

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 161/MP/2022

Coram:

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

Date of Order: 22nd May, 2025

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 read with Section 11(2), along with Regulation 111-113 of the CERC Conduct of Business Regulations, 1999 inter-alia seeking pass-through of Energy Charges (ECR) for the power supplied to the TANGEDCO under the Power Purchase Agreement dated 19.12.2013, in terms of the directions dated 5.5.2022, 13.5.2022, 20.5.2022 and 27.5.2022 issued by the Ministry of Power, Government of India under Section 11(1) of the Electricity Act, 2003.

AND IN THE MATTER OF:

M/s Coastal Energen Pvt. Ltd.,
7th Floor Buhari Towers, 4,
Moores Road, Chennai- 600006
(Through its Authorized Representative)

...Petitioner

Versus

1. Tamil Nadu Generation and Distribution Co. Ltd.,
6th Floor, Eastern Wing, 144,
Anna Salai, Chennai- 600-002
(Through Chief Engineer/ Private Power Projects)
2. Union of India, Ministry of Power,
Shram Shakti Bhawan,
Rafi Marg, New Delhi – 110001
(Through the Principal Secretary)

...Respondents

Parties present:

Shri Sanjay Sen, Sr. Advocate, CEPL & IL&FS
Ms. Ruth, Advocate, CEPL & IL&FS
Shri Lakshyajit Singh Bagdwal, Advocate, CEPL & IL&FS
Ms. Lavanya Panwar, Advocate, CEPL & IL&FS
Shri Mridul Chakravarty, Advocate, CEPL & ILFS
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Shri Rahul Ranjan, Advocate, TANGEDCO



ORDER

The Petitioner has filed the present Petition, M/s Coastal Energen Pvt. Ltd. under Section 79 read with Section 11(2) of the Electricity Act, 2003, along with Regulations 111 - 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, *inter-alia* seeking pass-through of Energy Charge Rate for the power supplied to the Respondent No.1 in terms of the directions dated 5.5.2022, 13.5.2022, 20.5.2022 and 27.5.2022 issued by the Ministry of Power, Government of India under Section 11(1) of the Electricity Act, 2003. The Petitioner made the following prayers in its Petition:-

- a) *"Determine/ Allow the Energy Charges (ECR) to the Petitioner based on actual cost of generation (in addition to the fixed cost envisaged under the PPA dated 19.12.2013) in terms of Section 11(2) of the EA, 2003, payable by the Respondent No. 1, with effect from 06.05.2022, for the power supplied/ to be supplied in terms of the notifications dated 05.05.2022, 13.05.2022, 20.05.2022 and 27.05.2022 issued by the Respondent No Administrator. 2/ Ministry of Power, Government of India under Section 11(1) of the EA, 2003;*
- b) *Direct the Respondent No. 1 to comply with all other directions as stipulated by the Respondent No. 2/ Ministry of Power, Government of India vide notification dated 05.05.2022, 13.05.2022, 20.05.2022 and 27.05.2022 issued under Section 11(1) of the EA, 2003;*
- c) *Direct the Respondent No. 1 to forthwith make a payment of Rs. 300 Crores, for meeting the working capital requirements of the petitioner;*
- d) *Issue such further orders and grant such further reliefs as deemed appropriate to offset the adverse financial impact, if any, caused upon the Petitioner, pursuant to and as a consequence of the generation and power supplied/ to be supplied by the Petitioner to the Respondent No. 1 in terms of the notifications dated 05.05.2022, 13.05.2022, 20.05.2022 and 27.05.2022 issued by the Respondent No. 2/ Ministry of Power, Government of India under Section 11(1) of the EA, 2003;*
- e) *In the interim, allow Energy Charges (ECR) to the Petitioner at Rs. 8.70 per unit, on provisional basis, for the power supplied/ to be supplied in terms of the notifications dated 05.05.2022, 13.05.2022, 20.05.2022 and 27.05.2022 issued by the Respondent No. 2/ Ministry of Power, Government of India under Section 11(1) of the EA, 2003, till the pendency of the present petition; and*
- f) *Pass any other or further order(s) as this Hon'ble Commission deems fit and proper, in the circumstances of the present case".*



Background of the Case

2. In the present matter, M/s Coastal Energen Pvt. Ltd (hereinafter referred to as “**the Petitioner**”) is a company incorporated under the Companies Act, 1956, and is a generating company within the provisions of the Electricity Act, 2003 (hereinafter referred to as “**the Act**”). The Petitioner Company has installed a 1200 (2x600MW) MW coal-based thermal power project located at Melamaruthur Village, Ottapidarum Taluk, Tuticorin District (Tamil Nadu).

3. At the time of filing the Petition, the Petitioner was undergoing Corporate Insolvency Resolution Process under the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”). The Hon’ble National Company Law Tribunal, Chennai vide order dated 4.2.2022, admitted an application of insolvency under Section 7 of IBC, 2016, and accordingly, Mr. Radhakrishnan Dharmarajan was appointed as the Resolution Professional responsible for the operation of the corporate debtor, including the said Petitioner plant.

4. Respondent No.1, Tamil Nadu Generation and Distribution Co. Ltd, is the distribution licensee under the Act, carrying on the business of distribution and retail supply of electricity in the State of Tamil Nadu.

5. Respondent No. 2, viz., Union of India, the Ministry of Power (hereinafter referred to as, “**MoP**”) is the Central Government, which issued the directions dated 5.5.2022, 13.5.2022, 20.5.2022, and 27.5.2022 under Section 11(1) of the Act.

6. The present Petition has been filed under Section 79 of the Act read with Section 11(2), along with Regulations 111-113 of the CERC (Conduct of Business) Regulations 1999 (including subsequent repealed and amendments thereto), *inter-alia* seeking determination of energy charge rate (hereinafter referred to as, “**ECR**”) for the pass



through to Respondent No. 1 in terms of the directions dated 5.5.2022, 13.5.2022, 20.5.2022 and 27.5.2022 issued by the MoP under Section 11(1) of the Act (hereinafter referred as “**directions**”).

7. The Petitioner has submitted that the directions issued by the Central Government are partly without jurisdiction, as the Central Government has determined the ECR to be paid to the generators by way of forming a Committee, whereas the power to issue such directions vests only with the Commission. Accordingly, the Petitioner has submitted that it is entitled to reimbursement for the supply made according to the aforementioned directives under Section 11(1) of the Act, and requested to admit the Petition.

Submissions by the Petitioner

8. The Petitioner has submitted brief facts summarised as under: -

- a) The Petitioner is one of the imported coal-based power plants in India. As the demand for electricity was increasing, with a concurrent shortage of coal at thermal power plants and the price of international coal was also increasing, MoP issued directions under Section 11(1) of the Act on 5.5.2022, where it was recorded that the PPAs with imported coal-based power plants do not envisage pass-through of the price of coal. Therefore, in light of the extraordinary circumstances, the MoP issued directions under Section 11(1) of the Act stating that all the imported coal-based power plants with the PPAs will receive a pass-through of tariff *qua* the coal imported by them.
- b) The directions issued above by the MoP also specified that a Committee would be constituted comprising representatives from the MoP, CEA, and the Commission to determine the rates at which the power will be supplied. Later, on 13.5.2022, the MoP issued further directions under Section 11(1) of the Act, where six imported coal-based power plants were identified (including the Petitioner's power plant), and



a benchmark Energy Charge (ECR) for such power plants was also provided. In the said directions, the benchmark ECR for the Petitioner was identified as Rs. 6.60 per unit, based on the recommendations of the Committee. Later, on 20.5.2022, MoP issued certain clarifications to the Directions mentioned earlier, dated 5.5.2022 and 13.5.2022. Subsequently, on 27.5.2022, the MoP issued further Directions where a new ECR was proposed for the six imported-coal-based power plants, as mentioned above. In the said Directions, the ECR for the Petitioner plant was proposed as Rs. 6.80 per unit, following the recommendation of the Committee.

- c) The ECR recommended by the Committee does not reflect the actual ECR of the Petitioner. Since, as per Section 11(1) of the Act, the MoP only has powers to issue directions to a Generating Company to operate and maintain its generating station in a particular manner, keeping in mind the 'extraordinary circumstances'. Whereas in the present case, the directions first issued on 5.5.2022 allowing pass through of the price of coal (ECR) to the imported coal-based plants (including the Petitioner's power plant) due to the exorbitant rates of coal in the international market under unprecedented circumstances were rightly given. However, by way of the aforesaid directions, the MoP could not have specified the tariff as the power to determine tariffs vests exclusively with the Commission under Section 79(1)(b) of the Act, read with Section 61(d) of the Act which provides for recovery of the cost of generation.
- d) The Petitioner relied on the principle laid down by the Appellate Tribunal for Electricity (hereinafter referred to as "APTEL") in a judgment dated 23.5.2014 passed in ***Appeal Nos. 37 of 2013 in GMR Energy Limited v. Karnataka Electricity Regulatory Commission & Ors.*** where it was held that only the Appropriate Commission has the power to offset the adverse financial impact of directions under Section 11(2) of the Act. Further, compensation to be granted to

the generating company under Section 11(2) of the Act is to be based on the actual cost of generation (including return on equity) from the Project.

- e) Directions of the MoP, to the extent of determining the variable cost/ tariff of the Petitioner, are beyond its jurisdiction. To substantiate jurisdictional challenge, the Petitioners placed reliance on the Constitutional Bench judgment (5 judges) of the Hon'ble Supreme Court in ***PTC India Limited v. CERC, [reported in (2010) 4 SCC 603]***, where it was held that the power to determine/ regulate tariff, or any component thereof, solely vests with the Regulatory Commissions under the said Act.
- f) As per Section 11(1) of the Act, MoP has the authority to issue directions on account of extraordinary circumstances, whereas Section 11(2) of the Act categorically provides that any adverse financial impact on a generating company on account of such directions (which necessarily includes impact on tariff) is to be offset by the appropriate Regulatory Commission only. The Petitioner has relied on the Judgments passed by the Hon'ble Supreme Court in ***Cellular Operators Assn. of India v. Union of India, reported in (2003) 3 SCC 186, U.P. Power Corpn. Ltd. v. NTPC Ltd., reported in (2009) 6 SCC 235, and U.P. Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn., reported in (2004) 5 SCC 430***, to substantiate the settled position of law that regulatory powers, wherever granted under a statute, are extremely wide.
- g) The Petitioner was receiving a tariff of Rs. 5.5292 per unit (being Fixed charges at Rs. 1.4332 per unit and Energy Charges at Rs. 4.0960 per unit) under the PPA dated 19.12.2013 executed with Respondent No. 1 on a long-term basis for 15 years. However, in terms of the aforesaid directions dated 5.5.2022, the Petitioner is seeking a pass-through of ECR (Energy Charges) based on the actual cost of electricity, in addition to the fixed cost. As such, in terms of Sections 11(2), 61(d),



and 79(1)(b) of the Act, this Commission possesses ample regulatory powers to decide on the issue of allowing the ECR as claimed by the Petitioner.

- h) The Petitioner, along with the present petition, submitted the details of the ECR computation demonstrating the tariff of Rs. 8.70 per unit (excluding Fixed Cost), to be allowed on an interim provisional basis by this Commission to enable the Petitioner to supply power to the Respondent No. 1 and to recover the cost of generation of electricity.
- i) The Petitioner does not have adequate working capital and is financially stressed due to the non-receipt of timely payment of dues from Respondent No. 1 for the power supplied to it under the PPA. Respondent No. 1 has not cleared the payments due for power supplied by the Petitioner under the PPA dated 19.12.2012. Thus, the Petitioner also sought appropriate directions to be issued upon the Respondent No. 1 to release an amount of Rs. 300 crores forthwith to settle the dues owed to the Petitioner. Further, vide Record of Proceedings for the hearing dated 14.7.2022, the Petitioner was also directed to furnish certain details, which were filed by the Petitioner vide its affidavit dated 3.8.2022.

Reply filed on behalf of Respondent No. 1, i.e., Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

9. The Respondent No. 1 filed their replies dated 1.11.2022 and 23.1.2023 before the Commission as under:-

- (a) It is facing severe supply constraints due to various reasons, such as failure in dispatching the allocated quantum of power to the State Grid by the Central Generating Station, expiration of the agreements under Pilot Scheme-I, inability of generating stations to run on required Plant Load Factor due to the non-availability of coal, and the stoppage of 1172 MW Round the Clock Power supply contrary to



the terms of the PPAs due to non-availability of Imported Coal by Intra-State Generators under long term PPAs.

- (b) It was constrained to purchase 1205.61 MUs of power through Power Exchange at an average rate of 10.16 per unit through both exchanges (IEX and PXIL). The Commission, vide *suo-motu* order 4/SM/2022 dated 1.4.2022, directed the power exchanges to redesign the bidding software with immediate effect, such that the bidders can submit their bids in the price range of Rs. 0-12 per kWh for DAM and RTM segments.
- (c) It took recourse to several measures to bridge the power supply gap by swapping power with other States, and calling for multiple bids, but was still unable to secure the requisite quantum.
- (d) Due to the increase in the price of imported coal, intra-state generators such as the Petitioner, with PPAs for a total capacity of 1697 MW, have not been supplying power since October 2021. Such non-supply was a breach of the PPAs, for which notices were also issued; nevertheless, the generators did not resume supply.
- (e) Respondent No.1, by way of a letter dated 30.4.2022, had requested the intra-State Power Generators, including the Petitioner having 558 MW capacity, to supply power on a pass-through basis for a period of one month or for such further period as may be extended till December 2022, to avoid the load shedding and to utilize the entire quantum of contracted power. Such supply of power was to be a one-time deviation from the provisions of the PPA, but the limited offer never resulted in an agreement following the MoP notifications dated 5.5.2022 and the subsequent communications exchanged between the parties on 7.5.2022. After the said communication, the parties agreed that the framework for supply of power in deviation from the PPA would be in line with the terms as outlined in the MoP notification dated 5.5.2022.



