

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 111/MP/2022

Along with

I.A. No. 36/IA/2022

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 13th June, 2022

In the matter of:

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.

In the matter of:

Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan,
Race Course Circle,
Vadodara-390 007

.....**Petitioner**

Vs

Adani Power (Mundra) Limited
Shikhar, Near Mithakhali Circle,
Navrangpura,
Ahmedabad-380 009

.....**Respondent**

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 Rao, AMPuL
Shri Sameer Ganju, AMPuL
Shri Malav Deeliwala, AMPuL
Shri Tanmay Vyas, AMPuL
Shri Mehul Rupera, AMPuL

ORDER

The Petitioner, Gujarat Urja Vikas Nigam Limited (hereinafter 'GUVNL') has filed the present petition for placing on record the Supplementary Agreements dated 3.1.2022 to PPAs dated 2.2.2007 and 6.2.2007 entered into between the Petitioner and Adani Power (Mundra) Limited (APMuL), the Respondent herein and for determination of the Base Rate of imported coal used in Units 1 to 6 of the Mundra Power Project of APMuL as on 15.10.2008 taking into account the consumer interest and all relevant factors pleaded in the petition and recommend the Base Rate to the Government of Gujarat.

Background

2. Based on tariff based competitive bidding, GUVNL and Adani Power (predecessor of APMuL) entered into two PPAs - PPA dated 2.2.2007 (hereinafter "Bid-2 PPA") for supply 1000 MW power from Units 5 and 6 and PPA dated 6.2.2007 (hereinafter "Bid-1 PPA") for supply of 1000 MW power from Units 1 to 4 of Mundra Power Project. Bid-2 PPA was premised on availability of domestic coal by GMDC. On account of failure of GMDC to make the domestic coal available, APMuL terminated the Bid-2 PPA on 28.12.2009 to be effective from 4.1.2010. Termination of Bid-2 PPA was challenged by GUVNL before Gujarat Electricity Regulatory Commission (GERC) through Petition No.1000/2010. GERC in its order dated 31.8.2010 held the termination of the PPA as

illegal which was upheld by Appellate Tribunal for Electricity (APTEL) vide its judgement dated 7.9.2011 in Appeal No.184/2010. APMuL challenged the order of APTEL in Civil Appeal No. 11133/2011. In the meantime, the Units 1 to 6 of Mundra Power Project achieved commercial operation and supplied power to GUVNL in accordance with the PPAs by using imported coal from Indonesia.

3. On 23.9.2010, Minister of Energy and Mineral Resources, Republic of Indonesia promulgated “Regulation of Ministry of Energy and Mineral Resources No.17 of 2010” (hereinafter “Indonesian Regulations”) which aligned any sale of coal from Indonesia with Harga Batubara Acuan (HBA) price which was to be determined based on the international price of coal. APMuL approached the Commission by filing Petition No. 155/MP/2012 seeking to evolve a mechanism to restore APMuL to the same economic position as prevailing prior to promulgation of Indonesian Regulations. The Commission vide order dated 2.4.2013 decided that the Indonesian Regulations are neither covered under Change in Law nor under Force Majeure but directed for grant of relief in exercise of regulatory of the Commission under Section 79(1)(b) of the Act. Subsequently, the Commission vide order dated 21.2.2014 granted compensatory tariff to APMuL. The APTEL set aside the said orders of the Commission and held that the Indonesian Regulations constituted force majeure under the PPA. On appeal, Hon’ble Supreme Court vide its judgment dated 11.4.2017 in CA No. 5399-5400 of 2016 [Energy Watchdog vs Central Electricity Regulatory Commission & Ors., [(2017) 14 SCC 80] (hereinafter referred to as “Energy Watchdog Case”) decided that enactment of Indonesian Regulations did not constitute either a change in law or Force Majeure, as contractually specified under the respective PPAs.

4. Government of Gujarat vide its Resolution dated 3.7.2018 constituted a High Power Committee for resolution of the issues of imported coal based power projects located in the State of Gujarat. The High Power Committee submitted its report to the Government of Gujarat suggesting certain financial and commercial resolution packages. Before implementing the recommendations of the High Power Committee, Government of Gujarat and GUVNL sought a clarification from the Hon'ble Supreme Court whether any amendments to the PPAs in the light of the recommendations of the High Power Committee would be possible on the face of the judgment of the Hon'ble Supreme Court in Energy Watchdog Case. Hon'ble Supreme Court vide its order dated 29.10.2018 clarified that the judgment in the Energy Watchdog Case would not stand on the way of maintaining any application for amendment to the PPA before the Commission. Thereafter, Government of Gujarat issued the policy directive vide GR dated 1.12.2018 accepting some of the recommendations of the High Power Committee. Consequent to the issue of the policy directive, GUVNL and APMuL signed supplementary PPAs dated 5.12.2018 to Bid-01 and Bid-02 PPAs and approached the Commission through Petition No. 374/MP/2018 for approval of the supplementary PPAs. The Commission vide its order dated 12.4.2019 in Petition No. 374/MP/2018 approved the supplementary PPAs to Bid-01 PPA and Bid-02 PPA.

5. Hon'ble Supreme Court disposed of Civil Appeal No. 11133/2011 vide its judgment dated 2.7.2019 upholding the termination of Bid-02 PPA by APMuL w.e.f. 4.1.2010 and granting liberty to APMuL to approach the Commission for determination of compensation tariff from the date of supply of electricity to GUVNL. The Review Petition filed by GUVNL

against the judgement dated 2.7.2019 was dismissed by the Hon'ble Supreme Court. APMuL filed Petition No. 275/MP/2019 before the Commission for determination of tariff from the date of supply of electricity to GUVNL. GUVNL filed Curative Petition (C) No.34 of 2020 before the Hon'ble Supreme Court for reconsideration of the judgement dated 2.7.2019 in Civil Appeal No. 11133/2011. GUVNL also filed Petition No. 250/MP/2019 before the Commission for recall of the order dated 12.4.2019 in Petition No. 374/MP/2018. APMuL filed Petition No. 614/MP/2020 seeking direction to GUVNL to comply with the terms of Bid-01 PPA as amended by the supplementary PPA dated 15.10.2018 and pay the entire energy charges on account of actual cost of coal incurred for spot procurement of coal without any deduction or adjustment along with late payment surcharge.

6. While the above petitions were under consideration of the Commission, both APMuL and GUVNL signed a Settlement Deed dated 3.1.2022 setting out the terms and conditions of settlement of various outstanding issues, disputes and differences between them with regard to the generation and sale of electricity by APMuL to GUVNL under the Bid-01 and Bid-02 PPAs. Pursuant to the Settlement Deed, both APMuL and GUVNL filed a joint application namely, IA No. 1421/2022 in Curative Petition(C) No. 34/2020 before the Hon'ble Supreme Court placing the Settlement Deed on record and for passing orders for the disposal of the Curative Petition (C) No. 34 of 2020 in terms of the settlement. Hon'ble Supreme Court vide order dated 8.2.2022 disposed of the IA No. 1421/2022 along with Curative Petition No. 34/2020 with the following directions:

“During the pendency of the Curative Petition, the parties have settled the dispute.

The Petitioner and Respondent No. 1 have filed a joint application, I.A. No. 1421/2022, to place on record the deed of settlement dated 3.1.2022 entered between them, regarding the subject matter of the present petition. The Settlement Deed dated 3.1.2022 is taken on record.

In view of the above, we dispose of the present Curative Petition with the observation that the inter se relationship between the parties shall now be governed by the settlement deed dated 3.1.2022.

I.A. No. 1421/2022 and Curative Petition (C) No. 34 of 2020 are disposed of in the above terms.”

7. Both APMuL and GUVNL also filed Interlocutory Applications in Petition No. 250/MP/2019, 275/MP/2019 and 614/MP/2020 pending before the Commission for taking on record the Settlement Deed and for passing appropriate orders. The Commission vide its orders dated 21.2.2022 has disposed of the above mentioned petitions.

8. Government of Gujarat issued G.R. dated 25.2.2022 regarding signing of the Supplemental PPAs between GUVNL and APMuL and approaching the Commission for determination of base rate as on 15.10.2018 for the sub-parameters such as 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) based on normative operating parameters as per provisions of SPPAs dated 5.12.2018. APMuL and GUVNL have entered into Supplementary Power Purchase Agreements dated 30.3.2022 in Bid-01 and Bid-02 PPAs incorporating the relevant terms and conditions of Settlement Deed 3.1.2022 and directions of Government of Gujarat in the G.R. dated 25.2.2022. The Petitioner, GUVNL has filed the present petition with the following prayers:

“(a) Take on record the Supplementary Power Purchase Agreements dated 30.3.2022 and the Settlement Deed dated 3.1.2022;

(b) Initiate a proceeding for determination of the Base Rate as on 15.10.2018 and recommend to the Government of Gujarat the Base Rate taking into account the relevant matters including those mentioned hereinabove in the present Petition and the paramount aspect of Consumer Interest; and

(c) Pass any further orders that this Hon'ble Commission may deem fit.”

Submission of the Petitioner

9. The Petitioner, GUVNL has submitted that the generation and supply of electricity by APMuL to GUVNL shall be governed by the provisions of Bid-01 and Bid-02 PPAs as amended/modified by the Supplementary Power Purchase Agreements dated 5.12.2018 and Supplemental Power Purchase Agreements dated 30.3.2022.

10. The Petitioner has submitted that Clause 5(b) of the Settlement Deed inter alia provides as under:

“5. APMuL and GUVNL hereby mutually agree on the following terms in regard to the tariff admissible in modification and supersession of the terms contained in the PPA dated 2.2.2007 read with the related SPPA dated 5.12.2018 which shall be effective 15.10.2018 and govern the period till 9.7.2019 and thereafter from the date of the commencement of the supply under this Settlement for the entire duration and in PPA dated 6.2.2007 read with related SPPA dated 5.12.2018 which shall be effective 15.10.2018 and govern the entire duration.

