THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2228 of 2025

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF:

Petition under Section 63 and 86(1) (a) & (b) of the Electricity Act, 2003, read with Regulation 15 of the Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2019, seeking approval of the Power Supply Agreement (PSA) dated 16.05.2025 for procurement of 1500 MW of power from thermal generating stations to be set up within Uttar Pradesh under the Design, Build, Finance, Own and Operate (DBFOO) model by sourcing fuel from the allocated coal linkage arranged under SHAKTI Policy B(iv) and for adoption of tariff discovered through competitive bidding process.

AND

IN THE MATTER OF

Uttar Pradesh Power Corporation Limited (UPPCL),

Shakti Bhawan, 14- Ashok Marg, Lucknow-226001 .... **Petitioner**

AND

Mirzapur Thermal Energy (UP) Pvt. Ltd. (MTEUPPL) (Subsidiary of M/s Adani Power Ltd.),

4th Floor, South Wing, B Block, KP Epitome,

Near DAV International School, Makarba,

Ahmedabad, Gujarat-380051. .... **Respondent**

FOLLOWING WERE PRESENT

1. Shri Savyasachi Saumitra, Advocate, UPPCL
2. Shri A.K. Zaidi, Advocate, UPPCL
3. Shri Sayed Abbas Rizvi, CE(Planning), UPPCL
4. Shri Ayush Singh, EE(Planning), UPPCL
5. Shri Avinash Kumar, EE(Planning), UPPCL

6. Shri Siddharth Vikram Singh, DGM, APL.
7. Shri Abhishek Tyagi, AVP, APL
8. Shri Saket Maloo, Manager, APL
9. Shri Atul Kr. Singh, Engineer, APL

ORDER

(DATE OF HEARING: 18.12.2025)

The present petition has been filed by the petitioner, UPPCL, u/s 63 and section 86(1)(a) & (b) of the Electricity Act,2003 seeking approval of the Power Supply Agreement(PSA) dated 16.5.2025 for procurement of 1500 MW of power from 2X800 MW Thermal Generating Station to be set up within Uttar Pradesh under the Design, Build, Finance, Own and Operate (DBFOO) model by sourcing fuel from the allocated coal linkage against under SHAKTI Policy B(iv) and for adoption of tariff discovered through competitive bidding process. The petitioner has prayed as follows:

Prayers:

a) Admit the Petition;

b) Pass an order adopting the tariff discovered through the Competitive Bidding Process conducted on the basis of Design, Build, Finance, Own and Operate (DBFOO) model by sourcing fuel from the allocated coal linkage arranged under SHAKTI Policy B(iv), in terms of Section 63 of the Electricity Act, 2003.

c) Pass an order approving the final executed Power Supply Agreement (PSA) dated 16.05.2025, entered into between UPPCL and M/s Mirzapur Thermal Energy (UP) Private Limited.

d) Pass any further order(s) as the Commission may deem fit in the facts and circumstances of the case.

Background:

Facts as stated in Petition:

1. UPPCL issued notice inviting tender on 6.3.2024 for procurement of 1500 MW of power (2X800 MW) through DBFOO basis from thermal power project established with in the state of UP. The Commission vide order dated 4.7.2024 and its corrigendum dated 9.7.2024 in Petition No. 2084/2024 approved

bidding documents, namely Request for qualification (RFQ), Request for Proposal (RFP) and Power Supply Agreement (PSA).

2. UPPCL received 7 applications on DEEP portal which were opened on 19.7.2024. A committee for evaluation of applications during RFQ and RFP stage was constituted vide OM no. 704PLG/UMPP-1/DBFOO dated 25.7.24. The bid evaluation committee, in its meeting dated 21.8.2024, recommended all the 7 applicants as pre-qualified to Centre Store Purchase Committee (CSPC) for RFP stage. CSPC in its meeting dated 22.8.2024 decided all 7 applicants as qualified for RFP stage. After the pre-bid conference on 9.9.2024, UPPCL filed petition no.2133/2024 for seeking approval of deviation in PSA, which were approved by the Commission vide order dated 30.9.2024.

3. On the bid date 10.10.2024, only 5 applicants submitted their application online within the timeline and were opened by M/s PFCCL on DEEP portal. The applications of the following applicants were opened:
   (i) Adani Power Ltd. (L1)
   (ii) Torrent power (L2)
   (iii) LPGCL(L3)
   (iv) MB Power, Madhya Pradesh(L4)
   (v) Haldia Energy Ltd.(L5)

4. BEC recommended to put up the proposal before CSPC for negotiating with lowest bidder i.e. M/s Adani Power Ltd. CSPC accepting the recommendation of BEC formed negotiation committee. The meeting of negotiation committee was held with representative of APL and M/s APL subsequently, vide letter dated 30.10.2024, gave its consent for discount of 10 paisa in fixed charges. The Negotiation Committee recommended as follows:

   (i) The revised Fixed Charges of INR 3.727 per unit (per Kwh) as obtained after negotiation (after reduction of 10 paise/unit from quoted Fixed Charge of INR 3.827/unit) as on Bid Due Date keeping all other tariff terms, including fuel charges as per bid dated 10-10-2024, unchanged as confirmed by M/s APL vide their letter dated 30-10-2024 may be accepted.

   (ii) In case, FGD would not be required, in the event of a notification by MoEF&CC consequent to the NITI Aayog Report dated 24-09-2024, the same will be treated as "Change in Law" and M/s APL will accordingly reduce the revised fixed charges of Rs 3.727 per kwh to the extent of the impact of savings in the project cost on account of removal of FDG from the scope, as mutually agreed and such adjustment will be submitted to

Hon'ble UPERC for adoption. However, if mutual agreement on this adjustment isn't reached, it will be referred to the Hon'ble UPERC for appropriate adjustment as an event under "Change in Law."

