



Petition No. 825,826,827,828 & 829 of 2012

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Date of Order : 20.05.2013

IN THE MATTER OF: Approval of capital cost and determination of tariff for 2 x 45 MW coal based Thermal Power Stations situated at Barkhera, Khambarkhera, Maqsoodpur, Kundarkhi & Utraula.

AND

IN THE MATTER OF

M/s Bajaj Energy Pvt. Ltd.
(Units- Barkhera, Khambarkhera, Maqsoodpur, Kundarkhi & Utraula)
B-10, Sector -3, Noida
Gautam Budh Nagar, (U.P.)

-----Petitioner

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

----- Respondent

Order

1. The Petitioner had requested to the commission through application dated 14.12.2013 to allow 95 % of the fixed charges provisionally which was declined by the Commission in its order dated 28.1.2013. The relevant portion is reproduced as below:

“Earlier, while determining the provisional tariff, vide order dated 22.12.11, the Commission considered it suitable to provisionally consider 95% of the actual incurred capital expenditure of Rs. 2307 Crores duly verified for the determination of provisional tariff as per the Regulations. Further, the Commission had directed that the actual project completion cost shall be submitted by the Petitioner to UPPCL for verification. UPPCL shall submit the verified and agreed costs to the Commission with the petition for final tariff



which shall be filed by BEPL as per the provisions of the Electricity Act, 2003 and UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009.

The above mentioned petitions were filed by the Petitioner for approval of capital cost and determination of tariff. In the petitions, the Petitioner had also requested to allow the revision of fixed charges on the basis of 95% of the revised fixed charges and variable charges on actual, provisionally, till the tariff is determined by the Commission. Since, the capital cost had not been submitted as per the directions of the Commission in order dated 22.12.11, the Commission had observed vide order dated 5.11.12 as below:

The petitions have two components one approval of capital cost and second the determination of tariff. The Commission considers that as of now these petitions are admissible to the extent of approval of capital cost. For determination of tariff, as per the Electricity Act, 2003 and UPERC (Terms and Conditions of Generation Tariff) Regulations, the proceedings for admittance shall be initiated separately.

*Since the provisional tariff has already been allowed on the basis of 95% of the submitted capital cost till the date of commercial operation and also **since the verified and agreed capital cost is still to be submitted by UPPCL, it is considered that no further revision is permissible at this stage.** The Commission directs BEPL to submit all the details of capital cost for verification to UPPCL who shall carry out the detailed verification of capital cost and submit the agreed cost to UPERC for prudence check.*

As far as the approval of variable cost in provisional tariff on actuals is concerned, keeping in view the escalation in the cost of fuel, the Commission considers it logical to allow from the date of commercial operation. The variable cost shall be calculated as per the provisions of agreed PPA and Regulations subject to adjustments of variations verified by UPPCL, if any.

.....

Whereas, in MoU route project despite the Commission's observation in its order dated 18.11.2010, as below, the ceiling capital cost in agreed PPA has never been brought to the Commission for approval so there is no capital cost approved by CEA nor agreed by the UPPCL and approved by the Commission.

As per the Regulations, PPA may provide a ceiling on capital expenditure which would be admitted by the Commission after prudence check, although, the actual capital cost incurred on completion of the project shall form the basis for determination of tariff which shall be approved by the



Commission under Regulation 17 of UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009.

Clause in PPA - Capital Cost: shall mean the total expenditure actually incurred by Seller, in setting up and constructing the Unit, as approved by Appropriate Commission.

Under the prevailing Regulations, the Commission has to determine the tariff subject to prudence check of the capital cost. In light of above facts, the Commission in its orders directed the UPPCL to submit the verified and agreed capital cost for the prudence check and approval of the Commission. Here, it is further necessary to stress upon that as a Procurer, UPPCL must ascertain that at what price they are going to purchase power from the certain project, taking into consideration the escalation factors. If the estimated capital cost is not ascertained at the initial stage, the future cost of procurement of power can not be arrived at. Such exercise is also necessary to establish that the MoU route projects are in no way inferior to the bidding route projects in bringing the power for the people of the State at competitive rates. UPPCL, being the authorized representative for purchase of power for all the State Discoms, has a major responsibility to procure the power for them at the most reasonable rates. Therefore, the Commission considered it appropriate to direct UPPCL to examine, verify and then submit the agreed cost for the prudence check and approval of the Commission. It is also pertinent with the fact that UPPCL is an organization having all requisite expertise for this purpose and has been authorized by the GoUP and State Discoms to procure power for the people of the State.