.....

b. To avoid disputes in relation to energy payments and to ensure pass through of coal cost in a prudent and transparent manner, it is decided that the payment of energy charges shall be linked to the escalation rates notified by CERC from time to time for which the base rate is to be determined. GUVNL shall request CERC for determination of the base rate for following 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 normative operating parameters as per provisions of SPPA dated 5.12.2018.”

11. The Petitioner has submitted that Government of Gujarat through its GR dated 25.2.2022 has issued the following resolution for signing of the Supplemental PPAs:

“Accordingly, GUVNL and Adani Power shall sign a Supplemental PPA with the following modifications:

1. The HBA index ceiling of FOB price of coal of USD 110/MT as per the Government of Gujarat as per the SPPAs dated 5.12.2018 and ceiling of USD 90/MT as per the Government guideline dated 12.6.2020 shall be deleted and the provision related to reset of the aforesaid ceiling from time to time shall also be deleted.
2. The existing provision in SPPA related to computation of energy charges and working of landed cost of fuel shall be modified and a provision shall be incorporated whereby energy charge shall be worked out considering the base rate recommended by Hon’ble CERC and finally approved by State Government for following sub-parameters as on 15.10.2018 viz. (i) FOB coal cost (in USD/kWh) for quality of coal consumed including other charges (ii) Ocean Freight (in USD/kWh) and (iii) Port Handling charges (in Rs./kWh), based on normative operating parameters as per provisions of SPPA dated 5.12.201. The base rate as approved by the State Government on 15.10.2018 shall be linked to the applicable escalation rates notified by CERC from time to time.
3. In addition to above applicable tax, duties and cess etc. on energy charges shall be payable as per the SPPA on reimbursement basis, for which separate invoices shall be raised, whereas other Change in Law shall be as per PPA with approval of CERC.
4. All other terms and conditions of PPA dated 6.2.2007 (Bid-01) and PPA dated 2.2.2007 (Bid-02) read with respective SPPAs dated 5.12.2018 including ceiling of Transportation charges and Port Handling Charges will remain unchanged. The rebate on payment of Monthly Invoices shall be as per PPAs dated 6.2.2007 (Bid-01) and PPA dated 2.2.2007 (Bid-02).
5. In view of the aforesaid and after signing of Supplemental PPA with Adani Power as per attached draft, GUVNL shall file a Petition before Hon’ble CERC for determination of the base rate as on 15.10.2018 for following sub-parameters viz. (i) FOB coal cost (in USD/kWh) for quality of coal consumed including other charges (ii) Ocean Freight (in USD/kWh) and (iii) Port Handling charges (in Rs./kWh), based on normative operating parameters as per provisions of SPPA dated 5.12.2018.
6. GUVNL shall thereafter submit the base rate as recommended by CERC to the Government of Gujarat for approval. Pursuant to the approval of the base rate by Government of Gujarat, the same shall be incorporated in the Supplemental PPA through the amendment to the SPPA and the same shall be final and binding on both the parties.
7. No claims/disputes shall be filed/raised by either parties related to the period prior to 15.10.2018 for PPAs dated 6.2.2007 (Bid-01) and PPA dated 2.2.2007 (Bid-02). Similarly, both parties shall not raise any claims for the period from 10.7.2020 till date of commencement of power supply under PPA dated 2.2.2007 (Bid-02).
8. The actual amounts paid by GUVNL to Adani Power under the PPAs dated 6.2.2007 (Bid-01) & PPA dated 2.2.2007 (Bid-02) read with the related SPPAs dated 5.12.2018 for the period from 15.10.2018 till date of settlement shall be adjusted against the

amount payable without interest as per the tariff to be reworked under the amended SPPA.

9. GUVNL shall submit the amended/modified SPPAs before CERC for allowing the aforesaid consequential changes/modification/amendments.”

12. The Petitioner has further submitted that the relevant provisions of the Supplemental PPAs dated 30.3.2022 (similar in both the SPPAs) signed between GUVNL and APMuL are as under:

“4.1 The following provisions in regard to the tariff admissible in modification and supersession of the terms contained in the PPA dated 6.2.2007 read with the related SPPA dated 5.12.2018 shall be effective from 15.10.2018 and govern the period for the entire duration of the PPA as provided in the SPPA dated 5.12.2018:

(1) The fixed or capacity charges shall be as per the terms of the PPA dated 6.2.2007 read with SPPA dated 5.12.2018 without any further change and the same shall be applicable throughout the duration of the PPA read with SPPAs.

(2) The Energy Charge Rate for determination of Energy Charges shall be determined based on a Base Rate to be determined as provided hereunder and the applicable escalation rates notified by the Central Electricity Regulatory Commission from time to time.

(3) Determination of Base Rate for Energy Charges: The Procurer shall request the Central Electricity Regulatory Commission for determination of the Base Rate for following 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 normative operating parameters as per provisions of SPPA dated 5.12.2018.

The Base Rate recommended by Central Electricity Regulatory Commission shall be submitted to the Government of Gujarat for approval. The Base Rate as per above would be finalised by the Government of Gujarat and the parties agree that they will abide by decision of the Government of Gujarat on the determination of the Base Rate mentioned above.

(4) In addition to the above, applicable tax, duties and cess etc. on energy charges shall be payable as per the SPPA dated 5.12.2018 on reimbursement basis, whereas other Change in Law shall be as per the PPA with approval of the Central Electricity Regulatory Commission. A separate Supplemental invoice as per PPA dated 06.02.2007 shall be raised for seeking reimbursement of approved Change in Law. There shall be no other consideration or claim for change in law in relation to variable/energy charges.

(5) Each of the 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 shall be thereafter escalated as per the applicable Central Electricity Regulatory Commission notified escalation rate from time to time related to imported coal. The month to month Energy charges based on Base Rate and escalation/adjustment provided by the Central Electricity Regulatory Commission shall apply for all intent and purposes for the period from 15.10.2018 onwards.

Base Rate for both escalable and non-escalable components of Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling charges shall be determined by the Central Commission subject to ceiling rate for each of them as per the SPPA dated 5.12.2018.

(6) The actual amounts paid by the Procurer to the Seller under the PPAs/SPPAs for the period from 15.10.2018 till date of settlement shall be adjusted accordingly without interest.”

7. For the purpose of working of monthly energy charges, the Article 3.2.3, 3.2.4, & 3.5.3 in both the SPPAs dated 5.12.2018 shall be substituted with the following:

Energy Charge shall be determined for each Month, as under:

Monthly energy charges for month ‘m’ will be calculated as under:

$$MEP_m = AEO_m \times MEP_n \text{ minus DT}$$

Where

MEP_m is the monthly Energy Charges for the month ‘m’ (in Rs)

AEO_m is the scheduled energy at the delivery point during the month ‘m’ (in kWh)

MEP_n is the Energy Charge, in Rs./kWh (upto four decimal), and is the sum of (a) : (i) Escalable Fuel Energy Charges ($MEFEP_n$) (ii) Escalable Transportation Energy Charges ($METEP_n$) (iii) Escalable Fuel Handling Energy Charges ($MEFHEP_n$) and (b): (i) Non Escalable Transportation Energy Charges ($MNETEP_n$) (ii) Non Escalable Fuel Handling Energy Charges ($MNEFHEP_n$) for the contract year ‘n’ in which Month ‘m’ occurs and computed as mentioned hereunder:

(a) Escalable Component of Energy Charge

- (i) $MEFEP_n = BMEFEP_n \times p/q \times FX_n \text{ Rate}$
- (ii) $METEP_n = BMETEP_n \times p/q \times FX_n \text{ Rate}$
- (iii) $MEFHEP_n = BMEFHEP_n \times p/q$

(b) Non-Escalable Component of Energy Charge

- (i) $MNETEP_n = BMNETEP_n \times FX_n \text{ Rate}$
- (ii) $MNEFHEP_n = BMNEFHEP_n$

Where ,

BMEFEPn is the Base Escalable Fuel Energy Charges (in USD per kWh upto five decimal) on 15.10.2018 as recommended by Central Electricity Regulatory Commission and approved by Government of Gujarat.

BMETEPn is the Base Escalable Transportation Charges (in USD per kWh upto five decimal) on 15.10.2018 as recommended by Central Electricity Regulatory Commission and approved by Government of Gujarat.

BMEFHEPn is the Base Escalable Fuel Handling Energy Charges (in INR per kWh upto four decimal) on 15.10.2018 as recommended by Central Electricity Regulatory Commission and approved by Government of Gujarat.

BMNETEPn is the Base Non Escalable Transportation Energy Charges (in USD per kWh upto five decimal) as recommended by Central Electricity Regulatory Commission and approved by Government of Gujarat for the Contract Year 'n'.

BMNEFHEPn is Base Non Escalable Fuel Handling Energy Charges (in INR per kWh upto four decimal) as recommended by Central Electricity Regulatory Commission and approved by Government of Gujarat for the Contract Year 'n'.

p is the Escalation Index as per Schedule A at the beginning of Month 'm' (expressed as a number)

q is the Escalation Index as per Schedule A as on 15.10.2018 (expressed as a number)

FXn shall be the simple average of closing SBI TT Selling Rate (for Rs./US \$) for last fifteen (15) days prior to the first day of the Month 'm' for which such exchange rates are published by SBI

DT is discount in relation to Mining Profit as determined in Clause 3.3 of SPPA dated 5.12.2018.

For the avoidance of doubt, this discount (DT) will be determined and applied only in respect of Energy Charge in respect of actual power generation for Contracted Capacity as specified in the PPA dated 2.2.2007 and in respect only of such proportion of the Capacity that pertains to Contracted Capacity linked to imported coal as Fuel.

In addition to the above, applicable tax, duties and cess etc. on energy charges shall be payable as per the SPPA dated 5.12.2018 on reimbursement basis, whereas other Change in Law shall be as per the PPA with approval of the Central Electricity Regulatory Commission.”

