



Petition No 1107 of 2016

**BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

PRESENT:

- 1. Hon'ble Sri. Desh Deepak Verma, Chairman**
- 2. Hon'ble Sri. Indu Bhushan Pandey, Member**
- 3. Hon'ble Sri. S. K. Agarwal, Member**

IN THE MATTER OF: In the matter of Review Petition for reviewing the Order dated March 29, 2016, of the Commission in Petition No. 952 of 2014 and 1092 of 2016.

AND

IN THE MATTER OF:

Alaknanda Hydro Power Company Limited (AHPCL)
156-159, Paigah House, SP Road,
Secunderabad – 500003

Petitioner

AND

UP Power Corporation Limited,
(through its CMD),
7th Floor, Shakti Bhawan,
14 Ashok Marg, Lucknow

Respondent

The following were present:

1. Sri. P. V. Prasana Reddy, CEO, AHPCL
2. Sri. D. Niranjana Reddy, Vice President, AHPCL
3. Sri. Srinivas Sisila, V.P., AHPCL
4. Sri. M. Sodakar, AGM-Law, AHPCL
5. Sri. E. Chandan, AHPCL
6. Sri. Dileep Tripathi, Senior Liaison Officer, AHPCL
7. Sri. Rajiv Srivastava, Advocate, UPPCL
8. Sri. V. P. Srivastava, CE, UPPCL
9. Sri. S. K. Sinha, SE, UPPCL



Order

(Date of Hearing: 06.06.2016)

1. AHPCL had filed the Petition No 881 of 2013 for approval of additional term loan and revised means of finance, Petition No. 952 of 2014 for approval of provisional tariff, Petition No. 1043 of 2015 for approval of revised CODs, Petition No. 1092 of 2016 for urgent hearing and Petition No. 1093 of 2016 for approval of revised provisional tariff, which were clubbed by the Commission for hearing and decision.
2. The Commission addressing all the aforesaid Petitions, approved provisional tariff for AHPCL vide its Order dated March 29, 2016. Aggrieved by the Commission's Order dated March 29, 2016 AHPCL filed a Review Petition with Petition No. 1107 of 2016 on April 22, 2016 in this regard. The issues raised by the petitioner in the review Petition are summarised below:
 - i. The term "Annual Fixed Charges" of Rs. 329.36Crore for second year of Operation i.e FY 2016-17 as mentioned in the aforesaid Order should have been termed as "Capacity Charges".
 - ii. The Commission has considered 281 days for computation of AFC for the year 2015-16 whereas the actual number of days as calculated by the Petitioner is 285 days. However, the Petitioner submitted that as per the provision of PPA as well as clause 5(3) of UPERC (Terms and Conditions of Generation Tariff), Regulations, 2014, the provisional tariff is required to be charged from the date of Commercial Operation of the respective units of the generating station.
 - iii. The Commission has considered rate of interest on loan at 12.50% for 1st year and 11.62% for 2nd year, which should be as per the loan agreement and the weighted average rate of interest as per loan agreement is 12.43% for both the years.
 - iv. In the said Order the Commission had considered 95% of the cost recommended by the Expert Committee (i.e. Rs. 4,007 Crore) for the determination of the provisional tariff. So, same Capital Cost as approved by the Commission for tariff determination should have been considered for calculation of O&M, in contrary to which the project cost of Rs. 1,852 Crore has been considered by the Commission for calculation of O&M expense in its Order dated March 29, 2016.
 - v. The Commission mentioned in the said Order, that Interest on Working Capital shall be allowed as per UPERC (Terms and Conditions of Generation Tariff), Regulations, 2014, which turns out to be 13.50% (considering base rate of SBI + 350 base points). But the Commission has not considered the same for calculating the Interest on Working Capital.



- vi. As per UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, it is mandatory to provide NAPAF for raising bill, but AHPCL presently do not have 10 days design energy data for 1550 MU design considered for tariff calculation. Hence, the Petitioner has requested the Commission to allow to calculate NAPAF as per 1397 MU design energy till 1550 MU Design energy is approved by competent authority.
 - vii. The Petitioner has requested the Commission to allow it to bill UPPCL for income tax and Foreign Exchange Rate Variations as per the terms of the PPA.
3. Further, the Petitioner has submitted that it is unable to raise bills on UPPCL for the recovery of capacity charge for the energy supplied during 2015-16 and 2016-17, as 10 days design energy data needed for calculation of NAPAF is not available with it for 1550 MU Design Energy as considered by the Commission in its Provisional Tariff Order and has requested the Commission to allow the Petitioner to compute the NAPAF as per available 10 day design energy data for approved design energy of 1397 MU. The Petitioner submitted the NAPAF as 45.15% for 2015-16 and 45.30% for 2016-17 for approved Design Energy of 1397 MU.
 4. In the counter affidavit filed by UPPCL on May 11, 2016, it is submitted that the law of review as settled by Hon'ble the Supreme court in a catena of judgement admits of mainly two grounds:
 - a. When error is apparent on the face of records
 - b. Discovery of new and important matter of evidence
 5. UPPCL further submitted that even if a decision or Order is erroneous in law or on merits, it cannot be accepted that it is an error apparent on the face of the record. Similarly, review sought on the grounds of discovery of new and important evidence must satisfy the Tribunal/court on three counts namely,
 - a. Such evidence was available and was "of undoubted character";
 - b. That it was so material that its absence might cause a miscarriage of justice;
 - c. That it could not with reasonable care and diligence has been brought forward at the time of order/judgment.
 6. UPPCL submitted that all issues raised in the review petition pertaining to the final determination of tariff in respect of the project has been left open to be determined/corrected by the Commission on later date and thus there is nothing that cannot be corrected at the time of final determination of tariff.

