

**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.

Petitioner : Tata Power Company Limited (TPCL)

Respondents : Gujarat Urja Vikas Nigam Limited (GUVNL) and 8 Ors.

**Petition No.79/MP/2023**

Subject : Petition under Section 79(1)(b) and (f) and Section 63 of the Electricity Act, 2003 for adjudication and recovery of the amount payable by Tata Power Company Limited on account of the Sellers Event of Default in terms of Article 14.1(iv) as read with 14.3.4 of the Power Purchase Agreement dated 22.04.2007.

Petitioner : Punjab State Power Corporation Limited (PSPCL)

Respondents : Tata Power Company Limited (TPCL) and 7 Ors.

**Petition No.92/MP/2023 along with IA No. 24/2023**

Subject : Petition under Section 142 of the Electricity Act seeking to initiate appropriate action against Gujarat Urja Vikas Nigam Limited inter alia against its deliberate non-compliance of directions as issued by this Central Commission through its Order dated 3.1.2023 in Petition No. 128/MP/2022.

Petitioner : Tata Power Company Limited (TPCL)

Respondents : Gujarat Urja Vikas Nigam Limited (GUVNL) and 2 Ors.

Date of Hearing : **12.2.2024**

Coram : Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member

Parties Present : Shri Sajan Poovayya, Sr. Advocate, TPCL  
Shri Sanjay Sen, Sr. Advocate, TPCL



Ms. Subhi Sharma, Advocate, TPCL  
Shri Deepak Thakur, Advocate, TPCL  
Ms. Samprati Singh, Advocate, TPCL  
Shri Divyansh Kasana, Advocate, TPCL  
Ms. Mandakini Ghosh, Advocate, TPCL  
Shri M. G. Ramachandran, Sr. Advocate, GUVNL, PSPCL & HPPC  
Ms. Poorva Saigal, Advocate, PSPCL & HPPC  
Shri Shubham Arya, Advocate, PSPCL & HPPC  
Ms. Pallavi Saigal, Advocate, PSPCL & HPPC  
Ms. Reeha Singh, Advocate, PSPCL & HPPC  
Ms. Anumeha Smiti, Advocate, PSPCL & HPPC  
Ms. Srishti Khindaria, Advocate, GUVNL  
Ms. Kriti Soni, Advocate, GUVNL  
Shri Tarun Kumar, Advocate, MSEDCL  
Shri G. Saikumar, Advocate, MSEDCL

### **Record of Proceedings**

Learned senior counsel for the Petitioner, TPCL in Petition No.179/MP/2023 submitted that the said Petition has been filed, *inter alia*, seeking a declaration/direction with regard to the principles/methodology to be adopted for computation of the rate/compensation at which supply of power in terms of directions 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 30.6.2024 or such other period as extended by the Ministry of Power from time to time, is to be made as per Section 11(2) of the Act. Learned senior counsel mainly submitted as under:

(a) Keeping in view that the Directions, 2023 has been extended up to 30.6.2024 (as against originally envisaged up to 16.6.2023), and there is a considerable gap between the actual cost-based Energy Charge Rate (ECR) and the ECR determined by the Committee constituted under Directions 2023 – thereby leading to substantial under/short recovery, the Petitioner is, at this stage, pressing for the interim relief as prayed for in the Petition, i.e. pending final adjudication of the present case, the Respondents be directed to make a payment at interim provisional tariff at the rate calculated as per the methodology adopted by the Commission through an 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) For instance, for the period between 16<sup>th</sup> April, 2022 to 23<sup>rd</sup> April, 2022, the ECR notified by the Committee was Rs. 4.64/kWh and as per the Commission's Order dated 3.1.2023, it worked out to Rs. 6.25/kWh whereas the actual cost based ECR was Rs. 6.83/kWh. Similarly, for the period between 22<sup>nd</sup> January, 2024 to 31<sup>st</sup> January, 2024, ECR notified by the Committee was Rs. 3.97/kWh and as per the Commission's order dated 3.1.2023, it worked out to Rs. 4.37/kWh, whereas the actual cost based ECR was 4.54/kWh.

(c) Over the period, the difference between the ECR notified by the Committee and the actual cost-based ECR has come down. However, there still has been a difference of Rs.0.80/kWh in the ECR notified by the Committee and actual cost-based ECR on an average basis for the period starting from 16<sup>th</sup> April, 2022 to

31<sup>st</sup> January, 2024 – leading to short / under-recovery of revenue to the tune of Rs. 1231 crore. In this regard, a tabulated chart indicating the ECR as notified by the Committee, as per Commission's order dated 3.1.2023 and actual basis along with corresponding short recovery of revenues was circulated and relied upon.

(d) Pursuant to the direction of the Commission vide Record of Proceedings for the hearing dated 15.12.2023, TPCL had also approached the Ministry of Power vide its letter dated 27.12.2023 for bridging the gap between the current methodology for computing the ECR by the Committee and the actual cost based ECR. In the Minutes of Meeting held by Committee dated 2.1.2024, various issues raised by TPCL, including the difference in GCV of imported coal (Committee is considering FoB Coal price of imported coal of 5000 kCal/kg whereas TPCL is consuming imported coal of 5350 kCal/kg) were noted.

(e) The Committee, however, noted that since it is computing the benchmark tariff in time bound manner, it would not be appropriate to go by actual coal utilized by Imported Coal Based (ICB) Plants and that since most ICB Plants are using imported coal of about 5000 kCal/kg, the Committee has decided to use the same for computation of the benchmark ECR and for any variations in the coal grade, ICB can get the relief from the Appropriate Commission.