13. The Petitioner has prayed before the Commission for determination of the Base Rate and recommendation of the same to the Government of Gujarat to enable decision on the applicable Base Rate as on 15.10.2018 in regard to the payment of energy charges

under both Bid-01 and Bid-02 PPAs as amended/modified by the Supplemental Power Purchase Agreements dated 30.3.2022.

14. In connection with the determination Base Rates under both the SPPAs dated 30.3.2022, GUVNL has made the following submissions:

- (a) The objective of the Supplemental PPAs dated 30.03.2022 is to allow pass through of prudent coal cost which APMuL is expected to incur. Only judicious and prudent coal cost should be considered while determining the Base Rate as it has a long term implication on the consumers since the Base Rate will be linked to the escalation index notified by the Commission from time to time.

- (b) APMuL has been procuring coal through SPOT enquiries from limited parties, mainly from its group companies and not through a transparent tender process. The coal has been consistently sourced at price above the HBA derived price for the quality of coal consumed and also significantly higher than the price at which coal has been traded in Indonesia as per the rate published by indices of repute viz. Argus/Coalindo and S&P Global Platts and the rate at which coal has been sourced by other imported coal based projects located in the State. GUVNL has placed on record a Statement (Annexure 'F' to the Petition) showing the details of coal procured by APMuL vis-à-vis the coal procured by other imported coal based generator under PPA with GUVNL such as CGPL, HBA derived price and the rates published by indices of repute Argus/Coalindo and S&P Global Platts. GUVNL has submitted that if APMuL like other procurers of coal from Indonesia can secure

coal at a FoB price less than HPB derived price, there is no reason as to why the base rate should not be less than the HPB derived price.

(c) The Commission may consider the FOB price of coal as lowest of actual / HBA derived price for the quality of coal used by APMuL for generation of power at Mundra Power Project for supply of power to the Petitioner under the PPAs. However, for determination of the Base Fuel Energy Charge, only the prudent coal cost in line with the price at which coal was traded in Indonesia during the period, for the quality of coal consumed, should be considered.

(d) The Commission while deciding the Base Rate need to deduct the profit / margin paid by APMuL to its group companies as it is not appropriate that on the one hand, fuel cost is allowed as pass through in excess of the quoted tariff under PPA and on the other side, the group company makes profit towards supply of coal to the Respondents power plant.

(e) The Commission may consider the operational parameters as lower of actual and as per the Tariff Regulation of this Commission as on date of commissioning of the Units as per the SPPAs dated 5.12.2018 while determining the base Fuel Energy Charge as on 15.10.2018. The Base Rate for both escalable and non-escalable components of Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling charges shall be determined as on 15.10.2018 subject to ceiling rate for each of them as per the SPPA dated 5.12.2018 taking into consideration the operational parameters as lower of actual or as per Tariff Regulations whichever

is lower. In the SPPA dated 5.12.2018, the payment of both Transportation Energy Charges (Ocean Freight) and Port (Fuel) Handling Charges are subject to ceiling rates benchmarked with the CGPL bid. While determining the base rate for transportation charge and port handling charge as on 15.10.2018, the lower of the actual transportation cost incurred and the ceiling rate as per the SPPA dated 15.10.2018 to be considered to ensure that there is no adverse financial implication on the Petitioner and end consumers.

Reply of Adani Power (Mundra) Ltd.(APMuL)

15. The Respondent, APMuL vide its reply dated 26.4.2022 has submitted the following in response to the issues raised by GUVNL in its petition:

- (a) ***Coal procurement by APMuL at high prices:*** As per the 2018 and 2022 SPPAs, the energy charges formula as agreed therein is applicable from 15.10.2018 onwards (effective date). Prior to 15.10.2018, APMuL was entitled to energy charges as per quoted tariff under the PPAs. Subsequently, the 2018 SPPAs dated 5.12.2018 were signed. Article 3.2.4 of the 2018 SPPAs dated 5.12.2018 specifically allowed for a 'tolerance of maximum 10% over HBA price derived for a quality of coal'. This tolerance limit was provided admittedly because trades were taking place at a premium over the HBA prices which has been recorded by the Commission in its order dated 12.4.2019 in Petition No. 374/MP/2018. APMuL has always been prudently procuring coal. Prior to 15.10.2018, APMuL has been procuring coal at the HBA prices only. For the coal consumed in October 2018, APMuL had ordered/procured the same in August 2018 (2 vessels) and September

2018 (2 vessels). Since the 2018 SPPAs dated 5.12.2018 were signed only on 5.12.2018 i.e. much later to such coal procurement, APMuL was not aware of the energy charge pass-through mechanism or the premium of up to 10% agreed to in the 2018 SPPAs as on date of such procurement of coal. As such, there was no incentive (and no intention) for APMuL to procure coal at higher prices, as energy charges at the time of such procurement was payable at quoted tariff under the PPAs. Post 15.10.2018, APMuL has strictly adhered to Article 3.2.4 of the 2018 SPPAs dated 5.12.2018 and procured coal priced within HBA price + 10% tolerance. Post 15.10.2018, APMuL claimed actual coal cost or HBA price + 10% tolerance whichever is lower.

(b) ***Coal Supply under Indonesian Regulations:*** For the entire period of power supply by APMuL since 2012, the pricing, export, restrictions of IUP licensees for steam coal etc. are governed by “Regulation of the Government of the Republic of Indonesia No. 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities” dated 1.2.2010 [“2010 Government Regulations”]. The Indonesian Regulations all along the period of supply of power by APMuL till date continue to mandate coal suppliers not to export coal at prices below HBA index price. APMuL has been consistently procuring imported coal in terms of the Indonesian Regulations as amended from time to time. None of the Indonesian Regulations extracted by GUVNL show that coal export can take place at price less than benchmark price. Regulations 35-37 of 2018 Regulations referred by GUVNL deals with certain types (fine coal, reject coal and coal with certain impurities) and certain purposes of coal [(i) used for own purpose, (ii) to increase

the value added of coal at mine mouth location or (iii) for development of under-developed areas around the mine]. Such types of coal are not suitable for power generation at APMuL's Mundra Power Project and hence was not used. As such, these Regulations have no relevance for fixation of base rate in the present context. The extracts of PWC report annexed to the Petition does not support GUVNL's case that export of coal from Indonesia can take place at price less than HBA price.

(c) **CGPL's coal procurement data:** CGPL's coal procurement data furnished by GUVNL is misleading and has no relevance to the present matter. Coal procurement price depends on various factors such as the date of placement of the order, payment terms and conditions etc. It is not possible for APMuL to ascertain whether the energy charges claimed by other generators is based on coal procurement prices actually incurred or the basis of such procurement. GUVNL has special knowledge of such information or documents but has not produced the same on record. The coal procurement by CGPL for 8 vessels was based on fixed HBA price as on the date of signing contract. HBA price agreed in contract remained constant irrespective of the HBA as on date of Bill of Lading. In the present case, for 8 vessels, CGPL had entered into contract in May 2018 was lower at 89.53 USD/MT. Thus, a premium of 4.50% was already built-up in the contract price itself. The trend of HBA Index was upward during the period of actual shipment which happened during August to November 2018. APMuL has submitted that even though it artificially appeared as if CGPL had procured coal at discounted price when fixed HBA price of 93.56 USD/MT as compared with Bill of

Lading HBA index of Aug-Nov 2018 which varied between 97.90 to 107.83 USD/MT but factually there was no discount. APMuL has placed on record a statement to that effect in Annexure-2 of its reply. APMuL has submitted that FoB base rate may be fixed by considering the applicable coal indices relevant for the coal consumed in October 2018 for supply of power under the 2018 SPPAs dated 05.12.2018. The other charges agreed in amended 2022 SPPAs should also be considered on normative basis at 3% of applicable FoB cost.

(d) ***Mines Profit to the Group Companies of APMuL:*** Since as per the Deed of Settlement dated 3.1.2022 and the 2022 SPPAs dated 30.3.2022, the payment of energy charges is linked to CERC escalation rates over base price, the issue of profit to group companies does not arise. This is because the CERC escalation rates over base price as on 15.10.2018 has co-relation with the actual cost at which coal was/to be procured. The present proceeding arises out of the Deed of Settlement dated 3.1.2022. Clause 6 of the Deed of Settlement dated 3.1.2022 required GUVNL and APMuL to withdraw all pending claims and that no claims as part of the then pending proceedings will be re-raised. GUVNL by re-agitating the past issues is in breach of Clause 6 of the Deed of Settlement, which is untenable.

(e) ***Operational parameters to be considered as lower of actual and as per Tariff***

Regulations: GUVNL and APMuL have unequivocally agreed to consider the 'normative' operating parameters for determination of the base rate by the Commission as is evident from Clause 5(b) of the Deed of Settlement dated 3.1.2022, Hon'ble Supreme Court Order dated 8.2.2022 holding that "inter se

relationship between the parties shall now be governed by the settlement deed dated 3.1.2022”, provisions in the GoG GR dated 25.2.2022 for determination of base rate as per the ‘normative’ operating parameters, and Recital O(b) and Article 4.1.(3) of 2022 SPPAs mandating the determination of base rate as per the ‘normative’ operating parameters. The Commission while approving the 2018 SPPAs dated 5.12.2018 has already approved normative parameters of Station Heat Rate (2340 kCal/kWh for Bid-01 PPA and 2274 Kcal/kWh for Bid-02 PPA) and Auxiliary Energy Consumption (9% for Bid-01 PPA and 6.5% for Bid-02 PPA).

16. The Respondent APMuL has made the following additional submissions:

(a) **Other charges:** For determination of the base rate viz. the FoB coal cost (in USD/kWh) for quality of coal consumed shall also include other charges viz. Sampling, Inspection, Customs clearance, Forwarding Agency charge etc. as agreed to in the 2022 SPPAs dated 30.3.2022, Deed of Settlement, GoG GR dated 25.2.2022 etc. Considering the aforesaid charges, the Commission may allow these other charges on normative basis at 3% of applicable FoB cost as agreed in 2022 SPPAs.

