

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.107/MP/2023**

Subject : Petition under Sections 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication of disputes and for directions to supply electricity under the contracted capacity of 1805 MW under the Power Purchase Agreement dated 22.04.2007 between Tata Power and GUVNL; compensation/damages for short-supply/nonsupply; and for consequential reliefs including refund.

Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)

Respondents : Tata Power Company Limited and Ors.

**Petition No. 85/MP/2022 along with IA Nos. 24/2022 & 37/2023**

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions in regard to the Power Purchase Agreement dated 22.4.2007 with Coastal Gujarat Power Limited.

Petitioner : Punjab State Power Corporation Limited (PSPCL)

Respondents : Coastal Gujarat Power Limited (CGPL) and Ors.

**Petition No. 123/MP/2022 along with IA No. 38/2023**

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions in regard to the Power Purchase Agreement dated 22.4.2007 with Coastal Gujarat Power Limited.

Petitioners : Uttar Haryana Bijli Vitran Nigam Limited and Anr.

Respondents : Coastal Gujarat Power Limited (CGPL) and Ors.

**Petition No. 246/MP/2022 along with IA No. 8/2023**

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions in regard to the Power Purchase Agreement dated 22.4.2007 with Coastal Gujarat Power Limited.

Petitioner : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

Respondents : Coastal Gujarat Power Limited (CGPL) and Ors.

**Petition No. 56/MP/2023**

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 seeking specific performance of the Power Purchase Agreement dated 22.4.2007 with Coastal Gujarat Power Limited.

Petitioner : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

Respondents : Coastal Gujarat Power Limited (CGPL) and Ors.

**Petition No. 185/MP/2023**

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions in regard to the Power Purchase Agreement dated 22.04.2007 with Tata Power Company Limited.

Petitioners : Jaipur Vidyut Vitran Nigam Limited and Ors.

Respondents : Tata Power Company Limited (TPCL) and Ors.

**Petition No. 205/MP/2023**

Subject : Petition under Section 79 the Electricity Act, 2003, along with Regulations 111-113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 inter-alia seeking appropriate directions against GUVNL and Rajasthan Discom/RRUVNL towards the wrongful and unsustainable demand towards contract year penalty for availability below 75% (DC penalty) for the contract year 2022-2023 for adjudication and directions in regard to the Power Purchase Agreement dated 22.04.2007 with Tata Power Company Limited.

Petitioner : Tata Power Company Limited

Respondents : Gujarat Urja Vikas Nigam Limited and Ors.

Date of Hearing : **3.1.2025**

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

Parties Present : Shri M. G. Ramachandran, Sr. Advocate, HPPC, GUVNL, PSPCL  
Ms. Ranjitha Ramachandran, Advocate, GUVNL  
Ms. Poorva Saigal, Advocate, HPPC & PSPCL  
Ms. Pallavi Saigal, Advocate, HPPC & PSPCL  
Ms. Tanya Singh, Advocate, HPPC & PSPCL  
Shri Rishabh Saxena, Advocate, HPPC & PSPCL  
Ms. Srishti Khindaria, Advocate, GUVNL  
Shri Sanjay Mathur, GUVNL  
Shri Vipul Lathiya, GUVNL  
Ms. Swapna Seshadri, Advocate, RUVNL & GUVNL  
Shri Anand Ganesan, Advocate, RUVNL & GUVNL  
Shri Amal Nair, Advocate, RUVNL & GUVNL  
Ms. Shivani Verma, Advocate, RUVNL & GUVNL  
Shri Parth Bhalla, Advocate, RUVNL & GUVNL  
Ms. Devyani Prasad, Advocate, RUVNL  
Shri Dhruv Mehta, Sr. Advocate, TPCL  
Shri Venkatesh, Advocate, TPCL  
Ms. Shubhi Sharma, Advocate, TPCL  
Shri Tushar Srivastava, Advocate, TPCL  
Shri Divyansh, Advocate, TPCL  
Shri Samprati Singh, Advocate, TPCL  
Shri Basava Prabhu Patil, Sr. Advocate, MSEDCL  
Shri Tushar Mathur, Advocate, MSEDCL  
Shri Gajendra Singh, WRLDC

### **Record of Proceedings**

During the course of the hearing, the learned senior counsel for the Petitioners in Petition Nos. 107/MP/2023, 85/MP/2022, and 123/MP/2022 made detailed submissions in support of his averment that these cases are not required to be referred to the arbitration in terms of the judgment of APTEL dated 28.8.2024 in Appeal No. 309 of 2019 in the matter of MPPMCL v. DVC and Anr. Learned senior counsel mainly submitted as under:

