

# CENTRAL ELECTRICITY REGULATORY COMMISSION

## NEW DELHI

### Petition No.179/MP/2023

- Subject : Petition under Section 11(2) of the Electricity Act, 2003 read with 79 of the Electricity Act, 2003, along with Regulation 111-113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 *inter-alia* seeking a declaration/direction with regard to the principles/ methodology to be adopted for computation of the rate/ compensation at which such supply of power to Respondent Nos. 1 to 8 for the period between being 15.03.2023 to 16.06.2023, or such other period as extended by Ministry of Power from time to time, based on principles laid down with respect to Section 11(2) of the Electricity Act, 2003.
- Date of Hearing : **15.12.2023**
- Coram : Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Tata Power Company Limited (TPCL)
- Respondents : Gujarat Urja Vikas Nigam Limited (GUVNL) and 8 Ors.
- Parties Present : Shri Sajan Poovayya, Sr. Advocate, TPCL  
Ms. Shubhi Sharma, Advocate, TPCL  
Shri Deepak Thakur, Advocate, TPCL  
Shri Neel Kandan Rahate, Advocate, TPCL  
Shri M. G. Ramachandran, Sr. Advocate, HPPC & PSPCL  
Shri Ravi Nair, Advocate, HPPC & PSPCL  
Ms. Poorva Saigal, Advocate, HPPC & PSPCL  
Ms. Swapna Seshadri, Advocate, GUVNL & Rajasthan Discoms  
Ms. Kriti Soni, Advocate, Rajasthan Discoms & GUVNL  
Ms. Shivani Verma, Advocate, GUVNL & Rajasthan Discoms  
Shri G. Sai Kumar, Advocate, MSEDCL  
Shri Shaida Dass, Advocate, MSEDCL  
Shri R. Birde, RUVNL

### Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking a declaration/direction with regard to the principles/ methodology to be adopted for the computation of the rate/compensation at which supply of power under terms of directions as issued by the Ministry of Power on 20.2.2023 under Section 11 of the Electricity Act, 2003 ("Directions 2023") to Respondent Nos. 1 to 8 for the period between 15.3.2023 to 16.6.2023 or such other period as extended by the Ministry of Power from time to time, based on the principles laid down with respect to Section 11(2) of the Act. Learned senior counsel further submitted as under:

(a) In the Petition itself, the Petitioner has also prayed for an interim relief that pending the final adjudication of the present Petition, Respondents be, *inter-alia*, directed to make timely and complete payment at the interim provisional tariff at the rate calculated as per the methodology adopted by the Commission through order dated 3.1.2023 in Petition No. 128/MP/2022 in respect of the Ministry of Power's Section 11 directions dated 5.5.2022 ("Directions 2022")

(b) Keeping in view that initially the validity of Directions 2023 was only for three months, the Petitioner did not press for the aforesaid interim relief as prayed for. However, the validity of Directions 2023 has now been extended up to 30.6.2024.

(c) The rates determined by the Committee constituted under Directions 2023 are inadequate and do not cover the actual cost of the generation and supply of power by the Petitioner under the Section 11 regime. As a result, the Petitioner is continuously incurring additional expenditure over and above the rates determined by the Committee in order to comply with the Directions 2023. The Petitioner has already incurred an additional expenditure to the tune of Rs. 1045 crore on this count. If this situation is allowed to persist, it may lead to an eventuality where the Petitioner might be required to shut down its Plant.

(d) The Commission, by its order dated 30.1.2023 in Petition No. 128/MP/2022, has already provided a methodology to compute the compensatory tariff to allow recovery of the cost of the generation along with reasonable margin for the adverse impact suffered by the Petitioner on account of the Directions 2022. Hence, during the pendency of the present Petition, the Respondents ought to be directed to make the payment at an interim provisional tariff calculated as per the methodology prescribed in the order dated 30.1.2023 for the supply under the Directions 2023.

(e) Pendency of Appeal No. 92 of 2023 and batch (filed against the order dated 30.1.2023) or the stay granted on the order dated 30.1.2023 may not come in the way of allowing an interim relief being prayed for by the Petitioner. In any case, APTEL, by its order dated 6.4.2023, has categorically directed the Respondents herein to make payment of 50% of the disputed amount in the interest of balancing equity between the parties. Hence, Respondents ought to be directed to make at least part payment towards the additional expenditure incurred by the Petitioner in complying with Directions 2023.

(f) In view of the above pressing circumstances, the Commission may take up the Petitioner's prayers for interim relief/direction for the hearing.

2. Learned counsel for Respondents, PSPCL and Rajasthan Discoms, at the outset, sought liberty to file their reply in the matter. Learned counsels submitted that the Petitioner is treating the Commission's order dated 30.1.2023, passed in respect of the Directions 2022, as precedence for the rates/tariff for supply under the Directions 2023. However, the terms & conditions of the Directions 2023 are quite different from those of the Directions 2022. Learned counsel also requested that Respondent GUVNL's Petition No. 117/MP/2023 also be taken up along with the present Petition, which is listed for the hearing on 24.1.2024. Learned counsel for Respondent, MSEDCL submitted that Appeal No. 92 of 2023 and batch, has already been taken up for the hearing by the APTEL, next being listed in January 2024 wherein the APTEL, *inter-alia*, is also examining the jurisdictional aspect of this Commission to grant an additional tariff under Section 11(2) of the Act when the

Section 11 Directions already provided a specific tariff/rate over and above the PPA rates.

3. Considering the submissions made by the learned senior counsel and learned counsel for the parties, the Commission permitted the Respondents, PSPCL and Rajasthan Discoms to file their reply within a week with a copy to the Petitioner, who may file its rejoinder within a week thereafter.

4. The Commission also observed that keeping in view that the Committee constituted by the Ministry of Power, under Section 11 Directions, undertakes the determination of the benchmark rates on a fortnightly basis, the Petitioner ought to first take up the aspect of under-recovery of the cost of actual generation vis-à-vis the benchmark rates with such Committee and accordingly, the Petitioner was asked to approach the aforesaid Committee along with its representation and to file on affidavit, the outcome thereof, if any, within a week. In the said affidavit, the Petitioner may also indicate similar efforts undertaken by it, if any, in the past and the outcome thereof.

5. The present Petition will be listed for the hearing on **3.1.2024**.

**By order of the Commission**

**Sd/-  
(T.D. Pant)  
Joint Chief (Law)**