The Commission allowed the Petitioner to make an additional submission within 15 days from the receipt of this order with a copy to the Respondent who shall file its reply and compliance of Commission's earlier orders on affidavit within next 15 days."

2. In compliance, the Petitioner has made additional submission dated 6.2.2013 and reply has been filed by UPPCL dated 18.2.13.
3. UPPCL, in its reply on affidavit dated 18.2.2013 has submitted as below:

A- Capital Cost

1. UPPCL have already submitted counter affidavit on 12.10.12 giving their observations/Comments upon capital cost claimed by M/s Bajaj in the Petition. Therefore the question of submitting agreed cost to UPERC does not arise. However we have no objection on the points clarified in the Rejoinder.

2. Regarding Verification of capital cost, it is submitted that:
- M/s Bajaj have not provided the required data for verification purpose. Rather they have objected in their additional submissions dated 6.2.13 to audit its accounts by UPPCL quoting the CI (5) & (17) or Regulation as well as the Hon'ble supreme Court order.
 - The original cost of 567 MW Rosa was approved by CEA vide TEC dated 19-09-97, when Regulatory Commission was not in existence. Rosa (600 MW) cost was approved by the UPERC on 2-2-06. The Commission did not allow UPPCL to audit the additional cost claimed by M/s Rosa and ultimately the cost so approved (Rs. 470.88 Cr) vide order dated 8.4.09 because part of total capital cost (Rs. 3112.81 Cr.) approved by UPERC as evident from Tariff order dated 28.3.11.
 - We do not have requisite expertise for verification of proposed cost. It would not be out of place to mention here that in Srinagar HEP, UPERC being independent body, have appointed Expert Committee for evaluation of Project cost as mentioned vide GoUP order dated 12.7.11.

In light of above, the Commission is requested to appoint an expert to determine the actual completed cost and approval of UPERC is accorded accordingly.

B – 95% Fixed Cost

UPPCL have already given consent vide letter no. 714 dated 20.11.12 followed by counter affidavit on 11.01.13. The Commission is requested to take a decision and dispose the IR application filed by firm.

C – MOU Route Projects

The PPAs for MOU projects were signed after individual approvals from UPERC. The commencement date for counting scheduled commissioning is from date to Financial closure. None of the developers (except Lalitpur) could achieve financial closure for want of Coal Linkages. Due to this reason and in light of coal being vital element for establishing the project, the Developers have probably not submitted Project costs. Therefore, it is not prudent at this stage to foresee the project costs and the related tariff.

In view of the foregoing submission, the Commission is requested to take the appropriate decision in the matter and pass the necessary orders.

UPPCL vide Affidavit dated 11.1.2013 has stated as below:

That, UPPCL have already submitted their observations/ comments on the subject matter, vide letter No. 714 dated 20.11.12 of Director (Finance), a copy of which is enclosed herewith. As mentioned, the Commission may like to allow the



Applicant for 95% of the claimed fixed cost, subject to adjustment as per final tariff order, so as to mitigate the elapse of time during completion of prudence check for the capital cost.

In view of the foregoing submission, the Commission is requested to take the suitable decision in the matter and /or otherwise pass the appropriate directions.

Letter dated 20.11.12 states as below:

Refer to the para-6 of UPERC's order dated 5.11.12 directing UPPCL to carry out the detailed verification of Capital Cost and submit the agreed cost to UPERC for prudence check.