- (a) In judgment dated 13.8.2024 in Appeal No.414 of 2022 in the matter of SECI v. KSERC & Anr., the APTEL itself has held that the 'regulation of tariff' is totally distinct from 'determination of tariff' and the former includes all the necessary terms & conditions relating to tariff such as billing, consequence of delay in payment of electricity charges, rebate, termination, suspension of electricity supply, and payment of security, etc., In this regard, the reliance was placed on the paragraphs 22, 25 & 26 of the said judgment.
- (b) The Electricity Act, 2003 is a complete code by itself, and the adjudicatory powers of the Commission under Section 79(1)(f) of the Act are part of the comprehensive approach envisaged in the Act. In this regard, the reliance was placed on the judgments of the Hon'ble Supreme Court in the cases of Jaipur

Vidyut Vitran Nigam Limited v. MB Power (MP) Ltd. (2024 SCC OnLine SC 26) and Chhattisgarh SEB v. Central Electricity Regulatory Commission, [(2010) 5 SCC 23].

- (c) Perusal of prayers made by the Petitioners in these cases clearly reveals that they relate to the “regulation of tariff,” as explained by the APTEL in the judgment dated 13.8.2024 (*supra*), which categorically holds that the ‘suspension of supply’ is included in ‘regulation of tariff.’ Moreover, in Petition No. 85/MP/2022 and batch, directions have also been sought in respect of Western Regional Load Despatch Centre for it had neglected its duties under the Electricity Act and Grid Code.
- (d) While the order of the Hon’ble Supreme Court dated 23.9.2024 in Civil Appeal No. 10480/2024 would certainly operate as *res judicata* - binding the parties to the said proceedings, it will not operate as a binding precedent to the other cases. In this regard, the reliance was placed on the judgment of the Hon’ble Supreme Court in Experion Developers Pvt. Ltd. v. Himanshu Dewan and Ors., [(2023) INSC 748].
- (e) In terms of Section 8 of the Arbitration & Conciliation Act, 1996 (A&C Act), a Judicial Authority before which an action is brought in a matter, which is the subject of an arbitration agreement, is required to refer the parties to the arbitration only if the party to the arbitration agreement so applies not later than the date of submitting *its first statement* on the substance of the dispute. Thus, in the pending case, the matter is not required to be referred to arbitration if an application to this effect is not filed before submitting the first statement on the substance of a dispute. Also, there is no provision in the A&C Act for splitting the cause or parties and referring the subject matter of the Petition to an arbitrator. In this regard, the reliance was placed on the judgment of the Hon’ble Supreme Court in Sukanya Holdings Pvt. Ltd. v. J H Pandya & Anr., [(2003) 5 SCC 531 (Paras 12, 15-17)].
- (f) In the case of arbitration under the PPA, the interest of third parties cannot be represented. In this regard, the reliance was placed on the judgment of the Hon’ble Supreme Court in Vidya Drolia v. Durga Trading Corp. [(2021) 2 SCC 1].
- (g) The ‘tariff’ in the context of the Electricity Act is not a defined term and also includes within the ambit the terms and conditions of the tariff. In this regard, reliance was placed in the judgments of the Hon’ble Supreme Court in BSES Ltd. v. Tata Power Co. Ltd. [(2004) 1 SCC 195], PTC India Ltd. v. CERC, [(2010) 4 SCC 603 (Para 26)], and A. P Transco v. Sai Renewable Power Pvt. Ltd. [(2011) 11 SCC 34], etc. Also, as held by the Hon’ble Supreme Court in a catena of judgments, the term ‘regulation’ / ‘regulate’ has a wider meaning.

2. Learned counsel for the Petitioners, Rajasthan Discoms in Petition No.185/MP/

2023, adopted the submissions made by the learned senior counsel for Petitioners in Petition No. 107/MP/2023 and Ors. as noted above.

3. Learned senior counsel for the Petitioner, MSEDCL, in Petition Nos.246/MP/2022 and 56/MP/2023 also endorsed the submissions made by the learned senior counsel for the Petitioners in Petition No. 107/MP/2023 and Ors. and sought liberty to place his additional submissions in this regard.

4. The matters remained part-heard and will be listed for the hearing on **14.1.2025 at 2.30 P.M**

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