



*Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC*

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**UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

Petition No. 967/2014, 968/2014 and 1016/2015

**FILED BY**

**ROSA POWER SUPPLY COMPANY LTD. (RPSC)**

**IN THE MATTER OF:**

**TRUING UP OF TARIFF FOR 600 MW ROSA THERMAL POWER PLANT STAGE-I (FY 2009-10 TO FY 2013-14)**

**FIXATION OF TARIFF FOR 600 MW ROSA THERMAL POWER PLANT STAGE-II (FY 2011-12 TO FY 2013-14)**

**&**

**FIXATION OF TARIFF FOR 4X300 MW ROSA THERMAL POWER PLANT FOR STAGE I & STAGE II FOR THE SECOND CONTROL PERIOD (FY 2014- 2015 TO FY 2018-19)**

**Lucknow**

Dated: August 22, 2017



*Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC*

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**Petition Nos. 967 & 968 of 2014 and 1016 of 2015**

**Before**

**UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**Date of Public Hearing: July 8, 2015, August 11. 2015, September 15, 2015**

**Date of Order: August , 2017**

**PRESENT:**

- 1. Hon'ble Shri Desh Deepak Verma, Chairman**
- 2. Hon'ble Shri Suresh Kumar Agarwal, Member**

**IN THE MATTER OF:**

Truing up of tariff for 600 MW Rosa Thermal Power Plant Stage-I (FY 2009-10 to FY 2013-14), Fixation of tariff for 600 MW Rosa Thermal Power Plant Stage-II ( FY 2011-12 to FY 2013-14)& Fixation of tariff for 4x300 MW Rosa Thermal Power Plant Stage-I & Stage-II for the Second Control Period (FY 2014-15 to FY 2018-19).

**Between**

M/s Rosa Power Supply Company Limited (RPSC)

AND

Uttar Pradesh Power Corporation td. (UPPCL)

The Following were present:

1. Shri Vaibhav Agarwal, Director, RPSC
2. Shri Sumeet Notani, GM, RPSC
3. Shri Ambuj Shukla, Manager, RPSC
4. Shri Himanshu Agarwal, Sr. Manager, RPSC
5. Shri J.J. Bhatt, Sr. Advocate, RPSC
6. Shri Anjali Chandurkar, Advocate, RPSC
7. Shri Deepandar Deep Singh, RPSC
8. Shri Venkatesh, Advocate, RPSC
9. Shri Pratyush, Advocate, RPSC
10. Shri Santosh Singh, RPSC



*Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSCL*

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11. Shri Sanjay Kumar Singh, Director (Commercial), UPPCL
12. Shri Vivek Dixit, E.E. Attached to D(Com), UPPCL
13. Shri V. P. Srivastava, CE (PPA), UPPCL
14. Shri Haroon Aslam, UPPCL
15. Shri Shri Manish Garg, UPPCL
16. Shri A. K. Singh, MVVNL
17. Shri Rajiv Shrivastava, UPPCL
18. Shri R. Bhatnagar, UPPCL
19. Shri C. K. Shukla, UPSLDC
20. Shri Mithilesh K. Gupta, UPSLDC
21. Shri Zahir Ahmad, UPSLDC
22. Shri Avdhesh Kumar Verma, Chairman, UPRVUP
23. Shri R. S. Awasthi, Consumer representative
24. Shri Ravi Tyagi, Consumer
25. Shri Mohd. Saleem, Consumer
26. Shri Ashok Srivastava, Consumer
27. Shri Manish Kumar, Consumer
28. Shri Kaushal Tyagi, Consumer
29. Shri Mamta, Advocate, Cosumer



## **1. FOREWARD**

- 1.1. Rosa Thermal Power Plant in district Shahjahanpur, Uttar Pradesh was originally envisaged as 567 MW project by Government of Uttar Pradesh (GoUP) in 1993 and Indo Gulf Fertilizers & Chemicals Ltd. (Aditya Birla Group) was allotted this project.
- 1.2. In order to develop the project, a MoU was signed between Government of Uttar Pradesh and Indo Gulf Fertilizers Limited on December 17, 1993.
- 1.3. Thereafter, Indo Gulf Fertilizers Limited created a special purpose vehicle namely Rosa Power Supply Company Limited (RPSCCL) and started the initial project development activities such as land acquisition, coal linkage, international competitive bidding for EPC, all statutory clearances and approval from various agencies etc.
- 1.4. In order to formalize the commitment of Government of Uttar Pradesh to purchase power from Rosa project, a Power Purchase Agreement was signed on September 24, 1998 between RPSCCL and the UPSEB. Further, an Implementation Agreement was also signed between Rosa and GoUP on February 23, 1999 wherein Government of Uttar Pradesh promised to provide land, water and all necessary approvals/ clearances and fiscal concessions to the project. The PPA was subsequently amended by the First Supplemental Agreement dated September 24, 1999.
- 1.5. Pursuant to the enactment of the Uttar Pradesh Electricity Reforms Act, 1999 and the Electricity Act, 2003, and the issue of Central Electricity Regulatory Commission Tariff Regulations on March 26, 2004, the Uttar Pradesh Electricity Regulatory Commission issued terms and conditions for determination of generation tariff on June 07, 2005 and the UP Power Policy, 2003 (amended in June, 2004) was notified by the Government of Uttar Pradesh (GoUP).
- 1.6. The capacity of the project was amended from 567 MW to 600 MW which was approved by the UPERC vide order dated February 02, 2006. Meanwhile, the RPSCCL was taken over by Reliance Group from Aditya Birla Group on November 01, 2006 and the same was approved by UPERC vide order dated November 08, 2006. An Amended and Restated Power Purchase Agreement was signed between RPSCCL and UPPCL on November 12, 2006, for 600 MW. This draft Power Purchase Agreement was approved by the UPERC vide order dated November 01, 2006.
- 1.7. Simultaneously, a Supplementary Implementation Agreement was also signed between RPSCCL and Government of Uttar Pradesh on November 12, 2006 to



extend the benefits of UP Power Policy 2003 under the previously signed Implementation Agreement dated February 23, 1999.

- 1.8. Reliance proposed to expand the capacity of the project from 600 MW to 1200 MW. Subsequently RPSC filed Petition No. 610/2009 before the Commission, for approval of Supplementary Power Purchase Agreement (SPPA) for sale of 300MW of power to UPPCL and approval of project cost for 600 MW (2X 300 MW) of Stage-II. The Commission approved the same in its Order dated June 15, 2009. Subsequently, it was amended to include balance 300 MW power also from expansion project by way of an amendment to Supplemental Power Purchase Agreement dated November 19, 2011, which was approved by the Commission vide its Order dated December 22, 2011.
- 1.9. All the four units are operational at present. The unit wise COD achieved as under:

**Table 1-1: TIMELINE APPROVED BY THE COMMISSION AND THE ACTUAL COD**

Units	Timeline approved by Commission	Actual COD
<b>Stage I</b>		
Unit 1	March 31, 2010	March 12, 2010
Unit 2	June 30, 2010	June 30, 2010
<b>Stage II</b>		
Unit 3	March 31, 2012	January 01, 2012
Unit 4	July 31, 2012	April 01, 2012

#### **HISTORY OF EVENTS:**

- 1.10. RPSC has set up coal based thermal power station with installed capacity of 1200 MW in two Stages Stage I and Stage II of ( 2 x 300 MW) each. The entire capacity is tied up with UPPCL through Long Term Power Purchase Agreement approved by the Hon'ble UPERC.

#### **Stage-I**

- In November, 2006, Reliance Energy Generation Ltd (renamed as Reliance Power Limited) acquired RPSC from the earlier promoters Aditya Birla Group.
- UPERC vide orders dated February 02, 2006, November 01, 2006 and November 08, 2006, approved PPA between UPPCL and RPSC for procurement of 600 MW of power from Unit 1 and Unit 2. The PPA was entered on 12.11.2006. The capital cost of the project was approved as Rs



2641.63 Crores with COD of Unit 1 and Unit 2 to be achieved before 31.03.2010 and 30.06.2010 respectively.

- EPC Contract was signed with Consortium of SEC (Sanghai Electric Company) & UEEPL (Utility Energytech and Engineers Pvt. Ltd.) on March 06, 2007 and NTP (Notice To Proceed) was issued in June, 2007 based on the ICB Process carried out by Aditya Birla Group earlier.
- UPERC vide order dated May 08, 2007, approved the financial package of Stage I.
- The Commission vide its Order dated April 08, 2009 allowed additional capital cost of Rs 470.88 Crores, which got added due to change in scope of work, statutory taxes, duties and change in cost of materials, making the total approved project cost of Rs 3112.81 Crores for Stage I subject to prudence check.
- UPERC vide its Order dated May 17, 2010 approved provisional tariff for Unit-1 of Stage-I which was applicable for the period in between COD of Unit-1 & Unit-2. After commercial operation of the Unit-2, final tariff was approved by the Commission vide its Order dated March 28, 2011 for Stage-I for period from FY 2009-10 to FY 2013-14 subject to prudence check of Capital Cost at the time of filing of Tariff Petition for the next Tariff period.

## **Stage-II**

- UPERC vide order dated June 15, 2009, approved the supplementary PPA for procurement of 300 MW of power from Unit 3 & Unit 4 from Stage II of the Project and approved Project cost of Rs 3098.6 Crores for Stage II subject to prudence check.
- Based on the EPC Contract Price discovered in the International Competitive Bidding process for Stage I, the EPC Contract for Stage II was signed in March, 2008 with consortium of SEC and UEEPL and NTP (Notice To Proceed) was issued in November, 2009, wherein the EPC Contract Price for Stage II was adjusted for Foreign Exchange Variation (for imported component) and increase in raw material prices (for indigenous component) based on the indices used by Indian Contractors.
- Supplementary PPA was signed with UPPCL on September 11, 2009 for procurement of additional 300 MW from Stage II.



- Government of Uttar Pradesh vide G.O (Government Order) dated September 09, 2011 decided to purchase the remaining 300 MW offered by the RSPCL on cost plus basis (as stipulated in the PPA).
- The Commission vide its Order dated December 22, 2011, approved the Amendment to Supplementary PPA signed on November 19, 2011, for procurement of balance 300 MW from Stage II.
- The Commission vide its Order dated May 21, 2012 provisionally approved fixed charge for Stage-II same as Stage-I for FY 2011-12 & 2012-13 as required by RPSCL and UPPCL.

**The Preliminary Objections raised by the respondent, Rejoinder filed by the petitioner is as follows:**

**A. Interest on Loan**

- 1.11. In counter Affidavit filed by UPPCL on July 7, 2015, in true up petition for Stage-I, it submitted that the RPSCL is erroneous in computation of Opening Normative Debt. UPPCL submitted that the RPSCL has not applied the average clause to additions made during the year and thus prayed to the Commission to direct the petitioner to revise the claim for interest on long term debts.
- 1.12. In the rejoinder filed by the RPSCL on August 11, 2015, it submitted that the interest has been calculated on the average of opening and closing loan balance and it has computed interest correctly and there is no error made in computation.
- 1.13. In the Counter Affidavit filed by UPPCL on July 7, 2015, in petition for tariff determination for Stage-II, it submitted that the comparison of Rupee Term Loan (RTL) with Foreign Term Loan (FTL) without considering the impact of Foreign Rate Exchange Variation (FERV) is erroneous and FERV has a significant impact on cost of servicing of debt.
- 1.14. Further, UPPCL submitted that the hedging cost needs to be factored in to evaluate financial feasibility of FCL over RTL and thus prayed the Commission to direct the petitioner to provide actual cost of beneficiary of FCL after factoring in FERV over this time period.
- 1.15. In the rejoinder filed by the RPSCL on August 11, 2015, it submitted the computation of FCL's rate of interest for FY 2012-13 to FY 2014-15 factoring in FERV. RPSCL further submitted that during this period the RTL rate of interest was in the range of 12.5% to 14%, which is substantially more than FCL.





1.16. In reply to the rejoinder, UPPCL submitted on October 23, 2015, that the methodology adopted by RPSCL for computation of “Interest rate including FERV” is misleading as it has considered FERV on repayment and not on total loan outstanding.

#### **B. Interest on Working Capital**

1.17. In counter Affidavit filed by UPPCL on July 7, 2015, in true up petition for Stage-I, it submitted that the RPSCL has filed this Petition as per para 7(b) of the Order dated March 28, 2011, in petition 706 of 2010 of the Commission, in which it was stated by the Commission that the truing up shall be carried out with respect to capital expenditure incurred upto March 31, 2014, for Stage-I and Stage-II. UPPCL added that the RPSCL has filed this Petition for Truing up of changes in the interest rates and working capital requirement of the stage-I, in which interest rate on long term loan is maintainable but change in working capital requirement does not fall within scope of capital expenditure and hence to be disallowed by the Commission. Further, UPPCL submitted that the UPERC Generation Tariff Regulation 2009 and CERC Tariff Regulations, 2009 allows true up of Capital expenditure only.

1.18. In the rejoinder filed by the RPSCL on August 11, 2015, it submitted that the UPPCL has clearly admitted in its response that the change in interest on loan is maintainable and thus the same is liable to be trued up.

1.19. RPSCL submitted that the Interest on working capital (IWC) was calculated based on certain assumption and it has claimed IWC on account of the change in the overall coal blend and resultant price of coal as approved by the Commission vide its Order dated March 28, 2011. RPSCL submitted that on account of shortage of coal supplied by Central Coal Fields, it has to import coal to supply power and to fulfil PPA obligations after prior approval of quantum as well as the price from UPPCL. Further, RPSCL added that this situation was not considered by the Commission while assessing the working capital requirement and interest thereon and thus the very basis on which normative working capital requirement was calculated has changed and which is admitted by UPPCL by approving such import. RPSCL further submitted that the Commission has itself carried out truing up of interest on working capital in its Order dated November 14, 2013, in Petition No. 877 of 2013 in the matter of truing up of MYT of UPRVUNL for FY 2009-10 and FY 2010-11 and thus the claimed shall be allowed.

1.20. In reply to the rejoinder, UPPCL submitted on October 23, 2015, that the reason for allowing imported coal was shortage of domestic coal. Further the respondent submitted that the petitioner is claiming reimbursement on



account of higher rate of imported coal but continues to claim for 2 months of inventory when actual stock maintained is for a substantial lesser time period.

### C. Normative Parameter considered for tariff computation

- 1.21. In counter Affidavit filed by UPPCL on July 7, 2015, in petition for determination of tariff for Stage-II, it submitted that normative parameters considered by the petitioner are higher compared to those specified in UPERC Generation Regulations, 2009. UPPCL further stated that the UPERC Generation Tariff Regulations, 2009 provisions take precedence of PPA and the same has been approved by the Commission vide its order dated June 19, 2009 in petition No. 610 of 2009 (petition for approval of Supplementary PPA and project cost of 2 X 300 MW Rosa Power Project Stage-II) and thus the UPPCL prayed the Commission to direct the RPSCL to revise the parameters as per UPERC Generation Tariff Regulations, 2009.
- 1.22. In the rejoinder filed by the RPSCL on August 11, 2015, it submitted that the Regulation 2(5) clearly provides that the said regulations are in addition to and not in derogation to the terms and conditions of determination of tariff approved by the Commission in the PPA signed between UPPCL and RPSCL. Further the said Regulations provides that either party of PPA may approach the Commission for specific relief under the Tariff Regulations 2009 and amendments thereof if such provision or remedy is not available in the PPA signed between them. RPSCL further submitted that the Commission vide its order dated June 19, 2009 has also held the same view which is reproduced below for reference,

*“Shri Vaibhav Agarwal stated that as per regulations 2(5), UPERC (Terms & Conditions of Generation Tariff) Regulations, 2009 should also be applicable for determination of fixed charges in case of Stage I & II. The respondent objected to the interpretation of Regulation 2(5) made on behalf of the Petitioner. The parties must note that Regulations 2(5) operates only where any remedy is not available under power purchase agreement (PPA) signed between them but it is available in the said regulation in such event, any party of PPA could approach the Commission.”*

And after that the Commission has stated that *“it is to clarify that UPERC (Terms & Conditions of Generation Tariff) Regulations, 2009 as amended from time to time shall apply”* and thus it means that the parties would be clearly governed by the PPA dated November 12, 2006, along with the SPPA dated November 11, 2009 and only by the Regulations where such provisions are not available in the PPA signed by the parties.



- 1.23. In reply to the rejoinder, UPPCL submitted on October 23, 2015, that the provisions of UPERC Generation Tariff Regulations, 2009 are applicable and not PPA.

#### **D. Capital Cost including Additional Capital Cost**

- 1.24. In counter Affidavit filed by UPPCL on July 7, 2015, in petition for true up of Stage-I it submitted that the Capital Cost is determined as per Regulation 17, which provides determination of Capital Cost based on actual expenditure incurred and not on the basis of capitalization in books of account. UPPCL further submitted that the to above reason Regulation 18(1)(i) and Regulation 18(2)(i) provide for payment of deferred liabilities under additional capital expenditure and prayed to the Commission to direct the Petitioner to submit details of Undischarged liability in respect of capital expenditure along with details of subsequent payment, duly reconciled with audited financial statement.
- 1.25. In the rejoinder filed by the RPSCL on August 11, 2015, it submitted that it has claimed capital cost as well as Tariff on the basis of agreed terms and conditions of Amended and Restated Power Purchase Agreement signed between UPPCL and RPSCL. In reply to the rejoinder, UPPCL submitted on October 23, 2015, that provisions of UPERC Generation Tariff Regulations, 2009 are applicable and not of PPA.
- 1.26. In counter Affidavit filed by UPPCL on July 7, 2015, in petition for determination of tariff for Stage-II, it submitted that the Capital Cost is determined as per Regulation 17, which provides determination of Capital Cost based on actual expenditure incurred and not on basis on capitalization in books of account. UPPCL further submitted that the due to above reason Regulation 18(1)(i) and Regulation 18(2)(i) provide for payment of deferred liabilities under additional capital expenditure and prayed to the Commission to direct the Petitioner to submit details of Undischarged liability in respect of capital expenditure along with details of subsequent payment, duly reconciled with audited financial statement.
- 1.27. Further, UPPCL submitted that Rs. 133.15 crore towards additional capital expenditure in 2012-13 is not clear whether this work forms part of approved cost of Rs. 3098.6 crores or not. Further UPPCL submitted that the petitioner has not submitted the details of initial spares, without which it is not possible to assess allowability of such expenditure as such expenditure on initial spares is limited to 2.5% of original project cost.



1.28. UPPCL submitted that RPSCL has claimed an amount of Rs. 48.21 crores in 2013-14 being 'part work under additional capital expenditure of Rs. 550 crores approved by the Commission and it is not in harmony with the additional capital expenditure stated in Sl. No. 15 of the petition as reproduced below for reference,

*"it is further submitted that the Hon'ble Commission has approved an additional capital expenditure of Rs. 550.02 crores on various works for the project vide order dated 26.06.2012. the said additional capital works are in progress and in various stages of implementation. Based on the progress and the status of their capitalisation, the tariff in respect of such additional capital expenditure is proposed to be claimed from FY 2014-15 onwards. Accordingly, the petitioner craves leave to submit the claims towards additional capital expenditure while approaching the Hon'ble Commission for tariff determination for the control period for FY 2014-19"*

1.29. UPPCL prayed the commission to direct the petitioner to reconcile the issue and to provide details of 'undischarged liabilities' in respect of additional capital expenditure claim. Further UPPCL stated that the unpaid amount needs to be deducted from gross amount to determine additional capital cost.

1.30. In the rejoinder filed by the RPSCL on August 11, 2015, it submitted that it has claimed capital cost as well as Tariff on the basis of agreed terms and conditions of Amended and Restated Power Purchase Agreement signed between UPPCL and RPSCL. Further, RPSCL submitted that the additional capital cost of Rs. 133.15 crores incurred is part of the approved Project Cost of Stage II of Rosa TPP and deserves to be allowed by the Commission.

1.31. RPSCL submitted that the Rs. 48.21 crore claimed is a part of the additional expenditure of Rs. 550 crore, is already capitalized and information in this regard has been submitted in the MYT petition in the Form 5B and thus there is no question of reconciliation.

1.32. In reply to the rejoinder, UPPCL submitted on October 23, 2015, that the provisions of UPERC Generation Tariff Regulations, 2009 are applicable and not PPA.

1.33. In the Counter Affidavit filed by UPPCL on July 7, 2015, in petition for determination of tariff for Stage-I and Stage-II for second control period, it submitted that with respect to coal plant augmentation, the petitioner has not submitted that under which Regulation this additional capital expenditure is claimed nor has given any justification for incurring this expenditure. UPPCL further submitted that this expenditure is spread over a three year period



spanning two tariff block and thus prayed the Commission to direct the petitioner to state when this asset was put to use by RPSCL, so that year of capitalization is determined appropriately.

- 1.34. Further, UPPCL submitted that the petitioner has not submitted that under which Regulation Total additional capital expenditure claimed nor has given any justification for incurring this expenditure and thus prayed the Commission to direct the petitioner to submit the same.
- 1.35. UPPCL prayed to the Commission to direct the petitioner to provide year wise details of undischarged liability in respect of additional capital expenditure claim of Rs. 517 recommended by the Expert Committee so that amount of undischarged liability may be duly excluded.
- 1.36. In the rejoinder filed by the RPSCL on August 11, 2015, it submitted that the additional expenditure claimed by the petitioner is part of the additional capital expenditure which has been approved by the Commission in its order dated June 25, 2012 in petition No. 786 of 2012. Further, RPSCL submitted that the treatment of the additional expenditure is required to be in accordance with the terms of the PPA.
- 1.37. In reply to the rejoinder, UPPCL submitted on October 23, 2015, that the petitioner has failed to answer issues like, date on which, coal handling plant was put to use and benefit for same started flowing to the beneficiaries. Further UPPCL added that the Supreme Court has ruled in that undischarged liability needs to be deducted from additional capital expenditure for tariff determination process.

#### **E. Advance Against Depreciation (AAD)**

- 1.38. UPPCL in its Counter Affidavit filed on July 7, 2015, in petition for determination of tariff for Stage-I and Stage-II for second control period, submitted that the concept of AAD has been discontinued at the national level and the Commission has incorporated the change in its Generation Tariff Regulations, 2014 and thus prayed the Commission to disallow the same.
- 1.39. In reply, Petitioner submitted that it has projected Depreciation as per Article 12.2 strictly as per Amended and Restated PPA in order to abide by the terms and conditions of PPA and not as per the Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2014 (herein after referred as UPERC Generation Regulations, 2014).



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- 1.40. In reply to the rejoinder, UPPCL submitted on October 23, 2015, that the provisions of UPERC Generation Tariff Regulations, 2014 are applicable and not PPA.



## **2. BACKGROUND**

### **2.1. REGULATORY FRAMEWORK:**

2.2.1 The Electricity Act, 2003 (hereinafter referred to as EA, 03) came into effect from June 10, 2003 which repealed all the erstwhile electricity Acts in the country viz. Indian Electricity Act, 1910 (9 of 1910), The Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998). Under section 61 of EA, 2003, the State Electricity Regulatory Commissions require to notify terms and conditions for determination of tariff of generation, transmission & distribution. Section 86 of the Act mandates the Electricity Regulatory Commission to determine tariff in respect of Generating Companies and Licensees.

2.2.2 In exercise of powers conferred under 181 read with the provisions of the section 61 of the EA 2003, UPERC notified the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2004 effective from June 06, 2005, the date of notification, for three years which was later extended for one year. Before expiry of the Regulations, the Commission came up with UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009 (hereinafter referred to as Generation Regulations, 2009) w.e.f. April 01, 2009 amended on March 20, 2012, which remained effective till March 31, 2014.

