

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.54/MP/2023**

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 13.2(b) of the Power Purchase Agreement dated 2.2.2007, Article 3.7 of the Supplemental Power Purchase Agreement dated 05.12.2018 and Recital O(d) of the Supplemental Power Purchase Agreement dated 30.03.2022 entered with Gujarat Urja Vikas Nigam Ltd. seeking Change in Law compensation.
- Date of Hearing : **13.9.2023**
- Coram : Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Adani Power (Mundra) Limited (APMuL)
- Respondent : Gujarat Urja Vikas Nigam Limited (GUVNL)
- Parties Present : Shri Amit Kapur, Advocate, APMuL  
Ms. Poonam Verma Sengupta, Advocate, APMuL  
Shri Saunak Rajguru, Advocate, APMuL  
Shri Subham Bhut, Advocate, APMuL  
Shri Kumar Gaurav, APMuL  
Ms. Swapna Seshadri, Advocate, GUVNL  
Ms. Srishti Khindaria, Advocate, GUVNL  
Ms. Kriti Soni, Advocate, GUVNL  
Ms. Ashabari Thakur, Advocate, GUVNL

**Record of Proceedings**

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, (i) seeking a declaration that the Notification dated 7.12.2015 by the Ministry of Environment, Forest, and Climate Change (MoEF&CC) mandating the adoption of several emission control norms that result in additional recurring expenditure qualifies as a Change in Law event, and (ii) approval of the cost to be incurred by the Petitioner in installing the Flue Gas De-sulphurizer (FGD) system for Units 5 & 6 of Mundra TPS at the matching bid price of Units 1 to 4 of Mundra TPS. Learned counsel further circulated a note of arguments and briefly captured the entire litigation history involving the Power Purchase Agreement dated 2.2.2007 (Bid 2 PPA) as entered into between the parties for supply of power from Units 5 & 6 – beginning from the Petitioner having elected to terminate the said PPA on 28.12.2009 to the parties having signed Supplemental PPAs dated 30.3.2022 to give contractual sanctity to the deed of settlement as entered into between them on 3.1.2022. Learned counsel further submitted as under:

- (a) It is no longer *res-integra* that the MoEF&CC Notification dated 7.12.2015 is a Change in Law event, as already settled by the APTEL in its judgment

dated 28.8.2020 in Talwandi Sabo Power Ltd. v. PSERC and judgment dated 12.8.2021 in APMuL v. CERC. This Commission has also held, in catena of its orders, that the said Notification is a Change in Law event.

(b) Earlier, by Petition No. 332/MP/2018 [APMuL v. GUVNL], the Petitioner had raised the issue of MoEF&CC Notification qualifying as Change in Law events both for Units 1-4 and Units 5 & 6 of its Mundra TPS. However, during the pendency of the said Petition, the Hon'ble Supreme Court, by its judgment dated 2.7.2019, allowed the Petitioner's appeal, *inter alia*, holding that its notice of termination dated 28.12.2009 of Bid 2 PPA dated 2.2.2007 was legal and valid, and thus, the said PPA stood terminated w.e.f. 4.1.2010. In view of the above, GUVNL had contended that the Petitioner cannot claim Change in Law relief under Bid 2 PPA, and the Petitioner, accordingly, sought liberty to analyze the implication of the judgment of the Hon'ble Supreme Court and approach the Commission at a later stage in respect of Units 5 & 6.

(c) In view of the high-level negotiations *inter se* the Petitioner and GUVNL and also with the intervention of the Government of Gujarat, the Petitioner was not able to approach any other procurer for tying up the capacity of Units 5 & 6 of Mundra TPS under a long-term PPA, and due to this uncertainty, it was not practically feasible for the Petitioner to initiate the bid process for installation of FGD at Units 5 & 6 while the bidding process was initiated for Units 1 to 4 of Mundra TPS along with other TPS of the Petitioner.

(d) However, immediately after the revival of Bid 2 PPA, the Petitioner, on 14.4.2022, wrote to GUVNL, *inter alia*, stating that (i) the requirement of FGD installation at Units 5 & 6 in view of the revival of Bid 2 PPA, (ii) if the Petitioner opts for a fresh ICB process, it may take about 6-12 months and installation and commissioning may cross the stipulated timeline, and (iii) suggestion of GUVNL on the option of awarding the contract for installation of FGD at Units 5 & 6 to the same successful bidder identified in the bid process for installation of FGD in the previously concluded ICB process for Units 1 to 4.

(e) GUVNL, vide its letter dated 26.4.2022, neither opposed the Petitioner's request nor raised any of the objections now being raised in the reply. Instead, GUVNL allowed the Petitioner to do the needful and take suitable decisions as per the prudent practices for installation of the FGD system at Units 5 & 6 by adhering to the directives specified by the CEA and this Commission.