- (f) The Petitioner acted on the MoP directions issued on 5.5.2022, and called upon the Respondent to agree on a negotiated tariff (of Rs. 9.90 per unit – inclusive of capacity charges) in terms of the MoP directions dated 5.5.2022. The grievance of the Petitioner is only with respect to the benchmark energy charge rate fixed by the MoP in its consequential directions issued on 13.5.2022 (Rs. 6.60 per unit), as modified by directions issued on 27.5.2022 (Rs. 6.80 per unit).
- (g) By virtue of Section 11 of the Act, the MoP is vested with the power to issue directions to generating companies “in extraordinary circumstances”. Hence, in the instant case, no direction has been issued to generating companies with respect to any additional obligation or burden, or mandates in supplying power beyond, or extraneous to, the PPAs that have already been entered into between such generating companies and the respective procurers. Generators, such as the Petitioner, are already under an obligation to supply power to the Respondent in terms of the long-term PPA between the parties. A direction to comply with the obligations under the PPA cannot be construed as an event that has led to an “adverse financial impact” for the generating companies as parties to the PPA.
- (h) The directions issued by the MoP were intended to save the generating companies from the consequences of any breach and to benefit the generating companies by fixing a benchmark price. Additionally, the directions of the MoP were to mitigate the impact of rising prices of imported coal by allowing a price higher than the prices agreed under the PPA. In the existing PPA, there was no provision for pass-through of the increase in costs under any circumstances. It is also pertinent that in the absence of any such provision, it was incumbent upon generating companies such as the Petitioner to supply power at the committed prices, which they were refusing to supply, and such refusal was in breach of obligations under the PPA. As per the existing PPA between the parties, the energy charge rate was



Rs. 4.0960 per unit, while the Petitioner is being paid energy charges at Rs. 6.80 per unit according to the directions issued by MoP. Hence, the Petitioner cannot contend that they suffer loss on account of not being able to sell power at higher prices on the exchange, as such a plea would be hit by the well-settled principle of law that no party can benefit from their own wrong.

- (i) In view of the above, the necessary pre-requisite for applicability of Section 11(2) of the Act, which is that the generating company must suffer adverse financial impact by virtue of the directions issued under Section 11(1) of the Act, does not stand fulfilled in the present petition. The directions under Section 11(1) in fact, provide reprieve to the generating company. Therefore, in the present petition, there arises no occasion for the Commission to intervene under Section 11(2) of the Act.
- (j) The energy charges are strictly paid to the Petitioner for the supply of power under Section 11 of the Act as per the directions of MoP dated 5.5.2022. Additionally, the benchmark prices determined by the MoP are reasonable, as they are also arrived at by the members of the Committee after considering all requisite parameters.
- (k) As per the documents furnished by the Petitioner while making claims for change in law, it is clear that in the last 3 years, the Petitioner has not imported any coal from a foreign country as per the coal supply agreement furnished by the Petitioner during the bidding process.
- (l) The Petitioner purchased coal from different local vendors, and is incurring additional expenditure, and the Petitioner is trying to pass the burden on to the Respondent under the pretext of the MoP directions. To substantiate the same, the Respondent has also relied on the Commission's order dated 3.1.2023 in Petition Nos. 128/MP/2022.



- (m) The Respondent No.1 had applied for rescheduling of its outstanding dues under the Electricity (Late Payment Surcharge and related matters) Rules, 2022 (hereinafter referred to as "LPSC Rules") notified by the Ministry of Power, Government of India on 3.6.2022. In terms of the said Rules, on 17.6.2022, the Board resolved to submit its proposal for liquidation of total outstanding dues owed to generating companies as on the date of notification of the LPSC Rules, along with the proposed schedule of installments as envisaged under Rule 5(2) of the LPSC Rules.
- (n) Since the total outstanding dues of the Respondent exceed Rs. 10,000 crores, the Respondent proposed liquidation of the total outstanding dues, subject to reconciliation, in 48 equal monthly instalments starting from 5.8.2022. The details of the outstanding dues with respect to the Petitioner as on the date of notification of the LPSC Rules, i.e., 3.6.2022, were communicated to the Petitioner well within the 30 days, as envisaged under Rule 5(2) of the LPSC Rules, by way of a letter bearing No. CFC/Rev/FC/DFC/Cost1&3/F.Liq.Scheme/D.No.59/22 dated 1.7.2022.
- (o) LPSC rules apply to outstanding dues, and the right of the distribution licensee to seek rescheduling of the same under the provisions has been recognized by the Commission in the matter of ***Jindal Power Ltd. V. TANGEDCO, 199/MP/2022*** ***vide order dated 8.7.2022***

Rejoinder on Behalf of the Petitioner to Reply filed by Respondent No. 1

10. The Petitioner, vide its rejoinder dated 7.11.2022 (affidavit dated 28.10.2022), made the following submissions: -

- a) The directions issued vide notifications dated 17.6.2022, 29.6.2022, 11.7.2022, 2.8.2022, 12.8.2022, 29.8.2022, 9.9.2022, 6.10.2022, and 26.10.2022 by the MoP



u/s 11 of the Act have been passed without taking into consideration various aspects which were involved in procuring imported coal by the Petitioner. In this context, the MoP has not considered that as per the norms laid down by the CEA, the Petitioner is required to maintain coal stock for 20 to 26 days, which amounts to about 2 lac Metric Tonnes (MT), resulting in a financial burden of approximately Rs. 220 Crores upon the Petitioner. Further, the energy charge rate published by the MoP does not reflect the actual project-specific costs.

- b) While publishing the ECR every fortnight, the MoP only considered the coal index change, without regard to the actual coal consumed. Further, the MoP also failed to consider that the Indonesian coal, which is imported by the Petitioner, is discharged at V. O. Chidambaranar Port (VOC port), Tuticorin, Tamil Nadu. For this, the Petitioner pays Port Handling charges at Rs. 498 per Metric Tonne (MT), and the transportation charges from port to plant at Rs. 252 per Metric Tonne (MT).
- c) The Petitioner also put forth the point in its rejoinder that Respondent No.1, being under Corporate Insolvency Resolution Process under the provisions of the IBC, 2016, the Petitioner must purchase coal on a spot basis, as it does not have Working Capital support. The maximum draft at Tuticorin port allows smaller Panamax and Supramax vessels with a maximum capacity of up to 75,000 MT. This entails additional ocean freight when compared to the bigger, cape-size vessels, which can be used at other Ports having a capacity of 1.8 Lac MT. Further, the Rupee depreciation US dollar from Rs. 76.09 to Rs. 82.40 for the period between 5th May 2022 to 31st Oct 2022 has led to an increase in coal cost and freight.
- d) Due to the aforementioned reasons, there are various additional project-specific costs incurred by the Petitioner towards the supply of power to Respondent No. 1 owing to such unprecedented circumstances. Such costs have not been



considered by the MoP while issuing the benchmark cost in the directions under Section 11 of the Act, to fully offset the costs in terms of Section 11(2) of the Act, read with Section 61 of the Act, *qua* the actual variable cost.

- e) It was imperative that this Commission take due cognizance of the actual costs incurred by the Petitioner, and accordingly allow actual ECR in terms of the power conferred upon this Commission under Section 11(2) of the Act, to '*offset the adverse financial impact*' on the Petitioner on account of the directions of the MoP under Section 11(1) of the Act.
- f) Under Section 79(1) of the Act, the Commission is vested with the necessary jurisdiction and power to regulate the tariff of the generating company, and this statutory function is not fastened upon the government in any manner whatsoever. Further, Section 61(d) of the Act provides that the cost of generation must be recovered. The Petitioner also relied on the decision of the APTEL in judgment dated 23.05.2014 passed in ***Appeal Nos. 37 of 2013*** titled as ***GMR Energy Limited v. Karnataka Electricity Regulatory Commission & Ors. (Para 53)***, which categorically stated that the Appropriate Commission had the power to offset the adverse financial impact of directions under Section 11(2) of the Act.
- g) The total overdue amount/ tariff payable by Respondent No. 1 in terms of the current bills is Rs. 115 crores as on 31.10.2022. Respondent No.1 also failed to provide an unconditional LC as stipulated under the directions issued by the MoP, as well as under the PPA. Rather, TANGEDCO only provided a "Conditional LC", despite repeated reminders by the Petitioner.

Additional Affidavit by the Petitioner in compliance with the Directions of the Commission vide ROP dated 21.11.2022.

11. The Petitioner, vide additional affidavit dated 5.12.2022, has placed on record the following documents:



- a) Detailed calculations (Excel sheet) demonstrating beneficiary-wise quantum of power tied-up during the period starting 6.5.2022.
- b) Calculations (excel sheet) demonstrating details of coal i.e., quantity, GCV, and cost (detailed break-up of cost of coal, transportation, loading, unloading, handling charges, and other charges, if any), etc. received from various sources i.e., import, linkage coal, coal availed under shakti scheme, e-auction, and open market, etc., during the period from 6.5.2022, along with the supporting documents.
- c) Detailed calculations (Excel sheet) demonstrating day-wise and beneficiary-wise details of declared capacity, and scheduled energy during the period.
- d) Detailed calculations (Excel sheet) demonstrating day-wise energy produced and supplied to each beneficiary as per the defined proforma during the period from 6.5.2022.
- e) Detailed calculations (Excel sheet) demonstrating day-wise details of secondary oil procured, GCV, cost, consumed, etc., during the period from 6.5.2022, along with supporting documents.

12. Respondent No.1 in its reply dated 16.1.2023 to the additional affidavit of the Petitioner, has made the following submissions: -

- a) The Petitioner has not attached agreements with the other entities with respect to the importation of the coal, and hence, all claims of costs which are attributable to sourcing of coal from other suppliers are unsupported by documentation, and cannot be included for computation of ECR.
- b) Respondent No.1 relied on the order passed by the Commission in the Petition No. 128/MP/2022 in the matter ***Tata Power Company Limited v. Gujarat Urja Vikas Nigam Limited & Ors.***, wherein Commission has justified exercise of its



jurisdiction to offset the adverse financial impact of the directions of the Ministry of Power, even in cases where there is a PPA between the parties on the ground:-

“Even the MoP while issuing directions under Section 11(1) recognised that power cannot be supplied at the PPA rates on account of high cost of imported coal. Therefore, the second finding in GMR judgment is not applicable in the instant case as the Petitioner and the Respondent 6 1286 Procurers are aware that on account of high cost of imported coal, power cannot be supplied by the Petitioner at PPA rates...”

The use of domestic coal for the supply of power to Respondent No. 1 is in violation of the PPA inasmuch as the energy charges agreed to be paid by TANGEDCO under imported coal-based PPAs are higher than those applicable under domestic coal-based PPAs. Further, the Petitioner has included the cost of secondary oil in its claim for ECR. Whereas the scope of exercise of jurisdiction by the Commission is only to offset the alleged adverse impact occasioned on account of being required to operate their power plants despite the increase in the prices of imported coal. Hence, the Petitioner is not justified in seeking the pass-through of the cost of secondary oil used by them.

- c) As per Schedule 5 of the Power Purchase Agreement dated 19.12.2013 between the parties, the source of fuel would be imported coal, and the duration of the Fuel Supply Agreement was stated to be 12 years. The Fuel Supply Agreement referred in the PPA has not been mentioned in the Additional Affidavit and hence, in the absence of details with respect to the rates at which coal could have been purchased under the Fuel Supply Agreement referred to in the PPA, the coal prices claimed on the basis of the purchases made by the Petitioner cannot be accepted.
- d) The Petitioner appears to have sourced imported coal from Agarwal Coal Corporation Pvt. Ltd., Manikaran Power Limited, Woodbridge Energy Pvt. Ltd., and Sahaj Vishwas Urja Pvt. Ltd. However, the Petitioner has only annexed



certain coal supply agreements with Agarwal Coal Corporation Pvt. Ltd. No agreements with the other entities have been annexed. All costs claimed, which are attributable to sourcing of coal from such other suppliers, are unsupported by documentation and deserve to be rejected, and thus, cannot be relied on for the computation of ECR. All costs claimed by the Petitioner that are attributable to procurement of coal from domestic sources therefore deserve to be rejected, as purported by the Section 11 notifications, and the exercise of jurisdiction by this Commission is only to offset the alleged adverse impact on imported coal-based generators on account of being required to operate their power plants despite increase in the prices of imported coal. No part of the cost incurred towards the procurement of coal from domestic sources may be permitted to be recovered by the Petitioner. The Petitioner has also included the cost of secondary oil in its claim for ECR, and there is no basis to seek a pass-through of the cost of secondary oil used by the Petitioner.

- e) In the absence of details having been furnished for the rates at which coal could have been purchased under the Fuel Supply Agreement referred to in the PPA, the coal prices claimed based on the purchases made by the Petitioner cannot be accepted.
- f) The Petitioner has purchased coal under the stock-and-sale mode, and has signed agreements for the purchase of coal having GCV (as received basis) of 4200 kCal/kg. However, the GCV considered for computation of the ECR claimed, is in the range of 3391 to 4191 kCal/kg. No details have been furnished by the Petitioner concerning price adjustment on account of GCV variation, nor has such price adjustment been factored in the computation of the ECR claimed by the Petitioner.



- g) A perusal of the data furnished by the Petitioner demonstrates that the Petitioner has included ocean freight, inland transportation charges, and port handling charges in the computation of its claim for the cost of coal. Whereas, under the PPA, the Petitioner has quoted: (i) non-escalable overseas transportation charges; (ii) escalable inland transportation charges; and (iii) escalable fuel-handling charges.
- h) The components pertaining to the above need to be identified and reduced from the cost of landed price of coal, because of the provisions of the PPA, which already factor in the above. It is pertinent that the Petitioner can only claim to be compensated for an increase in the coal prices, and is not entitled to seek actuals on other aspects.
- i) Respondent No.1 submits that the Commission has held in the CGPL order dated 3.1.2023 in Petition No. 128/MP/2022 that the operational parameters to be considered for the purpose of determining the ECR shall be *“lower of the actual or as specified in the Tariff Regulations, 2009 during the operation of the Section 11 Directions.”* And after the perusal of the computation furnished by the Petitioner, it is apparent that the Petitioner has computed the ECR based on actual Station Heat Rate (hereinafter referred to as “SHR”), which is in the range of 2543 to 2849 kCal/ kWh. Whereas, as per the CERC (Terms and Conditions for determination of tariff) Regulations, 2019, the SHR works out to 2289 kCal / kWh. Similarly, the computation of ECR takes into consideration the actual auxiliary consumption, which is in the range of 6.03% to 8.19%. However, the auxiliary consumption permissible in terms of the CERC Tariff Regulations 2019 is 6.25%. Therefore, the lower of the two values in each instance must be considered for the purposes of computation of ECR.