2.2.3 Further the Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2014 have been notified on December 16, 2014. These Regulations shall be applicable for determination of Tariff for a generating station or a unit thereof required to be determined by the Commission under Section 62 of the Act read with Section 86 thereof from April 1, 2014 to a period of 5 years up to March 31, 2019, unless reviewed earlier or extended by an Order of the Commission.

### **2.2. EARLIER ORDERS OF THE COMMISSION:**

2.2.1 In Petition No. 306 of 2006, the Commission vide its Orders dated February 02, 2006 and November 1, 2006 approved Power Purchase Agreement (PPA) between UPPCL and RPSCL for procurement of 600 MW (2 x 300 MW) power. The capital cost of the project was approved as Rs. 2641.63 Crore with COD of first unit within 41 months and for second unit within 44 months reckoned from date of the Order. The Commission in consideration of the mutual agreements arrived between the parties to PPA decided to accord in principle approval to the PPA subject to following conditions:-

*“1. The terms and conditions in the PPA shall be governed by UPERC (Terms and Conditions of Generation Tariff), Regulations, 2004 subject to the exception that the stock of coal, escalation on spares and receivables*





*shall be taken as per the CERC Regulations for the purpose of determination of interest on working capital.*

*2. The capital cost of the project shall be Rs.2641.63 Cr. as ceiling cost for the purpose of determination of tariff,*

*3. The foreign debt component shall be limited to US \$ 296.6 m.*

*4. There shall be no foreign equity in the project.*

*5. Financial closure should be made in 4 months from the date of this order, as agreed by the Respondent during the hearing.*

*6. The date of C.O.D of first unit shall be within 41 months and second unit within 44 months reckoned from the date of this order.*

*7. Since UPPCL being STU is not to engage in trading as per the provisions of the EA, 2003, as such the PPA in question shall be assigned to the concerned distribution companies as per the decision of the State Govt.*

*The Petitioner is directed to submit before the Commission final draft of the agreement duly agreed between the parties on an affidavit after incorporating the said decisions of the Commission for approval within one month of the date of this order.”*

2.2.2 In petition No. 409 of 2006 (in Petition No. 306 of 2006) vide order dated November 8, 2006, in the matter of review of Order dated February 02, 2006, filed by UPPCL commission approved few changes in the PPA approved order vide dated November 1, 2006. The relevant extract of the Order is reproduced below,

*“(i) the capital cost of the project not exceeding Rs.2641.63 Cr. and shall be a ceiling cost for the purpose of determination of tariff vide order dated 2.2.06 read with 1.11.06.*

*(ii) the date of COD for first unit not being beyond 41 months and second unit within 44 months reckoned from 1st Nov,06, the date of taking over of management by REGL.*

*(iii) change in the definition of affiliate as proposed in letter dt.2.11.06, addressed to Chairman, UPPCL by the Petitioner Company.*

*(iv) change in management within the affiliated companies of REGL is allowed.*

*(v) change in ownership and address of the registered office.*

*(vi) the interest on investment made prior to 2.2.06 shall not be considered for the purpose of the IDC in capital cost of the project for the period between 2.2.06 and 1.11.06.*





*(vii) expenses made between 2.2.06 and 1.11.06 that were not committed prior to 2.2.06 shall not be taken in the project cost.”*

2.2.3 Further, in Petition no. 455 of 2007 order vide dated 7/8.5.2007, the Commission approved the financial package of the project. The relevant extract of the Order is reproduced below,

*“(3) Debt & Equity ratio: The Petitioner is proposing debt & equity ratio of 80:20 and the Commission approves the same.*

*(4) Normative Equity: The normative equity of the project shall accordingly be Rs. 528.73 Cr. with no foreign equity.*

*(5) The remaining cost of the project after accounting for the domestic equity is proposed to be funded by domestic debt and US\$ 50 M foreign debt. It is observed that the commission has approved the completion cost of the project as Rs. 2641.63 Cr. comprising of Rs. 1292.30 Cr. plus US\$296.6 M at exchange rate of Rs. 45.5 per US\$ without any foreign debt component in Order dated 1.11.06. The Petitioner has submitted that loan in foreign currency is available at cheaper rate than that in domestic currency as such for optimization of the financial cost, the Petitioner has preferred US\$ 50 M. The Respondent has not objected to allowing debt in foreign currency in the project.*

*In view of above and the foreign loan component being small the Commission accepts the proposal of the Petitioner for securing loan of US\$ 50 M in foreign currency.”*

Also, it was observed by the Commission that,

***“The loan in foreign currency is being planned by the Petitioner with the objective to keep the overall cost of loan as low as possible, therefore, the Commission approves the aforesaid conditions of foreign loan proposed by the Petitioner with the condition that it shall not have adverse impact on tariff had the loan been taken in domestic currency.”***  
***[Emphasis Supplied]***

2.2.4 RPSC asked for the approval of additional project cost of Rs. 564.8 Crore in Petition No. 600 of 2009 for 2X300 MW (Stage-I). To which, Commission in its order vide dated April 08,2009, allowed additional capital cost of Rs. 470.88 Crore subject to prudence check, which arose due to change in scope of work, statutory taxes, duties and change in cost of materials, making the total approved project cost Rs. 3112.81 Crore for Stage-I subject to prudence check.

2.2.5 In Petition No. 610 of 2009, the Commission vide its Order dated June 15, 2009, approved supplementary PPA for procurement of 300 MW power from



Stage-II (Unit no. 3 & 4) with total capital cost of Rs. 3098.6 Crore with following observations made,

*“(a) The Petitioner at no time shall deprive Stage I of the project of any shared or common facilities or resources and Stage I will have preference on common facilities or resources over Stage II;*

*(b) The financial closure must be achieved as early as possible, however, the first unit (i.e. unit III) of stage II is scheduled for COD by 31.3.12 and that of second unit (i.e. unit IV) by 31.7.12;*

*(c) Provision for liquidated damages shall be made similar to Stage I project; and*

*(d) Any incentive consequent to grant of mega status to the project shall be pass through in tariff as the petitioner has made an application, as averred in the rejoinder, for grant of mega status.”*

Further the Commission gave following directions,

*“The parties must note that Regulation 2(5) operates only where any remedy is not available under power purchase agreement (PPA) signed between them but it is available in the said Regulation. In such event, any party to PPA could approach the Commission. Therefore, the terms & conditions of tariff approved by the Commission for Stage I project shall also apply to Stage II project. **It is to clarify that UPERC (Terms & Conditions of Generation Tariff) Regulations, 2009 as amended from time to time shall apply.** On commissioning of stage II project, the capital cost of common facilities accounted for Stage I shall be shared by Stage I & II in equal proportion.*

*Subject to observations made and directions issued above, SPPA and cost of Stage II project are approved. This approval of cost is for comfort to all stakeholders; however, it shall be subject to prudence check at the time of determination of tariff. A final supplementary agreement shall be drawn and a copy be sent to the Commission for information. The Petitioner shall submit compliance of directions issued in respect to cost of Stage II project on an affidavit within 2 months of this order.”(Emphasis Added)*

- 2.2.6 In Petition No. 660 of 2010, the Commission vide its Order dated May 17, 2010, approved provisional tariff for Unit – 1 of Stage-I RPSC. In this petition RPSC requested for 16.0% Return on Equity (RoE) as per Regulations instead of 14.0% as provided in PPA to maintain level playing field. The unit had achieved COD on March 12, 2010 i.e.19 days ahead of the scheduled period. In this Order the Commission observed as below:



*“The Commission opines that the norms of operations or other factors should be guided in totality either from the PPA or from the Regulations. The Generator cannot be allowed to get the best from the both. There is no question that whether Regulations would prevail over PPA or not because Regulation 2(5) clearly specifies that the Regulations are in addition to and not in derogation to the Terms & Conditions of determination tariff approved by the Commission in a PPA. In this case the Petitioner desires RoE as provided in the Regulations which is higher than what has been agreed under the PPA. The Petitioner has structured its claim on the basis of provisions of Regulations, 2009 supported by its plea to allow a level playing field. It would be discouraging for the generator if 15.5% RoE, as provided under the Regulation, is not allowed as it would be a deterrent to level playing field for such a Generator who has commissioned the plant ahead of the schedule. It is also pertinent to consider the revision of norms of operation with higher RoE but since the plant is still to be stabilized, it would not be appropriate to revise the same at this point of time. Although, to keep the level playing field, the norms of operation may be considered for revision at the time when the Petitioner would approach the Commission for the same. Therefore, the Commission decides to consider RoE 15.5% provisionally for calculation of provisional tariff. The Respondent has contested the incentive for early commissioning although there is no specific provision agreed under the PPA for the same. In case of commissioning ahead of schedule, regulation 23 (3) provides the eligibility for incentive equal to amount of reduction in interest during construction recoverable through tariff in twelve monthly instalments during first year of operation. However, Regulation 21 (iii) provides an additional amount of 0.5% for the projects approved by the Commission before 1.4.2009, in absence of any provision made in PPA. As the plea of Petitioner to provide level playing field has been accepted by the Commission, it would be appropriate to provisionally approve 0.5% additional RoE as incentive for early commissioning.*

*Provided that the road transportation costs, for carrying the coal from available railway siding to the plant due to non-availability of plant's railway siding from the Date of Commissioning 12th March to 30th April, 2010, may be paid additionally.*

*Based on the Capital Cost of Rs.1556.25 Cr. and provisionally approved RoE of 16% including 0.5% for early commissioning, the applicable tariff for the period between commercial operation dates of Unit-I and Unit-II shall be Rs.3.18/kwh for FY 2009-10 and Rs.3.19/kwh for FY 2010-2011. Cost towards road transportation of coal shall be paid additionally at*



*actuals. After determination of final tariff any over or under recovery due to this provisional tariff shall be adjusted within six months along with simple interest calculated at rate equal to short term Prime Lending Rate of State Bank of India prevailing as on 1st April of relevant year.”*

- 2.2.7 An amendment in the matter required for recovery of transportation costs was also issued by the Commission on May 24, 2010.
- 2.2.8 Further, in petition No. 707 of 2010, the Commission in its order dated December 15, 2010, approved Commercial Operation Date of Unit-2 of Stage-I to be June 30, 2010. COD of the unit-2 was under dispute because of the various tripping's occurred at the time of conducting performance Test for COD. In the said matter Independent Expert was appointed by the respondent, whose report showed that the tripping's occurred due to low grid voltage, which was under respondent's scope as per the signed PPA.
- 2.2.9 RPSC filed Petition No. 706 of 2010, for the approval of final tariff for Stage-1 for period from FY 2009-10 to FY 2013-14. Detailed content of the order dated March 28, 2011 is reproduced below for reference,

(a) Capital Cost

“ ...

*The Commission is of the considered opinion that the completion of the projects within the approved capital cost should be ensured. Although uncontrollable costs entailing due to reasons beyond the control, i.e. due to force majeure, may not be overruled, but timely completion within the approved cost is always desirable. **In this case, the Petitioner has completed the project almost within the capital cost of Rs. 3112.81 Crs. approved by the Commission. For determination of tariff the same cost could be considered as ceiling capital cost of the project. On prudence check, at the time of filing of tariff petition for next consideration period, if it is discovered that the total completed cost is lower than the ceiling capital cost then the actual completed cost would be considered as final completed cost but if it is higher then the ceiling capital cost would be considered as the final completed cost.** Initially total cost of Rs. 2964.33 Crs shall be considered for tariff calculations with equal allotment on both units. Further, the balance Rs. 148.48 Crs. shall be taken into account at the time when it is actually capitalized. In this manner, Rs. 100 Crs. would be capitalized on 31.3.2011 and Rs. 48.48 Crs. would be capitalized on 31.3.2012. RPSC shall submit details of duly audited and certified Capital Expenditure and Additional Capital Expenditure incurred for the period upto 31.03.2014 along with the tariff petition filed for the next tariff period. Any over or under recovery shall be adjusted retrospectively with*



*simple interest at the rate equal to short term PLR of SBI as on 1st April of the respective year.”(Emphasis Added)*

(a) Adjustment against Startup Power for Unit-II

*“..the Commission allows the adjustment of startup power of unit-II from infirm power as per PPA and Regulations.”*

(b) Applicability of ABT

*“Since no such relief has been provided under PPA or Regulations and also the whole system is functioning under the ABT regime after implementation of ABT in the State, the Commission does not approve any deferment of applicability of ABT. However, for the periods when no regular schedule for supply of power is provided by the UPPCL to the Seller, ABT shall not be construed as applicable.”*

(c) Construing Achievable Plant Load Factor equivalent to Target Availability

Since the Respondent had no objection on the aforesaid matter, the Commission allowed use of Target Availability in place of Achievable Plant Load Factor.

(d) Permission for procurement of coal from other sources

Commission approved seven days period for grant of consent from respondent for procurement of fuel from source other than the linkage. Further commission gave the following direction,

*“...In case the consent is not granted by the UPPCL within seven (7) working days from the date of receiving the request, it would be considered as deemed consent and if rejected then it would be considered as Respondent’s inability to procure power from the Petitioner.*

*No deemed generation on account of shortage of fuel shall be allowed. However, the Petitioner shall be allowed for sale of such corresponding capacity and/ or power to third parties.*

*From the proceeds of such sale, the surplus amount received over Variable Charges (as per the PPA) shall be adjusted against the Fixed Charge liability of the UPPCL in respect of the quantum of such capacity and / or power sold by RPSCCL to third parties as provided below.*

*In case the surplus amount over Variable Charges is higher than the Fixed Charge liability of the UPPCL in respect of the quantum of such capacity and / or power sold by RPSCCL to third parties, such excess amount shall be retained by the RPSCCL. In case if there is no such sale or the surplus amount over Variable Charges is lower than the Fixed Charge liability of*



*the UPPCL in respect of the quantum of such capacity and / or power sold by RPSCCL to third parties, such shortfall amount in fixed charge liability, in part or in full, as the case may be, shall be payable by the UPPCL.”*

- (e) In Order dated May 17, 2010, commission had provisionally approved 16% ROE including 0.5% for early commissioning for maintaining the level playing field as per the prevailing regulation. Hence, going with aforesaid, the Commission made the following observation,

***“...the Commission further observes that to maintain level playing field, the normative Achievable Plant Load Factor vis-a-vis the Normative Availability shall be as per the prevailing Regulations for the units commissioned after 01.04.2009. Therefore, the Commission considers 85% as normative Achievable Plant Load Factor w.e.f.01.04.2011. (Emphasis Added)***

*However, in view of teething problems such as non-availability of sufficient coal from linkage and transmission constraints faced by the petitioner in operating the station, the Commission approves the applicability of 80 % as normative Achievable Plant Load Factor upto 31.03.2011 and for the generation from 80% to 85%, no incentive shall be payable during this period i.e. upto 31.03.2011.”*

- 2.2.10 In petition No. 706 of 2010, commission vide its order dated March 28, 2011, approved final tariff for Stage-1 for period from FY 2009-10 to FY 2013-14 subject to prudence check of capital cost at the time of filing of tariff petition for next tariff period.

For the reference, in following tables, the components of fixed charges, norms of operation as agreed in the PPA and as approved by the Commission is shown,

- The components of fixed charges as per PPA, as per Regulations and as admitted by the Commission for the purpose of calculation of tariff,

Sl. No.	Component of Fixed Charge	Approved in PPA	As per Regulations, 2009	Approved in Order dated 28.03.2011
1.	Gross Fixed Assets (GFA)	Rs. 2641.63 Cr.	-	Rs. 1482.16 Cr. as on 12.3.10 Rs. 1482.16 Cr. as on 1.4.10 Rs. 2964.33 Cr. as on 30.6.10 Rs. 3064.33 Cr. as on 1.4.11 Rs. 3112.81 Cr. as on 1.4.12 Rs. 3112.81 Cr. as on





Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC

Sl. No.	Component of Fixed Charge	Approved in PPA	As per Regulations, 2009	Approved in Order dated 28.03.2011
				1.4.13
2.	Debt:Equity	70:30	70:30	70:30
3.	Interest on Loan (IoL)	Actual	Actual	Actual
4.	Depreciation	Normative	Normative	Normative
5.	Return on Equity (RoE)	14.00%	15.5% + 0.5%	15.5 % + 0.5 %
6.	O & M	As per Regulations, 2004	Rs. 16.00 lac/MW for 2009-10 Rs. 16.92 lac/MW for 2010-11 Rs. 17.88 lac/MW for 2011-12 Rs. 18.91 lac/MW for 2012-13 Rs. 19.99 lac/MW for 2013-14	Rs. 16.00 lac/MW for 2009-10 Rs. 16.92 lac/MW for 2010-11 Rs. 17.88 lac/MW for 2011-12 Rs. 18.91 lac/MW for 2012-13 Rs. 19.99 lac/MW for 2013-14
7.	I W C	SBI PLR	SBI PLR	SBI PLR

➤ The Norms of operation as approved by the Commission are as below:

Sl. No.	Component of Operation	Norms approved in PPA	As per Regulations, 2009	Norms as Approved by the Commission in Order dated 28.03.2011
1.	Achievable Plant Load Factor w.e.f. 01.04.2011	80%	85%	85 %
2.	Auxiliary Consumption	9.0 %	9.0%	9.0 %
3.	Gross Station Heat Rate	2500 kcal/kwh	2500 Kcal/KWh	2500 kcal/kwh
4.	Secondary Fuel Consumption	2.0 ml/kWh	2.0 ml/kWh	2.0 ml/kWh

➤ Comparison of Tariff as claimed by RPSC vis-à-vis as approved by UPERC

Particulars	FY 2009-10			FY 2010-11		
	As claimed by RPSC	As determined by the Commission	Difference (if any)	As claimed by RPSC	As determined by the Commission	Difference (if any)
Interest on Loan	0.00	5.48	<b>5.48</b>	147.23	171.64	<b>24.41</b>
Depreciation	0.00	2.90	<b>2.90</b>	79.26	92.51	<b>13.25</b>
Advance against Depreciation	0.00	0.00	<b>0.00</b>	0.00	0.00	<b>0.00</b>
Return on Equity	0.00	3.90	<b>3.90</b>	106.72	124.50	<b>17.78</b>
O & M Expenses	0.00	2.63	<b>2.63</b>	76.14	88.86	<b>12.72</b>
Compensation Allowance	0.00	0.00	<b>0.00</b>	0.00	0.00	<b>0.00</b>
I W C	0.00	1.16	<b>1.16</b>	32.74	39.52	<b>6.78</b>



Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSCL

<b>Total :</b>	<b>0.00</b>	<b>16.07</b>	<b>16.07</b>	<b>442.09</b>	<b>517.04</b>	<b>74.95</b>
Ex-bus Energy Sent Out (MU)	0.00	104.83	<b>104.83</b>	2872.00	3528.91	<b>656.91</b>
<b>Fixed Cost per Unit</b>	<b>0.00</b>	<b>1.53</b>	<b>1.53</b>	<b>1.54</b>	<b>1.47</b>	<b>-0.07</b>

Particulars	FY 2011-12			FY 2012-13		
	As claimed by RPSCL	As determined by the Commission	Difference (if any)	As claimed by RPSCL	As determined by the Commission	Difference (if any)
Interest on Loan	190.80	190.37	<b>-0.43</b>	176.85	176.59	<b>-0.26</b>
Depreciation	109.24	109.25	<b>0.01</b>	110.97	110.98	<b>0.01</b>
Advance against Depreciation	59.94	60.81	<b>0.87</b>	71.27	71.25	<b>-0.02</b>
Return on Equity	147.09	147.09	<b>0.00</b>	149.41	149.41	<b>0.00</b>
O & M Expenses	107.28	107.28	<b>0.00</b>	113.46	113.46	<b>0.00</b>
Compensation Allowance	0.00	0.00	<b>0.00</b>	0.00	0.00	<b>0.00</b>
I W C	45.34	48.58	<b>3.24</b>	45.63	50.54	<b>4.91</b>
<b>Total :</b>	<b>659.69</b>	<b>663.37</b>	<b>3.68</b>	<b>667.59</b>	<b>672.23</b>	<b>4.64</b>
Ex-bus Energy Sent Out (MU)	3837.00	4065.52	<b>228.52</b>	3826.00	4065.52	<b>239.52</b>
<b>Fixed Cost per Unit</b>	<b>1.72</b>	<b>1.63</b>	<b>-0.09</b>	<b>1.74</b>	<b>1.65</b>	<b>-0.09</b>

Particulars	FY 2013-14		
	As claimed by RPSCL	As determined by the Commission	Difference (if any)
Interest on Loan	159.17	158.93	<b>-0.24</b>
Depreciation	110.97	110.98	<b>0.01</b>
Advance against Depreciation	71.27	71.25	<b>-0.02</b>
Return on Equity	149.41	149.41	<b>0.00</b>
O & M Expenses	119.94	119.94	<b>0.00</b>
Compensation Allowance	0.00	0.00	<b>0.00</b>
I W C	45.63	52.21	<b>6.58</b>
<b>Total :</b>	<b>656.39</b>	<b>662.73</b>	<b>6.34</b>
Ex-bus Energy Sent Out (MU)	3826.00	4065.52	<b>239.52</b>
<b>Fixed Cost per Unit</b>	<b>1.72</b>	<b>1.63</b>	<b>-0.09</b>

- 2.2.11 In petition No. 773 of 2011, commission in its order vide dated December 22, 2011, approved amendment to Supplementary PPA dated 19.11.2011 to procure additional 300 MW from Unit-2 of 2X300 MW, Stage-II of RPSCL.
- 2.2.12 In petition No. 851 and 861 of 2012, the Commission approved deemed energy claim of RPSCL for Unit-III of Stage-II.
- 2.2.13 In petition No. 787 of 2012, commission vide its order dated May 21, 2012 approved provisional tariff for Stage-II same as Stage-I for the period from COD to the date, when final tariff is approved by the commission as agreed by





both the parties. A relevant extract of the Commissions direction is reproduced below for reference,

*“5. The fixed charges of Rs. 1.63 for financial year 2011-12 and Rs. 1.65 for 2012-13 for stage-1 have been approved by the Commission vide RPSC’s tariff order dated 28.3.2011. As it has been agreed by both the parties that the same may be considered for the supply of power from Unit No. 3 & 4 of Stage – 2 of RPSC, the Commission provisionally allows, as an interim solution, fixed charge of Rs. 1.63 per unit for financial year 2011-12 and Rs. 1.65 for 2012-13 from commercial operation date. The variable charges for the supply of power shall be paid on actuals on production of original bills. The payments shall be made by UPPCL under the provisions of article 12 of PPA. 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 under the provisions of Regulation 5(3) of the existing Regulations. M/s RPSC is further directed to file the final tariff preferably within 3 months from the date of this order and the provisional tariff approved above shall be applicable till the final tariff is approved by the Commission.”*

➤ Comparison of Provisional Tariff as claimed by RPSC vis-à-vis as approved by UPERC is as follows:

Applicable Year	As claimed by RPSC (fixed charge)	As approved by the Commission (fixed charge)
FY 2011-12	1.63	1.63
FY 2012-13	1.79	1.65

2.2.14 In Petition No. 786 of 2012, in the matter of Approval of additional capital cost for Rosa Thermal Power Station, RPSC asked for additional capital cost of Rs. 595.09 Crore incurred on BoP (Balance of Plant) and 400 KV Transmission Line and associated work of Rosa Thermal Power Station. The Commission in its order vide dated May 16. 2012, asked the petitioner to file a separate petition for cost incurred on 400 kv transmission line. Also Commission in its order dated June 25, 2012, approved additional capital cost of Rs. 550.2 Crore on BoP subject to prudence check. An extract of the Commissions judgement is reproduced below for reference,

*“...the Commission deems it appropriate to provisionally approve the additional capital cost of Rs. 550.02 Cr. on the BoP of the project subject to prudence check and final approval of the Commission under the provisions of PPA, Regulations and earlier orders of the Commission.”*



2.2.15 In petition No. 802 of 2012, the Commission vide its order dated November 09, 2012, approved COD of Unit No. 3 of Stage-II as 01/01/2012 as achieved by the petitioner, which was 31/03/2012 as per the Supplemented PPA. An extract of Commissions direction is reproduced below for reference,

*“...the Commission opines that CoD of Unit 3 (Stage II) shall be considered as 1.1.2012. Accordingly, under the existing provisions of the PPA, the fixed charges, for the supplied power shall be determined....”*

### 2.3. PROCEDURAL HISTORY:

#### Recent Petitions

2.3.1. RPSC had filed an interim petition for True up of tariff for Stage I vide petition No. 811 of 2012 for change in interest rates & total working capital requirement of Stage I and Petition No. 836 of 2012 regarding fixation of final tariff for 2 x 300 MW Rosa TPP Stage-II. Commission vide in its Order dated May 22, 2014 directed the petitioner to file a consolidated petition afresh in respect of the entire generating station considering the facts that the tariff period was completed on March 31, 2014 and report of the Expert Committee on Capital Cost was expected soon.