5. Board of Directors of UPPCL, on 11.11.2024, approved APL as successful bidder. Subsequently, Energy Task Force (ETF) in its meeting dated 18.11.2024 approved the procurement of 1500 MW power at the discovered tariff. GoUP, vide its letter dated 07.05.25 approved the procurement of 1500 MW power from successful bidder M/s Adani Power Ltd. at the discovered tariff. Govt. of UP has decided the following:

   (i) निविदा सं0 02/नि0 / यू०एम०पी०पी० 1 / थर्मल / 2x800 मे०वा० / 2024 दिनांक 06.03.2024 के अन्तर्गत प्रतिस्पर्धात्मक बिडिंग के आधार पर स्थापित क्षमता 2x800 मे0वा0 (1600 मे0वा0) तापीय पावर परियोजना से, कुल 1500 मे०वा० (ex-bus) ऊर्जा क्रय किये जाने की बिडिंग प्रक्रिया में न्यूनतम बिडर मे० अडानी पावर लि० द्वारा बिड जिसमें फिक्सड चार्ज रू० 3.727 प्रति यूनिट, फ्यूल चार्ज रू0 1.656 प्रति यूनिट है, को स्वीकार किया जाये एवं बिड ड्यू डेट 10.10.2024 पर मे0 अडानी पावर लि० द्वारा उपलब्ध करायी गयी बिड के अन्य समस्त टैरिफ पैरामीटर (फ्यूल चार्ज सहित) यथावत रहेंगे।

   (ii) चूंकि वर्तमान बिड में डेवलपर द्वारा MoEF & CC की वर्तमान नीतियों के अनुसार अनुमानित लागत को वित्तीय बिड में सम्मिलित किया गया है। अतः यदि नीति आयोग की दिनांक 24.09.2024 की रिपोर्ट के दृष्टिगत MoEF&CC के नोटीफिकेशन होने के पश्चात् एफजीडी की आवश्यकता न होने पर Change in Law के दृष्टिगत मे० अडानी पावर लि० द्वारा तदनुसार फिक्सड चार्ज में एफजीडी कॉस्ट को समायोजित किया जायेगा। यदि इस समायोजन पर आपसी सहमति नहीं बनती है तो लागत एवं तत्क्रम मे टैरिफ निर्धारण पर निर्णय मा0 उ0प्र0 विद्युत नियामक आयोग से प्राप्त किया जायेगा।

   (iii) मे0 अडानी पावर लिमिटेड को सफल बिडर घोषित करने एवं प्रदेश में स्थापित होने वाली 2x800 मे०वा० तापीय परियोजना से 1500 मे0वा० (ex-bus) दीर्घकालीन ऊर्जा बिड की शर्तों के अनुसार बिड ड्यू डेट पर कुल टैरिफ रू0 5.383 प्रति यूनिट पर 25 वर्षों की अवधि के लिए पावर सप्लाई एग्रीमेन्ट (पी०एस०ए०) किया जाये ।

   (iv) मे0 अडानी पावर लिमिटेड को प्रतिस्पर्धात्क बिडिंग के आधार पर सफल बिडर घोषित करने एवं प्रदेश में स्थापित होने वाली 2x800 मे0वा0 तापीय परियोजना से 1500 मे0वा0 (ex-bus), दीर्घकालीन ऊर्जा कुल टैरिफ रू0 5.383 प्रतियूनिट (बिड ड्यू डेट) पर क्रय करने के सम्बन्ध में मा0 उ0प्र0 विद्युत नियामक आयोग से अनुमोदन/टैरिफ एडॉप्शन प्राप्त कर लिया जाये।

6. UPPCL has issued the LOA to successful bidder M/s APL on 9.5.2025, the relevant extract from the LOA is reproduced as below:

"......

Kindly have reference of the Negotiation meeting held with you, wherein it was decided that in case, FGD would not be required, in the event of a notification by MOEF&CC consequent to the NITI Ayog Report dated 24.09.2024, the same will be treated as "Change in Law" and M/s. APL will accordingly adjust the revise fix charges of Rs. 3.727 per kWh to the extent of the impact of savings in the project cost on account of removal of FGD from the scope. However, a mutual agreement on this adjustment is not reached, it will be referred to the Hon'ble UPERC for appropriate adjustment as an event under "Change in Law"

....

"Schedule A – Final Quantum of Power and Final Tariff

Particulars		*Details*
Installed Capacity (MW)		*1600 (2*800)*
Contracted Capacity (MW)		*1500*
Fixed Charges		
Base Fixed Charges (Rs/Kwh)	*a*	*3.727*
Fuel Charge		
Cost of Fuel (Rs/Kwh)	*b*	*1.097*
Cost of transportation (Rs/Kwh)	*c*	*0.559*
Weighted Average Freight (inclusive of applicable taxes) payable to Indian Railways for transportation (applicable for full rake load) (Rs/Tonne)	*d*	*1092.630*
Weighted Average distance from loading point of Mines to the proposed Plant location (km)	*e*	*360*
Weighted Average of "As Delivered Price" of coal at the loading point of the mine to be sourced from the mines (Rs/Tonne)	*f*	*2146.047*
Weighted Average GCV of Coal as delivered at the loading point of the mines (kCal/Kg)	*g*	*4450*
Weighted Average CIL Cost of Washing (inclusive of applicable taxes (Rs./Tonne)	*h*	*0*
Total (i = a + b + c) (Rs/kWh)	*i*	*5.383*

7. APL, vide letter dated 13.5.2025, acknowledged the receipt of LOA and confirmed its unconditional acceptance to LOA. APL also informed that the PSA will be executed between *'Mirzapur Thermal Energy (UP) Pvt. Ltd.,'* a Special Purpose Vehicle (SPV) and 100% owned subsidiary of Adani Power Ltd. and UPPCL. The PSA was signed on 16.5.2025 between UPPCL & Mirzapur Thermal Energy (UP) Pvt. Ltd.