7. UPPCL also submitted that review of the aforesaid Order cannot be sought on the basis of the detailed workings provided by the Commission to the Petitioner. The Commission considering the factual matrix of the issue accepted the verbal argument of the Petitioner suggesting improved water flow thus enabling higher design energy of 1550 MU. Also the Petitioner cannot seek correction of the Order dated March 29, 2016, as hydrological data suggesting design energy of 1397 MU was available before the Commission, while deciding the matter vide Order dated March 29, 2016.
8. In reply to the counter affidavit filed by UPPCL, AHPCL filed rejoinder on May 31, 2016. In the rejoinder, AHPCL reiterated its submission made in its review petition and submitted the workings for reference. Further, AHPCL submitted that the present Petition was filed under the Section 94(1)(f) of the Electricity Act, 2003 read with the Regulation 150(1) of the Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 to request the Commission to rectify by way of review, the clerical and arithmetic errors occurred while computing the AFC and the Energy Charges that were mentioned in the Order.
9. In the rejoinder, AHPCL stated that the monthly bills raised by it, as per the Order dated March 29, 2016, were rejected by UPPCL on the argument that the bills were not in line with the Order. Further, AHPCL has requested the Commission to categorically mention the Capacity Charges payable by the respondent and stated that such Order will only be a clarification, not amendment.
10. The Commission held the hearings in matter on May 5, 2016, May 31, 2016, and June 6, 2016. During the hearing, AHPCL reiterated its submission made in the review petition filed on April 22, 2016, and submitted that it has obtained the data for 1550 MU from Central Water Commission (CWC) for calculation of Normative Annual Plant Availability Factor (NAPAF), but its approval by the Central Electricity Authority (CEA) is still pending.
11. During the hearing on June 6, 2016, the Commission inquired from UPPCL that whether they can calculate NAPAF for 1550 MU Design Energy from the data made available with the Petitioner from CWC for 1550 MU Design Energy. In reply to it, UPPCL stated that they do not have any issue in the approval of provisional Design Energy and NAPAF can be calculated as per the data made available by AHPCL, but same should be approved by the Commission.

Commission's Analysis

12. The Commission has gone through the submissions made by the Petitioner and the respondent. The Commission observed that the Petitioner has raised some new issues which were not part of the Order dated March 29, 2016 and is of the view that since it is a review Petition, new issues cannot be considered as part of the review proceedings. The relevant extract of Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, is reproduced below for reference,

“150. (1) The Commission may on its own or on the application of any of the persons or parties concerned, within 90 days of the making of any decision, direction or order, review such decision, directions or orders and pass such appropriate orders as the Commission thinks fit.”

“156. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.”

13. The Commission agrees with the submissions of UPPCL that the review can be admitted mainly on following two grounds:

- a. Some mistake or error apparent on the face of records
- b. Discovery of new and important matter of evidence which, after the exercise of diligence was not within the knowledge of Petitioner or could not be produced by Petitioner at the time when the Order was passed.

14. With above background, the Commission has analyzed and addressed all the issues raised by the Petitioner in the review Petitions follows:

- i. **The term “Annual Fixed Charges” of Rs. 329.36 Crore for second year of Operation i.e FY 2016-17 as mentioned in the aforesaid Order should have been termed as “Capacity Charges”.**

Commission’s View:

It was inadvertently written as Annual Fixed Charge, instead of Capacity charge, and the same should be read as Capacity Charges.

- ii. **Individual COD of the Units to be considered for calculation of AFC**

Commission’s View:

As per provision in clause 7(1) read with clause 7(2) of Generation Regulation, 2014, on commissioning of all units of a generating station, the COD of last unit is to be considered for tariff calculation of the generating station as a whole.

Clause 7(1) and clause 7(2) of Generation Regulations, 2014 is reproduced below for reference,

“(1) Date of commercial operation in case of a generating unit or block of the thermal generating station shall mean the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run after notice to the beneficiaries, if any, and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station:”

“(2) Date of commercial operation in relation to a generating unit of hydro generating station including pumped storage hydro generating station shall mean

the date declared by the generating company from 0000 hour after the scheduling process in accordance with the Grid Code is fully implemented, and in relation to the generating station as a whole, the date declared by the generating company after demonstrating peaking capability corresponding to installed capacity of the generating station through a successful trial run”

As there is no error apparent on the face of the record, this issue does not qualify for review.