Rejoinder dated 6.3.2023 on Behalf of the Petitioner to Reply filed by Respondent No. 1

13. The Petitioner filed a Rejoinder before the Commission on 6.3.2023 to the reply filed by Respondent No. 1 and made the following submissions: -

- a) The rates (ECR) prescribed by the Committee appointed by the MoP are only interim in nature, and that the power to offset/ compensate any financial/ actual impact qua supply of power in terms of the directions issued under Section 11(1) of the Act can only be exercised by the Commission.
- b) Section 11 of the Act needs to be read with Section 2(5) of the Act to carve out the point that the Directions issued by the Central Government are only in respect of 'inter-state generation' and not intra-state generation. In the present case, Directions under Section 11(1) were issued by the Central Government (through MoP) on all imported coal-based power plants, where the Petitioner's power plant was specifically identified under the mandate in terms of the said Directions to supply power to TANGEDCO, and/or through the Energy Exchanges. Hence, the power supplied by the Petitioner to TANGEDCO in terms of the MoP directives was inter-State generation, and as a result, the jurisdiction lies with the Commission.
- c) When MoP directives were in force, the Petitioner not only supplied power to Respondent No. 1, but also outside the State of Tamil Nadu as mandated in Section 11 of the Act, thereby acting in accordance with the scheme of generation contemplated under the directions issued by the Central Government under Section 11(1) specifically for 'inter-State' generation and sale in terms of Section 79(1)(b) of the Act. Therefore, the scheme of generation/ sale of the Petitioner for the said period was always inter-State. In this regard, the Petitioner relied on the Judgment of the Hon'ble Supreme Court in ***Energy Watchdog v. CERC***,



reported in (2017) 14 SCC 80, and submitted that the principle as laid down by the Hon'ble Supreme Court in the judgment was duly followed by the Commission in the Order dated 31.05.2021 passed in the **Petition No. 351/MP/2018 Coastal Energen Private Ltd. v. TANGEDCO & Ors.**, where it was held that since at the moment, there was a scheme of generation and supply in more than one state (which is not required to be established by way of any contract/ term of contract), the generator will be deemed to have a composite scheme and as a consequence, it is the Commission which has the jurisdiction to on adjudicate matters in terms of Section 79 of the Act. The said order was not challenged by TANGEDCO.

- d) The procurement of coal was done on a CIF basis, and the Petitioner suggested linking with the HBA index. The Petitioner vide affidavit dated 6.3.2023 submitted that the Commission in its order dated 3.1.2023 in Petition No. 128/MP/2022 where it was categorically held that if ocean freight is not included in Cost and Freight (CFR)/Delivery at Place (DAP), then such charges shall be considered on an actual basis to work out the Cost, Insurance, and Freight basis (hereinafter referred to as, "CIF") costs. Hence the PPA only envisages fuel handling charges, and no separate provisions are made with respect to the ocean freight for the calculation of the tariff under the PPA. In view of the same, coal procurement is done on a CIF basis, and therefore, in terms of the aforesaid order, the actual cost ought to be allowed as pass-through.

14. Respondent No.2 has not made any submission in the matter. The matter was heard by the Commission on 5.7.2022 through video conferencing. During the hearing, the parties made their submissions before the Commission and issued the directions to the Petitioners to submit the following additional information within two weeks:-

- a) Details of fixed charges and energy charges (ECR) being billed to the beneficiaries as per PPA prior to 5.5.2022 from 1.4.2021, along with relevant



PPA clauses, applicable escalation indices for the fuel cost, and norms of operation considered;

- b) Monthly quantum of power supplied to the Respondents from 1.4.2021 to 5.5.2022 and from 6.5.2022 till date, along with the ECR.
- c) Basis of claim of higher ECR than that recommended by the Committee constituted by MoP vide letter dated 27.5.2022 duly supported by data and calculations and certified by an Auditor (all the data/calculations to be in MS Excel sheets linking all details).

15. The present Petition was listed on 5.7.2022, 18.10.2022, 15.11.2022, 17.1.2023, 21.2.2023, 29.1.2024, 22.8.2024. The Commission, after hearing the learned counsels for the parties, has reserved the order in this matter.

Analysis and Decision

16. We have considered the submissions of the Petitioner and Respondent No.1 and perused the documents on record. However, prior to considering the matter on merits and examining the entitlement of the Petitioner to the various reliefs as sought for, it is pertinent to deal with certain preliminary objections as raised by Respondent No.1. Since the benchmark rates determined by the Committee constituted by the Ministry of Power were project specific, the adverse financial impact under Section 11(2) of the Act is to be decided on a case-to-case basis separately for each imported coal-based project by considering the relevant issues. In the light of the documents placed on record and submissions of the parties, the following issues arise for our consideration: -

- (a) Issue No.1: What is the scope of adverse financial implications under Section 11(2) of the Act, and whether such scope for the generating station is covered within the jurisdiction of the Commission? What should be the principles to determine the Adverse Financial Impact under Section 11(2) of the Act?**



- (b) Issue No. 2: Whether the pass-through of the cost of secondary fuel oil consumption is admissible within the direction dated 5.5.2022 issued by the Government under Section 11(2) of the Act?**
- (c) Issue No. 3: Whether the generating company is bound to procure coal from the fuel supply agreement recognized under the PPA at a higher cost or can the generating company source coal from other suppliers for compliance with the directions issued by the Government under Section 11 of the Act ?**
- (d) Issue No. 4: How can the reasonability of the imported coal price be ensured for the purpose of determining the adverse financial impact u/s 11(2) of the Act, as the coal purchased by the Petitioner on a CIF basis from the domestic suppliers, with limited bidding undertaken by the Petitioner ?**
- (e) Issue No.5: How shall the energy charge be computed during the operation of Section 11 Directions in the instant case, including adjustment on account of GCV variation and operational parameters such as Station Heat Rate, Auxiliary consumption, etc. ?**

17. The Commission in its order dated 3.1.2023 in Petition No.128/MP/2022, along with IA No.64/2022, has addressed the similar issues as mentioned in para 16 of this order. As discussed in the previous paragraph, the adverse financial impact under Section 11(2) of the Act is to be decided on a case-by-case basis separately for each imported coal-based project, as the benchmark rates determined by the Committee constituted by the Ministry of Power were project-specific. Further, in the instant case, there are certain differences from the Mundra project considered in Petition No. 128/MP/2022, namely in terms of the approach for procurement of coal, its price, and bid structure. The Commission, wherever necessary, referred to the Commission's order dated 3.1.2023, and all the issues have been decided accordingly. The issues framed in para 16 of this order have been dealt with in the subsequent paragraphs.

(A) Issue No.1: What is the scope of adverse financial implications under Section 11(2) of the Act, and whether such scope for the generating station is covered within the jurisdiction of the Commission? What should be the principles to determine the Adverse Financial Impact under Section 11(2) of the Act?

Jurisdiction of the Commission

18. Respondent No.1 has submitted that a bare perusal of the data furnished by the Petitioner demonstrates that the Petitioner does not have any arrangements for supply



of electricity to any entity other than Respondent No.1. In this context, Respondent No.1 has submitted that the Petitioner has only referred to the order dated 31.5.2021 passed by the Commission in Petition No. 351/MP/2018 whereas no other details have been set out as to the arrangements that are subsisting, apart from the PPA with TANGEDCO, to substantiate its case that there exists a composite scheme or arrangement for sale of electricity in two or more states. As per the Petitioner, the order passed by the Commission in Petition No. 351/MP/2018 took into consideration the arrangements that were then subsisting (supplying power to Telenagana and Power Exchanges), details of which have been noted in the said order. According to the Respondent, all arrangements that were considered by the Commission at the time of the order passed by this Commission in Petition No. 351/MP/2018 have since expired. In the absence of the Petition alluding to any subsisting arrangements, and there in fact, being no such arrangements for the generation and sale of electricity in any State apart from Tamil Nadu, as evidenced from the data furnished by the Petitioner in the Additional Affidavit, the present Petition is not maintainable and this Commission has no jurisdiction to entertain, try or grant the relief sought therein.

19. The Petitioner, in its rejoinder to the Reply of Respondent No.1, has submitted that the Ministry of Power issued the direction as a Central Government which is appropriate government as per the definition given under Section 2(5) of the Act *inter-alia* means “in relation to any inter-State generation”. The Petitioner has further submitted that directives issued by the Central Government are only in respect of ‘inter-State generation’ and not intra-State generation, which makes the said directives in the nature of a composite scheme for generation and sale in more than one State. The Petitioner has also submitted that Clauses 4(h) of the MoP directions dated 5.5.2022 read with clarifications dated 20.5.2022 in case the Distribution Licensee does not avail power supply in terms of the benchmark ECR prescribed thereunder, or no mutually negotiated tariff is agreed



upon, then the generator can supply the power to third parties, in Power Exchanges which further reinforces the fact that the aforesaid MoP directives are nothing but a scheme which involves inter-State generation. The Petitioner has contended that the principle laid down in the above judgment of the Hon'ble Supreme Court was duly followed by the Commission in the order dated 31.5.2021 passed in Petition No. 351/MP/2018 [**Coastal Energen Private Ltd. v. TANGEDCO & Ors.** (between the same parties), wherein the issue of jurisdiction based on the composite scheme was decided.

20. We have considered the rival submissions of the parties. The issue of the jurisdiction has been raised again as the order passed by this Commission in Petition No. 351/MP/2018 took into consideration the arrangements that were then subsisting (supplying power to Telenagana and Exchange), which do not exist anymore. The Commission, in its order in Petition No. 351/MP/2018 held as under: -

“20. Accordingly, the Hon'ble Supreme Court has set the following principles for consideration of a scheme as a composite scheme so as to qualify under Section 79(1)(b) of the Act:

(a) The State Commission's jurisdiction is where generation and supply take place within the State.

(b) The moment generation and sale takes place in more than one State in any manner, the Central Commission becomes the appropriate Commission under the Act.

(c) Composite scheme does not have any special meaning.

21. In the present case, the Petitioner whose generating station is located in the State of Tamil Nadu, is supplying only 558 MW of the total installed capacity of 1200 MW to the State of Tamil Nadu. The Petitioner has been selling the remaining capacity to other States through various contracts/Lols enumerated in paragraph 16 of this order. Therefore, the Petitioner meets the criteria of generation and sale of electricity to more than one State. Since the judgment of Hon'ble Supreme Court in the case of Energy Watchdog Case does not establish any qualifying criteria with regards to the term of the contract for a scheme to be classified as 'composite scheme', the contention of TANGEDCO to link composite scheme with long term or medium term PPA does not have merit. For the same reason, the contention of TANGEDCO that the Petitioner did not have composite scheme at the time of filing of the Petition is also incorrect as it is also an effort to link composite scheme with term of the PPA. For the Petitioner, the State Commission shall have jurisdiction only when the Petitioner is generating and supplying power only to the State of Tamil Nadu and it is not selling power outside the State by any means. Thus, in the light of the decision of the Hon'ble Supreme Court in Energy Watchdog Case, we are of the considered view that the Petitioner satisfies the condition of having a 'composite



scheme' and, therefore, this Commission has the jurisdiction to adjudicate the disputes raised in the present Petition in terms of Section 79(1)(b) read with Section 79(1)(f) of the Act. It is answered accordingly that the present petition as framed is maintainable and further this commission has the necessary jurisdiction."

21. Now, let us examine whether the existing contractual arrangement alters the decision of the Commission in its order in Petition No. 351/MP/2018. It may be observed that as per the above decision of the Commission in the order in Petition No. 351/MP/2018, the Commission has held that the Petitioner whose generating station is located in the State of Tamil Nadu, is supplying only 558 MW of the total installed capacity of 1200 MW to the State of Tamil Nadu and selling remaining capacity to other States through various contracts/Lols. In the instant case, the position of the contract of supplying 558 MW of the total capacity to Tamil Nadu remains unchanged, and there is no new contract that can establish that the arrangement of the entire power supply is within the State of Tamil Nadu. Since there is only a firm contract of 558 MW for the supply of power within the State, the Petitioner can sell the remaining capacity to the open market outside the State. The direction issued under Section 11(1) of the Act is an overarching decision *dehors* the contractual arrangement. The direction of the Central Government under Section 11(1) of the Act has been necessitated on account of extraordinary circumstances of (i) non-availability/ shortage of domestic coal, and (ii) unprecedentedly high prices of imported coal. Thus, for the purpose of Section 11(1) and Section 11(2) of the Act, the existing contractual arrangement of supply of power remained unchanged and hence, the jurisdiction of the Commission cannot be altered on account of the directions issued by the Central Government under Section 11(1) of the Act. Notwithstanding the above, the direction issued by the Central Government itself envisaged supplying the power to the open market and therefore, the character for sale of more than one State is built within the direction and satisfies the principles set by the Hon'ble Supreme Court in the case of ***Energy Watchdog v. CERC, [reported in (2017) 14 SCC 80]*** for consideration of a



scheme as a composite scheme so as to qualify under Section 79(1)(b) of the Act. Therefore, this Commission has the jurisdiction to decide the adverse financial impact under Section 11(2) of the Act in terms of Section 79(1)(b) read with Section 79(1)(f) of the Act, and the petition is maintainable.

Directions under Section 11(1) of the Act

22. At the outset, referring to Issue No. 1 regarding the scope of Section 11(2) of the Act, the Commission is of the view that this issue has been exhaustively dealt with in its order dated 3.1.2023 in Petition No. 128/MP/2022. However, since the directions issued by the Ministry of Power are project-specific as they contain the list of the imported coal-based plants, the Commission decided to re-examine the scope of jurisdiction of the Commission under Section 11(2) of the Act in the instant case.

23. Section 11(1) of the Act allows the Appropriate Government to issue directions to the generating companies. It provides that the Appropriate Government may specify that a generating company shall, in extraordinary circumstances, operate and maintain any generating station in accordance with the directions of that Government. The Explanation under Section 11(1) of the Act explains the extraordinary circumstances as arising out of a threat to the security of the State, public order, or a natural calamity, or such other circumstances in the public interest. Relevant part of section 11 of the Act is extracted below:-

“Section 11. (Directions to generating companies): --- (1) Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government. Explanation. - For the purposes of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest.

(2) The Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.”



24. Respondent No.2, the MoP, invoked the powers of the Central Government under Section 11(1) of the Act to issue the directions to the generating companies. MoP, vide its letter No.23/13/2021-R&R(Pt-1) dated 5.5.2022, issued directions under Section 11 of the Act to all imported coal-based power plants to operate and generate power to their full capacity which included the power plant of the Petitioner at located at Melamaruthur Village, Ottapidarum Taluk, Tuticorin District (Tamil Nadu). The following directions have been issued under Section 11 of the Act by MoP, vide letter dated 5.5.2022:-

"4. In the light of the present emergent circumstances, the following directions issued under Section 11 of the Electricity Act:

a. All imported coal-based power plants shall operate and generate power to their full capacity. Where the imported coal-based plant is under NCLT, the Resolution Professional shall take steps to make it functional.

b. These plants will supply power in the first instance to the PPA holders. Any surplus power left thereafter or any power for which there is no PPA will be sold in the Power Exchanges.

c. Where the plant has PPA with multiple DISCOMs then in such cases, if one DISCOM does not schedule any quantity of power according to its PPA, that power will be offered to other PPA holder(s), and any remaining quantity thereafter will be sold through the Power Exchanges.

d. Considering the fact that the present PPAs do not provide for the pass through of the present high cost of imported coal, the rates at which the power shall be supplied to PPA holders shall be worked out by a Committee constituted by the Ministry of Power (MoP) with representatives from MoP, CEA and CERC. This Committee shall ensure that benchmark rates of power so worked out meets all the prudent costs of using imported coal for generating power, including the present coal price, shipping costs and O&M costs etc. and a fair margin.

e. Where the generators/group companies own coal mines abroad, the mining profit will be set off to the extent of the shareholding of the generating/group company in the coal mine.

f. The PPA holders shall have an option to make payment to the generating company according to the benchmark rate worked out by the Group or at a rate mutually negotiated with the generating company.

g. Payment at the above rates shall be made to the Generating Company on a weekly basis.

h. Where any DISCOM/State is not able to enter into mutually negotiated rates with the generating company and is also not willing to procure power at the benchmark rate worked out by the Committee; or is not able to make weekly payment then such quantity of power shall be sold in the Power Exchanges.



i. The net profit, if any, by sale of power which is not sold to the PPA holder and is sold in the Power Exchanges, shall be shared between the generator and PPA holder in the ratio of 50:50 on monthly basis.

j. Benchmark rates worked out by the Committee shall be reviewed every 15 days taking into consideration the change in the price of imported coal; shipping costs etc.”

The directions under Section 11 of the Act were originally valid till 31.10.2022 which were extended till 31.12.2022.

25. We have considered the submissions of the Petitioner Generating Company and Respondent No.1 Procurer. Respondent No.1 has raised the objection on the directions of MoP *inter-alia*, applicability of the directions under Section 11(1) of the Act under extraordinary circumstances. According to Respondent No.1, the MoP has not issued directions upon the generating companies with respect to any additional obligation or burden, or mandates in supplying of power beyond, or extraneous to the PPAs that have already been entered into between such generating companies and the respective procurers on the ground that direction under Section 11(1) of the Act is applicable under extraordinary circumstances. The circumstances leading to the issue of directions under Section 11 have been mentioned in the MoP order as under: -

"The demand for power has gone up by almost 20% in energy terms. The supply of domestic coal has increased but the increase in the supply is not sufficient to meet the increased demand for power. This is leading to load shedding in different areas. Because of the mismatch between the daily consumption of coal for power generation and the daily receipt of coal at the power plant, the stocks of coal at the power plant have been declining at a worrisome rate. The international price of coal has gone up in an unprecedented fashion. It is currently around 140 US Dollars per tonne. As a result of this, the import of coal for blending, which was of the order of 37 million Tonnes in 2015-16 has gone down, leading to more pressure on domestic coal. The imported coal-based generation capacity is around 17,600 MW. The PPAs for imported coal-based plants do not have adequate provision for pass through of the entire increase in the international coal price. At the present price of imported coal, running of imported coal-based plants and supply of power at the PPA rates will lead to huge losses to the generators and therefore the generators were not willing to run those plants.

3. In order to ensure that all power plants based on imported coal start functioning; the States have been advised that the price of coal should be a pass through. Most states have done that and about 10,000 MW out of 17,600 MW imported coal-based generation capacity has started operating. However, some imported coal-based capacity is still not operating.”



26. The MoP, in its direction, recognized that the international price of coal has gone up in an unprecedented fashion and the PPAs for imported coal-based plants do not have adequate provision for the pass-through of the entire increase in the international coal price, leading to unwillingness of the generators to run plants. In order to ensure that all power plants based on imported coal start functioning, the States have been advised that the price of coal should be a pass-through. It is noted that the MoP, in its directions, explained the circumstances which, in the opinion of the Central Government, are extraordinary circumstances that caused the Central Government to exercise its power under Section 11(1) of the Act. Further, Respondent No.1 has not challenged the grounds considered by the Central Government in its direction issued by the MoP in the appropriate court. The Commission is not an appropriate forum to examine the legal validity of the directions. Thus, we are not examining the objections of Respondent No.1 regarding the validity of extraordinary circumstances considered for issuance of the direction under Section 11 (1) of the Act.

Scope under Section 11(2) of the Act

27. The Petitioner has filed the present petition under Section 11(2) of the Act which entrusts the Appropriate Commission with the responsibility for offsetting the adverse financial impact caused to the generating company as a consequence of the directions given by the Appropriate Government. The Petitioner has further submitted that the supply of power under Section 11(1) of the Act is subject to the restitutive principles enshrined in the Act. The Petitioner has submitted that the APTEL in its judgment dated 23.5.2014 in ***Appeal No. 37 of 2013 and 303 of 2013 (GMR Energy Limited V. Karnataka Electricity Regulatory Commission & Ors)*** (hereinafter referred to as “***the GMR judgment***”) has laid down the principle that only the Appropriate Commission has the power to offset the adverse financial impact of directions under Section 11(2) of the



Act. The Petitioner has submitted that in terms of the said judgment, the compensation to be granted to the generating company under Section 11(2) of the Act is to be based on the actual cost of generation in addition to a reasonable return on equity. Since the said judgment has attained finality in terms of dismissal of the civil appeal filed against the judgment by the Hon'ble Supreme Court, the Commission has the power to determine the appropriate rate/compensation for the generation and supply of power from the project of the Petitioner to Respondent No.1 in terms of the order dated 5.5.2022 issued by the MoP under Section 11(1) of the Act.

28. The present petition has been filed for the determination of adverse financial impact on the Petitioner under Section 11(2) of the Act on account of the directions issued by MoP under Section 11(1) of the Act. Section 11(2) of the Act provides that “ *The Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.*” Thus, power has been vested in the Appropriate Commission, in this case, the Central Electricity Regulatory Commission, to offset the adverse financial impact of the directions under Section 11(1) on the generating company of the Petitioner in such manner as the Commission may consider appropriate.

29. As per Section 11(2) of the Act, the Commission's jurisdiction is to work out the adverse financial impact on account of the direction under Section 11(1) of the Act. In normal circumstances, the adverse financial impact is over and above the existing financial consideration, which is either based on the agreement or any other arrangement that exists. The MoP, vide its directions dated 5.5.2022, has also intended to allow the incremental cost of international coal prices over and above the PPA tariff.

“The PPAs for imported coal-based plants do not have adequate provision for pass through of the entire increase in the international coal price. At the present price of imported coal, running of imported coal-based plants and supply of power at the PPA



rates will lead to huge losses to the generators and therefore the generators were not willing to run those plants.”

Since the tariff in the existing agreement is approved by the Commission, the Act also envisages that the adverse financial impact under section 11(2) of the Act is to be decided by the appropriate Commission. This can be represented by the following formula:-

Adverse financial Impact u/s 11(2) of the Act (**ΔP**)

= [Tariff (**P_a**) (to be assessed based on actual cost) – Tariff (**P_c**) (approved by the Appropriate Commission as existing contract)]

$(\Delta P) = [(P_a) - (P_c)]$

30. In terms of para 4(d) of the letter dated 5.5.2022, MoP appointed a Committee to work out the rates at which power is to be supplied to the PPA holders. Based on the recommendation of the Committee, MoP vide its letter dated 13.5.2022, issued the proposed tariff to be paid by the PPA holders to the generating companies, including the Petitioner. Relevant portion of the said letter is extracted as under:

“5. The Committee has given the following recommendations:

(a) The Energy Charges Rate (ECR) calculated for six plants have been worked out as under:

Plant	Capacity	Benchmark ECR (Rs./kWh)
Salaya (Essar)	2X600	6.88
CGPL Mundra (Tata)	5X800 6	6.05
JSW Ratnagiri	1X300	6.52
Thamminapatnam (Meenaxi)	2X150	7.03
Muthiara-Coastal Energy	2X600	6.60
ITPCL	2X600	6.60

(b) The fixed charge will be as per the Power Purchase Agreements or as has been already agreed mutually between the generating company and Procurers.

(c) In case of CGPL,

(d) The benchmark, ECR, given above, is subject to revision every week or every fortnight, if required, on the basis of the updated prices of imported coal and shipping charges.” (Emphasis supplied)

MoP has been issuing the rates for the supply of power from time to time based on the recommendations of the Committee.

31. Subsequent to the above, the stakeholders have represented certain implementation difficulties which caused Respondent No.2, MoP, to issue the following clarifications vide its letter dated 20.5.2022: -

"2. MoP has received representations from some stakeholders. To resolve the issues raised by the stakeholders, directions on certain aspects are given as under:-

(a) As per the PPA, the Payment Security Mechanism (PSM) shall be maintained. Letter of Credit (LC) is to be maintained by the procurer for the contracted power to be purchased. In case there is no LC, advance payment shall be made. The Letter of Credit shall be unconditional. The LC shall be promptly encashed for payment, and it should be timely recouped by the procurer for purchase of power from the generator. If there is no LC or advance payment or if the LC has not been recouped after encashment, then the generator will not schedule power to the procurer and will be entitled to sell the power in power exchanges. No formal consent from the procurer will be required for such sale. The net profit, if any, from such sale on power exchanges shall be shared with the procurer(s) on monthly basis.

(b) Payment by the procurer will be made on weekly basis. If the payment is made within 5 days of presentation of weekly bill, then rebate of 0.375% on weekly basis in accordance with CERC norms or as per the PPA whichever is higher shall be applicable.

(c) If power is not scheduled by the procurer, the generator will bid the power in the power exchange at the tariff up to the tariff given under Section 11 or the mutually agreed tariff with the procurer. However, the bid will be cleared on MCP discovered on the power exchanges. In case the average MCP is less than the tariff given under Section 11 or the mutually agreed tariff with the procurer, then the generator will not be bound to sell power in the power exchange. However, if the average MCP is more than the tariff given under Section 11 or the mutually agreed tariff with the procurer, then the generator will mandatorily sell power in the power exchange.

(d) The generator shall maintain coal stock as per the extant norms so that the plant operates at full capacity.

(e) Generator shall submit weekly report to MoP for the generation and sale from the ICB plants.

(f) If the plant is made available as per the directions issued under Section 11 of the Act, no penalty can be imposed by the procurer on account of availability under PPA.

(g) The plant will have to operate as per the directions, notwithstanding any prior outstanding dues of the generating company. Such outstanding dues shall be dealt with separately.

(h) The committee have determined the tariff based on the Argus index. However, some of the plants, to begin with, which are required to purchase coal from "High Seas" due to inadequate stock being available at plant shall be given tariff accordingly for such imported coal to build stock up to three weeks requirement and subject to condition that plant is made operational within 15 days of such



purchase. The generator shall submit the relevant documents for verification by the Committee.”

32. It is apparent from the above that the MoP has not only issued directions under Section 11(1) of the Act but also constituted a committee for recommending the rates to be charged by the concerned generating companies for the supply of power to the beneficiaries during the period of operation of the directions under Section 11(1) of the Act. The MoP has been issuing rates for the supply of power, from time to time, in respect of the Petitioner’s plant based on the recommendations of the Committee. The directions and the rates worked out by the Committee have also considered the various aspects of the PPA. For example, clause(d) of the letter dated 5.5.2022 and clarification regarding the payment security mechanism under the PPA clearly indicate that said directions considered the aspects agreed under the PPA. The scope of the Committee as per letter dated 5.5.2022 is to work out the benchmark rates of power so worked out meets all the prudent costs of using imported coal for generating power, including the present coal price, shipping costs, and O&M costs etc. and a fair margin which is essentially the components of the energy charges rate of the tariff.

33. The notified rates by the Committee encompass such aspects as capacity charge, energy charge, maintenance of Letter of Credit (LC), weekly payments, and rebates. In other words, MoP directions under Section 11(1) also include rates and terms and conditions under which power may be supplied during the operation of Section 11 Directions. It is implied from the above that the Committee constituted by virtue of the direction under Section 11(1) of the Act has determined the interim benchmark rate over and above the rates being paid under the existing arrangement of the PPA. By determining benchmark rates through directions, the Committee has stepped into the jurisdiction of the adverse financial impact to be decided under Section 11(2) of the Act. Notwithstanding the above, Respondent No.1 has paid the benchmark rates decided by



the Committee over and above the tariff agreed under the PPA. Thus, the scope of adverse financial impact under Section 11(2) of the Act is to be decided by considering the directions as well as the benchmark rates decided by the Committee.

34. The Commission, in its order dated 3.1.2023 in petition no. 128/MP/2022 has dealt with this issue as under:-

“57.....However, in the present case, the Central Government has not only issued directions under Section 11(1) of the Act but has also been issuing orders from time to time with regard to the rates to be paid by the Respondent Procurers to the Petitioner during the operation of Section 11 Directions based on the recommendations of the committee constituted for the purpose. It is the case of the Petitioner that the rates of supply of power determined by the Committee are not adequate to even cover the cost of generation and the Petitioner has accordingly sought determination of adverse financial impact by this Commission under Section 11(2) of the Act.

58. The question arises with regard to the legal sanctity of the rates determined by MoP for supply of power during the operation of Section 11 Directions. In this connection, the following observations of the APTEL in GMR Judgement are relevant:

“28. Thus, the State Government can only give directions under Section 11(1) for operation and maintenance of the generating station in accordance to its directions. The State Commission alone has been empowered under Section 11(2) of the Electricity Act to offset the adverse financial impact on the generating company as a result of operating and maintaining the power plant as per the directions of the State Government under Section 11(1). The State Government is not empowered to determine the rate or terms and conditions at which the generating companies will supply power to the State Grid against directions u/s 11(1) of the Act. The rate specified by the State Government in the order regarding direction under Section 11(1) is only a rate at which the distribution licensees have to make payment to the generating company in the interim period till the State Commission under Section 11(2) decides the compensation to be given to the generating company, if any, to offset the adverse financial impact of the directions of the State Government under Section 11(1).”