8. BEC and Procurer, each, have issued separate certificates, both, dated 18.6.2024 with respect to adherence to guidelines for long term procurement of electricity from thermal power station set up on DBFOO basis and sourcing

fuel as provided under model bidding documents including allocation of coal under B(I), B(II), B(IV) of SHAKTI Policy issued by MoP.

Facts as stated in affidavit dated 17.07.2025

9. UPPCL, vide affidavit dated 17.7.2025, has placed on record letter dated 16.6.2025 to M/s Mirzapur Thermal Energy (UP) Pvt. Ltd., wherein UPPCL referred to the LOA dated 09.5.2025 regarding adjustment to the fixed charges of Rs. 3.727 per kWh to the extent of the impact of savings in the project cost on account of removal of FGD from the scope. UPPCL stated that in view of the Neeti Ayog Report dated 24.9.2024 indicating high probability that FGD installation in TPP might no longer be necessary, therefore, M/s MTEUPPL to take note of the ongoing developments and continue to monitor further updates regarding the requirement of FGD system for project in larger interest of electricity consumer of the State. Subsequently, UPPCL, in light of the MOEF&CC notification dated 11.7.2025 communicated to MTEUPPL, vide letter dated 14.7.2025 asked developers to ensure designing their project strictly in the interest of consumer of the State and sought to intimate the revision in tariff accordingly as pert the terms specified in LOA dated 9.5.2025.

Record of Proceedings

10. During the hearing dated 25.9.2025, the Commission observed that UPPCL had sought details of revision in tariff due to exclusion of FGD from MTEUPPL vide its letter dated 14.7.25, therefore, UPPCL ought to have approached the Commission with reply of MTEUPPL. The Commission directed UPPCL to (i) revert on the FGD cost details and its impact on fixed and variable charges and (ii) assess impact of changes in GST rates vide notification dated 17.09.25 on coal on variable charges as per provision of change in law, under the PSA.

11. During the next hearing on 4.11.2025, the Commission observed that although UPPCL had placed APL's response dated 14.10.2025 on record of the Commission vide its reply filed on 31.10.2025, but has not clarified its agreement/disagreement to the APL's response. The Commission, vide order dated 18.11.25, directed UPPCL to implead Adani Power Ltd. as a party and submit its comment on APL's response. UPPCL, vide its affidavit dated 25.11.2025 filed an impleadment application in favour of MTEUPPL as a

respondent and also informed that it had served a copy of the petition to MTEUPPL. The Commission also issued notice to APL. MTEUPPL has filed its response dated 15.12.2025 and UPPCL filed its replies on 16.12.2025 and 17.12.2025. During the next hearing 18.12.2025, the Commission after hearing the arguments of the both the parties reserved the order.

12. MTEUPPL vide paras 38 and 41 of its response affidavit dated 15.12.2025 has stated as under:

"38. That the Answering Respondent vide their letter dated 09.12.2025 informed UPPCL as regards the FGD system requirement and the Change in Law invoked by UPPCL as per Article 34.2 of the PSA on account of the revision in the GST rates pursuant to the Notification No. 09/2025 - Central Tax (Rate) dated 17.09.2025, issued by the Ministry of Finance. A copy of the letter dated 09.12.2025 issued by the Answering Respondent to UPPCL is annexed herewith and marked as Annexure R 2. The relevant portion of the said letter is reproduced herein below:

....

a. Regarding MoEF&CC Notification:

i. Pursuant to the MoEF&CC Notification, the installation of Flue Gas Desulphurization (FGD) system is no longer required, subject to development of an increased stack height.

ii. As informed earlier also, the contract for Supply and Erection, Testing & Commissioning (ETC) of Wet-limestone based Flue Gas Desulphurization (FGD) and associated system package had already been placed by MTEUPPL.

iii. The total contract value of FGD package, including construction of chimney with 125 m height is Rs. 434,30,25,592.00 (Rupees Four Hundred Thirty-Four Crores Thirty Lakh Twenty-Five Thousand Five Hundred Ninety-Two only). A Copy of the said order has been enclosed herewith.

iv. With the removal of the FGD requirement, the project now requires an increased stack height i.e., from l25m to 275m, to meet the norms, and the estimated/ indicative cost of the new standalone chimney is around Rs. 130,00,00,000/- (Rupees One Hundred Thirty Crore only). It may be noted that our ordering for the same is under finalization and accordingly the exact cost for the same shall be determined once ordering is completed.

v. Further, with the removal of FGD requirement, there will be an additional cost implication towards development of enhanced water recycling infrastructure and the additional cost implication due to above will be tentatively Rs. 34,00,00,000/- (Rupees Thirty-Four Crores only).

vi. Based on the above, the indicative/ tentative net impact on project cost due to the MoEF&CC Notification is indicated hereunder:

Particulars	Formula	Value (Rs.)
Contract Value for Wet Limestone based FGD System & Chimney Cost	A	434,30,25,592
Additional Cost towards new chimney	B	130,00,00,000
Additional Cost towards water infra and other costs	C	34,00,00,000
Indicative/ Tentative Net Savings in Project Costs to MTEUPPL	D=A-(B+C)	270,30,25,592

vii. As per above, there is an indicative/tentative net capital cost reduction of approximately Rs. 270.30 Crores on account of non-installation of FGD and considering additional costs towards increased stack height and other systems.

b. Regarding GST 2.0 Notification - Impact on Capital Cost

i. Regarding the implications of GST 2.0 Notifications on capital cost, it may be noted that GST rates on primary equipments used in development of thermal power project remain unchanged even after the GST 2.0 Notification. The remaining agreements of MTEUPPL with its vendors and contactors are predominantly in the nature of service contracts, which continues to attract GST at 18% even after the GST 2.0 Notification. Accordingly, there is no impact of GST 2.0 Notification on our said contracts.

ii. It may also be noted that the benefit of GST reduction, if any, on any input materials used for executing such contracts is nullified due to the parallel reduction in Input Tax Credit (ITC) availability to contractors executing such contracts. Consequently, the overall tax burden on *contractors remains unchanged, and no reduction flows through to MTEUPPL under its contracts.*

iii. *Accordingly, there is also no reduction in the total capital cost of the project and consequently no impact on Fixed Charge. Further, as already submitted earlier, since this is post bid event the above should have no impact on tariff adoption proceeding.*

c. ***Regarding GST 2.0 notification – Impact on coal price:***

i. *Pursuant to GST 2.0 Notification, the rate of GST on coal has been revised from 5% (as applicable on Bid Date) to 18% and the GST Compensation Cess of INR 400/ Tonne (as applicable on Bid Date) levied on Coal has been abolished.*

ii. *In accordance with Article 22 of the PSA, the Fuel Charge is on a pass-through basis and accordingly, the impact of aforesaid mentioned changes shall automatically pass on to UPPCL during the operations period, i.e. once power supply is commenced. Hence, computation of any impact on the Tariff at this stage is not required and as such there is no requirement for revision in Tariff.*

........................"

41. With respect to the MoEF&CC Notification concerning FGD system installation, the Answering Respondent has already issued a Letter of Award to a vendor for implementation of the FGD system and, in light of the notification, is presently negotiating with the said vendor, and only upon conclusion of these negotiations will the Answering Respondent be in a position to estimate the impact of this development. The additional requirement of increasing the stack height also requires further technical and financial evaluation, and accurate cost estimates must first be determined. In addition, the Answering Respondent is still assessing other associated expenses and, at this stage, it is not feasible to quantify the precise impact of the aforesaid post-bid events."

13.MTEUPPL has assured UPPCL that it shall promptly inform UPPCL regarding the finally determined implications of MoEF&CC notifications once further details are finalised and associated savings /cots ascertained. Since, the actual tariff payable by the UPPCL under the current PSA shall be effective after the unit commissioning, hence at the time of commissioning of the project, impact of FGD removal and impact of additional expenditure to be incurred on chimney height and other infrastructure cost to be finalised.

14. The matters arising from MoEF&CC Notification and GST 2.0 Notification are separate and has no bearing on ongoing tariff proceedings. MTEUPPL has argued that the tariff adoption process is independent of the assessment and subsequent actions related to these notifications, which shall be governed as per PSA provisions. MTEUPPL has referred to following judgements:
    a) Wardha Power Company Limited vs. Maharashtra Electricity Regulatory Commission and Ors. 2015 ELR (2015)
    b) Indiabulls CSEB Bhaiyathan Power Limited vs. Chhattisgarh State Electricity Regulatory Commission, Chhattisgarh State Power Holding Co. Ltd. and Chhattisgarh State Power Generation Co. Ltd. 2013 ELR (APTEL) 2013
    c) Vidharbha Industries Power Limited vs. The Maharashtra Electricity Regulatory Commission World Trade Centre 2012 ELR (APTEL) 341
    d) Essar Power Limited vs. Uttar Pradesh Electricity Regulatory Commission and Noida Power Company Limited Commercial 201308 2012 ELR (APTEL) 182
    e) Energy Watchdog vs. Central Electricity Regulatory Commission and Ors. (2017) 14 SCC 80
    f) DLF Universal Ltd. and Ors. vs. Director, T. and C. Planning Haryana and Ors., (2013) 5 SCC 470
    g) Haryana Power Purchase Centre v. Sasan Power Ltd., (2024) 1 SCC 247
    h) Chamundeshwari Electricity Supply Co. Ltd. v. Saisudhir Energy (Chitradurga) (P) Ltd., 2025 SCC Online SC
    i) India Renewables One (P) Ltd. v. Solar Energy Corpn. of India Ltd., 2024 SCC Online CERC 40
    j) Solar Energy Corpn. Of India Ltd. v. Azure Power (India) (P) Ltd., 2023 SCC Online CERC 291

15. UPPCL, vide affidavit dated 16.12.25, has submitted that
    a) Impact of non-requirement of FGD system on tariff cannot be ascertained at this stage as UPPCL does not possess information regarding capital cost, cost of FGD system etc.

b) In Article 22 of PSA, the fuel charge is on a pass-through basis, therefore, any impact arising from change in GST rate applicable to coal will be reflected and duly accounted for in fuel charge at the time of commencement of power supply.

c) In accordance with Article 4 "condition precedent to the PSA" the rights and obligations of the parties arising under Article 34 "change in law" shall come into effect upon tariff adoption & PSA approval by the Commission since the later is part of fulfilment of the condition precedence. Therefore, details quantification of change in law effect would arise at a later stage under article 34 after fulfilment of the condition precedence and shall be taken up at the time of commissioning of the project. Accordingly, the adjustment of tariff due to non-requirement of FGD shall be taken up on mutual agreement basis failing which the matter will be referred to the Commission.

16.UPPCL, vide additional affidavit 17.12.25, has placed M/s MTEUPPL's letter dated 9.12.2025 and has reiterated that the Commission may approve the PSA dated 16.05.2025 and adopt the tariff discovered through transparent and competitive process in accordance with the Guidelines notified by the GoI and under Section 63 of Act, 2003. Further, the Commission should take on record that since the determination of impact of non-requirement of FGD on tariff will take time, it shall be taken up at the time of Commissioning of the project.

<u>Commission's analysis and decision</u>

17.UPPCL, in this Petition, has sought to (i) adopt the tariff discovered through the Competitive Bidding Process conducted on the basis of Design, Build, Finance, Own and Operate (DBFOO) model by sourcing fuel from the allocated coal linkage arranged under SHAKTI Policy B(iv), in terms of Section 63 of the Electricity Act, 2003 and (ii) approve the executed Power Supply Agreement (PSA) dated 16.05.2025, entered into between UPPCL and M/s Mirzapur Thermal Energy (UP) Private Limited.

