

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 111/MP/2022

Subject : Petition under Section 79(1)(b) of the Electricity Act, 2003 read with Clause 5(b) of the Settlement Deed dated 3.1.2022 and Supplemental PPA dated 30.3.2022 entered into between the Petitioner and the Respondent in regard to the base rate as on 15.10.2018.

Date of Hearing : 21.4.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)

Respondent : Adani Power (Mundra) Limited (APMuL)

Parties Present : Shri M. G. Ramachandran, Sr. Advocate, GUVNL
Shri Anand K. Ganesan, Advocate, GUVNL
Ms. Swapna Seshadri, Advocate, GUVNL
Ms. Anushree Bardhan, Advocate, GUVNL
Ms. Tanya Sareen, Advocate, GUVNL
Ms. Srishti Khindaria, Advocate, GUVNL
Shri Amit Kapur, Advocate, AMPuL
Ms. Poonam Verma, Advocate, AMPuL
Shri Saunak Rajguru, Advocate, AMPuL
Shri S.K.Nair, GUVNL
Shri Vipula Lathiya, GUVNL
Shri Krishna Roa, AMPuL
Shri Sameer Ganju, AMPuL
Shri Malav Deeliwala, AMPuL
Shri Tanmay Vyas, AMPuL
Shri Mehul Rupera, AMPuL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, for determination of base rate of energy charge as on 15.10.2018 in terms of Clause 5(b) of the Settlement Deed dated 3.1.2022 and Supplemental Power Purchase Agreements ('SPPAs') dated 30.3.2022 entered into between the Petitioner and APMuL. Learned senior counsel further submitted the following:

(a) The Petitioner and APMuL have entered into a Settlement Deed dated 3.1.2022 setting out the terms and conditions on which they have settled various

outstanding issues, disputes and differences between them in regard to generation and sale of electricity under the two PPAs dated 2.2.2007 and 6.2.2007.

(b) In terms of the settlement reached, the parties had also filed a joint application before the Hon'ble Supreme Court being IA No. 1421 of 2022 for taking on record the Settlement Deed and for passing order for disposal of the Curative Petition (C) No. 34 of 2020 in terms of the settlement. The Hon'ble Supreme Court by order dated 8.2.2022 took on the record the Settlement Deed dated 3.1.2022 and disposed of the said Curative Petition with the observation that the *inter se* relationship between the parties shall now be governed by the said Settlement Deed.

(c) In Clause 5(b) of the Settlement Deed, it has been agreed that the payment of energy charges shall be linked to the escalation rates notified by the Commission from time to time for which the base rate is to be determined and the Petitioner shall request this Commission for determination of the base rate for sub-parameters viz. FOB coal cost (in USD/kWh) for quality of coal consumed including other charges, Ocean Freight (In USD/kWh) and Port Handling Charges (in Rs./kWh) as on 15.10.2018 based on the normative operating parameters as per the provisions of the SPPA dated 5.12.2018.

(d) Government of Gujarat has issued G.R dated 25.2.2022 regarding signing of the SPPAs between the parties and accordingly, the Petitioner and APMuL have entered into SPPAs dated 30.3.2022 for modification to SPPAs dated 5.12.2018 for implementation of Settlement Deed.

(e) The Petitioner has already furnished the relevant aspects in regard to the determination of base rates under both the SPPAs dated 30.3.2022. However, APMuL may be directed to submit the actual documents/copy of contracts in support of FOB price of coal utilised & other charges, transportation and port handling required for determination of base rates.

(f) Accordingly, the Petitioner has prayed (i) to take on record the SPPAs dated 30.3.2022 and Settlement Deed dated 3.1.2022, and (ii) to initiate a proceedings for determination of base rate as on 15.10.2018 and recommend to Government of Gujarat the base rate taking into account the relevant matters including those mentioned in the Petition and the paramount aspect of consumer interest.

3. Learned counsel for the Respondent, APMuL accepted the notice and sought two days' time to file reply in the matter.

4. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondent, APMuL, the Commission ordered as under:

(a) Admit.

(b) The Petitioner to serve copy of the Petition on the Respondent immediately, if not already served and the Respondent to file its reply by 26.4.2022 after serving copy of the same to the Petitioner, who may file its rejoinder, if any, by 3.5.2022.

(c) The Respondent to provide the following details/information on affidavit by 26.4.2022:

(i) Coal quantity consumed in October, 2018 for supply under SPPA dated 5.12.2018 duly certified by Auditor;

(ii) GCV (quality) of such quantity of coal consumed in October, 2018 for supply under SPPA dated 5.12.2018. In case of different GCV coal is consumed in October, 2018 for supply under SPPA dated 5.12.2018 by blending or otherwise and used for generation, the details of each such GCV and the quantity used thereof;

(iii) Coal Quantity and GCV (quality) to be backed by certificate of analysis at both ends i.e. at load port end and at discharge port end for each shipment; and

(iv) Maximum coal stocking/storage capacity for Mundra Plant.

(d) Parties to comply with the above directions within the specified timeline and no extension of time shall be granted.

5. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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