In the light of the above observations of APTEL, the rates specified by MoP on the recommendations of the Committee are the rates at which the Respondent Procurers have to make payment to the Petitioner in the interim period till the Appropriate Commission, in the present case this Commission, decides the compensation to be given to the generating company, if any, to offset the adverse financial impact of the directions issued under Section 11(1) of the Act.”

35. In view of the above, the Act does not provide for the Central Government to decide the adverse financial impact under Section 11(1) at which the distribution licensees have to make the payment to the generating company. The rates determined by the committee are the rates at which the procurers have to make payments to the generators in the



interim period till the Commission decides the compensation to be given to the generating company, if any, to offset the adverse financial impact of the directions issued under Section 11(1) of the Act. The determination of interim ECR by the committee is significant for the sustained operation of the plant in terms of the arrangement of working capital, since the adverse financial impact under Section 11(2) is to be worked out based on actual cost on an *ex-post* basis. In the instant case, the Committee has decided the interim benchmark rate based on the indicative cost on an *ex-ante* basis to facilitate the payment. The benchmark rate decided by the Committee, paid by Respondent No.1, partially offset the adverse financial impact on the generating company. Accordingly, the adverse financial impact determined by the Commission under Section 11(2) needs to be adjusted by the payment made by the Respondent No.1 over and above the tariff. This can be represented by the following formula:-

Adverse financial Impact u/s 11(2) of the Act (**ΔP**)

= { Tariff (**P_a**) (to be assessed based on actual cost) – Tariff (**P_c**)
(approved by the Commission based on existing arrangement or
contract) – Adjustments

Adjustment (**Adj**)

= Tariff (**P_p**) (paid as per the benchmark rate decided by the
Committee of the Central Government) - Tariff (**P_c**) (approved by
the Appropriate Commission as per the existing contract)

$(\Delta P) = (P_a) - (P_c) - Adj.$

Principles to determine the Adverse Financial Impact u/s 11(2) of the Act

36. Respondent No.1 has submitted that the necessary pre-requisite for applicability of Section 11(2) of the Act, which is that the generating company must suffer adverse



financial impact by virtue of the directions issued under Section 11(1) of the Act, does not stand fulfilled in the present petition. The directions under Section 11(1) of the Act, in fact, provide relief to the generating company. Therefore, in the present petition, there arises no occasion for the Commission to intervene under Section 11(2) of the Act. Respondent No.1 has further submitted that the Petitioner acted on the MoP direction issued on 5.5.2022 and called upon Respondent No.1 to agree upon a negotiated tariff (of Rs. 9.90 per unit – inclusive of capacity charges) in terms of the direction of MoP dated 5.5.2022. In response, the Petitioner relied on the decision of the APTEL in judgment dated 23.5.2014 passed in **Appeal Nos. 37 of 2013** titled as **GMR Energy Limited v. Karnataka Electricity Regulatory Commission & Ors.**, which categorically states that the Appropriate Commission has the power to offset the adverse financial impact of directions under Section 11(2) of the Act and the principles to be followed for its determination.

37. We have considered the submissions of the Petitioner and Respondent No.1. The Commission, in its order dated 3.1.2023 in Petition No. 128/MP/2022, has addressed this issue relying on the judgment of the APTEL in the case of **GMR Energy Limited and PCKL** in Appeal Nos. 37 of 2013 and 303 of 2013, respectively. Relevant Para of the said judgment is extracted below: -

“65. From the above judgements of APTEL, the following broad findings emerge with regard to determination of the adverse financial impact arising out of the directions issued under Section 11(1) by the Appropriate Government:

(a) In case of generators having no Power Purchase Agreements with distribution licensees, offsetting the adverse financial impact on a generator which supplied electricity to the distribution licensees in compliance of the directions of the State Government under Section 11(1) of the Electricity Act, 2003 would mean fixing a rate keeping in view the revenue which the generator could have realized in short term market subject to the condition that the rate covers the cost of generation so that the generating company does not incur a loss.

(b) The generators with existing PPAs are obliged to supply power at rates specified in the agreement to the extent of the supplies committed in the PPAs. However, such generators are entitled to the rate determined by the State Commission for the quantum of energy in excess of the energy that they would have normally supplied to the distribution licensees under the PPA.”



66...

67..... *Even the MoP while issuing directions under Section 11(1) recognized that power cannot be supplied at the PPA rates on account of high cost of imported coal. Therefore, the second finding in GMR judgement is not applicable in the instant matter as the Petitioner and the Respondent Procurers are aware that on account of high cost of imported coal, power cannot be supplied by the Petitioner at PPA rates and have sat down to negotiate for finding out a mutually acceptable negotiated rate for supply of power which would be formalized through signing Supplementary PPA. Thus, MOP having issued directions under Section 11(1) of the Act, it is mandatory for the Petitioner to follow the directions and for this Commission to offset the adverse financial impact of the directions on the Petitioner under Section 11(2) of the Act.*

68. *Notwithstanding our observations in paras 64 to 66 above, we notice that the following observations of APTEL in GMR judgement are relevant for guidance to determine the adverse financial impact of generation and supply of power under Section 11 Directions:*

“22. The only check that is to be exercised is that the rate of power decided by the State Commission should cover the variable cost of the power plant plus a reasonable profit. This is necessary to cover the eventuality when the market rate is lower than the variable cost of generation. Under such a condition, the generator would not like to run its power plant as the market rate would not compensate even for the expenses incurred for operating the plant. If under such an eventuality, the generator has to run the power plant to supply power to the State Grid against directions of the State Government under Section 11(1), then the State Commission under Section 11(2) of the Act, shall compensate the power plant to cover the variable cost plus a reasonable margin of profit. In the present case the short term market price prevailing during the period of Section 11(1) directions as decided by the State Commission, covers the variable cost of the power generation and, therefore, the compensation has to be based on basis of the short term market price as determined by the State Commission.”

As per the above observations of APTEL, the rate of power decided by the Commission should cover the variable cost of the power plant plus a reasonable profit. APTEL has reasoned that this is necessary to cover the eventuality when the market rate is lower than variable cost of generation as the generator would not like to run its power plant at the market rate as it would not compensate even for the expenses incurred for operating the plant. The Petitioner is required under Section 11(1) Directions to supply power to the PPA holders (Respondent Procurers) in the first instance and only in case of refusal or non-scheduling, the Petitioner has been permitted to sell power at the power exchange. Therefore, while determining the adverse financial impact, the comparison has to be made between the energy charge agreed in the PPA and the variable cost of production in compliance with the directions under Section 11(1) of the Act. In the present case, the energy charge under the PPA is lower than the variable cost of generation with imported coal in order to supply power in compliance with the MoP directions under Section 11 of the Act. Therefore, in order to ensure that the Petitioner maintains and operates its power plant to generate and supply power to the Respondent Procurers in compliance with the directions of the MoP under Section 11(1) of the Act, the Commission under Section 11(2) of the Act is required to compensate the Petitioner to cover the cost plus a reasonable margin of profit, in the light of the principles decided by APTEL in GMR judgement.”

38. As per the above findings of the Commission and as per the judgment of the APTEL, the only check to be exercised is that the rate of power decided by the Commission should cover the variable cost of the power plant plus a reasonable profit. While determining the



adverse financial impact, the comparison has to be made between the energy charge agreed upon in the PPA and the variable cost of generation in compliance with the directions under Section 11(1) of the Act. In the instant case, the PPA exists between the Petitioner and Respondent No. 1, and the energy charge under the PPA is lower than the variable cost of generation with imported coal. The Petitioner, vide its affidavit dated 5.12.2022, has submitted the under-recovery of the energy charge rate. Relevant data is reproduced as under: -

Month	Total Generation	Per Unit Cost of Coal	Per Unit Cost of Secondary Oil	Actual Energy Charge Rate (ECR)	Avg. ECR recovered from TANGEDCO (as per benchmark rates issued by MOP)	Under Recovery
UOM	MUs	INR/Kwh	INR/Kwh	INR/Kwh	INR/Kwh	INR/Kwh
May-22 (from 06 th)	98.70	8.73	0.13	8.86	6.64	2.21
Jun-22	181.42	8.42	0.11	8.53	6.60	1.93
Jul-22	101.46	8.19	0.15	8.34	6.50	1.83
Aug-22	210.24	8.10	0.05	8.15	5.44	2.71
Sep-22	133.33	7.50	0.08	7.58	5.25	2.32
Oct-22	189.28	7.24	0.08	7.32	6.39	0.93
Nov-22	279.98	7.70	0.03	7.73	6.41	1.32
Total	1,194.41					

It is evident from the above table that the Petitioner suffered from under recovery even after the payment made by Respondent No.1 as per the benchmark rate determined by Respondent No.2, MoP. As per the submissions of the Petitioner, the energy charge approved by the Commission under the power purchase agreement, as well as the energy charge rate paid by Respondent No.1, as determined by the Committee, does not cover the variable cost of the power plant. Thus, the principle laid down under the order dated 3.1.2023 in Petition No. 128/MP/2022 is applicable in the instant case. Accordingly, the Commission under Section 11(2) of the Act is required to compensate the Petitioner to cover the cost plus a reasonable margin of profit, in the light of the principles decided by the Commission in the order dated 3.1.2023 in Petition No. 128/MP/2022.



(B) Issue No. 2: Whether the pass-through of the cost of secondary fuel oil consumption is admissible within the direction dated 5.5.2022 issued by the Government under Section 11(2) of the Act?

39. The Petitioner has claimed the cost of secondary energy oil as part of the energy charge rate. Respondent No.1 contended that the energy charge rate claimed by the Petitioner also includes the cost of secondary oil. Whereas the scope of exercise of jurisdiction by the Commission is only to offset the alleged adverse impact occasioned on account of being required to operate its own plant despite the increase in the prices of imported coal. Hence, the Petitioner is not justified in seeking a pass-through of the cost of secondary oil used by it.

40. We have examined the issue of the pass-through of the cost of secondary fuel oil. Undisputedly, the cost of secondary fuel oil has an impact on the tariff and may have an adverse financial impact on the Petitioner for the electricity supplied under direction 11(1) of the Act. The Petitioner has not indicated the component in which the cost of secondary fuel oil was factored at the time of bidding. We have perused the guidelines dated 19.1.2005 issued by the Ministry of Power as under:-

- (a) As per clause (6) of Para 2.7.1.4 of the RFP, it is mentioned that “ 6. The Bidders should factor the cost of the secondary fuel into the Quoted Tariff, and no separate reimbursement shall be allowed on this account.”
- (b) Further, as per Para 4.7.2 of the PPA, it is mentioned that “Notwithstanding anything contained in this agreement, no separate reimbursement shall be allowed for the cost of the secondary fuel.
- (c) As per Para 4.2 of the standard bidding guidelines issued by the Ministry of Power vide Resolution dated 19th January 2005, it is mentioned that “In case of coal/lignite fuel, the cost of secondary fuel oil shall be factored in the capacity charges.”



(d) Further, as per Para 2.4.1.1 (B) (vii) of the standard RFP for Case-1 issued by the Ministry of Power with the standard bidding guidelines also provides that “The Quoted Escalable Capacity Charges and Quoted Non-Escalable Capacity Charges for each Contract Year shall be based on the Normative Availability and shall include the cost of secondary fuel.”

41. It is clear from the bidding guidelines that the bidder has to factor the cost of secondary fuel oil into the quoted escalable capacity charges and non-escalable capacity charges. In the instant case, the Petitioner has not substantiated whether the cost of secondary fuel oil is built in as part of the energy charge rate. It is not clear whether the Committee has considered the secondary fuel oil as part of the energy charge rate. Even though the RFP document has clarity on the treatment of the cost of secondary fuel oil consumption, the submission made by Respondent No.1 is silent on the Petitioner’s claim for the cost of secondary fuel oil. Further, it may be possible to conclude the allocation of secondary fuel oil cost in the capacity charges based on the bidding guidelines and standard bidding documents because the bidding guidelines themselves allow for the deviation with the approval of the Commission. In order to ensure the same, we have considered the order dated 18th December, 2012, issued by the Tamil Nadu State Electricity Regulatory Commission (TNERC) in Petition No.37 of 2012. In the said order, the TNERC accorded approval to float a tender for the procurement of 1000 ± 20% with the following deviations:-

- a) Deviations in payment mechanism with the provision of direct payment and standby LC / Bank Guarantee instead of LC and Escrow mechanism.
- b) Option to decide the scheduled delivery date, which shall not be less than five months instead of four years from the effective date.
- c) Failure to start supply even after expiry of six months instead of twelve months, may be considered as the seller’s event of default and to apply provisions of Article



- d) Net worth should be equal to or greater than the value calculated at the rate of Rs . 0.50 crore per MW of capacity offered by the bidder on the date of opening of the tender. “

42. It is observed from the deviation allowed by the TNERC that there is no deviation with regard to the clauses of secondary fuel oil consumption. It implied that the clauses regarding the allocation of the cost of secondary fuel oil are as per the bidding guidelines. We have relied on the prevailing regulatory framework at the time of bidding and the standard bidding guidelines issued by the Ministry of Power, which were applicable at the time of bidding. Para 4.2 of the standard bidding guidelines issued by the Ministry of Power vide Resolution dated 19th January 2005 and Para 2.4.1.1 (B) (vii) of the standard RFP, which is also part of the bidding guidelines, clearly provides that the Quoted Escalable Capacity Charges and Quoted Non-Escalable Capacity Charges include the cost of secondary fuel oil. In the instant case, the capacity charge rate quoted in the PPA is to be recovered as per the PPA, and hence, the passing of secondary fuel oil cost through the energy charge rate would lead to double payment of the cost. Further, the scope of the directions issued by the Ministry of Power is limited to the cost of imported coal only. Accordingly, we are of the view that the cost of secondary fuel oil shall be excluded from the adverse financial impact and energy charge rate under Section 11(2) of the Act.

(C) Issue No. 3: Whether the generating company is bound to procure coal from the fuel supply agreement recognized under the PPA at a higher cost or can the generating company source coal from other suppliers for compliance with the directions issued by the Government under Section 11 of the Act ?

43. The Petitioner has sourced the imported coal from various sources. Respondent No.1 has submitted that as per Schedule 5 of the Power Purchase Agreement dated 19.12.2013 entered into between the parties, the source of fuel will be imported coal, and the duration of the Fuel Supply Agreement is stated to be 12 years. Respondent 1 has



further contended that the Fuel Supply Agreement referred to in the PPA has not been mentioned in the additional affidavit. Hence, in the absence of details on the rates at which coal could have been purchased under the Fuel Supply Agreement referred to in the PPA, the coal prices claimed based on the purchases made by the Petitioner cannot be accepted.

44. Respondent No.1 has contended that the Petitioner has only annexed certain coal supply agreements with Agarwal Coal Corporation Pvt. Ltd. All costs claimed, which are attributable to sourcing of coal from such other suppliers that are unsupported by documentation, deserve to be rejected and cannot be included for computation of ECR. The Petitioner has also claimed the costs that are attributable to the procurement of coal from domestic sources, therefore deserve to be rejected, as the purport of the Section 11 notifications, and the exercise of jurisdiction by this Commission is only to offset the alleged adverse impact occasioned to imported coal-based generators on account of being required to operate their power plants despite increase in the prices of imported coal. In response, the Petitioner vide Para 31 of the affidavit dated 6.3.2023 submitted that it has procured the imported coal at HBA Index price.

45. We have considered the submission of the Petitioner and the Respondent No.1. On perusal of the direction of MOP dated 5.5.2022, it is observed that it fastened the obligation on the imported coal-based power plants to operate and generate power to their full capacity with the broad objective to maximize the generation in the system and reduce the shortage on an overall basis. The only condition regarding sourcing of coal laid down in the direction is that where the generators/group companies own coal mines abroad, the mining profit will be set off to the extent of the shareholding of the generating/group company in the coal mine. In the above circumstances, there is no obligation to source the coal from agreed fuel supply agreements under the PPA. The



generating company has the liberty to source the imported coal from any source. The Petitioner has used some amount of the domestic coal for trial purposes on a one-time basis, which was not repeated by the Petitioner, during the direction. As submitted by the Petitioner, the GCV of domestic coal procured was G12 grade at a landed cost of Rs 6125.88. Since the usage of domestic coal has reduced the cost of imported coal procured for the supply of power as per the directions under Section 11(1) of the Act, it would benefit Respondent No. 1 in terms of a reduction in the compensation to be paid as per the methodology decided by the Commission in this order. Thus, the cost of domestic coal used by the Petitioner is allowed to pass on the benefit of the reduction in imported coal usage. While the directions issued by the MoP allow only the incremental cost of imported coal, it is necessary to ensure the reasonableness of the imported coal price to address the concern of Respondent No.1.

(D) Issue No. 4: How can the reasonability of the imported coal price be ensured for the purpose of determining the adverse financial impact u/s 11(2) of the Act, as the coal purchased by the Petitioner on a CIF basis from the domestic suppliers, with limited bidding undertaken by the Petitioner ?.

46. Respondent No.1 has submitted that the data furnished included ocean freight, inland transportation charges, and port handling charges in the computation of its claim for the cost of coal whereas, under the PPA, the Petitioner has quoted: (i) non-escalable overseas transportation charges; (ii) escalable inland transportation charges; and (iii) escalable fuel handling charges. As per Respondent No.1, the Petitioner can only claim to be compensated for the increase in the coal prices and is not entitled to seek actuals on other aspects. Hence, the components pertaining to the above need to be identified and reduced from the cost of landed price of coal, in view of the provisions of the PPA, which already factor in the above.

47. The Petitioner has submitted that the procurement of the coal was done as per the HBA index (HPB price). The Petitioner vide affidavit dated 6.3.2023 submitted that the Commission in the order dated 3.1.2023 in Petition No. 128/MP/2022 passed by the Commission wherein it was categorically held that where ocean freight is not included in CFR/DAP, then such charges shall be considered on the actual basis to work out the Cost, Insurance, and Freight basis (hereinafter referred to as, "CIF") costs. The Petitioner has further submitted that the PPA only envisages fuel handling charges, and no separate provisions have been made with respect to the ocean freight for the calculation of the tariff under the PPA. In view of the same, coal procurement is done on a CIF basis, and therefore, in terms of the aforesaid order, the actual cost ought to be allowed as a pass-through.

48. In response to the Record of Proceeding, the Petitioner has submitted the details of coal price, vide affidavit dated 5.12.2022, which includes details of 16 instances of imported coal and 1 instance of sourcing coal from e-auction linkage. The details are as under:-

Table - Details of coal i.e. quantity, GCV, and cost (Break up)

Sr. No	Imported Coal Supplier & vessel Name	Receipt Period	Invoice Quantity (MT)	GCV at discharge port (KCal/Kg)	Cost of Coal incl. Ocean Freight & In-Land Transportation (Rs.)	Port Handling Charges (Rs.)	Debit / Credit towards GCV (Rs.)	Debit / Credit towards FOREX (Rs.)	Final Landed Cost of Coal (Rs./MT)
1	XXX	01st - 04th May 2022	24,989	3391	21,43,62,001	1,24,43,672	5,24,251	6,13,200	9,080
2	XXX	06th - 08th May 2022	20,001	4175	23,47,45,685	99,59,569	13,19,689	7,11,506	12,204
3	XXX	23rd - 30th May 2022	71,030	3908	77,42,27,872	3,53,70,139	1,67,42,074	1,37,63,216	11,356
4	XXX	13th - 20th June 2022 06th - 09th July 2022	51,411	3992	56,86,16,287	2,56,00,811	2,75,36,732	1,69,62,247	11,352
5	XXX	13th - 22nd June 2022 19th - 24th Aug 2022	63,980	4049	70,76,25,251	3,13,30,937	2,39,41,065	1,76,98,752	11,452
6	XXX	24th June 2022 - 15th Aug 2022	69,934	3998	71,65,87,750	3,48,24,484	3,35,495	91,25,569	10,870
7	XXX	29th June 2022 - 08th July 2022	50,005	4187	53,49,37,537	2,49,00,649	15,54,690	97,57,638	11,360



Sr. No	Imported Coal Supplier & vessel Name	Receipt Period	Invoice Quantity (MT)	GCV at discharge port (KCal/Kg)	Cost of Coal incl. Ocean Freight & In-Land Transportation (Rs.)	Port Handling Charges (Rs.)	Debit / Credit towards GCV (Rs.)	Debit / Credit towards FOREX (Rs.)	Final Landed Cost of Coal (Rs./MT)
		13th - 16th Aug 2022							
8	XXX	16th Aug 2022 - 03rd Sep 2022, 30th Sep 2022 - 02nd Oct 2022, 18th - 19th Oct 2022	49,969	4021	50,80,54,869	2,44,68,107	1,47,51,994	92,91,598	11,138
9	XXX	18th Aug 2022 - 03rd Sep 2022	52,477	4114	56,35,33,092	2,61,31,577	18,07,317	1,29,70,337	11,518
10	XXX	03rd - 11th Sep 2022	49,999	4151	47,66,75,569	2,48,97,403	-	25,12,590	9,978
11	XXX	27th - 29th Sep 2022, 10th - 12th Oct 2022, 20th Oct 2022, 30th Oct 2022 - 01st Nov 2022, 10th Nov 2022, 19th - 20th Nov 2022	48,293	4130	45,13,11,524	2,40,48,419	30,71,891		9,907
12	XXX	27th- 29th Sep 2022, 10th- 20th Oct 2022, 30th Oct 2022 - 02nd Nov 2022	54,049	3931	51,52,85,300	2,69,14,041	-	1,15,19,160	9,530
13	XXX	12th - 27th Oct 2022, 09th - 10th Nov 2022	66,006	4147	62,92,87,094	3,28,68,505	73,97,790	Awaited	9,920
14	XXX	05th - 14th Nov 2022	56,055	3919	61,29,82,788	2,79,13,138	4,96,83,202	Awaited	10,547
15	XXX	15th - 22nd Nov 2022	30,006	4129	31,77,50,417	1,46,93,713	50,40,777	Awaited	10,911
16	XXX	16th -22nd Nov 2022	52,009	Awaited	56,64,94,310	2,58,98,541	Awaited	Awaited	11,390

(XXX-Name of supplier deleted)

49. Respondent No.1, in its reply, has made the following submissions about the imported coal price to be considered for the energy charges:

(a) As per the documents furnished by the Petitioner, while making claims, it is clear that for the last 3 years, the Petitioner has not imported any coal from a foreign country as per the coal supply agreement furnished by the Petitioner during the bidding process.

(b) The Petitioner has purchased coal from different local vendors, which attracts additional expenditure, and is trying to pass the burden to the Respondent under



the pretext of the directions of MoP. The Respondent has also relied on order dated 17.6.2022 in the Petition No. 128/MP/2022.

(c) On perusal of the data furnished by the Petitioner, demonstrates that the Petitioner has included ocean freight, inland transportation charges, and port handling charges in the computation of its claim for the cost of coal. Whereas, under the PPA, the Petitioner has quoted: (i) non-escalable overseas transportation charges; (ii) escalable inland transportation charges; and (iii) escalable fuel handling charges.

(d) The components pertaining to the above need to be identified and reduced from the cost of landed price of coal, in view of the provisions of the PPA, which is already factored in. It is pertinent that the Petitioner can only claim to be compensated for the increase in the coal prices and is not entitled to seek actuals on other aspects.

50. Matter has been examined. It is observed that the Petitioner has procured the coal at CIF price, which includes the ocean freight charges and inland transportation charges. Since the company was undergoing the Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016, the operation of the company is monitored by the Committee of Creditors. Petitioner has purchased the coal from the local vendors with reference to the index price. The Petitioner preferred to procure imported coal through domestic coal suppliers of imported coal through the process monitored by the third-party agency appointed by the Committee of the Creditors. This can be evidenced from the following illustration of the break-up of the coal price for a single instance: -

Table: Break of Landed Fuel Cost received during 1st-4th May 2022

Imported Coal Supplier	XXX
Vessel Name	XXX
Receipt Period	1 st - 4 th May 2022
Invoice Quantity (MT)	24,989



GCV at discharge port (KCal/Kg)	3391
Cost of Coal incl. Ocean Freight & In-Land Transportation (Rs.)	21,43,62,001
Port Handling Charges (Rs.)	1,24,43,672
Debit / Credit towards GCV (Rs.)	-5,24,251
Debit / Credit towards FOREX (Rs.)	6,13,200
Final Landed Cost of Coal (Rs.)	22,68,94,622
Final Landed Cost of Coal (Rs./MT)	9,080

(XXX -Name of supplier omitted)

51. The major component of the landed cost of imported coal is the FOB price of the coal. In the instant case, the Petitioner has purchased the coal at CIF price and no separate FOB price is indicated by them. The Petitioner has submitted the details of the coal in its Annexure-9, wherein mentioned that the coal prices shall be linked to the HBA Index. While the Petitioner preferred to provide the CIF price but suggested to link it HBA Index, which represents FOB price, relying on the order dated 3.1.2023 in Petition No. 128/MP/2022 wherein it was held that where ocean freight is not included in CFR/DAP, then such charges shall be considered on actual basis to work out the Cost, Insurance, and Freight basis (hereinafter referred to as, "CIF") costs. Since in the instant case, the coal price is submitted by the Petitioner on a CIF basis at the landed price, it is a challenging proposition to ascertain the reasonability of the coal price separately in the absence of a detailed break-up. The Petitioner has not maintained the break-up of the cost as received from the supplier. We are of the view that the Petitioner's suggestion to compare the CIF price with the Index, is not acceptable as both are not comparable. Besides, CIF of imported coal should not be allowed to pass through to the consumer without verifying and ascertaining the reasonableness of claim.

52. Further, as per the quoted tariff by the Petitioner as approved by the Appropriate Commission, the tariff was separately quoted for different components of the coal price. The first-year tariff is reproduced as under:-



Contract Year	Unit	Value
Commencement Date of Contract Year	-	01 st October 2013
End Date of Contract Year	-	31 st March
Quoted Non Escalable Capacity Charges	(Rs./kWh)	1.092
Quoted Escalable Capacity Charges	(Rs./kWh)	0.250
Quoted Non Escalable Energy Charges	(Rs./kWh)	-
Quoted Escalable Energy Charges	(Rs./kWh)	-
Quoted Non Escalable Energy Charges	(USD./kWh)	0.01187
Quoted Escalable Energy Charges	(USD./kWh)	-
Quoted Non Escalable Inland Transportation Charges	(Rs./kWh)	-
Quoted Escalable Inland Transportation Charges	(Rs./kWh)	0.150
Quoted Non Escalable Overseas Transportation Charges	(USD./kWh)	0.00300
Quoted Escalable Overseas Transportation Charges	(USD./kWh)	-
Quoted Non Escalable Fuel Handling Charges	(Rs./kWh)	-
Quoted Escalable Fuel Handling Charges	(Rs./kWh)	0.200

The power supplied under the direction of MoP dated 5.5.2022 concerns the imported coal price, which implies that all other components may not be touched upon. The Commission, in its order dated 3.1.2023 in Petition No. 128/MP/2022, allowed the actual CIF price for only a few instances, which may be an exception. The Petitioner should not treat it as an acceptable practice. We are of the view that as the tariff quoted by the Petitioner is separate for all components of the energy charges, it is important that the components of the coal price should be maintained by the generating company separately while claiming adverse financial impact under section 11(2) of the Act. This is necessary to ensure that due diligence has been exercised to arrive at a reasonable cost. In the absence of the break-up of the CIF cost of the coal procured, we have to address the Free on Board (FOB) price, for which we exercise our due diligence on the coal cost.

Re: Free on Board (FOB) price

53. The Petitioner has submitted the details of the coal cost based on CIF with segregation of port handling charges, whereas all other transportation costs are



combined with the FOB price. In the absence of the break-up of the coal price, the cost of imported coal cannot be worked out separately to compare with the Index price. There may be instances in the supplier's invoice that contain the breakdown of the price. However, the Petitioner has not taken care to furnish the same. In the circumstances, we decide on the following approach going forward to ascertain the reasonability of the landed cost of coal price.

