



Petition No 1234 of 2017

BEFORE

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

PRESENT:

Hon'ble Sri. S. K. Agarwal, Chairman

Hon'ble Sri. K. K. Sharma, Member

IN THE MATTER OF: In the matter of Review Petition for reviewing the Order dated August 28, 2017 of the Commission in Petition No. 967 of 2014, 968 of 2014 and 1016 of 2015.

AND

IN THE MATTER OF:

Rosa Power Supply Company Limited (RPSCL)
3rd Floor, South Wing Reliance Centre,
Near Prabhat Colony, Off Western Express Highway,
Santacruz (East), Mumbai - 400055

Petitioner

AND

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

Respondent

The following were present:

1. Sri. Sumeet Notani, GM, RPSCL
2. Sri. Vaibhav Agarwal, Senior VP, RPSCL
3. Sri. Ambuj Shukla, Senior Manager, RPSCL
4. Sri. Himanshu Agarwal, Senior Manager, RPSCL
5. Sri. Vinod Asthana, CE, UPPCL
6. Sri. Naeem Khan, EE, UPPCL
7. Sri. Dharm Ratna, AE, UPPCL
8. Sri. Sanjay Verma, SE, UPPCL
9. CA Manish Garg, Consultant, UPPCL



Order

(Date of Hearing: 11.04.2018)

1. RPSCL had filed the Petition No. 967 of 2014 for true up of tariff of Stage-I from FY 2009-10 to FY 2013-14, Petition No. 968 of 2014 for determination of tariff of Stage-II for FY 2011-12 to 2013-14 and Petition NO. 1016 of 2015 for determination of tariff of Stage-I and Stage-II for Second Control period (i.e. FY 2014-15 to FY 2018-19), which were clubbed by the Commission for hearing and decision.
2. The Commission addressing all the aforesaid Petitions, approved final true up of tariff of Stage-I for FY 2009-10 to FY 2013-14, determined final tariff of Stage-II for FY 2011-12 to 2013-14 and its true up and determined tariff of Stage-I and Stage-II for Second Control period (i.e. FY 2014-15 to FY 2018-19) vide its Order dated August 22, 2017. Aggrieved by the Commission's Order dated August 22, 2017, RPSCL filed Review Petition No. 1234 of 2017 on September 05, 2017 seeking review and reconsideration of certain claims disallowed by the Commission in the impugned order.
3. In the counter affidavit filed by UPPCL on October 18, 2017, it submitted that scope and application of Review Petition under CPC is mainly on following grounds:
 - a. Discovery of new and important matter of evidence
 - b. Mistake or error apparent on the face of records
 - c. For any other sufficient reasons
4. UPPCL further submitted that the central Commission has in its order dated December 15, 2000; in Review Petition No. 13/2000 of Petition No. 2/99 has laid the proposition for scope of review as follows:

“Keeping in view the statutory provisions and the law laid down by the Supreme Court, the following propositions emerge in regards to the exact scope of review.

 - i. The power of review can be exercised only for correction of a patent error, whether of law or of fact, which stares in the face, and needs no elaborate arguments.*
 - ii. Where there are conceivably two opinions on an issue, it cannot be said to be an error on the face of the record;*
 - iii. The error should be self-evident and*
 - iv. A review by no means is an appeal in disguise whereby an erroneous decision is reheard and corrupted.”*
5. The issues raised by the petitioner in the review Petition along with its reply by UPPCL are summarised below:

- i. True up on Interest on Working Capital (IWC)**



RPSCL submitted that the Commission has held that neither the PPA nor the UPERC Tariff Regulations, 2009 provides for true up of IWC and hence disallowed its claim for the same. RPSCL submitted that the Commission's decision is erroneous and is an error apparent on the face of the record due to following reasons:

- a. The Commission vide its order dated 28.03.2011 in Petition No. 706 of 2010 has held that the Commission will carry out True up with respect to the Capital Expenditure incurred up to 31.03.2014 for Unit-I and Unit-II. Hence, the Commission in aforesaid Order held that it shall carry out true up exercise with respect to Capital Expenditure in order to true up the Fixed Charges. IWC claimed by the petitioner is part of Fixed Charges. Thus, the same ought to be trued up even in the absence of Regulations to this effect.
- b. Further, the Commission has carried out limited true-up of the Interest on Working Capital (IWC) on account of change in receivables and overlooked change in IWC on account of increase in fuel prices of coal procured from alternate sources.