(b) **Change in Law provision:** As per 2022 SPPAs dated 30.3.2022, applicable tax, duties and cess etc. on energy charges shall be payable as per 2018 SPPAs dated 5.12.2018 on reimbursement basis, whereas other Change in Law shall be as per the PPAs with approval of the Commission. Any further Change in Law events, except the events mentioned above, impacting the cost or revenue of APMuL shall also be as per the original PPAs with the approval of the Appropriate Commission.

(c) **Monthly Escalation Rates:** MoP has advised the Commission that the escalation index for imported coal be notified on monthly basis in addition to the present six-monthly escalation index. The monthly index can be used for existing PPAs with mutual consent of generating company and the procurer. APMuL has requested the Commission to approve adoption of monthly escalation index from the date the same is being notified by the Commission.

(d) **Ocean Freight and Port Handling Charges:** APMuL submits that as per Clause 4.1.5 of the 2022 SPPAs dated 30.3.2022, base rate for both escalable and non-escalable components of ocean freight and port handling charges shall be determined by the Commission subject to ceiling rate for each of them as per the 2018 SPPAs dated 5.12.2018. As per the 2018 SPPAs dated 5.12.2018, the escalable and non-escalable components of ocean freight are in the ratio of about 30:70. However, as per data received from Clarksons (an international agency offering inter alia port services support, agency, freight forwarding, supplies and tools for the marine and offshore industries), the escalable and non-escalable components of ocean freight are in the ratio of 56:9:43:1 for the month of October 2018 which may be taken into consideration in determination of base rate for ocean freight.

Rejoinder of the Petitioner

17. The Petitioner in its rejoinder filed vide affidavit dated 3.5.2022 has submitted as under:

(a) It is essential that only judicious and prudent coal cost based on actual is considered by the Commission while determining the base rate as it has a long term implication on the consumers since the base rate will be linked to the escalation index notified by the Commission from time to time. The Supplementary PPAs dated 5.12.2018 entered into between GUVNL and APMuL in respect both Bid-01 and Bid-02 PPAs clearly provides for consideration of actuals when it states that FOB price of coal “shall be lower of the actual price or the HBA price” and GHR and Auxillary consumption “shall be lower of actual or normative”. The stipulation of ‘actual’ in each of the specific elements under the SPPAs dated 5.12.2018 clearly establish the contemporaneous intention and acceptance of both APMuL and GUVNL that each of the above component/element could be actually lower than the alternate provided against each of them as ceiling. It is therefore not correct on the part of APMuL to allege that only HBA or HPB price, derived from HBA, should be considered for determination of base rate ignoring the actual FOB price at which coal from Indonesia of the relevant grade was being exported during the relevant period. APMuL is first required to disclose in a transparent manner, supported by authenticated documents the actual FOB price at which the coal was exported to APMuL and/or its group companies during the September-October 2018 (even in the previous month) and such FOB price at which coal was being exported generally by others from Indonesia during the said period in order to establish the prudent price of export of coal from Indonesia during the relevant period.

(b) In its affidavit dated 26.4.2022, APMuL has disclosed that during the relevant period, coal was procured by APMuL from PT Kaltim Prima Coal which is a company in which Tata Power Limited has the equity stake. The procurement of coal by CGPL has been primarily from the said PT Kaltim prima coal mine. Therefore, it is not correct on the part of APMuL to claim that the price at which coal was being imported by CGPL is not the relevant material to be considered. As per the documents submitted by APMuL to GUVNL for claiming energy charge for October 2018 under the SPPA dated 5.12.2018, the sourcing of coal in the four vessels through its Group Company Adani Global Pte Ltd. was from PT Kaltim Prima Coal from which CGPL has been procuring its coal requirement and the price at which coal has been sourced by APMuL is significantly higher than the rate prevalent at that time and is also inclusive of the margin claimed by the Group Companies. Therefore, while determining the Base energy charge component, the Commission needs to consider the market rates notified by indices of repute viz. Argus/Coalindo and S&P Global Platts for the quality of coal consumed at the plant for supply. GUVNL has filed a compilation of rates notified by Argus/Coalindo and S&P Global Platts for various qualities of coal for the month of August to October 2018 as Annexure A to the rejoinder and has submitted that the price at which APMuL has procured coal excluding some odd instances is higher than the indices published by Argus/Coalindo and S&P Global Platts.

(c) In order to enable the Commission to decide on the Base Rate recommendations to the Government of Gujarat, APMuL in addition to the documents filed in the reply is required to provide the necessary and relevant documents viz. duly

authenticated invoices of fuel supplier, ocean freight and insurance, port/fuel handling charges and other charges, certificate for actual parameters of GHR and Auxiliary consumption for the month. The invoice price of coal raised by the Indonesian Coal mining company exporting the coal at the Indonesian port commonly known as FOB price of coal, duly authenticated along with the Bill of lading, the Certificate of Origin and Certificate of Sampling and Analysis from the Agency authorised by the Indonesian Government, invoices for ocean freight, marine insurance, commercial invoice etc. which are part of the shipping documents, and required for Letter of Credit to be opened in favour of Suppliers and for bill of entry by the Indian Customs Authorities are available with APMuL and need to be furnished to the Commission for determination of base rate. The actual price of other components forming part of ocean freight and insurance as provided in Article 3.2.4(I) of the SPPA dated 5.12.2018 need to be furnished. It is also necessary for APMuL to operate the power generating units as per the assumed bid parameters so as to ensure that the same are lower even with regard to normative parameters.

(d) APMuL in its reply has interpreted wrongly the implications of the Indonesian Regulations by saying that coal from Indonesia is not exported below HBA price or derived HPB price. The Indonesian Regulations and orders made thereunder from time to time allow export of coal at a discount or at a price lower than the derived price based on HBA such as HPB price published or otherwise allowed the relevant quality of coal exported (GCV) to be imported at a price to be mutually agreed subject only to the payment of Government Taxes at the notified prices. The SPPA

dated 5.12.2018 providing for the FOB cost as lower of actual price or the HBA price (HBA index derived price for the quality of coal) clearly establish that it is not open to APMuL to claim HBA price for the relevant GCV imported coal as the normative price, de hors the actual price. Relying on Articles 2 and 3 of the Ministerial Decree No.7 of 2017 enacted on 11.1.2017, it has been submitted that it is not necessary that coal export from Indonesia cannot be less than the HBA price or HPB index price. The HBA index price which is based on the international market price of major markets is only the starting point for the Indonesian Authorities to decide on the benchmarking of export price of coal. Based on the HBA price as the starting point, the Indonesian Authorities arrive at HPB price which takes into account host of relevant factors including and in particular, the relevant GCV of coal, the impurities, other quality aspects such as Sulphur, ash and moisture content. Therefore, the export price of coal can be less than the HBA index price/HPB price. The average prices of coal export from Indonesia of specified GCV and quality have been published by reputed agencies such as Argus/Coalindo and S&P Global Platts and the average price published from the month of August 2018 to October 2018 (filed as Annexure A to the Rejoinder) are lower than the HBA derived/HPB price and actual price at which APMuL has procured coal. The Indonesian Regulations providing for benchmark prices in regard to many grades of coal is to protect the quantum of royalties and statutory levies payable to the Indonesian Government on export of coal. Subject to the said requirement, the export of coal has not been prohibited at discounted prices by way of mutual agreement between the Indonesian Coal Mines and the Procurer of

coal from outside. GUVNL has also submitted two schematic diagrams- one pertaining to FOB price comparison of HPB Vs Indices Vs Claimed for the period April 2020 to March 2021 and other about the price of coal as per Global Coal New Castle, ICI-3 (5000 GAR), ICI-4 (4200 GAR), ICI(Argus/Coalindo) and QHD 5,500 NAR (RMB) given by M/s PT Adaro Energy TBK (miner). GUVNL has submitted the average price of coal in the reputed publications clearly indicates that there are significant quantum of coal of the relevant categories being exported from Indonesia at a price much lower than the average price and there are quantum of coal exported at a price higher than the average price. Adani Group has also specifically participated in number of transactions, including the bids called for by Central Public Sector Undertakings for the imported coal and had itself given a price below the HBA price and based thereon, had entered into contracts with commitment to supply. There is no basis for APMuL to claim that there is an embargo on the sale of coal below the HPB price. The reading of the Indonesian Regulations also indicate that particularly in the context of lesser GCV coal, the Indonesian Authorities had been allowing export at a much lower price than the HBA index derived price. In support of its contention, GUVNL has also placed on record a copy of an article published on 8.6.2020 by Jakarta Post on the Website of Indonesian Coal Mining Association in which it has been stated that due to Covid 19 pandemic, coal miner's burden has worsened by the disparities over the HPB price which is greater than the actual price of coal and the miners pay the royalty on HPB price which is much higher.

- (e) The Commission should not consider the “other charges” @ 3% of the FOB price while determining the Base Rate as all the cost upto the delivery of coal to the mother vessel is part of the FOB price.
- (f) The claims towards applicable Change in Law shall be governed as per the provisions of the PPAs and SPPAs thereto only after approval by the Commission.
- (g) The issue relating to applicability of Monthly escalation rate is not relevant for the purpose of determination of Base Rate by the Commission. However, GUVNL will make submission at the appropriate time as and when any changes in the existing methodology of notifying the escalation rates is proposed by the Commission.
- (h) The e-mail of Clarkson submitted by APMuL in its reply is contrary to the ceilings on ocean freight and fuel handling charges as specified in the SPPAs dated 30.3.2022 and therefore, the same should not be considered while determining the escalable and non-escalable components of the Base Rate for ocean freight and fuel handling charges.

