

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 179/MP/2023

Subject : Petition under Section 11(2) of the Electricity Act, 2003 read with 79 of the Electricity Act, 2003, along with Regulations 111-113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 inter-alia seeking a declaration/ direction with regard to the principles/ methodology to be adopted for computation of the rate/ compensation at which such supply of power to Respondent Nos. 1 to 8 for the period between being 15.3.2023 to 16.6.2023, or such other period as extended by Ministry of Power from time to time, based on principles laid down with respect to Section 11(2) of the Electricity Act, 2003.

Date of Hearing : **8.5.2024**

Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Tata Power Company Limited (TPCL)

Respondents : Gujarat Urja Vikas Nigam Limited (GUVNL) and 8 Ors.

Parties Present : Shri M. G. Ramachandran, Sr. Advocate, GUVNL, PSPCL & HPPC
Shri Ravi Nair, Advocate, PSPCL & HPPC
Shri Shubham Arya, Advocate, PSPCL & HPPC
Shri Sanjay Sen, Sr. Advocate, TPCL
Ms. Samprati Singh, Advocate, TPCL
Ms. Subhi Sharma, Advocate, TPCL
Shri Divyansh Kasana, Advocate, TPCL
Shri Sajjan Poovayya, Sr. Advocate, TPCL
Ms. Shivani Verma, Advocate, Rajasthan Discoms
Shri Amal Nair, Advocate, Rajasthan Discoms
Shri Anand K. Ganesan, Advocate, Rajasthan Discoms
Shri Vipul Lathiya, Representative, GUVNL
Shri Aneesh Bajaj, Advocate, GUVNL
Ms. Srishti Khindaria, Advocate, GUVNL

Record of Proceedings

At the outset, the learned senior counsel for the Petitioner mainly submitted as under:

(a) The Petitioner has complied with the directions of the Commission vide its RoP dated 15.3.2024.



(b) The Petitioner is pressing on the prayer of interim relief in the nature of a direction to Respondents 1-8 that, pending the adjudication of the present Petition, the Respondents should be directed to make payment to the Petitioner in terms of the methodology determined by this Commission in its Order dated 3.1.2023 in Petition No. 128/MP/2022 (hereinafter referred to as "Final Order") for the supply of power during the period from 15.3.2023 to 15.6.2024 or as extended by the Ministry of Power (MoP). By way of the Final Order, this Commission provided the methodology to determine the compensation under Section 11(2) of the Act to offset the adverse financial impact of the directions dated 5.5.2022 issued by the MoP under Section 11(1) of the Act on the Petitioner.

(c) The FOB price is exclusive of Freight, Insurance and Other Charges. Therefore, in order to arrive at the Cost Insurance and Freight charges (CIF), Ocean Freight, and Other Charges have been added (computed in the table in Annexure A1) have been added to the FOB price. Additionally, while some shipments have been procured on the FOB basis, coal has also been procured on the CIF, CFR (Cost and Freight), and DAP (Delivered at Place) basis. For shipments wherein, coal is procured on the CIF basis, a separate breakup for the Freight and Insurance value is not applicable since it is already included. Therefore, such transactions are reflected directly in the CIF price and are not covered under the FOB.

(d) The 'Assumed FOB' Cost/ value has been calculated assuming that the Committee considered six weeks' time to arrive at the Argus coal price for the 5000 GCV grade (ICI-3). The Assumed FOB value is exclusive of the Freight, Insurance, and Other Charges. Therefore, in order to arrive at the Assumed Cost, Insurance and Freight value (CIF), the FOB, Ocean Freight, and Other Charges (computed in the table in Annexure A1) have been added.

(e) Relief granted by the MoP in the meeting held on 26.12.2023 is prospective in nature, and the reference with regard to the same can be made to the minutes of meeting of the Committee constituted by the Ministry of Power for finalizing the benchmark ECR of Imported Coal Based (ICB) plants held under the Chairperson, Central Electricity Authority on 26.12.2023.

(f) Due to the directions of the MoP, which extended the operation of Section 11(1) of the Act till 15.10.2024, it has brought adverse financial implications on the Petitioner.

(g) Since the Appeal filed against the Commission's Order in Petition No. 128/MP/2022, is pending final adjudication before the APTEL, interim relief may be granted to address the issue of financial hardship. It is submitted that this petition has been filed for the extended period of the said direction for a separate cause of action.

2. Learned senior counsel for Respondents opposed the interim relief sought by the Petitioner and has mainly submitted as under:

(a) The Petitioner procured the coal at a price higher than the Argus Indices prices. As the benchmark ECR calculated by the Committee constituted by the Ministry of Power is adequate, no interim relief should be given to the Petitioner.

(b) Tata Power has been consistently considering higher FOB cost of coal and has failed to provide details for such procurement.

(c) Freight and insurance costs need to be considered as per the PPA.

(d) Respondent further argued that the HBA index is for royalty purposes and objected to the interim relief with respect to the HBA index.

(e) The status of the Appeal before the APTEL is that the same is pending for the final adjudication.

3. After hearing the learned senior counsels for the parties, the Commission directed the parties to file their written submissions within two days. The Petitioner is further directed to file a brief on the price consideration in long term transportation contracts and details of the handling charges within two days.

4. Subject to the above, the Commission reserved the matter with respect to the interim relief sought by the parties.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)