UPPCL

The Commission has taken a learned view on truing up of IWC, hence it is not an error apparent on the face of record and prayer needs to be rejected.

ii. Undischarged Liability

RPSCL

The Commission has not considered undischarged liability as part of capital cost relying on the definition of capital expenditure as per UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009 and UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014. Also, the Commission has omitted to consider the Un-discharged liability for the MYT period of FY 2014-15 to FY 2018-19 even after its discharge. The petitioner submitted that above findings of the Commission is incorrect and is an error apparent on the face of the record for the following reasons:

- a. As per definition of Capital Cost provided in PPA, Undischarged Liability is to be considered as part of Capital Cost read with the UPERC Tariff Regulations, 2009.
- b. Also, Regulations 2(5) of the UPERC Tariff Regulations, 2009 states that the Regulations are in addition and not in derogation to the terms and condition approved in the PPA. Also, the Commission vide its order dated

15.06.2009 in Petition No. 610 of 2009 has held that the terms and condition of the Stage-I shall apply to Stage-II of the project. Thus, the tariff for Stage-II up to FY 2013-14 has to be determined as per the terms and conditions approved in the PPA.

- c. The Commission has erroneously considered undischarged liability as Rs. 139 Crore for the MYT period without taking into account that the liabilities have been discharged in FY 2015-16.
- d. The Commission has allowed Undischarged Liability as part of Capital Cost in case of UPRVUNL for tariff determination.

UPPCL

The Commission has taken a learned view on disallowance of Undischarged Liability, hence there is no error apparent on the face of record and this issue does not qualify for review.

iii. Secondary Oil Consumption (SOC)

RPSCL

The Commission has considered Secondary Oil Consumption of 1 ml/kWh as per UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009, instead of 2 ml/kWh as per PPA for the period of FY 2011-12 to FY 2013-14 for Stage-II. The petitioner submitted that above finding of the Commission is erroneous and error apparent on the face of record due to following reasons:

- a. Provision of the PPA has to be applicable as per which the petitioner is eligible for Secondary Oil Consumption of 2.20 ml/kWh.
- b. The Commission in its impugned order held that the GSHR and SOC are exempted from the applicable Regulations for the MYT period, hence, reduction of SOC to 1 ml/kWh is clearly an error.

UPPCL

In absence of any actual data on Secondary Oil Consumption by the petitioner, the contention of the petitioner is baseless and has requested the Commission to reject the prayer of the petitioner.

iv. Computation of IWC for MYT Period

RPSCL

The Commission has deviated from the principles given in the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, for computing IWC for Stage-I and Stage-II for the MYT Period. The cost of coal considered by the Commission for computing the IWC is not in line with Regulations 25(v)(b) of the UPERC Tariff Regulations, 2014.

UPPCL

The Commission has not stated reasons for deviation from Regulations 25(v)(b) for computation of IWC. UPPCL submitted that coal cost may be allowed as per Norms stipulated in the Regulations.

v. Auxiliary Consumption for MYT Period

RPSCL

The Commission has erroneously considered auxiliary energy consumption @ 8.5% instead of 9.0% for the MYT period as per UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014.

UPPCL

The Commission may allow Auxiliary Consumption as per the norms stipulated in the MYT Regulations.

vi. Applicability of PPA or MYT Regulations

RPSCL

The Commission has incorrectly applied the provision of UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014 ignoring the Terms and Conditions agreed under the Power Purchase Agreement.

UPPCL

The Commission has taken a learned view on applicability of Regulations over PPA, hence it is not an error apparent on the face of record and prayer needs to be rejected.

vii. Request for sharing tariff model

RPSCL

Requested the Commission to provide model of the tariff order.

UPPCL



Requested to share Model for tariff order with them as well, if the Commission share it with RPSCL.

viii. Amendment in para 10.1 of the Order

RPSCL

Amend para 10.1 of the Impugned Order.

UPPCL

Accepting the contention in regards to amending the para 10.1 of the tariff order, requested the Commission to make necessary rectifications.

ix. Clarification on the applicability of UPERC tariff Regulations for reimbursement of Income Tax for FY 2014-15 to FY 2018-19

RPSCL

Requested the Commission to provide clarification on the applicability of UPERC Tariff Regulations for reimbursement of Income Tax for FY 2014-19.

UPPCL

On clarification sought by the petitioner on the applicable UPERC Regulations, for reimbursement of Income Tax for FY 2014-15 to FY 2018-19, UPPCL submitted that there is only one Regulation (i.e. Regulation 9) which deals with Tax on Income. Provision of this Regulation have been consistent since earlier Regulations. Thus, there is no need for clarification.

