

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 54/MP/2023

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

Date of order: 22nd November, 2023

In the matter of

Petition under Section 79 of the Electricity Act, 2003 read with Article 13.2(b) of the Power Purchase Agreement dated 2.2.2007, Article 3.7 of the Supplemental Power Purchase Agreement dated 5.12.2018 and Recital O(d) of the Supplemental Power Purchase Agreement dated 30.3.2022 entered with Gujarat Urja Vikas Nigam Ltd. seeking Change in Law compensation.

**And
In the matter of**

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

...Petitioner

Versus

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

..Respondent

Parties present:

Shri Amit Kapur, Advocate, APMuL
Shri Saunak Rajguru, Advocate, APMuL
Shri Subham Bhut, Advocate, APMuL
Ms. Swapna Seshadri, Advocate, GUVNL
Ms. Shivani Verma, Advocate, GUVNL

ORDER

The Petitioner, Adani Power (Mundra) Limited (hereinafter referred to as ‘the Petitioner/APMuL), has filed the present Petition under Section 79 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) read with Article 13.2(b) of the Power

Purchase Agreement dated 2.2.2007, Article 3.7 of the Supplemental Power Purchase Agreement dated 5.12.2018 and Recital O(d) of the Supplemental Power Purchase Agreement dated 30.3.2022. The Petitioner has made the following prayers:

“(a) Admit the present Petition;

(b) Declare that Notification S.O. No. 3305(E) dated 07.12.2015 by Ministry of Environment, Forest and Climate Change is a Change in Law event;

(c) Allow the consequential relief of Change in Law and allow the cost to be incurred by APMuL in installing the FGD;

(d) Approve the cost to be incurred by APMuL in installing the FGD system for Units 5 and 6 of Mundra TPS at the matching bid price of Mundra TPS (Units 1-4).”

2. The Petitioner has set up a 4,620 MW Thermal Power Plant (hereinafter referred to as “Mundra Power Project”) in the Special Economic Zone at Mundra, Gujarat consisting of four Units of 330 MW each in Phase I and II (Units 1 to 4), two Units of 660 MW each in Phase III (Units 5 and 6) and three Units of 660 MW each in Phase IV (Units 7, 8 and 9). Pursuant to separate competitive bidding processes carried out by the Gujarat Urja Vikas Nigam Limited (GUVNL) and Haryana Discoms, the Petitioner has entered into long term Power Purchase Agreements (“PPAs”) for the supply of 1000 MW from Units 5 and 6 to GUVNL (“Bid-02”); 1000 MW from Units 1 to 4 to GUVNL (“Bid-01”); and 1,424 MW (712 MW each) from Units 7 to 9 to Haryana Discoms from Mundra Power Project.

3. On 2.2.2007, APMuL signed a Power Purchase Agreement (“PPA”) with Gujarat Urja Vikas Nigam Ltd. (“GUVNL”) for the supply of power from two (2) Units of 660 MW in Phase III (i.e., Units 5 and 6) of Mundra TPS.

4. The Petitioner had filed a Petition No. 332/MP/2018 seeking declaration that the Notification issued by the Ministry of Environment, Forest and Climate Change (hereinafter referred to as 'the MoEF&CC Notification') dated 7.12.2015 is an event of Change in Law under the provisions of the respective PPAs and to declare that an additional capital cost and operational cost along with expenses on account of the generation loss, reduction in efficiency, deterioration of heat rate, and other expenses specified in the above Petition shall be considered on the actual basis for Change in Law relief in terms of the PPAs provisions to ensure that the Petitioner is brought to the same economic position as if such Change in Law event has not occurred.

5. Subsequently, APMuL sent notice to GUVNL for termination of the PPA dated 2.2.2007. The Hon'ble Supreme Court, by its Judgment dated 2.7.2019 in Civil Appeal No. 11133 of 2011 [2019 SCC Online SC 813] had allowed APMuL's Appeal *inter-alia* holding that APMuL's notice of termination dated 28.12.2009 of the PPA dated 2.2.2007 was legal and valid ("PPA termination SC judgment"). As a result, the PPA dated 2.2.2007 stood terminated with effect from 4.1.2010. Therefore, the Petitioner had sought liberty to analyse the implication of the said judgment of the Hon'ble Supreme Court and approach the Commission at a later stage claiming Change in Law relief on account of MoEF&CC Notification under PPA dated 2.2.2007 (i.e., for Units 5 and 6). In the said Petition, the learned counsel for the Respondents argued that since the Hon'ble Supreme Court has terminated the GUVNL Bid-02 PPA, the Petitioner cannot claim Change in Law for Bid-02 PPA in the present Petition. In response, learned counsel for the Petitioner submitted that the Petitioner is evaluating the implications of the Hon'ble Supreme Court's decision upholding the termination of the GUVNL Bid-02 PPA and seeking advice. Accordingly, the Petitioner craved leave to approach the Commission at a later stage regarding the Change in Law impact on

the GUVNL Bid-02 PPA and to formulate a mechanism to compensate the Petitioner for incurring the financial cost towards the installation of FGD. Accordingly, the Commission, vide its order dated 28.10.2019 in Petition No. 332/MP/2018, allowed the Change in Law with regard to the Haryana PPA.

6. On 3.1.2022, a Deed of Settlement was executed between APMuL and GUVNL *inter-alia* agreeing (i) that PPA dated 2.2.2007 will be revived by APMuL and (ii) on terms and conditions therein to avoid any future dispute qua payment of energy charges to APMuL. The Deed of Settlement was approved by the Hon'ble Supreme Court vide Order dated 8.3.2022 in Curative Petition No. 34 of 2020. Supplemental Power Purchase Agreement ("SPPA") dated 30.3.2022 was signed by APMuL and GUVNL to give contractual sanctity to the Deed of Settlement dated 3.1.2022. Accordingly, the Petitioner has filed the present Petition.

Submissions of the Petitioner

7. The Petitioner has mainly submitted as under:

(a) On 14.4.2022, APMuL wrote to GUVNL *inter alia* stating that in view of the revival of the PPA dated 2.2.2007, APMuL is mandated to install FGD at Units 5 and 6 of Mundra TPS and if APMuL opts for a fresh International Competitive Bidding ("ICB") process for the installation of FGD for Units 5 and 6, the ICB process itself will take about 6-12 months and the installation and commissioning activities may eventually cross the timeline (being 31.12.2026). Accordingly, GUVNL requested to provide its suggestions on the option of awarding the contract for the installation of FGD for 2 x 660 MW of Mundra TPS (Units 5 and 6) also to the same successful bidder identified in the bidding process for the installation of FGD in the previously concluded ICB process for Units 1-4.

(b) In response, GUVNL vide its letter dated 26.4.2022 allowed APMuL to do the needful and take the suitable decision as per the prudent practices for the installation of FGD systems at Units 5 and 6 of Mundra TPS under the PPA dated 2.2.2007, by adhering to the directives specified by the Central Electricity Authority (“CEA”) and this Commission. GUVNL also reserved its right to make suitable submissions before this Commission once APMuL approaches the Commission seeking Change in Law reliefs for Units 5 and 6.

(c) On 7.12.2015, MoEF&CC notified the Environment (Protection) Amendment Rules, 2015 (hereinafter referred to as “2015 MoEF&CC Notification”) which mandatorily require all thermal power plants to comply with the revised norms within two years of the 2015 MoEF&CC Notification.

(d) On 5.2.2016, GUVNL wrote to APMuL admitting that implementation of the measures in the MoEF&CC Notification requires heavy CAPEX, and it requires to examine the matter in detail. GUVNL further requested APMuL to take up the matter with the Ministry of Power (“MoP”) and MoEF&CC regarding the applicability of revised environmental norms for existing plants, revisiting the restriction on water consumption, and mandatory installation of cooling towers.

(e) On 30.5.2017, referring to the mandatory requirements under CEA’s ‘region-wise phasing plan for FGD installation’, APMuL informed GUVNL that it will be incurring additional expenditure to implement the MoEF&CC Notification and requested that it must be compensated by GUVNL. MoEF&CC Notification qualifying as a Change in Law event was reiterated by APMuL in the letter.

(f) On 11.12.2017, the Central Pollution Control Board (CPCB) issued the directions to APMuL for compliance with the revised norms. On 5.1.2018, APMuL wrote to GUVNL referring to the aforesaid CPCB directive dated 11.12.2017, as per which APMuL was directed to (i) install/retrofit Electronic Precipitators (ESP) so as to comply with the particulate matter emission limit immediately, (ii) install FGD as per the mentioned schedule, and (iii) take immediate measure like installation of low NOx (Oxides of Nitrogen) burners, providing Over Fire Air (OFA) etc. and achieve progressive reduction so as to

comply with NOx emission limit by the year 2022. APMuL informed GUVNL that since the said directive is binding and mandatory in nature, it has to implement the such directive of CPCB and claimed Change in Law compensation for the additional expenditure towards such implementation.

(g) On 11.6.2019, CEA submitted its recommendation report to APMuL for the installation of FGD at APMuL's Mundra TPS and directed APMuL to adhere to the timelines of CPCB. CEA also acknowledged that APMuL had submitted the revised feasibility report wherein the best suited technology and estimated indicative cost were proposed for the installation of systems to control the emission from the power plant.

CB for installation of FGD

(h) On 15.10.2020, APMuL informed CEA that it has already taken several initiatives for ICB for the installation of Wet Limestone based FGD. APMuL stated that the earlier ICB process, which was initiated on 29.3.2019, did not receive any response from the bidders due to the impact of Covid-19, therefore, a fresh Notice Inviting Tender (NIT) was issued on 5.10.2020. It was informed that installation of the FGD system would take approximately 30 to 36 months from the award of the contract for 1st Unit and subsequent Unit at an interval of 3 months. In this light, APMuL requested CEA to consider extension of FGD installation timelines for Units 1 & 2 and Units 3 & 4 as 30.9.2023 and 31.12.2023, respectively.

(i) On 27.10.2020, APMuL submitted its proposal to GUVNL qua FGD installation. GUVNL was intimated about the issuance of a Notice Inviting Tender and asked to nominate its representative to participate in the bidding process. On 7.11.2020, APMuL informed GUVNL that it has only followed CEA's direction dated 28.10.2019 while adopting the technology for FGD, and once again requested GUVNL to appoint an officer to witness/participate in the bidding process and award of the bid.

(j) On 9.11.2020, GUVNL wrote to APMuL admitting that it will have to bear the additional cost to be incurred by APMuL for installing FGD. GUVNL,

however, requested APMuL to comply with directions of the Commission in Order dated 28.10.2019 in Petition No. 332/MP/2018. In view of GUVNL's refusal to accept APMuL's proposal for the installation of a Wet Limestone based FGD System, on 2.12.2020, APMuL requested CEA to provide suitable clarification to enable APMuL to convey the same to GUVNL.

(k) On 5.12.2020, APMuL intimated to GUVNL that in view of GUVNL's allegations, APMuL has approached CEA to provide necessary clarification regarding technology for the FGD system. APMuL also sought inputs from GUVNL regarding tender documents in view of the deadlines set by the authorities to comply with the FGD installation norms.

(l) On 10.12.2020, GUVNL requested APMuL to follow the directions of the Commission qua technology for FGD. GUVNL further informed that as per the Commission's Order, APMuL was directed to approach CEA to firm-up the technology to be used for the installation of FGD and CEA to recommend the appropriate technology to be employed.

(m) On 8.1.2021, CEA informed APMuL, re-affirming its suggestion to install the wet limestone based FGD technology for Phases I & II (4 x 330 MW) and Phase III (2 x 660 MW). Accordingly, on 16.1.2021, APMuL intimated GUVNL that CEA has re-affirmed its recommendation for the installation of wet limestone based FGD technology as a suitable technology at Mundra TPS. GUVNL was once again requested to nominate an officer from GUVNL to witness the bidding process. However, on 29.1.2021, GUVNL appointed its representative to witness/ participate in the bidding process for FGD system installation.

(n) On 4.4.2022, APMuL intimated GUVNL regarding the completion of the evaluation of price bids for the installation of FGD at Mundra TPS and the identification of Power Mech Projects Private Limited ("Power Mech") as the successful L-1 bidder. APMuL submitted a comparative statement of price for FGD along with the Bid Evaluation Report received from the bid advisory consultant to GUVNL. Accordingly, APMuL sought GUVNL's approval to enable APMuL to issue a Letter of Award and sign the contract with Power Mech.

(o) On 7.4.2022, GUVNL requested APMuL to take a suitable decision for the award of the contract as per its business prudence. On 14.4.2022, APMuL informed GUVNL that in view of the revival of the PPA, APMuL has to install FGD at Units 5 and 6 of Mundra TPS. Units 5 and 6 of Mundra TPS plant are categorized under the "C" Category (as per Minutes of the 4th meeting of the Task Force constituted by CPCB).

(p) 26.4.2022, GUVNL wrote to APMuL stating that (i) GUVNL's letter dated 7.4.2022 should not be construed as its consent for award of contract to L-1 bidder for Units 1-4. (ii) APMuL may do the needful and take the suitable decision as per business prudence for the installation of FGD systems at Units 5 and 6 of Mundra TPS to comply with the emission norms by 31.12.2024 under PPA dated 2.2.2007 (Bid-02) by adhering to the directives specified by CEA and the Commission (iii) GUVNL clarified that this is not consent, and it reserved its right to make suitable submissions before this Commission once APMuL files the Change in Law Petition

(q) On 10.5.2022, Power Mech submitted the Price Bid for the implementation of the FGD system at Mundra Phase III (2x660 MW). Power Mech stated that since the submission of the price offer of Mundra Phases I & II (4x330 MW) on 8.12.2021, the markets have changed drastically which has also affected the prices of raw materials for the FGD system. However, it has maintained the same prices for Mundra Phase III (2x660 MW) as it had offered for Mundra Phases I & II (4x330 MW). It was also informed that the techno-commercial offer and price offer are in accordance with the scope of works proposed in the Technical Specifications provided along with the Record Notes on Discussions ("RND"). The total price without taxes and duties quoted by Power Mech is Rs. 963,60,00,000.

(r) On 18.8.2022, APMuL and Power Mech executed the Engineering, Procurement and Construction ("EPC") Contract for the installation of a Wet Limestone based FGD system in Phase III (2x660MW) of Mundra power project at the contract price of Rs 963,60,00,000.

(s) On 5.9.2022, MoEF&CC notified the Environment (Protection) Second Amendment Rules, 2022 wherein it revised the timelines for compliance with the emission control norms as specified in the Environment (Protection) Amendment Rules, 2015 to 31.12.2026 as against 31.12.2024 provided under Environment (Protection) Amendment Rules, 2021 for thermal generating stations covered under the Category "C".

(t) On 6.9.2022, APMuL informed GUVNL about executing the EPC contract with the L1 bidder i.e. Power Mech. GUVNL has not responded to date. Accordingly, APMuL is seeking the Change in Law compensation on the basis of the adoption of the price bid of Mundra Phase I & II (Units 1-4) for the Mundra Phase III (Units 5 and 6).

Hearing dated 16.5.2023

8. Vide Record of Proceedings for the hearing dated 16.5.2023 notice was issued to the Respondent to file its reply. Reply and rejoinder to the Petition have been filed by the parties.

9. The Respondent, in its reply dated 25.8.2023, has mainly submitted as under:

(a) In terms of the Order dated 28.10.2019, vide letter dated 27.10.2020, APMuL had intimated GUVNL regarding the publication of notice inviting tender dated 5.10.2020 to appoint EPC Contractor for the installation of FGD system *inter-alia* for the Mundra Power Plant. However, APMuL chose not to invite Bids for Units 5 & 6 (2 x 660 MW). There is no direct correlation between the termination of the PPA dated 2.2.2007 relating to Units 5 & 6 and the requirement to comply with the environmental norms.

(b) The requirement of compliance with the environmental norms is not related to whether or not the generating company has a PPA, long-term or otherwise. Every generating station/power plant was required to comply with the environmental norms. Even a merchant power plant, selling power at a Power Exchange or through short-term contracts or a captive power plant, is required

to comply with the environmental norms. It is not the case of APMuL that it was shutting down Units 5 and 6 and therefore, did not need to comply with the environmental norms.

(c) The CEA vide letter dated 28.10.2019 had recommended the installation of FGD for Units 5 and 6. GUVNL vide letters dated 3.11.2020 and 9.11.2020 had requested APMuL to comply with the Order dated 28.10.2019 of the Commission. Vide letter dated 2.12.2020, APMuL for the first time since the Commission's Order dated 28.10.2019, wrote to CEA regarding the installation of the FGD system at the Mundra TPP. In response to the above, vide letter dated 8.10.2021, CEA recommended the installation of the FGD system for Units 5 and 6 as well.

(d) APMuL may appraise the Commission on the status of the installation of FGD for Units 1 to 4. The cost or implications of any delay in installation of the FGD systems is required to be borne by APMuL. There has also been a delay on the part of APMuL in the completion of the earlier tender and installation of FGD systems for other units of the Mundra TPP.

Re: Change in Law Claim of APMuL in the present Petition

(e) The effect of Change in Law has been claimed in regard to the amendment to the Environment (Protection) Rules, 1986 notified by the Ministry of Environment, Forests and Climate Change by way of the Environment (Protection) Amendment Rules, 2015 notified on 7.12.2015. The issues raised by APMuL in the Petition have to be considered with reference to the specific claims in the context of Article 13 of the PPAs read with the applicable provisions of the respective SPPAs.

(f) The Amendment to the Environment Protection Rules notified on 7.12.2015 relates to the quantum of water consumption, emission limits for Sulphur Dioxide, emission limits for Nitrogen Oxide, emission limits for Mercury, and emission of Suspended Particulate Matter.

(g) In the present case, APMuL has only claimed the impact of the Amendment for the emission limits for Sulphur Dioxide (SO₂). With regard to other issues, APMuL is not claiming any relief and therefore, GUVNL is not dealing with the said issues. However, this may not be construed as an admission of the contentions or facts presented by APMuL in regard to the same.

(h) The Feasibility Report has considered the SO₂ for Phases 1 and 2, which may not be appropriate if the Phase 1 and 2 consists of 2 X 330 MW. Since the same is not supported by any emission data, it cannot be considered. The SO₂ emissions for Phase III being 2 X 660 MW are the same as Phase II (2X330 MW) and higher than Phase I (2X330 MW), which is not logical.

(i) The consideration of emissions levels cannot be based merely on the statement of APMuL and actual emission levels have to be considered. Any recommendation by CEA based on erroneous emission levels cannot be the basis and therefore, APMuL should be required to submit the actual emission data.

Costs claimed by APMuL

(j) APMuL is claiming similar costs as incurred by it for Units 1 to 4. The Commission may consider the prudence and appropriateness of the cost.

(k) The issue in the present case relates to Units 5 and 6, and APMuL has sought consideration of costs based on the bid for Units 1 to 4. There is no reason why APMuL did not initiate the ICB process for Units 5 and 6 when it is clear that they would also have to comply with the environmental norms, irrespective of whether it has the PPA with GUVNL or not. The alleged increasing cost of FGD technology cannot be considered when it was APMuL who had unnecessarily delayed.

(l) APMuL has claimed a cost of Rs. 963.60 crore for FGD for a total of 1320 MW which works out to Rs. 0.73 crore per MW for Units 1 to 4. APMuL is claiming approval of the matching costs for Units 5 and 6. APMuL has not

approached the Commission yet for approval of costs for Units 1 to 4 and, without such approval, is now claiming matching costs for Units 5 and 6. There cannot be any approval for Units 5 and 6 on the basis of matching costs with Units 1 to 4 when costs for Units 1 to 4 have not yet been approved by the Commission.

(m) The cost is very high compared to the rate discovered by NTPC in recent bids. Even as per the CEA, the ceiling for the FGD is 0.4 crore per MW. Therefore, even assuming but not admitting that the costs for 330 MW units are held to be considered prudent, the said cost of Rs. 73 lakh per MW cannot be considered to be prudent or reasonable for 660 MW units.

10. The Petitioner in its rejoinder dated 11.9.2023 has mainly submitted as under:

(a) GUVNL was a part of the entire bidding exercise through its nominated representative. There were a total of 16 Addendums to NIT issued by APMuL on 5.10.2020, and each and every addendum was informed to GUVNL. In the presence of GUVNL's representative, the techno commercial and price bids were opened on 20.12.2021 and 14.03.2022 respectively. In fact, by letter dated 7.4.2022, GUVNL gave a go-ahead to APMuL to proceed with awarding the contract to Power Mech for installing the FGD system in Units 1-4 of Mundra TPS. If GUVNL had any objections *qua* the bidding process for Units 1-4, the same ought to have been raised at the relevant point of time, i.e., either when price bids were opened or before the award of the contract. It is not open for GUVNL to raise such objections now.

GUVNL is erroneously casting aspersions on cost discovered in the bidding process for installation of FGD at Units 1-4 of Mundra TPS

(b) So far as the cost of installation of FGD is concerned, the attempt of GUVNL to compare the prices discovered in the bidding process concluded for NTPC Projects is erroneous, and not a correct comparison to be made. It is noteworthy that prices discovered in the bidding process concluded for NTPC Projects were prior to COVID-19, whereas the cost discovered in the bidding process for installation of FGD at Units 1-4 of Mundra TPS is post-COVID-19

period. The Ministry of Power by its Office Memorandum dated 3.5.2022 *inter alia* records CEA's view/observations that due to the huge demand-supply gap, prices quoted in the FGD bid are escalating exorbitantly [increased from Rs. 0.39 crore per MW to Rs. 1.14 crore per MW i.e., 2.9 times in a short span]. As against CEA's observation *qua* FGD installation cost having touched Rs. 1.14 crore per MW, APMuL's estimated hard cost sought to be approved stands at Rs. 0.86 crore per MW. Accordingly, the aspersions cast *qua* bid discovered cost for installation of FGD is baseless and lacks merit.

Approval of cost to be incurred by APMuL in installing FGD system for Units 5 and 6 of Mundra TPS at the matching bid price of Units 1-4 of Mundra TPS subsumes consumers' interest

(c) Admittedly, the cost of installation of FGD will be borne by GUVNL, which in turn, will be passed on to the consumers. As per the Environment (Protection) Second Amendment, Rules, 2022, APMuL is mandated to install the FGD by 31.12.2026 (being a Category "C" TPS).

(d) Despite being subjected to a rigorous bidding process, the ICB process is going to take a minimum of 12 months. If APMuL is subjected to a fresh ICB process for the installation of FGD system in Units 5 and 6, then (i) APMuL may not be in a position to comply with the deadline set by MoEF&CC /CPCB for "C" category thermal power plants., and (b) In all likelihood, the discovered bid price will be on the higher side as compared to presently claimed price considering as also evident from the Ministry of Power by its Office Memorandum dated 3.5.2022.

(e) Therefore, in order to meet the twin objectives of (a) meeting the strict timeline to implement emission reduction norms laid down by MoEF&CC, and (b) also to minimize the financial impact on GUVNL, both being in the interest of end consumers, the cost to be incurred by APMuL in installing FGD system for the Units 5 and 6 of Mundra TPS may be approved at the matching bid price of the Units 1-4 of Mundra TPS.

(f) Non-approval of the cost of installation of FGD system for Units 1-4 of Mundra TPS does not pose any embargo for the Commission to approve the

cost to be incurred by APMuL in installation of FGD system for Units 5 and 6 of Mundra TPS at the matching bid price of the Units 1-4 of Mundra TPS. For Units 1-4 of Mundra TPS, the occasion to get the cost approved has not arisen in view of the direction in the Commission's order to approach the Commission for approval of cost 'after implementation' of revised norms in accordance with the CEA guidelines. However, currently, for Units 1-4 of Mundra TPS, the EPC contract has been awarded, the layout has been finalized and engineering work is under process.

Hearing dated 13.9.2023

11. During the course of the hearing on 13.9.2023, the learned counsel for the Petitioner and the Respondent made detailed submissions in the matter. In response to the specific query of the Commission with regard to whether the cost to be incurred by the Petitioner in installing the FGD system for Units 1-4 of Mundra TPS has been approved by the Commission, learned counsel for the Petitioner submitted that by order dated 28.10.2019 in Petition No. 332/MP/2018, the Petitioner has been directed to first implement the revised norms in consultation with CEA and to approach this Commission thereafter, for determination of an increase in cost and/or revenue expenditure on account of the implementation of revised norms in accordance with the CEA Guidelines and the mode of recovery of the same through the monthly tariff.

12. After hearing the submissions of the learned counsel for the parties, the Commission further directed the GUVNL to provide in an affidavit, the cost comparison of other generating stations duly specifying whether the cost is including taxes or excluding taxes.

13. The Respondent, GUVNL, vide its affidavit dated 7.10.2023, has placed on record the details of the cost of comparison of other generating stations. It has been

further submitted that the cost of Rs. 73 lakh per MW (hard cost), as sought by the Petitioner by any stretch cannot be considered to be prudent or reasonable for 660 MW. The Respondent has submitted the details of the cost as provided by NTPC / other generating companies. The Respondent has submitted that the costs claimed for matching by the Petitioner for the FGD systems for Units 5 & 6, in line with the cost discovered for Units 1-4, are exorbitantly higher and not sustainable for GUVNL. As per MOEFCC Notification dated 5.9.2022, the compliance timeline for FGD norms is 31.12.2026, for Mundra Plants, after which Environmental compensation at Rs. 0.20 – 0.40 / unit of electricity generated would be levied as a penalty for non-compliance of the timeline for FGD norms. It has been submitted that any implication on account of non-compliance within the stipulated time, shall not be attributed to GUVNL. Accordingly, The Petitioner may be granted in-principle approval for Change in Law and may be directed to initiate a fresh tendering process and subsequently approach this Commission by way of a fresh Petition, which shall be subject to prudence check. Any claim for approval of costs at this stage is premature. Further, in view of the configurations for Units 1 to 4 being different than Units 5 and 6, it would be imprudent for the Petitioner to simply adopt the costs as suggested by it. In any event, there cannot be approval of costs without a prudence check by the Commission.

Analysis and Decision

14. We have considered the submissions of the Petitioner and Respondent, GUVNL. During the course of the hearing on 13.9.2023. the learned counsel for the Respondent, GUVNL, submitted that the Petitioner, on its own, chose not to include Units 5 & 6 of Mundra TPS in its NIT dated 5.10.2020 for the bid process for installing the FGD System for its various thermal power plants, including Units 1 to 4 at Mundra TPS. Uncertainty relating to the long-term PPA cannot be a ground for not initiating a

process for FGD installation, as the Petitioner was under a mandate to install the FGD system irrespective of the existence of long-term PPAs. Thus, the consequences of such delays are entirely attributable to the Petitioner and cannot be passed on to the Respondent or consumers. The Petitioner is now claiming a similar cost as incurred by it for Units 1 to 4 of Mundra TPS. However, even the bidding process for the installation of the FGD System at Units 1 to 4 was delayed. In any case, the Petitioner has yet to approach the Commission for approval of costs for Units 1 to 4, and there cannot be approval for Units 5 & 6 on the basis of matching costs with Units 1 to 4 when costs for the Units 1 to 4 have not yet been approved by the Commission. The cost claimed by the Petitioner (approximately 0.73 crore per MW, excluding taxes) is substantially higher compared to the rates discovered by NTPC in its recent bids. In this regard, reliance was placed on the costs for FGD systems allowed in the cases of NTPC's various thermal generating stations and also in the case of other thermal generating stations, as produced in the reply. In any case, Units 1 to 4 are 330 MW, whereas Units 5 & 6 are 660 MW, and therefore, there would be economies of scale to reduce the costs. The Commission may also consider directing the Petitioner to go for a fresh ICB process for installation of the FGD systems at Units 5 & 6 or, alternatively, may restrict the approval of costs to those approved in similarly placed thermal power plants.

15. Keeping in view the deadlines specified for compliance with the emission control norms by thermal generating stations, the Commission observed that it would be prudent that the Respondent, being the sole procurer, clearly indicate its stance on the fresh ICB process for installation of FGD systems at Units 5 & 6 of Mundra TPS. For this purpose, it may also be necessary to weigh the costs that may be discovered at this stage. Accordingly, the Commission found it appropriate to instruct the

Petitioner and the Respondent to jointly carry out the consultation on the various aspects, including but not limited to the suitability of initiating the fresh ICB process for installation of the FGD system at the Units 5 & 6, cost & time implications associated with it, the scope of any further optimization of costs by the successful bidder for Units 5 & 6, etc. and file the outcome of such a consultation process. The Commission also clarified that any suggestions/proposals to be agreed upon between the parties/by GUVNL will be limited to Units 5 & 6 only and will be without prejudice to GUVNL's right to raise objections relating to the delays/costs in respect of Units 1 to 4 of Mundra TPS.

16. During the course of the hearing held on 10.11.2023, the learned counsel for the Petitioner submitted that the Petitioner has no hesitation to conduct a fresh ICB process for the installation of FGD at Units 5&6 of Mundra TPP in view of the stand taken by GUVNL to initiate fresh tendering process vide its affidavit dated 7.10.2023. However, the learned counsel for the Petitioner submitted that GUVNL should be bound to accept the price discovered in the fresh ICB process even if it is higher than the claim made by the Petitioner in the present Petition. In response, the learned counsel for GUVNL reaffirmed GUVNL's stand regarding the initiation of the fresh tendering process and further added that GUVNL is ready to undertake the risk associated with it.

17. The Respondent has submitted that the Petitioner may be granted in-principle approval for Change in Law. However, no costs can be admitted at this stage without AMPuL initiating a tendering process and subsequently, approaching this Commission by way of a fresh Petition, which shall be subject to prudence check. The Commission also observed that the Petitioner APMuL could have initiated the ICB process for Units

5 and 6 earlier as they would have had to comply with the environmental norms, irrespective of whether it has the PPA with GUVNL or not. It is noticed that the Commission, in its order dated 28.10.2019 in Petition No. 332/MP/2018 has dealt with the aspect of Change in Law and in-principle I approval. Relevant portions of the said order dated 28.10.2019 are extracted as under:

“39. In light of the above, the requirement of installation of FGD for compliance with the revised norms for sulphur dioxide in terms of the MoEF&CC Notification, 2015 is covered under Change in Law in terms of the GUVNL Bid-01 PPA dated 6.2.2007.

46. The Petitioner vide its rejoinder dated 26.2.2019 to reply filed by GUVNL has sought regulatory certainty/ in-principle approval of the additional investments to be made to secure finance from financial institutions. The aspect of in-principle approval for additional capital expenditure has been dealt with by the Commission in order dated 17.9.2018 in Petition No. 77/MP/2016 as under:

“44.....There is no concept of in-principle approval in the PPA, and we find no reason to accord such approval as prayed for by the petitioner. The consequential implementation of Change in Law and compensation will flow from the declaration and recognition that MoEFCC Notification is a Change in Law. However, we have already concluded that MoEFCC Notification, 2015 is in the nature of Change in Law in terms of the PPA as well as the directions issued by the Central Government under Section 107 of the Act. Further, the Change in Law will be applicable on those items of cost or revenue which the Petitioner has claimed and is approved by the Commission. The Petitioner shall implement the revised environment norms to comply with the MoEFCC Notification and approach the Commission for determination of the increase in cost or/and revenue expenditure on account of implementation of such Change in Law in terms of guidelines to be prepared by CEA as stated in para 47 of this Order At that stage, the Commission will determine the mode of recovery of the cost or/and revenue expenditure for the Petitioner through monthly tariff which shall be incurred for compliance with the MoEFCC Notification

Summary of our Decisions

49. Summary of our decisions in this order are as under:

(a) MoEFCC Notifications, 2015 prescribing the revised environmental norms in respect of thermal Power plants which has been issued after the cut-off date of Mundra UMPP are in the nature of Change in Law in terms of the PPA dated 22.4.2007 and the MoP directions issued under Section 107 of the Act.

(b) The Petitioner has given notice regarding Change in Law arising out of MoEFCC Notification in terms of the PPA.

(c) The Petitioner is required to take steps to implement revised norms in respect of Sulphur Dioxide, Nitrogen Oxide and water consumption. The Petitioner has taken up the matter with MoEFCC for exemption from implementing the norms for water consumption and therefore, the implementation of the norms of water consumption shall be dependent on the decision of MoEFCC in this regard.

(d) Mundra UMPP meets the norms prescribed in MoEFCC Notification, 2015 with regard to particulate matters and mercury and accordingly, the Petitioner has not claimed the relief under Change in Law.

(e) The Commission has directed CEA vide its order dated 22.7.2018 in Petition No. 98/MP/2017 to prepare guidelines specifying the suitable technology for each plant and operational parameters such as auxiliary consumption, Station Heat Rate, O&M expenses, norms of consumption of water, lime stones etc. for implementation of revised environmental norms. The Petitioner shall implement the revised norms as per the MoEFCC Notification, 2015 in consultation with CEA.

(f) There is no provision for in-principle approval in the PPA. However, the Commission has decided that MoEFCC Notification, 2015 is in the nature of Change in Law. Accordingly, the Petitioner shall approach the Commission for determination of increase in cost or/and revenue expenditure on account of implementation of revised norms in accordance with the Guidelines to be issued by CEA and the mode of recovery of the same through monthly tariff.”

18. In light of the above, we are of view that the requirement of installation of FGD for compliance with the revised norms for sulphur dioxide in terms of the MoEF&CC Notification, 2015 is covered under Change in Law. Since the sole Respondent, which has to bear the cost for installation of the FGD cost, has not agreed to the cost submitted by the Petitioner in the present Petition, the Petitioner is directed to initiate a transparent competitive bidding process after wide publicity for Units 5 & 6 as suggested by the Respondent immediately. The Petitioner shall also keep the sole respondent informed and involved during the bidding process. The Petitioner is granted a liberty to approach the Commission for determination of the increase in cost on account of the installation of FGD along with the relevant details in accordance with

the Guidelines issued by CEA and as per the principles consistently followed in various orders of the Commission.

19. The Petition No. 54/MP/2023 is disposed of in terms of above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson