

**CENTRAL ELECTRICITY REGULATORY COMMISSION
(NEW DELHI)**

Petition No. 75/MP/2023

Coram:

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

Date of Order: 13th October, 2025

In the matter of

Petition under Section 79 and Section 11(2) of the Electricity Act, 2003 read with Regulation 111-113 of the CERC Conduct of Business Regulations, 1999 seeking recovery of Energy Charges from Respondent No. 1/ TANGEDCO for the power procured in the month of December, 2022, in terms of the Directions issued by the Ministry of Power, Government of India.

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

Vs.

1. Tamil Nadu Generation and Distribution Co. Ltd.

6th Floor, Eastern Wing, 144,
Anna Salai, Chennai- 600-002
Through Chief Engineer/ Private Power Projects

...Respondent No.1

2. Union of India, Ministry of Power

Shram Shakti Bhawan Rafi Marg,
New Delhi – 110001
Through the Principal Secretary

...Respondent No.2

The following were present:

Shri Hemant Singh, Advocate, CEPL & ILFS
Shri Lakshyjit Singh Bagdwal, Advocate, CEPL & ILFS
Shri Harshit Singh, Advocate, CEPL & ILFS
Ms. Lavanya Panwar, Advocate, CEPL & ILFS
Shri Chetan Garg, Advocate, CEPL & ILFS



Shri Syed Fazl, Advocate, CEPL & ILFS
Ms. Ankita Bafna, Advocate, CEPL & ILFS
Shri Gyanendra Singh, Advocate, ILFS
Shri Pawan Singh, Advocate, ILFS
Shri Jay Lal, Advocate, ILFS
Shri Ramesh Kumar, Advocate, CEPL
Shri Rohit Raj, Advocate, CEPL
Shri Shailendra Singh, Advocate, CEPL
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Shri Rahul Ranjan, Advocate, TANGEDCO

ORDER

The present application is filed by M/s Coastal Energen Pvt. Ltd (hereinafter referred to as “**Petitioner**”) in view of the liberty granted by the Commission, vide its order dated 23.12.2022 in the Petition 349/MP/2022, seeking recovery of Energy Charges from the Tamil Nadu Generation and Distribution Co. Ltd. (hereinafter referred to as “**Respondent No. 1**”) for the power procured in the month of December, 2022. The Petitioner sought to enforce the benchmark tariff notified by the Ministry of Power (hereinafter referred to as “**Respondent No. 2**”) under Section 11(1) of the Electricity Act, 2003 (shortly referred to as “**the Act**”) for December 2025. Respondent No. 1 insisted that the Petitioner supply power as per the tariff provided under the PPA, instead of the benchmark tariff, on the strength of their prior communication dated 23.11.2022 and 30.11.2022.

2. The Petitioner has made the following prayers in the Petition:

- a) *“Direct the Respondent No.1 / TANGEDCO to make payment of Energy Charges of INR 128,63,16,420/-, for the power it procured from 1.12.2022 till 31.12.2022, in terms of the ECR/ benchmark tariff notified by the MOP under Section 11 of EA 2003;*
- b) *Grant liberty to the Petitioner to claim Energy Charges from the Respondent No. 1/ TANGEDCO in future, in the event there is differential recovery of such ECR which accrues to the Petitioner pursuant to adjudication of Petition No. 161/MP/2022, which is presently adjudication before this Hon'ble Commission;*
- c) *In the interim, direct Respondent No. 1/ TANGEDCO to make payment of 80% of total outstanding Energy Charges of INR 128,63,16,420; and*



d) Pass such other further order(s) as the Hon'ble Commission may deem just in the facts of the present Petition."

Factual Matrix

3. The Petitioner Company has an installed Capacity of 1200 (2x600MW) MW coal-based thermal power project located at Melamaruthur Village, Tuticorin District, in the State of Tamil Nadu. The Petitioner has executed a Long-Term Power Purchase Agreement (hereinafter referred to as "**PPA**") dated 19.12.2013 with Respondent No.1 for the supply of 558 MW power for a period of 15 years, based on imported coal.

