

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 275/MP/2019 along with IA No.9/2020  
And  
IA No. 2/2022**

**Coram:  
Shri P.K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P.K. Singh, Member**

**Date of Order: 21<sup>st</sup> February, 2022**

**In the matter of**

Petition pursuant to the directions of the Hon'ble Supreme Court *vide* Order dated 02.07.2019 in Civil Appeal No. 11133 of 2011 and applicable provisions of the Electricity Act, 2003 including Sections 62 and 79(1)(b).

**And  
In the matter of**

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

**.....Petitioner**

**Vs.**

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

**.....Respondent**

**ORDER**

The Petitioner, Adani Power Mundra Limited (APMuL), has filed the present Petition seeking determination of tariff of 1000 MW capacity of Unit 5 and Unit 6 of Mundra Power Project for supply of power to Gujarat Urja Vikas Nigam Limited (GUVNL) from the date of scheduled commercial operation of these units till 9.7.2019 in the light of the judgment of Hon'ble Supreme Court dated 2.7.2019 in Civil Appeal No. 11133 of 2011 and has prayed for the following:

*"30. In view of the facts and reasons stated above and the directions of the Hon'ble Supreme Court vide Judgement dated 02.07.2019, this Ld. Commission may be pleased to: -*

*(a) Allow the present Petition;*

*(b) Determine the compensatory tariff along with Interest payable by the Respondent GUVNL in terms of directions in paragraphs 49 and 51 of the SC Judgement, Section 62 of the Electricity Act, 2003 read with CERC 2009 Regulations; and*

*(c) Direct the Respondent GUVNL to pay such compensatory tariff including Interest in terms of directions in paragraphs 49 and 51 of the SC Judgement, Section 62 of the Electricity Act, 2003 read with CERC 2009 Regulations;*

*(d) Any other or further relief(s) as may deem fit may please be granted.”*

2. After a series of hearings wherein submissions were made by both the learned counsel for APMuL and learned senior counsel for GUVNL, the order in the present petition along with IA No.9/2020 filed by the Respondent was reserved on 28.4.2021.

3. In the meantime, both the parties have signed a Settlement Deed dated 3.1.2022 and pursuant to the said Settlement Deed, both APMuL and GUVNL have filed Interlocutory Application (IA) No. 2/IA/2022 before this Commission with the following prayers:

*“(a) Permit the parties to place on record the Settlement Deed dated 3.1.2022 between the parties contained in Annexure A to the present Application;*

*(b) Dispose of the Petition No. 275/MP/2019 in terms of the Settlement reached holding that the parties shall be governed and bound by the terms of the Settlement Deed;*

*(c) Declare that Petitioner has relinquished its claim for termination of the Power Purchase Agreement dated 2.2.2007 and the compensation for the period till 9.7.2019 in perpetuity for all intent and purposes in view of the Settlement Deed reached; and*

*(d) Pass such further orders as this Commission may deem fit and appropriate.”*

4. We note that pursuant to the Settlement Deed dated 3.1.2022, both APMuL and GUVNL had filed a joint application, namely, I.A. No. 1421/2022 in Curative Petition No.34 of 2020 before the Hon'ble Supreme Court for placing the Settlement Deed on record.

5. GUVNL vide its affidavit dated 14.2.2022 has placed on record the order of the Hon'ble Supreme Court dated 8.2.2022 in I.A. No. 1421/2022 and Curative Petition No.34 of 2020. Hon'ble Supreme Court vide order dated 8.2.2022 has disposed of the I.A. No. 1421/2022 and Curative Petition No.34 of 2020 in terms of the following:

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

*The Petitioner and respondent No. 1 have filed a joint application, IA No. 1421/2022, to place on record the deed of settlement dated 03.01.2022 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.”*

6. Since IA No. 2/IA/2022 has been filed jointly by APMuL and GUVNL seeking the same prayers, the Petition No.275/MP/2019 along with IA No.9/2020 and IA No. 2/IA/2022 are being decided by the Commission by circulation of the case file.

7. The first prayer in the IA is for taking on record the Settlement Deed dated 3.1.2022. We take on record the Settlement Deed dated 3.1.2022 filed vide IA No. 2/IA/2022 and order of the Hon'ble Supreme Court dated 8.2.2022 in I.A. No. 1421/2022 and Curative Petition No.34 of 2020 filed vide affidavit dated 14.2.2022.

8. The first prayer is allowed in terms of above.

9. The second prayer in the IA is for disposal of Petition No.275/MP/2019 in terms of the Settlement reached holding that the parties shall be governed and bound by the terms of the Settlement Deed dated 3.1.2022. Since Hon'ble Supreme Court in order dated 8.2.2022 has observed that the *inter se* relationship between the parties shall now be governed by the Settlement Deed dated 3.1.2022 between

APMuL and GUVNL, reliefs prayed for by APMuL in Petition No. 275/MP/2019 seeking determination of tariff in the light of the judgment of Hon'ble Supreme Court dated 2.7.2019 in Civil Appeal No. 11133 of 2011 have become infructuous. Accordingly, we hold that the relationship *inter se* between APMuL and GUVNL in so far as generation and supply of power from 1000 MW capacity of Unit 5 and Unit 6 of Mundra Power Project is concerned, shall be governed in terms of the Settlement Deed dated 3.1.2022 and Petition No.275/MP/2019 is being disposed of.

10. The second prayer is answered accordingly.

11. The third prayer in the IA is for a declaration that APMuL has relinquished its claim for termination of the Power Purchase Agreement dated 2.2.2007 and the compensation for the period till 9.7.2019 in perpetuity for all intent and purposes in view of the settlement reached. We have gone through the Settlement Deed dated 3.1.2022 and have noticed that APMuL and GUVNL have agreed to the continued validity of the PPA dated 2.2.2007 and SPPA dated 15.10.2018 without any claim of APMuL in terms of the decision dated 2.7.2019 in Civil Appeal No.11133 of 2011. Accordingly, we hold that APMuL has unconditionally consented to relinquish its claim for termination of the PPA dated 2.2.2007 and compensation from the date of termination till 9.7.2019 in terms of the Settlement Deed dated 3.1.2022.

12. The third prayer is answered accordingly.

13. We also note that as per the Settlement Deed, the fixed charges as per the PPA dated 2.2.2007 read with SPPA dated 15.10.2018 shall be payable without any further change for the entire duration except for the period from 10.7.2019 till resumption of power supply in terms of the Settlement Deed. The Settlement Deed further provides that for energy charges, there shall be pass through of cost of coal in a prudent and transparent manner and shall be linked to the escalation rates

notified by the Commission from time to time for which base rate shall be determined by the Commission as on 15.10.2018 based on the normative parameters as per the provisions of the SPPA dated 15.10.2018 for the three parameters, namely, (a) FOB of coal cost (USD/kWh), (b) Ocean Freight (USD/kWh) and (c) Port Handling Charges (Rs./kWh).

14. Accordingly, for determination of base rate for energy charges as on 15.10.2018, APMuL and GUVNL may file a separate Petition containing all relevant data.

15. Petition No. 275/MP/2019 along with IA No. 9/2020 and I.A. No. 2/IA/2022 are disposed of in terms of the above. The Settlement Deed dated 3.1.2022 forms part of the order.

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

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

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

**sd/-**  
**(P.K.Pujari)**  
**Chairperson**