18.Recapitulating the entire scope of the petition, it is noted that the process of bidding started with the Commission's order dated 04.07.24 and its corrigendum dated 09.07.24 in Petition No. 2084/2024 approving the bidding documents, namely Request for Qualification (RfQ), Request for Proposal (RfP) and Power Supply Agreement (PSA) for procurement of 1500 MW from 1600 MW (2X800 MW) Mirzapur Thermal Energy (UP) Pvt. Ltd. through DBFOO basis from thermal power project established within the State of Uttar Pradesh. The bid evaluation committee, in its meeting dated 21.8.24, recommended all the 7 applicants as pre-qualified to Centre Store Purchase Committee (CSPC) for RFP stage, which decided all 7 applicants as qualified for RFP stage. After the pre-bid conference on 09.09.24, UPPCL filed Petition No. 2133/2024 for seeking approval of deviation in PSA, which were approved by the Commission vide order dated 30.09.24. The bid due date was 10.10.2024. PFCCL opened the Bids on DEEP Portal and intimated the details of application received on DEEP Portal along with the Price Comparative Statement. The following applicants' applications were opened:

- Adani Power Ltd. (L1)
- Torrent power (L2)
- LPGCL(L3)
- MB Power, Madhya Pradesh(L4)
- Haldia Energy Ltd.(L5)

19. BEC recommended putting up the proposal before the CSPC for negotiating with lowest bidder, i.e. M/s Adani Power Ltd. The CSPC formed a negotiation committee and a meeting was held with the representative of APL. M/s APL, vide letter dated 30.10.24, gave its consent for discount of 10 paisa in fixed charges. The Board of Directors of UPPCL, on 11.11.24, approved APL as the successful bidder. The Energy Task Force (ETF), in its meeting dated 18.9.24, approved the procurement of 1500 MW power at the discovered tariff and the GoUP vide its letter dated 07.05.25 approved the procurement of 1500 MW of power from successful the bidder M/s Adani Power Ltd. at the discovered tariff. The Government of Uttar Pradesh has decided the following:

(i) *निविदा सं0 02/नि0 / यू०एम०पी०पी० 1 / थर्मल / 2x800 मे०वा० / 2024 दिनांक 06.03.2024 के अन्तर्गत प्रतिस्पर्धात्मक बिडिंग के आधार पर स्थापित क्षमता 2x800 मे0वा0 (1600 मे0वा0) तापीय पावर परियोजना से, कुल 1500 मे०वा० (ex-bus) ऊर्जा क्रय किये जाने की बिडिंग प्रक्रिया में न्यूनतम बिडर मे० अडानी पावर लि० द्वारा बिड जिसमें फिक्सड चार्ज रू० 3.727 प्रति यूनिट, फ्यूल चार्ज रू0 1.656 प्रति यूनिट है, को स्वीकार किया जाये एवं बिड ड्यू डेट 10.10.2024 पर मे0 अडानी पावर लि०*

द्वारा उपलब्ध करायी गयी बिड के अन्य समस्त टैरिफ पैरामीटर (फ्यूल चार्ज सहित) यथावत रहेंगे।

(ii) चूंकि वर्तमान बिड में डेवलपर द्वारा MoEF & CC की वर्तमान नीतियों के अनुसार अनुमानित लागत को वितीय बिड में सम्मिलित किया गया है। अतः यदि नीति आयोग की दिनांक 24.09.2024 की रिपोर्ट के दृष्टिगत MoEF&CC के नोटीफिकेशन होने के पश्चात् एफजीडी की आवश्यकता न होने पर Change in Law के दृष्टिगत मे॰ अडानी पावर लि॰ द्वारा तदनुसार फिक्सड चार्ज में एफजीडी कॉस्ट को समायोजित किया जायेगा। यदि इस समायोजन पर आपसी सहमति नहीं बनती है तो लागत एवं तत्क्रम मे टैरिफ निर्धारण पर निर्णय मा0 उ0प्र0 विद्युत नियामक आयोग से प्राप्त किया जायेगा।

(iii) मे0 अडानी पावर लिमिटेड को सफल बिडर घोषित करने एवं प्रदेश में स्थापित होने वाली 2x800 मे॰वा॰ तापीय परियोजना से 1500 मे0वा0 (ex-bus) दीर्घकालीन ऊर्जा बिड की शर्तों के अनुसार बिड ड्यू डेट पर कुल टैरिफ रू0 5.383 प्रति यूनिट पर 25 वर्षों की अवधि के लिए पावर सप्लाई एग्रीमेन्ट (पी॰एस॰ए॰) किया जाये ।

(iv) मे0 अडानी पावर लिमिटेड को प्रतिस्पर्धात्क बिडिंग के आधार पर सफल बिडर घोषित करने एवं प्रदेश में स्थापित होने वाली 2x800 मे0वा0 तापीय परियोजना से 1500 मे0वा0 (ex-bus), दीर्घकालीन ऊर्जा कुल टैरिफ रू0 5.383 प्रतियूनिट (बिड ड्यू डेट) पर क्रय करने के सम्बन्ध में मा0 उ0प्र0 विद्युत नियामक आयोग से अनुमोदन/टैरिफ एडॉप्शन प्राप्त कर लिया जाये।

20. UPPCL issued the LOA to the successful bidder M/s APL on 09.05.25. The relevant extract from the LOA is reproduced as below:

"Kindly have reference of the Negotiation meeting held with you, wherein it was decided that in case, FGD would not be required, in the event of a notification by MOEF&CC consequent to the NITI Ayog Report dated 24.09.2024, the same will be treated as "Change in Law" and M/s. APL will accordingly adjust the revise fix charges of Rs. 3.727 per kWh to the extent of the impact of savings in the project cost on account of removal of FGD from the scope. However, if mutual agreement on this adjustment isn't reached, it will be referred to the Hon'ble UPERC for appropriate adjustment as an event under "Change in Law"."