4. The Union of India, Ministry of Power, has issued the directions dated 5.5.2022, 13.5.2022, 20.5.2022, 27.5.2022, 28.6.2022, 15.9.2022, 28.9.2022 (collectively referred to as "**Directions**") under Section 11(1) of the Electricity Act, 2003 (hereinafter referred to as "**the Act**"). As per the directions issued by the Respondent No.2, all imported coal-based power plants were obligated to supply power, in the first instance, to the PPA holders, till 31.12.2022, either according to the benchmark energy charge rate worked out by the Committee constituted by the Ministry of Power or at a rate mutually negotiated with the generating company.

5. On 30.4.2022 and 16.6.2022, Respondent No.1 informed the Petitioner to continue the supply of 558 MW Round the clock for the period up to 31.12.2022, at the benchmark tariff notified by the Ministry of Power. Respondent No.1 agreed to procure power from the Petitioner till 31.12.2022 at the benchmark tariff notified through Directions of the Ministry of Power.

6. On 23.11.2022 and 30.11.2022, Respondent No.1 issued a letter to the Petitioner to supply power as per the tariff provided under PPA instead of the benchmark tariff. In response, the Petitioner vide letters dated 24.11.2022, 1.12.2022



wrote back to the Respondent to abide by the Section 11 Directions issued by the Ministry of Power and therefore to raise invoices in terms of the energy charge rate notified by the Ministry of Power.

7. Aggrieved with the Respondent No. 1's letter, the Petitioner approached the Commission, vide Petition No. 349/MP/2022 dated 1.12.2022, seeking to quash the said demand letters and to direct the Respondent No. 1 to abide by the terms of the Ministry of Power's notification and to adhere to the energy charge rate notified by the Ministry of Power in procuring the power from the Petitioner till 31.12.2022.

8. On 19.12.2022, the Ministry of Power clarified that the PPA holder or utility can (i) either procure power in terms of energy charge rate or benchmark tariff notified or (ii) not procure power at all so that such power can be sold at the power exchange. The Directions of the Ministry of Power nowhere allowed the utility to procure power at the PPA rate, i.e., the rate other than the said benchmark rate notified by the Ministry of Power.

9. On 23.12.2022, the Commission issued an order dated 23.12.2022 in the Petition 349/MP/2022 directing Respondent No. 1 to follow the notification of the Ministry of Power and benchmark tariff until 31.12.2022, and restrained them from enforcing the terms of the PPA. Accordingly, the Petitioner raised the invoices for such supply of power.

Submission of the Petitioner

10. The Petitioner's submissions are briefly as under:-

- a) Respondent No.1 contravened the said directions and also disregarded its commitment to procure power until 31.12.2022 at the energy charge rate and insisted on scheduling power only at the PPA tariff.



- b) After the decision of the Commission, vide its order dated 23.12.2022, directing the Respondent No. 1 to follow the notification of the Ministry of Power and benchmark tariff until 31.12.2022, and restrained them from enforcing the terms of the PPA, the Petitioner raised the invoices for such supply of power at benchmark rate during the December, 2022 which was objected to by the Respondent No. 1.
- c) The Petitioner has submitted that in view of the liberty granted by the Commission, vide its order dated 23.12.2022 in the Petition 349/MP/2022, the Petitioner preferred this petition seeking recovery of Energy Charges of INR 128,63,16,420/- from the Respondent No. 1 for the power procured in the month of December, 2022, in terms of the benchmark tariff notified by the MOP under Section 11 of the Act.
- d) The Petitioner has also sought liberty to claim Energy Charges from the Respondent No. 1 in the future, in the event there is differential recovery of such ECR which accrues to the Petitioner pursuant to adjudication of Petition No. 161/MP/2022, which is presently under adjudication before this Hon'ble Commission.

Hearing of the Petition

11. The Petition was first heard on 10.5.2023, and after hearing the submissions of the Petitioner, the Commission admitted the matter and directed the parties to file their replies and rejoinder, if any. Respondent No.1 filed a reply on 31.5.2023. The Petitioner filed a rejoinder on 31.5.2023. Subsequently, the Petition was heard on 20.3.2024 and reserved the order on 22.8.2024.

