
Petition No. 1075 of 2015
BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW
Date of Order:07.03.2018

PRESENT

Hon'ble Sri Suresh Kumar Agarwal, Chairman

IN THE MATTER OF: Amendment of provisional Tariff for Unit-1 (660 MW) and fixation of provisional tariff for Unit-2 & 3 (660 MW each) for Lalitpur TPP.

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, Gomti Nagar, Lucknow - 226010

----- **Petitioner**

AND

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

----- **Respondent**

Following were present:

1. Shri S.N.M Tripathi, Director, LPGCL
2. Shri Gobind Maheshwari, CFO, LPGCL
3. Shri Amrendra, Senior Manager, LPGCL
4. Shri Vinod Asthana, CE, UPPCL
5. Sri Manish Garg, Consultant, UPPCL
6. Shri Haroon Aslam, EE, UPPCL
7. Shri Anand Shukla, SE, UPPCL
8. Shri Shubham Srivastava, AE, UPPCL

Order
Date of hearing 07.03.2018

1. The Petition (No. 1075 of 2015) has been filed by LPGCL for amendment of provisional tariff for Unit-1 (660 MW) and fixation of provisional tariff for Unit-2 (660MW) for Lalitpur TPP. Hearings and Public Hearing on this matter were conducted on 07.12.2016, 04.01.2017, 31.1.2017, 07.02.2017 , 22.02.2017 , 27.4.2017 and the final hearing on 7.3.2018

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2. The counter was filed by UPPCL on 1.12.16 and rejoinder by LPGCL on 19.12.16 which was replied by UPPCL on 9.1.2017. UPPCL has raised the following objections on the petition:
 - (i) Claim of provisional tariff for unit 2 may be allowed as per the regulations but prayer for redetermination of provisional tariff for unit 1 must be rejected.
 - (ii) Undischarged liability of Rs. 646.76 Crs should be deducted from the capital cost.
 - (iii) The amount invested on debenture need to be considered as debt.
 - (iv) Abnormal increase in IDC should be looked into.
 3. Shri Shaifullah, Secretary, Upbhokta Abhirakshan Society has filed comments vide his Petition No. 1095 of 2016. A summary of the submission is as follows:
 - (i) That the Commission provisional order be stayed till the disposal of the Petition filed by him.
 - (ii) That the provisional tariff order be amended specifying that the order will come in to effect only after CoD of Unit 1. The CoD should be declared only after completion of the raw water supply scheme, railway siding and power evacuation facility.
 - (iii) To amend the provisional tariff order by mentioning that fixed charges are to be payable only for the power generated.
 - (iv) To reduce the fixed charges by Paise 1/ kWh and Paise 2.3/ kWh after correction of arithmetical errors in the Petition.
 - (v) To reduce the fixed charges as a result of deletion of expenses which had been booked earlier by the Petitioner in the apportioned capital cost.
 - (vi) To reduce the energy charges to Rs. 2.07 kWh by considering coal prices as applicable to Harduaganj TPS of UPRUVNL.
 - (vii) To exercise its powers for enforcing commercial principle, efficiency, economy and optimum use of resources in the interest of the energy industry and consumers at large.
 4. The Commission vide Order dated 14.02.2017, directed the Petitioner and the Respondent to file replies to the comments filed by Shri Shafiullah within 10 days of the hearing.
 5. LPGCL filed their replies to the comments of Shri Shafiullah on February 16, 2017. A summary of the Petitioner's submission is as follows:
 - (i) The Petitioner has refuted the claims of the Consumer representative and mentioned that the Consumer representative should have appeared in the numerous public hearings which were held instead of filing a review Petition after the hearing proceedings have been closed by the Commission.
 - (ii) The Commission has currently determined a provisional tariff which will be subject to adjustment on determination of final tariff after complete cost is arrived at. Hence the objections raised are not relevant at this stage.
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- (iii) The contention of the Consumer representative regarding payment of capacity charges is misconceived as it is paid based on declared capacity and not on the basis of actual generation.
 - (iv) The Petitioner mentioned that rest of the issues raised by the Consumer representative are not relevant for this current Petition and may be taken up by the Commission during prudence check at the time of finalization of capital cost and tariff determination.
6. UPPCL also filed their submissions before the Commission vide letter dated February 20, 2017. A summary of the UPPCL's submission is as follows::
- (i) UPPCL submitted that the stay of provisional tariff order is not in consumer interest. In case the issues are taken up at a later stage, UPPCL may have to pay tariff along with interest which will be an additional burden on the consumers. UPPCL requested the Commission not to stay its order.
 - (ii) Regarding amending of the provisional tariff order, UPPCL has requested the Commission to examine the issues as highlighted by the Consumer representative while undertaking prudence check.
 - (iii) In regard to the payment of fixed charges linked to actual power generation, UPPCL requested the Commission to reject the prayer as it is not in consonance with the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014 nor has the Commission allowed such a mechanism in the past.
 - (iv) UPPCL requested the Commission to examine and correct any arithmetical error taking suo-motu cognizance.
 - (v) With regards to reduction in apportioned capital cost as submitted by the Consumer Representative due to deletion of some expenses, UPPCL requested the Commission to examine the issues while undertaking the prudence check.
 - (vi) UPPCL requested the Commission to examine the issue highlighted by the Consumer representative regarding reduction in energy charges by considering coal price as applicable to Harduaganj TPS.
7. Shri Awdhesh Kumar Verma, Chairman, U.P.Rajya Upbhokta Parishad had also submitted a letter dated 13.01.2016 in which he had raised the issue that LPGCL has filed a petition for fixation of provisional tariff for Unit-II and they have asked for increase in fixed cost on the basis of revised capital cost of Rs.14916 crore. He had pleaded that increase in provisional tariff will put an extra burden on the consumers of the State. He had further raised an issue that the Committee report submitted by UPPCL regarding agreed ceiling cost has not been made public. The Commission has considered the objections raised by Shri Verma. The Commission is of the view that the tariff of such projects is determined on the basis of Generation Regulations which clearly specify the procedure to be followed by the Commission. At present the Commission is allowing the provisional tariff as per the prescribed regulations and has considered only the cost incurred up to 30th September, 2015. From this cost
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also undischarged liability has been deducted and only 95% of the remaining cost is considered. While determining the final tariff the Commission will go for the prudence check and the final tariff will be determined on the basis of legitimate cost and will not be guided by the agreed ceiling capital cost submitted by the parties.