In the above context, we have to submit that UPPCL have already submitted the counter affidavit on the subject petitions vide letter dated 12.10.12 giving their observations/comments upon the capital cost claimed by M/s Bajaj in their petition. Therefore, the question of submitting the agreed cost to UPERC does not arise at this stage

However the Commission is requested to make an independent view upon the Project Cost and carry out the scrutiny and evaluation for the purpose of prudence check as per the clause-17 of UPERC Generation Regulation 2009. In the mean time, so as to mitigate the elapse of time during completion of prudence check, the Commission may like to allow the Applicant for 95% of the claimed fixed cost subject to adjustment as per Final tariff order.

Affidavit dated 12.10.2012 states as below:

1. That, in the Petition No. 763 to 767 of 2001 of Provisional Tariff, the firm had distributed the total EPC Cost of Rs. 2118.05 Cr. equally for each of 90 MW Project but after actual completion of work, the EPC cost of each project is ranging from Rs. 406.40 cr. (Kundarkhi) to Rs. 422.36 Cr. (Khambherkhera). The Commission is requested to direct the firm for clarification on such variations in the EPC cost in light of the fact that the project size of each project is same.
2. That, non EPC component of each project is also varying from 28.68 Cr. (Khambherkhera) to Rs. 48.64 Cr. (Utraula). This variation needs the clarification from the firm, as the same has not been covered in the petitions
3. That, the project cost of Utraula has been indicated as Rs. 535.23 Cr. (Rs. 5.947 Cr./MW), which is the highest project cost as compared to the remaining projects. The non EPC component in Uraula is also highest one (Rs. 48.64 Cr.) as compared in the remaining projects. This needs explanation/justification from the firm.

4. That, the firm has given the completed cost of all five (5) Nos. Projects as Rs. 2569.80 Cr. and have enclosed a certificate from their Statutory Auditor in support of the project wise completed cost.

It is noted that IDC component in project cost of all 5 projects has gone up by Approx. Rs. 103.45 Cr. as against amount given in their provisional tariff petition. The firm has not given the detailed IDC calculation and the certificate from the lenders in support of this claim. The firm should be asked to submit detailed calculation of IDC

5. That, the firm has included the additional land (Rs. 5.03 Cr.) for all 5 nos. projects pending for completion under “Deferred Liability.” This requirement of additional land has not been justified which should be given.
6. That, the firm has mentioned Rs. 32.04 Cr. pending for completion under the “Deferred Liability” in non EPC component for emergency DG sets, housing and colony, roads & drainage, administrative buildings for all 5 projects. They have not provided the details for these works. These details should be submitted by the firm.

It may be mentioned that the deferred liability falling within the original scope of work may be admitted up to the defined cut of date as per regulation but if these works do not fall under original scope, it is not liable for admission.

7. The firm should be asked to ensure procurement of linkage coal to the extent of 80% to 85% capacity and only 20% coal should be purchased from open market or import. The generation should be restricted to 85% availability in light of higher coal cost.
8. That the firm has given the tariff calculation as per UPERC Regulation on the basis of completed costs, for each projects. We do not have any objection to the calculation. However, the Commission is requested to determine the tariff after the prudence check of the completed costs for each project in light of our above mentioned submissions. In the mean time, the Commission may like to admit 95% of the fixed cost on provisional basis as per First Amendment in UPERC Generation Regulation-2009, which should be adjustable after the final determination of project cost by the Hon’ble Commission.

4. It is observed that as per the directions of the Commission, pointwise reply to the UPPCL’s affidavit dated 12.10.2012 was submitted by M/s Bajaj Energy to UPPCL vide letter 17.12.2012 with a copy to the Commission. But instead of completing the verification of costs and submission of agreed costs following the Commission’s lucid directions as given in the orders dated 22.12.2011 and 5.11.2012, UPPCL tried to do away from the verification and submission of agreed capital cost and wrote a letter dated 20.11.2012 requesting the Commission to make an independent view upon



the Project Cost and carry out the scrutiny and evaluation for the purpose of prudence check quoting clause-17 of UPERC Generation Regulation 2009. In the mean time, so as to mitigate the elapse of time, UPPCL requested the Commission that it may like to allow the Applicant for 95% of the claimed fixed cost subject to adjustment as per Final tariff order. The same was repeated on affidavit dated 11.01.2013.