(f) As per the Environment (Protection) Second Amendment Rules, 2022, the Petitioner is mandated to install FGD by 31.12.2026. Further, the Ministry of Power, by its OM dated 3.5.2022, has noted the CEA's views/observations that due to the huge demand supply gap, the prices quoted in the FGD bid are escalating exorbitantly (increased from Rs. 0.39 crore/MW to Rs. 1.14 crore/MW).

(g) Hence, in order to meet the twin objections of (i) confirming a strict timeline to implement emission reduction norms laid down by MoEF&CC, and (ii) also to minimize the financial impact on GUVNL, also in the interest of end consumers, the cost to be incurred by the Petitioner in installing FGD systems for Units 5 & 6 may be approved at a matching bid price of Units 1 to 4 of Mundra TPS, which works out to Rs.0.86 crore per MW inclusive of taxes. Besides, GUVNL was duly part of the entire bid process for selecting the successful bidder, Power Mech, for the installation of FGD Systems at Units 1 to 4 of Mundra TPS.

(h) If the Commission so directs, the Petitioner may also go for a fresh ICB bid process. However, the fresh bid process may take a significant amount of time, and the Petitioner may not be in a position to comply with the deadline of 31.12.2026 as set by MoEF&CC for compliance with emission norms. Also, in all likelihood, the discovered bid price will be on the higher side as compared to the presently claimed price, as evident from the Ministry of Power's OM dated 3.5.2022.

2. In response to the specific query of the Commission with regard to whether the cost to be incurred by the Petitioner in installing the FGD system for Units 1-4 of Mundra TPS has been approved by the Commission, learned counsel for the Petitioner submitted that by order dated 28.10.2019 in Petition No. 332/MP/2018, the Petitioner has been directed to first implement the revised norms in consultation with CEA and to approach this Commission thereafter for determination of an increase in cost and/or revenue expenditure on account of the implementation of revised norms in accordance with CEA Guidelines and the mode of recovery of the same through the monthly tariff.

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

(a) The Petitioner, on its own, chose not to include Units 5 & 6 of Mundra TPS in its NIT dated 5.10.2020 for participation in the bid process for installing the FGD System for its various thermal power plants, including Units 1 to 4 at Mundra TPS. Uncertainty relating to the long-term PPA cannot be a ground for not initiating a process for FGD installation, as the Petitioner was under a mandate to install the FGD system irrespective of the existence of long-term PPAs. Thus, the consequences of such delays are entirely attributable to the Petitioner and cannot be passed on to the Respondent or consumers.

(b) The Petitioner is now claiming a similar cost as incurred by it for Units 1 to 4 of Mundra TPS. However, even the bidding process for the installation of the FGD System at Units 1 to 4 was delayed. In any case, the Petitioner has yet to approach the Commission for approval of costs for Units 1 to 4, and there cannot be approval for Units 5 & 6 on the basis of matching costs with Units 1 to 4 when the costs for Units 1 to 4 have not yet been approved by the Commission.

(c) Cost claimed by the Petitioner (approximately 0.73 crore per MW, excluding taxes) is substantially higher compared to the rates discovered by NTPC in its recent bids. In this regard, reliance was placed on the costs for FGD systems allowed in the cases of NTPC's various thermal generating stations and also in case of other thermal generating stations as produced in the reply. In any case, Units 1 to 4 are 330 MW, whereas Units 5 & 6 are 660 MW, and therefore, there would be economies of scale to reduce the costs.

(d) The Commission may also consider directing the Petitioner to go for a fresh ICB process for the installation of FGD systems at Units 5 & 6 or, alternatively, may restrict the approval of costs to those approved in similarly placed thermal power plants.

4. After hearing the submissions of the learned counsel for the parties and keeping in view the deadlines specified for compliance with the emission control norms by thermal generating stations, the Commission observed that it would be prudent that the Respondent, being the sole procurer, clearly indicate its stance on

the fresh ICB process for installation of FGD systems at Units 5 & 6 of Mundra TPS. For this purpose, it may also be necessary to weigh the costs that may be discovered at this stage. Accordingly, the Commission found it appropriate to instruct the Petitioner and the Respondent to jointly carry out the consultation within two weeks on the various aspects, including but not limited to the suitability of initiating the fresh ICB process for installation of the FGD system at Units 5 & 6, cost & time implications associated with it, the scope of any further optimization of costs by the successful bidder for Units 5 & 6, etc. and file the outcome of such a consultation process within a week thereafter. The Commission also clarified that any suggestions/proposal to be agreed upon between the parties/by GUVNL will be limited to Units 5 & 6 only and will be without prejudice to GUVNL's right to raise objections relating to the delays/costs in respect of Units 1 to 4 of Mundra TPS.

5. The Commission further directed the GUVNL to provide in an affidavit within a week the cost comparison of other generating stations duly specifying whether the cost is including taxes or excluding taxes.

6. The Petition will be listed for hearing on **9.10.2023**.

**By order of the Commission**

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