6. The Commission held the hearings in the said matter on October 23, 2017, during which RPSCL reiterated its submission made in the review petition filed on September 5, 2017.
7. The next hearing was held on April, 11, 2018, wherein the both the parties made their submission on the issues raised in the petition.

Commission's Analysis

8. The Commission has gone through the submissions made by the Petitioner and the respondent and opines that the review proceedings shall be governed as per the provision of the Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, which is as follow,

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



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

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

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

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

i. True up of IWC limited to Fixed Charge

Commission’s View:

The Commission in Chapter 3 of the impugned Order categorically took a view that the UPERC Generation Tariff Regulations, 2009 and its amendments are squarely applicable for trueing up of Stage-I. The relevant extract of the order is as follows:

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

3.1.1 The Commission approved PPA between RPSC 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.”

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

3.1.8 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.

3.1.9 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.”

On the basis of the above, the Commission in the impugned order carried out true up of Capital Cost of Stage-1 as per the provision of UPERC Generation Tariff Regulations, 2009 and its amendments and Tariff Order dated March 28, 2011. Since, as per the provision of the UPERC Generation Tariff Regulations, 2009 and Order dated March 28, 2011, the truing up was to be limited to Capital cost, the Commission has not allowed truing up of Interest on Working Capital. However, since the truing up has been carried out limited to Capital Cost of Stage-I, its impact on the computation of Working capital has been considered. Whereas, the Commission has not considered any revision of receivables in computation of Working Capital on account of Change in coal prices. The relevant extract of the order is as follows:

“4.1 As per the PPA between RPSCL 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. RPSCL shall make an application as per Appendix - I of UPERC (Terms & Conditions of Generation Tariff) Regulation, 2009 for carrying out true up exercise. RPSCL 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 upto 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 of State 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 of State 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 a 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.

From the above, it can be observed that the Commission has taken a considered view in the matter and there is no error apparent on the face of the record and hence this issue does not qualify for review.

ii. Disallowance of Undischarged Liability

Commission’s View:

The Commission in its Order dated August 24, 2017, took a considered view on the Undischarged Liability. Also, the Commission had clearly mentioned in the impugned order that the discharge of Liability has only been considered till FY 2013-14 and the remaining discharge of liability will be considered while truing up for the period from FY 2014-15 to FY 2018-19. The relevant extract of the Tariff Order is as well as follows:

“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.”

Hence, from above it can be observed that the Commission categorically took a view on the issue of Un-discharged liability and there is no error apparent of the face of record. Hence, the issue does not qualify for review.

iii. Allowance of Secondary Oil Consumption of 2 ml/kWh as against approved 1.0 ml/kWh

Commission's View:

As discussed in foregoing paragraphs, that the Commission categorically took a view on applicability of UPERC Generation Tariff Regulations, 2009 for period FY 2010-11 to FY 2013-14 and applicability of UPERC Generation Tariff Regulations, 2014 for the period FY 2014-15 to FY 2018-19. Since, there is no error apparent on the face of record, the issue does not qualify for review.

iv. Coal Cost for computing Interest on Working Capital for the MYT Period.

Commission's View:

The Commission while computing the Interest on Working Capital for the Period from FY 2014-15 to FY 2018-19 inadvertently considered latest available cost of coal, whereas the UPERC Generation Tariff Regulations, 2014, provides for the use of cost of coal of preceding three months from the period for which tariff is to be determined. Hence, considering the Regulations, the Commission sought weighted average cost of coal and weighted average 'As received' GCV for previous three months (i.e. January 2014 to March 2014), which was submitted by RPSCL on 16.04.2018 / 25.04.2018. It is observed that the CEA in its recommendation vide letter No. 228/MISC/TPP&D/CEA/2017/1432 based on the CAG report of "Fuel Management of Coal Based Power Stations of NTPC Limited" to Central Electricity Regulatory Commission (CERC) in the proceedings under Petition No. 244/MP/2016 has recommended to consider margin of 105 kcal/kg to 120 kcal/kg to arrive at 'As received' from 'As fired' GCV. However, the matter is still under consideration before CERC. In view of the above, the Commission allows Interest on Working Capital based on the 'As received' GCV submitted by the petitioner however, based on the decision of CERC in the said matter, the Commission may revise it. UPPCL has also agreed to revise the computation as per the Regulations.

