable to the coal supplier and (2) Customs clearance, forwarding agency charge – Custom clearance charges is the cost charged by the agent for submitting documentation and processing custom duty payment. Forwarding charges are paid for facilitating the movement of the cargo from one country to another and to prepare and file the required documentations.

112. We observe that in the SPPAs dated 5.12.2018 approved vide order of the Commission dated 12.4.2019 in Petition No. 374/MP/2018 filed by GUVNL, Other charges were recognized as applicable separately @ 3% of CIF or actual whichever is lower. Even the Settlement Deed dated 3.1.2022 and SPPAs dated 30.3.2022 recognises other charges separately than FOB. Had the other charges been considered as a part of FOB cost as being suggested now by GUVNL, the Settlement Deed and SPPAs would not have mentioned “including other charges”.

113. FOB shipping means that the supplier retains ownership and responsibility for the goods until they are loaded ‘on board’ a shipping vessel. Once on the ship, all liability transfers to the buyer. CIF (Cost, Insurance, Freight) puts the liability of payment for cost, insurance and freight on the supplier. This means that shipment is in the proverbial hands of the supplier through the process of transporting them to a port and loading them aboard a ship. They also cover insurance costs. However, the buyer still pays additional fees like customs clearance. Depending on the agreement with the supplier, the goods may be considered delivered at any point between the port of destination and buyers final delivery address.

114. Thus, it can be seen that transfer of liability happens depending on the type of contract entered. Also, FOB does not necessarily indicate that it includes charges for

Coal Sampling and Inspection at Load Port or Customs clearance, forwarding agency charge. One of the reasons for these charges not being part of FOB, even if it is to be arranged by the seller, can be the impact these cost can have due to taxation. If goods are taxed at different rate compared to add on services like Customs clearance, forwarding agency charge, Coal Sampling & Inspection charge, then these will always be shown as other charges over the basic price of goods to avoid higher rate of tax. Any service either arranged by the supplier [cannot be gratuitous] or the buyer directly entails cost to the buyer. Apart from the heads of Customs clearance, forwarding agency charge, Coal Sampling & Inspection charge other charge also includes in most of such shipments Finance charges (bank charges towards opening of Letter of Credit and discounting charges on these LCs opened). Further, there are commitment charges to be paid to the bank for availing credit lines for such trades. Since these charges are primarily around 3% as was also agreed to at the time of SPPA dated 05.12.2018, we compute it at 3% of worked out base FOB rate of 64.06 USD/MT i.e.  $64.06 \times 3\% = 1.9218$  USD/MT. However, the actuals [being available] incurred is 1.6904 USD/MT. As other charges at 3% of FOB/CIF are standard set by industry and are only indicative, the same can be the upper limit.

115. Therefore, 1.6904 USD/MT towards other charges is considered for working out the Other Charges in USD/kWh for recommendation to Government of Gujarat in terms of the Settlement Deed of 3.1.2022, G.R. to this effect and the SPPAs dated 30.3.2022.

116. FOB coal price of 64.06 USD/MT and Other Charges of 1.6904 USD/MT for the consumed GCV of 4594.88 kCal/kg have been considered for the purpose of working of monthly energy charges for the defined component BMEFEPn being the Base



Escalable Fuel Energy Charges (in USD per kWh up to five decimal) on 15.10.2018 to be recommended by Central Electricity Regulatory Commission for further approval by Government of Gujarat. The BMEFEPn is worked out as under:

On 15.10.2018			UOM
FOB value Recommended	64.06000		USD/MT
Other Charges	1.69040		USD/MT
Quality of coal consumed	4594.88000		Kcal
<b>Normative Parameters</b>	<b>BID -01</b>	<b>BID -02</b>	
GSHR	2340	2274	Kcal/Kg
Auxiliary Consumption	9%	6.50%	%
Transit Loss	0.20%	0.20%	%
<b>TOWARDS FOB</b> [a]	0.03592	0.03398	USD/Kwh
<b>TOWARDS OTHER CHARGES</b> [b]	0.00095	0.00090	USD/Kwh
<b>BMEFEPn</b> [a+b]	0.03687	0.03488	USD/Kwh

#### Ocean Freight (in USD/kWh) and Port Handling charges (in Rs./kWh)

117. As per the Settlement Deed, Base Rate for both escalable and non-escalable components of Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling charges shall be determined by the Central Commission subject to ceiling rate for each of them as per the SPPA dated 5.12.2018.

