Petition No. 1115 of 2016

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

**PRESENT:**

1. **Hon’ble Sri Desh Deepak Verma, Chairman**
2. **Hon’ble Sri Suresh Kumar Agarwal, Member**

**IN THE MATTEROF:** Approval of Supplementary Power Purchase Agreement for Lalitpur TPP

 UP Power Corporation Limited

(through its Chairman)

7th Floor, Shakti Bhawan

14- Ashok Marg, Lucknow.

**--------------- Petitioner**

AND

M/s Lalitpur Power Generation Company Limited (LPGCL)

Registered Office,

B-10, Sector-3, Jamnalal Bajaj Marg, Noida-201301

Local Office-

B2/ 335 Vishal Khand II, Gomit Nagar, Lucknow-226010

**--------------- Respondent**

The following were present:

1. Shri V.P. Srivastava, CE, UPPCL
2. ShriVinodAsthana, SE, UPPCL
3. ShriHaroonAslam, EE, UPPCL
4. CA Manish Garg, Consultant, UPPCL
5. ShriAnantSwaroop, Sr. VP, LPGCL
6. Shri Praveen Bansal, AVP, LPGCL
7. Shri S.N.M. Tripathi, Direcctor, LPGCL
8. ShriAmrendra, Sr. Manager, LPGCL
9. ShriDhruvMathur, Advocate, LPGCL

**ORDER**

**(Date of Hearing 31thJanuary, 2017)**

1. MoU for 3 x 660 MW was signed on 22.04.2010, which was approved by UPERC on 18.11.2010.
2. The first time extension for meeting the conditions subsequentincluding the long term coal linkage was allowed by GoUP on 8.06.2012 which expired on 10.12.2013.The first time extension was allowed by the Commission on 3.11.2014.
3. The Second time extension for meeting the conditions subsequent was allowed by GoUP on 9.12.2013 which expired on 31.03.2015, with the conditions as follows:
4. For all the developers except LPGCL stage-1, the date of COD to be calculated from the date it achieves financial closure or the date it gets linkage coal from the government, whichever is later.
5. The developers have to give undertaking that if the transmission system gets ready before the completion of generating power station, then the generator has to pay permissible tariff to the transmission system developer and for that purpose developer has to enter into an agreement.
6. Due to time extension, additional IDC would not be paid to any developer.
7. The petition no. 923 of 2013 for second time extension has been disposed of by the Commission vide order dated 30.11.2016 as follows:

*“The Commission considered the issue of LPGCL and decided to dispose of the Petition No. 923 of 2013 with the direction to file SPPA afresh which shall be dealt with the Petition for determination of tariff.”*

1. Subsequently, vide order dated December 22, 2016, the Commission noted the request of UPPCL for clubbing the issues of approval of second and third time extensions.
2. As the coal linkage could not be obtained, the third time extension was allowed by GoUP on 26.02.2016 which will end on 30.09.2016.
3. In petition no. 1115 of 2016 filed on May 13, 2016, UPPCL has filed a petition for approval of third time extension and SPPA in which following arrangements have been agreed vide an agreement dated 4.11.2015, which is part of SPPA.
4. Arrangement upto obtaining of long term coal linkage – Fixed Charge will be paid as per schedule and Variable Charge as per implemented schedule. No deemed availability.
5. Arrangement upto availability of 765 KV evacuation system (in case long term coal linkage is obtained prior to it) - Fixed Charge and Variable Charge both on implemented schedule. If evacuation system is either not available or failed, no deemed availability upto 72 hrs.and after that to be paid only upto technical minimum.
6. Arrangement of coal at premium rate under presidential directive – Premium rate of coal minus road fare shall be allowed only with approval of UPERC.
7. UPPCL has requested approval of third time extension upto 30.09.2016, with above arrangement w.e.f. 1.10.2015 till completion of 765 KV evacuation system and obtaining of long term coal linkage and CoD of Unit No.1 of LPGCL w.e.f. 01.10.2015 subject to the interim commercial arrangement as described in the aforementioned SPPA.
8. Further, LPGCL filed petition No. 1101 of 2016 and application for interim relief dated 1.08.2016 disputing few clauses of agreement dated 4.11.2015, which were decided by the Commission vide Order dated September 21, 2016as follows:

*“15. Now the latest situation that has emerged, is that the transmission evacuation system have come and LPGCL is all geared up to run its Unit No. 1 at full capacity. Accordingly, the arrangement of agreement of 4.11.2015 is to be replaced by some other arrangement for which the present interim petition has been filed.*

*16. In view of the stand taken by both the parties during the course of hearing and also keeping in view the principle of natural justice, the Commission decides on an interim basis that after the commissioning of 765 KV transmission system for evacuation of power from the Lalitpur TPS the petitioner would charge the coal price at the notified price of coal for the concerned mine and the transportation charges computed for distance between Amarpali Mines to plant’s captive railway siding (numerical code: LPGU). No road transportation charges will be admissible to the petitioner. With this arrangement the petitioner would not be penalized in the matter of availability of the plant. This arrangement will be an interim arrangement to facilitate the running of the plant to augment the availability of power to the state.*