Submission of the Respondent No.1



12. Respondent No. 1 has submitted its reply on 31.5.2023. The Respondent No.1's submissions are, briefly, as under:-

- a) Respondent No.1 has submitted that the directions of the Ministry of Power dated 5.5.2022 under Section 11 of the Act, as clarified from time to time, did not oblige the distribution companies to purchase the power at the benchmark rates till the Section 11 directions were in force.
- b) Respondent No.1 relied on Para 4(h) of the directions of the Ministry of Power, specifically stating that if the distribution company is not able to enter into mutually agreed rates with the generator, and is also not willing to procure power at the benchmark energy charge rate, then the contracted quantum shall be sold in the power exchanges.
- c) Respondent No.1 has submitted that they communicated to the Petitioner on 23.11.2022 that it will no longer purchase power at the benchmark rates from 1.12.2022 in terms of the Section 11 directions dated 5.5.2022 and clarification dated 28.6.2022.
- d) There was no unconditional commitment by the Respondent No.1 to procure power till 31.12.2022 on a pass-through basis; this was a one-time measure and deviation from the PPA. The Respondent no.1 relied on their letter dated 30.4.2022 in this regard. Respondent No.1 has submitted that vide letter dated 16.6.2022, they explicitly clarified that the said communication is in continuation of the above letter dated 30.4.2022 and called upon the Petitioner to continue the supply of 558 MW on a pass-through basis for a period up to 31.12.2022, at the benchmark rates notified by the Ministry of Power.
- e) Respondent No.1 has submitted that the directions permit Respondent No.1 to refuse to procure power at the benchmark rate and specifically allowed pass-through under the said directions, which did not contain any compulsion upon



the Discoms to procure power at the benchmark rates till the said directions were in force.

- f) Respondent No.1 has submitted that on 23.11.2022, they informed and clarified to the Petitioner that they proposed to withdraw their consent for procuring power at the benchmark rates issued by the Ministry of Power and would procure the same from the Petitioner from December 2022 at the PPA tariff. And the said letter was strictly in accordance with the directions dated 5.5.2022.
- g) On 19.12.2022, the Ministry of Power replied to the Petitioner's letter dated 25.11.2022, wherein the Ministry of Power specifically referred to Para 4(h) of the said directions. Respondent No.1 vide its Bill Dispute Notice dated 10.2.2023, disputed the invoice for the month of December 2022.
- h) Further, Respondent No.1 has submitted its objection with regard to the issue of jurisdiction on the ground of non-existence of the composite scheme.

13. Respondent No.1, vide its written submissions dated 22.3.2024, has mainly reiterated its submissions. Respondent No.1 returned the invoices raised by the Petitioner on the basis of the benchmark rate for the month of December 2022 issued by the Ministry of Power. However, the Respondent No.1 has made payment of INR 95,74,86,592/- towards energy charges for the month of December 2022, as per the PPA.

Rejoinder on behalf of the Petitioner

14. The Petitioner, vide its rejoinder dated 23.6.2023, mainly submits as under: -

- a) The Petitioner has submitted that they denied the contention that the Respondent was vested with the discretion to either procure or not to procure power in terms of the directions. If the Respondent No.1 decides to procure



power based on the availability declared by the generator, it is left with the only option to procure power either at the energy charge rate or at a negotiated rate, but clearly not at the PPA rate.