(f) Although the APTEL, by its order dated 18.4.2023 in Appeal No.92 of 2023 and batch, has directed an interim stay on order dated 3.1.2022 subject to payment of 50% of the amount due to TPCL in terms of the said order, the APTEL has clearly indicated that its order dated 18.4.2023 will have no bearing on the subsequent 2023 Directions. As such, there is no restriction on granting/allowing the interim prayers as prayed for by TPCL.

(g) Since the actual adverse financial impact for the supply period under Directions 2023 would be determined at the end of such period, the Commission may, at this stage, allow the interim prayers as prayed for by TPCL.

2. In response to the specific queries of the Commission with regard to the difference/gap attributable to coal cost alone out of the total difference in the ECRs worked out as per the Committee, order dated 3.1.2023 and the actual costs as indicated in the circulated chart, and also the head-wise break-up of the ECR computations, learned senior counsel sought liberty to place such details by way of an additional affidavit.

3. Learned senior counsel for the Respondents mainly submitted the following:

(a) None of the details/information as referred to, including its correspondence with the Ministry of Power pursuant to the direction of the Commission, has been placed on the record, and TPCL be directed to furnish such details/information on an affidavit.

(b) The Commission's order dated 3.1.2023 takes the HPB price, based on the HBA index, as a base for fixing the price of the imported coal from Indonesia. However, subsequently, the Commission has itself, in its order dated 25.9.2023 in Petition No.12/SM/2023 considered the Argus CoalIndo / S&P Global Platts indices. Hence, the FoB price of coal to be considered cannot be in excess of published indices of the relevant period of Argus CoalIndo / S & P Global Platts and the incremental royalties and taxes payable based on HBA-derived prices.

(c) The Minutes of Meeting of Committee dated 2.1.2024 also specifically records that none of the ICB Plants raised any issue related to the index to be used for computation of coal prices, and accordingly, it decided to take the lower of Argus and Platts Indices for computation of coal prices. It also notes that sometimes coal is available at a discount whereas sometimes at a premium, and therefore, the Committee decided to only consider the Index values.

(d) The coal from PT Kaltim Prima Coal (in which TPCL owns 30% shareholding through its subsidiary) was available to TPCL for generation at its Mundra Plant. However, there is no cause or justification for TPCL to have not sourced the quantum of coal requirements from the said mine at the prudent price. As such, presently, there is no sharing of mining profit by TPCL.

(e) Contrary to what has been stated, the actual GCV of the imported coal for the period between April, 2023 to August, 2023 as per TPCL's own data, ranges from 4891 kCal/kg to 5478 kCal/kg. TPCL may be directed to provide such details for the period beyond August, 2023.

(f) Taking into account the Argus Index and prudently incurred other charges such as shipping, insurance and port handling charges, the computation of ECR for the period April, 2023 to August, 2023 would reveal that TPCL is being paid far in excess of the amount admissible. In other words, ECR, as determined by the Committee, is already in excess of TPCL's entitlement.

(g) Therefore, it is incorrect on the part of TPCL to claim any relief interim or final on an *ad hoc* basis in the format contained in the order dated 3.1.2023.

4. Considering the submissions made by the learned senior counsel for the parties, the Commission directed TPCL to furnish the following details/ information on affidavit within two weeks.

a. Month-wise, 01.01.2023 to 31.12.2023, the quantity of coal, GCV, Charges paid to coal company, charges incurred for transportation through the sea, inland transportation charges, etc in the following format:

Month	Source of Coal (Vendor and Country)	Quantity of Coal Received (MT)	GCV of Coal Received (kCal / kg)	Charges Paid to Coal Company (Rs.)	Transportation Charges up to Indian Port (Rs.)	Inland Transportation Charges (Rs.)	Other Charges (Rs.)	Landed Cost (Rs.)
01.03.2023 – 15.03.2023								
16.03.2023 – 31.03.2023								
....								
01.12.2023 – 31.12.2023								

b. Component-wise break-up of ECR (i.e. fuel cost, transportation for importing, inland transportation, mining profit, etc.) for ECR notified by the Committee (if available), ECR calculated as per the Commission's Order dated 3.1.2023 and actual ECR for the months of April 2023, May 2023, November 2023 and December 2023.

c. Month-wise availability declared, energy scheduled by the beneficiaries, energy generated, energy supplied to the beneficiaries, energy sold in the market, revenue realized through sale of energy in short term / exchange etc.

Month	DC (MW)	Energy Scheduled by Long term and Medium Beneficiaries (MUs)	Actual energy generated (MUs)	Energy supplied to long term / Medium Term Beneficiaries (MUs)	Energy Sold in Short term / exchange (MUs)	Revenue realized through sale of power in short term / exchange (Rs.)
01.01.2023 – 31.01.2023						
01.02.2023 – 28.02.2023						
....						
01.12.2023 – 31.12.2023						

d. Month-wise, 01.01.2023 to 31.12.2023, total mining profit realised by the Petitioner.

5. The Respondent, GUVNL, shall furnish the detailed computation in arriving at ECR for the period from April 2023 to August 2023 along with assumptions considered thereof.

6. The Commission permitted the Respondents/Procurers to file their response/comments on the above details/information, if any, within 10 days with a copy to TPCL, who may file its rejoinder, if any, within a week thereafter.

7. Based on the request of the learned senior counsel for both sides, the Commission also directed to list the Petition Nos. 117/MP/2023, 92/MP/2023 and 79/MP/2023, along with the Petition No. 179/MP/2023 for the sake of convenience.

8. The matters will be listed for hearing on **13.3.2024 at 2.30 P.M.**

**By order of the Commission**

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