- a) The generating company shall obtain the break-up of the CIF price from the coal supplier along with supporting documents or invoices, etc. The breakup of the CIF price shall be consistent with the quoted bid structure, namely the FOB price, overseas transportation cost, inland transportation cost, and fuel handling charges. It is the obligation of the generating company to ensure the receipt of the break-up of coal cost and to carry out due diligence before sharing it with the beneficiaries for their consideration.
- b) Where the price of imported coal is available on FOB basis, the FOB cost of imported coal for the purpose of offsetting the adverse financial impact under Section 11(2) should be taken as the lower of the actual cost of coal or the price of the appropriate Index. The approach for the consideration of the appropriate index is dealt with in the subsequent paragraph.
- c) Where the FOB price is not available separately, the generating company shall work out the FOB price based on the CIF price after adjusting the overseas transportation cost, inland transportation cost, and fuel handling charges as under:-

FOB Price (Imported Coal)

$$\begin{aligned} &= \{ \text{CIF Price in Rs/MT (Imported coal)} - (\text{Quoted overseas} \\ &\quad \text{transportation cost in Rs/MT)} - (\text{Quoted inland transportation} \\ &\quad \text{cost in Rs/MT}) - (\text{Quoted fuel handling cost in Rs/MT}) \} \end{aligned}$$



Where

Quoted cost (in Rs/MT) shall be worked out based on the quoted charges (Rs/kWh) and the operational parameters decided in a subsequent paragraph by applying the following formula:-

$$\begin{aligned} &\text{Quoted Oversea Transportation Cost (in Rs/MT)} \\ &= 1000 \times \{ \text{GCV} \times \text{Quoted Oversea tariff} \times (1 - \text{AEC} (\%)/100) \} / (\text{SHR}) \end{aligned}$$

$$\begin{aligned} &\text{Quoted Inland Transportation Cost (in Rs/MT)} \\ &= 1000 \times \{ (\text{GCV} \times \text{Quoted Inland Transportation Tariff} \times (1 - \text{AEC} (\%)/100)) \} / (\text{SHR}) \end{aligned}$$

$$\begin{aligned} &\text{Quoted Fuel Handling Cost (in Rs/MT)} \\ &= 1000 \times \{ (\text{GCV} \times \text{Quoted fuel handling tariff} \times (1 - \text{Aux} (\%)/100)) \} / (\text{SHR}) \end{aligned}$$

54. The FOB price worked out as above, subject to the benchmark reference price, shall be considered for working out the energy charges as per the methodology decided upon in the subsequent paragraphs to determine the adverse financial impact arising on account of the directions of MoP dated 5.5.2022 under Section 11(1) of the Act. The FOB price worked out as per the above-discussed methodology shall be considered to work out the admissible energy charge rate after due diligence and referencing it with the appropriate index price.

Issue No.5: How shall the energy charge be computed during the operation of Section 11 Directions in the instant case, including adjustment on account of GCV variation and operational parameters such as Station Heat Rate, Auxiliary consumption, etc. ?

55. The Petitioner has submitted the details of coal received during the period as under:-

- (a) The coal received from 6.5.2022 to 30.11.2022, along with details of the coal quality and cost (break up of cost of coal, transportation, loading, unloading, handling charges, and other charges, if any), etc., received from the various sources;



- (b) Out of the total 17 shipments of coal procured, 16 shipments of coal have been procured from imported coal suppliers and 1 shipment from Mahanadi Coalfields Limited - Spur I & II.
- (c) The Petitioner has submitted the vessel name and the imported coal supplier. However, the country from which the coal is sourced by the imported coal supplier is not indicated. This may be available on the invoice of the imported coal supplier or can be obtained from the imported coal supplier by the Petitioner.
- (d) The domestic coal procured from Mahanadi Coalfields Limited is a small quantity of coal of only 20 rakes, which does not contribute significantly to the overall cost of energy. The majority of coal is procured from the imported coal supplier.
- (e) The Petitioner has submitted the secondary oil consumption for the period from 6.5.2022 to 30.11.2022.
- (f) The Petitioner has submitted the Cost of Coal, including Ocean Freight & In-Land Transportation and Port Handling Charges separately. However, it may be observed that the Free on Board (FOB) price of coal is not provided by the Petitioner.

56. Based on the above, the Petitioner has calculated the ECR for the period 6.5.2022 to 30.11.2022 as under:-

Month	Total Generation (Mus)	Per Unit Cost of Coal (INR/kWh)	Per Unit Cost of Secondary Oil (INR/kWh)	Actual Energy Charge Rate (ECR) (INR/kWh)
6 th May-22 to 31 st May-22)	98.70	8.73	0.13	8.86
Jun-22	181.42	8.42	0.11	8.53
Jul-22	101.46	8.19	0.15	8.34
Aug-22	210.24	8.10	0.05	8.15
Sep-22	133.33	7.50	0.08	7.58



Month	Total Generation (Mus)	Per Unit Cost of Coal (INR/kWh)	Per Unit Cost of Secondary Oil (INR/kWh)	Actual Energy Charge Rate (ECR) (INR/kWh)
Oct-22	189.28	7.24	0.08	7.32
Nov-22	279.98	7.70	0.03	7.73

57. The Committee has calculated the benchmark rate based on the anticipated scenario. The Petitioner has submitted that the actual scenario is different from the assumption considered by the Committee. The Petitioner has submitted that the ECR recommended by the Committee does not reflect the actual ECR for allowance of the Petitioner. It is because, as per Section 11(1) of the Act, the MoP has only the powers to issue directions to a Generating Company to operate and maintain its generating station in a particular manner, keeping in mind the 'extraordinary circumstances'. Whereas, in the present case, the directions first issued on 5.5.2022, allowing pass through of the price of coal to the imported coal-based plants, including the Petitioner herein, due to the exorbitant rates of coal in the international market under unprecedented circumstances, were rightly given.

58. The Petitioner has strongly submitted that by way of the aforesaid directions, the MoP could not have specified the rates/ tariff as because the said power exclusively vested with the Commission under Section 79(1)(b) of the Act along with Section 61(d) of the Act which provides that there has to be recovery of cost of generation. The Petitioner has placed on record the comparison of the ECR calculated by the Committee and the actual ECR. The brief details of the submission are as under: -

Month	Total Generation (Mus)	Energy Supplied to TANGEDCO under LTPPA	Average ECR (as per benchmark rates issued by MOP)	Actual Energy Charge Rate (ECR) (INR/kWh)	Under Recovery (INR/kWh)
6th May-22 to 31st May-22)	98.70	8.73	6.64	8.86	2.21



Jun-22	181.42	8.42	6.60	8.53	1.93
Jul-22	101.46	8.19	6.50	8.34	1.83
Aug-22	210.24	8.10	5.44	8.15	2.71
Sep-22	133.33	7.50	5.25	7.58	2.32
Oct-22	189.28	7.24	6.39	7.32	0.93
Nov-22	279.98	7.70	6.41	7.73	1.32

59. Respondent No.1 has objected to the determination of the energy charges claimed by the Petitioner as under:

- a) The energy charges are paid strictly as per the directions of the MoP dated 5.5.2022, and the benchmark price determined by the MoP is reasonable, as the same was decided by the members of the Committee after considering all requisite parameters.
- b) The GCV considered for computation of the ECR claimed is in the range of 3391 to 4191 kCal/kg. Neither details have been furnished by the Petitioner with respect to price adjustment on account of GCV variation, nor has such price adjustment been factored into the computation of the ECR claimed by the Petitioner.
- c) It is apparent that the Petitioner has computed the ECR on the basis of actual Station Heat Rate (hereinafter referred to as "SHR"), which is in the range of 2543 to 2849 kCal/ kWh. Whereas, as per the CERC (Terms and Conditions for determination of tariff) Regulations, 2019, the SHR works out to 2289 kCal / kWh. Similarly, the computation of ECR takes into consideration the actual auxiliary consumption, which is in the range of 6.03% to 8.19%. However, the auxiliary consumption permissible in terms of the CERC Regulations is 6.25%. Therefore, the lower of the two values in each instance has to be taken into consideration for the purposes of the computation of ECR.

Determination of Components of Energy Charge

Re: Applicability of HBA Index

60. As per the submission of the Petitioner, the procurement of the coal was done on ARB basis as evidenced from the coal supply agreement, and suggested linking the coal with the HBA index. Respondent No.1 has submitted that the FOB price is to be separated from the coal cost and contended that the Petitioner has purchased coal from different local vendors with additional expenditure and is trying to pass the burden to the Respondent under the pretext of the directions of MoP. This issue of the separation of FOB cost from CIF price has been dealt with in Para 53-54 of this order. The Petitioner in its Annexure-9 to the Petitioner mentioned in the footnote below that the coal prices shall be linked to the HBA Index. Respondent No.1 has not raised any objection to the consideration of the specific Index.

61. The Commission, in its order dated 3.1.2023 in the Petition No. 128/MP/2022, had dealt with the issue of the HBA Index for the electricity supplied by the Tata Power Company Ltd. under the direction of the MoP dated 5.5.2022. The Commission, in its order, addressed the applicability of the index for the coal sourced from Indonesia. The Commission has accepted the HBA Index price in its order dated 3.1.2023 for benchmarking the coal procured from Indonesia. Relevant para is extracted below:-

“101. The basic differences in calculation of landed cost of coal by TPCL and GUVNL pertain to FOB price of coal, ocean freight and other charges. Ocean freight and other charges have been dealt with under respective heads. As regards FOB price of coal, we are not inclined to accept the Argus derived price for the reason that the export of coal from Indonesia is permitted only on HPB price based on HBA index. Hence, the HBA price prevalent on the date of bill of lading or the actual FOB price of coal whichever is lower has been considered for the purpose of calculation of FOB price of coal imported from Indonesia. As regards the FOB price of coal from countries other than Indonesia namely, south Africa, Australia and Russia, GUVNL has considered the spot price claimed by TPCL for the purpose of calculation of FOB price of coal. Though GUVNL has submitted that the coal imported from countries other than Indonesia should be appropriately benchmarked, it has not suggested any benchmark price of coal prevalent in the countries like Australia, Russia and South Africa. In the absence of benchmark price available for spot procurement of coal from these countries, the actual CIF price paid for these nine vessels shall be considered for calculation of CIF price of coal.



However, in case of coal received from sources other than Indonesia, the CIF price of coal plus the mining profit per tonne decided during the month (in respect of Indonesian coal per tonne) shall not be more than CIF price of Indonesian coal received during the said month." (Emphasis supplied)

For the coal sourced from countries other than Indonesia, in a few instances, the Commission has allowed the CIF cost of coal, while the CIF price of Indonesia is to be used for benchmarking.

62. The objective of the directions of the MoP dated 5.5.2022 was to maximize the generation in the system by ensuring the operation of imported coal-based plants to their full capacity. The MoP, in its direction, recognized the reason behind the shutdown of the imported coal-based plant and mentioned that the existing PPA provisions in the case of imported coal-based plants do not have adequate provisions for a pass-through of the entire increase in the international coal price. It is pertinent to note that the MoP has recognized the pass-through of an increase in the international coal price. Thus, the Commission, while determining the adverse financial impact under Section 11(2) of the Act, is required to determine the prudently incurred cost for the import of coal, which is to be allowed as compensation to the generating plant based on imported coal for generation and supply of power pursuant to the directions under Section 11(1) of the Act. This requires the benchmarking of the FOB price of imported coal based on the index price.

63. We have considered the submissions of the Petitioner and Respondent No.1. The Petitioner is claiming the coal price on a CIF basis, whereas at the same time, the Petitioner has also submitted that the Coal was procured from Indonesia at the HBA Index price. We have dealt with the issue of FOB price in both cases, whether it is available separately or derived based on the CIF price in Para 53 and Para 54 of this order.



64. The Petitioner, in response to the objection raised by Respondent No.1, has submitted the Coal supply agreement and the details of invoices. We have perused the coal supply agreements and invoices to ascertain the source country of coal. It is observed that the Petitioner has entered into sixteen contracts through the domestic agencies engaged in the supply of imported coal. It is observed from the coal supply agreements that the Petitioner has entered to procure coal from Indonesia, which has been specifically indicated in the contract. Through all sixteen contracts, the Petitioner has procured imported coal from Indonesia. The details of all sixteen contracts are as under:-

S. No.	Purchase Contract		Imported Coal Supplier	Vessel Name	Origin of Coal	Invoice Quantity *
	Reference No.	Date				
1	CEPL/ACCPL/2-022-23/Apr/07	28-04-2022	XXX	Star Norita	Indonesia	24,989.30
2	CEPL/ACCPL/2-022-23/May/01	05-05-2022	XXX	KM Weipa	Indonesia	20,000.74
3	CEPL/MPL/2022-23/Apr/04	28-04-2022	XXX	Modest SW	Indonesia	71,030.08
4	CEPL/WBE/2022-23/Apr/04	28-04-2022	XXX	Hai Jin	Indonesia	51,411.38
5	CEPL/SVU/2022-23/APR/03	28-04-2022	XXX	Ernest Vinberg & Emerald Dongji	Indonesia	63,979.86
6	CEPL/MPL/2022-23/Jun/01	24-06-2022	XXX	Busan Star	Indonesia	69,934.30
7	CEPL/ACCPL/2-022-23/Jun/01	24-06-2022	XXX	Astoria & Ruby indah	Indonesia	50,005.32
8	CEPL/SVU/2022-23/Jul/01	18-07-2022	XXX	Maa Saleha Begum&Orient U	Indonesia	49,968.58
9	CEPL/WBE/2022-23/Jun/01	24-06-2022	XXX	Nord Capella	Indonesia	52,477.26
10	CEPL/ACCPL/2-022-23/Aug/01	24-08-2022	XXX	Capecross & Rubyindah	Indonesia	50,001.04
11	CEPL/WBE/2022-23/Aug/01	25-08-2022	XXX	Constantin oldendorff	Indonesia	48,293.34
12	CEPL/MPL/2022-23/Aug/01	25-08-2022	XXX	Daine	Indonesia	54,048.60
13	CEPL/ACCPL/2-022-23/Aug/02	31-08-2022	XXX	Ioannis M	Indonesia	66,006.32
14	CEPL/MPL/2022-23/OCT/01	29-10-2022	XXX	Bernina	Indonesia	56,054.98
15	CEPL/SVUPL/2-022-23/OCT/01	29-10-2022	XXX	Orient U	Indonesia	30,005.54
16	CEPL/ACCPL/2-022-23/OCT/01	29-10-2022	XXX	Singapore Bulker	Indonesia	52,009.28

(*as per vessel from Indonesia)



65. It is observed that in the Coal supply agreement, the origin of coal was indicated as Indonesia, along with a particular vessel name. The vessel name indicated in the coal supply agreement also matches the vessel name indicated in different invoices. Hence, based on the records placed by the Petitioner, it is ascertained that the Coal was procured from Indonesia. Hence, the decision of the Commission in its order dated 3.1.2023 in Petition No. 128/MP/2022 in respect of the coal procured from Indonesia *inter-alia*, the pricing of coal at HBA price index (equivalent HPB price) is applicable in the instant case.