"Schedule A – Final Quantum of Power and Final Tariff

Particulars		*Details*
Installed Capacity (MW)		*1600 (2*800)*
Contracted Capacity (MW)		*1500*
Fixed Charges		
Base Fixed Charges (Rs/Kwh)	*a*	*3.727*

by

Fuel Charge		
Cost of Fuel (Rs/Kwh)	*b*	*1.097*
Cost of transportation (Rs/Kwh)	*c*	*0.559*
Weighted Average Freight (inclusive of applicable taxes) payable to Indian Railways for transportation (applicable for full rake load) (Rs/Tonne)	*d*	*1092.630*
Weighted Average distance from loading point of Mines to the proposed Plant location (km)	*e*	*360*
Weighted Average of "As Delivered Price" of coal at the loading point of the mine to be sourced from the mines (Rs/Tonne)	*f*	*2146.047*
Weighted Average GCV of Coal as delivered at the loading point of the mines (kCal/Kg)	*g*	*4450*
Weighted Average CIL Cost of Washing (inclusive of applicable taxes (Rs. /Tonne)	*h*	*0*
Total (i = a + b + c) (Rs/kWh)	*i*	*5.383*

"

21. APL, vide letter dated 13.05.25, acknowledged the receipt of LOA and confirmed its unconditional acceptance to LOA. APL also informed that the PSA will be executed between *'Mirzapur Thermal Energy (UP) Pvt. Ltd.,'* a Special Purpose Vehicle (SPV) and 100% owned subsidiary of Adani Power Ltd., and UPPCL. The PSA was signed on 16.05.25 between UPPCL and Mirzapur Thermal Energy (UP) Pvt. Ltd.

22. BEC and Procurer, each, have issued separate certificates, both dated 18.06.24 with respect to adherence to the guidelines for long term procurement of electricity from thermal power station set up on DBFOO basis and sourcing fuel as provided under model bidding documents including allocation of coal under B(I), B(II), B(IV) of SHAKTI Policy issued by MoP.

23. Both UPPCL and MTEUPPL have contended that matters arising from MoEF&CC Notification and GST 2.0 Notifications were separate and had no bearing on the ongoing tariff proceedings. MTEUPPL has argued that the tariff adoption process is independent of the assessment and subsequent actions related to these notifications, which shall be governed as per PSA provisions. The argument has been supported by various judgements as noted at para 14. The main argument of the parties has been that Section 63 is a standalone provision and has to be construed on its own terms, and that, in the case of

transparent bidding nothing can be looked at except the bid itself, which must accord with guidelines issued by the Central Government.

24. The petition having been filed under **Section 63 and 86(1) (a) & (b) of the Electricity Act, 2003;** wherein Section 63 of the Electricity Act requires this Commission to adopt the tariff discovered through TBCB for the procurement of power by a distribution licensee, Section 86(1)(a) & 86(1)(b) of the Electricity Act not only require this Commission to discharge functions related to the determination and adoption of tariff but also to regulate the procurement process by way of which electricity is purchased in the state of Uttar Pradesh.

25. Regarding the above said contentions of the parties that Section 63 is a standalone provision and has to be construed on its own terms and therefore, in the case of transparent bidding, nothing can be looked at except the bid itself, which must accord with guidelines issued by the Central Government, the Commission has considered the Hon'ble Supreme Court, in Jaipur Vidyut Vitran Nigam Ltd & Ors v. MB Power (Madhya Pradesh) Ltd & Ors, dated 08.01.2024, 2024 INSC 23, in which Hon'ble Supreme Court has interpreted and analysed Section 63, bidding process, consumer/public interest, powers and role of the Regulatory Commissions under the Electricity Act. Relevant extracts of the said judgement are reproduced below:

> *"66. ....The provisions of Section 63 of the Electricity Act fell for consideration before this Court in the case of Energy Watchdog (supra). It will be apposite to refer to paragraphs 19 and 20 of the said judgment, which are as under:*
>
> *"19. The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62.*
>
> *Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined under Section 63. Thirdly, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. What has been argued before us is that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the*

bid itself which must accord with guidelines issued by the Central Government. ***One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. ....***

20. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions dehors its general regulatory power under Section 79(1)(b).

.... ***Considering the fact that the non obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether.*** *The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways — either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff.*

67. ***It was sought to be contended before this Court in the said case that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. However, rejecting the said contention, this Court observed that the appropriate Commission does not act as a mere post office under Section 63.***

68. It has been held that, either under Section 62, or under Section 63, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff.

70. We have already referred to Section 86(1)(b) of the Electricity Act, which is analogous to Section 79 of the Electricity Act. Section 79 determines the functions of Central Commission, whereas Section 86 provides for the functions of the State Commission. Section 86 of the Electricity Act empowers the State Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating *companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.*

71. It can thus be seen that Section 86(1)(b) of the Electricity Act gives ample power on the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc.

26.**Therefore, considering the above judgement, it emerges that while adopting the tariff, the Commission is not supposed to act merely as a post office, rather it has to conscientiously uphold its regulatory power while navigating its route through Section 63, thereby regulating the power procurement process including the price at which electricity shall be procured in accordance with Section 86 (1)(b) of the Electricity Act 2003. Express mention of "procurement price" radiates through above order as a purple patch and enlarges the scope of the Commission through which it is supposed to have a constant gaze and vigil on the protection of consumer interest. Therefore, even while adopting the tariff under Section 63, the Commissions are not expected to be merely a stamping authority, rather it can always look gently in the matter of consumer interest and thus, explore the possibility of any legitimate adjustment in procurement price on account of events that have occurred between the cutoff date and the date of tariff adoption, which can alleviate the burden on consumers in general and more so on those consumers on whom providence has not favoured.**

27.Further, the Hon'ble APTEL has set the following criteria for adoption of tariff through competitive bidding in the ***Essar Power Limited vs. Uttar Pradesh Electricity Regulatory Commission and Noida Power Company Limited Commercial 201308 2012 ELR (APTEL) 182***:

"78. Thus the competitive bidding process as contemplated under Section 63 of the Act must meet the following mandatory statutory requirements:
(a) Competitive bidding process under Section 63 must be consistent with the Government of India guidelines and Request for Proposal (RFP) including the finalized PPA approved by the State Commission

(b) The process must discover competitive tariff in accordance with market conditions from the successful bid - consistent with the guiding principles under Section 61 of the Act as well as the Government of India guidelines which strike a balance between the transparency, fairness, consumer interest and viability.

*79. **At the risk of repetition, it has to be stated that if these requirements have not been followed and if the process has failed to safeguard the consumer interest as well as to promote competition and efficiency by permitting the deviations, it would not only destroy the basic structure of the guidelines but also would frustrate the objectives of the Government guidelines........***

Accordingly, it can be seen that the order of the Hon'ble APTEL also makes "protection of consumer interest" an essential benchmark for adoption of tariff through competitive bidding.

28. In Indian astronomy, the Saptarishi, i.e. the constellation including seven bright stars, represent the seven Rishis - but two them are pointers, i.e. they show the path as they point to the pole star. Similarly, above two orders of Hon'ble Supreme Court and Hon'ble APTEL depict that in the firmament of adoption of tariff through competitive bidding, the necessity of protection of consumer interest must shine and show the path. After discussing above, we would like to recapitulate two incidents viz MOEF&CC notification dated 11.07.2025 and GST 2.0 notification dated 17.09.2025, which must be given a reasonable and legitimate treatment, the impact of which might be indeterminate at present, however, it must be kept into continuous consideration so that it may be fructified at the appropriate opportune moment for the protection of consumer interest. The Commission is of the view that it not only has to adopt the tariff but also to approve the PSA containing express provision regarding Change in Law after the bid due date, i.e., 10.10.2024 particularly when such events have occurred recently and find place in the communication of the Procurer with the Supplier. Regarding the recognition of Change in law events that have occurred after the cut-off date and have impact on tariffs as proposed to be adopted, Hon'ble APTEL judgement dated 12.10.21 in Appeal No. 251 of 2021 ("Green Infra Renewable Energy Ltd. v. Rajasthan Electricity Regulatory Commission") provides ample guidance.

29.In this matter, the Order dated 23.07.2021 ("Impugned Order") passed by the Rajasthan Electricity Regulatory Commission ("the Commission") was challenged before the Hon'ble APTEL. The Commission had refused to consider Change in Law events which had occurred after award of the contract but before tariff adoption and directed GIREL to approach the Commission by way of a separate petition. The Commission had observed that at the tariff adoption stage, the Commission could only examine whether the competitive bidding process under Section 63 of the Act was in accordance with the guidelines issued by the Government of India and whether the process was held in a transparent manner.

30.Hon'ble APTEL has recognised that change in law events that have occurred prior to the adoption of tariff and after the submission of the bid would need to be considered by the respective State Electricity Regulatory Commissions at the tariff adoption stage itself to avoid confusion, regulatory uncertainty and consequent difficulties in achieving financial closure. The Hon'ble APTEL, in the course of the said Judgment recorded the following observations:

> *"16. During the hearing, we pointedly asked but no regulation or contractual clause or, for that matter, any other provision was shown as could reflect an inhibition or prohibition against consideration of claim of change in law compensation at the stage of adoption of the tariff discovered by the bid process under Section 63 of the Electricity Act, 2003. We agree with the appellant that deferring such claim for later date creates a whole lot of confusion and, what is of utmost concern to the project developers, regulatory uncertainty and consequent difficulties in attaining financial closure. It cannot be ignored that the impact on the cost of the development of the project of such change in law events that have occurred after the submission of the bid and closure of the bid process but before the adoption of the bid discovered price renders the bid price unrealistic and in terms of Section 86 (1) (b) of the Electricity Act, it is the duty of the State Commission to inquire into such claim at the first opportune time and bring in suitable corrections, may be first by declaration and followed up by detailed tariff orders. If the event referred to actually constitutes change in law within the four corners of its definition under the PPA, there is no reason why it cannot be duly recognized as a change in law at the stage of tariff adoption, the actual impact and extent of the relief admissible to be determined at the appropriate stage".*

31.The said views of the APTEL were again reiterated in Appeal Nos. 344 of 2021 and 9 of 2022, titled "Green Infra Renewable Energy Ltd. v. Rajasthan Electricity Regulatory Commission" and connected batch matters, wherein the APTEL further held that the adoption proceedings were incomplete and inchoate, if any Change in Law claims had been ignored by the Appropriate Commission.

32.**Therefore, Hon'ble Appellate Tribunal for Electricity has held that Change in Law claims can and should be considered at the tariff adoption stage in order to provide regulatory certainty and reduce multiplicity of proceedings.**

33.In the present case, at the time of issuance of the LOA dated 9.5.2025, the position of requirement of installation of FGD was not clear and accordingly on the recommendation of the negotiation committee, the CSPC, the Board of Directors of UPPCL and the ETF, Govt. of UP, in its letter dated 07.05.25, while approving the procurement of 1500 MW at the negotiated tariff, incorporated a clause stating that if the MOEF&CC dispenses with the requirement of FGD, then the impact of savings in project cost on account of such Change in Law shall be adjusted by M/s APL in the fixed charge. In case the parties are not able to arrive at a mutual consensus, then the matter of assessment of impact on cost and tariff shall be referred to the Commission for decision. This was expressly mentioned in the LOA and unconditionally accepted by APL in its reply dated 13.05.25. The PSA was signed on 16.05.25.

34.When the matter came up for hearing before the Commission on 25.09.25, the MOEF&CC notification dated 11.07.25 had already been issued and accordingly the Commission enquired about status of progress,that had been made in view of above agreed provisions to assess the savings in costs. As the GST notification dated 17.09.25 had also been issued by then, the Commission also enquired about its impact on cost.

35.From the submissions made by both sides before the Commission, there is no dispute as regards considering both these notifications as 'Change in Law'. The Commission is also of the view that both these notifications constitute Changes in Law necessitating consequential relief/compensation to the affected party in terms of adjustment in the discovered tariff. Having recognized these two events as Change in Law, it needs to be ascertained whether exact quantification of impact of these "Change in Law" events is plausible in terms of reduced fixed and/or energy charges.

36. As regards the impact of GST Notification on price of coal, the Commission agrees with the contention of the parties that in accordance with Article 22 of the PSA, the fuel charge is on a pass-through basis accordingly, the Energy Charges will automatically get revised once the plant commences operations and begins to supply power. Therefore, there is no requirement for revision of Energy Charges at this stage.

37. As regards the impact of the GST Notification on Capital Cost of the project, while it has been contended by APL that there is going to be no impact on the cost of goods or services procured for the setting up of the project, the Commission would require UPPCL to develop appropriate formats to seek information and relevant documents to be able to assess the savings, if any, on a periodic basis and keep constant vigil.

38. As regards the impact of the MOEF& CC notification, the Commission is in agreement with the submissions made by the parties that it is not possible to assess the exact impact at this stage. It has been submitted that removal of FGD requirement will necessitate an increase in the chimney height from 125m to 275m and some changes in water infra along with associated costs. An indicative/tentative net savings figure of Rs 270,30,29,592/- has been submitted before the Commission. While the contract for installation of wet-limestone-based FGD System & Chimney (as per earlier requirement of 125m height) is stated to have already been awarded at a cost of Rs.434,30,25,592, the award of new chimney of 275m height and water infra is yet to be undertaken and hence their estimated costs have only been indicated. The Commission also observes that apart from the indicated savings with regard to installation of FGD, there will also be savings in its operational cost in respect of lubricants, chemicals & other consumables, which may be required to be factored in. The Commission agrees that exact costs and savings can only be known once the awards of these facilities are renegotiated/finalised. Hence it is extremely important for both the parties, especially UPPCL, to develop a system of reporting whereby it remains informed and cognizant of the progress of required changes in infra, award finalisations of such infra and its

consequential impact on costs or any other significant associated developments related to such Change in Law.

39. The Commission also observed that as per Article-12 of the PSA, the supplier has been obligated to provide quarterly reports on the progress of the construction works and is also obligated to 'promptly give such other relevant information as may be required'. Hence, MTEUPPL shall be obligated to provide any such information/document sought by the Petitioner in terms of para 38 of the order.

40. The Commission notes that the quantification of these Notifications issued by the MOEF&CC and the Ministry of Finance, respectively, can only be ascertained near to the commissioning of the Project since by that time the procurement of major equipment and materials would be substantially completed, vendor invoices would be available, and GST actually charged on supplies would be more or less accurate. Since the above two notifications dated 11.07.25 and 17.09.25 have been recognised as Change in Law events therefore, it is the unbounded responsibility of the petitioner to seek all relevant information from MTEUPPL to accurately capture the impact of Change in Law and MTEUPPL shall be obligated to provide any such information sought by the petitioner in this regard.

41. With the abovesaid observations, the Commission adopts the tariff discovered through the Competitive Bidding Process conducted on the basis of Design, Build, Finance, Own and Operate (DBFOO) model by sourcing fuel from the allocated coal linkage arranged under SHAKTI Policy B(iv), in terms of Section 63 of the Electricity Act, 2003 and approves the final executed Power Supply Agreement (PSA) dated 16.05.2025, entered into between UPPCL and M/s Mirzapur Thermal Energy (UP) Private Limited.

42. The decisions of the Commission are summarized below:

(a) The Commission adopts the tariff discovered through the Competitive Bidding Process conducted on the basis of Design, Build, Finance, Own and Operate (DBFOO) model by sourcing fuel from the allocated coal linkage arranged under SHAKTI Policy

B(iv), in terms of Section 63 of the Electricity Act, 2003 subject to adjustments resulting from the impact of the Changes in Law referred to in this order.

(b) The Commission also approves the final executed Power Supply Agreement (PSA) dated 16.05.2025, entered into between UPPCL and M/s Mirzapur Thermal Energy (UP) Private Limited.

(c) The Commission recognises the MOEF&CC notification dated 11.07.2025 and GST 2.0 notification dated 17.09.2025 as change in law events, which would be applicable to the instant power procurement through competitive bidding. The impact of the above Change in Law would be sanctimoniously captured by UPPCL through developing an appropriate mechanism, as directed in (d) below and the same would be placed before the Commission at the appropriate time.

(d) UPPCL shall develop an appropriate reporting system/formats/any other reports including GST compliance reports and documents so as to have authentic and verifiable information related to the two Changes in Law events as referred in (c) above. UPPCL will also ascertain whether the changes made in infra claimed to have been caused on account of deletion of FGD requirement were really necessitated in consequence to and as a resultant of such FGD deletion.

(e) MTEUPPL shall be duty bound to provide information sought by UPPCL as referred to at (d) above.

(f) Before the commissioning of Unit-1, UPPCL and M/s APL/MTEUPPL should make all efforts to arrive at a consensus on impact of Changes in Law on Fixed and Energy Charges and seek approval of the Commission based on verifiable information and documents.

(g) In case no consensus can be arrived at, the matter along with all relevant documents will be submitted before the Commission for

determination of the impact of twin "Change in Law", as discussed in the course of this order, on the tariff.

The Petition is disposed of in terms of above.

Sanjay

(Sanjay Kumar Singh)
Member

(Arvind Kumar)
Chairman

Place: Lucknow
Dated: 13 .01.2026