- iii. Number of days of operation is to be considered as 285 days instead of 281 days as considered by the Commission in its provisional tariff order.**

Commission’s View:

The actual number of days of operation for FY 2015-16 is 285 days, but due to an inadvertent error, it was miscalculated as 281 days. This being a mistake apparent on record, the Commission orders that the AFC is to be allowed for 285 days instead of 281 days. Accordingly, the revised AFC for FY 2015-16 works out to Rs. 545.89 Crore.

- iv. Interest on loan is considered as 12.50% for 1st year and from second year onwards 11.62%, which is incorrect. As per the loan agreement, the weighted average of interest is 12.43% and same is to be considered for calculation. 11.50% interest rate is subject to periodical reset from lenders.**

Commission’s View:

As the Commission in its Order dated March 29, 2016, has computed the interest on loan considering all the facts and there is no error apparent on the face of record, this issue does not qualify for review.

- v. In the said Order the Commission had considered 95% of the cost recommended by the Expert Committee (i.e. Rs. 4,007 Crore) for the determination of the provisional tariff. So, same Capital Cost as approved by the Commission for tariff determination should have been considered for calculation of O&M, in contrary to which the project cost of Rs. 1,852 Crore has been considered by the Commission for calculation of O&M expense in its Order dated March 29, 2016.**

Commission’s View:

The capital cost used in the calculation of O&M expense was considered as Rs. 1977.87 Crore (excluding R&R cost) as approved by the Commission vide its Order dated June 7, 2006. The Commission took a view to consider the original capital cost approved by the Commission, which was Rs. 1977.87 Crore without considering time and cost overrun and not the project cost considered for tariff determination i.e. 4007.86 Crore (95% of the project cost Rs. 4218.80 Crore recommended by the Expert Committee). While deciding the final tariff the Commission will take final view on this issue. As appropriate view has been

taken by the Commission while issuing the Order on provisional tariff, there is no error apparent and hence this issue does not qualify for review.

- vi. **The Commission mentioned in the said Order, that Interest on Working Capital shall be allowed as per UPERC (Terms and Conditions of Generation Tariff), Regulations, 2014, which turns out to be 13.50% (considering base rate of SBI + 350 base points). But the Commission has not considered the same for calculating the Interest on Working Capital.**

Commission's View:

As the Commission in its Order dated March 29, 2016 has computed the interest on working capital considering all the facts and there is no error apparent on the face of record, this issue does not qualify for review.

- vii. **As per UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, it is mandatory to provide NAPAF for raising bill, but AHPCL presently do not have 10 days design energy data for 1550 MU design considered for tariff calculation. Hence, the Petitioner has requested the Commission to allow to calculate NAPAF as per 1397 MU design energy till 1550 MU Design energy is approved by competent authority.**

Commission's View:

The issue of NAPAF has been raised by AHPCL referring their difficulty in getting the payment of bills from UPPCL. UPPCL accepted that on the basis of provisional design energy of 1550 MU, they do not have details necessary for verification of bills. AHPCL has submitted that they have provided required data to UPPCL for the calculation of NAPAF and UPPCL needs permission of the Commission to compute the NAPAF on the provisional discharge data provided by AHPCL.

On this issue even though the Commission is of the view that it was possible for UPPCL to calculate NAPAF, but considering the practical difficulty of both the parties, the Commission clarified that NAPAF calculated by UPPCL based on design energy of 1550 MU and on the basis of data submitted by AHPCL should be considered for computation of provisional tariff.

Separately, for determination of final tariff, AHPCL would submit the hydrological data to the Commission and the same shall be sent to CEA for their decision. The design energy data taken in the above calculations will be subject to adjustment after the final determination of design energy by the CEA.

- viii. **The petitioner has requested the commission to approve billing to UPPCL for income tax and foreign exchange variations as prayed by the petitioner in its petition for approval of provisional tariff and in terms of the provisions of PPA.**

Commission's View:



The Commission has not taken any view on this issue in the Order dated March 29, 2016 and thus this does not fall under the purview of this review proceeding.

Further, as per the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, recovery on Income Tax and FERV shall be done directly by the generating Company without making any application before the Commission. Regulation 12 of UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014 is reproduced below for reference,

“Recovery of Income-tax and Foreign Exchange Rate Variation shall be done directly by the generating company from the beneficiaries without making any application before the Commission.

Provided that in case of any objections by the beneficiaries to the amounts claimed on account of income-tax or Foreign Exchange Rate Variation, the generating company may make an appropriate application before the Commission for its decision”.

15. On the basis of above, the Commission has recalculated the Annual Fixed Charge and Energy Charge Rate for FY 2015-16 and FY 2016-17, which are as under,

Particulars	Approved in this Order		Approved in Order date March 29, 2016	
	2015-16	2016-17	2015-16	2016-17
Annual Fixed Charge (Rs. Crore)	545.89	658.58	538	658.73
Energy Charge Rate (Rs./kWh)	2.59	2.44	2.59	2.44

However, the provisional tariff approved by the Commission in its Order dated March 29, 2016 and this Order is subject to adjustment while determination of final tariff.

The Petition is disposed of.

(S. K. Agarwal)
Member

(I. B. Pandey)
Member

(Desh Deepak Verma)
Chairman

Place: Lucknow

Date: June 17, 2016