18. The Petitioner has submitted its calculation of Base Rate for all sub-parameters of the Energy Charge as on 15.10.2018 for the PPAs under Bid-01 and Bid-02 which are extracted as under:

BID-1 PPA dated 06-02-2007

SR no.	Technical Parameters	Normative as per SPPA dated 05-12-2018:	ACTUL claimed by Adani in Monthly billing Oct-2018:	Min of (Norm , Actual)	Remarks
1	SHR	2340	2330	2330	
	Auxiliary (%)	9.00%	8.18%	8.18%	
	GHR (Kcal/ Kwh)	2571	2538	2538	
	Coal CGV coal consumed in OCT-18	4619	4619	4619	
	Speci. Coal Cons. (Kg/Kwh)	0.5567	0.5494	0.5494	
Coal price published by ARGUS/Coalindo for September-2018					
2	Date of Publications	4200	5000	Wt. Avg for 4619	
	07-09-2018	37.96	54.35	4200 - 47.63%	
	14-09-2018	38.39	54.06	5000 -52.38%	
	21-09-2018	38.72	53.59		
	28-09-2018	38.56	53.28		
	Monthly Average	38.41	53.82	46.49	
3	Base Rate for FOB (USD / Kwh)	(Specific coal consumption x (coal price in USD per MT /1000))		\$0.02554	
4	Ocean Freight & Insurance (USD / MT)	Discriptions	ACTUAL (USD / MT)	Ceiling as per SPPA dated 05-12-2018 (USD/MT)	Min of (Actual or Ceiling) (USD / MT)
		Non-Escalable	Not submitted	\$7.08450	to be determined by Hon'ble Commission based on submission of actual documents
	Escalable	Not submitted	\$3.11220		
	Base Rate for Ocean Freight & Insurance (USD / Kwh)	Non-Escalable	-	\$0.00389	
Escalable		-	\$0.00171		
5	Port / Fuel Handling (INR / MT)	Discriptions	ACTUAL (INR / MT)	Ceiling as per SPPA dated 05-12-2018 (INR/MT)	Min of (Actual or Ceiling) (INR / MT)
		Non-Escalable	Not submitted	₹ 126.78	to be determined by Hon'ble Commission based on submission of actual documents
	Escalable	Not submitted	₹ 232.46		
	Base Rate for Fuel / Port Handling (INR / Kwh)	Non-Escalable	-	₹ 0.0697	
Escalable		-	₹ 0.1277		

BID-2 PPA dated 02-02-2007						
SR no.	Technical Parameters	Normative as per SPPA dated 05-12-2018	ACTUAL claimed by Adani in Monthly billing; December-2018;	Min of (Norm , Actual)	Remarks	
1	SHR	2274	2278.59	2274	Unit 5 & 6 under BID-2 PPA were not operational during the month of October -2018 & November -2018. The Operational DATA for Dec-2018 is considered when the plant become operational	
	Auxiliary (%)	6.50%	5.97%	5.97%		
	GHR (Kcal/ Kwh)	2432	2423	2418		
	Coal CGV coal consumed in Dec-18	4076	4076	4076		
	Speci. Coal Cons. (Kg/Kwh)	0.5967	0.5945	0.5933		
Coal price published by ARGUS/Coalindo for November-2018						
2	Date of Publications	4200		Wt. Avg for 4076		
	02-11-2018	36.07				
	09-11-2018	34.64				
	16-11-2018	32.29				
	23-11-2018	29.87				
	30-11-2018	28.85				
	Monthly Average	32.34			31.39	
3	Base Rate for FOB (USD / Kwh)	(Specific coal consumption x (coal price in USD per MT /1000))		\$0.01862		
4	Ocean Freight & Insurance (USD / MT)	Discriptions	ACTUAL (USD / MT)	Ceiling as per SPPA dated 05-12-2018 (USD/MT)	Min of (Actual or Ceiling) (USD / MT)	
		Non-Escalable:	Not submitted	\$7.08450	to be determined by Hon'ble Commission based on submission of actual documents	
		Escalable:	Not submitted	\$3.11220		
	Base Rate for Ocean Freight & Insurance (USD / Kwh)	Non-Escalable:	-	\$0.00420		Non-Escalable rate to be determined for each contract year seperately.
		Escalable:	-	\$0.00185		
5	Port / Fuel Handling (INR / MT)	Discriptions	ACTUAL (INR / MT)	Ceiling as per SPPA dated 05-12-2018 (INR/MT)		Min of (Actual or Ceiling) (INR / MT)
		Non-Escalable:	Not submitted	₹ 126.78	to be determined by Hon'ble Commission based on submission of actual documents	
		Escalable:	Not submitted	₹ 232.46		
	Base Rate for Fuel / Port Handling (INR / Kwh)	Non-Escalable:	-	₹ 0.0752		Non-Escalable rate to be determined for each contract year seperately.
		Escalable:	-	₹ 0.1379		

APMuL’s Reply in response to ROP of the Hearing dated 21.4.2022

19. The Commission through RoP for the hearing dated 21.4.2022 directed APMuL to submit the following details/information:

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

(ii) GCV (quantity) 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 for otherwise and used for generation, the details of each such GCV and the quantity used thereof;

(iii) Coal Quantity and GCV (quantity) 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.”

20. APMuL vide its affidavit dated 26.4.2022 has made the following submissions with regard to the queries raised:

(a) ***Coal quantity consumed in October 2018 for supply under SPPA dated***

5.10.2018: Units 5 & 6 were not in operation during the period 15.10.2018 to 31.10.2018 for supply of power under the 2018 SPPA dated 5.12.2018 to Bid-02 PPA and hence there was no coal consumed in Units 5 & 6. Following details of coal consumption in October 2018 (from 15.10.2018 to 31.10.2018) in respect of Units No.1 to 4 for supply of power under the 2018 SPPA dated 5.12.2018 to Bid-01 PPA are as below:

Vessel Name	Coal Consumed (MT)
MV ORANGE TIARA	16738
MV STAR GWYNETH	26518
MV NAVIOUS ASTER	115750
MV GOLDEN FENG	107194
TOTAL	266200

(b) **GCV of coal consumed in October 2018:** The details of load port and discharge port GCV of coal consumed during October 2018 (as received basis) as under:

Vessel Name	Vessel Quantity (MT)	Coal Consumed (MT)	Load Port GCV (Kcal/kg)	Discharge Port GCV (kcal/kg)
MV ORANGE TIARA	163972	16738	2858	2824
MV STAR GWYNETH	80157	26518	4843	4829
MV NAVIOUS ASTER	164244	115750	4691	4662
MV GOLDEN FENG	159305	107194	4760	4741

(c) **Coal quality and quantity backed by certificate of analysis at both ends:**

Certificates load port and discharge port GCV of the vessels from which coal is consumed during October 2018 for supply of power under 2018 SPPAs dated 5.12.2018 have been submitted.

(d) **Maximum coal stocking and storage capacity for Mundra Plant:** APMuL's

Mundra thermal generating station has an installed capacity of 4620 MW (4X330 MW & 5X660 MW) and the coal requirement per day is about 50,000 MT. Coal received is being unloaded at West Port and stacked at the designated coal yards for Mundra thermal generating station i.e. C, D, E & F, having a capacity of 12 Lakh MT. The above coal is being reclaimed from the designated coal yard and moved to Mundra thermal generating station through a conveyor system for consumption at Mundra plant. Further, a coal storage capacity 3.17 Lakh MT is available at Mundra thermal generating station. Therefore, the total capacity available for storage of coal for operating 4620 MW Mundra thermal generating station is 15.17 Lakh MT. Considering the normative level of generation, Mundra thermal generating station has storage capacity to meet the coal requirement for

30-35 days. Drawing of West Basin Block and Coal Yard has been placed on record.

GUVNL's Additional Affidavit dated 9.5.2022

21. GUVNL in its additional affidavit dated 9.5.2022 has submitted as under:

(a) While GUVNL in the statement had dealt with 35 shipments of the coal imported by CGPL from Indonesian mines of GCV ranging from 6320 kCal/kg to 4032 kCal/kg, APMuL in its statement has selectively dealt with only 8 shipments without any rationale, reason or justification. Since APMuL has pleaded the existence of a firm contract of CGPL in May 2018, it is for APMuL to disclose the source of its information on the said alleged firm contract of CGPL and further produce the firm contract of CGPL in support of its plea and prove the same to the satisfaction of the Commission. Adani Power cannot refer to a specific plea of the existence of firm contract of CGPL without producing the same. The judgement of the Hon'ble Supreme Court in Sushil Kumar vs Rakesh Kumar [(2003) 8 SCC 673] relied on by APMuL instead of supporting its contention supports the stand of GUVNL.

(b) The plea taken by Adani Power that CGPL did not procure coal from Indonesia at a price less than HPB is wrong and misleading. GUVNL had analyzed the Statement in the reply of APMuL in regard to 8 shipments vis-à-vis the balance 27 shipments. The analysis by GUVNL shows that APMuL has deliberately selected 8 shipments where the HPB based fixed contract price is equal to the FOB Price of coal so that it could plead that the FOB price of coal imported from Indonesia is at par with the HPB price, by indicating in the last column of the first statement as

the difference being “0%”. GUVNL has further submitted that in the second statement, APMuL is claiming that in May 2018 the contract price has been arrived at with a premium of 4.50% which is wrong as the HBA price at 89.53 is related only to 50% of the contract price to be settled, the balance 30% to be considered with reference to the HBA price of April 2018 and 20% of March 2018.