The revised approved computation of interest on Working Capital is as follows:

Revised Approved Interest on Working Capital for FY 2014-15 to FY 2018-19 (in Rs. Crore)

Particulars	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Cost of Coal	493.38	493.38	493.38	493.38	493.38
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	732.06	725.72	720.06	717.92	716.18
Total Working Capital	1300.75	1295.59	1294.45	1297.13	1300.52
Rate of Interest	13.50%	13.50%	13.50%	13.50%	13.50%
Interest on Working Capital	175.60	174.90	174.75	175.11	175.57

v. Auxiliary Consumption

Commission's View:

As per Regulation 18 V(a) of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014, the petitioner is eligible for Auxiliary Energy Consumption of 9.0%, which was inadvertently approved as 8.5% in the impugned order. Hence, the Commission approves the Auxiliary Energy Consumption of 9.0% for the MYT period. UPPCL has also given its consent on revision.

vi. Providing Tariff Model of Tariff Order to the petitioner

Commission's View:

The Commission has given the detailed speaking Order which also includes the assumptions and parameters considered for computing the tariff.

vii. Amendment of 10.1 of the Tariff Order

Commission's View:

The Commission has already addressed this issue in the corrigendum dated 07.09.2017 to the said order. Now, as there is no error apparent on the face of the record, this issue does not qualify for review.

viii. Clarification on the applicability of the Regulations for reimbursement of Income Tax

Commission's View:

The Commission has already addressed this issue in the corrigendum dated 07.09.2017 to the said order. Now, as there is no error apparent on the face of the record, this issue does not qualify for review.

11. Considering the view taken by the Commission above, the revised approved AFC and indicative Energy charges for the period of FY 2014-15 and FY 2018-19 are as follows:

Revised Annual Fixed Charges for FY 2014-15 to FY 2018-19 (in Rs. Crore)

Particulars	FY 2014-15			FY 2015-16		
	Approved in Order Dt. 22.08.2017	Approved in Review Petition	Difference	Approved in Order Dt. 22.08.2017	Approved in Review Petition	Difference
Return on Equity	247.24	247.24	0.00	247.24	247.24	0.00
Depreciation	347.31	347.31	0.00	347.31	347.31	0.00
Advance Against Depreciation	0.00	0.00	0.00	0.00	0.00	0.00
Interest on Loan	336.55	336.55	0.00	294.41	294.41	0.00
Interest on working capital	171.85	175.60	3.75	160.18	174.90	14.73
O&M expenses (Normative)	239.40	239.40	0.00	254.52	254.52	0.00
Total	1342.35	1346.09	3.75	1303.65	1318.38	14.73



Ex-bus Energy Sent Out	8175.71	8131.03	-44.68	8198.11	8153.31	-44.80
Capacity per unit charge	1.64	1.66	0.02	1.59	1.62	0.03

Particulars	FY 2016-17			FY 2017-18		
	Approved in Order Dt. 22.08.2017	Approved in Review Petition	Difference	Approved in Order Dt. 22.08.2017	Approved in Review Petition	Difference
Return on Equity	247.24	247.24	0.00	247.24	247.24	0.00
Depreciation	347.31	347.31	0.00	347.31	347.31	0.00
Advance Against Depreciation	0.00	0.00	0.00	0.00	0.00	0.00
Interest on Loan	252.98	252.98	0.00	222.69	222.69	0.00
Interest on working capital	160.04	174.75	14.71	160.40	175.11	14.71
O&M expenses (Normative)	270.48	270.48	0.00	287.52	287.52	0.00
Total	1278.05	1292.76	14.71	1265.16	1279.87	14.71
Ex-bus Energy Sent Out	8175.71	8131.03	-44.68	8175.71	8131.03	-44.68
Capacity per unit charge	1.56	1.59	0.03	1.55	1.57	0.02

Particulars	FY 2018-19		
	Approved in Order Dt. 22.08.2017	Approved in Review Petition	Difference
Return on Equity	247.24	247.24	0.00
Depreciation	347.31	347.31	0.00
Advance Against Depreciation	0.00	0.00	0.00
Interest on Loan	193.68	193.68	0.00
Interest on working capital	160.86	175.57	14.71
O&M expenses (Normative)	305.64	305.64	0.00
Total	1254.73	1269.43	14.71
Ex-bus Energy Sent Out	8175.71	8131.03	-44.68
Capacity per unit charge	1.53	1.56	0.03



Revised Indicative Energy Charges for FY 2014-15 to FY 2018-19

Particulars	Units	FY 2014-15			FY 2015-16		
		Approved in Order Dt. 22.08.2017	Approved in Review Petition	Difference	Approved in Order Dt. 22.08.2017	Approved in Review Petition	Difference
Capacity	MW	1200.00	1200.00		1200.00	1200.00	
Availability Factor	%	85.00	85.00		85.00	85.00	
Gross Station Heat Rate	kcal/kWh	2475.00	2475.00		2475.00	2475.00	
Auxiliary Energy Consumption	%	8.50	9.00	0.50	8.50	9.00	0.50
Gross Generation	MU	8935.20	8935.20	0.00	8959.68	8959.68	0.00
Auxiliary Energy Consumption	MU	759.49	804.17	44.68	761.57	806.37	44.80
Ex-bus Energy Sent Out	MU	8175.71	8131.03	-44.68	8198.11	8153.31	-44.80
Specific Oil Consumption	ml/kWh	0.75	0.75	0.00	0.75	0.75	0.00
Weighted Average GCV of Oil	kcal/L	9495.00	9495.00	0.00	9405.83	9405.83	0.00
Price of Oil	Rs./kL	66994.33	66994.33	0.00	39166.67	39166.67	0.00
Weighted Average GCV of Coal	kcal/kg	3833.74	3901.00	67.26	3611.75	3901.00	289.25
Price of Coal	/MT	5076.08	5310.16	234.09	4389.49	5310.16	920.68
Rate of Energy Charges Ex-bus	Paise/kWh	362.57	374.65	12.07	330.97	372.35	41.38

Particulars	Units	FY 2016-17			FY 2017-18		
		Approved in Order Dt. 22.08.2017	Approved in Review Petition	Difference	Approved in Order Dt. 22.08.2017	Approved in Review Petition	Difference
Capacity	MW	1200.00	1200.00		1200.00	1200.00	
Availability Factor	%	85.00	85.00		85.00	85.00	
Gross Station Heat Rate	kcal/kWh	2475.00	2475.00		2475.00	2475.00	
Auxiliary Energy Consumption	%	8.50	9.00	0.50	8.50	9.00	0.50
Gross Generation	MU	8935.20	8935.20	0.00	8935.20	8935.20	0.00
Auxiliary Energy Consumption	MU	759.49	804.17	44.68	759.49	804.17	44.68
Ex-bus Energy Sent Out	MU	8175.71	8131.03	-44.68	8175.71	8131.03	-44.68
Specific Oil Consumption	ml/kWh	0.75	0.75	0.00	0.75	0.75	0.00
Weighted Average GCV of Oil	kcal/L	9405.83	9405.83	0.00	9405.83	9405.83	0.00
Price of Oil	Rs./kL	39166.67	39166.67	0.00	39166.67	39166.67	0.00
Weighted Average GCV of Coal	kcal/kg	3611.75	3901.00	289.25	3611.75	3901.00	289.25
Price of Coal	/MT	4389.49	5310.16	920.68	4389.49	5310.16	920.68



Rate of Energy Charges Ex-bus	Paise/kWh	330.97	372.35	41.38	330.97	372.35	41.38
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Particulars	Units	FY 2018-19		
		Approved in Order Dt. 22.08.2017	Approved in Review Petition	Difference
Capacity	MW	1200.00	1200.00	
Availability Factor	%	85.00	85.00	
Gross Station Heat Rate	kcal/kWh	2475.00	2475.00	
Auxiliary Energy Consumption	%	8.50	9.00	0.50
Gross Generation	MU	8935.20	8935.20	0.00
Auxiliary Energy Consumption	MU	759.49	804.17	44.68
Ex-bus Energy Sent Out	MU	8175.71	8131.03	-44.68
Specific Oil Consumption	ml/kWh	0.75	0.75	0.00
Weighted Average GCV of Oil	kcal/L	9405.83	9405.83	0.00
Price of Oil	Rs./kL	39166.67	39166.67	0.00
Weighted Average GCV of Coal	kcal/kg	3611.75	3901.00	289.25
Price of Coal	/MT	4389.49	5310.16	920.68
Rate of Energy Charges Ex-bus	Paise/kWh	330.97	372.35	41.38

*Note: The increase in Energy Charges is on account of increase in coal cost.

With the above, the Petition is disposed of.

(K. K. Sharma)
Member

(S. K. Agarwal)
Chairman

Place: Lucknow
Date: April 25, 2018