

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.35/RP/2017  
in Petition No. 154/MP/2015**

Subject :Petition for review of the order dated 31.7.2017 in Petition No. 154/MP/2015 under Section 94 of the Electricity Act, 2003 read with Order 47 Rule 1 of the CPC and Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

Date of hearing : 18.5.2018

Coram : Shri P.K. Pujari, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member

Petitioner : Gujarat Urja Vikas Nigam Limited

Respondent : Adani Power Limited

Parties present :Shri M.G. Ramachandran, Advocate, GUVNL  
Ms. Ranjitha Ramachandran, Advocate, GUVNL  
Shri Amit Kapur, Advocate, APL  
Ms. Abiha Zaidi, Advocate, APL  
Shri Tanmay Vyas, APL

**Record of Proceedings**

Learned counsel for the Review Petitioner submitted that the present Review Petition has been filed for seeking review of the order dated 31.7.2017 in Petition No. 154/MP/2015 for allowing claims of respondent, APL against the Petitioner, GUVNL. Learned counsel for the Review Petitioner further submitted as under:

- (i) As regards consideration of the quantum of units being 992.06 MUs allegedly supplied under compulsion to GUVNL, learned counsel submitted that the Commission has considered only 258.80 MUs being supplied to UPPCL from merchant capacity of Unit 5 and 6 and has not considered 510.90 MUs supplied by APL to UPPCL from Units 1 to 4 (under Lol dated 11.4.2011 and revised Lol dated 28.6.2011 as mentioned by APL in its submission to the Commission dated 18.10.2016). There was no embargo on APL to sell the power from Units 1 to 4 in the Power Exchange and supply 510.9 MUs from Units 5 and 6 to UPPCL instead to GUVNL. Accordingly, similar to 258.80 MUs, the quantum of 510.90 MUs may be deducted from 1250.96 MUs;
- (ii) APL has concealed the fact that it had sold power from its merchant capacity of Units 5 and 6 and from Units 1 to 4 to other entities, to the quantum of 315.48 MUs from March, 2011 to October, 2011. Accordingly, APL may be directed to submit the details of sale to other entities from its merchant capacity in Units 1

to 4 and Units 5 and 6 and all such power may be deducted from the units sold by APL to GUVNL;

- (iii) The Commission has considered the weighted average merchant sale rate of power by GUVNL instead of the weighted average rate in the Power Exchange that APL would have obtained, had APL sold the power in Power Exchange. Accordingly, the measurement of compensation may only be on the prevalent weighted average rate in the Power Exchange on the relevant dates, at which the maximum APL would have got, had GUVNL had allowed the sale through power exchange. The consideration of tariff under the PPA may be computed without considering any applicable rebate;
- (iv) Interpretation of the Minutes of Meeting dated 31.12.2010 with regard to the conditions subject to which the claim of APL is admissible against GUVNL may be reviewed. The methodology for sale of power to third-party may be considered in terms of the said Minutes dated 31.12.2010 under which it is mentioned that both the person to whom the sale will be made and the quantum of sale shall be identified;
- (v) In terms of the Minutes of Meeting dated 31.12.2010, the basic condition for APL's claim is to consider the excess realization paid by APL to GUVNL, if any, along with interest which is to be paid back by GUVNL to APL within one month from the date of final judgment. Accordingly, the adjustment of any excess realization paid to GUVNL will be refunded to APL only after the dispute is decided in the favour of APL and such final decision may only be taken after disposal of Civil Appeal No. 2567 of 2013 by the Hon'ble Supreme Court;
- (vi) GUVNL vide letter dated 1.2.2011 had stated that the issue of non-identification of sale of Gujarat share in Power Exchange transactions. However, the said issue was neither contested nor challenged by APL in the impugned order dated 31.7.2017.

2. Learned counsel for APL submitted that the present Review Petition is not maintainable as the Petitioner is seeking re-opening of the issues which was already decided by the Commission vide its order dated 31.7.2017 and has failed to demonstrate that there is an error apparent on the face of the record. Learned counsel for APL further submitted as under:

- (i) None of the issues raised by GUVNL falls under review and the matter cannot be reargued *de novo*;
- (ii) Under the PPA towards GUVNL for sale of power, the claim is only towards the merchant capacity of Units 5 and 6, and are not related to Units 1 to 4 of the Mundra Power Plant;
- (iii) Minutes of the Meeting dated 31.12.2010 had been adjudicated by the Gujarat Electricity Regulatory Commission, Central Electricity Regulatory Commission and by the Hon'ble Supreme Court. The Central Commission had already considered the compensation at the rate of the difference between the

weighted average merchant sale rate of power by GUVNL for the corresponding months and the PPA tariff (with applicable rebate @ 2%);

(iv) In terms of the order dated 31.7.2017, APL vide letter dated 12.8.2017 had informed GUVNL that APL is entitled to compensation along with the interest payable, however, till date the said amount is outstanding;

(v) Therefore, the review petition is not maintainable.

3. In its rebuttal, the learned counsel for GUVNL submitted that the Commission in order dated 31.7.2017 in Petition No. 154/MP/2015 has considered the fact that APL has supplied the power from Units 1 to 4 and from Units 5 and 6 to UPPCL. Learned counsel further submitted that the Letter of Intent which has been placed by UPPCL on APL and the total quantum which is purchased by the UPPCL for 600 MW is from all the units of the Mundra Power Plant.

4. After hearing the parties, the Commission directed the review petitioner, GUVNL and respondent APL to file their written submissions with copy to each other, on or before 5.6.2018. The Commission further directed that due date of filing the written submissions should be strictly complied with. No extension shall be granted on that account.

5. Subject to above, the Commission reserved the order in the petition.

**By order of the Commission**

**-Sd/-  
(T. Rout)  
Chief (Law)**