- b) The Petitioner has submitted that the Respondent No.1 and the Petitioner have not mutually negotiated any applicable rate for the procurement of power under Section 11 Directions. Therefore, in the absence of a mutually negotiated rate, the supply and procurement of power during December 2022, in the present case, can only be at the benchmark rate.
- c) The Petitioner has submitted that the Respondent No. 1 has failed to appreciate that the Directions issued by the Ministry of Power, which are statutory in nature, have resulted in modification of the terms of PPA (including applicable tariff/ energy charge rate) executed between the Petitioner and the Respondent No.1.
- d) The Letter dated 30.4.2022 was issued prior to the issuance of the Directions of the Ministry of Power dated 5.5.2022; therefore, the reliance on the said letter is not relevant. The Petitioner further relied on the letter dated 16.6.2022, wherein the Respondent had specifically referred to MOP Directions.
- e) The Petitioner has submitted that the Commission, vide its Record of Proceedings, in the Petition No. 349/MP/2022, clarified that the MOP Directions were applicable until 31.12.2022, and any action of TANGEDCO shall be subject to the final outcome of the case.
- f) The Directions dated 28.6.2022 merely allowed the PPA holder to either procure power at the benchmark rate or surrender it so that such power can be offered to any other interested beneficiary. The Directions nowhere allowed the utility to procure power at a rate other than the said benchmark rate notified by MOP or a mutually negotiated rate.



- g) Further, the Commission passed an Order dated 23.12.2022 in Petition No. 349/MP/2022 and inter alia directed that TANGEDCO will not insist upon power supply as per PPA till such time the direction of MoP is in force.
- h) The present Petition is very well within the Jurisdiction as submitted by the Petitioner, as the directions are a scheme which involves inter-state generation, as per Clauses 4(h) and 2(c) of the Directions dated 5.5.2022 and 20.5.2022 respectively, which allows the generator to supply the power to third parties, in Power Exchange.

15. The Petitioner, vide its written submissions dated 29.3.2024, has mainly reiterated the submissions made in the petition. The Petitioner has submitted that Respondent No.1 has made payment of INR 95,74,86,592/- out of the total claim of INR 128,63,16,420/-. Therefore, the outstanding amount out of the total claim of the Petitioner remains around INR 32,88,29,828/-.

Analysis and Decisions

16. We have considered the submissions of the Petitioner and Respondent No.1 and perused the documents on record. The present petition has been filed by the Petitioner seeking direction for payment of the electricity supplied during December 2022 in terms of the liberty granted by the Commission. Respondent No.1 has raised the issue of the jurisdiction again, which was already decided by the Commission in the order dated 23.12.2022 in Petition No. 349/MP/2022. Hence, the same is not dealt with again.

17. In the instant case, Respondent No.1 has objected to making the payment as per the benchmark tariff decided by the Committee constituted by the Ministry of Power on the ground that the directions provide options to distribution companies to



purchase the power at the benchmark rates till the Section 11 directions were in force. Respondent No. 1 advanced their claim to enforce the tariff as per PPA on the strength of the communication dated 23.11.2022, wherein they informed and clarified to the Petitioner that they proposed to withdraw their consent for procuring power at the benchmark rates issued by the Ministry of Power. According to the Petitioner, the directions provide Respondent No.1 with the discretion to either procure or not to procure power in terms of the directions. If Respondent No.1 decides to procure power, it is left with the only option to procure power either at the energy charge rate or at a negotiated rate, but not at the PPA rate.

18. In the instant case, the limited issue is whether the direction dated 5.5.2022 (including subsequent clarifications and amendments) issued by the Ministry of Power did not oblige the distribution companies to purchase the power at the benchmark rates till the Section 11 directions were in force. Alternatively, can Respondent No.1 enforce the existing tariff agreed upon under the power purchase agreement during the operation of the directions?

19. The Commission has partly addressed this issue in the order dated 23.12.2022 in Petition No. 349/MP/2022, wherein Respondent No.1 himself admitted that they will not insist upon power supply as per PPA till such time the direction of MoP is in force. Relevant Para is extracted below:-

“9. In view of the categorical submissions made by the learned senior counsel for TANGEDCO including to take on record the clarification made by TANGEDCO before the Hon’ble High Court of Madras, as recorded in paragraph 11 of the order dated 6.12.2022, i.e. the word ‘shall’ occurring in 3rd paragraph of letters dated 23.11.2022 and 30.11.2022 be read as ‘may’ and that TANGEDCO will not insist upon power supply as per PPA till the such time the direction of MoP are in force, in the present cases also, we are of the view that the prayers made by the Petitioners in these Petitions no longer survive and have become infructuous.

10. Insofar as the aspects of TANGEDCO having already scheduled the power from the Petitioners from 1st December, 2022 onwards and applicable rates for such supply as raised during the course of arguments, we are of the view that such aspects are beyond the subject matter of these Petitions and it would not be appropriate to stretch the scope



of these cases beyond what have been prayed for by the Petitioners. In case of the any grievances in relation to the charges to be payable by/receivable Page 8 Order in Petition Nos. 349/MP/2022 & 350/MP/2022 from TANGEDCO for such supply by the Petitioners during the subsistence of direction of MoP, the Petitioners are at liberty to approach the Commission with fresh Petitions and contentions of both the sides, on these aspects, are kept open. However, both parties, the Petitioners and TANGEDCO, are directed to scrupulously comply with the direction issued by MoP under Section 11 of the Act read with subsequent clarifications thereto as long as they are in force.”

20. We have examined the directions issued by the Ministry of Power. It may be observed from clauses 4(a) and 4(b) that the directions laid down the obligations of the generating company to operate and generate power to their full capacity, whereas the distribution companies or the PPA holders have no obligation to procure the power from the same generating company. The Direction addresses the cost component of the electricity supplied and its recovery. Clause 4(f) explicitly provides the framework to determine the rate of electricity, which may be either the benchmark rate worked out by the Group or at a rate mutually negotiated with the generating company. Clause 4(h) addresses the situation 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 a weekly payment, then such quantity of power shall be sold in the Power Exchanges. Relevant para of the directions is extracted below:-

“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.

....

.....

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.



...

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.

....”

21. It is clear from the directions that in the event of the failure to agree on mutually negotiated rates or to procure electricity at the benchmark rate or failure to make payment, the consequence is to sell the power in the open market, and it is the obligation of the generating company to sell in the open market. The main objective of the directions is that there is no provision in the existing PPA to pass through the present high cost of imported coal. Hence, it is clear from the above that the framework prescribed in the directions has an overriding effect over the PPA, and hence, the provision of the PPA cannot be enforced during the operation of the directions. Further, the Petitioner, vide letters dated 24.11.2022 and 1.12.2022, refused to accept the request of the Respondent No.1 to supply power at the PPA rate and insisted on abiding by the Directions of the Ministry of Power. Hence, there is no *ad idem* between the parties to enforce the tariff under PPA or any other mutual arrangement. Accordingly, the claim of Respondent No.1 to have been supplied with power as per the tariff provided under the PPA instead of the benchmark tariff on the strength of their prior communication dated 23.11.2022 and 30.11.2022 is not sustainable.

22. Further, the Commission, in its order dated 22.5.2025 in Petition no. 161/MP/2022, has decided the adverse financial impact under Section 11(2) of the Act, which is also applicable for the power supplied to the Respondent No.1 during December 2022. The adverse financial impact decided by the Commission is over and above the rate agreed under the power purchase agreement, after adjustment of



the amount received through the benchmark rate. The Commission, in its order dated 22.5.2025 in Petition No. 161/MP/2022, held that the benchmark rate determined by the Committee is against the backdrop of adverse financial impact under section 11(2) of the Act which was allowed by the Ministry of Power in its directions on an *ex-ante* basis for the limited purpose to meet the working capital requirement for sustaining operations of the power plant. Since the Commission, in its order dated 22.5.2025, in Petition no. 161/MP/2022 has decided principles and methodology on the adverse financial impact during the period of directions. Accordingly, the Petitioner's prayer to enforce the benchmark tariff is infructuous. The Petitioner is entitled to raise the bill as per the decision of the Commission in Petition No. 161/MP/2022, over and above the tariff as per PPA paid by Respondent No. 1 after adjustment of the payment, if any, made against the benchmark tariff, till the validity of the directions issued by Respondent No.2. Given the submission of the Petitioner that Respondent No.1 has already made payment of INR 95,74,86,592/- out of the total claim of INR 128,63,16,420/-, an interim direction to make part payment is not required.

23. Petition No.75/MP/2023 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson

