

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 65/MP/2024

Subject : Petition under Section 79 (1)(b) of the Electricity Act, 2003 seeking approval of the Commission for the Supplemental Power Purchase Agreements dated 28.02.2023.

Petitioner : Haryana Power Purchase Centre (HPPC) and Ors.

Respondent : Adani Power Limited (APL)

Date of Hearing : **8.10.2024**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member

Parties Present : Shri Tushar Mathur, Advocate, HPPC
Shri Amit Kapoor, Advocate, APL
Ms. Poonam Verma Sengupta, Advocate, APL
Shri Saunak Rajguru, Advocate, APL
Ms. Priyakshi Bhatnagar, Advocate, APL
Shri Kumar Gaurav, APL

Record of Proceedings

Learned counsel for the Petitioner submitted that pursuant to the direction of the Commission vide Record of Proceedings for the hearing dated 28.8.2024, the Petitioner has filed its note of submissions on the aspect of jurisdiction of this Commission to approve the Supplemental PPAs, as entered into by the Petitioners and the Respondent, under Section 79(1)(b) vis-à-vis Section 86(1)(b) of the Electricity Act, 2003. Learned counsel further referred to the said note and mainly submitted as under:

(a) The issue of jurisdiction of this Commission has been conclusively settled by the Hon'ble Supreme Court in the case of *Energy Watchdog v. CERC*, [(2017) 14 SCC 80] wherein the Hon'ble Court explained what constitutes a 'composite scheme' and jurisdiction of this Commission for regulating the tariff of generation projects having a composite scheme. In the light of the decision of the Hon'ble Supreme Court, this Commission has the jurisdiction to regulate the tariff under Section 79 (1) (b) of the Electricity Act, 2003, under the composite scheme.

(b) This Commission vide order dated 16.12.2013 in the matter of *Adani Power Ltd v. UHBVNL & Ors.* has held that the composite scheme can be entered into by the generating company at any stage subsequently and the jurisdiction gets vested in this Commission as and when the generating company enters into a composite scheme. Accordingly, the Commission decided the issue of jurisdiction in the said order dated 16.12.2013.

(c) This Commission has approved the amendment to the PPA of Gujarat Utilities (GUVNL), who are also procuring power from the Adani Power (Mundra) Limited under its Order dated 12.04.2019 passed in Petition No.374/MP/2018: *GUVNL v. Adani Power (Mundra) Limited*, wherein, on the issue of the jurisdiction this Commission held that it would have jurisdiction power under Section 79(1)(b) of the Act to consider the proposed amendments to the PPAs, including the provisions relating to tariff in the PPAs, since they flow from the Competitive Bidding Guidelines issued by the Central Government in pursuance to the provisions of Section 63 of the Act.

(d) In the instant case, from a bare perusal of the features of the supplemental PPA, it is evident that by way of the Supplemental PPA, the parties have mutually agreed to modify arrangement for payment of 'tariff' in case of use of imported coal by the Respondent. Thus, under Section 79(1)(b) of the Electricity Act, 2003, the Respondent having a 'composite scheme' of generation, such agreements on payment of 'tariff' could only be 'regulated' by this Commission, including approval of the present supplemental PPA.

2. Learned counsel for the Respondent, APL also supported the submissions made by the learned counsel for HPPC and submitted that this Commission has the necessary jurisdiction to approve the SPPAs. Learned counsel further circulated a compilation of judgments and referred to (i) orders of the Commission dated 16.10.2012, 2.4.2013, and 21.2.2024 in Petition No. 155/MP/2012, (ii) judgment of APTEL dated 7.4.2016 in Appeal No. 100 of 2013, (iii) judgment of the Hon'ble Supreme Court in the case of Energy Watchdog & Ors. v. CERC & Ors., [(2017) 14 SCC 80], etc. in detail to buttress his submissions.

3. However, due to a paucity of time, the submissions of learned counsel for the parties could not be completed.

4. The matter remained part-heard and will be listed for hearing on **26.11.2024**.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)