(c) If the balance 27 shipments as contained in the reply filed by GUVNL are considered on the same principle of calculation adopted by APMuL for 8 shipments, it will be seen that there has been large number of shipments where the HPB price is higher than the contract price establishing clearly that there has been sale with FoB price below the HPB price. GUVNL has submitted that the following table indicates the consistent sale of coal at FoB price at lower than the HBA/HPB derived price:

S.No.	Vessel Name	GCV @ Load Port	HBA price for 6322 kCal /kg for May 2018 (USD/ MT)*	Derived HPB Price as per the assumption taken by Adani Power (USD/ MT)	Price Claimed by CGPL (USD/ MT)	Difference in Price claimed v. HPB Price (USD/MT) Claimed (Prem / Disc.) respect to HBP Price	
				A	B	(A-B)	
						USD/ MT	%
1.	Frontier Phoenix	5219	93.56	69.84	69.84	0.00	0.00%
2.	Kiran Turkiye	4119	93.56	49.17	48.05	1.12	-2.28%
3.	Suigo	4224	93.56	50.97	43.55	7.42	-14.56%
4.	FPMC B Majesty	5235	93.56	69.89	69.89	0.00	0.00%
5.	Cape Sun	4155	93.56	48.84	47.49	1.35	-2.76%

6.	Mineral Themse	5157	93.56	68.58	68.58	0.00	0.00%
7.	Frontier Neige	5213	93.56	69.05	65.66	3.39	-4.91%
8.	Cape Normandy	4234	93.56	50.79	43.65	7.14	- 14.06%
9.	Anangel Courage	5137	93.56	68.51	68.51	0.00	0.00%
10.	Baltic Wolf	4136	93.56	49.30	48.25	1.05	-2.13%
11.	Hanna Oldendorff	5155	93.56	68.57	68.57	0.00	0.00%
12.	Cape Sunrise	4229	93.56	50.79	40.28	10.51	- 20.69%
13.	Frontier Kotobuki	5134	93.56	68.04	68.04	0.00	0.00%
14.	Frontier Island	4215	93.56	50.08	42.65	7.43	- 14.84%
15.	Lan May	5165	93.56	69.43	69.43	0.00	0.00%
16.	Cape Harmony	4037	93.56	46.39	46.14	0.25	-0.54%
17.	Mineral Haiku	4149	93.56	49.95	48.40	1.55	-3.10%
18.	Golden Horizon	5219	93.56	69.76	69.76	0.00	0.00%
19.	Gulf Petrochem FCG	5311	93.56	69.28	66.24	3.04	-4.39%
20.	PT KPC	5167	93.56	68.86	58.49	10.37	- 15.06%
21.	PT AGM	4209	93.56	50.45	40.09	10.36	- 20.54%
22.	PT KPC	5389	93.56	72.74	61.01	11.73	- 16.13%
23.	Indo International	6320	93.56	88.07	79.99	8.08	-9.17%
24.	Mina Oldendorff	5415	93.56	73.97	61.30	12.67	- 17.13%
25.	Genco London	4171	93.56	49.87	40.22	9.65	- 19.35%
26.	Ping May	5306	93.56	71.84	60.07	11.77	- 16.38%
27.	Frontier Youth	4032	93.56	46.42	46.08	0.34	-0.73%
28.	Frontier Lodestar	5292	93.56	71.47	59.91	11.56	- 16.17%
29.	C Utopia	4049	93.56	46.96	33.74	13.22	- 28.15%

30.	Frontier Expedition	4947	93.56	64.76	46.50	18.26	- 28.20%
31.	CPO Europe	5271	93.56	71.34	59.67	11.67	- 16.36%
32.	Lady Charme	4226	93.56	50.39	31.19	19.20	- 38.10%
33.	Cape Lily	4997	93.56	66.45	46.97	19.48	- 29.32%
34.	Qing May	5253	93.56	69.95	59.47	10.48	- 14.98%
35.	Frontier Phoenix	4138	93.56	48.45	34.48	13.97	- 28.83%

* Based on the assumption taken by Adani Power

(d) GUVNL has filed 'Annexure-II' alongwith the affidavit showing the comparison of FoB price in the commercial invoice of CGPL vis-à-vis the term contract vis-à-vis the HPB price of the month of the bill of lading of the certain shipments, from the data available with GUVNL, as submitted by CGPL in its supplementary invoices towards Change in Law.

(e) An analysis of the Indonesian Regulations clearly shows that where the coal of relevant GCV is exported at a price less than the benchmark prices/reference prices, the royalty, taxes, obligatory contribution to state revenue shall be done with reference to benchmark price/reference price and there is no specific mandate or express stipulation in regard to non-export of coal at price less than the benchmark price/reference price. The High Power Committee in paras 2.6.2 and 2.6.3 of report has specifically interpreted that the amendment to the Indonesian Regulation primarily aimed to increase the government revenue by way of the royalties received from the coal producers. GUVNL has further relied on a report on "Mining in Indonesia Investment and Taxation Guide June 2019, 11th Edition"

by PWC in support of its contention that HBA/HPB is the floor price of Government duties and in case, the sale price is lower than HPB, tax has to be calculated on HPB.

(f) With regard to the ocean freight, Annexure B to the SPPA dated 5.12.2018 providing for the maximum ceiling based on the CGPL bid is also relevant to give an effect to and it is not open to APMuL to claim that the same needs to be ignored and actual price claimed by Adani Power should be allowed. Even the Government of Gujarat G.R. dated 25.02.2022 which is a part and parcel of the SPPAs dated 30.03.2022 also specifically provides that the ceiling of Transportation charges and Port Handling Charges as per SPPAs dated 5.12.2018 shall remain unchanged.

(g) The Supplementary PPA dated 5.12.2018 clearly envisages that the pricing will be on the components of FoB price of coal, ocean freight and other charges. Having so specified, it is not open to APMuL to claim that the procurement was on CIF basis and therefore, it is not required to provide the FoB price of coal separately with due authentication and documents from concerned authorities.

APMuL's Affidavit dated 9.5.2022

22. The Commission in its Record of Proceedings of the Hearing dated 05.05.2022 directed APMuL to submit the following details/information:

- (a) FOB price of coal in USD per MT;
- (b) Ocean Freight and Insurance in USD per MT;
- (c) Port/Fuel Handling Charges in Rs per MT; and
- (d) Other Charges in USD per MT.

23. APMuL vide its affidavit dated 9.5.2022 has furnished the details of actual amount incurred under various heads of landed cost of coal consumed in Units 1 to 4 of Mundra Power Station for supply of power to GUVNL during the period from 15.10.2018 to 31.10.2018 duly supported by Auditor's Certificate:

Vessel Name	Vessel Qty	Coal Cons. under Stage-I	FOB price of coal	Ocean Freight	Other Charges	Port/ Fuel Handling Charges
Text	MT	MT	USD/MT	USD/MT	USD/MT	Rs/MT
A	B	C	D	E	F	G
MV ORANGE TIARA	163972	16738	24.16	10.30	0.53	375.00
MV STAR GWYNETH	80157	26518	72.02	10.35	2.42	375.00
MV NAVIOS ASTER	164244	115750	66.62	10.40	2.21	375.00
MV GOLDEN FENG	159305	107194	68.14	10.30	1.13	375.00
Total		266200				
Wt. Avg. w.r.t Col.(C)			65.1002	10.3485	1.6904	375.00

24. APMuL has also placed on record the details regarding (i) the amount claimed by the Respondent from the Petitioner in the Monthly Bill of Oct-2018 and (ii) the amount admitted by the Petitioner against the claim of Respondent for the period 15.10.2018 to 31.10.2018 as per the SPPA dated 05.12.2018 under various heads of landed cost of coal as under:

- (a) Components of landed cost of coal claimed by APMuL for the period from 15.10.2018 to 31.10.2018 as per the ceiling provided for FoB price of coal, Ocean freight and Port/Fuel Handling charges in SPPAs dated 05.12.2018-

Vessel Name	Vessel Qty	Coal Consumed under Stage-I	FOB price of coal	Ocean Freight	Other Charges	Port/ Fuel Handling Charges
Text	MT	MT	USD/MT	USD/MT	USD/MT	Rs/MT
A	B	C	D	E	F	G
MV ORANGE TIARA	163972	16738	24.16	10.1967	0.53	359.24
MV STAR GWYNETH	80157	26518	72.02	10.1967	2.42	359.24
MV NAVIOS ASTER	164244	115750	66.62	10.1967	2.21	359.24
MV GOLDEN FENG	159305	107194	68.14	10.1967	1.13	359.24
Total		266200				
Wt. Avg. w.r.t Col.(C)			65.1002	10.1967	1.6904	359.24

(b) Components of landed cost of coal admitted and paid by GUVNL for the period from 15.10.2018 to 31.10.2018: -

Vessel Name	Vessel Qty	Coal Consumed under Stage-I	FOB price of coal	Ocean Freight	Other Charges	Port/ Fuel Handling Charges
Text	MT	MT	USD/MT	USD/MT	USD/MT	Rs/MT
A	B	C	D	E	F	G
MV ORANGE TIARA	163972	16738	24.16	10.1967	0.53	359.24
MV STAR GWYNETH	80157	26518	71.73	10.1967	2.42	359.24
MV NAVIOS ASTER	164244	115750	64.85	10.1967	2.21	359.24
MV GOLDEN FENG	159305	107194	68.14	10.1967	1.13	359.24
Total		266200				
Wt. Avg. w.r.t Col.(C)			64.3024	10.1967	1.6904	359.24

GUVNL's Affidavit dated 11.5.2022

25. GUVNL vide its affidavit dated 11.5.2022 has filed its response to the affidavit of APMuL dated 9.5.2022 as under:

(a) Perusal of the Auditor's Report as a whole indicates that the Auditor did not verify anything other than what was provided APMuL. In note 3 of the Statement at Annexure A states that "the Company purchases the coal on CIF basis. The cost components of CIF price into FOB price, freight and other charges is obtained by the Company from the supplier as disclosed above." Therefore, there cannot be any reliance placed on Annexure-A to the Auditor's Report as certifying the individual components of FoB price, freight and other charges, as disclosed in the table.