2.3.2. RPSC filed three Petitions for

- i. Truing up of tariff for 600 MW Rosa Thermal Power Plant Stage I for the Period FY 2009-10 to FY 2013-14 vide Petition No. - 967/2014
- ii. Fixation of tariff for 2x300 MW Rosa Thermal Power Plant Stage II for the period FY 2011-2012 to FY 2013-14 vide Petition No.- 968/2014
- iii. Fixation of tariff for 4X300MW Rosa thermal Power Plant for Stage I and Stage II for the second Control period FY 2014-15 to FY 2018-19 vide Petition No.- 1016/2014

2.3.3. RPSC filed Petition No. 1068 of 2015 for removal of hardship due to inconsistency in the parameters/ provisions specified in the 2014 Regulations and PPA, at the time of tariff determination for the control period FY 2014-15 to FY 2018-19.

#### Proceedings

2.3.4. The Hon'ble Commission in its 115th meeting on 30.10.2013 and vide its subsequent approval decided to constitute the Expert Committee for prudence check of the capital cost comprising of the following members based on their experience in the power sector,

Name	Designation in Committee	Credentials
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Shri. H. L. Bajaj	Chairman and Convenor of the Committee	Ex-Chairman, CEA and Ex. Member, APTEL
Shri. G. K. Pharlia	Member of Committee	Ex. Member, CEA
Shri. Saurabh Tak	Member of Committee	Chartered Accountant

- 2.3.5. The Hon'ble Commission vide its letters dated 01.11.2013, 25.11.2013 and 02.01.2014, appointed the Expert Committee for verification and prudence check of additional capital cost along with capital cost of Stage 1 and Stage 2 of Rosa Thermal Power Station. The Hon'ble Commission in the aforementioned letters defined the scope of the work for carrying out the prudence check of capital cost of RPSCL.
- 2.3.6. The Expert Committee was directed by the Hon'ble Commission to start the work from 01.12.2013 and complete the prudence check by end of February, 2014. The timelines were further extended till 31st May 2014 vide UPERC letter dated 22nd April 2014.
- 2.3.7. Expert Committee report on prudence check of the Capital Cost of both stages of the project was submitted to the Commission on June 8, 2014. An extract of the Expert Committee report is reproduced below for reference,

**“(a) Capital Cost**

*The overall capital cost of RPSCL project is as under:*

Particulars	Amount (Rs. In Crores)	Reference
Stage 1 (as at 31.03.12)	3112.81	Form 5B submitted with UPERC
Stage 2 (as at 31.03.13)	3093.02	
Additional Capital Cost	517.28	As recommended by the Committee
<b>Overall Capital Cost</b>	<b>6723.11</b>	

*The overall capital cost of Rs.6723.11 crores, as given above, is within reasonable limits when compared to CERC benchmark norms and per MW cost of other contemporarily completed thermal power projects and, therefore, the same is found prudent*

**(b) Additional Capital Cost**

*The committee has also assessed the essentiality of each of the UPERC approved additional capital cost items amounting to Rs.550.02 Crores. The Committee has recommended the requirement of all additional capital cost items except the additional capital cost amounting to Rs. 32.74 Crores...” [Emphasis Added].*

- 2.3.8. Presentation of the report on Verification and Prudence Check of Capital Cost along with Capital cost of Stage-1 and Stage-2 was made by the Expert Committee to the Commission on August 19, 2014. During the presentation,



the Commission sought clarification from the Expert Committee on process followed by RPSC for award of additional works to ascertain the competitiveness.

2.3.9. The copy of report of Expert Committee on capital cost of Rosa project was sent to UPPCL and GoUP on September 05, 2014 for their comments. The Expert Committee report was also uploaded on UPERC website.

2.3.10. Expert committee submitted the Supplementary report for addressing the clarifications desired by the Commission. The observation of the Expert committee vide its Supplementary report is reproduced below for reference,

*“In view of the foregoing submissions furnished by RPSC and examined by the Committee, the Committee is satisfied with the process of award of Contracts for the packages for which the additional cost was approved by the Honourable Commission.*

*Further, the efficacy of award of these additional/increased works has also been examined by the Committee in terms of the overall project cost in Section 8.5 & Section 8.6 of the main report by making comparison with a) CERC Benchmarks and b) Project Cost of similar projects.*

*In view of the foregoing findings and analysis, the overall project cost of Rosa Thermal Power Station is found reasonable and prudent.”*

2.3.11. Further the copy of the Supplementary report was sent to GoUP and UPPCL on February 24, 2015, for their comments.

2.3.12. Since no comment was received even after laps of about eight months, on request of UPPCL, the Commission allowed one more month time to UPPCL to file their comments on the Expert Committee report on the Capital Cost in Order dated May 15, 2015. The relevant extract from the Commission’s Order is reproduced below:

*“..The Commission expressed its displeasure on delay in submission of necessary comments by UPPCL on capital cost submitted by the expert committee. The Commission directed UPPCL to submit requisite comments within a month positively along with the comments of GoUP.”*

2.3.13. The Commission clubbed the Petition nos. 967 & 968 of 2014 and 1016 of 2015 and admitted them on June 05, 2015 subject to submission of all the information within 7 days and as per direction of the Commission to the satisfaction of the Commission, in replies to deficiency notes raised by the Commission.



- 2.3.14. In compliance to the Commission's Order dated June 05, 2015, RPSC issued Public Notice on June 10, 2015 in Hindustan Times and on June 11, 2015 in Rashtriya Sahara requesting views, comments, suggestion, objections and representations from the stakeholders within 15 days.
- 2.3.15. UPPCL vide its letter dated June 15, 2015 submitted that Board of Director of UPPCL in its meeting held on June 03, 2015 decided to constitute a high power committee consisting of MD UPPCL, Director (Finance) UPPCL, and Director (Commercial) UPPCL for thoroughly reviewing the report of the expert Committee. UPPCL has requested the Commission for time of 6 months for submission of its recommendation / comments on the report of Expert Committee on the capital cost. However, UPPCL has also made detailed written submission dated July 07, 2015 in the petitions filed by RPSC without taking a view on capital cost.
- 2.3.16. **First public hearing was held on July 08, 2015** at 11.30 AM at UPERC Conference Room. Mr Avdhesh Kumar Verma, Chairman, UPRVUP, informed to the Commission that the petitions were not directly accessible on the website of Reliance Power Limited. The Commission directed to put soft copies of the petitions in downloadable PDF format on the website of the UPERC which shall remain available to all stakeholders / public till the date of next public hearing on August 11, 2015 at 11.30 A.M.
- 2.3.17. Considering the plea of UPPCL to provide time to file their reply on Expert Committee report, the Commission had allowed UPPCL to submit their comments by August 10, 2015 with the condition that non-submission may amount to disallowance of impact while truing up the costs of supplies from RPSC in the ARR of Discoms.
- 2.3.18. RPSC requested for 15 day time for submission of its replies on the objections raised by UPPCL, Shri R. S. Awasthi and Shri A. K. Verma on their petitions which was granted by the Commission. The Commission fixed the date for next Public Hearing on August 11, 2015.
- 2.3.19. **Second public hearing was held on August 11, 2015** at 11.30 A.M at UPERC Conference Room. In response to the request of Mr Avdhesh Kumar Verma, Chairman, UPRVUP and Mr. Rama Shanker Awasthi for a copy of the Expert Committee Report, the Commission decided to make the same available to them, however all other relevant information submitted by the RPSC/UPPCL or any other party and annexure/formats/copy of balance sheets etc. would be made available in the office of the Commission for examination in next fifteen days on deposit of requisite fees.



- 2.3.20. UPPCL submitted that it has received the necessary information/ documents from the RPSCL. The Commission directed UPPCL to submit the comments on Expert Committee Report within one month. The Commission also directed RPSCL to submit replies on pending deficiency notes within one week from August 17, 2015 and the next date of Public Hearing was fixed for September 15, 2015.
- 2.3.21. RPSCL filed an affidavit in support of Supplementary Submission in petition No. 967/2014, 968/2014 and 1016/2015 to sought permission of the Commission to submit the carrying cost computation for truing up of Stage-1 and Final Tariff for Stage-2 for consideration and allowing them in the Tariff Order.
- 2.3.22. **Third public hearing was held on September 21, 2015.** In the hearing the Commission showed displeasure for the delay in submission of the UPPCL's comments on the Expert Committee report on capital cost of the project. UPPCL submitted that the delay occurred due to delay in providing data and documents by RPSCL and requested 15 days to reply.
- 2.3.23. The representative of UPPCL submitted that the Tariff should strictly be as per the norms set in the Regulations 2014-19, additional capital should be dealt separately, AAD & carrying cost should be disallowed and additional coal augmentation cost should be rejected. He added that foreign exchange variation has not been covered and reconciliation has not been done with audited financial statement. It was further pointed out that there was some error in normative debt calculation and taxes. He strongly put forwarded the view of UPPCL that true up should only be allowed on capital cost as per the provisions of the regulations.
- 2.3.24. Shri Avdhesh Kumar Verma, Chairman, UPRVUP cited the CAG report which has points related to capital cost, additional capital cost, O&M, RoE (Return on Equity), incentive, deemed energy, foreign exchange variation and payment of bills. He added that any undue burden should not be passed on to the consumer. He put forward that the capital cost should be compared with benchmark and norms. He made a written submission enclosing the copy of CAG report.
- 2.3.25. Further, Shri R.S. Awasthi submitted that the parameters should be as per Regulations and added that the capital cost after cut-off date should not be allowed and true up should be limited to capital cost as per regulations.
- 2.3.26. With above submissions Commission allowed one month time to UPPCL and RPSCL to file replies and closed the Public Hearing in this matter saying that
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the Commission will view and pass final order after receipt of submissions from UPPCL and RPSCL.

2.3.27. In the meanwhile, RPSCL filed Petition No. 1068 of 2015 for removal of hardship due to inconsistency in the parameters/ provisions specified in the 2014 Regulations and PPA, at the time of tariff determination for the control period FY 2014-15 to FY 2018-19. Since, the matter was relate to tariff, Hearing was held in this matter on January 20, 2016. In the hearing Commission took a view that the matter of hardship shall be decided with the tariff petitions. An extract of the judgement is reproduced from order dated January 28, 2016, below for reference,

*“4. The Commission accepted that the matter of hardship shall be decided with the tariff petitions on which the hearings have already been concluded. However, ten days time was allowed to RPSCL and next eight days to UPPCL for making requisite submissions therein.”*

2.3.28. UPPCL submitted its comments on Capital Cost to the Commission on September 20, 2016.

2.3.29. During the hearing held on September 21, 2016, the Commission directed RPSCL to file reply to the UPPCL comments on Capital cost within three weeks time and UPPCL to file reply to RPSCL submission within one week.

2.3.30. RPSCL filed its reply to UPPCL’s comments on Capital Cost on October 26, 2016. Further, RPSCL filed supplementary submission for allowing reimbursement of ash transportation expenses along with the relevant taxes and duties as part of fixed charges on monthly basis as per actual citing MOEFC Notification dated 25.01.2016

2.3.31. UPPCL filed rejoinder on 02.02.2017 in reply to the RPSCL submission on Capital Cost dated 26.10.2016.

2.3.32. Shri Shafiullah, Secretary, Upbhokta Abhirakshan Society, has filed Review Petition No. 1096/2016 in the matter of RPSCL, which was rejected by the Commission on lack of requisite fee. However, since the issue were related to the tariff of RPSCL as per the Commission’s view it was served to the parties for comments vide letter dated 15.02.2017.

2.3.33. During the hearing on 07.02.2017, RPSCL deliberated their written submission before the Commission. The Commission directed RPSCL to file written submission showing that the interest earned on Mutual fund is more than the interest paid on it. In reply to which RPSCL submitted that they will file a consolidated reply when the hearing will conclude.



- 2.3.34. Also the Commission took a view that the issue of reimbursement of transportation charges to be dealt separately. On which RPSCL submitted that they will file a separate petition for it, which was noted by the Commission.
- 2.3.35. UPPCL filed additional reply on 21.03.2017 in reply to RPSCL submission on Capital Cost.
- 2.3.36. Further, during the hearing on 22.03.2017, the Commission inquired from RPSCL that why they have not submitted the reply to public objections and written submission as directed during the last hearing to which they submitted that they will submit the replies at the earliest and file the consolidated written argument when concludes.
- 2.3.37. The Commission, vide order dated 12.04.2017, directed the RPSCL to file written submission justifying why the GSHR of 2475 Kcal / kW and SFC of 0.75 ml / kWh, as per the Regulations, cannot be achieved by RPSCL. The Commission further directed RPSCL to demonstrate the actual position on coal cost, station heat rate, secondary oil consumption and taxation etc. UPPCL was also directed to file their comments on the issues raised by RPSCL during the hearing on 22.03.2017.
- 2.3.38. No party has filed any written submission as directed by the Commission in order dated 12.04.2017.
- 2.3.39. During the hearing on 27.04.2017 and 04.05.2017, UPPCL made presentation deliberating the issues in hardship petition.
- 2.3.40. RPSCL filed a written submission on 19.05.2017, wherein it was observed that it has not submitted the data as directed by the Commission during the hearing.
- 2.4. **PRELIMINARY SCRUTINY OF THE PETITION:**
- 2.4.1. A preliminary analysis of the Petition was conducted by the Commission wherein it was observed that some of the critical submissions were missing.
- 2.4.2. In this regard, a deficiency note was issued by the Commission in regards to Stage I and Stage II on March 20, 2015 directing the Petitioner to submit a copy of Amended and restated Power Purchase Agreement between RPSCL and UPPCL, copy of annual accounts for FY 2011-12 to FY 2013-14, inclusion of income tax for calculating working capital requirement, copy of domestic and foreign loan agreements, actual interest paid on term loan along with documentary evidence, copy of tariff filing formats. Such deficiency note also





- sought clarifications on other issues in regard to the Petition filed by the Petitioner.
- 2.4.3. The Petitioner vide letter dated April 06, 2015 submitted its reply addressing most of the issues as enquired by the Commission in its first deficiency note dated March 20, 2015.
- 2.4.4. The Commission also sent a deficiency note in regards to the MYT Petition filed by the Petitioner vide its letter dated May 18, 2015. The major issues included appropriate date of the stamp paper used in filing of the Petition, reasoning for the formats which are not applicable to them, details of the actual additional capitalization duly certified by the auditor for FY 2013-14 and FY 2014-15, Advance against Depreciation, Rate of Interest used in calculation of interest on working capital, depreciation etc.
- 2.4.5. The Petitioner vide letter dated May 22, 2015 submitted its reply addressing most of the issues as enquired by the Commission in its first deficiency note dated May 18, 2015.
- 2.4.6. The Commission admitted the Petitions on June 05, 2015 considering the availability of most of the information sought through its deficiency notes and with the condition of subsequent submission of the some pending information as mentioned in the admittance Order. The Petitioner submitted its reply to the pending some of the pending data gaps vide its letter dated June 08, 2015, June 16, 2015 and June 18, 2015.
- 2.4.7. The Commission vide its third deficiency note dated June 29, 2015 sent a list of the deficiencies to be submitted by the Petitioner. The Petitioner submitted its reply to the second deficiency note vide its letter dated July 03, 2015 in which it addressed most of the issues except submission of the audited accounts for FY 2014-15
- 2.4.8. Based on the reply submitted by the Petitioner, the Commission issued a combined fourth deficiency note which included the pending queries related to Stage-I, Stage-II and MYT Petition filed by the Petitioner. The petitioner submitted its reply to the said deficiency vide its letter dated August 17, 2015.
- 2.4.9. Further, many information remaining to be submitted by the petitioner were communicated to it through meetings and many of the information sought by the Commission were submitted vide letter October 27, 2015 and January 6, 2016.
- 2.4.10. Further, the Commission issued another fifth deficiency note on January 22, 2016, pertaining to the pending information and the information required on actual data to ascertain the hardship caused to the petitioner. The petitioner submitted its reply to the said deficiency vide its letter dated March 2, 2016, in
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which most of the actual data (i.e. Station Heat Rate, Design Heat Rate, Actual Coal Consumption, GCV of Imported and Domestic coal separately etc.) sought by the Commission were not submitted by the petitioner.

## **2.5. ADMITTANCE OF THE TRUE-UP AND ARR / TARIFF PETITION**

2.5.1. The Commission through its Admittance Order dated June 05, 2015 admitted the Petitions subject to submission of all the information within 7 days and as per direction of the Commission to the satisfaction of the Commission, in reply to deficiency notes raised by the Commission.

2.5.2. In the Order the Commission also directed the Petitioner to publish, within 3 days from the date of issue of the Order, the Public Notice detailing the salient information and facts of the Petitions, year wise revenue requirement and per unit fixed cost in at least two daily state wide circulated newspapers (one English and one Hindi) for two successive days for inviting views / comments / suggestions / objections / representations from all stakeholders and public at large within the stipulated time of 15 days from the date of publication of the Public Notice. The Commission had also directed the Petitioner to put all details on its internet website, with intimation to the Commission, in PDF format before publication of public notice, showing detailed computations, the application made to the Commission along with all filings, information, particulars and documents.

## **2.6. PUBLICITY OF THE PETITION**

2.6.1. The Public Notice detailing the salient features of the Truing up of tariff for 600 MW Rosa Thermal Power Plant Stage-I, Fixation of tariff for 600 MW Rosa Thermal Power Plant Stage-II, Fixation of Tariff for 4x300 MW Rosa Thermal Power Plant for Stage I & Stage II for the Second Control period (FY 2014- 2015 to FY 2018-19) was made by RPSC and they appeared in daily newspapers as detailed below, inviting objections from the public at large and all stakeholders:

- Hindustan Times (English) : June 10, 2015
- Rastriya Sahara (Hindi) : June 11, 2015

## **2.7. PUBLIC HEARING PROCESS**

2.7.1. To provide an opportunity to all sections of the population in the State to express their views and to also obtain feedback from them, public hearings were held by the Commission. The public hearings were conducted on July 08,



2015 at 11.30 am, August 11, 2015 at 11.30 am, and September 15, 2015 at 12.30 am at the conference hall of UPERC.

- 2.7.2. Consumer representatives participated actively in the public hearing process.
- 2.7.3. The views / suggestions / comments / objections / representations on the True-up / ARR / Tariff Petitions received from the public were forwarded to the Petitioner for comments / response. The Commission has considered these submissions of the consumers and the response of the Petitioner before it embarked upon the exercise of determining the final True-up / ARR / Tariff.
- 2.7.4. Besides this, the Commission, while disposing the True-up / ARR / Tariff Petitions filed by the Petitioner, has also taken into consideration the oral and written views / comments / suggestions / objections / representations received from various stakeholders during the public hearings or through post or by e-mail.
- 2.7.5. The Commission has taken note of the views and suggestions submitted by the various stakeholders who provided useful feedback on various issues and the Commission appreciates their participation in the entire process.

#### **VIEWS / COMMENTS / SUGGESTIONS / OBJECTIONS / REPRESENTATIONS ON TRUE-UP / ARR / TARIFF PETITION**

- 2.7.6. The Commission has taken note of the various views / comments / suggestions / objections / representations made by the stakeholders and would like to make specific mention of the following stakeholders for their valuable inputs:

- Shri Avdhes Kumar Verma, Chairman, Uttar Pradesh Rajya Vidyut Upbhoktha Parishad (UPRVUP)
- Shri Rama Shanker Awasthi, Lucknow
- Shri Shaifiullah, Lucknow

The Commission has attempted to capture the summary of comments / suggestions / observations in this section. However, in case any comment / suggestion / observation is not specifically elaborated, it does not mean that the same has not been considered. The Commission has considered all the issues raised by the stakeholders and Petitioner's response on these issues while carrying out the detailed analysis of the Petition.

- 2.7.7. The major issues raised therein, the replies given by the Petitioner and the views of the Commission have been summarised as detailed below:
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## General

### A) Comments/Suggestions of the Public

- 2.7.8. Shri Avdhesh Kumar Verma raised following objection vide its letter dated July 29, 2015 and July 8, 2015,
- i. Reiterated its earlier submission in regards to non-availability of the petition on website of RSPCL and requested the Commission to direct the petitioner to do the same.
  - ii. Requested the Commission to postpone the Public Hearing till petitions are uploaded on website and comments are received from public.
  - iii. Requested the Commission to make the Expert Committee Report Public.
- 2.7.9. Shri R. S. Awasthi, vide its submission dated February 7, 2017, submitted that he supports the contention raised by the UPPCL in its report on Capital Cost and requested the Commission to consider the same.
- 2.7.10. Shri Shaifiullah vide its objection dated 07.02.2016 prayed to the Commission to conduct prudence check of capital cost by some other agency except the expert Committee made by the Commission, since the report submitted by them is incomplete and full of inconsistency. Also, he has requested the Commission to conduct CAG audit of the accounts of RPSCL. The Commission disposed of the petition due to deficiency in fees, but since the matter relates to determination of tariff which affects the consumers at large, the Commission served the copy of the petition to the parties for comments.
- 2.7.11. Further, Shri Shaifiullah filed review petition dated 17.02.2016 to review commission's order dated May 17, 2010, March 28, 2011, April 4, 2012 and May 21, 2012 in petition no. 660/2010, 706/2011, 743/2011 and 787/2012. The Commission disposed of the petition due to deficiency in fees, but since the matter relates to determination of tariff which affects the consumers at large, the Commission served the copy of the petition to the parties for comments.

### B) RPSCL's Response

- 2.7.12. In reply to the objections raised by Shri A.K. Verma, vide its letter dated July 29, 2015 and July 8, 2015, RPSCL on August 11, 2015, submitted that the Commission has uploaded the petitions on its website and the Commission has already scheduled a second public hearing on August 11, 2015.
- 2.7.13. Further, RPSCL on August 12, 2015, submitted that the decision to make Expert Committee report public may be decided by the Commission.



- 2.7.14. RPSCL in reply to Shri Awasthi's submission dated February 7, 2017, submitted that the averments in relation to composition of Commission, merits no response from them.
- 2.7.15. Further, RPSCL submitted that it denies all contention of Shri R. S. Awasthi and its submission dated October 21, 2016 may be considered for reply.
- 2.7.16. RPSCL on April 18, 2017, in reply to Shri Shaifiullah's submission, submitted that the averments made by him are denied in totality, as the same are baseless and untenable in law. Further, RPSCL submitted that the Commission has already provided enough opportunity through Public Hearing to make public submission/comments, which has already elapsed and hence Shri Shaifiullah's objection are liable to be rejected.
- 2.7.17. RPSCL on April 18, 2017, in reply to Shri Shaifiullah's review petition, submitted that the petition is time barred and the averments and prayers made are outside the scope of Review Jurisdiction.