Further, the Commission, in its order dated 28.01.2013, again reiterated earlier directions which are reproduced below:

“Under the prevailing Regulations, the Commission has to determine the tariff subject to prudence check of the capital cost. In light of above facts, the Commission in its orders directed the UPPCL to submit the verified and agreed capital cost for the prudence check and approval of the Commission. Here, it is further necessary to stress upon that as a Procurer, UPPCL must ascertain that at what price they are going to purchase power from the certain project, taking into consideration the escalation factors. If the estimated capital cost is not ascertained at the initial stage, the future cost of procurement of power can not be arrived at. Such exercise is also necessary to establish that the MoU route projects are in no way inferior to the bidding route projects in bringing the power for the people of the State at competitive rates. UPPCL, being the authorized representative for purchase of power for all the State Discoms, has a major responsibility to procure the power for them at the most reasonable rates. Therefore, the Commission considered it appropriate to direct UPPCL to examine, verify and then submit the agreed cost for the prudence check and approval of the Commission. It is also pertinent with the fact that UPPCL is an organization having all requisite expertise for this purpose and has been authorized by the GoUP and State Discoms to procure power for the people of the State.

The Commission allowed the Petitioner to make an additional submission within 15 days from the receipt of this order with a copy to the Respondent who shall file its reply and compliance of Commission’s earlier orders on affidavit within next 15 days.”

It is quite unacceptable that UPPCL, not following the directions of the Commission, has submitted on affidavit dated 18.2.13 that since they do not have requisite



expertise for verification of costs, an expert committee may be constituted by the Commission.

5. In this matter, it is again to elucidate that under Reg -17 of UPERC Generation Regulation 2009, the actual expenditure incurred on completion of the project shall form the basis for determination of tariff subject to prudence check by the Commission. For submission of project cost, since there was no agreed capital cost in the PPA, the mode has been directed by the Commission vide its orders dated 22.12.11, 5.11.12 and 28.1.13. But, despite repeated directions of the Commission, UPPCL has not filed the verified and agreed capital cost till date. To provide a last chance, the Commission allows three months time to UPPCL to complete the job otherwise it would be treated as non-compliance of the Commission's orders and would be considered under the respective provisions of the Act.
6. Since there are many power projects for procurement of power for the Discoms under MoU with the GoUP and under PPA with UPPCL, it is necessary to evolve the mode so that the intent of the Act and the Regulations may not be misunderstood. The reluctance shown by UPPCL in this matter, which has caused enough delay in initiating the process for prudence check of capital cost and subsequent determination of tariff by the Commission, hammer the requirement of making the agreed cost as an essential part of PPA.

Therefore, it is directed that for all MoU Route projects who are under PPA with UPPCL, the agreed ceiling capital cost shall be brought to the Commission for approval and the approved cost shall be a part of PPA. The actual capital cost, if it is equal to the approved ceiling capital cost, shall form the basis for prudence check and determination of tariff by the Commission. If the actual cost is lower then the lower cost would be taken and if it is higher then the additional cost would first be verified and agreed by UPPCL/GoUP then shall be taken up by the Commission for consideration and approval. The



necessary changes to remove the ambiguity in the Regulations shall be made accordingly.

7. However, in this case, since the projects are operational, the direction given in earlier orders shall be applicable. UPPCL and M/s Bajaj Energy Pvt. Ltd. will have to arrive on agreed/admitted capital cost without further delay as per the directions of the Commission. The Petitioner is directed to file the petitions for determination of final tariff afresh subsequently.
8. It is also necessary to consider the capital cost incurred till date of commissioning, to mitigate the delay on part of UPPCL for the time being, for determination of fixed cost of the provisional tariff. Hence, the Commission decides to allow 95 % of the claimed annual fixed costs as agreed by the UPPCL subject to adjustment as per proviso to clause (3) of the Regulations.
9. Hence the Commission allows fixed charges in respect of each power station as below:

1. BARKHERA TPS				
S.N.	Head of Expenditure	FY 2011-12	FY 2012-13	FY 2013-14
1	Return on Equity	66.84	3049.70	3049.70
2	Interest on Loans	109.10	4726.05	4227.98
3	Depreciation	40.10	1828.37	1828.37
4	Advance against Depreciation	0	1728.27	1728.27
5	O & M Expenses	40.13	1935.47	2046.17
6	Interest on working Capital	23.12	1105.98	1118.66
	Total	279.29	14373.84	13999.15
7	No of Units as Bus Bars (MU)	13	596	596
8	Rate of Fixed cost per unit	2.14	2.41	2.35
9	95% of above fixed cost	2.03	2.28	2.23
	Rate of fixed charge per Kwh (Provisional)	2.03	2.28	2.23



2. KHAMBAR KHERA TPS				
S.N.	Head of Expenditure	FY 2011-12	FY 2012-13	FY 2013-14
1	Return on Equity	184.64	3063.28	3063.28
2	Interest on Loans	301.08	4737.22	14236.94
3	Depreciation	110.76	1837.60	1837.60
4	Advance against Depreciation	0	1735.88	1735.88
5	O & M Expenses	110.35	1935.47	2046.17
6	Interest on working Capital	64.12	1115.39	1128.17
	Total	770.95	14424.84	14048.04
7	No of Units as Bus Bars (MU)	36	596	596
8	Rate of Fixed cost per unit	2.14	2.42	2.36
9	95% of above fixed cost	2.03	2.30	2.24
	Rate of fixed charge per Kwh (Provisional)	2.03	2.30	2.24

3. MAQSOODPUR TPS				
S.N.	Head of Expenditure	FY 2011-12	FY 2012-13	FY 2013-14
1	Return on Equity	33.17	3026.79	3026.79
2	Interest on Loans	54.16	4693.34	4199.01
3	Depreciation	19.90	1815.81	1815.81
4	Advance against Depreciation		1715.11	1715.11
5	O & M Expenses	20.06	1935.47	2046.17
6	Interest on working Capital	11.41	1092.49	1104.93
	Total	138.70	14279.01	13907.82
7	No of Units as Bus Bars (MU)	7	596	596
8	Rate of Fixed cost per unit	1.98	2.39	2.33
9	95% of above fixed cost	1.88	2.27	2.21
	Rate of fixed charge per Kwh (Provisional)	1.88	2.27	2.21

4. KUNDARKHI TPS				
S.N.	Head of Expenditure	FY 2011-12	FY 2012-13	FY 2013-14
1	Return on Equity	-	2892.25	3068.81
2	Interest on Loans	-	4487.37	4260.12
3	Depreciation	-	1734.93	1840.84
4	Advance against Depreciation		1845.01	1739.10
5	O & M Expenses	-	1824.11	2046.17
6	Interest on working Capital	-	1047.45	1110.94



	Total	-	13826.12	14065.98
7	No of Units as Bus Bars (MU)	-	562	596
8	Rate of Fixed cost per unit	-	2.46	2.36
9	95% of above fixed cost	-	2.33	2.24
	Rate of fixed charge per Kwh (Provisional)	-	2.33	2.24

5. UTRAULA TPS				
S.N.	Head of Expenditure	FY 2011-12	FY 2012-13	FY 2013-14
1	Return on Equity	-	3000.50	3211.68
2	Interest on Loans	-	4655.33	4458.45
3	Depreciation	-	1799.64	1926.30
4	Advance against Depreciation		1946.96	1820.30
5	O & M Expenses	-	1808.20	2046.17
6	Interest on working Capital	-	1069.05	1148.03
	Total	-	14279.68	14610.93
7	No of Units as Bus Bars (MU)	-	557	596
8	Rate of Fixed cost per unit	-	2.56	2.45
9	95% of above fixed cost	-	2.43	2.32
	Rate of fixed charge per Kwh (Provisional)	-	2.43	2.32

10. The petitions are disposed of with directions as above.

(Meenakshi Singh)
Member

(Shree Ram)
Member

Place : Lucknow
Dated: 20.05.2013