(b) The analysis of the data at the said Annexure A to the report shows that out of 5,67,678 MT received for the period from 15.10.2018 to 31.10.2018, the weighted average FoB price of the entire quantum is 54.99 USD/MT whereas APMuL has used 2,66,200 MT for consumption at Units 1 to 4 of the Mundra Power Plant, and the blending of various grades of coal has been done in such a manner that the weighted average FoB price of the coal actually used is 64.30 USD/MT. This is evident from the table as under:

S. No	Vessel Name	Coal Procurement					Coal allocated to Units – 1 to 4 under Bid-1 during 15-10-2018 to 31-10-2018 as claimed by ADANI			Coal price published by ARGUS/COALINDO for respective B/L month			Coal price published by ARGUS/COALINDO for Oct -2018				
		B/L Month	HBA rate for B/L month (USD/ MT)	Vessels Quantity (MT)	Billed GCV (kCal/ kg)	HBA derived HPB price (USD/ MT)	MT	GCV (kCal/ kg)	HBA derived HPB price (USD/ MT)	Notified GCV (kCal/ kg)	Rate (USD/ MT)	coal blending to derived equivalent consumed GCV	Coal price of Consumed GCV (USD/ MT)	Notified GCV (kCal/ kg)	Rate (USD/ MT)	coal blending to derived equivalent consumed GCV	Coal price of Consumed GCV (USD/ MT)
1	MV STAR GWYNETH	Aug-18	107.83	80,157	4843	71.72	26,518	4843	71.72	5000	57.95	96.86%	56.13	5000	52.84	96.86%	51.18
2	MV NAVIOS ASTER	Sep-18	104.81	1,64,244	4691	64.85	1,15,750	4691	64.85	5000	53.82	61.38%	47.87	5000	52.84	61.38%	47.18
										4200	38.41	38.63%		4200	38.19	38.63%	
3	MV ORANGE TIARA	Aug-18	107.83	1,63,972	2858	24.16	16,738	2858	24.16	3400	25.65	84.06%	21.56	3400	23.66	84.06%	19.89
4	MV GOLDEN FENG	Sep-18	104.81	1,59,305	4760	68.14	1,07,194	4760	68.14	5000	53.82	70.00%	49.20	5000	52.84	70.00%	48.45
										4200	38.41	30.00%		4200	38.19	30.00%	
				5,67,678	4202 (Weighted Average)	54.99 (Weighted Average)	2,66,200	4619 (Weighted Average)	64.30 (Weighted Average)				47.57 (Weighted Average)				46.37 (Weighted Average)

- (c) Coal through Vessel Name MV Orange Tiara of 163972 MT is indicated to be FoB price of 24.16 USD/MT and CIF price is 34.99 USD/MT in Annexure A. The GCV value of the above coal is 2858 kCal/kg. The coal has been imported from Bunyu Island belonging to Adani Group's step-down subsidiary in which Adani Enterprises Limited, the ultimate holding company, effectively controls 100% shareholding of the mining company in Bunyu Island, Indonesia. Considering the quality of the above coal, the Indonesian Authorities were not applying the requirement of HBA/HPB derived price of coal even in regard to the royalties and obligatory contribution to state revenue.
- (d) APMuL's claim for other charges separately over and above the FoB price of coal is wrong as there is no authentication of such other charges besides such FoB price of coal. The Commission should not consider the "other charges" @ 3% of FOB price while determining the Base Rate since all cost upto the delivery of coal to the mother vessel is part of the FOB price.
- (e) Procurement of coal from the coal mines in Indonesia has all been routed through other group companies of Adani Power/Adani Enterprises Limited, though the shipment of coal has been directed to Mundra Port in India. APMuL has not disclosed the margin, which has been charged by such group companies. Such margin, in any event, ought to have been deducted from the price claimed by APMuL. The various documents such as Bill of Lading and other export documents from Indonesia are duly available with the Adani Group and there is no reason as to why the same has not been made available to the Commission and to GUVNL, despite the specific directions in the record of proceedings dated 5.5.2022.

- (f) The information given by Adani Power has been restricted to the coal procured and consumed in Units 1 to 4 of the Mundra Power Project, and the same does not cover the coal price and details for Units 5 and 6.

APMUL's Affidavit dated 11.5.2022

26. APMuL in its reply to the additional submissions dated 9.5.2022 has made the following submissions:

- (a) In response to the submissions of GUVNL that APMuL has dealt with only 8 vessels of CGPL out of the 35 vessels submitted by GUVNL, APMuL has submitted that APMuL is not privy to the contracts of CGPL and cannot make submissions with respect to each vessel. Based on the limited information that could be gathered, APMuL demonstrated that HBA index was higher during the period of actual shipment which happened during August to November 2018 than the HBA index relatable to the date of contract. GUVNL has not produced any data/document to show that APMuL's submissions made in relation to CGPL's coal procurement data is factually incorrect. Though GUVNL has special knowledge of complete details qua imported coal procurement by CGPL and is in possession of the certified copies of the invoices and coal procurement contracts of CGPL, GUVNL has failed to produce the same on record. Therefore, the entire reference to CGPL's coal procurement data needs to be rejected.

- (b) In response to GUVNL submission that APMuL should disclose the source of firm contract of CGPL and produce the firm contract in support of its plea, APMuL has submitted that GUVNL relied upon the data pertaining to CGPL in

the first place and made averments qua coal procurement by APMuL at a higher price as compared to CGPL. In terms of Section 106 of the Evidence Act, 1872, the burden of proving such fact within the special knowledge of GUVNL is on GUVNL alone. If APMuL's submissions that coal procurement by CGPL for 8 vessels was based on fixed HBA is incorrect, it is incumbent on GUVNL to produce relevant contract documents to establish its averment.

(c) GUVNL has considered the information furnished by APMuL for 8 vessels of CGPL and applied it to the remaining 27 vessels of CGPL to contend that for the remaining vessels, the coal procurement price of CGPL is lower than HBA index price. GUVNL has not produced any document to substantiate that the contract month and basis for procurement for the 8 vessels is the same as the remaining 27 vessels of CGPL. Without appropriate information produced on record by GUVNL, no inference can be drawn qua APMuL's coal procurement at a price higher than CGPL. GUVNL's comparison of FOB price in the commercial contract of CGPL vis-à-vis the term contract vis-à-vis the HBA price for the month of the bill of lading of certain shipments is not supported by any document or basis in this regard.

(d) None of the Indonesian Regulations extracted/referred to by GUVNL shows that coal export can take place at a price less than the benchmark price. The provisions relied upon by GUVNL with respect to royalty, taxes etc. does not take away the binding mandate on IUP holders to refer to benchmark prices while exporting Indonesian coal. The HPC report, PWC report, news articles etc. are extraneous to the provisions of Indonesian Regulations and cannot be read to interpret and alter the Indonesian Regulations.

- (e) APMuL is not disputing GUVNL claim that the overall figure for ocean freight is to be linked with the ceiling provided in Annexure B of the 2018 SPPAs. APMuL is only praying for the escalable and non-escalable components of the ocean freight to be considered by the Commission in the ratio of 56.9 : 43.1 as per information received from Clarkson (an international agency providing port services support, agency, freight forwarding, supplies and tools for the marine and off-shore industries) for the month of October 2018 while determining the base rate as on 15.10.2018.
- (f) To meet the GUVNL's requirement that pricing will be on the components of FoB price of coal, ocean freight and other charges as per the SPPA, APMuL has been ensuring that commercial invoices/addendum from coal suppliers bifurcate CIF price into the FoB price + ocean freight + other charges. This position was acceptable to GUVNL till the sudden change in August 2020. Based on the very same documents, GUVNL has paid energy charges to APMuL for more than one year (October 2018 to November 2019) without raising any dispute qua the ocean freight charges. Since August 2020, GUVNL has started insisting on submission of separate ocean freight invoices as per Article 3.2.4(III)(iii) of the SPPA as a pre-requisite for processing the energy charge claims of APMuL in spite of being aware that such separate ocean freight invoices are not available for procurement of coal on CIF basis.

GUVNL's Affidavit dated 25.5.2022

27. The Commission vide its Record of Proceedings dated 19.5.2022 directed GUVNL to clarify the statement of APMuL in its affidavit dated 9.5.2022 that GUVNL

has admitted and paid energy charges considering FOB price of coal as per HBA index (HPB) (without tolerance) for the period from 15.10.2018 to 31.10.2018 vis-à-vis their statement during the hearing that the same was on provisional basis.

28. GUVNL vide its affidavit dated 25.5.2022 has submitted as under:

(a) The supplementary invoice for the period from 15.10.2018 to 31.3.2019 were raised together by APMuL on 15.4.2019 only after the Commission passed the order dated 12.4.2019 in Petition No.374/MP/2018 approving the SPPAs dated 5.12.2018. Prior to that, APMuL was being paid as per the respective tariffs under the PPAs dated 6.2.2007 and 2.2.2007. Article 3.2.4 of the SPPA dated 5.12.2018 would show that there was no admission of GUVNL in the basic contractual document of payment of FoB cost of coal equivalent to the HBA index (HPB) only.

(b) The supplementary invoice dated 15.4.2019 was raised by APMuL based on the CIF value of the landed cost of coal without furnishing all the requisites. Further, the said supplementary invoice was not with reference to HBA index but an amount having paid to the intermediary procurer of coal which are Adani Group Companies. GUVNL vide its letters dated 25.4.2019 and 31.5.2019 disputed the amount cleared by APMuL in its supplementary invoice dated 15.4.2019 and sought for various documents/information/details including and in particular the document of the coal supplier from Indonesia indicating the actual FOB price of the coal. The payments were made by GUVNL to APMuL under protest without prejudice to the rights and contentions of GUVNL that the invoices are not in accordance with SPPA dated 5.12.2018.