118. GUVNL has submitted that in the SPPA dated 5.12.2018, the payment of both Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling Charges are subject to ceiling rates benchmarked with the CGPL bid as shown in the Table below:

Contract Year	Commence ment Date of Contract Year	End Date of Contract Year	Quoted Non Escalable Overseas Transportat ion Charges USD/MT	Quoted Escalable Overseas Transportat ion Charges USD/MT	Quoted Non Escalable Port / Fuel Handling Charges Rs/MT	Quoted Escalable Port / Fuel Handling Charges Rs/MT
9	Oct-18	31-Mar	7.0845	3.1122	126.78	232.46

10	01-Apr	31-Mar	7.0597	To be escalated as per CERC index for Transportati on Charges	139.20	To be escalated as per CERC index for Fuel Handling Charges
11	01-Apr	31-Mar	7.0597		136.72	
12	01-Apr	31-Mar	7.0597		136.72	
13	01-Apr	31-Mar	7.0597		149.15	
14	01-Apr	31-Mar	7.1094		149.15	
15	01-Apr	31-Mar	7.1342		146.66	
16	01-Apr	31-Mar	7.1342		161.58	
17	01-Apr	31-Mar	7.1342		161.58	
18	01-Apr	31-Mar	7.1591		156.60	
19	01-Apr	31-Mar	7.1342		176.49	
20	01-Apr	31-Mar	7.1342		171.52	
21	01-Apr	31-Mar	7.1342		166.55	
22	01-Apr	31-Mar	7.1342		188.92	
23	01-Apr	31-Mar	7.1342		183.95	
24	01-Apr	31-Mar	7.1839		178.98	
25	01-Apr	31-Mar	7.2088	203.84		

119. GUVNL has submitted that while determining the Base Rates for Transportation Energy Charges and Port Handling charges as on 15.10.2018, the lower of actual transportation cost incurred and the ceiling rate as per SPPA dated 15.10.2018 is to be considered to ensure there is no adverse financial implication on the Petitioner and the end consumers.

120. The Base Rates for non – escalable components of Transportation Energy Charges and Port Handling charges is to be decided for each of the Contract Years. It is noted from the table in paragraph above that as agreed between the two parties while signing the SPPA dated 05.12.2018, no changes have been made in SPPA dated 30.03.2022. The non escalable transportation charge as agreed as on 15.10.2018 is 7.0845 USD/MT and escalable transportation charge as agreed as on 15.10.2018 is 3.1122 USD/MT, totalling 10.1967 USD/MT. The agreed ratio as on 15.10.2018 between escalable and non escalable component as seen from the above table is 30.52:69.48.

121. Against this ratio, APMuL has suggested to take into consideration the ratio of 56.9:43.1 based on October 2018 communications received from Clarksons. This suggestion being outside the terms of settlement deed and signed SPPAs between the two parties, we are not inclined to consider the same. We therefore recommend to consider the values as per SPPAs dated 05.12.2018 in the Base Rate. Since the actual value claimed is more than as agreed, we recommend the ceiling value of 10.1967 USD/MT [non escalable transportation charge=7.0845 USD/MT and escalable transportation charge = 3.1122 USD/MT].

122. Similarly, the non escalable Port/Fuel handling charge as agreed as on 15.10.2018 is 126.78 Rs/MT and escalable Port/Fuel handling charge as agreed as on 15.10.2018 is 232.46 Rs/MT, totalling 359.24 Rs/MT. Thus the agreed ratio as on 15.10.2018 between escalable and non escalable component as seen from the above table is 35.29:64.71.

123. We therefore recommend to consider the values as per SPPAs dated 5.12.2018 in the Base Rates. Since the actual value claimed is more than as agreed, we recommend the ceiling value of 359.24 Rs/MT [non escalable Port/Fuel handling charge=126.78 Rs /MT and escalable Port/Fuel handling charge = 232.46 Rs /MT].

### **Recommendations**

124. The following Base rates are recommended for submission to the Government of Gujarat for approval in terms of Settlement Deed dated 3.1.2022, GOG GR dated 25.2.2022 and SPPAs dated 30.03.2022.

**FOB coal cost (in USD/kWh) for quality of coal consumed [4594.88 Kcal/Kg] including other charges, Ocean Freight (in USD/kWh) and Port Handling charges (in Rs./kWh) as on 15.10.2018 for Bid 01 and Bid 02**

	<b>As on 15.10.2018</b>	<b>Bid 01</b>	<b>Bid 02</b>	<b>UOM</b>
1	Quality of Coal Consumed	4594.88	4594.88	Kcal/Kg
2	FOB Coal Cost including Other Charges	0.03687	0.03488	USD/Kwh
3	Ocean Freight	0.00572	0.00541	USD/Kwh
4	Port Handling Charges	0.2014	0.1905	Rs/Kwh

**Ocean Freight and Port Handling/Fuel Handling charges, the breakup of Escalable and Non Escalable components**

	<b>As on 15.10.2018</b>	<b>BID 01</b>	<b>BID 02</b>	<b>UOM</b>	
A	Ocean Freight (Fixed Component) valid up to March 2019	0.00397	0.00376	USD/Kwh	Up to 5 decimal places
B	Ocean Freight (Escalable Component)	0.00175	0.00165	USD/Kwh	Up to 5 decimal places
1 (A+B)	Ocean Freight - TOTAL	<b>0.00572</b>	<b>0.00541</b>	USD/Kwh	Up to 5 decimal places
C	Port Handling charges (Fixed Component) valid up to March 2019	0.0711	0.0672	Rs/Kwh	Up to 4 decimal places
D	Port Handling charges (Escalable Component)	0.1303	0.1233	Rs/Kwh	Up to 4 decimal places
2 (C+D)	Port Handling charges - TOTAL	<b>0.2014</b>	<b>0.1905</b>	Rs/Kwh	Up to 4 decimal places

125. Since this Petition has been filed under Section 79 (1) (b) and not under Section 79 (1) (f) of the Act, the Commission has not adjudicated the issues raised in the Petition. The Commission has made recommendations for consideration of Govt. of Gujarat, strictly based on the submissions made and information provided by the parties and within the strict boundaries of the Settlement Deed dated 3.2.2022, Govt. of Gujarat GR dated 25.2.2022 and Supplementary PPA dated 30.3.2022 in the light of the observation of the Hon'ble Supreme Court in order dated 8.2.2022 in IA No. 1421/2022 in Curative Petition No. 34/2020.

**Monthly Escalation Index**

126. APMuL vide its affidavit dated 29.4.2022 has submitted that Ministry of Power, Government of India vide its letter dated 13.4.2022 has conveyed to the Commission

that the escalation index for imported coal may be notified on a monthly basis by CERC in addition to the present six monthly escalation index. APMuL has submitted that the Commission may take necessary action for introduction of escalation index on monthly basis and allow APMuL to compute the energy charge rate by using monthly escalation index. GUVNL in its reply has submitted that the issue regarding applicability of monthly escalation rate is not relevant for the purpose of Base Rate by the Commission.

127. Ministry of Power vide its letter dated 13.4.2022 has conveyed the following to the Commission for notification of escalation index by CERC for imported coal:

“4. This Ministry have received requests regarding notification of escalation index on a monthly basis to avoid any lag in notified price index with reference to actual variation of Imported Coal prices. This has been examined in the Ministry. After careful consideration, Government have decided that the escalation index for imported coal may be notified on a monthly basis by CERC in addition to the present six monthly escalation index. In existing PPAs where the generating company and procurer agree, they can use the monthly escalation index. For future PPAs, Government proposes to make provisions in the bidding guidelines and bidding document for use of the monthly Escalation index for imported coal. The present practice of notifying escalation rates, every six months, in addition to notification of monthly basis, should also be continued, to be used by the sellers and procurers, in the context of concluded PPAs.”

128. Pursuant to the above directions, the Commission has carried out an exercise and laid down vide order dated 6.6.2022 in Petition No. 7/SM/2022 the detailed methodology to be followed for notification of the monthly escalation index for imported coal with effect from April, 2022. Further, the Commission in para 13 (5) of the said order has observed the following:

“13(5). The present practice of notifying escalation rates every six months, in addition to notifying escalation rates on monthly basis, shall also be continued for use by sellers and procurers in the context of already concluded PPAs. In the existing PPAs, where the generating company and the procurer mutually agree, they may use the monthly escalation rate.”

129. Thus, we have already laid down the methodology for computation of monthly escalation index, Furthermore, in view of the above, it is left to GUVNL and APMuL to mutually decide whether to adopt the monthly escalation index for the purpose of payment in terms of the SPPA dated 30.3.2022.

130. This order disposes of Petition No. 111/MP/2022 and IA No. 36/IA/2022.

Sd/-  
**(P.K. Singh)**  
Member

sd/-  
**(Arun Goyal)**  
Member

sd/-  
**(I.S. Jha)**  
Member