8. The Commission has considered the submissions of Sri Shaifullah and Shri Awdhesh Kumar Verma as well as the replies filed by LPGCL and UPPCL. The relevant issues shall be taken up at the time of the final Tariff Order for LPGCL.
9. For determination of provisional tariff, the Regulation 5 (3) of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, provides as below:

(3) In case of a generating station declared under commercial operation on or after the date of commencement of this regulation, an application for fixation of tariff shall be made as per Appendix II to these regulations, for determination of provisional tariff within 180 days of the anticipated date of commercial operation based on the capital expenditure actually incurred up to the date of making of the application or a date prior to making of the application, duly audited and certified by the statutory auditors, and the provisional tariff shall be charged from the date of commercial operation of the respective unit of the generating station.

A generating company shall make a fresh application as per Appendix II to these regulations, for determination of final tariff based on actual capital expenditure incurred up to the date of commercial operation of the generating station, duly audited and certified by the statutory auditors.

Provided further that over or under recovery of charges by the generating company on account of provisional tariff shall be subject to retrospective adjustment on the basis of final tariff determined by the Commission. The generating company, on the basis of such final tariff, shall calculate the amount of under or over recovery of charges and bill such amount to be recovered or paid by it from or to the beneficiary (ies), for the period the provisional tariff remained effective, within six months of determination of final tariff, along with simple interest calculated at rate equal to Bank Rate as on 1st April of the relevant year.

(4) Where application for determination of tariff of an existing or a new project has been filed before the Commission in accordance with clauses (2) and (3) of this regulation, the Commission may consider in its discretion to grant provisional tariff up to 95% of the annual fixed cost of the project claimed in the application subject to adjustment as per proviso to clause (3) of this regulation after the final tariff order has been issued.

Provided that recovery of capacity charge and energy charge, as the case may be, in respect of the existing or new project for which provisional tariff has been granted shall be made in accordance with the relevant provisions of these regulations.

10. With regard to amendment of the Provisional tariff of Unit 1, the Petitioner has mentioned in the petition that prior to COD of Unit-I and before making the

application for fixation of provisional tariff for Unit-II, capital cost of Rs. 14916 crore has been incurred up to 30th September, 2015. The Commission had allowed provisional tariff for Unit-I vide its order dated 27th November, 2015 in which the capital cost of Rs.12868 crore was considered and the tariff was allowed at 90% of this amount. The Petitioner has mentioned that the fixed cost determined is not sufficient to meet even the debt service obligation and O&M expenses. UPPCL in their counter affidavit has opposed the revision of provisional tariff for Unit-I although no convincing argument has been made out.

11. Provisional tariff is fixed as per Regulations to ensure that the generator starts getting payment of energy bills stage wise or unit wise because in thermal plants the Units are commissioned with a time lag. In case of Petitioner's plant all the units have been commissioned in December 2016. As a matter of principle the petitioner should have filed the final completion cost also but now they have promised to submit the final capital cost in next 3 months. In the present circumstances the Commission has to approve the provisional tariff for Unit-II and Unit-III based on the audited cost of Rs.14916 crore. This cost is to be apportioned on all the three units as per the Regulations. The Commission cannot take Rs.12868 crore for provisional tariff of Unit-I and Rs. 14916 crore for the other two units. Further there cannot be two rates of fixed charges as the energy supplied is not unit wise. CERC has also followed the principle of one provisional tariff for units commissioned before the full completion of the plant. In such a situation the Commission is of the view that the cost of Rs.14916 crore after the deductions as given in the following table should be apportioned on all the three units and the provisional tariff of Unit-II and III should be applicable on Unit-I also.
12. The scheduled COD of Unit 2 of the project was 24.06.2016 and as per the Petitioner's submission, the Unit has been commissioned on 14.10.2016.
13. The Petitioner has also submitted the revised capital expenditure of Rs. 14916 Cr duly certified by statutory auditors as on 30.09.2015 before the Commission. The capital cost incurred has been financed by an equity share capital of Rs. 3,726.03 Cr and the balance by debt. The details are given in the following table:

Table 1: Details of expenditure as on 30.09.2015

S. No	Total Amount Spent	Amount (Rs. In Crore)
1	Land, leasehold land and R &R	112.01
2	Payment for BTG package	5900.56
3	Payment for BOP Package	3493.88
4	Payment for Misc. BOP works	1656.08
5	Preoperative Expenses including insurance , consultancy etc.	435.34
6	Power & water arrangement for construction	43.61
7	Payment for Startup fuel cost	100.10

8	Interest during Construction period (Net)	2962.03
9	Finance Charges	212.39
	Total	14,916.00

14. In the details submitted by the Petitioner, an amount of Rs. 646.76 Cr has been mentioned as retention money and amount due to the creditors etc., under means of finance. Since the amount is unpaid, the Commission has deducted the amount from the submitted capital cost to arrive at a revised capital cost at Rs. 14269 for the purpose of determination of provisional tariff of Unit II.
15. On scrutiny of the details submitted regarding the equity share capital, the Commission observed that an amount of Rs. 60 Cr financed through debentures has been included in the equity share capital. The Commission has considered the same amount under debt as the debentures fall into the category of debt. Accordingly the debt – equity ratio considered for the provisional tariff determination of Unit -II is given in the following table:

Table 2: Debt Equity ratio

S. No	Particulars	Submitted by the Petitioner (Rs. Cr)	Considered by the Commission provisionally (Rs. Cr)
1	Capital cost	14916.00	14269.24
2	Equity share capital	3726.03	3666.03
3	Debt	11189.97	10603.21
4	Debt : Equity Ratio	75:25	74:26

16. Since the final tariff is to be determined upon completion of the project after due prudence check, the Commission at this stage finds it appropriate to take 95% of the capital cost of Rs. 14269.24 Cr for the purpose of provisional tariff determination of Unit II.
17. For arriving at the components of fixed charge, the Commission has relied upon the norms specified under the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014. The details are given in the following table:

Table 3: Approved fixed cost and fixed charge per unit

S.No	Particular	Units	LPGCL Submission	UPERC Provisional Approval
1.	Capital cost filed by the Petitioner	Rs.Cr	14916	14269
2.	Apportioned Capital Cost for Unit-II	Rs.Cr	4972	4756
3.	Provisional approval by the Commission	%		95%
4.	Capital Cost provisionally considered by UPERC			4519
	Annual Fixed Charges			
5.	Interest on loans	Rs.Cr	160.30	139.52
6.	Return on Equity	Rs.Cr	198.88	179.94
7.	Depreciation	Rs.Cr	287.70	235.46
8.	Operation and Maintenance Expenses	Rs.Cr	101.05	101.05
9.	Interest on working Capital	Rs.Cr	93.21	83.09

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18. The petitioner has made a written submission on 23.02.2018 in which they have informed that Unit –III of the plant has also been commissioned in December 2016 therefore the provisional tariff for Unit-I and II be made applicable for unit-III also. On this submission UPPCL has also filed an additional submission on 06.03.2018 in which they have made the following prayers:
- I. To disallow the request of the petitioner for determination of provisional tariff of Unit-iii.
 - II. To consider the current eligible tariff (pre supplementary power purchase agreement dated 6.1.18) to be ceiling tariff post procurement of coal under SHAKTI.
 - III. Direct the petitioner to show how tariff post SHAKTI Linkage is lower than tariff pre linkage.
19. While making the above prayers UPPCL has mentioned that the petitioner should have filed a petition for determination of provisional tariff for Unit-III 6 months prior to commissioning i.e in June 2016. Further they have stated that petition no. 1075 was filed on the basis of capital cost incurred till 30th September 2015 and request for tariff of unit III based on capital cost incurred up to 30.9.2015. It appears that the petitioner is submitting that no capital expenditure is incurred subsequent to September 30th 2015 till date. They have further stated that in case the Commission chooses to allow provisional tariff of unit-III , same as that of unit-II , interest on differential tariff after determination of final tariff should be to the account of the petitioner due to delay in submission of capital cost of all the units.
20. UPPCL has also stated that now the petitioner has got the long term coal linkage under the SHAKTI policy and a supplementary PPA has been signed between the parties. UPPCL has asked the petitioner to show how tariff post SHAKTI is lower than the tariff pre linkage.
21. On the additional submissions of UPPCL the Commission is of the view that the petitioner has filed the petition for determination of provisional tariff for Unit-II on the basis of cost incurred up to 30th September, 2015 and Unit-III has been commissioned in December 2016. If the petitioner wants provisional tariff on the basis of cost up to 30th September, 2015, there appears to be no anomaly as far as the Regulations are concerned. Regarding delay in submission of final cost and admissibility of interest on difference in tariff after the determination of final tariff, the Commission would take a call on this issue when the petition for final tariff is filed. UPPCL can take this argument at that time. Asking the Commission to cap the provisional tariff to pre supplementary power purchase agreement is not justified and is against the violation of the terms of the PPA. The implication of SHAKTI scheme on the cost is very well elucidated in the said notification. Further UPPCL has signed a Supplementary PPA after the linkage under the SHAKTI scheme and the benefits which will accrue to UPPCL are very well defined in the Supplementary PPA.
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22. On the basis of above the Commission directs that the provisional tariff as determined herein above shall be applicable on Unit-I and Unit-II from the date of COD of Unit-II and for Unit-III from the date of COD of Unit-III.
 23. The variable cost shall be billed in line with the norms provided under the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014 and the earlier orders of the Commission.
 24. The petition is disposed of with the above directions.

(S.K. Agarwal)
Chairman

Place: Lucknow
Dated:07.03.2018