- (c) It is necessary for APMuL to place on record in a transparent manner the documents relating to the actual FOB price of coal at which the coal was exported by the coal mining company in Indonesia supported by authenticated documents of the Custom Authorities of Indonesia, including the complete copy Bill of Lading etc.
- (d) When the Deed of Settlement dated 3.1.2022 and the SPPAs dated 30.3.2022 were finalized, the parties had not agreed on the coal price being as per HBA Index (HPB) but had specifically referred to the determination of the Base Rate, which is obviously considered to be something different than the said HBA Index (HPB). This is particularly in the context of GUVNL having consistently raised the aspect that APMuL should disclose the actual FOB price of coal and further that the FOB price at which the coal could be exported can be lower than the HBA Index (HPB) in accordance with the Indonesian Regulations, except that royalties and obligator contribution to the state revenue (of Indonesia) to be computed on the said HBA Index (HPB) when the export price is lower than such HBA Index (HPB).
- (e) The escalation in the imported coal price is being considered by the Commission based on published indices such as Argus/Coallindo and S&P Global Platts in regard to Indonesian Coal. Thus, there is a clear recognition of the market price at which coal is being exported from Indonesia at a price lower than the HBA Index (HPB) when such indices are considered. There cannot be any dispute that the export of coal from Indonesia has been permitted below the HBA Index (HPB).

APMuL's Affidavit dated 25.5.2022

29. The Commission vide its Record of Proceedings of the hearing dated 19.5.2022 had directed APMuL to respond to the contention of GUVNL that by virtue of disproportionate allocation of blending of GCV coal received during month of August and September 2018 (four shipments), the weighted average GCV of coal is arrived and claimed as 4619 kCal/kg with weighted average price shown as \$64.30/MT as against the achievable weighted average GCV coal at 4202 kCal/kg with weighted average price workable as \$54.99/MT. APMuL in response to the above query has submitted as under:

(a) GUVNL is considering the receipt quantity of coal instead of consumed quantity of coal by the APMuL which is against the principle followed by GUVNL for payment of energy charge under 2018 SPPAs. Both GUVNL and APMuL have agreed to consider the consumed quantity of coal in the Deed of Settlement dated 3.1.2022 and SPPAs dated 30.3.2022. APMuL has submitted that it is no longer open to GUVNL take the stand that allocation of coal has been done disproportionately.

(b) Coal availability during the period 15.10.2018 to 31.10.2018 was allocated and used keeping in view the technical consideration of the generating units of Mundra Power Project. Except the vessel named MV ORANGE TIARA, all other vessels contained coal of GCV more than the weighted average GCV arrived based on consumed quantity of coal. The GCV of coal consumed during 15.10.2018 to 31.10.2018 would have been lower if APMuL would have consumed more coal from the vessel named ORANGE TIARA.

I.A. No. 36/IA/2022 and GUVNL's Additional Affidavit dated 26.5.2022

30. GUVNL has filed through I.A. No.36/IA/2022 an affidavit dated 26.5.2022 to bring on record the Certificate dated 28.11.2018 issued by SRBC & Co LLP, the Chartered Accountant, to APMuL with regard to the details of coal consumed vessel-wise in the entire month of October, 2018 in connection with the claim for Change in Law. GUVNL has submitted that APMuL vide its affidavit dated 9.5.2022 had filed another certificate dated 13.4.2019 from the same Auditor in respect of 4 vessels only as against 15 vessels given in Certificate dated 28.11.2018 for coal consumed from 15.10.2018 to 31.10.2018:

Coal Consumed in MUNDRA POWER PROJECT during the OCTOBER -2018						
Discrepancy in Independent Auditor's Report Submitted by APMuL						
SR No.	Name of Vessels	GCV of Coal (Kcal/Kg)	Vessels Quantity	Phase -1 & 2 under BID-1 PPA		Discrepancy (Coal consumed in 16 days is higher than 30 days)
				Coal consumed during 01-10-18 to 31-10-2018 as per Change in Law (CIL) Invoice	Coal consumed during 15-10-18 to 31-10-2018 as per differential claim for OCT-2018	
				Auditor Certificate dated 28-11-2018	Auditor Certificate dated 13-04-2019	
1	MV Star Gwyneth	4829	80,157	10,027.15	26,518.00	16,490.85
2	MV Narious Aster	4662	1,64,244	62,104.96	1,15,750.00	53,645.04
3	MV Golden FENG	4741	1,59,305	60,237.40	1,07,194.00	46,956.60

4	MV Frontier Explorer	4757	82,500	31,195.41	-	-
5	MV Frontier Explorer	4757	82,499	31,195.03		
6	MV AANYA	4703	1,64,999	51,323.98		
7	MV Orange Tiara	2824	1,63,972	3,928.88	16,738.00	12,809.12
8	MV West Trader	2867	1,61,500	36,829.29		
9	MV Orange Tiger	2849	1,65,000	14,311.54		
10	MV NAVIOUS Ray	4046	1,64,000	30,714.02		
11	MV Golden Shui	4217	73,200	17,813.27		
12	MV Golden Shui	4085	86,300	21,001.16		
13	Cape Fusion	4963	1,57,637	13,074.30		
14	MV Nord Destiny	5073	81,157	25,630.79		
15	MV Minon Flame	5589	70,554	11,444.87		
		4188.6 (Weighted Average)	18,57,024	4,20,832.05	2,66,200	1,29,902

31. By comparing the two auditor certificates, GUVNL has sought to show that there is significant discrepancy between the two certificates in the coal consumed for Units 1 to 4 as under:

(a) In respect of the shipment MV Star Jwyneth, the coal consumed for the entire month of October, 2018 for the Units 1 to 4 is 10,027.15 MT as per the certificate dated 28.11.2018 while for the part period from 15.10.2018 to 31.10.2018, the

quantum of coal from the said vessel for Units 1 to 4 has increased to 26,518 MT as per the certificate dated 13.4.2019.

(b) In respect of shipment of MV Narious Aster, the coal consumed for the entire month of October, 2018 for the Units 1 to 4 is 61,104.96 MT as per the certificate dated 28.11.2018 while for the part period from 15.10.2018 to 31.10.2018, the quantum of coal from the said vessel for Units 1 to 4 has increased to 1,15,750 MT as per the certificate dated 13.4.2019.

(c) In respect of shipment of MV Golden FENG, the coal consumed for the entire month of October, 2018 for the Units 1 to 4 is 60,237.4 MT as per the certificate dated 28.11.2018 while for the part period from 15.10.2018 to 31.10.2018, the quantum of coal from the said vessel for Units 1 to 4 has increased to 1,07,194 MT as per the certificate dated 13.4.2019.

(d) In respect of shipment of MV Orange Tiara, the coal consumed for the entire month of October, 2018 for the Units 1 to 4 is 3,928.88 MT as per the certificate dated 28.11.2018 while for the part period from 15.10.2018 to 31.10.2018, the quantum of coal from the said vessel for Units 1 to 4 has increased to 16,738 MT as per the certificate dated 13.4.2019.

GUVNL has submitted that the coal consumption for the whole month of October, 2018 for Unit 1 to 4 is significantly lesser than the coal consumed for the part of the month i.e. 15.10.2018 to 31.10.2018. If the coal consumption for the entire month of October, 2018 is taken even as per the Auditor's Certificate dated 28.11.2018, the weighted average GCV of coal works out to 4188.6 kCal/kg.

APMuL's Affidavit dated 2.6.2022

32. In response to affidavit filed by GUVNL vide I.A. No.36/IA/2022, APMuL vide its affidavit dated 2.6.2022 has submitted that both the Auditor's Certificate 28.11.2018 and 13.4.2019 were available with the Petitioner at the time of filing of this petition. The Petitioner chose not to rely on these certificates either in its petition or in the subsequent pleading/proceedings. The Petitioner by filing these certificates at this belated stage when the order is reserved in the present petition and is trying to prejudice the Commission. On merit, the Petitioner has submitted as under:-

- (a) 2018 SPPAs were signed on 5.12.2018 and as per the said SPPAs, there was no requirement to claim change in law compensation subsequent to the date of signing because the pass through formula allowed in the 2018 SPPAs was subject to certain caps/ceilings as provided in SPPAs.
- (b) APMuL had therefore raised Change in Law claims separately on GUVNL upto October, 2018 only. In fact, the Change in Law claim for October 2018 was submitted to GUVNL on 28.11.2018 along with the Auditor Certificate dated 28.11.2018 i.e. prior to signing of 2018 SPPAs on 5.12.2018. No Change in Law claims were submitted to GUVNL after signing of 2018 SPPAs. Since the 2018 SPPAs were effective from 15.10.2018, even the Change in Law amount claimed for the period 15.10.2018 to 31.10.2018 was refunded to the Petitioner by giving credit in the differential invoice raised on 15.4.2019. The amount of Rs. 14,68,54,467/- has been refunded to GUVNL as shown at Sl. No. 7 of the invoice.

- (c) From perusal of Auditor Certificate dated 28.11.2018, evidently coal quantity mentioned therein is based on a particular allocation basis and not on unit-wise actual consumption basis.
- (d) This fact has been clearly mentioned in the Auditor Certificate dated 28.11.2018 in the Note "1. Imported Coal Quantity allocated to GUVNL Bid-1 PPA is based on allocation of heat required from imported coal to the shipments from which coal was consumed in the respective months" being submitted to GUVNL till October, 2018.
- (e) So far as Auditor Certificate dated 13.4.2019 is concerned, the vessel wise coal quantity mentioned therein is in accordance with SPPAs dated 5.12.2018. Since Article 3.2.4 of the 2018 SPPAs stipulates actual coal consumption to be considered, therefore, APMuL for the purpose of energy charge claim for the period 15.10.2018 to 31.10.2018 has considered actual quantity of coal consumed based on the Books of Accounts in its Auditor Certificate dated 13.4.2019. The quantity shown in the Auditor Certificate dated 13.4.2019 was not based on any allocation methodology as against the Auditor Certificate dated 28.11.2018.
- (f) GUVNL was aware of the methodology being followed for Change in Law claims prior to 2018 SPPAs and for monthly energy charge claim under the 2018 SPPAs.
- (g) GUVNL had raised various objections on the energy charges claim submitted for October 2018 pursuant to approval of the 2018 SPPAs by the Commission