### **C) UPPCL**

- 2.7.18. UPPCL on March 8, 2017, in reply to Shri Shaifiullah' objection, submitted that the averments raised by him are against Expert Committee, hence does not merit any response from UPPCL.
- 2.7.19. UPPCL on March 8, 2017, in reply to Shri Shaifiullah's review petition, submitted that issues raised by him are beyond the scope of the petitioner.

### **PPA Vs Regulations**

#### **A) Comments/Suggestions of Public**

- 2.7.20. Shri Avdhesh Kumar Verma raised following objection vide its letter dated July 29, 2015 and July 8, 2015,
- i. The petitions in the said matter should be filed as per Generation Tariff Regulations and not as per PPA.
  - ii. As per the provisions of the Regulations, the consumer shall be given benefit on account of controllable factors like SHR, Specific Oil Consumption etc.
  - iii. The Commission has given benefit of Deemed Energy to the Petitioner as per the provision of PPA, whereas it has been clearly said by the Commission in its previous Orders that the petitioner has to work as per Regulations only. Thus, it is requested to the Commission to repeal its previous order on deemed energy and further proceedings to be carried out as per Regulations.



- 2.7.21. Shri R. S. Awasthi, on August 11, 2015 requested the Commission to get verified the fuel bills and compare it with the balance sheet submitted by the petitioner. Further, Shri R. S. Awasthi requested the Commission to approve the tariff based on the provisions given in the Regulations or actual figures submitted in the balance sheet, whichever is lower.
- 2.7.22. Shri R. S. Awasthi on September 21, 2015, submitted that as per Section 61 and 181(2zc) of Electricity Act 2003, notified Generation Tariff Regulations 2009 and Generation Tariff Regulations 2014 are applicable.

### **B) RPSCL's Response**

- 2.7.23. RPSCL on August 12, 2015, submitted that the terms and conditions of PPA has been finalized after detailed discussion with UPPCL and same is applicable for tariff determination. Further, RPSCL stated that the Deemed Energy matter is not relevant in current Petitions.
- 2.7.24. RPSCL in its reply dated October 16, 2015, submitted that the objector has wrongly relied on the judgments referred in its submission as the same are not applicable in the present facts and circumstances of the matter in hand. Further, RPSCL submitted that the implement agreement signed between GoUP and RPSCL dated November 12, 2006, also recognizes that the terms and conditions mentioned in the PPA are to be complied. The relevant of the Implementation Agreement is reproduced below,

“i) GoUP will take necessary steps within administrative powers to ensure that the terms of PPA are followed by UPPCL or its successors and assigns.”

- 2.7.25. Further RPSCL submitted that the independence of the PPA has been acknowledged by Tariff (Term & Conditions of Generation Tariff) Regulations, 2009. Also the sanctity of PPA signed prior to 2014 has been maintained by UPERC Tariff Regulations, 2014 and the Commission is empowered to overcome in the event of any inconsistency in terms of PPA and the Regulations under the proviso to Regulation 4 of UPERC Tariff Regulation 2014.

### **C) UPPCL's Response**

- 2.7.26. UPPCL in its reply dated October 5, 2015, submitted that the aforesaid legal issue raised in the submission of Shri Awasthi is to be tested in the peculiar facts and circumstances stated in the above petitions filed by RPSCL.

### **Capital Cost**

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**A) Comments/Suggestions of Public**

- 2.7.27. Shri Avdresh Kumar Verma raised following objection vide its letter dated July 29, 2015 and July 8, 2015,
- i. The Capital Cost for all the Units should not be allowed more than the benchmark standard set by the CEA/CERC for the Capital Cost.
  - ii. Shri Avdresh has requested the Commission to not to allow any additional Capital cost and suggested to get the Capital Cost audited from CAG
- 2.7.28. Shri R. S. Awasthi vide its submission dated February 2, 2017, requested the Commission to consider the share application money and preference share capital as debt till its allotment as share capital and not to allow ROE on the share application money as claimed by the petitioner.

**B) RPSC's Response**

- 2.7.29. RPSC on August 12, 2015, in reply to Shri Avdresh objection that the Capital Cost of Rosa Project is lower than the benchmark capital cost of thermal power projects as per the order of CERC dated June 4, 2012.
- 2.7.30. RPSC on April 18, 2017, in reply to Shri Awasthi submission, submitted that Share application money and preference share capital has been converted into equity, hence it should be considered as part of equity.

**Reply to Deficiency notes/ Information sought from the Petitioner**

**A) Comments/Suggestions of Public**

- 2.7.31. R.S. Awasthi raised following objection vide its submission dated July 8, 2015, September 14, 2015 and September 21, 2015,
- i. RPSC has not stated in the Petition that under which regulation these Petitions 967/2014, 968/2014 and 1016/2015 has been filed.
  - ii. The petitioner has used provisions from PPA, Regulations 2009 and Regulations 2014 in the said petitions which are in its favour. Also the petitioner has not submitted the appendix 1 which was required to be filled as per section 5 of the Regulations 2009 and Regulations 2014.
  - iii. The petitioner has not fully submitted the information sought by the Commission through deficiency notes.
  - iv. RPSC has not provided all the information in the petition as per Regulations 2009 and Regulations 2014.
  - v. UPPCL has not submitted its comments on Prudence Check Report as sought by the Commission till date.





- vi. Hence prayed the Commission to dismiss the Public Hearing, till the all the information sought by the Commission is submitted by RPSCL and UPPCL

**B) UPPCL's Response**

- 2.7.32. UPPCL in its reply dated October 5, 2015, submitted that, it is in the purview of the Commission, regarding maintainability of the petition and issue deficiency note in case of a deficiency found by the Commission.

**C) RPSCL's Response**

- 2.7.33. RPSCL submitted on October 16, 2015, that it has been stated in its Petitions that,
- i. The petition for fixation of Tariff for 2 X 300 MW for Stage-II has been filed under regulation 5 of the Tariff Regulations, 2009 on the basis of terms and conditions of tariff approved by the Commission in the said PPA, SPPA and ASPPA
  - ii. The petition for fixation of Tariff for 4 X 300 MW for third control period has been filed in accordance to provisions of Amended and Restated Power Purchase Agreement and the Commissions observations in various Orders.
  - iii. The petition for Truing up of Tariff for 2 X 300 MW of Stage-I has been filed as per the direction of the Commission in the Order dated March 28, 2011.

**In regards to COD of Unit-I and Unit-II of Stage-I.**

**A) Comments/Suggestions of Public**

- 2.7.34. Shri R. S. Awasthi on September 21, 2015, submitted that from the report of Ashok Kumar submitted on July 7, 2010, it is clear that the AVR System was faulty and contention of R.D. Gupta retired Member, UPERC, submitted on September 27, 2010, that the AVR system was normal and the tripping occurred due to disturbance in the Grid is erroneous. Further, added that proper investigation should be done for the objection raised by the Objector.

**B) UPPCL's Response**

- 2.7.35. UPPCL in its reply dated October 5, 2015, submitted that the issue raised by Shri Awasthi is of academic value but accepting the submission, would mean going back in time by more than five years and thereby jeopardize the viability of the project itself.

**C) RPSCL's Response**

- 2.7.36. RPSCL in its reply dated October 16, 2015, submitted that the Commission has adjudicated and settled the issue with regard to COD of Unit-I & II and has





passed an order on December 15, 2010 in the matter of COD in case of 300 MW Unit-II.

### **In regards to work allotted to Utility Energytech Engineers Private Limited**

#### ***A) Comments/Suggestions of Public***

- 2.7.37. Shri R. S. Awasthi vide its submission dated August 11, 2015 and September 21, 2015, submitted that the petitioner has inflated the value of the contract by getting the 80% of the work done by UEEPL. Further Shri Awasthi submitted that from the records of Register of Company Mumbai that UEEPL is a related company of RPSCL, which has also been accepted by the Expert Committee.
- 2.7.38. Shri Awasthi, Submitted that this matter should be investigated by any team of Chartered accountant and company secretary, who has experience of related party transaction, as Prudence Check Committee formed by the Commission has not commented anything on this matter.
- 2.7.39. Further, Shri Awasthi stated that as per the meaning given in Section 76 of Companies Act, 2003, it is clear that in matter of related company transaction, it is required to take permission from the Central Government before making any transaction and the petitioner has not taken any permission before making any related company transaction.

#### ***B) UPPCL's Response***

- 2.7.40. UPPCL in its reply dated October 5, 2015, submitted that the Commission can investigate the matter after receiving reply/comments from RPSCL.

#### ***C) RPSCL's Response***

- 2.7.41. RPSCL in its reply dated August 12, 2015, submitted that UEEPL is not a group company and is not related to the petitioner in any manner.
- 2.7.42. Further, RPSCL in its reply dated October 16, 2015, submitted that the EPC contract was awarded through a competitive bidding process and there was no favour given to any entity. Further, RPSCL submitted that the objector has reproduced the definition of "related party" under section 2(76) of the Companies Act, 2013, which are not applicable at the point of time when the subject was executed i.e. in the year 2007.
- 2.7.43. In addition to above RPSCL submitted that it is denied that Expert Committee appointed by this Commission has accepted that UE&EPL is related party of RPSCL.



**In regards to Rosa Power Capital cost prudence Check Committee report.**

**A) Comments/Suggestions of Public**

- 2.7.44. Shri Awasthi on July 8, 2015,, Submitted that the Expert Committee has stated that they have prepared the report as per the provisions of the Regulations, but in reality capital cost has been decided as per regulations and Operating parameters has been decided as per PPA, which is wrong. Hence the objector requested to reject the submitted report and form a new Committee or direct the existing Committee to prepare report keeping these objections in mind.
- 2.7.45. Shri R. S. Awasthi on September 21, 2015, submitted that,
- i. Committee has mentioned in its report that the EPC contract awarded through ICB process has been verified by the Committee is fallacious and misleading.
  - ii. Committee has stated in its report that the no benchmarks are specified by CERC for unit size of 300 MW and Comparison is made with nearest unit size or on installed capacity basis of 600 MW for each Stage. Whereas, there are many operating and upcoming unit of 300 MW in India.
  - iii. Committee has accepted that in absence of CERC Benchmark, it is necessary to assess the investment of the company, which has actually worked on the project to assess the total project cost, which has not been done by the Committee.
- 2.7.46. Further Shri Awasthi stated that RPSCL has asked for approval of additional capital cost of 550.02 Crore, which is not acceptable as per Regulations. And if the Commission approves additional capital cost of Rs. 550.02 Crore or 517.12 crore as recommended by the Expert Committee then the RPSCL will start getting interest on this amount, IDC, Depreciation etc. from 2012 itself, whereas it has not been spent by RPSCL, which is against the provisions of EA 2003 and Regulations.

**B) UPPCL's Response**

- 2.7.47. UPPCL in its reply dated October 5, 2015, submitted that it will submit a comprehensive view of UPPCL on the capital cost of the project arrived at by the expert committee shortly, and it will also address all the other objection raised on the part of UPPCL by Shri Awasthi. UPPCL submitted its reply on September 09, 2016.

**C) RPSCL's Response**

- 2.7.48. RPSCL in its reply dated October 16, 2015, submitted that the scope of Expert Committee was limited to undertake prudence check of capital cost and not to determine tariff.



- 2.7.49. RPSCCL in its reply dated October 16, 2015, submitted that in absence of Benchmarking for 300 MW, the Expert Committee has extrapolated the capital cost of 500 and 600 MW Units to arrive at the total project cost. Further, RPSCCL in regards to IDC for the period between February 2, 2006 and November 1, 2006, submitted that they have not booked any expenditure for this period in the Capital cost of Rosa TPP.
- 2.7.50. RPSCCL submitted that as per Amended and Restated PPA dated November 12, 2006, there is no binding of cut-off date for implementation of additional project cost.

### **Undischarged Liability**

#### ***A) Comments/Suggestions of Public***

- 2.7.51. Shri R. S. Awasthi vide its submission dated August 11, 2015 and September 21, 2015, submitted that the Expert Committee has not commented anything on undischarged liability and nor UPPCL. The real capital cost cannot be ascertained without deducting the undischarged liability from it.
- 2.7.52. Further Shri R. S. Awasthi vide submission dated February 7, 2017, requested the Commission to deduct the undischarged liability from Capital cost considered for tariff determination.

#### ***B) UPPCL's Response***

- 2.7.53. UPPCL in its reply dated October 5, 2015 to Shri Awasthi's objection dated August 11, 2015 and September 21, 2015, submitted that it will submit a comprehensive view of UPPCL on the capital cost of the project arrived at by the expert committee shortly, and it will also address all the other objection raised on the part of UPPCL by Shri Awasthi.
- 2.7.54. Further, UPPCL in its reply dated February 8, 2017, that they are in favour of the objection raised by Shri Awasthi.

#### ***C) RPSCCL's Response***

- 2.7.55. RPSCCL in its reply dated August 12, 2015, October 16, 2015, October 21, 2016 and February 7, 2017, submitted that as per the definition of Amended and Restated PPA dated November 12, 2006, the capital cost shall mean the total expenditure actually incurred which includes the amount towards work completed plus the unpaid liabilities retained in the form of any kind of security deposit on account of performance guarantee. Further RPSCCL submitted that it has been held APTEL in various orders that the actual



expenditure is not limited to actual outflow but also include the unpaid liabilities for the asset which is already in operation.

### **Comments made by CAG in FY 2013 in regard to ROSA**

#### **A) Comments/Suggestions of Public**

- 2.7.56. In submission made on September 21, 2015, Avdhesh Kumar Verma reiterated its submission made on June 23, 2014 and submitted that there has been no information about the steps taken by the Commission to get private generating stations audited from CAG and requested the Commission to make the question raised in the CAG report to be part of the public proceedings.
- 2.7.57. Further, A.K. Verma, stated that in the petition filed by Reliance in the matter of True up and Tariff fixation, Public Hearing shall be conducted only when CAG audit of its financial standards has been fixed.
- 2.7.58. Shri Awasthi vide its letter dated July 8, 2015 requested the Commission to keep in mind the Comments made by CAG with respect to Rosa while determining the Tariff.

#### **B) UPPCL's Response**

- 2.7.59. In reply to the submission made by Shri A.K. Verma on September 21, 2015, UPPCL submitted on October 5, 2015, that all the objections taken in the report of CAG forming part of submissions made by Shri A.K. Verma pertaining to UPPCL have been dropped by CAG and thus there is no CAG objection as pointed out in the report for the Financial Year ending on March 31, 2013 remaining against UPPCL.
- 2.7.60. Further, UPPCL submitted that in regard to CAG report to be made part of the proceeding of Public Hearing, it has no comment to offer and the Commission may exercise its statutory power, to accept or reject the contention of Shri Avdhesh Kumar Verma.

#### **C) RPSC's Response**

- 2.7.61. RPSC in its reply dated October 16, 2015, has submitted that it has submitted the point wise reply to UPPCL on the queries raised by CAG to UPPCL.

**Can Benefits from the provisions of PPA and as well as the Regulations, 2009 be given to the petitioner.**

#### **A) Comments/Suggestions of Public**

- 2.7.62. Shri Awasthi on July 8, 2015, submitted that the Commission vide its order dated March 28, 2011, has given the benefit as per the provision of



Regulations by approving 16% ROE and vide its order dated March 20, 2013 has given benefits as per the provisions of PPA by allowing benefits of deemed energy. Further, requested the Commission to determine tariff either as per provision of PPA or Regulations.

**B) RPSC's Response**

- 2.7.63. RPSC in its reply dated August 11, 2015, submitted that it has raised invoices on UPPCL based on the Tariff approved by the Commission vide order dated March 28, 2011 and has not claimed any additional amount. Further, RPSC submitted that it has filed present petitions as per terms and conditions of the PPA approved by the Commission.

**Depreciation**

**A) Comments/Suggestions of Public**

- 2.7.64. Shri Awasthi vide its letter dated July 8, 2015, requested the Commission to calculate depreciation as per schedule 7 of the PPA and not as per Straight Line Method.

**B) RPSC's Response**

- 2.7.65. RPSC in its reply dated August 11, 2015, submitted that it has claimed depreciation as per the rate mentioned in schedule 7 of PPA.

**Delay in Tariff Fixation**

**A) Comments/Suggestions of Public**

- 2.7.66. Shri Awasthi vide its letter dated July 8, 2015, Kumari Mamta vide its submission dated July 7, 2015 and Shri K. S. Tyagi vide its letter dated July 15, 2015, requested the Commission that if the tariff increases due to delay in tariff fixation, then the RPSC should not be benefitted from it and neither the consumer be burdened with this tariff increase.

**B) RPSC's Response**

- 2.7.67. RPSC in its reply dated August 11, 2015, to Shri Awasthi's objection dated July 8, 2015, submitted that in accordance with, inter-alia, various Judgments of the Hon'ble Tribunal of Electricity, any over/under recovery on account of Delay in tariff finalization is subject to retrospective adjustment including carrying cost on the basis of finally approved tariff/ trued-up tariff and date of payment thereupon.

**Deemed Energy**

**A) Comments/Suggestions of Public**

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2.7.68. Shri Awasthi vide its letter dated July 8, 2015, requested the Commission that before giving benefit of deemed energy to the petitioner, take cognition of the report submitted by UPPCL in the matter of Deemed Energy.

**B) RPSC's response**

2.7.69. RPSC in its reply dated August 11, 2015, submitted that the issue of deemed energy is not relevant in current petitions.

**Actual data on Gross Station Heat Rate (GSHR), Gross Calorific Value (GCV), Blending Ratio**

**A) Comments/Suggestions of Public**

2.7.70. Shri Awasthi vide its letter dated August 11, 2015, requested the Commission to get verified the coal bills, GSHR, GCV and blending ratio as submitted by the petitioner with the original bills and to decide the blending ratio of Imported and Domestic coal for per unit generation of electricity.

2.7.71. Shri Awasthi vide its submission dated February 2, 2017, requested the Commission to investigate onto how the petitioner is able to earn Rs. 1300 Crore of excess profit for the period from FY 2011-12 to FY 2013-14. Further, he submitted that the one of its reason (other than excess O&M Expense, saving in Finance charge etc.) may be saving in fuel cost due to low GSHR. He also requested the Commission to conduct impact analysis of not incorporating the provision of distinction in new and old generating stations in 2009-14 Regulations.

**B) RPSC's response**

2.7.72. RPSC in its reply dated August 12, 2015, submitted that all the bills are duly checked and verified by UPPCL and particularly in respect of fuel cost, consumption and blend before any payment is released.

2.7.73. RPSC in its reply dated February 18, 2017 to R. S. Awasthi's objection dated February 2, 2017, submitted that the contention of Shri R. S. Awasthi are denied as wrong and frivolous. Further, RPSC submitted that Shri R. S. Awasthi objections pertain to period FY 2009-14 which has already elapsed and the order pertaining to this period has attained finality. Also, if the objector was aggrieved with the said order then he would have filed an appeal as per Section 111 of 2003, which has not been done by him.

2.7.74. Also RPSC submitted that it has claimed O&M Expense and Interest and Finance charges as per UPERC Tariff Regulations.

**Income Tax**

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### **A) Comments/Suggestions of Public**

- 2.7.75. Shri Awasthi vide its letter dated August 11, 2015, requested the Commission to not to provide Income Tax benefits to the petitioner as it would be against the natural justice because as per objector except power sector, all the businesses are liable to pay income tax on the booked profit.

### **B) RPSCL's Response**

- 2.7.76. RPSCL in its reply dated August 12, 2015, submitted that the tariff is to be determined as per provision of PPA.

### **Stabilization Period**

#### **A) Comments/Suggestions of Public**

- 2.7.77. Shri Awasthi vide its letter dated August 11, 2015, requested the Commission to not to provide any benefit for the stabilization period as it is already clarified by the CEA report that the presently used machines for power generation does not require stabilization period.

#### **B) RPSCL's Response**

- 2.7.78. RPSCL in its reply dated August 12, 2015, submitted that the petitioner has not sought any benefit for the stabilization period of the plant as it was not provided in the PPA, although this was provided in UPERC Terms and Conditions of Generation Tariff regulations, 2004 and 2009.

### **Summary and Conclusion by the Commission**

The Commission has provided ample opportunities to all the stakeholders to file their comments and responses regarding the subject Petition. The Commission has considered and reviewed the submissions/ comments and recommendations of all the stakeholders and hereby summarizes its views in the following sections

#### **2.7.79. PPA Vs Regulations**

The Commission has dealt this issue in detail in Section 3.1 of chapter 3 of this Order.

#### **2.7.80. Capital Cost**

The Commission has dealt this issue in detail in Section 3.2 of chapter 3 of this Order.

#### **2.7.81. Reply to Deficiency notes/ Information sought from the Petitioner**

The Commission has dealt this issue in detail in Section 3.3 of chapter 3 of this Order.





**2.7.82. COD of Unit-I and Unit-II of Stage-I**

This issue has already been settled and reopening will lead to further delay in tariff determination process.

**2.7.83. In regards to work allotted to Utility Energytech Engineers Private Limited**

The Commission has dealt this issue in detail in Section 3.2 of chapter 3 of this Order.

**2.7.84. Undischarged Liability**

The Commission has dealt this issue in detail in Section 3.2 of chapter 3 of this Order.

**2.7.85. Delay in tariff fixation**

The Commission has dealt this issue in detail in Section 3.3 of chapter 3 of this Order

**2.7.86. Comments made by CAG in FY 2013 in regard to ROSA**

The Consumer representatives have highlighted about the audit and findings by CAG. The Commission would like to mention that any such findings of CAG having an impact on tariff will be considered in the subsequent orders of the Commission.

**2.7.87. Deemed Energy**

The Commission has already dealt upon this matter in its order dated March 20, 2013 in petition no. 851 & 861 of 2012.

**2.7.88. Actual data on Gross Station Heat Rate (GSHR), Gross Calorific Value (GCV), Blending Ratio**

The Commission has dealt this issue in detail in Section 3.3 and 3.4 of chapter 3 of this Order.

**2.7.89. Income Tax**

The Commission has dealt this issue in detail in Section 3.4 of chapter 3 of this Order.

**2.7.90. Stabilization period**

The petition has not claimed any benefit pertaining to stabilization period, hence the issue is settled.



### 3. KEY ISSUES INVOLVED IN THE PROCEEDINGS

#### 3.1 Issue on applicability of provision of PPA or provision of Regulations

3.1.1 The Commission approved PPA between RPSCL and UPPCL in 2006 which was in line with provisions and operation norms of prevailing Generation Regulations, 2004.

3.1.2 Later it was supplemented in 2009 to procure 300MW from Stage-II and again amended in 2011 to procure additional 300 MW power from Stage-II. During approval of SPPA, the Commission stated that the regulation 2(5) operates only when any remedy is not available in PPA and is available in Regulation 2009. Further the Commission had stated that UPERC (Terms & Conditions of Generation Tariff) Regulations, 2009 as amended from time to time shall apply. The relevant extract of the order is reproduced below for reference,

*“The parties must note that Regulation 2(5) operates only where any remedy is not available under power purchase agreement (PPA) signed between them but it is available in the said Regulation. In such event, any party to PPA could approach the Commission. Therefore, the terms & conditions of tariff approved by the Commission for Stage I project shall also apply to Stage II project. **It is to clarify that UPERC (Terms & Conditions of Generation Tariff) Regulations, 2009 as amended from time to time shall apply.** On commissioning of stage II project, the capital cost of common facilities accounted for Stage I shall be shared by Stage I & II in equal proportion.*

*Subject to observations made and directions issued above, SPPA and cost of Stage II project are approved. This approval of cost is for comfort to all stakeholders; however, it shall be subject to prudence check at the time of determination of tariff. A final supplementary agreement shall be drawn and a copy be sent to the Commission for information. The Petitioner shall submit compliance of directions issued in respect to cost of Stage II project on an affidavit within 2 months of this order.” (Emphasis Added)*

3.1.3 Also, the proviso 2(5) of the UPERC Generation Tariff Regulations, 2009, affirms that the regulation are in addition to and not in derogation to the terms and conditions approved by the Commission in a PPA. The relevant extract of the Regulation, 2009 is reproduced below for reference,

*“These Regulations are in addition to and not in derogation to the terms and condition of determination of tariff approved by the Commission in a power purchase agreement signed between a generating company and distribution licensee(s)/beneficiary(ies). Either party to power purchase agreement may approach the Commission for specific relief, under these*



*Regulations and amendments thereof, if such provision or remedy is not available in the power purchase agreement signed between them.”*

3.1.4 The petitioner in petition No. 660 of 2010 for approval of provisional tariff for Stage-I, requested the Commission for increase of RoE to 16.00% from 14.00% as per the Regulations, 2009 only, as the petitioner was allowed to approach the Commission for specific relief, under the Regulations and amendments thereof, if such provision or remedy was not available in the power purchase agreement signed between them. There was no provision for revision of RoE in PPA and also there was no case for remedy, in absence of undesirable situation, as far as RoE was concerned. However, considering the plea for **level playing field**, the Commission allowed increased RoE of 16.00%, but while allowing increased RoE, the Commission categorically took the view that the Generator cannot be allowed to get the best from the both. The details are as follows:

*“The Commission opines that the norms of operations or other factors should be guided in totality either from the PPA or from the Regulations. The Generator cannot be allowed to get the best from the both. There is no question that whether Regulations would prevail over PPA or not because Regulation 2(5) clearly specifies that the Regulations are in addition to and not in derogation to the Terms & Conditions of determination tariff approved by the Commission in a PPA. In this case the Petitioner desires RoE as provided in the Regulations which is higher than what has been agreed under the PPA. The Petitioner has structured its claim on the basis of provisions of Regulations, 2009 supported by its plea to allow a level playing field. It would be discouraging for the generator if 15.5% RoE, as provided under the Regulation, is not allowed as it would be a deterrent to level playing field for such a Generator who has commissioned the plant ahead of the schedule. It is also pertinent to consider the revision of norms of operation with higher RoE but since the plant is still to be stabilized, it would not be appropriate to revise the same at this point of time. **Although, to keep the level playing field, the norms of operation may be considered for revision at the time when the Petitioner would approach the Commission for the same.** Therefore, the Commission decides to consider RoE 15.5% provisionally for calculation of provisional tariff. The Respondent has contested the incentive for early commissioning although there is no specific provision agreed under the PPA for the same. In case of commissioning ahead of schedule, regulation 23 (3) provides the eligibility for incentive equal to amount of reduction in interest during construction recoverable through tariff in twelve monthly instalments during first year of operation. However, Regulation 21 (iii)*



*provides an additional amount of 0.5% for the projects approved by the Commission before 1.4.2009, in absence of any provision made in PPA. As the plea of Petitioner to provide level playing field has been accepted by the Commission, it would be appropriate to provisionally approve 0.5% additional RoE as incentive for early commissioning.”*

3.1.5 The petitioner never challenged above mentioned order for approval of provisional tariff for Stage-I of the Commission and the order attained finality. The final tariff for Stage-I was decided by the Commission on same lines vide order dated March 28, 2011. In this order, going with the earlier decision to consider level playing field, as per the existing regulations, the Commission also enhanced the plant load factor from 80% to 85%. Regarding the norms of operation the Commission took the view that *“It is also pertinent to consider the revision of norms of operation with higher RoE but since the plant is still to be stabilized, it would not be appropriate to revise the same at this point of time. Although, to keep the level playing field, the norms of operation may be considered for revision at the time when the Petitioner would approach the Commission for the same.”*

3.1.6 Hence, it is amply clear that during the finalization of tariff for Stage-I, the Commission took a considered view on the basis of prayer made by the petitioner for level playing field and allowed RoE of 16.00% as per the Regulations instead of 14.00% as provided in the PPA. At the same time to ensure level playing field, the Commission increased target PLF from 80% to 85% as per the Regulations. Regarding the operating parameters the Commission took the view that

*“ It is also pertinent to consider the revision of norms of operation with higher RoE but since the plant is still to be stabilized, it would not be appropriate to revise the same at this point of time.”*

For Stage-II, as requested by RPSC and agreed by UPPCL, the tariff, approved by the Commission for Stage-I was allowed provisionally.

3.1.7 In view of above, the Commission opines that for the period of FY 2009 to FY 2014 i.e. upto 31.03.2014, the True Up for Stage-I shall be considered based on decisions of the Commission taken while determining the final tariff for Stage-I vide order dated March 28, 2011, wherein the Commission, took a view that True Up exercise shall be carried out with respect to the Capital Expenditure incurred upto 31.03.2014, for Stage-I in terms of UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009 and its amendments.

3.1.8 As regards to determination of tariff / True Up of Stage –II for the period FY 2011-12 to FY 2013-14, the Commission opines that the norms of operation



shall be taken as per the Regulations 2009 as decided by the Commission vide order dated June 15, 2009.

*“The parties must note that Regulation 2(5) operates only where any remedy is not available under power purchase agreement (PPA) signed between them but it is available in the said Regulation. In such event, any party to PPA could approach the Commission. Therefore, the terms & conditions of tariff approved by the Commission for Stage I project shall also apply to Stage II project. **It is to clarify that UPERC (Terms & Conditions of Generation Tariff) Regulations, 2009 as amended from time to time shall apply.** On commissioning of stage II project, the capital cost of common facilities accounted for Stage I shall be shared by Stage I & II in equal proportion.”*

- 3.1.9 Further, while finalizing the Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2014, the Commission provided enough opportunity to all the stakeholder including the petitioner to provide Comments / Objections / Suggestions before approval and notification of the Regulations. The Regulations were finalized after completing the due process of publication of discussion paper, Draft Regulations and Public Hearings vide Notification no. UPERC/Secy/Generation Regulations, 2014/1620 dated 16.12.2014 and is in operation till 31.3.2019.
- 3.1.10 Further, with respect to the tariff for both Stage-I and Stage-II for the period FY 2014-15 to FY 2018-19, the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, clearly specifies that the provisions of the Regulations shall prevail over the terms and conditions agreed in the PPA. The UPERC Generation Regulations, 2014, Proviso 2(4) further provides for approaching the Commission in case of hardship faced due to discrepancy/inconsistency with parameters. The relevant extract of the UPERC Generation Regulations, 2014 is as follows:

***“(4) In case of any conflict between provisions of these regulations and a power purchase agreement signed between a generating company and distribution licensee(s)/beneficiary(ies), the provisions of these regulations shall prevail. (Emphasis Added)***

*Provided that in case of projects where parameters have been agreed to in the Power Purchase Agreement or determined through an earlier Regulation prior to 1.4.2014, for any hardship due to discrepancy/inconsistency with parameters given in these Regulations, the Commission may be approached and parameters in such cases may be determined by the Commission at the time of tariff determination of respective generating station.”*



3.1.11 In a similar case of applicability of PPA or Regulations, Hon'ble APTEL has given its decision in its order dated 06.04.2017, in the matter OPGCL Vs. OERC & Others, wherein OERC had first approved the PPA between the parties and determined tariff on the basis of the provision provided in the PPA, which was to remain applicable for the period of 25 years. Later, after enacting the OERC Generation Tariff Regulations, 2014, OERC determined tariff for FY 2016-17 to 2018-19 as per the provision provided in the Regulations. Aggrieved by this order of the OERC, OPGCL filed an APPEAL No. 126 OF 2016 and I.A. No. 282 OF 2016, in APTEL. The Hon'ble APTEL in its order dated 6.4.2017 in aforementioned case, held as under:

*"28. From the above paragraphs following propositions can be deduced:*

- (a) While exercising the power to frame the terms and conditions for determination of tariff under Section 178 or 181 of the said Act the Central Commission or the State Commission has to be guided by the factors specified in Section 61. If a regulation is made under Section 178 or 181 of the said Act, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulation under Section 178 or 181 of the said Act.*
- (b) A regulation under Section 178 or 181 of the said Act has the effect of interfering with and overriding the existing contractual relationship.*
- (c) A regulation under Section 178 or 181 is in the nature of a subordinate legislation. Such subordinate legislation can even override the existing contract including PPAs which have got to be aligned with the said regulation.*

.....

*44. We are mindful of the guidelines contained in Section 61 of the said Act which the Appropriate Commission has to follow while determining tariff. It is true that a large number of efficiency and commercial considerations have to be taken into account while determining tariff. The State Commission has to ensure that interest of all stakeholders is balanced. Consumer interest has to be safeguarded at the same time cost of electricity has to be recovered in a reasonable manner. In the facts of this case, if we were to form an opinion that due to the impugned order, the interest of the Appellant would be set at naught as contended by the Appellant, we would have certainly intervened. But, we are unable to come to such a conclusion. In fact, the Appellant has not specifically denied Respondent No.1's case that additional burden of Rs.25 crores*





would fall on the consumers if the PPA is implemented in the manner suggested by the Appellant.

**45. In view of the above, we are of the opinion that the impugned order which determines the tariff on the basis of the norms stipulated in the OERC Regulations deserves to be confirmed. Needless to repeat that when regulations are in the field, they have to be followed in entirety and this will also apply to the OERC Regulations. The State Commission's view is supported by legal provisions and the law laid down by the Supreme Court in the judgments referred to by us. The appeal will have to be therefore, dismissed and, is accordingly dismissed. Needless to say that the interim application shall also stand dismissed.”(Emphasis Added)**

3.1.12 In view of above the Commission opines that the tariff for Stage-I and Stage-II for the MYT period FY 2014-15 to FY 2018-19 shall be determined according to the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, subject to decision in the matter of Hardship.

### 3.2 Final approval of Capital Cost

3.2.1 The capital cost of the Stage-I was approved as Rs 2641.63 Crores with COD of Unit 1 and Unit 2 to be achieved before 31.03.2010 and 30.06.2010 respectively.

3.2.2 The Commission vide its Order dated April 08, 2009 allowed additional capital cost of Rs 470.88 Crores, due to change in scope of work, statutory taxes, duties and change in cost of materials, making the total approved project cost of Rs 3112.81 Crores for Stage I subject to prudence check.

3.2.3 UPERC vide order dated June 15, 2009, approved the supplementary PPA for procurement of 300 MW of power from Unit 3 & Unit 4 from Stage II of the Project and approved Project cost of Rs 3098.6 Crores for Stage II subject to prudence check.

3.2.4 The Commission vide its Order dated June 25, 2012 approved additional capital cost of Rs. 550.02 Crore for the BoP of the project subject to prudence check.

3.2.5 The Commission appointed an Expert Committee for verification and prudence check of the additional capitalization and Capital cost of Stage-I and Stage-II. Expert Committee recommended as under:

Particulars	Approved (Rs. In Crores)	Recommended by Expert Committee (Rs. In Crores)
Stage 1 (as at 31.03.12)	3112.83	3112.81
Stage 2 (as at 31.03.13)	3098.60	3093.02
Additional Capital Cost	550.02	517.28*





<b>Overall Capital Cost</b>	<b>6761.45</b>	<b>6723.11</b>
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\*Expert committee recommended that UPERC may consider the additional capital cost for pass through in tariff as and when the same are capitalised and submitted to UPERC in duly certified Form 5B certificates.

3.2.6 The additional capital cost has been recommended by the Committee but since it was not capitalized, the prudence check could not be done by the Committee. The petitioner has submitted that Rs. 413.86 Crore has been capitalized till FY 2015-16 and Rs. 103.42 Crore is proposed to be capitalized in FY 2016-17.

3.2.7 In view of the Expert Committee report, replies of the parties and deliberations during the Hearings, the Commission considers it appropriate to take up Rs. 3112.81 Crore as Capital Cost of Stage-I and Rs.3093.02 Crore as Capital Cost of Stage-II subject to corrections as per the decisions of the Commission in following paragraphs.

#### **Additional Capital Works**

3.2.8 UPPCL submitted that out of Rs. 517.28 Crore approved by the Commission towards the additional Capital works, the actual capitalization is only of the tune of Rs. 48.20 Crore in FY 2013-14 and Rs. 294.50 Crore in FY 2014-15, thus totalling to 342.70 Crore only, which can be seen from the auditor certificate for FY 2013-14 and FY 2014-15.

3.2.9 RPSCCL submitted that UPPCL erroneously ignored the capitalization of Rs. 71.17 Crore towards additional capital works in FY 2015-16 and proposed capitalization for FY 2016-17 is 103.42 Crore which totals out to 517.28 Crore which is to be considered for MYT control period of 2014-19. The total additional work capitalization is as follows:

<b>Capitalization</b>	<b>FY 13-14</b>	<b>FY 14-15</b>	<b>FY 15-16</b>	<b>FY 16-17</b>
Additional Capital Works	48.20	294.50	71.17	103.42
Total Cumulative	48.20	342.70	413.87	517.28

3.2.10 UPPCL submitted that the audited accounts for FY 2015-16 were not made available to them when the report was being prepared. UPPCL, also requested the Commission to allow additional capitalization of Rs. 103.42 Crore in FY 2016-17 only on the availability of audited accounts for the said financial year. UPPCL, further requested the Commission to direct RPSCCL to submit the details of % completion details of the additional works.

#### **Commission's View**

3.2.11 The Commission is of the view that since the additional Capital expenditure has not been verified by the Exert Committee, the additional capital expenditure capitalized till FY 2013-14 only i.e. Rs. 48.20 crore has been



considered for the purpose of determination of tariff and True-up of tariff for Stage-II till 2013-14 and for determination of tariff of Stage-I and Stage-II for MYT Period. However, RPSCL may file a separate petition for approval of Additional Capital Cost for the period FY 2014-15 to FY 2018-19, which shall be approved subject to prudence check.

### Un-discharged Liabilities

3.2.12 UPPCL submitted that as per the Tariff Regulations, the un-discharged liabilities are to be excluded from the capital cost being considered for the purposes of tariff, which are as follows:

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Creditors for capital Expenditure	228.82	179.96	81.53	77.98	95.12	166.11
Retention Money for Capital Expenditure	185.90	210.60	252.19	112.63	126.57	147.61
<b>Total</b>	<b>414.72</b>	<b>390.56</b>	<b>333.56</b>	<b>190.61</b>	<b>221.69</b>	<b>313.72</b>

3.2.13 In reply RPSCL submitted that UPPCL has wrongly relied upon the definition of capital cost provided in Tariff Regulations applicable for FY 2014-19, which is not applicable in this matter since, the capital cost was approved in control period 2004-09 and project was commissioned in control period in 2009-14. Also the Commission while approving the SPPA vide order dated 15.06.2009, clarified that the Regulations 2009-14 will only be applicable, when any remedy is not available under the PPA.

3.2.14 Further RPSCL submitted that as per standard practice and accounting principles also expenditure incurred includes payment deferred or retained on account of any reason including retention amount as per contract terms or security deposit linked to performance guarantee, which has also been upheld by Hon'ble APTEL in its various judgments. Hence the entire amount capitalized should be considered for tariff determination.

3.2.15 In reply, UPPCL submitted that the UPERC (Terms and Conditions of Generation Tariff) Regulations 2009 and amendments thereafter are squarely applicable in the instant case as the Supplementary PPA dated 11.09.2009 was approved by the Commission vide Order dated June 15, 2009. Further UPPCL submitted that CERC amended the tariff Regulations after the Hon'ble APTEL judgments in the appeal cited as cited by RPSCL. UPPCL also submitted that the RPSCL's contention that the unpaid liabilities were converted into security deposit is tenable as it is not depicted in audited accounts.

3.2.16 UPPCL has also submitted that they are not denying the admissibility of un-discharged liability and can be considered under incurred capital cost but it cannot be considered for tariff determination and true-up.

3.2.17 Further the Commission to ascertain Un-discharged liability sought data on Undischarged Liability and the discharge of Un-discharge Liability year wise vide its letter dated June 21, 2017. RPSC submitted the sought information on June 26, 2017 as under:

Stage-I	2010-11	2011-12	2012-13	2013-14
Opening Liability	452.98	390.56	46.86	15.21
Addition	0.00	0.00	0.00	0.00
Discharge	62.41	343.70	31.65	15.21
Closing Liability	390.56	46.86	15.21	0.00

Stage-II	2012-13	2013-14	2014-15
Opening Liability	286.86	175.40	221.45
Addition	0.00	46.05	0.00
Discharge	111.45	0.00	82.37
Closing Liability	175.40	221.45	139.08
Capital Advances	41.02	26.68	9.27
Net Capital Liabilities	134.39	194.78	129.82

### Commission's View

3.2.18 The Commission observes that as per the provision provided in Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2009, Un-discharged Liability is to be deducted from capital cost, which is shown as follows:

*“(xv) ‘Expenditure incurred’ means the fund, whether the equity or debt or both, actually deployed and paid in cash or cash equivalent, for creation or acquisition of a useful asset and does not include commitments or liabilities for which no payment has been released;” (Emphasis added)*

*“17.Capital Cost:*

*Subject to prudence check by the Commission, the actual expenditure incurred on completion of the project shall form the basis for determination of final tariff. The final tariff shall be determined based on the admitted capital expenditure actually incurred up to the date of commercial operation of the generating station and shall include capitalised initial spares subject to following ceiling norms as a percentage of the original project cost as on the cut off date: ....” (Emphasis added)*

3.2.19 Also similar provision is provided in UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014. Hence considering the applicability of



provision of Regulations or PPA as discussed in Section 3.1, the Commission is of the view that Regulations shall be applicable and as per the Clause 14 (XV) read with clause 17 of the Regulations, Capital cost has been approved after deduction of net Undischarged Liability and considering discharge. The Capital cost till FY 2013-14 has been allowed after deducting undischarged liability as on COD and year wise discharge of liability till FY 2013-14 as under:

Stage-I	2010-11	2011-12	2012-13	2013-14
Opening Liability	452.98	390.56	46.86	15.21
Addition	0.00	0.00	0.00	0.00
Discharge	62.41	343.70	31.65	15.21
Closing Liability	390.56	46.86	15.21	0.00

Stage-II	2012-13	2013-14
Opening Liability	286.86	175.40
Addition	0.00	46.05
Discharge	111.45	0.00
Closing Liability	175.40	221.45
Capital Advances	41.02	26.68
Net Capital Liabilities	134.39	194.78

However, discharge of liability for the period FY 2014-15 to FY 2018-19 shall be considered while truing up of tariff for FY 2014-15 to FY 2018-19.

### R&R / CSR Expenses

- 3.2.20 UPPCL submitted that RPSC has made a fixed deposit of Rs. 20 Crore in 2010 for meeting R&R expenses and has also included that in the Capital Cost, which is wrong on its part as such funds will vest to RPSC after project life.
- 3.2.21 As per the provisions of Clause (xviii) of the MoEF (Ministry of Environment & Forest) clearance granted vide letter dated July 20, 2009, RPSC was directed to earmark a corpus fund of Rs. 24 Crore for CSR activities and not for R&R. Also the CSR activities are to be met out of net profit as per Section 135 of the Companies Act, 2013 and cannot be part of capital cost as purported by the RPSC.
- 3.2.22 In reply RPSC submitted that the Commission itself had given approval for creation of corpus fund of Rs. 20 Crore towards development of social infrastructure and development activities in the project effected area in petition No. 600 of 2009 in which UPPCL did not raised any objection during the proceedings.
- 3.2.23 Further, RPSC submitted that MoEF kept statutory obligation for it to comply with the Environment Clearance condition and it was required to create the corpus fund of Rs. 24 Crore prior to execution of the project. Provided that since the corpus fund towards CSR activity was to be created before execution



of the project it is erroneous on behalf of UPPCL to say that the fund was to be created from profits. Also, the approval of creation of fund was granted by the Commission in 2009, when there was no such provision of Company Act, 2013, requiring mandatory contribution of certain portion of the company's profits towards the CSR activities.

- 3.2.24 UPPCL in its reply submitted that the stipulation in EC was only in respect of CSR activities and not R&R activities. Also UPPCL cited various Judgment, wherein the Hon'ble APTEL has disallowed the CSR expenditure to be considered as part of ARR.

**Commission's View:**

- 3.2.25 The corpus of Rs. 20 Crore has already been allowed by the Commission as part of Capital Cost of Stage-I. However, since the corpus of Rs. 20 Crore is going to vest with RPSCL after the completion of project life and which if considered will lead undue burden on the end consumers. Hence, in view of the above corpus of Rs. 20 Crore allowed for CSR/R&R expense has not be considered for calculation of Fixed Charges.

**Purchase of mutual fund out of long term loans and IDC**

- 3.2.26 UPPCL submitted that the investment of the money drawn from long term loan for purchase of Reliance Mutual funds has led to increase in IDC by amount of Rs. 10.46 Crore and the same ought to be disallowed from the capital cost. Further, UPPCL submitted that the penal interest amounting to Rs. 26.35 lakh may be disallowed from the capital cost by the Commission. Further UPPCL has submitted that RPSCL should submit details about the debt refinancing undertaken by it and about the benefits of it to the beneficiaries and consumers.
- 3.2.27 In reply RPSCL submitted that the UPPCL has not highlighted the fact that the majority of these investment made in mutual fund were made for period of few days only and were interim and prudent arrangement to avoid idling of funds in current account in order to reduce the IDC.
- 3.2.28 RPSCL submitted that the IDC of the Rosa TPP is well within the amount approved by the Commission, which proves that it has made debt drawl prudently during the implementation of the project.
- 3.2.29 UPPCL submitted that the investment in mutual funds in some cases has been for the period in range of 8 to 10 month and to the tune of several hundred Crores. Hence it cannot be contended that RPSCL had invested in Mutual Funds schemes only as a stop-gap arrangement pending utilization towards capital expenditure.



- 3.2.30 Further UPPCL reiterated that the penal interest of Rs. 0.26 Crore must be disallowed and RPSCL must be directed by the Commission to submit the complete details of the debt refinancing undertaken by it in November 2014 including the benefits owing to such debt refinancing to beneficiaries and consumers.
- 3.2.31 Further, the Commission vide its letter dated June 21, 2017, directed RPSCL to file written submission showing the impact of investment of money drawn from loan in mutual funds on capital cost, which was submitted by it on June 23, 2017.

**Commission's View:**

- 3.2.32 After closely scrutinizing the submissions made by RPSCL and other stakeholders, the Commission is of the view that RPSCL has managed the funds prudently and completed the project within defined timeline and approved IDC. Hence, the Commission considers it appropriate to allow IDC as claimed by the petitioner i.e. Rs. 554.66 Crore as against Rs. 567.33 Crore earlier approved by the Commission.

**Contract Award Procedure**

- 3.2.33 UPPCL submitted that since the original document related to contract award procedure were not provided to them for examination, they are not in a position to provide any comments on Contract Award Procedure for EPC, OSBL and additional Capital work contracts. Further UPPCL requested the commission to conduct a prudence check on the contract award procedure and ensure that the contracts have been awarded at arm's length price. UPPCL has also submitted that they have checked the register of contracts maintained by RPSCL under Section 31 of the Companies Act, 1956 wherein they have not found any entry which relates RPSCL with UEEPL.
- 3.2.34 In reply RPSCL submitted that UPPCL has no locus to undertake denovo prudence check which falls within the exclusive domain of this Commission or the Expert Committee appointed by it. Also UPPCL was updated by RPSCL on continuous basis and was involved in the selection of the EPC contractors. Further, the non-availability of original offers related to award of EPC contracts, additional capital works cannot be an excuse for questioning the contract procedure by UPPCL as copies of all the original offers were provided to UPPCL for verification. RPSCL also submitted that neither the Commission nor the Expert Committee has found any substantiate reason to say that the RPSCL and UEEPL are related party and further submitted that they are not related parties as Companies Act, 2013 and Companies Act, 1956.

**Commission's View**

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3.2.35 It is observed that the expert Committee established by the Commission for prudence check of the capital cost has not raised any such concern in its report. Also, there is no such evidence available showing that the contract award procedure was not conducted in transparent manner. However, the Commission would like to mention that any findings which may come at a later stage showing that the immoral practice were involved in contract award procedure will be considered in the subsequent orders of the Commission.

### **Overheads**

3.2.36 UPPCL submitted that the allowable legal and professional charges for RPSC are Rs. 3.13 Crore as against Rs. 51.94 Crore claimed by the petitioner as the remaining charges has been paid towards the expenses of other group companies. Also, the amount allowable under 'Reimbursement of expenses to Group Companies' head stands at Rs. 26.20 Crore as against Rs. 33.66 Crore claimed by the petitioner, as only such expense is to be allowed under capital cost, which is directly attributable to the project or is incurred by RPSC.

3.2.37 RPSC in its reply submitted that its overhead expense is highly competitive among similar projects established and commissioned in similar time frame. Also, the overhead expense has been prudently spent for the service rendered by the group companies for the timely completion of the project.

3.2.38 In reply UPPCL reiterated that only those expenses are to be considered under capital cost, which is directly incurred for the implementation of the said project.

### **Commission's View:**

3.2.39 The overheads forms part of the Capital Cost, which has already been verified by the Exert Committee appointed by the Commission for conducting prudence check of the capital cost of RPSC. Since, the Expert Committee has not raised any issue on the amount booked for overheads, the Commission consider it appropriate to allow same as claimed by the petitioner and as recommended by the Expert Committee.

### **3.3 Non Submission of actual data**

3.3.1 RPSC filed the petition for True up for Stage-I, determination of tariff for Stage-II and determination of tariff for Stage-I and Stage-II for the second control period i.e. FY 2014-15 to FY 2018-19. The Commission observed many discrepancies and deficiencies in the petition, which were communicated to the petitioner vide various deficiency notes.

3.3.2 On many occasion the petitioner has deliberately have not submitted the crucial information sought by the Commission, which was essential for





completion of the tariff determination process in a transparent manner. The Commission sent four deficiency notes in which following information sought was not submitted by the petitioner:

- i. Actual details of GSHR, Secondary Oil Consumption, transit loss and Fuel consumption etc.
- ii. Performance parameters, fuel cost and variable charges of Stage-II for the period FY 2011-12 to FY 2013-14
- iii. the Income tax charged for FY 2009-10 to FY 2014-15 and further Income tax claimed for Stage I & II separately.
- iv. The supporting actual bills of the all the fuels and related cost components for the period January 2014 to March 2014.
- v. The Year wise consumption of imported coal, domestic coal and year wise cost of LDO and HFO for Stage-I and Stage-II separately.
- vi. Year wise eligible RoE from FY 2010-11 to FY 2014-15.
- vii. Year wise Income tax on ROE from FY 2010-11 to FY 2014-15.
- viii. Year wise Income tax on other income from Core Business apart from RoE from FY 2010-11 to FY 2014-15.
- ix. Actual GSHR from FY 2010-11 to FY 2014-15 for each Stage separately.
- x. Actual Secondary Fuel oil consumption from FY 2010-11 to FY 2014-15 for each Stage separately and for period April 2015 to December 2015.
- xi. Year wise Indian and Imported Coal actual consumption from FY 2010-11 to FY 2014-15 for each Stage separately.
- xii. Year wise actual 'as received GCV' of Indian and imported Coal from FY 2010-11 to FY 2014-15 for each Stage separately and for the period April 2015 to December 2015.
- xiii. Year wise actual 'as fired GCV' of Blended coal with blending ratio from FY 2010-11 to FY 2014-15 for each Stage separately and for the period April 2015 to December 2015.
- xiv. Year wise actual transit loss on Indian and Imported coal from FY 2010-11 to FY 2014-15 for each Stage separately and for the period April 2015 to December 2015.
- xv. Details of Actual Working Capital Loan availed and the applicable interest rate.

3.3.3 Also, it was observed that the petitioner has not submitted all the forms duly filled which are required as per the Regulations, and the same was pointed



out by the Commission, Public Objectors and UPPCL. Further, the Commission has observed that the petitioner on may occasion did not provided satisfactory submission in reply to the deficiency notes, which lead to delay in process of tariff finalisation which indirectly affect the consumers at large.

3.3.4 Further, it is to be considered that the tariff determination process directly impact the consumers at large and hence, any delay in completion of this process, attributable to the developer or the respondent should not be passed onto the consumer as additional burden.

3.3.5 The Commission has observed that the UPPCL which was required to submit the comments on the Capital Cost recommended by the Expert Committee submitted its reply after almost one and half year, which further lead to delay in tariff determination process. Also, RPSC has been constantly misleading the Commission by not providing the sought data.

3.3.6 Hence in view of the above, the Commission has taken an appropriate view.

### **3.4 Hardship**

3.4.1 The Petitioner has filed a petition under the proviso of regulations 2(4) of UPERC Generation Tariff Regulations, 2014, for removal of hardship due to inconsistency in the parameters/ provisions specified in the 2014 Regulations and the PPA at the time of Tariff determination for the control period FY 2014-15 to FY 2018-19.

3.4.2 The Petitioner has submitted that the proviso to Regulation 2(4) of the 2014 Regulations would mandate that new parameters are determined by the Commission for determination of generation tariff for Stage-I & Stage-II of the Generating Station of the Petitioner for the period FY 2014-19 by revisiting the parameters under the 2014 Regulations and bringing them in alignment with the provisions of the PPA's as hardship is being caused to the Petitioner owing to the parameters that were agreed to in the PPAs as saved and protected by the 2004 Regulations, 2009 Regulations and the Commission's order dated March 28, 2011, are deleted/diluted and defeated by the 2014 Regulations. The petitioner herein is facing hardship on account of regulations 6(6), regulations 9(2), regulations 18(iii), regulation 18(iv), regulation 25(v)(b), regulation 25(v)(c), regulation 26(i) and proviso (iii) of regulation 26 of the 2014 Regulations made under and protected by the 2004 Regulations, 2009 Regulations and the Commission's Order dated March 28, 2011 are over-riden by the 2014 Regulations in the form of enacting operational norms, and therefore the operational norms and financial norms under the 2014 Regulations are in conflict with the financial norms and operational norms under the PPAs.



- 3.4.3 In counter affidavit filed by the UPPCL on January 19, 2016, it submitted that the intention of Regulation is clear and unambiguous i.e. 'Regulations shall prevail over PPA' and in the event of hardship the Commission may be approached who may grant relief as the Commission deems fit based on actual parameters. Further, UPPCL submitted that Proviso to Regulations 2(4) is akin to Reg. 14 (Power to Remove Difficulties) and Reg. 15 (Power to Relax). It is an enabling provision for the Commission to grant relief in event of hardship faced and an 'ipso facto' overriding proviso. Further, UPPCL submitted that hardship referred to in Proviso to Reg. 2(4) is not defined in the Regulations. Nor is it defined in the EA03 or any other Regulations pertaining to Electricity Laws. Oxford Dictionary defines Hardship as 'Severe suffering or privation' and the petitioner has failed to show any suffering or privation is imposed by application of norms as per 2014 Tariff Regulations.
- 3.4.4 In the rejoinder filed by the RPSC on March 2, 2016, it is submitted that the hardship cannot be restricted to losses only but would also include reduced revenues. RPSC submitted that the petitioner entered into PPA at the time when operational norms were materially different from those notified in the 2014 Regulations. Moreover the Commission itself in framing of subsequent Regulations such as 2004 Regulations, 2009 Regulations and the order dated March 28, 2011 has protected the interest of the petitioner Company and thus reliance on the old regulations in no manner lead to any absurd interpretation and it has been an accepted practice. Further, RPSC submitted that tariff of any power plant is a reflection of cost and technology and therefore, it is imperative that the technology and financial parameters are kept consistent over the life of the project. Hence, the generators who now commission their project in the present control period would rightly be subject to the extant of 2014 Regulations as it is a reflection of the 'Technology and Cost' of thermal generation as on date. However, such new parameters cannot be imposed upon existing Generating Companies which were conceptualized and executed on entirely different parameters. RPSC added that it has submitted the details of various hardships caused to the petitioner by the application of 2014 Regulations in Para 8 and 9 of the petition.
- 3.4.5 Further, UPPCL made a presentation to the Commission during the hearing on 27.04.2017 and 04.05.2017, vide which they submitted that the Proviso to Regulations 2(4) allows Petitioner to approach the Commission to 'determine' Parameters and De Facto Application of Parameters as per PPA is not the Objective of Proviso. Further, UPPCL submitted that the Commission may determine Parameters under Proviso of Regulations 2(4) consistent with provisions of EA03, National Tariff Policy, National Electricity Policy, etc. and the Parameters may be Determined Based on Quantitative Data.



3.4.6 RPSC and UPPCL submission on the issue wise hardship is as follows:

**Conflict between Regulations 18 of the 2014 Regulations and the signed PPAs on 'Gross Station Heat Rate'**

3.4.7 It is observed that the PPA provides for the GSHR of 2500 Kcal/kWh, whereas UPERC (Terms and conditions for Generation tariff) Regulations, 2014 provides for GSHR of 2475 Kcal/kWh.

3.4.8 RPSC submitted that GSHR of 2500 Kcal/kWh as approved in PPA to be considered as it takes into account the inferior coal quality as received from Coal India Limited with higher ash content and moisture content, as compared to the design coal quality, heavy backing down on reserved shut down in case of slight reduction in demand of the generated electricity and the blending of coal, owing to the lower materialization of the linkage coal from Coal India Limited as against provided in Regulations.

3.4.9 In reply UPPCL submitted that the Petitioner has failed to establish its contention with actual data of GSHR at which stations have operated since date of Commissioning. Thus Petitioner has failed to establish any hardship before the Commission.

**Conflict between Regulations 18 of the 2014 Regulations and the signed PPAs on 'Specific Oil Consumption (SOC)'**

3.4.10 It is observed that the PPA provides for SOC of 2 ml/kWh, whereas UPERC (Terms and conditions for Generation tariff) Regulations, 2014 provides for GSHR of 0.75 ml/kWh.

3.4.11 RPSC has requested the Commission to consider SOC of 2 ml as agreed and approved in PPA, as the Rosa TPP faces frequent rapping up and down due to fluctuating power demand.

3.4.12 UPPCL submitted that the petitioner has failed to establish its contention with actual data of SOC at which stations have operated since date of Commissioning. Thus Petitioner has failed to establish any hardship before the Commission.

**Conflict between Regulations 18 of the 2014 Regulations and the signed PPAs on 'Gross Calorific Value'**

3.4.13 As per PPA, GCV is the average gross calorific value of the Primary Fuel fired at the Station during the Operating Months expressed as Kcal/kg, whereas UPERC (Terms and conditions for Generation tariff) Regulations, 2014 provides for GCV on 'as received' basis.

3.4.14 RPSC submitted that the UPERC Generation Tariff Regulations, 2014, ignored that non pit head of distantly located power plants, such as the power plant of



the Petitioner where coal stocking period is high ,there is significant rate of heat loss due to coal's spontaneous fire oxidation , moisture evaporation windage and coal getting washed away during monsoon.

- 3.4.15 UPPCL submitted that CERC on recommendation of CEA has considered GCV on 'as received' basis as against 'as fired', as there is no significant loss for stacking of coal for 8 to 10 days.
- 3.4.16 As per PPA, GCV is the average gross calorific value of the Primary Fuel fired at the Station during the Operating Months expressed as Kcal/kg.

**Conflict between Regulations 18 of the 2014 Regulations and the signed PPAs on 'Transit loss on Imported Coal'**

- 3.4.17 It is observed that the PPA provides for Handling and transit loss of 0.8%, whereas UPERC (Terms and conditions for Generation tariff) Regulations, 2014 provides for transit loss of 0.2%.
- 3.4.18 RPSC submitted that Transit loss of 0.2% as per Regulations, can only be achieved by coastal power plants and requested the Commission to consider the transit loss of 0.8% as approved in PPA.
- 3.4.19 UPPCL submitted that CERC approved transit loss of 0.2% after analysing actual data of NTPC for five years and also the petitioner has submitted any actual data in support of its averment.

**Conflict between Regulations 18 of the 2014 Regulations and the signed PPAs on 'Interest on Working Capital'**

- 3.4.20 It is observed that the PPA provides for Interest on Working Capital as Prime Lending Rate of State Bank of India as on 1st April of the year in which it achieves COD, whereas the UPERC (Terms and conditions for Generation tariff) Regulations, 2014 provides for interest rate on Working capital as SBI Bank Rate plus 350 basis point.
- 3.4.21 RPSC requested the Commission to consider the SBI PLR instead of SBI Bank Rate + 350 basis points for computation of interest on working capital as this will lead to hardship to the petitioner.
- 3.4.22 UPPCL submitted that interest rate should be determined based on SBI PLR as against SBI Bank Rate' would be in violation of RBI guidelines. Further the Petitioner has failed to provide any proof that weighted average working capital rate approved by banks is in excess of prescribed Bank Rate.

**Conflict between Regulations 18 of the 2014 Regulations and the signed PPAs on 'Sharing of Efficiency Gains at the end of Control Period'**

- 3.4.23 It is observed that the PPA has no provision for sharing of efficiency gains, whereas the UPERC (Terms and conditions for Generation tariff) Regulations,



2014 provides for sharing of gains in the ratio of 80:20 between the generator and beneficiary respectively.

- 3.4.24 RPSC submitted that the PPA does not have any provision for sharing of efficiency gains on operational parameters, whereas, the Regulations 2014, provides for sharing of the financial gains and inclusion of this at the belated stage would cause undue financial hardship to the petitioner.
- 3.4.25 UPPCL submitted that the reason for adopting methodology of sharing of efficiency gains on account of controllable factor is well documented in SOR of CERC and the claim of the petitioner not to allow sharing of efficiency gains on account on controllable factors would be against the principle enshrined in the EA03.

#### **Conflict between Regulation 9 of the 2014 Regulations and the signed PPAs on 'Tax on Income'**

- 3.4.26 It is observed that the PPA provides for pass through of Tax on Income limited to the Income from core business whereas, the tax on other income is to be paid by the petitioner, whereas the UPERC (Terms and conditions for Generation tariff) Regulations, 2014 provides for pass through of Income tax limited to RoE.
- 3.4.27 RPSC submitted that PPA allows the Petitioner to claim the entire tax on income earned from its core business activity, whereas Regulations, 2014, limit the total income tax payable to the generating company to the return on equity levied viz. MAT.
- 3.4.28 Hence, there is conflict in the provisions of the PPA and UPERC Generation Regulations, 2014, which may be resolved by the Commission by invoking proviso to Regulations 2(4) thereby revisiting the existing parameters and bring them in line with the provisions of PPA.
- 3.4.29 UPPCL submitted that the provisions of PPA were consistent with Regulations prevailing at the time of Signing of PPA viz. CERC Tariff Regulations, 2004-09 and UPERC Tariff Regulations, 2004-09. On implementation of CERC and UPERC Regulations, it was realized that Regulations were resulting in unintended burden on beneficiaries. It may be observed that pass through of income tax in totality is against Regulations 61(d) i.e 'safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;'. It is for this reason that CERC, 2009-14 Regulations moved from 'payment of actual tax' to 'grossing of return on equity' and UPERC, 2009-14 Regulations imposed ceiling of Tax on ROE.
- 3.4.30 UPPCL submitted that the Generating Company is only entitled to Return on Equity on capital invested. Other components like O&M, etc. are essentially



Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC

reimbursement of cost. Any saving that a generator is able to make in operating norms are not in nature of return and hence beneficiaries are not eligible to pay tax on same. UPPCL also submitted the comparison of Profit as per books and Regulatory profit, which is as follows:

	2011-12	2012-13	2013-14	Remarks
	Rs. Crores	Rs. Crores	Rs. Crores	
<b>Book Profit</b>				
Profit Before Tax	422.81	879.48	1022.19	As per Audited Financial Statement (AFS).
Depreciation	117.79	232.08	243.15	As per AFS .Being excluded to bring consistency in computation
<b>Total</b>	<b>540.6</b>	<b>1111.56</b>	<b>1265.34</b>	
<b>Regulatory Profit</b>				
<b>Stage 1</b>				
Return on Equity	147.09	149.41	149.41	As per UPERC order dated 28.3.2011 in petition 706/2010)
Depreciation	109.25	110.98	110.98	Being excluded to bring consistency in computation
	256.34	260.39	260.39	
<b>Stage 2</b>				
ROE	2.88	107.29	112.12	As Per Petition 968/2014
Depreciation	2.67	97.87	102.28	As Per Petition 968/2014
	5.55	205.16	214.4	
UI Charges				Details not available
Incentive				Details not available
<b>Total Regulatory Profit</b>	<b>261.89</b>	<b>465.55</b>	<b>474.79</b>	
<b>Excess of Book Profit over Regulatory Profit</b>	<b>278.71</b>	<b>646.01</b>	<b>790.55</b>	





### Commission's View

- 3.4.31 Proviso 2(4) of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, provides remedy in case of conflict between provision of PPA and Regulations, which is as follows:

*“(4) In case of any conflict between provisions of these regulations and a power purchase agreement signed between a generating company and distribution licensee(s)/beneficiary(ies), the provisions of these regulations shall prevail.*

*Provided that in case of projects where parameters have been agreed to in the Power Purchase Agreement or determined through an earlier Regulation prior to 1.4.2014, for any hardship due to discrepancy/inconsistency with parameters given in these Regulations, the Commission may be approached and parameters in such cases may be determined by the Commission at the time of tariff determination of respective generating station.”*

- 3.4.32 Hence to ascertain the hardship caused to the petitioner, the Commission repeatedly sought actual data depicting the hardship through Deficiency notes, however the petitioner did not submit the same. Further, during the hearing, RPSCCL also submitted that they will not provide any actual data as they are pleading only for the financial hardship faced by them and not operational hardship.
- 3.4.33 From the above it can be seen that the Commission provided enough opportunity to the petitioner to prove hardship by submitting the actual data, which was not attempted by it. The submission of actual data was also necessary to take a considerate view if the new parameters were causing any hardship to the petitioner, which has been pleaded.
- 3.4.34 In view of the decision taken in the section 3.1 of this order and the submissions made by the RPSCCL and UPPCL, the Commission reiterates that all issues raised by RPSCCL in their hardship petition shall be governed as per UPERC (Terms and Conditions of Generation Tariff) Regulations 2014, whereas the operating parameters of Gross Station Heat Rate (GSHR) and Specific Fuel Oil Consumption (SFOC) shall be considered under proviso of Regulation 2(4).
- 3.4.35 Further, as per Regulation 6 of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, the Commission shall carry out true up of capital expenditure including additional capital expenditure along with tariff on account of controllable and uncontrollable factor. Also, the Regulations provides for sharing of the gains on account of the gains on account of controllable factors with beneficiary in the ratio of 80:20. The relevant extract of the Regulations is as follows:
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***“6. Truing up of Capital Expenditure and Tariff:***

*(1) The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2019, as admitted by the Commission after prudence check at the time of truing up.*

*(2) The generating company shall make an application, as per Appendix II to these regulations, for carrying out truing up exercise in respect of the generating station or any of its units or block of units thereof by 31.10.2019.*

*(3) The generating company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred duly audited and certified by the auditors.*

*Provided the Commission may appoint a separate independent auditor who, under the supervision of the Commission, shall undertake technical and financial audit of the generating station at any time.*

*(4) The Commission shall also carry out truing up of tariff of generating stations based on the performance of following controllable parameters:*

- (a) Gross Station Heat Rate;*
- (b) Secondary Fuel Oil Consumption;*
- (c) Auxiliary Energy Consumption; and*
- (d) Re-financing of Loan.*

*(5) The Commission shall carry out truing up of tariff of generating stations based on the performance of following uncontrollable parameters:*

- (a) Force Majeure;*
- (b) Change in Law; and*
- (c) Primary Fuel Cost*

*(6) The financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries. The financial gains computed as per following formulae in case of generating station on account of operational parameters contained in Clause (4) (a) to (c) above shall be shared in the ratio of 80:20 between generating company and the beneficiaries:*

*Net Gain = (ECRN– ECRA) x Scheduled Generation*

*Where,*



*ECRN – Normative Energy Charge Rate computed on the basis of norms specified/approved for Gross Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption.*

*ECRA – Actual Energy Charge Rate computed on the basis of actual Gross Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption for the month.*

*Provided that in case of financial gains on account of parameters contained in Clause (4)(d) above shall be shared in accordance with Clause (i) (e) of Regulation 25 & Regulation 44 of these regulations.”*

- 3.4.36 Hence in view of the Regulation 6 of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014 and in absence of actual data regarding operating norms of GSHR and SFOC which was required to be submitted by the petitioner for ascertaining the hardship to the petitioner during the MYT period from FY 2014-15 to FY 2018-19, the Commission at this point of time approves Gross Station Heat Rate and Specific Fuel Oil Consumption as per the UPERC (Terms and Conditions of Generation Tariff) Regulations 2014 only. However, the Commission may reconsider the same while truing up as per UPERC (Terms and Conditions of Generation Tariff) Regulations 2014, if the petitioner is able to substantiate its claim on hardship by submitting the actual data within three months from the date of this order.
- 3.4.37 Further, Reimbursement of Income Tax, shall be governed as per UPERC Regulations.



#### 4. METHODOLOGY FOR TRUE UP

- 4.1. As per the PPA between RPSCCL and UPPCL, there was no provision for True Up, but while accepting the plea of the petitioner for level playing field during approval of Provisional tariff and subsequent final tariff for Stage-I vide order dated March 28, 2011, the Commission took following view:

*“The Commission shall carry out true up exercise with respect to the capital expenditure incurred up to 31.03.2014 for Unit I and Unit II along with the tariff petition by the Petitioner seeking the approval of tariff for the next multi-year tariff period and as admitted by the Commission after prudence check. RPSCCL shall make an application as per Appendix - I of UPERC (Terms & Conditions of Generation Tariff) Regulation, 2009 for carrying out true up exercise. RPSCCL shall submit details of duly audited and certified Capital Expenditure and Additional Capital Expenditure incurred for the period from 12.03.2010 to 31.03.2014 for the purpose of true up of the tariff approved by the Commission in this order.”*

- 4.2. Further, as per UPERC Generation Tariff Regulations, 2009 and its amendments provides the following for True Up:

*“Truing up of Capital Expenditure and Tariff:*

*(i) The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31-3-2014, as admitted by the commission after prudence check at the time of truing up:*

*Provided that the generating company may in its discretion make an application before the Commission one more time prior to 2013-14 for revision of tariff.*

*(ii) The generating company shall make an application, as per Appendix I to these regulations, for carrying out truing up exercise in respect of the generation station or any of its units thereof by 31-10-2014.*

*(iii) The generating company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1-4-2009 to 31-03-2014, duly audited and certified by the auditors.*

*(iv) Where after the truing up the tariff recovered exceeds the tariff approved by the Commission under these regulations the generating company shall refund to the beneficiaries, the excess amount so recovered along with simple interest at the rate equal to short-term Lending Rate Bank of India prevailing as on 1st April of the respective year.*



(v) Where after the truing up the tariff recovered is less than the tariff approved by the Commission under these regulations the generating company shall recover from the beneficiaries, the under-recovered amount along with simple interest at the rate equal to short-term Lending Rate Bank of India prevailing as on 1st April of the respective year.

(vi) The amount under-recovered or over-recovered, along with simple interest at the rate equal to the short-term Prime Lending Rate of State Bank of India prevailing as on 1st April of the respective year, shall be recovered or refunded by the generating company, in six equal monthly instalments starting within three months from the date of the tariff issued by the Commission after the truing up exercise.”

4.3. The petitioner in true up petition for Stage-I has sought truing up on account of (i) Change in Interest on Loan and (ii) Interest on Working Capital. From above it can be observed that neither, the UPERC Generation tariff Regulations, nor the direction of the Commission provides for truing of Interest on Loan and Interest on Working Capital.

4.4. Further, as per UPERC Generation Tariff regulations, the Interest on loan is pass through and is to be settled between the parties. However, the petitioner may approach the Commission in case of any dispute with a separate petition. The relevant extract of the Regulations, is as follows:

“(i) Interest on loan capital

(a) Interest on loan capital shall be computed loan wise on the loans arrived at in the manner indicated in regulation 20.

(b) The loan outstanding as on 1st April shall be worked out as the gross loan as per regulation 20 minus cumulative repayment as admitted by the Commission up to 31st March. The repayment shall be worked out on a normative basis.

(c) The rate of the interest shall be the weighted average rate of interest calculated on the basis of actual loans at the beginning of each year and shall be adjusted based on actual loan each year accordingly.

(d) If there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average of interest shall be considered.

(e) The generating company shall make every effort to swap the loan as long as it results in net benefit to the beneficiaries. The costs associated with such swapping shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company in the ratio of 2:1.



- (f) *The changes to the loan terms and conditions shall be reflected from the date of such swapping and benefit passed on to the beneficiaries.*
- (g) *In case of any dispute, any of the parties may approach the Commission with proper application. However, the beneficiaries shall not withhold any payment as ordered by the Commission to the generating company during pendency of any dispute relating to swapping of loan.*
- (h) *In case any moratorium period is availed of by the generating company, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be calculated accordingly.*
- (i) *The generating company shall not make any profit on account of swapping of loan and interest on loan.*
- (j) ***In case, the generating company has contracted floating/variable rate of interest on loan resetting at certain interval of time the impact of change in rate of interest shall be assessed by the generating company on account of such resetting duly certified by statutory auditor and the capacity charge of the relevant year shall be adjusted for such impact and billed accordingly to beneficiary without approaching the Commission for change in tariff on this account.***

*Provided that the generating company shall make every effort to refinance/swap the loan as long as it results in net benefit to the beneficiaries. The costs associated with such refinancing/swapping shall be borne by the beneficiaries. Both the above facts shall be certified by statutory auditor.*

*Provided if the generating company does not have actual loan or have swapped/refinanced the loan resulting in no specific loan attributable to the generating station then the weighted average rate of interest of the generating company as a whole shall be considered.*

*Provided also in case of dispute, any party to such dispute may approach the Commission with proper application and it shall be ensured that the payment to the generating company is not withheld during pendency of the dispute.” (Emphasis Added)*

- 4.5. Hence, in view of the above, the petitioner is directed to settle its claim on Interest on Loan with UPPCL directly. Further, the Commission allows the petitioner to approach the Commission through a separate petition in case of any dispute.



- 4.6. Also, neither the PPA nor the UPERC (Terms and condition of Generation Tariff) Regulations, 2009, provides for True up of interest on Working Capital. Hence, the Commission has dis-allowed the petitioner's claim on truing up of Interest on Working Capital.
- 4.7. Considering the above, the Commission has approved True Up for Stage-I for the period from FY 2009-10 to FY 2013-14 on account of Capital Cost and undischarged liability as submitted by the petitioner on 26.06.2017 only, which is shown in next chapter.





## 5. TRUING UP OF 2X300 MW ROSA TPP (STAGE I) FOR FY 2009-10 TO FY 2013-14

- 5.1. The final tariff for Stage I was approved by the Commission vide Order dated March 28, 2011 after a detailed deliberation with a direction that, the Commission shall carry out true up exercise with respect to the capital expenditure incurred up to March 31, 2014 for Unit I and Unit II after the prudence check. Against the approved project cost of Rs 3112.81 Crores, the Petitioner capitalized cost of Rs 3113.37 Crores for project completion up to the period ending March 31, 2012.
- 5.2. Later the Petitioner had filed an interim petition for True up of tariff for Stage-I vide petition no 811 of 2012 for change in interest rates & total working capital requirement of Stage I.
- 5.3. However, vide Order dated May 22, 2014, the Commission directed the following:

*“Considering the facts that the tariff period has completed on 31.3.2014 and report of the Expert Committee on Capital Cost is expected soon, the Commission finds that it would be appropriate for RPSCCL to file a consolidated petition afresh in respect of the entire generating station.”*
- 5.4. In adherence to the above stated Order of the Commission, the Petitioner filed fresh petition for the true up of Tariff for Stage I after the submission of Expert Committee report.
- 5.5. The Petitioner has sought the Truing up of Tariff for 600 MW Rosa Thermal Power Plant Stage I due to change in (a) interest rates, and (b) working capital interest as per the amended and restated power purchase agreement signed between the Petitioner and Uttar Pradesh Power Corporation Limited (UPPCL).
- 5.6. Based on the detailed analysis of the petitioner’s submission, and the treatment of the same as discussed in Chapter 4 of this order the Commission approves the true up for FY 2009-10 to FY 2013-14, which is deliberated as under:



Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC

### Approved GFA for Stage-I

Particulars	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Opening GFA	0.00	1482.16	2673.84	3045.95	3077.59
Additions	1482.16	1602.25	28.40	0.00	0.00
Undischarged Liability	0.00	452.98	0.00	0.00	0.00
Discharge of liability	0.00	62.41	343.70	31.65	15.21
*Deductions (R&R / CSR Expense)		20.00			
Net Addition	1482.16	1191.68	372.10	31.65	15.21
Closing GFA	<b>1482.16</b>	<b>2673.84</b>	<b>3045.95</b>	<b>3077.59</b>	<b>3092.81</b>
Net GFA	<b>1480.71</b>	<b>2598.42</b>	<b>2807.90</b>	<b>2659.30</b>	<b>2493.43</b>
<b>Financing:</b>					
Opening Equity	0.00	444.65	802.15	913.78	923.28
Net Additions	444.65	357.51	111.63	9.49	4.56
Closing Equity	444.65	802.15	913.78	923.28	927.84
Opening Accu Dep.	0.00	1.45	75.42	238.04	418.29
Dep. During the year	<b>1.45</b>	<b>73.98</b>	<b>101.81</b>	<b>109.00</b>	<b>109.83</b>
Advance Against Depreciation	0.00	0.00	60.81	71.25	71.25
Total accu. Dep.	<b>1.45</b>	<b>75.42</b>	<b>238.04</b>	<b>418.29</b>	<b>599.38</b>
<b>Opening Debt</b>	0.00	1036.07	1796.27	1894.12	1736.02
Additions	1037.51	834.18	260.47	22.15	10.65
Less : Repayment	<b>1.45</b>	<b>73.98</b>	<b>162.62</b>	<b>180.25</b>	<b>181.08</b>
Closing Debt	1036.07	1796.27	1894.12	1736.02	1565.59

\* Deduction on account of R&R / CSR expense has been done for the purpose of disallowance in the fixed charges as explained in detail in chapter 3.



Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC

**Approved Annual Fixed Charges for FY 2009-10 to FY 2013-14 after True up**

Particulars	FY 2009-10			FY 2010-11			FY 2011-12		
	Petition	Approved	Diff	Petition	Approved	Diff	Petition	Approved	Diff
O&M Expense	2.63	2.63	0.00	88.86	88.86	0.00	107.28	107.28	0.00
Depreciation	2.9	1.45	-1.45	92.51	73.98	-18.53	109.25	101.81	-7.44
Advance against Depreciation	0	0.00	0.00	0	0.00	0.00	60.81	60.81	0.00
Interest on Loan	5.48	5.48	0.00	171.64	157.75	-13.89	213.48	191.42	-22.06
Return on Equity	3.9	1.95	-1.95	124.5	99.74	-24.76	147.09	137.27	-9.82
Interest on Working Capital	1.16	1.09	-0.07	39.52	38.33	-1.19	72.61	51.26	-21.35
<b>Total</b>	<b>16.07</b>	<b>12.59</b>	<b>-3.48</b>	<b>517.03</b>	<b>458.66</b>	<b>-58.37</b>	<b>710.52</b>	<b>649.85</b>	<b>-60.67</b>

Particulars	FY 2012-13			FY 2013-14		
	Petition	Approved	Diff	Petition	Approved	Diff
O&M Expense	113.46	113.46	0.00	119.94	119.94	0.00
Depreciation	110.98	109.00	-1.98	110.98	109.83	-1.15
Advance against Depreciation	71.25	71.25	0.00	71.25	71.25	0.00
Interest on Loan	221.42	176.95	-44.47	179.25	160.48	-18.77
Return on Equity	149.41	146.96	-2.45	149.41	148.09	-1.32
Interest on Working Capital	98.85	61.01	-37.84	95.81	61.79	-34.02
<b>Total</b>	<b>765.37</b>	<b>678.64</b>	<b>-86.73</b>	<b>726.64</b>	<b>671.38</b>	<b>-55.26</b>



## **6. FIXATION OF TARIFF FOR 2X300 MW ROSA THERMAL POWER PLANT STAGE II FOR THE PERIOD FY 2011-2012 TO FY 2013-14**

### **6.1 INTRODUCTION**

6.1.1. In accordance with the Regulation 5 of UPERC (Terms & Conditions of Generation Tariff) Regulations, 2009, the Petitioner has submitted the Petition before the Commission for fixation of final tariff for Stage II for the period FY 2011-14 on the basis of terms and condition for determination of tariff approved by the Commission in the PPA, SPPA and ASPPA. The Petition has been divided in two sub-parts namely

- a. Approval of financing package
- b. Computation of Tariff

6.1.2. Earlier, the Commission vide order dated May 25, 2012, provisionally approved the fixed charges for Stage-II same as Stage-I for FY 2011-12 and FY 2012-13 and variable charges as on actuals and directed that the tariff to remain applicable till the final tariff is determined by the commission.

6.1.3. **Now since the audited accounts are available till FY 2013-14, the Commission in this order has approved Tariff for Stage-II for the period from FY 2011-12 to FY 2013-14 along with its True Up.**

### **6.2 TARIFF DESIGN AND APPROACH FOR DETERMINATION OF TARIFF**

6.2.1. The data on GFA has been considered as per auditor certificate after deduction of Un-discharged liability.

6.2.2. Return on Equity has been considered as 16.0 % as provided in Regulation 21 (iii) in the UPERC Generation Tariff Regulations, 2009.

6.2.3. The rate of the interest shall be the weighted average rate of interest calculated on the basis of actual loans at the beginning of each year and shall be adjusted based on actual loan each year accordingly. If there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average of interest has been considered.

6.2.4. Depreciation and Advance Against Depreciation has been allowed as provided in Regulation 21 (ii) in the UPERC Generation Tariff Regulations, 2009.

6.2.5. The O&M expenditure has been allowed as per the normative values provided in Regulation 21 (iv) of the UPERC Generation Tariff Regulations, 2009.



6.2.6. Working capital requirement has been allowed as per Regulation 21 (v) of the UPERC Generation Tariff Regulations 2009. The rate of interest on working capital has been allowed on normative basis as equal to the short-term Prime Lending Rate of State Bank of India as on 1.4.2009 or as on 1st April of the year during which the generating station or a unit thereof is declared under commercial operation, whichever is later.

6.2.7. Depending on the above elaborated methodology the Commission has determined final tariff for Stage-II for FY 2011-12 to FY 2013-14.

### 6.3 APPROVED TARIFF FOR STAGE-II FOR FY 2011-12 TO FY 2013-14

6.3.1. In the petition, the petitioner has claimed Fixed charges as follows:

Particulars	FY 2011-12	FY 2012-13	FY 2013-14
	Petition	Petition	Petition
O&M Expense	2.93	113.46	119.94
Depreciation	2.88	107.29	112.12
Advance against Depreciation	17.5	55.77	50.93
Interest on Loan	6.75	232.38	207.64
Return on Equity	2.67	97.87	102.28
Interest on Working Capital	1.94	95.63	93.92
<b>Total</b>	<b>34.67</b>	<b>700.14</b>	<b>686.83</b>

6.3.2. Annual Fixed Charges as determined by the Commission are as follows:

#### i. Fixed Charges

For determination of components of fixed charges for MYT period from FY 2011-12 to FY 2013-14 for Stage-II, the Commission opines that the parameters as provided in UPERC (Terms and Conditions of Generation Tariff) Regulations 2009 and its amendments, will be applicable. Hence, in view of the above the Commission has decided to allow the components of fixed charges as below:

Sl. No.	Component of Fixed Charge	Value	Remark
1	Debt : Equity	Actual	As per Regulations, 2009
2	Interest on Loan (IoL)	Actual	As per Regulations, 2009
3	Depreciation	Normative	As per Regulations, 2009
4	Return on Equity (RoE)	15.5 % + 0.5 %	As per Regulations, 2009
5	O & M	Rs. 16.00 lac/MW for 2009-10 Rs. 16.92 lac/MW for 2010-11	As per Regulations, 2009



Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC

Sl. No.	Component of Fixed Charge	Value	Remark
		Rs. 17.88 lac/MW for 2011-12 Rs. 18.91 lac/MW for 2012-13 Rs. 19.99 lac/MW for 2013-14	
6	I W C	SBI PLR	As per Regulations, 2009

## ii. Gross Fixed Asset (GFA) and its components

For the determination of Return on Equity, Interest on balance Loans and Depreciation it is essential to determine the value of GFA duly supported with the financing program and the value of Net Fixed Asset (NFA) at the end of each financial year. Therefore, the GFA and NFA at the end of each financial year commencing from FY 2011-12 to FY 2013-14 has been worked out along with Equity and Debts taking consideration of the actual capital expenditure as per Auditors certificates

### Calculation of GFA and NFA including Financing

Particulars	FY 2011-12	FY 2012-13	FY 2013-14
Opening GFA	0.00	2956.57	2955.33
Additions	1478.29	133.15	48.20
Undischarged Liability	0.00	286.86	46.05
Discharge of Liability	0.00	152.47	26.68
Net Addition	1478.29	-1.24	28.83
<b>Closing GFA</b>	<b>1478.29</b>	<b>2955.33</b>	<b>2984.16</b>
<b>Net GFA</b>	<b>1469.37</b>	<b>2783.36</b>	<b>2649.13</b>
<b>Financing:</b>			
Opening Equity	0.00	305.85	611.42
Net Additions	305.85	305.58	5.97
Closing Equity	305.85	611.42	617.39
Open. Accu Dep.	0	8.91	171.97
Dep. During the year	1.44	105.23	105.72
Advance Against Depreciation	7.47	57.83	57.34
Total accu. Dep.	8.91	171.97	335.03



Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSCL

Particulars	FY 2011-12	FY 2012-13	FY 2013-14
Opening Debt	0.00	2335.98	2171.94
Additions	1172.45	-0.98	22.86
Less: Repayment	8.91	163.06	163.06
Closing Debt	1163.54	2171.94	2031.74

### iii) Return on Equity (RoE), Depreciation, O&M and Interest on Loans

On the basis of methodology as detailed above in Section 8.2 and the details of GFA, NFA and financing as indicated above the Return on Equity, Depreciation, O&M expenditure and Interest on Loans, at the end of each financial year for the period from FY 2011-12 to FY 2013-14 is as follows:

#### Details of approved RoE, Depreciation, O&M and Interest on Loans

Particulars	FY 2011-12	FY 2012-13	FY 2013-14
Return on Equity	1.34	73.38	98.31
Depreciation	1.44	105.23	105.72
Advance Against Depreciation	7.47	57.83	57.34
Interest on Loan	4.23	232.38	185.17
O&M expenses (Normative)	2.93	113.46	119.94
<b>Total</b>	<b>17.41</b>	<b>582.28</b>	<b>566.48</b>

### iv) Interest on Working Capital

The amount of working Capital and Interest on working Capital for the period from FY 2011-12 to FY 2013-14 for Stage-II as determined by the Commission is as under:

#### Interest on Working capital as determined by the commission

Particulars	FY 2011-12	FY 2012-13	FY 2013-14
Cost of Coal for 2 months	5.44	246.85	245.51
Cost of Secondary Fuel Oil for 2 months	0.10	4.73	4.99
Operation & Maintenance expenses for 1 month	4.40	9.46	10.00
Maintenance spares	0.59	22.69	23.99
Receivables	8.42	364.57	360.44
<b>Total Working Capital</b>	<b>18.94</b>	<b>648.31</b>	<b>644.92</b>
Rate of Interest	13.00	14.75	14.45
<b>Interest on Working Capital</b>	<b>0.13</b>	<b>95.63</b>	<b>93.19</b>





**v) Fixed charges per unit of generation:**

Based on above the capacity charges as claimed by Petitioner and as approved by the Commission are tabulated herein for the period from FY 2011-12 to FY 2013-14.

**Annual Fixed Charges as claimed and as approved by the Commission**

Particulars	FY 2011-12			FY 2012-13		
	Petition	Approved	Diff	Petition	Approved	Diff
O&M Expense	2.93	2.93	0.00	113.46	113.46	0.00
Depreciation	2.88	1.44	-1.44	107.29	105.23	-2.06
Advance against Depreciation	17.5	7.47	-10.03	55.77	57.83	2.06
Interest on Loan	6.75	4.23	-2.52	232.38	232.38	0.00
Return on Equity	2.67	1.34	-1.33	97.87	73.38	-24.49
Interest on Working Capital	1.94	0.13	-1.81	95.63	95.63	0.00
<b>Total</b>	<b>34.67</b>	<b>17.55</b>	<b>-17.12</b>	<b>700.14</b>	<b>677.91</b>	<b>-22.23</b>
<b>Energy Sent out</b>	<b>111.38</b>	<b>111.38</b>	<b>0.00</b>	<b>4065.52</b>	<b>4065.52</b>	<b>0.00</b>
<b>Annual Fixed Charge per Unit</b>	<b>3.11</b>	<b>1.58</b>	<b>-1.54</b>	<b>1.72</b>	<b>1.67</b>	<b>-0.055</b>

Particulars	FY 2013-14		
	Petition	Approved	Diff
O&M Expense	119.94	119.94	0.00
Depreciation	112.12	105.72	-6.40
Advance against Depreciation	50.93	57.34	6.41
Interest on Loan	207.64	185.17	-22.47
Return on Equity	102.28	98.31	-3.97
Interest on Working Capital	93.92	93.19	-0.73
<b>Total</b>	<b>686.83</b>	<b>659.67</b>	<b>-27.16</b>
<b>Energy Sent out</b>	<b>4065.52</b>	<b>4065.52</b>	<b>0.00</b>
<b>Annual Fixed Charges per Unit</b>	<b>1.69</b>	<b>1.62</b>	<b>-0.07</b>

The Actual COD of unit-III of Stage -II is 01.01.2012, however, the petitioner has claimed the annual fixed charges for the year 2011-12, considering the COD of unit-III of Stage-II as 12.03.2012 (i.e. AFC is claimed for 20 days) keeping in mind the availability of the system from this date. The Commission vide its order dated 20.03.2013 has already approved the deemed availability for the unit-III for the period from 01.01.2012 to 20.03.2012, and directed both the parties to settle the dues separately. Hence, the Commission in this order has approved fixed charges for the period onwards 12.03.2012. The fixed charges paid upto 12.03.2012 shall be adjusted accordingly.

**6.3.3. Representative calculation of Variable Charges:**



**Variable charge per unit of Generation –** For the purpose of calculation of normative working capital

Based on the operation norms provided in the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009, the variable charge per unit of generation for Rosa Power Station for the period from FY 2011-12 to FY 2013-14 has been arrived at. The calculation shown below is representative of the variable cost calculation and has been used to arrive at some of the components of normative working capital.

**Variable charge per unit of generation for Rosa Power Station**

Particulars	Units	FY 2011-12	FY 2012-13	FY 2013-14
Capacity	MW	300	600	600
Availability Factor	%	85	85	85
Gross Station Heat Rate	kcal/kWh	2500	2500	2500
Auxiliary Energy Consumption	%	9	9	9
Gross Generation	MU	557	4468	4468
Ex-bus Energy Sent Out	MU	507	4066	4066
Specific Oil Consumption	ml/kWh	1	1	1
Weighted Average GCV of Oil	kcal/L	9838	9582	9495
Price of Oil	Rs./kL	51671	63566	66994
Weighted Average GCV of Coal	kcal/kg	3619	3816	3834
Price of Coal	₹/MT	3939	5080	5076
Rate of Energy Charges Ex-bus	Paise/kWh	303.49	371.30	369.69

**6.3.4. Summary of Fixed Charges**

The Fixed Charges for Rosa Thermal Power Station for the period of FY 2011-12 to FY 2013-14 is summarized in the table below.

**Fixed Charge per kWh as claimed with those as allowed by the Commission**

Particulars	FY 2011-12			FY 2012-13		
	Petition	Approved	Diff	Petition	Approved	Diff
Annual Fixed Charge (in Rs. Crore)	34.67	17.55	-17.12	34.67	17.55	-17.12
Fixed Charge per Unit	3.11	1.58	-1.54	1.72	1.67	-0.055

Particulars	FY 2013-14		
	Petition	Approved	Diff
Annual Fixed Charge (in	686.83	659.67	-27.16



*Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC*

Particulars	FY 2013-14		
	Petition	Approved	Diff
Rs. Crore)			
Fixed Charge per Unit	1.69	1.62	-0.07



## **7. FIXATION OF TARIFF FOR 4X300 MW ROSA THERMAL POWER PLANT STAGE I & II FOR THE SECOND CONTROL PERIOD FY 2014-15 TO FY 2018-19**

### **7.1 INTRODUCTION**

7.1.1 RPSCCL has submitted the Tariff Petition for the control period of FY 2014-15 to FY 2018-19, to determine Generation Tariff in accordance with the provisions specified in the Amended and Restated PPA dated November 12, 2006, SPPA dated September 11, 2009 and ASPPA dated November 19, 2011.

7.1.2 The Petitioner has requested the Commission to

- a. Approve Fixed Charges for supplying the regulated contracted capacity of 4X300MW to UPPCL from the second control period from FY 2014-15 to FY 2018-19 along with the carrying cost for the period elapsed of FY 2015-16 in issuance of Tariff Order.
- b. Approve the carrying cost for the period FY 2014-15 on the revised Fixed Charges.
- c. Direct UPPCL to admit bills for the aforementioned fixed cost for the respective years along with interest.

7.1.3 The Petition has been divided in two sub-parts namely

- a. Capital Cost including additional capitalization and means of finance
- b. Computation of Tariff.

### **7.2 TARIFF DESIGN AND APPROACH FOR DETERMINATION OF TARIFF for MYT PERIOD FROM FY 2014-15 to FY 2018-19**

7.2.1 The capital cost of the whole project has been considered for determination of tariff for the MYT period FY 2014-15 to FY 2018-19 i.e. tariff for Stage-I + Stage-II as a whole.

7.2.2 The data on GFA has been considered as per auditor certificate after deduction of Un-discharged liability. The Additional Capital Expenditure and undischarged liability has not been allowed in this order for the period from FY 2014-15 to FY 2018-19 as explained in Chapter 3.

7.2.3 Return on Equity has been considered as 16.0 % as provided in Regulation 25 (iii) in the UPERC (Terms and Conditions of Generation Tariff) Regulations 2014.

7.2.4 The rate of the interest on loans shall be the weighted average rate of interest calculated on the basis of actual loans at the beginning of each year and shall



be adjusted based on actual loan each year accordingly. If there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average of interest has been considered.

7.2.5 Depreciation has been allowed as provided in Regulation 25 (ii) in the UPERC (Terms and Conditions of Generation Tariff) Regulations 2014. Also claims pertaining to Advance Against Depreciation (AAD) has been disallowed as there is no such provision in UPERC (Terms and Conditions of Generation Tariff) Regulations 2014.

7.2.6 The O&M expenditure has been allowed as per the normative values provided in Regulation 25 (iv) of the UPERC (Terms and Conditions of Generation Tariff) Regulations 2014.

7.2.7 Working capital requirement has been allowed as per Regulation 25 (v) of the UPERC (Terms and Conditions of Generation Tariff) Regulations 2014. The rate of interest on working capital has been allowed on normative basis as equal to the SBI Base Rate plus as on 1.4.2014 or as on 1st April of the year during which the generating station or a unit thereof is declared under commercial operation, whichever is later plus 350 basis point.

7.2.8 Depending on the above elaborated methodology the Commission has determined final tariff for Stage-I and Stage-II combined for FY 2014-15 to FY 2018-19.

### 7.3 APPROVED TARIFF FOR STAGE-I AND STAGE-II (FOR STATION AS WHOLE) FOR MYT PERIOD FROM FY 2014-15 TO FY 2018-19

7.3.1 In the petition, the petitioner has claimed Annual Fixed charges as follows:

Particulars	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Return on Equity	282.69	314.28	322.56	322.56	322.56
Depreciation	229.72	237.98	241.00	241.00	241.00
Advance Against Depreciation	114.95	106.68	103.66	135.02	229.10
Interest on Loan	342.84	303.89	265.83	234.36	198.30
Interest on working capital	200.17	200.22	200.12	201.28	203.98
O&M expenses (Normative)	239.40	254.42	270.48	287.52	305.64
<b>Total</b>	<b>1409.78</b>	<b>1417.58</b>	<b>1403.65</b>	<b>1421.74</b>	<b>1500.57</b>



7.3.2 Annual Fixed Charges as determined by the Commission are as follows:

**i. Fixed Charges**

For determination of components of fixed charges for MYT period from FY 2014-15 to FY 2018-19 for Stage-I and Stage-II, the Commission opines that the parameters as provided in UPERC (Terms and Conditions of Generation Tariff) Regulations 2014, will be applicable. Hence, in view of the above the Commission has decided to allow the components of fixed charges as below:

Sl. No.	Component of Fixed Charge	Value	Remark
1	Debt:Equity	Actual	As per MYT Regulations 2014-15 to FY 2018-19
2	Interest on Loan (IoL)	Actual	As per MYT Regulations 2014-15 to FY 2018-19
3	Depreciation	Normative	As per MYT Regulations 2014-15 to FY 2018-19
4	Return on Equity (RoE)	15.5 % + 0.5 %	As per MYT Regulations 2014-15 to FY 2018-19
5	O & M	Rs. 19.95.00 lac/MW for 2014-15 Rs. 21.21 lac/MW for 2015-16 Rs. 22.54 lac/MW for 2016-17 Rs. 23.96 lac/MW for 2017-18 Rs. 25.47 lac/MW for 2018-19	As per MYT Regulations 2014-15 to FY 2018-19
6	I W C	SBI PLR	As per MYT Regulations 2014-15 to FY 2018-19

**ii. Gross Fixed Asset (GFA) and its component**

For the determination of Return on Equity, Interest on balance Loans and Depreciation it is essential to determine the value of GFA duly supported with the financing program and the value of Net Fixed Asset (NFA) at the end of each financial year. Therefore, the GFA and NFA at the end of each financial year commencing from FY 2014-15 to FY 2018-19 has been worked out along with Equity and Debts taking consideration of the actual capital expenditure as per Auditors certificates

**Calculation of GFA and NFA including Financing**

Particulars	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Ope. GFA	6076.97	6076.97	6076.97	6076.97	6076.97



Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC

Particulars	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Additions	0.00	0.00	0.00	0.00	0.00
Undischarged Liability	0.00	0.00	0.00	0.00	0.00
Discharge of Liability	0.00	0.00	0.00	0.00	0.00
Net Addition	0.00	0.00	0.00	0.00	0.00
Clo. GFA	6076.97	6076.97	6076.97	6076.97	6076.97
Net GFA	4795.25	4447.94	4100.63	3753.33	3406.02
<b>Financing:</b>					
Opening Equity	1545.23	1545.23	1545.23	1545.23	1545.23
Net Additions	0.00	0.00	0.00	0.00	0.00
Closing Equity	1545.23	1545.23	1545.23	1545.23	1545.23
Open. Accu Dep.	934.41	1281.72	1629.02	1976.33	2323.64
Dep. During the year	347.31	347.31	347.31	347.31	347.31
Advance Against Depreciation	0.00	0.00	0.00	0.00	0.00
Total accu. Dep.	1281.72	1629.02	1976.33	2323.64	2670.95
<b>Opening Debt</b>	3597.32	3250.02	2902.71	2555.40	2208.09
Additions	0.00	0.00	0.00	0.00	0.00
Less: Repayment	347.31	347.31	347.31	347.31	347.31
Closing Debt	3250.02	2902.71	2555.40	2208.09	1860.78

### iii) RoE, Depreciation, O&M Expense and Interest on Loans

On the basis of methodology as detailed above in Section 9.2 and the details of GFA, NFA and financing as indicated above the Return on Equity, Depreciation, O&M expenditure and Interest on Loans, at the end of each financial year for the MYT period from FY 2013-14 to FY 2014-15 is as follows:

#### Details of approved RoE, Depreciation, O&M and Interest on Loans

Particulars (in Rs. Crore)	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Return on Equity	247.24	247.24	247.24	247.24	247.24
Depreciation	347.31	347.31	347.31	347.31	347.31
Advance Against Depreciation	0.00	0.00	0.00	0.00	0.00
Interest on Loan	336.55	294.41	252.98	222.69	193.68
O&M expenses (Normative)	239.40	254.52	270.48	287.52	305.64
<b>Total</b>	<b>1170.49</b>	<b>1143.47</b>	<b>1118.01</b>	<b>1104.76</b>	<b>1093.86</b>





#### iv) Interest on Working Capital

The amount of working Capital and Interest on working Capital for the period from FY 2014-15 to FY 2018-19 for Stage-I and Stage-II (consolidated) as determined by the Commission is as under:

#### Interest on Working capital as determined by the commission

Particulars (in Rs. Crore)	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Cost of Coal	479.90	440.50	440.50	440.50	440.50
Cost of Oil	7.48	4.39	4.37	4.37	4.37
O&M expenses for 1 month	19.95	21.21	22.54	23.96	25.47
Maintenance spares	47.88	50.90	54.10	57.50	61.13
Receivables	717.77	669.50	664.00	661.85	660.11
<b>Total Working Capital</b>	<b>1272.99</b>	<b>1186.50</b>	<b>1185.50</b>	<b>1188.18</b>	<b>1191.58</b>
Rate of Interest	13.50%	13.50%	13.50%	13.50%	13.50%
<b>Interest on Working Capital</b>	<b>171.85</b>	<b>160.18</b>	<b>160.04</b>	<b>160.40</b>	<b>160.86</b>

#### v) Annual Fixed Charges per unit of generation:

Based on above the fixed charges as claimed by Petitioner and as approved by the Commission are tabulated herein for the MYT period of F.Y. 2014-15 to F.Y 2018-19.

Particulars (in Rs. Crore)	FY 2014-15			FY 2015-16		
	Petition	Approved	Diff	Petition	Approved	Diff
O&M Expense	239.40	239.40	0.00	254.42	254.52	0.10
Depreciation	229.72	347.31	117.59	237.98	347.31	109.33
Advance against Depreciation	114.95	0.00	-114.95	106.68	0.00	-106.68
Interest on Loan	342.84	336.55	-6.29	303.89	294.41	-9.48
Return on Equity	282.69	247.24	-35.45	314.28	247.24	-67.04
Interest on Working Capital	200.17	171.85	-28.32	200.22	160.18	-40.04
<b>Total</b>	<b>1409.77</b>	<b>1342.35</b>	<b>-67.42</b>	<b>1417.47</b>	<b>1303.65</b>	<b>-113.82</b>
Ex-bus Energy Sent Out	7652.736	8175.708	522.97	7673.70	8198.11	524.40
<b>Capacity per unit charge</b>	<b>1.84</b>	<b>1.64</b>	<b>-0.20</b>	<b>1.85</b>	<b>1.59</b>	<b>-0.26</b>

Particulars	FY 2016-17			FY 2017-18		
	Petition	Approved	Diff	Petition	Approved	Diff
O&M Expense	270.48	270.48	0.00	287.52	287.52	0.00
Depreciation	241.00	347.31	106.31	241.00	347.31	106.31
Advance against Depreciation	103.66	0.00	-103.66	135.02	0.00	-135.02



Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC

Particulars	FY 2016-17			FY 2017-18		
	Petition	Approved	Diff	Petition	Approved	Diff
Interest on Loan	265.83	252.98	-12.85	234.36	222.69	-11.67
Return on Equity	322.56	247.24	-75.32	322.56	247.24	-75.32
Interest on Working Capital	200.12	160.04	-40.08	201.28	160.40	-40.88
<b>Total</b>	<b>1403.65</b>	<b>1278.05</b>	<b>-125.60</b>	<b>1421.74</b>	<b>1265.16</b>	<b>-156.58</b>
Ex-bus Energy Sent Out	7652.736	8175.708	522.97	7652.736	8175.708	522.97
<b>Capacity per unit charge</b>	<b>1.83</b>	<b>1.56</b>	<b>-0.27</b>	<b>1.86</b>	<b>1.55</b>	<b>-0.31</b>

Particulars	FY 2018-19		
	Petition	Approved	Diff
O&M Expense	305.64	305.64	0.00
Depreciation	241.00	347.31	106.31
Advance against Depreciation	229.10	0.00	-229.10
Interest on Loan	198.30	193.68	-4.62
Return on Equity	322.56	247.24	-75.32
Interest on Working Capital	203.98	160.86	-43.12
<b>Total</b>	<b>1500.58</b>	<b>1254.73</b>	<b>-245.85</b>
Ex-bus Energy Sent Out	7652.736	8175.708	522.97
Capacity per unit charge	1.96	1.53	-0.43

### 7.3.3 Representative calculation of Variable Charges:

**Variable charge per unit of Generation** – Variable charge per unit has been calculated for the purpose of calculation of normative working capital.

Based on the operation norms provided in the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014 and the Commission's decision in Section 3.4 of this order, the variable charge per unit of generation for Rosa Power Station for the MYT period from FY 2014-15 has been arrived at. Further for FY 2015-16 to FY 2018-19 the variable charge per unit of generation has been arrived at based on the actual coal price for FY 2015-16 as submitted by the petitioner vide submission dated June 29, 2016. The calculation shown below is representative of the variable cost calculation and has been used to arrive at some of the components of normative working capital.

#### **Variable charge per unit of generation for Rosa Power Station**



Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC

Particulars	Units	FY 2014-15	FY 2015-16	FY 2016-17
Capacity	MW	1200	1200	1200
Availability Factor	%	85	85	85
Gross Station Heat Rate	kcal/kWh	2475	2475	2475
Auxiliary Energy Consumption	%	8.5	8.5	8.5
Gross Generation	MU	8935.20	8959.68	8935.20
Ex-bus Energy Sent Out	MU	8175.71	8198.11	8175.71
Specific Oil Consumption	ml/kWh	0.75	0.75	0.75
Weighted Average GCV of Oil	kcal/L	9495	9406	9406
Price of Oil	Rs./kL	66994	39167	39167
Weighted Average GCV of Coal	kcal/kg	3834	3612	3612
Price of Coal	Rs. /MT	5076	4389	4389
Rate of Energy Charges Ex-bus	Paise/kWh	362.57	330.97	330.97

Particulars	Units	FY 2017-18	FY 2018-19
Capacity	MW	1200	1200
Availability Factor	%	85	85
Gross Station Heat Rate	kcal/kWh	2475	2475
Auxiliary Energy Consumption	%	8.5	8.5
Gross Generation	MU	8935.20	8935.20
Ex-bus Energy Sent Out	MU	8175.71	8175.71
Specific Oil Consumption	ml/kWh	0.75	0.75
Weighted Average GCV of Oil	kcal/L	9406	9406
Price of Oil	Rs./kL	39167	39167
Weighted Average GCV of Coal	kcal/kg	3612	3612
Price of Coal	₹/MT	4389	4389
Rate of Energy Charges Ex-bus	Paise/kWh	330.97	330.97

**(a) Cost of alternative coal supply:**

Regulation 26 (iv) of the UPERC Generation Tariff Regulations 2014 specifies the norms for the calculation of cost of alternative coal supply:

*“In case of part or full use of alternative source of fuel supply by coal based thermal generating stations other than as agreed by the generating company and beneficiaries in their power purchase agreement for supply of contracted power on account of shortage of fuel or optimization of economical operation through blending, the use of alternative source of fuel supply shall be permitted to generating station;*



*Provided further that the weighted average price of use of alternative source of fuel shall not exceed 30% of base price of fuel computed as per clause (v) of this regulation;*

*Provided also that where the energy charge rate based on weighted average price of use of fuel including alternative source of fuel exceeds 30% of base energy charge rate as approved by the Commission for that year or energy charge rate based on weighted average price of use of fuel including alternative sources of fuel exceeds 20% of energy charge rate based on weighted average fuel price for the previous month, whichever is lower shall be considered and in that event, prior consent of the beneficiary shall be taken by the generator by serving a notice upon the beneficiary in writing not later than seven working days in advance.*

*Provided that if the beneficiary does not respond to the notice given by the generator in writing within the above stipulated time, the beneficiary shall be liable for payment of fixed charges to generator.*

**Note**

*Alternative coal supply from CIL beyond the FSA must be done through e-auction route and for procurement of domestic open market coal and imported coal the generating companies shall follow a transparent competitive bidding process so as to identify a reasonable market price.”*

However, the Commission directs that a Committee should be formed for carrying out the above mentioned process with at least one member of the Beneficiary as part of the Committee.

Accordingly, the cost of alternative coal supply for FY 2017-18 shall not exceed the following:

Period	Maximum ECR (Paise/kWh)
01.04.2017 to 31.03.2018	430.264

The rates for the subsequent years shall be computed as per the Regulations

**(b) Adjustment of Rate of Energy Charge on Account of Variation in price or Heat Value of Fuels:**

Any variation shall be adjusted on month to month basis on the basis of Gross Calorific Value of coal or gas or liquid fuel as received and landed cost incurred



by the generating company for procurement of coal, oil, or gas or liquid fuel, as the case may be. No separate petition needs to be filed with the Commission for fuel price adjustment. In case of any dispute, an appropriate application in accordance with Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations 2004, as amended from time to time or any statutory re-enactment thereof, shall be made before the Commission.

Provided further that copies of the bills and details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, lignite, liquid fuel etc., details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal shall also be displayed on the website of the generating company. The details should be available on its website on monthly basis for a period of three months.

**However, UPPCL shall verify the “As Received GCV” and landed cost of coal from the original coal purchase bills.**

RPSCL shall be entitled to recover / adjust any change in fuel cost according to the provisions set out in the relevant UPERC Generation Tariff Regulations.

#### 7.3.4 Summary of Fixed Charges

The fixed charges for Rosa Thermal Power Station for the MYT period of FY 2014-15 to FY 2018-19 is summarized in the table below.

##### Fixed Charge per kWh as claimed with those as allowed by the Commission

Particulars	FY 2014-15			FY 2015-16		
	Petition	Approved	Diff	Petition	Approved	Diff
Annual Fixed Charge (in Rs. Crore)	1409.77	1342.35	-67.42	1417.47	1303.65	-113.82
Fixed charge per unit	1.84	1.64	-0.20	1.85	1.59	-0.26

Particulars	FY 2016-17			FY 2017-18		
	Petition	Approved	Diff	Petition	Approved	Diff
Annual Fixed Charge (in Rs. Crore)	1403.65	1278.05	-125.60	1421.74	1265.16	-156.58
Fixed charge per unit	1.83	1.56	-0.27	1.86	1.55	-0.31

Particulars	FY 2018-19		
	Petition	Approved	Diff
Annual Fixed Charge (in Rs. Crore)	1500.58	1254.73	-245.85



*Truing up of tariff for 2x300 MW TPP Stage -1, Fixation and Truing up of Tariff for 2x300 MW TPP Stage II for the period 2011- 2014 and fixation of Tariff for 4x300 MW TPP Stage I&II for the period 2015- 2019 for RPSC*

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Particulars	FY 2018-19		
	Petition	Approved	Diff
Fixed Charge per unit	1.96	1.53	-0.43



## **8. OTHER PROVISIONS**

### **(A) Recovery of Water Cess and Tax on Income etc.**

In addition to the above tariff RPSC is allowed to recover the payment of statutory charges like water cess, cost of water, payment to Pollution Control Board, rates and taxes, FBT and Regulatory Fee paid to the Commission, on production of details of actual payments made and duly supported with the certificate of the Statutory Auditors.

### **(B) Incentive :**

Incentive shall be calculated according to Regulations 27 of UPERC (Terms and Conditions of Generation tariff) Regulations, 2014. Incentive does not form a component of tariff.

### **(C) Billing & Payment :**

Billing and Payment of Capacity Charges shall be done under provisions of Regulation 51 of UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014.

### **(D) Additional Capital Expenditure:**

The Petitioner shall seek prior approval of the Commission before undertaking additional capital expenditure on its generation stations.

### **(E) Truing up of Capital Expenditure and Tariff**

- (i) The Commission shall carry out true up exercise along with the tariff petition filed for the next tariff period with respect to the Capital Expenditure incurred up to 31.03.2019, as admitted by the Commission after prudence check at the time of truing up.
- (ii) The generating company shall make an application, as per Appendix II to these regulations, for carrying out truing up exercise in respect of the generating station or any of its units or block of units thereof by 31.10.2019.
- (iii) The generating company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred duly audited and certified by the auditors.

Provided the Commission may appoint a separate independent auditor who, under the supervision of the Commission, shall undertake technical and financial audit of the generating station at any time

- (iv) The Commission shall also carry out truing up of tariff of generating stations based on the performance of following controllable parameters:
  - (a) Gross Station Heat Rate;
  - (b) Secondary Fuel Oil Consumption;
  - (c) Auxiliary Energy Consumption; and
  - (d) Re-financing of Loan
- (v) The Commission shall carry out truing up of tariff of generating stations based on the performance of following uncontrollable parameters:
  - (a) Force Majeure;





- (b) Change in Law; and
- (c) Primary Fuel Cost

(vi) The financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries. The financial gains computed as per following formulae in case of generating station on account of operational parameters contained in Regulation(4) (a) to (c) of Generation Regulation 2014 shall be shared in the ratio of 80:20 between generating company and the beneficiaries:

$$\text{Net Gain} = (\text{ECRN} - \text{ECRA}) \times \text{Scheduled Generation}$$

- (vii) The financial gains and losses by a generating company on account of uncontrollable parameters shall be passed on to beneficiaries of the generating company.
- (viii) Where after the truing up the tariff recovered exceeds the tariff approved by, the Commission under these regulations the generating company shall refund to the beneficiaries, the excess amount so recovered along with simple interest at the rate equal to the Bank Rate prevailing as on 1st April of the respective Year.
- (ix) Where after the truing up the tariff recovered is less than the tariff approved by the Commission under these regulations the generating company shall recover from the beneficiaries, the under-recovered amount along with simple interest at the rate equal to the Bank Rate, prevailing as on 1st April of the respective Year.
- (x) The amount under-recovered or over-recovered, along with simple interest at the rate equal to the Bank Rate as on 1st April of the respective Year, shall be recovered or refunded by the, generating company, in six equal monthly installments starting within three months from three months from the date of the tariff order issued by the Commission after the truing up exercise



## 9. COMMISSION'S ADDITIONAL DIRECTIVES

- 9.1. The Commission is of the view that it is essential for the project developer to adopt procedures such that expenses are incurred in a prudent manner to achieve efficiency in costs. As the fixed costs of the generating station is ultimately passed on to the consumers of the distribution licensees in the state as part of the tariff, it is essential to always consider the interest of consumers while awarding such contracts. Therefore the Commission hereby directs that in future, award of contract for procurement of major equipment, services and works should be done through a transparent process involving a two part competitive bid process so as to ensure cost efficiency and prudence. **For award of major contract packages the project developer should set up a Committee to manage the bid process. This Committee shall also include a representative from the procurers to avoid pre and post bid disputes.**
- 9.2. As per Section 86 of the Electricity Act 2003, the State Commission can determine the tariff for various utilities in the state for generation, transmission and distribution. As a part of the tariff determination process, the respective Petitioners are required to submit various information and data pertaining to capital cost, operational and financial performance and fuel cost etc. before the Commission.

Section 62 (2) of the Electricity Act 2003 empowers the Commission to seek information and data from the entities for determination of tariff.

*“The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.”*

As per Section 2. (7) of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, the Petitioners are required to submit performance report to the Commission in every six months period as per the format specified in Appendix I of the Regulations.

*“(7) The generating company shall submit performance report to the Commission under Section 10(3) (a) of the Act in the format given in Appendix I to these regulations.”*

However, the required data is not submitted by the Utilities periodically before the Commission.

During filing of Petition, the Petitioner is required to submit details as per specified tariff filing formats. It is observed that the information and data in the required formats are also not submitted by the Petitioner which hampers and



delays the tariff determination process. Many a times wide discrepancies are observed in the submitted data. The Commission has to give repeated directions to the Petitioner to submit the details post which it is submitted, if available with the Petitioner. Moreover in some cases the Petitioner is unable to submit data as it has not implemented processes to record and maintain such data or information.

During true up also, the Petitioner is required to submit the actual and audited data which forms the basis for true-up. The inability of the Petitioner to submit the requisite information and data as sought by the Commission can impact the tariff determination and as a result the end consumer at large.

Hence it is important that issue is addressed and a mechanism is developed in consultation with the Utilities, Generators, other stakeholders and the public so that the required data or information is made available to the Commission on a periodic basis. This will also bring uniformity transparency in the process.

9.3. As per the Uttar Pradesh Electricity Regulatory Commission (Compliance Audit) Regulations, 2012

*“3.1 The Commission may, at any time, conduct audit of regulated entity for verifying their compliance with the Act, Rules, Regulations made thereunder, orders and directions issues by the Commission.”*

The regulated entity means Distribution Licensee or Generation Company or Transmission Utility or Trading Licensee or SLDC. The Commission may by order empanel Consultants/Auditors required to assist the Commission in discharge of these functions on the terms and conditions as deemed fit.

Hence, to address the non-compliance on the part of the Generation Companies in providing data, the Commission would initiate independent audit.

## **10. IMPLEMENTATION OF ORDER**

10.1. This order shall be reckoned to have come into effect from 01.04.2014 and shall remain effective till 31.03.2019 for the Multi Year Tariff period of F.Y. 2014-15 to FY 2018-19. BEPL is entitled to raise the bills as per the tariff order under provisions of UPERC (Terms & Conditions of Generation Tariff) Regulations, 2014.

**(S. K. Agarwal)**  
**Member**

**(Desh Deepak Verma)**  
**Chairman**

Date: August 22, 2017

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