66. The Petitioner's claim regarding the purchase of coal from the intermediary and claiming the cost of coal on a CIF basis on the ground that the coal is procured at the HBA Index price is unacceptable. Since the Petitioner has quoted the fuel charges, freight charges, and handling charges separately, the Petitioner should have procured the coal on an FOB basis, as the freight charges and handling charges are unimpacted due to the directions issued by the Central Government. Even if the Petitioner procured the coal on a CIF basis, the Petitioner should have taken care to maintain adequate information on the break-up of costs for the regulatory requirement. The Petitioner has procured the Coal from Indonesia with reference to the HBA Index price from coal traders. The entire purchase of coal is overseen and approved by the third-party agencies appointed by the Lenders of the company, which indicates that the Petitioner has exercised certain checks on coal procurement. We have noted that due diligence through third-party agencies was carried out by the Petitioner. However, in the absence of the FOB price of the coal procured by the Petitioner, we need to compare it with the benchmark price to ensure that only prudent costs are passed on to the consumer. We are conscious of the fact that more than 65% of imported coal in India is procured from Indonesia, which can be evidenced by the fact that the escalation rate notified by the Commission factored 65% of the HBA Index. Since the Petitioner has procured coal from Indonesia, one of the options is to compare the FOB price with the HBA Index (HPB price).



67. The Commission, in its order dated 3.1.2023, has addressed the issue of applicability of Argus ICI vis-à-vis HBA Index for comparison of FOB price sourced from Indonesia. Relevant Para is extracted below: -

“Re: Argus ICI vis-à-vis HBA for calculation of FOB price of coal

96....

97...

98. We have considered the submissions of TPCL and GUVNL. HBA or Harga Batubara Acuan is a coal price reference determined by the Government of Indonesia by averaging the calorific value of coal based on 25% each of New Castle Export Coal Index, Global Coal New Castle Index, Platts Kalimantan and Argus Indonesia Coal Index (ICI). While the first two indices represent international price, the last two indices represent the local prices. The category is divided based on coal quality which is set at 6322 kCal/kg (As Received Basis or ARB), moisture content at 8% ARB, Sulphur content at 8% (ARB) and ash content at 15% (ARB). After determining the HBA, the benchmark coal price (HPB) is determined. There are 8 benchmark prices category, representing the quality of coal starting from GCV of 4200 kCal/kg to 7000 kCal/kg. In case of price of coal other than these 8 categories of HPB, the prices are determined by interpolation basis based on GCV, total moisture, total Sulphur and ash. Under the Indonesian Regulations, all Spot Sale Contracts and Term Sale Contracts have to be aligned with the benchmark price. As regards the submission of GUVNL that two indices of Indonesia namely, Platts (5000 kCal/kg GAR and Argus (ICI3, 5000 kCal/kg GAR) are included in the escalation indices notified by the Commission and therefore, the prices of imported coal should be benchmarked with reference to these indices, we would like to point out that export price of coal from Indonesia has to be in conformity with the HPB price based on HBA index. We have already taken a view in our order dated order dated 13.6.2022 in Petition No. 111/MP/2022 that as per the Indonesian Regulations, it is not permissible to export coal below the benchmark price failing which the coal company shall be subjected to administrative sanctions. Therefore, simply because Platts and Argus indices are included in the composite index notified by CERC does not mean that coal is exported from Indonesia at prices other than HPB. Therefore, any benchmarking of coal exported from Indonesia has to be linked to the appropriate HPB price based on HBA index. In our view, HPB price of coal based on HBA index notified by Government of Indonesia is the appropriate benchmark price for comparing the price of coal imported from Indonesia.” (emphasis supplied)

68. In the instant case, the Petitioner has procured coal from Indonesia only. The comparison of the FOB price with the HPB Price (based on HBA index) is consistent with the decision of the Commission in its order dated 3.1.2023 for benchmarking the coal procured from Indonesia. There may be an exception if the Petitioner has an arrangement to procure coal on an Argus index basis in the Coal Supply Agreement with the supplier or trader. However, in the instant case, the Petitioner submitted that the coal is procured



on an HBA Index basis. The Commission, in its order, addressed the applicability of the HBA Index (HPB Price) for the coal sourced from Indonesia. Accordingly, to pass on the prudent cost to the consumer, we are of the view that the FOB price worked out as per the decision of the Commission be allowed to pass through after benchmarking with the HPB price (worked out based on HBA Index price) i.e. actual FOB or HPB price, whichever is lower.

Admissible FOB Price = Lower (Actual FOB price, HPB price (HBA Index))

Where,

- a) Actual FOB price is the derived FOB price worked out as per Para 53 and Para 54 of this order, based on the actual CIF cost less the ocean transportation, inland transportation, and handling charges on a Rs/MT basis;
- b) HPB price is to be worked out based on HBA Index Price by applying the applicable parameters of coal based on the 4 weeks prior to the date of lading.
The GCV for the purpose of the Coal price based on the index shall correspond to the GCV as per the bill of lading or as per the invoice of the coal supplier.

69. The above formulation will take care of the interests of the consumer and the generating company. If the derived FOB price after adjusting quoted transportation and handling charges is higher than the HPB price (HBA Index), the same will be reduced to the HPB Price (HBA index) level. If the derived FOB price is lower than the HBA price, the actual FOB price will be allowed to be passed through. At the same time, this formulation will offset the adverse impact on account of the imported coal price only, whereas other components of the quoted tariff in respect of the transportation and handling charges remain unchanged.

Re: Ocean Freight and Fuel Handling Charges



70. Respondent No.1 has submitted that ocean freight, inland transportation charges, and port handling charges have been included in the computation of its claim for the cost of coal, whereas the PPA tariff provides a separate component of transportation and fuel handling charges. These components need to be identified and reduced from the cost of the landed price of coal, as the direction of MoP dated 5.5.2022 is related to the imported coal cost only. The Petitioner has claimed the landed cost of coal on a CIF basis, including ocean freight, fuel handling charges, etc., relying on the order dated 3.1.2023 in Petition No.128/MP/2022.

71. We have considered the submissions of Respondent No.1 and the Petitioner. The Petitioner has quoted overseas transportation charges, inland transportation charges, and fuel handling charges separately in the bid tariff, which implies that the Petitioner has factored in all costs of transportation and fuel handling charges. The direction of the MoP dated 5.5.2022 is related to the international FOB price only, whereas it does not relate to the overseas transportation, inland transportation, and handling price. The elements of the energy charges other than the FOB price of coal are not affected by the directions of the MoP. Therefore, it is the FOB price of coal for which the generating company is required to be compensated. Accordingly, the components of the overseas transportation, inland transportation, and fuel handling charges shall be applicable as per the quoted tariff for the applicable year.

Re: Operational Parameters and consideration of GCV

72. The Petitioner, in response to the RoP dated 21.11.2022, has submitted the details calculation of the coal price and energy charge calculation. The relevant part of the table submitted by the Petitioner is extracted below:



Month	Gross Station Heat Rate (GSHR)	Wgt. Avg. GCV of Coal Consumed	Aux. Power Consumption (APC)	Final Landed Cost of Coal Consumed (COST)	Per Unit Cost of Coal	Per Unit Cost of Secondary Oil	Actual Energy Charge Rate (ECR)
	kCal/kWh	kCal/kg	%	INR/MT	INR/kWh	INR/kWh	INR/kWh
	I	J	K	L	$M = (GSHR / GCV / (1 - APC)) * COST / 1000$	$N = SOC / (Ex-Bus Injection \times 10^6)$	$O = M + N$
May-22 (from 6th)	2784	3843	7.98%	11083	8.73	0.13	8.86
Jun-22	2724	3955	7.17%	11345	8.42	0.11	8.53
Jul-22	2738	4043	7.31%	11208	8.19	0.15	8.34
Aug-22	2697	4082	7.79%	11313	8.10	0.05	8.15
Sep-22	2712	4074	7.91%	10372	7.50	0.08	7.58
Oct-22	2743	4051	7.73%	9863	7.24	0.08	7.32
Nov-22	2731	4024	7.44%	10500	7.70	0.03	7.73

73. Respondent No. 2 has submitted that the Petitioner has computed the ECR on the basis of actual Station Heat Rate (hereinafter referred to as “SHR”), which is in the range of 2543 to 2849 kCal/ kWh. Whereas, as per the CERC (Terms and Conditions for determination of tariff) Regulations, 2019, the SHR works out to 2289 kCal / kWh. Similarly, the computation of ECR takes into consideration the actual auxiliary consumption, which is in the range of 6.03% to 8.19%. However, the auxiliary consumption permissible in terms of the CERC Regulations is 6.25%. Therefore, the lower of the two values in each instance has to be taken into consideration for the purposes of the computation of ECR.

74. The Commission, in its order dated 3.1.2023 in Petition No. 128/MP/2022, held as under:-

“109. We have considered the submissions of TPCL and GUVNL. The operational/technical parameters in terms of the order dated 6.12.2016 in Petition No.159/MP/2012 was in the context of the compensatory tariff which was being granted as a package to TPCL. However, while deciding the adverse financial impact of Section 11 Directions which has to cover the variable cost of generation and a reasonable margin as per the Appellate Tribunal’s judgement in GMR case, we are not inclined to adopt the operational parameters in the present case which was approved in order dated 6.12.2016 in Petition No.159/MP/2012. In our view, the operational parameters such as heat rate and APC should be lower of the actual or as worked out in accordance with Tariff Regulations, 2009 which was in force at the time of commercial operation of the generating station of the Petitioner. Heat Rate and APC worked out on the basis of Tariff Regulations, 2009 are 2121 kCal/kg and 8.50% respectively.....” (Emphasis supplied)



75. We have considered the submissions of the Petitioner and Respondent No.1. It is observed from the computation that the Petitioner has considered the actual station heat rate worked out based on the coal consumption and energy output. The parameters considered at the time of bidding would be based on the quality of the coal envisaged under the fuel supply agreement. However, the coal procurement for complying with the direction of the MoP dated 5.5.2022 is not limited to the fuel supply agreement. In fact, the direction does not restrict the source of coal from the fuel supply agreement under the PPA. Thus, the operational parameters assumed in the bidding tariff may change depending on the quality of the coal.

76. The Commission, while framing the Terms and Conditions of Tariff Regulations at every five-year period, arrived at the operational parameters based on the past performance of the various generating stations and in consultation with various stakeholders. Thus, the operational norms determined under the CERC (Terms and Conditions of Tariff) Regulations specified by the Commission from time to time reflect achievable norms. The Commission, in its order dated 3.1.2023 in the Petition No. 128/MP/2022, decided to consider the operational parameters with the CERC (Terms and Conditions of Tariff) Regulations as applicable at the time of bidding. We are of the view that the decision of the Commission in its order dated 3.1.2023 in the Petition No. 128/MP/2022 balances the interest of all the stakeholders and addresses the concerns of the Respondent No.1. Therefore, the station heat rate and auxiliary power consumption for the purpose of arriving energy charge rate should be lower of the actual or as worked out in accordance with the CERC (Terms and Conditions of Tariff) Regulations, 2009, which was in force at the time of commercial operation of the generating station of the Petitioner.



77. As regards the consideration of the GCV, the Petitioner has submitted the details of the weighted average GCV of coal consumed on a daily basis. The Petitioner has entered into a contract with a coal supplier for the coal received on an ARB basis. It is observed that the Petitioner has received certain credit on account of GCV, which has been factored into the landed fuel price. In view of the above, the weighted average GCV of coal consumed shall be considered to calculate the energy charge rate.

Re: Foreign Exchange Rate Variation and Other Charges

78. The Commission has dealt with the issue of foreign exchange rate variation and other charges in its order dated 3.1.2023 in Petition No. 128/MP/2022. We are of the view that the decision taken in the above-said order is applicable in the instant case as under:-

- a) The Petitioner has quoted the tariff of overseas transportation in USD/kWh, and hence, the foreign exchange rate variation as applicable in the PPA shall also be applicable in the instant case.
- b) The Commission has rejected the other charges, namely letter of credit opening charges, hedging cost, and inventory carrying cost, etc., as these charges have been factored into the different components of the tariff.

Re: Computation of the Energy Charge Rate

79. The Commission has decided on the various aspects to determine the Energy Charges (ECR) for the electricity supplied by the Petitioner to Respondent No.2 from the generating station based on the actual cost of generation in terms of Section 11(2) of the Act. Accordingly, the Energy Charge Rate of the energy supplied shall be computed as under:-

- a) Energy Charge Rate on account of coal cost :

$$\text{ECR [Rs/kWh]} = ((\text{Heat Rate [kCal/kWh]} / \text{GCV of coal consumed [kal/kg]}) / (1 - \text{Auxiliary Consumption [\%]})) \times \text{Coal cost [Rs/MT]} / 1000$$



Where,

- i) Heat Rate and Auxiliary consumption shall be as decided by the Commission in Para 76 of this order
 - ii) Coal Cost shall be the admissible FOB price as decided by the Commission in Para 68 of this order.
- b) Quoted Oversea Transportation Tariff (in Rs/ kWh), Quoted Inland Transportation Tariff (in Rs/ kWh), and Quoted Fuel Handling Tariff (in Rs/kWh) shall be applicable as per the power purchase agreement.

80. The fixed charges shall be applicable as per the terms and conditions agreed upon by the parties in their PPA dated 19.12.2013. The net profit, if any, by sale of power which is not sold to the PPA holder but sold in the Power Exchanges, shall be shared on a monthly basis as per MOP's directions dated 5.5.2022, as revised from time to time. The generating company shall work out the fixed charge and energy charge rate every month as per the Commission's decision in this order and raise the bill to the beneficiaries for the differential amount over and above the energy charges paid by the beneficiaries as per the rates decided by the Committee within 30 days. The beneficiary shall pay the bill commensurate with the energy received and certified in the regional energy account within 30 days from the receipt of the bill. The generating company shall also provide the details of the calculation, along with the bill of the suppliers of the coal, for verification by the beneficiaries. Since the period covered under Section 11 direction is over, the prayer of the Petitioner seeking interim relief has become infructuous.

81. Petition No.161/MP/2022 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson

