

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.108/MP/2026 along with IA No.26/2026

Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 and the terms of the Power Purchase Agreements dated 06.02.2007 and 02.02.2007 read with the corresponding SPPAs both dated 05.12.2028, Settlement Deed dated 03.01.2022 and SPPAs dated 30.03.2022, entered into between Gujarat Urja Vikas Nigam Limited and Adani Power Limited read with Order dated 08.02.2022 passed by the Hon'ble Supreme Court, seeking setting aside the Supplementary Invoices dated 05.01.2026 and Monthly Invoices dated 06.01.2026 raised by Adani Power on GUVNL and passing directions against Adani Power.

Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)

Respondents : Adani Power Limited and Anr.

Date of Hearing : **18.3.2026**

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

Parties Present : Shri M.G. Ramachandran, Sr. Advocate, GUVNL
Ms. Ranjitha Ramachandran, Advocate, GUVNL
Ms. Srishti Khindaria, Advocate, GUVNL
Shri Sanjay Mathur, GUVNL
Shri Nirav Thakkar, GUVNL
Shri Amit Kapur, Advocate, APL
Ms. Poonam Sengupta, Advocate, APL
Shri Saunak Rajguru, Advocate, APL
Shri Pradyumn Amit Sharma, Advocate, APL

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition has been filed seeking, *inter alia*, a declaration that the Supplementary Invoices dated 5.1.2026 and Monthly Invoice dated 6.1.2026 (for December 2025) raised by Respondent No.1, APL, are illegal, void, and contrary to the PPAs/SPPAs/Settlement Deed and the Commission's order dated 13.6.2022, a direction to APL to withdraw the said invoices and not to take any coercive steps on their basis, including through PRAAPTI, and appropriate interim and ad-interim reliefs staying the operation and effect of the above invoices pending adjudication. The learned senior counsel submitted that the Respondent, APL, has already filed its reply to IA, and the Petitioner has also filed its rejoinder thereto. The learned senior counsel further submitted that

the Petitioner has already made the detailed opening arguments on 11.03.2026, including on the interim reliefs.

2. The learned counsel for the Respondent, APL, while opposing the grant of any interim reliefs, referred to his note of submissions and submitted as under:

(a) The invoices dated 05.1.2026 and 06.01.2026 raised by APL are based on the Base Rate determined by the Commission in the order dated 13.06.2022 in Petition No. 111/MP/2022 ("Base Rate Order"). There is no illegality in APL raising invoices strictly in consonance with the Base Rate Order, which attained finality. GUVNL's IA and Petition constitute a guised attempt to make the Base Rate Order redundant.

(b) IA does not meet the three-fold test for the grant of any interim relief, i.e., (a) there is no *prima facie* case in favour of GUVNL while APL is acting to implement the Base Rate Order, which has attained finality, (ii) balance of convenience is in favour of APL, and (iii) no irreparable injury will be caused to GUVNL, if interim relief is denied.

(c) At paragraph 10(a) of the IA, GUVNL has admitted that the Settlement Deed dated 03.01.2022, Govt. of Gujarat's Resolution dated 25.02.2022 and the SPPAs dated 30.3.2022 state that invoices can be raised based on the Base Rate, in the absence of the Base Rate being approved by the GoG.

(d) GUVNL's submission that the Base Rate Order of the Commission was only a recommendation and non-enforceable until GoG approves the Base Rate is contrary to the statutory scheme envisaged under the Act. One of the primary objectives of the Act was to distance the regulatory responsibilities from the Government to the Regulatory Commission to promote private sector participation and determining economic tariffs.

(e) GUVNL had filed the Petition No.111/MP/2022 under Section 79(1)(b) of the Act for the determination of the Base Rate. Thus, the Base Rate was determined by the Commission in exercise of its regulatory power under Section 79(1)(b). However, after the determination of the Base Rate by the Commission, GUVNL wrongly appealed to GoG not to approve the said Base Rate by its letters dated 21.6.2022 and 03.08.2022 and raised objections to argue against the Base Rate. Any action by GoG to redetermine or modify the Base Rate determined by the Commission would be an abuse of process and violative of the legislative scheme of the Act.

(f) GUVNL's reliance on Clause 5(b) of the Deed of Settlement dated 03.01.2022 and Clause 4.1(3) of the SPPAs dated 30.03.2022 to contend that GoG can modify the Base Rate determined by the Commission is misplaced. These clauses cannot be read to authorise or empower GoG to sit in appeal and overturn, tinker, or modify the Base Rate determined by the Commission for payment of energy charges. It is settled law that PPAs are subject to statutes, and parties by Agreement cannot override statutory provisions as far as they relate to matters of tariff. GUVNL has neither filed any review petition nor an appeal against the Base Rate Order; and accordingly, the Base Rate Order has attained finality and is legally enforceable in law.

(g) The Base Rate Order has been passed by the Commission in exercise of its regulatory jurisdiction under Section 79(1)(b) of the Act. Hence, it is not open for GUVNL to contend that it is only recommendatory in nature. Merely because the Base Rate Order refers to the word “recommendation”, it will not transform a quasi-judicial order into a recommendation. The only provision that deals with the ‘advisory’ power of the Commission is Section 79(2) of the Act, which was neither invoked by GUVNL nor did the Commission refer to the said provision in the order.

(h) As to the contention that parties had agreed to an interim arrangement for payment, such ‘ad-hoc’ payment mechanism was not perpetual. Once the Commission has determined the Base Rate, GUVNL is obligated to pay the energy charges based on such Base Rate, even until such Base Rate is approved by GoG. Approval here does not mean re-opening of or re-determination of the Base Rate determined by the Commission. Also, it was GUVNL’s responsibility to obtain the Base Rate approval from GoG. Having failed in its responsibility to do so, even after more than 3.5 years have elapsed since the Base Rate Order, GUVNL cannot be permitted to take advantage of its own wrong.

(i) The period of 60 days for making payment towards Supplementary Bills under Article 11.8.3 of the PPAs has already elapsed on 06.03.2026. Under the PPAs, even for any disputed Monthly or Supplementary Bill, GUVNL is required to pay 85% of the amount payable thereunder.

(j) Balance of convenience also lies in favour of APL’s favour and not GUVNL. In the absence of any payment under the Supplementary Invoice dated 5.1.2026, APL is facing acute stress in day-to-day plant operations, and is hindered in meeting its debt service obligations. On the other hand, no prejudice is being caused to GUVNL since APL’s invoices are admittedly in strict consonance with the Base Rate Order. Likewise, no irreparable injury will be caused to GUVNL.

3. In rejoinder, the learned senior counsel for the Petitioner, GUVNL, while refuting the above submissions, pointed out that even though the Base Rate Order was passed in June 2022, APL itself all along raised the bills in terms of the agreed interim arrangement between the parties, and that only in January 2026, it unilaterally chose to raise the bill as per the Base Rate Order.

4. In response to the Commission’s specific query as to why APL raised the Supplementary and/or Monthly bill based on the Base Rate Order only in January 2026, if it considered the said order legally enforceable and binding, the learned counsel for APL submitted that APL was pursuing the matter with GUVNL and/or GoG on a *bona fide* basis. However, no concrete answer/response came even after three and a half years, and this cannot be held against APL.

5. After hearing the learned senior counsel and learned counsel for the parties, the Commission observed that the aspects of nature and the effects of the Base Rate Order, which appeared to be the sheet-anchor of APL’s argument, needed further hearing. However, in the meantime, the Commission deemed it appropriate to direct that no coercive actions shall be taken against the Petitioner in respect of the

invoices/bills dated 5.1.2026 and 6.1.2026 raised on the basis of the Base Rate Order till the next date of hearing.

6. The Petition will be listed for hearing on **7.5.2026**.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)