



Petition No. 1960 of 2023

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

QUORUM:

Hon'ble Shri Arvind Kumar, Chairman
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)
Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF: Petition under Section 86(1)(b) and 86(1)(f) of the Electricity Act, 2003, Article 10 and Schedule 8 of the PPA dated 12.11.2006 read with Supplementary Power Purchase Agreement dated 31.12.2009 executed between the parties for seeking a declaration that the costs actually incurred / to be incurred under the Facilities and Services Agreement dated 12.11.2006 read with Supplementary Facilities and Services Agreement dated 20.04.2010 regarding augmentation of shared facilities is in terms of the PPA and the Facilities and Services Agreement and to direct reimbursement by the Respondents to the Petitioner for such expenditure incurred / to be incurred in terms of the PPA.

AND

Lanco Anpara Power Ltd. (LAPL),
411/9, Riverside Apartments, New Hyderabad, Lucknow-226 007.

.....Petitioner

VERSUS

- 1. U.P. Power Corporation Ltd. (UPPCL),**
(Through its Managing Director),
Shakti Bhawan, 14-Ashok Marg, Lucknow-226001
- 2. Paschimanchal Vidyut Vitran Nigam Ltd. (PVVNL),**
(Through its Managing Director),
Urja Bhawan, Victoria Park, Meerut - 250001
- 3. Purvanchal Vidyut Vitran Nigam Ltd. (PuVVNL),**
(Through its Managing Director),
DLW Bhikharipur, Varanasi - 221004.
- 4. Madhyanchal Vidyut Vitran Nigam Ltd. (MVVNL),**
(Through its Managing Director),
4-A, Gokhale Marg, Block-1, Gokhale Vihar, Butler Colony, Lucknow - 226001.
- 5. Dakshinanchal Vidyut Vitran Nigam Ltd. (DVVNL),**
(Through its Managing Director),

by





Urja Bhawan, Agra Mathura bypass Road, Agra – 282007.

..... Respondent(s)

THE FOLLOWING WERE PRESENT

1. Shri Avijeet Kumar Lala, Advocate, LAPL
2. Shri Karan Jaiswal, Advocate, LAPL
3. Shri M.Narasimha Murthy, V.P., LAPL
4. Ms. Puja Priyadarshini, Advocate, UPPCL
5. Shri Kunal Kashyap, Advocate for UPPCL
6. Shri Haroon Aslam, S.E, UPPCL
7. Shri Gajendra Singh, E.E, UPPCL
8. Shri Jagnayak Singh, SE, PPA, UPPCL
9. Shri Shubham Srivastava, A.E, UPPCL
10. Shri Divyanshu Bhatt, Advocate, UPRVUNL
11. Shri Shahswat Singh, Advocate UPRVUNL
12. Shri Savyasachi Saumitra, Advocate UPRVUNL
13. Shri Ved Anand Pal, EE, UPRVUNL
14. Shri Anand Kumar, CE, UPRVUNL

**ORDER
(DATE OF HEARING:09.04.2024)**

1. The last hearing dated 5.3.24 was adjourned and the matter was listed for hearing today.
2. Shri. Avijeet Lala, Counsel of LAPL submitted that UPRVUNL is the owner of premises encompassing their projects Anpara A, B & D and the petitioner's project Anpara C. The counsel further stated that they would be pressing upon all 3 issues regarding claim of expenditures (Clear Available Length (CAL), Ash-dyke & RCC pipelines) for shared facilities used by Lanco Anpara C under the Facility & Service Agreement (FSA) signed with UPRVUNL in a departure from his original stand where he was pressing only "Clear Available Length" issue. The counsel also referred to correspondence with UPPCL evidencing consent of UPPCL to bear such expenditures.
3. He averred that amount of Rs.4.2 Cr. has been paid to UPRVUNL towards CAL, which has in turn been paid by UPRVUNL to Railways and infrastructure has been completed. The expenditure on other two heads i.e. Ash-dyke & RCC pipeline has also been claimed under the 'Prudent Utility Practice' clause 13.4.1 of FSA.

by





4. The counsel further argued that these expenditures were being claimed in terms of clause 13.4.1 of the facility service agreement, which covers the operation phase of the project and stated that the expenditure incurred in relation to shared facility, after commencement date, had to be borne by parties in proportion to their usage interest in the shared facility. The schedule 8 of PPA regarding tariff specifies component SFC(n) as the total charge required to be paid under FSA by petitioner is sum of (i) payments made to UPRVUNL, & (ii) payments made for Augmentation of common facilities under clause 12.2.4 of FSA. Therefore, they were seeking reimbursement of these expenditures in the manner provided under schedule 8 of PPA.
5. The counsel explained that it was not claiming these expenditures under 12.2.4 of FSA since the Commission vide its review order dated 6.2.06, while approving the RFP of the project, held that if common facility were found inadequate, the seller would augment the facilities and claim such expenditures, subject to the approval of the Commission. The Counsel placed on record Vol I of RFP of the petitioner's project set up under section 63 of EA,2003 and the Commission's order dated 19.1.05 and review order dated 6.2.06, which were made part of RFP.
6. The counsel further argued that the proportionate expenditure incurred by UPRVUNL on such facilities has been claimed as part of addition capitalization under UPERC Generation Tariff Regulation,19 and the Commission vide order dated 16.6.23 in Petition no.1931/22 has held that the same may be considered at the time of truing up for FY 2019-24.
7. Ms. Puja Priyadarshini, the Counsel of UPPCL submitted that the petitioner's project is section 63 project wherein the tariff payable by UPPCL would be strictly governed by PPA. The Counsel also referred to Hon'ble Supreme Court judgement that terms of PPA are sacrosanct.
8. The Counsel further argued that from the language of FSA clause 12.2.4, it is clear that the expenditure incurred by the petitioner during only





construction phase was payable by UPPCL. Therefore, the said expenditure claimed by petitioner under clause 13.4.1 of FSA is beyond schedule 8 of PPA.

9. The counsel further contested that UPPCL has never consented for payment of expenditure claimed on any of three issues and has always taken a stand that tariff for petitioner's project is payable in terms of PPA.

10. Shri. Divynashu Bhatt Counsel of UPRVUNL submitted that UPRVUNL has been impleaded as a party on the directions of the Commission and it has submitted its reply in the matter with details as sought by Commission. The counsel further submitted that there were no prayer sought in the petition against UPRVUNL. He also laboriously argued that the petitioner has made certain undesired insinuations against it, which is a complete U turn on the part of petitioner and is certainly most undesirable since the petitioner had initially not arrayed UPRVUNL as a party in the petition and it was made a party to the dispute only at the instructions of the Commission. The petitioner counsel stated that it had no intention to insinuate UPRVUNL and if the language of rejoinder transpired to this effect, he was willing to take it back in the open court.

11. The Commission heard the arguments and allowed parties to file their written submission within two weeks.

Order reserved.

(Sanjay Kumar Singh)
Member

Place: Lucknow

Dated: 12.04.2024

(Vinod Kumar Srivastava)
Member (Law)



(Arvind Kumar)
Chairman