*17. Regarding admissibility of Return on Equity the Commission is of the view that compliance of condition subsequent as given in clause 3.1.2(ii) is an essential element to claim any return on equity and since this important condition subsequent has not been complied with the petitioner will not be entitled to RoE during this interim arrangement.*

*18. As far as our observation on terms of agreement dated 4.11.2015 under petition No.1101 of 2016 is concerned,Clause 17 regarding availability of coal linkage will be dealt with as per the interim order as mentioned herein above. Clause 16 regarding availability of transmission system has lost his relevance as the system going to be commissioned soon. However, approval of supplementary PPA as filed with petition No. 1115 of 2016 will be dealt with separately.*

*19. After the commissioning of 765 KV transmission system the seller will retake the performance test for full capacity of Unit No. 1 as per the relevant clauses of PPA.*

*20. These interim order will be applicable from the date of commissioning of this evacuation system of 765 KV and will continue until the long term coal linkage is obtained by seller.*

*21. This arrangement is made primarily in the interest of the consumers without compromising on the cost to the procurers. Rather this arrangement will have a lowering effect on the cost.*

*22. UPPCL while signing the agreement dated 4th November, 2015, had taken the post facto approval of the competent authority in the State Government therefore it will be in the fitness of things that UPPCL obtains approval of competent authority on this interim arrangement.*

*……”*

1. In the matter of third time extension in petition No. 1115 of 2016, LPGCL filed objection on January 3, 2017, as follows:
	1. The agreement dated 4.11.2015 is void as it is in violation of UPERC (Terms & conditions of Generation tariff) Regulations, 2014, the tariff order dated 27.11.2015 and the law governing and regulating such agreement and it deprives LPGCL from claiming ABT.
	2. LPGCL has performed all its obligation and the UPPCL has not been able to purchase electricity as per PPA because it was not able to erect the evacuation system of 765 KV transmission line on time.
	3. Linkage coal as provided under PPA cannot be achieved due to reasons not attributable to LPGCL.
	4. Clause 6.5 of PPA allows sourcing of fuel from alternate source is case of shortage of fuel from linkage coal.
	5. UPPCL also gave its consent vide its letter dated 27.03.2015 for sourcing of coal under presidential tariff.
	6. UPPCL not able to purchase power beyond 400 MW in absence of 765 KV evacuation system.
	7. UPPCL failed to comply with the undertaking given by it to procure all the power made available to it through 220 KV transmission system.
	8. The above mentioned condition coerced LPGCL to enter into agreement dated 4.11.2015.
	9. UPPCL rejected the bills raised by LPGCL in accordance to the PPA and forced LPGCL to raise bills as per the agreement dated 4.11.2015
	10. Hearing was held on 4.01.2017, during which the UPPCL requested the Commission to club the matter for approval of all three time extension altogether,to which the Commission found reasonable and approved.
2. The Commission vide its Order dated January 9, 2017, decided to consider all three time extensions (i.e. Second, Third and Fourth time extension) together on the basis UPPCL’s undertaking that they will soon file petition for Fourth time extension.As the plant is operational, and UPPCL has not been able to file application for approval of fourth time extension, the Commission considers it appropriate to decide the approvals of second as well as third time extension.
3. UPPCL filed rejoinder on 13.01.2017, vide which it has refuted all the contentions raised by LPGCL and submitted that it has acted in conformity of the commission’s Order dated 21.09.2016 in petition no. 1101 of 2016.
4. UPPCL has filed a petition No. 1158 of 2017 on which the Commission has passed orders on 18.01.2017 and has approved the revised arrangement.
5. During the hearing on January 31, 2017, UPPCL submitted that all the issues have been settled before the Commission, which have come out in the Order dated September 21, 2016and the order dated 18.01.2017of the Commission.
6. The Commission finds that the conditions stipulated in the Govt. order dated 9.12.2013 have the bearing in determination of tariff and hence should be considered with the tariff determination. In the matter of agreement dated 4.11.2015, which is a part of SPPA submitted for approval of third time extension, the Commission has passed orders on 21.09.2016 and on 18.01.2017. Therefore, the Commission does not find any reason to again deal with the issues already decided in the above said orders. The Commission has further observed that despite the directions vide Order dated 21. 09.2016, the performance test for full capacity of Unit No. 1 as per relevant clauses of PPA has not been done by the developer, hence the Commission directs to complete it by the end of February 2017.
7. With above, the Commission approves the Second time extension i.e. upto 31.03.2015 and Third time extension i.e. upto 30.09.2016.
8. The Petition is disposed of.

(Suresh Kumar Agarwal) (Desh Deepak Verma)

 Member Chairman

Place: Lucknow

Dated: 14.2.2017