

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.160/GT/2012

**Coram: Dr. Pramod Deo, Chairperson
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member**

Date of hearing: 23.10.2012

Date of Order: 24.12.2012

IN THE MATTER OF

Determination of tariff of Udupi Thermal Power Station (2 x 600 MW) for the period from 11.11.2010 to 31.3.2014 (Unit-I) and from 1.4.2012 to 31.3.2014 for Unit-II

AND

IN THE MATTER OF

Grant of Provisional tariff of Unit-I (600 MW) of Udupi Thermal Power Station for the period from 11.11.2010 to 31.3.2014

AND

IN THE MATTER OF

Udupi Power Corporation Ltd, Bangalore

...Petitioner

Vs

1. Power Company of Karnataka Ltd, Bangalore
2. Bangalore Electricity Supply Company Ltd, Bangalore
3. Mangalore Electricity Supply Company Ltd, Mangalore
4. Gulbarga Electricity Supply Company Ltd, Gulbarga
5. Hubli Electricity Supply Company Ltd, Hubli
6. Chamundeshwari Electricity Supply Company Ltd, Mysore
7. Punjab State Power Corporation Ltd, Patiala

...Respondents

8. M/s Janajagrithi Samithi, Karnataka

...Objector

Parties present:

1. Shri J.J. Bhatt, Senior Advocate, UPCL
2. Shri L. Vishwanathan, Advocate, UPCL
3. Shri R.Parthasarathy, UPCL
4. Shri Soumyanarayanan, UPCL
5. Shri R.A.Mulla, UPCL
6. Shri M.G.Ramachandran, Advocate, PCKL, KPTCL
7. Shri Anand Ganesan, Advocate for Discoms of Karnataka
8. Shri V.G.Manjunath, PCKL
9. Shri Padamjit Singh, PSPCL
10. Shri Rohit Rao, Advocate for Objector

ORDER

This petition has been filed by the petitioner, Udupi Power Corporation Ltd (UPCL) for determination of tariff of Udupi Thermal Power Station (2 x 600 MW) (hereinafter referred to as “the generating station”) for the period from 11.11.2010 to 31.3.2014 for Unit-I and from 1.4.2012 to 31.3.2014 for Unit-II, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “the 2009 Tariff Regulations”).

2. The petitioner, formerly known as 'Nagarjuna Power Corporation Ltd' is a public Ltd company incorporated under the Companies Act, 1956 and was renamed as 'Udupi Power Corporation Ltd' on 8.2.2008. UPCL is a generating company as defined under Section 2(28) of the Electricity Act, 2003 (the Act). The project has been developed as a Mega Power project in line with the policy guidelines issued by the Ministry of Power, Government of India and is a first thermal power plant designed for 100% imported coal.

3. The Commission by its order dated 25.10.2005 in Petition No.40/2005 had accorded 'in-principle' approval of the capital cost of the project with a capacity of 1015

MW for ₹4299.12 crore, inclusive of Interest During Construction (IDC) and Financing Charges (FC). The petitioner has entered into a Power Purchase Agreement (PPA) on 26.12.2005 with the respondent Nos. 2 to 6 i.e. the distribution companies of Karnataka for sale of 90% of power generated from the project and PPA dated 29.9.2006 with respondent No.7, PSPCL for sale of the balance 10% of power. Subsequently, based on the recommendations of Justice (*Retd*) Gururajan Committee vide its report dated 23.9.2010, the Government of Karnataka by its order dated 25.10.2010 agreed for enhancement of the capacity of the generating station from 1015 MW to 1200 MW and for increase in the capital cost of the project by ₹583.85 crore, excluding IDC, subject to approval of the Commission. In the said order dated 25.10.2010, the petitioner was directed to file necessary particulars regarding increase in capital cost along with relevant documents before this Commission immediately.

4. The petitioner filed the present petition on 14.12.2011 for determination of tariff of Unit-I of the generating station which has been declared under commercial operation on 11.11.2010. As regards the Unit II, the petitioner has submitted that declaration of commercial operation of the unit which was expected on 1.4.2012 is still pending on account of non-commissioning of 400 kV transmission line.

5. The petitioner has filed this petition in compliance with Clauses (1) and (2) of Regulation 5 of the 2009 Tariff Regulations. The petitioner has also published the notice in the newspapers as regards the filing of tariff petition and has served copies of the petition on the beneficiaries, in line with Regulation 3(6) of the Central Electricity Regulatory Commission (Procedure for making of application for determination of tariff,

publication of the application and other related matters) Regulations, 2004 (the Procedure Regulations). Reply to the petition was filed by the respondent No. 1 (PCKL), and the respondent No.7 (PSPCL). In addition to this, objection to the tariff petition had also been filed by M/s Janajagrithi Samithi, an NGO based in Karnataka. The petitioner had filed its rejoinder to the replies filed by the Respondents, PKCL and PSPCL and its response to the objections filed by the Objector.

6. After notice to the parties including the Objector, the Commission heard the petition on 26.7.2012 for grant of tariff of Unit I of the generating station. During the hearing, the learned counsel for the petitioner, respondent No.7 and the learned for the Objector were present. After considering the submissions of the parties present and the documents available on record including the reply filed by respondent No.1, the Commission by order dated 27.8.2012 granted provisional tariff for Unit-I of the generating station for the period from 11.11.2010 to 31.3.2014. Aggrieved by the said order, the respondents 2 to 6 filed appeal (Appeal No. 190 of 2012 with I.A. No. 304 of 2012) before the Appellate Tribunal for Electricity ('the Tribunal') on the ground that the provisional tariff order dated 27.8.2012 had been passed by the Commission without hearing the said respondents. The Tribunal by its order dated 8.10.2012 set aside the order dated 27.8.2012 and remanded the matter to the Commission to pass appropriate order in accordance with law after hearing all the parties concerned.

7. Meanwhile, Unit-II of the generating station was declared under commercial operation on 19.8.2012. The petitioner filed Interlocutory Application (I.A. No. 49/2012 in Petition No. 160/2012) revising the tariff calculations, based on the actual audited

capital expenditure as on the date of commercial operation of Unit-I and the projected additional capital expenditure from the date of commercial operation of Unit-I (11.11.2010) to Unit-II (i.e 19.8.2012).

8. Petition No.160/2012 alongwith I.A.No.49/2012 were listed for hearing on 23.10.2012 and accordingly, by letter dated 10.10.2012 notices for hearing of the petition were served upon all the concerned parties, in terms of the order of the Tribunal to consider the grant of provisional tariff. The hearing was attended by the petitioner, all respondents and the Objector. During the hearing, the learned counsel for the respondents Nos. 1 to 6 has filed its reply with copy to the petitioner which has been taken on record. The learned counsel for the objector submitted that copy of the I.A filed by the petitioner has not been received and prayed that it may be granted some time to file its reply after service of the copies. Similar submission was made by the representative of the respondent No.7. In response, the learned counsel for the petitioner clarified that copy of the I.A had been served on all the respondents. He however undertook to handover copies of the I.A on the respondent PSPCL and the objector, in course of the day. After considering the submissions of the parties, we have decided that I.A No.49/2012 pertaining to tariff of Unit-II of the generating station would be taken up for hearing after completion of pleadings by all parties. Accordingly, the parties were directed to make their submissions in respect of the grant of provisional tariff for Unit-I of the generating station from the date of its commercial operation till 31.3.2014.

Submissions of Petitioner

9. The learned counsel for the petitioner mainly submitted the following:

- (a) The provisional tariff of ₹3.127/kWh for Unit-I of the generating station has not been determined by any authority. The Government of Karnataka vide its letter dated 27.9.2010 has approved the said tariff applicable from the date of commercial operation of Unit I till the tariff is determined by this Commission, subject to adjustment.
- (b) The petitioner is being paid this unilaterally determined provisional tariff by the respondents Nos.1 to 6, considering the project cost of ₹4882.97 crore for 1200 MW capacity, excluding IDC and including additional costs as recommended by Justice (*Retd*) Gururajan Committee which has been agreed to by the respondent No.1, by letter dated 10.11.2010.
- (c) Based on the approval of the Government of Karnataka vide its letter dated 3.2.2009, the capacity of the generating station was augmented from 1015 MW to 1200 MW even though the Power Purchase Agreement (PPA) dated 26.12.2005 between the petitioner and the respondent Nos. 2 to 6 still provides for a capacity of 1015 MW.
- (d) The PPA dated 26.12.2005 is not final as the petitioner by its letter dated 8.12.2005 had brought to the notice of the Government of Karnataka regarding the changes required to be made in the PPA in order to make the project viable and bankable and further by letter dated 26.12.2005, had informed the respondent No.1 that the signing of PPA was without prejudice to right of the petitioner to have certain issues decided by this Commission at the time of final determination of tariff.
- (e) In terms of Section 79(1)(b) of the Electricity Act, 2003, the Commission has the power to determine and regulate the tariff of the generating station which have either entered into PPA or otherwise have a composite scheme for generation and

sale of electricity for more than one state. Since the existing PPA entered into on 26.12.2005 has not yet been approved and keeping in view the fact that the tariff of ₹3.127/kWh is being provisionally paid by the respondent Nos. 2 to 6 based on the enhanced capacity for which no PPA exists, the Commission may determine the provisional tariff for Unit-I of the generating station in terms of the 2009 Tariff Regulations.

- (f) The respondent Nos.1 to 6 in their reply dated 22.10.2012 have submitted that the claims of the petitioner for IDC, interest on term loans, fuel cost at actuals, Interest on Working capital (IWC), Return on Equity, Station Heat Rate, Auxiliary Consumption and O&M charges should be considered as per provisions of the PPA dated 26.12.2005 which is permitted under Regulation 37 of the 2009 Tariff Regulations. The petitioner has submitted that the pleas of the respondents are not tenable since the PPA dated 26.12.2005 between the petitioner and respondent Nos.1 to 6 has not yet been approved by the State Commission. Moreover, tariff at the rate of ₹3.127/kWh is being provisionally charged which is not as per the rate agreed to in the PPA. Even the additional claim for ₹36.85 crore as establishment charges by the petitioner have also not objected to by the respondents although it is over and above the cost agreed to in the PPA. .
- (g) The provisional tariff of ₹3.127/kWh is not adequate to meet the fuel expenses, operating costs and debt servicing. As regards revision of capital cost for enhanced capacity, the Government of Karnataka by its order dated 25.10.2010 had approved an amount of ₹583 crore, excluding IDC, incurred upto the date of commercial operation and the same has been accepted and acted upon by the respondents Nos. 1 to 6. Subject to the approval of tariff by this Commission, the respondents are bound to off-take power from the generating station as per orders of the Government which have been accepted and acted upon by the said respondents.
- (h)The provisional tariff of the generating station be determined in terms of the 2009 Tariff Regulations specified by the Commission keeping in view the sustainability of

operation of the plant including the cost of fuel, oil, other consumables and overhead expenses.

- (i) The petitioner may be given liberty to file its rejoinder to the reply filed by the respondents 1 to 6 during the hearing.

Submissions of Respondent Nos. 1 to 6

11. In response to the above, the learned counsel for the respondent Nos. 1 to 6 mainly submitted as under:

- (a) The provisional tariff rate of ₹3.127/kWh for Unit-I agreed to by the parties, has been claimed by the petitioner from November, 2010 to December, 2011 and the same is being paid by the respondents. The said tariff has been agreed to as an interim measure, despite the actual tariff as per PPA being lower (2.101/kWh) considering the norms and parameters contained therein. Since, the present petition has been filed only on 14.12.2011, the provisional tariff to be determined by the Commission cannot be given retrospective effect.
- (b) The various norms and parameters provided in the PPA such as capital cost (including IDC), interest on loan, return on equity, O&M charges, Station Heat Rate etc are required to be applied. The provisions in the 2009 Tariff Regulations specified by the Commission are ceiling norms and since the norms provided in the PPA are less than the norms specified in the 2009 Tariff Regulations, the provisions of the PPA are binding and should be applied, in terms of Regulation 37 of the 2009 Tariff Regulations, for determination of tariff.
- (c) The application for approval of PPA is pending before the State Commission and the same has been deferred considering the pendency of tariff petition before this Commission. Regulation 37 specified by the Commission would be rendered meaningless, if provisions of the PPA are not considered for determination of tariff. Also, in terms of Rule 8 of the Electricity Rules, 2005, the tariff determined

by this Commission under Section 79(1) (a) & (b) would not be re-determined by the State Commission under Section 86 (1) and subject to this, the State Commission may determine whether a distribution licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission.

- (d) Since the petitioner has entered into a composite scheme for generation and sale of electricity by PPA dated 26.12.2005, the same is required to be considered. The petitioner is required to limit its claim for a capital cost of ₹4430 crore (₹4299 cr + ₹131 cr) and no additional capital cost can be claimed for the purpose of determination of tariff. Hence, there is no justification for the petitioner to unilaterally claim a higher amount, at this stage.
- (e) Each of the parameters mentioned in the PPA has been specifically agreed to by the petitioner and the respondents. The provisional tariff rate of ₹3.127/kWh based on the parameters as approved by the Government of Karnataka vide its letter dated 27.4.2012 are without prejudice to the rights of the principal buyers conferred under the PPA dated 26.12.2005. Hence the PPA, which has a composite scheme, is sacrosanct and the petitioner is bound by the terms agreed upon by the parties.
- (f) The variable cost to be allowed to the petitioner may be considered in the backdrop of the conduct of the petitioner and its acts of omission and commission.
- (g) The delay in the commissioning of Unit-II has been occasioned due to the default of the petitioner to comply with the pollution control norms and not on account of the 400 kV evacuation facilities not being ready as alleged. Moreover, there is no Change in law and/or Force Majeure event involved in the matter and the disputes if any, between the petitioner and the EPC contractor are bilateral issues to be settled between them.

- (h) The petitioner has been raising bills based on the agreed interim rate of ₹ 3.127/kWh which is paid by the respondents. Hence, there is no reason for the petitioner to seek revision of provisional tariff in deviation to the terms of the PPA.
- (i) The respondents may be granted time to file detailed reply in the matter. Thereafter, the Commission may hear the parties and final tariff of the generating station may be determined.

12. In response to our query as to how the State Government of Karnataka has agreed to the rate of ₹3.127/kWh, despite the fact that the tariff rate in terms of the PPA was less, the learned counsel for the said respondents clarified that the said rate was provisional in nature, without prejudice to the rights of the buyers in terms of the PPA. The learned counsel for the petition reiterated that the tariff rate of ₹3.127/kwh approved by the State Government of Karnataka was agreed to and acted upon by the parties, subject to final adjustment of the tariff to be approved by the Commission.

Submissions of Respondent No. 7

13. The representative of the respondent No.7, Punjab State Power Corporation Ltd (PSPCL) mainly submitted as under:

- (a) The generating station of the petitioner has attained the status of an inter-state generating station (ISGS) only on account of the supply of balance 10% of power to the State of Punjab vide PPA dated 29.9.2006.
- (b) In Petition No. 40/2005, the Commission had given in-principle approval of capital cost for the project on the basis of BTG supply by M/s BHEL for 1015 MW capacity. Subsequently, order was placed on Dong Fang for 1200 MW for supply of Chinese BTG equipment for the project which would be lower than the cost of

1015 MW BHEL project. The petitioner has not approached the Commission for revision of capital cost and amendment of the in-principle order dated 25.10.2005, pursuant to augmentation of the capacity and the change in the EPC contractor. The actual incurred capital cost should be furnished by the petitioner. For assessment of capital cost, the project with similar capacity and similar make needs to be compared. In this regard, the response of the petitioner to the observations of the Commission in its order dated 7.8.2006 may be made known to the parties.

- (c) Since the Commission had observed in order dated 25.10.2005 that the capital cost for tariff purpose should not exceed the cost determined in Petition No. 40/2005, the capital cost of ₹4299 crore shall be firm. Hence, as per PPA with respondent No.7, the same capital cost should be considered.
- (d) The in-principle approval accorded by the Commission in its order dated 25.10.2005 as per the 2004 Tariff Regulations is subject to ceiling norms and no additional capital expenditure is admissible. As per CEA data available, the capital cost for the project of the petitioner is higher when compared to other similar projects. Hence for the grant of provisional tariff, the Commission may consider the same.
- (e) Since the generating station is an ISGS, the sale of infirm power should be accounted for and the same should be reduced from the capital cost, to the extent of the difference between the UI cost and the actual fuel cost.
- (f) The features of EPC contract with Dong Fang to determine the Liquidated damages for deviation in Heat Rate, Auxiliary consumption, etc may be submitted by the petitioner.
- (g) The petitioner may be directed to provide copies of letter/documents regarding the declaration of Unit-I and Unit-II, performance guarantee tests, auxiliary consumption as per actual /data of PG tests.

- (h) The 2009 Tariff Regulations do not provide for higher auxiliary norm in case of power consumption in jetty. The functioning of jetty involve the loading of coal, shifting of coal to stockyard and loading from stockyard to railway wagons for plant site, which is clearly a cost component of fuel and should be included in the landed cost of coal received in the plant. Hence, auxiliary consumption higher than 6% is not justified.
- (i) Station Heat Rate (SHR) should be lower of 2400 kcal/kWh or the SHR approved by the Commission for Karnataka ESCOMS (respondent Nos. 2 to 6) and the lowest figure in line with Regulation 37 may be adopted.
- (j) The debt-equity ratio of 80:20 may be adopted as agreed to by the petitioner in the PPA dated 29.9.2006 with this respondent and the petitioner should be called upon to clarify the lower GCV of coal.
- (k) Though the project is availing the benefit of lower capital cost being a mega project, this respondent has not been supplied with any kWh energy till date from this project. It is for the petitioner to arrange for long term open access from PGCIL.
- (l) The petitioner may not be permitted to disown the parameters and norms stipulated in the PPA which have been accepted by it. This respondent may be permitted to file detailed written submissions in the matter.

Submissions of the Objector

14. The learned counsel for the objector, mainly submitted as under:

- (a) The petitioner should have approached the Commission to charge the provisional tariff of ₹3.127/kWh. Hence, the said provisional tariff rate charged by the petitioner is excessive and without authority of law. This Commission only has

the authority to grant provisional tariff and any other arrangement by the parties should have been ratified and approved by the Commission.

(b) Provisional tariff should not be granted with retrospective effect, since the petitioner has filed this petition belatedly.

(c) Copy of the I.A filed by the petitioner as regards tariff of Unit-II of the generating station has been handed over by the petitioner now and accordingly, time may be granted to the objector to file its response to the same.

15. In response to the above, the learned counsel for the petitioner made his submissions as under:

(a) Though the scheme for supply of 90% of power from the generating station to the respondents 2 to 6 and the balance 10% of power to the respondent No.7, PSPCL was envisaged under the agreement entered into on 26.10.2005 and 29.9.2006 respectively, the same is subject to the approval of the Commission.

(b) Clause 14.2 under Article 14 of the PPA provides that the PPA shall come into force only after approval of the Government of Karnataka and the Commission and till then the agreement is not legally enforceable against either by the parties.

(c) Though PPA has been signed by the parties with lower tariff rate, the interim tariff of ₹3.127/kWh was approved by the Government of Karnataka keeping in view the changes in capacity and the capital cost, and the same has been implemented by the parties. However, by letter dated 16.11.2010, the petitioner had requested the respondent No.1, PCKL to have a re-look into the tariff computations and revise the same considering the correct parameters. Thus, considering the issues like change in capacity and capital cost, it is abundantly clear that the PPA has not been considered sacrosanct by the parties and the same is subject to the approval of this Commission.

- (d) Even during the signing of the PPA, the petitioner by its letter dated 26.12.2005 had made it clear that the said PPA has been signed without prejudice to the rights to take up the issues with the Appropriate Commission while final approval of tariff and PPA are accorded to the project. Since both the parties have deviated from the terms of the PPA, the Commission in exercise of its powers under Section 79(1)(b) shall determine the tariff of the generating station.
- (e) Regulation 37 of the 2009 Tariff Regulations envisage a situation wherein the improved norms of operation are agreed to by the parties to be made applicable for determination of tariff. It is also important to consider if the lesser/improved norms of operation if accepted, could be achieved by the generating station. Regulation 37 would be applicable if PPA is binding and has been accepted by the parties. In the instant case, issues were raised by the petitioner as regards amendment of PPA and consequently, interim tariff of ₹3.127/kWh was approved by the Government of Karnataka which has been agreed to by the parties, subject to final adjustment of tariff to be approved by this Commission. Hence, the question of application of Regulation 37 does not arise.
- (f) Bills have been raised on the respondents based on the interim rate of ₹3.127/kWh and the same is without prejudice to the final adjustment of tariff to be determined by this Commission. In this regard, the order of the Government of Karnataka dated 25.10.2010 is self explanatory.
- (g) The Government of Karnataka has not paid any amount for infirm power to the petitioner.
- (h) The Commission may consider to grant provisional tariff for Unit-I of the generating station, during the pendency of this petition. Thereafter, I.A. for tariff of Unit-II may be taken up after completion of pleadings by parties.

16. The learned counsel for the respondent Nos.1 to 6 clarified that no amendment to the PPA dated 26.12.2005 has been made. He also pointed out that the interim tariff rate of ₹3.127/kWh approved to by the Government of Karnataka is without prejudice to the rights of the principal buyers conferred under the PPA.

17. We have heard the parties and perused the documents on record. From the pleadings and submission of the parties, the following preliminary issues arise for our consideration:

(a) Jurisdiction of the Commission to determine the tariff of the generating station;

(b) Whether the PPA dated 26.12.2005 between the petitioner and Respondent Nos. 2 to 6 is legally binding on the parties and can be considered by the Commission while determining tariff?

(c) What is the scope of Regulation 37 of the 2009 Tariff Regulations? Whether the provisions of the 2009 Tariff Regulations can be given a go by in favour of the terms and conditions of the PPA in view of Regulation 37 of 2009 Tariff Regulations?

(d) Whether the tariff should be determined as per the provisions of the 2009 Tariff Regulations or as per the terms and conditions of the PPA?

Jurisdiction of the Commission

18. The petitioner has submitted that since there is a scheme to supply power from the generating station to more than one State i.e. Karnataka and Punjab, there is a composite scheme in terms of section 79(1)(b) of the Electricity Act, 2003 (the Act) and therefore, the jurisdiction of this Commission gets invoked and existence of the PPA is not relevant. Respondent No.1 to 6 in their written submission have submitted that the contention of the petitioner that the jurisdiction of the Commission even without the PPA is misplaced as there should be some legal basis for the generating company agreeing

to supply electricity to the purchaser. It has been stated that the term “otherwise have a composite scheme” is in the nature of being a statutory provision for the generating company supplying electricity to two states and in such cases the agreement is not relevant. The respondents have further submitted that in the present case, there is no requirement for application of “otherwise have a composite scheme” as there is a PPA duly signed by the petitioner with the distribution licensees in Karnataka and also with Punjab and based thereon, the composite scheme is claimed to invoke jurisdiction of this Commission under section 79(1)(b) of the Act. Therefore, the contention of the petitioner that the PPA should be ignored and the tariff is to be determined without considering that there is a PPA for sale of electricity is misplaced. The respondents have also contested the contention of the petitioner that the PPA was signed only for the purpose of achieving the financial closure and was not a valid document between the parties on the basis of which electricity is to be supplied to the petitioner.

19. We have considered the submission of parties. Section 79(1)(b) of the Act provides that this Commission shall discharge the function to regulate the tariff of generating companies other than those owned or controlled by the Central Government if such generating companies enter into or otherwise have a composite scheme for generation and supply of electricity in more than one State. Thus the main requirement is the existence of a composite scheme for generation and supply in more than one State. The Act envisages that the composite scheme may emerge through either of the two ways, namely, the generating company may enter into agreement with more than one state for generation and supply of electricity or the generating company may otherwise have a composite scheme for generation and supply of electricity in more

than one state. The words “otherwise have a composite scheme” would mean the scheme that has emerged other than through agreements. For instance, a generating company may be required under a statute to generate and supply electricity to more than one state. A generating company may have an agreement at the inception to supply to one state but subsequently it starts supplying power to more than one state. In the present case, the generating company has entered into agreements with Karnataka and Punjab for generation and supply of electricity from the generating station. This Commission while approving the in-principle capital cost of the project had the occasion to consider the question of jurisdiction of the Central Commission to determine the tariff of the generating station and in order dated 25.10.2005 in Petition No.40/2005 observed as under:

“25.According to the petition filed before us, PPAs for sale of power are being negotiated with Karnataka and Kerala. Clearly, the generating station has the scheme of sale to more than one State. The Central Government has accorded the Mega Power status on being satisfied that it will involve supply of power to more than one State. Hence the jurisdiction of the Commission in respect of the project is indisputable.”

Thus this Commission had based its finding on the issue of jurisdiction on the presentation of the petitioner that the PPAs for sale of power were under negotiation with Karnataka and Kerala. Though the PPAs were subsequently signed with Karnataka and Punjab, the fact remains that there is a composite scheme because the petitioner has entered into agreement with more than one state. Therefore, the composite scheme for generation and supply of electricity in more than one state emerges from the PPAs entered into by the petitioner with the distribution companies of Karnataka and Punjab. If the PPA with any one of them is terminated, it will no more remain a composite

scheme unless the petitioner is able to establish that it has otherwise a composite scheme for generation and sale of electricity in more than one state. It is not in dispute that the Commission derives its jurisdiction from the Act and not from the agreement between parties. However, when the Act presupposes that the composite scheme should be based on agreements between the generating company and the purchasing states and in the absence of any evidence that the generating company has otherwise a composite scheme for generation and sale of electricity in more than one state, the importance of the PPAs cannot be overlooked. In our view, based on the PPAs entered into by the petitioner with the distribution companies of Karnataka and Punjab for generation and sale of power from the generating station, a composite scheme has emerged and the Commission has the jurisdiction to regulate the tariff for such composite scheme under section 79(1)(b) of the Act.

Consideration of the PPA by the Commission

20. The petitioner has submitted that in view of the provisions of Article 14.2 of the PPA dated 26.12.2005, the PPA is not valid and cannot be enforced. Article 14.2 of the PPA reads as under:

“14.2 This Agreement shall come into force only after approval of the GoK and the Commission and till then this agreement is not legally enforceable against either by the parties.”

Respondent Nos.1 to 6 have submitted in their written submissions that the above clause deals with the conditions for enforcement of the PPA and does not say that the terms and conditions set out in the PPA are not agreed terms. The respondents have submitted that the intention of above stated clause is that the parties will approach the

Government of Karnataka and the Appropriate Commission in pursuance of the agreement reached for approval and this agreement will be enforced upon such approval. The respondents have further submitted that approval of the PPA by the Karnataka Commission is pending on account of the determination of the tariff by this Commission and Karnataka Commission has opined that the approval of the PPA will be taken after the tariff is determined by this Commission. The process is in terms of Rule 8 of the Electricity Rules, 2005 wherein the State Commission is to decide the power purchase after determination of tariff by this Commission. The respondents have submitted that the effect of the contention of the petitioner would be that once the PPA is approved by Karnataka Commission, this Commission would have to re-enter the entire process of tariff determination and once again determine the tariff in line with the norms and parameters provided for in the PPA, subject to ceiling norms in the 2009 Tariff Regulations.

21. We have considered the submissions of the petitioner and the respondents. This Commission does not approve the PPA in exercise of its power of tariff regulation or determination. This Commission determined tariff in accordance with the prevailing tariff regulations. The State Commission in exercise of its power under section 86(1)(b) “regulates the electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply of power within the State”. Therefore, the PPA between the petitioner and the respondents will be approved by the respective State Commission as

part of the power procurement process. In this connection, the observations of the Appellate Tribunal for Electricity in its judgment dated 4.9.2012 in Appeal No. 94 & 95/2012 with regard to the role of the Central Commission and the State Commission in the matter of determination of tariff of generating stations covered under Section 79(1)(a) and (b) are relevant and is extracted as under:

"42. The Electricity Act, 2003 carves out the regulatory control over the Central Sector Generating Companies like NTPC and the generating Companies having composite arrangements of generation and sale of electricity in two or more States. By virtue of those powers, the Central Commission will have to ensure for (a) uniformity in the tariff amongst more than one State beneficiary; and (b) common terms and conditions of supply of electricity to more than one State beneficiary as well as supply from the Central Sector Generating Companies.

43. Thus, these utilities are subjected to a special treatment and brought under the jurisdiction of the Central Commission.

44. The Central Commission has got a wide jurisdiction. In fact, the functions vested in the Central Commission are specific in nature. Whereas, the functions vested in the State Commissions are general in nature applicable to a particular State. The specific function will therefore, have to be given supremacy to the general functions vested in the State Commission. This is provided under Rule-8 of the Electricity Rules, 2005 which provides as under: *"The tariff determined by the Central Commission for generating companies under clause (a) or (b) of sub section (1) of Section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under Clauses (a) or (b) of sub-section (1) of Section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission."*

45. In terms of the above Rule, the tariff determined by the Central Commission which would include the terms and conditions of supply also cannot be re-worked by the State Commission.

46. The role of the State Commission is only to decide whether the Power Purchase Agreement to be entered into between the NTPC and the Distribution Company for purchase of Electricity from NTPC Stations at the tariff determined by the Central Commission has to be approved or not from the point of view of deciding whether the power can be procured from other sources at a cheaper or in a more economical manner to supply the same to the concerned State.

47. The said power of scrutiny by the State Commission cannot be taken to mean that the State Commission has got the powers to suggest modifications to the terms and conditions or even reserving to deal with the implications of the terms and conditions at a later stage.

48. Therefore, in all respects, the Power Purchase Agreement shall be subject to the Regulation of Central Commission and certainly not of the State Commission"

22. Therefore, it emerges from the above judgment that the tariff of the generating station of the petitioner shall be determined by this Commission in accordance with the 2009 Tariff Regulations. The State Commission will decide whether the PPA entered into between the generator and the distribution companies at the tariff determined by this Commission shall be approved or not from the point of view of deciding whether the power can be procured from other sources at a cheaper or in a more economical manner to supply the same to the concerned State. It is to be noted that Article 14.2 of the PPA does not say that the PPA is not valid, but it predicates its enforceability on the approval by the State Commission. Therefore, the PPA can be considered for the purpose of tariff determination by this Commission to the extent it is permissible under the 2009 Tariff Regulations. However, the tariff so determined will come into effect only when the PPA is approved by the State Commission and the tariff determined by this Commission is adopted under Rule 8 of the Electricity Rules, 2005.

Scope of Regulation 37 and its applicability to PPA dated 26.12.2005

23. The petitioner has submitted that the tariff of the generating station should be determined in accordance with the 2009 Tariff Regulations. The Respondent No. 1 to 6 have submitted that the Commission need to consider and implement the improved norms of operation as agreed to between the generating companies and the purchasers as such improved norms become the applicable norms in accordance with the provisions of Regulation 37 in place of the norms specified in the 2009 Tariff Regulations. Respondent No. 1 to 6 have further submitted that the individual aspects

of tariff elements such as capital cost, return on equity, interest on loan, station heat rate, O&M expenses and auxiliary consumption being the improved norms as agreed to by the petitioner and the respondents have to be applied instead of the norms specified in the 2009 Tariff Regulations.

24. Regulation 37 of 2009 Tariff Regulations provides as under:-

"37. Norms of operation to be ceiling norms: - Norms of operation specified in these regulations are the ceiling norms and shall not preclude the generating company or the transmission licensee, as the case may be, and the beneficiaries and the long-term transmission customers from agreeing to the improved norms of operation and in case the improved norms are agreed to, such improved norms shall be applicable for determination of tariff."

25. The norms of operation have been enumerated under chapter 4 of the 2009 Tariff Regulations. The norms of operation include Normative Annual Plant Availability Factor (NAPAF), Gross Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy Consumption. Therefore, under Regulation 37 only parties can agree to the improved norms of operation in respect of these norms. Consequently, the factors like capital cost including IDC, debt equity ratio, return on equity, interest on loan and O&M charges are not covered under the norms of operation and cannot be decided by agreement between the parties. These elements of tariff have necessarily to be decided in accordance with the provisions of 2009 Tariff Regulations. The Hon'ble Supreme Court in PTC(I) Ltd-v- CERC & ors (2010) 4 SCC 603) has ruled that the Regulations made by the Commission in exercise of its power of subordinate legislation shall override the existing and future contracts. The relevant portion of the judgment is extracted as under:-

"A regulation under Section 178, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities in as much as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations."

In view of the above judgment, the provisions in the PPA between the petitioner and the respondents shall have to conform to the provisions of the 2009 Tariff Regulations in so far as determination of tariff is concerned. Accordingly, except for the norms of operation as stated in the preceding paragraphs, other elements of tariff shall be determined in accordance with the 2009 Tariff Regulations.

26. As already noted, the parties in terms of Regulation 37 can agree on improved norms of operation and in that event such norms shall be applicable for determination of tariff. The respondents have submitted that improved norms for gross station heat rate @ 2220 kcal/kWh (corresponding to net station heat rate of 2400 kcal/kWh) and the auxiliary consumption @ 6% as per the 2009 Tariff Regulations should be adopted for determination of tariff. The petitioner has submitted that the PPA provides for the heat rate of 2400 kcal/kWh and the same should be adopted. The respondents have submitted that the PPA provides for heat rate for net generation i.e. the net heat rate at 2400 kcal/kWh which translates into gross station heat rate of 2220 kcal/kWh. The respondents have further submitted that there can be no justification for the petitioner to pay the higher heat rate as provided in the PPA which is also better than the norms provided in the 2009 Tariff Regulations and the commitment given by the petitioner in its letter dated 10.12.2004. As regards the auxiliary consumption the petitioner has claimed @7.5% as per PPA which include jetty, coal handling arrangements, sea water pumping and condenser cooling and seawater arrangements for sweet water

requirements for boilers and provision of flue gas de-sulphurisers for plant as part of the auxiliary consumption. The respondents have submitted that inclusion of jetty consumption as a part of auxiliary consumption is incorrect as the same is located at a distance place and not supplied electricity by the petitioner as auxiliary consumption. The respondents have submitted that the auxiliary consumption for the generating station needs to be considered in terms of the 2009 Tariff Regulation which is 6% and the same is consistent with the provisions of EPC contract which specifies the auxiliary consumption of less than 6.5% for the generating stations including FGD and coal handling plant for 400 MW.

27. We have considered the submissions of the parties. The dispute regarding Station Heat Rate between the parties pertains to the interpretation of station heat rate provided in the PPA i.e. whether it is gross or net heat rate. This requires detailed examination and cannot be gone into at this stage. However, the 2009 Tariff Regulations provides for a formula for working out the heat rate of the new thermal generating station on achieving COD after 1.4.2009. It is also noted that the Government of Karnataka had appointed a committee under Justice (Retd) Gururajan who has recommended gross station heat rate of 2333.43 kcal/kWh and the auxiliary consumption of 6.5% after 1.4.2009. Accordingly, it cannot be said that there is an agreement between the parties with regard to the heat rate simply because one rate is agreed at the time of entering into the PPA. Further, the Government of Karnataka considering the report dated 8.4.2011 of Justice (Retd) Gururajan Committee had decided that the issue of determination of heat rate should be left to this Commission. The Station Heat Rate has been accordingly worked out on the basis of the formula

given in the 2009 Tariff Regulations for purpose of determination of provisional tariff. As regards auxiliary consumption, the interim tariff of ₹3.127/kWh has been worked out based on the auxiliary consumption of 7.5%. However, for the purpose of provisional tariff, the auxiliary consumption of 6% as per the 2009 Tariff Regulations has been considered. The claim of the petitioner for auxiliary consumption of 7.5%, after considering the additionalities like dedicated jetty and coal handling arrangements, sea water pumping and condenser cooling and seawater arrangements for sweet water requirements for boilers and provision of flue gas de-sulphurisers for plant will be considered at the time of determination of final tariff.

Principles to be adopted for determination of tariff

28. In view of the discussions in the preceding paragraphs, the following principles have been adopted for determination of provisional tariff of Unit-I of the generating station.

(a) All elements of tariff such as Capital cost, IDC, initial spares, additional capitalisation, debt-equity ratio, Return on Equity, Interest on loans, O&M expenses, and interest on Working capital have been worked out on the basis of the provisions of the 2009 Tariff Regulations after carrying out prima facie prudence check.

(b) Norms of operation such as NAPAF, Station Heat Rate and Secondary Fuel oil consumption has been considered as per the provisions of the 2009 Tariff Regulations.

(c) Auxiliary Consumption has been considered as 6% as per the 2009 Tariff Regulations.

(d) The detailed prudence check of the expenditure incurred or projected to be incurred will be gone into at the time of final determination of tariff after considering the submissions of the parties.

29. Next we consider the grant of provisional tariff of Unit-I of the generating station with effect from the date of commercial operation, subject to adjustment as per proviso to clause (3) of Regulation 5 of the 2009 Tariff regulations. We direct accordingly.

30. Regulation 5 of the 2009 Tariff Regulations, amended on 2.5.2011, provides as under:

“(4) Where application for determination of tariff of an existing or a new project has been filed before the Commission in accordance with clauses (1) and (2) of this regulation, the Commission may consider in its discretion to grant provisional tariff upto 95% of the annual fixed cost of the project claimed in the application subject to adjustment as per proviso to clause (3) of this regulation after the final tariff order has been issued:

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

31. The respondents 1 to 6 have submitted that the provisional tariff to be granted by the Commission should be prospective in operation. Similarly, the learned counsel for the objectors have also submitted that the provisional tariff of the generating station may not be granted with retrospective effect as the petition has been filed belatedly. We have considered the objections of the respondents/objector. The 2009 Tariff Regulations is applicable for the entire tariff period 2009-14. The petitioner and the respondents have agreed on the interim tariff rate of ₹3.127/kWh subject to the determination of final tariff by this Commission. That being the case, it is not proper for the respondents to take a contrary view that the tariff determined by the Commission will not have its application from the date of commercial operation. In our view, the tariff determined by this Commission shall be applicable from the date of commercial operation till the end of the tariff period.

32. It is noticed that the petitioner has made a specific prayer (prayer (d) of the petition) for grant of provisional tariff at the rate of 95% of the annual fixed cost claimed along with actual variable charges in accordance with Regulation 5(4) of the 2009 Tariff Regulations. Regulation 5(4) of the 2009 Tariff Regulations, as quoted above, provides that only when the application has been made in accordance with Clauses (1) and (2) of Regulation 5 of the 2009 Tariff Regulations, the Commission may at its discretion allow upto 95% of the annual fixed cost claimed in the petition as provisional tariff, till the final tariff is determined. In other words, all procedural requirements under the Act and the regulations for making the application for tariff must have been complied with before the provisional tariff is granted. The petitioner having filed the tariff petition in terms of Clauses (1) and (2) of the 2009 Tariff Regulations, the Commission has the power under Regulation 5(4) to grant provisional tariff for Unit-I of the generating station of the petitioner. Based on this, the tariff petition filed by the petitioner on 14.12.2011 for determination of tariff for the period from 11.11.2010 till 31.3.2014 is subject to prudence check of the Commission in terms of the provisions of the 2009 Tariff Regulations. However, the grant of provisional tariff in terms of Regulation 5(4) of the 2009 Tariff Regulations would be subject to adjustment after final tariff is determined for the generating station.

33. It is noticed that though Unit-I of the generating station was declared under commercial operation on 11.11.2010, the petitioner has filed the present petition for determination of tariff only on 14.12.2011. For this, the petitioner in its petition has submitted that the petition for determination of tariff with respect of Unit-I could not be

filed till the response of the State Government of Karnataka/Principal buyers on certain outstanding issues like the Debt-Equity ratio, Gross Station Heat Rate, schedule for 400 kV transmission line, was not received by it and only after receipt of response, the petition was filed. In our view, mutual negotiation of any outstanding issues by the petitioner with the beneficiary states should not have detracted the petitioner from filing the petition for determination of tariff. Regulation 5(1) of the 2009 Tariff Regulations provides that the generating company or the transmission licensee, as the case may be, may make an application for determination of tariff, in respect of the units of the generating station or the transmission lines or sub-stations of the transmission system, completed or projected to be completed within six months from the date of application. The purpose of this provision is that the tariff is decided by the time the generating station or unit thereof is put to commercial operation. Moreover, the issues referred to by the petitioner which was allegedly responsible for the delay in filing the petition can be decided by the Commission in terms of the 2009 Tariff Regulations. Accordingly, it was incumbent upon the petitioner to file the petition before the Commission and seek the determination of tariff for the units, any time within six months prior to the date of commercial operation or immediately after commercial operation of the units of the generating station.

Delay in the commissioning of the project

34. The petitioner in its petition has submitted that the delay in commissioning of the generating station were on account of the major earthquake in China during 2008 due to which boiler manufacturing facilities of M/s Dong fang electric corporation (OEM) were

severely affected and due to the visa policy of the Government of India, due to which Chinese experts, who were required to be in site for pre-commissioning activities, had left India during the period from July, 2009 to October, 2009. Thus, the delay is on account of force majeure and is not attributable to the petitioner. It has also submitted that erection work of Unit-II got hampered due to non-readiness of 400 kV transmission lines, which was the responsibility of the Respondent Nos. 2 to 6 herein. The petitioner has also submitted that though Unit-II reached full capacity on 16.4.2011, declaration of COD was pending for want of 400 kV transmission lines. Accordingly, the petitioner has prayed that the delay on account of the above, leading to time and cost overrun is not attributable to it and the Commission may consider the same accordingly. The respondent No.1 to 6 during the hearing has submitted that the delay due to earthquake and change in visa policy cannot be considered as Force majeure and the delay is attributable to the petitioner. It has also submitted that the completion of 400 kV DC line from the project switchyard has been delayed for want of Stage-II clearance from the Ministry of Environment & Forests, Government of India and hence Force Majeure event has been invoked on the petitioner under Article 10 of the PPA dated 26.12.2005. The submissions of the parties, as to whether the delay in the commissioning of the generating station is on account of Force majeure or attributable to the parties are required to be looked into in detail after hearing all the parties on merit, at the time of determination of final tariff. However, keeping in view the time and cost overrun involved in the project and since only Unit-I of the generating station is to be granted provisional tariff by this order, we consider only 90% of the capital cost claimed by the petitioner for the purpose of grant of provisional tariff. Accordingly, after considering the documents

submitted by the parties upto the date of hearing, the provisional tariff of Unit-I of the generating station from 11.11.2010 to 31.3.2014 is determined in the subsequent paragraphs:

Capital cost

35. The petitioner has claimed a capital cost of ₹291732.40 lakh for Unit-1 as on the date of commercial operation i.e. 11.11.2010. Based on Form-9A (revised), the break-up of the capital cost claimed is as under.

<i>(₹ in lakh)</i>	
Gross block as on 1.4.2010	3642.00
Addition in gross block through CWIP during the period	276841.00
Total	280483.00
Projected Additional capital expenditure upto 31.3.2011	11249.00
Total	291732.00

36. The respondents have submitted that after considering the request of the petitioner for increasing in the capacity and examination of all relevant records, the respondents had agreed to increase in the capital cost by ₹131 crore. Accordingly, the total capital cost was agreed for ₹4430 crore for 1200 MW capacity which is including of interest during construction. The petitioner is required to limit its claim to the said amount and cannot claim extra capital cost for tariff determination. Further, it is not open to the petitioner to claim capital cost on the ground that the Government of Karnataka in the conciliation efforts referred to other capital cost. The respondents have further submitted that a substantial part of claim and since IDC has been increased due to delay in commissioning of the generating stations for reasons solely attributed to the petitioner, they additional IDC claimed by the petitioner should be denied.

37. We have considered submissions of the parties. The Commission had approved the capital cost of ₹ 4299 crores for development of 1015 MW generating station in the in principle approval order dated 25.10.2005 in Petition No. 40/2005. It is not in dispute that respondents have agreed to increase in the capital cost by ₹131.68 crore for a capacity of 1200 MW based on the report of the official committee. On the basis of the representation of UPCL to Govt. of Karnataka regarding reconsideration of the capital cost on account of the increase in the capacity of project from 1015 MW to 1200 MW, Govt. of Karnataka appointed an independent committee headed by Justice (retd) Gururajan. The said committee in its report submitted to the Government on 23.9.2010 had recommended increase in capital cost by ₹583.00 crore and suggested for appropriate amendment to the PPA. The Govt. of Karnataka in its order dated 25.10.2010 had approved the enhancement of project capacity from 1015 MW to 1200 MW and capital cost by ₹583 crore and had also directed the petitioner to file necessary particulars of increase in tariff along with relevant documents to the Central Commission for approval. It has been further mentioned in the said order that "subsequent to the approval of cost and tariff by CERC, the PPA between ESCOMS and M/s. UPCL has to be approved by Karnataka Electricity Regulatory Commission (KERC)". In view of the clear cut directions of the Govt. of Karnataka, it does not lie with the respondents to contend that the capital cost cannot be revised since it has not been agreed to by the respondents while agreeing to enhancement in project capacity. Accordingly, the Commission has considered the enhanced capital cost by ₹583 crore for purpose of determining the capital cost.

38. Considering the delay in commissioning of the project, 90% of capital cost claimed has been considered for the purpose of grant of provisional tariff. Since the period of claim for projected additional capital expenditure (upto 31.3.2011) is over, we restrict the same to actuals. As per the balance sheet and Form-9A to the petition, the closing gross block as on 31.3.2011 is ₹281052.00 lakh, which imply that the additional capital expenditure from the date of commercial operation (11.11.2010) to 31.3.2011 is ₹569.00 lakh. Out of this, ₹542.00 lakh is on account of Exchange Rate Variation. It is observed that the opening capital cost is on accrual basis, consisting of liabilities of ₹18800 lakh. Therefore, in terms of Regulation 7 of the 2009 Tariff Regulations, as amended on 21.6.2011, the capital cost, on cash basis, works out to ₹261683.00 lakh, after removal of projected additional capital expenditure. Accordingly, 90% of the opening capital cost, as on the date of commercial operation of Unit-I (600 MW) of the generating station (11.11.2010) considered for provisional tariff, works out to ₹235514.70 lakh, on cash basis. Similarly, the additional capital expenditure claimed for ₹569.00 lakh for 2010-11 and ₹15292.00 lakh for 2011-12, has been restricted to 90%, which works out to ₹512.10 lakh and 13762.80 for 2010-11 and 2011-12 respectively. This has been considered.

Debt Equity Ratio

39. The petitioner has claimed debt-equity ratio of 75.64: 24.36 for the purpose of tariff. The respondent 2 to 6 and PSPCL have submitted that the debt-equity ratio of 80:20 may be considered. Unit-I of the generating station has been declared under commercial operation on 11.11.2010. Since the equity actually deployed is less than

30% of the capital cost, in terms of the first proviso to Regulation 12 (1) of the 2009 Tariff Regulations, the actual debt-equity ratio as claimed by the petitioner has been considered.

Interest on Loan

40. The petitioner has claimed weighted average rate of interest on loans for the respective years as under:

	2010-11	2011-12	2012-13	2013-14
Weighted average rate of interest	12.3524%	12.9448%	13.4248%	13.4248%

41. The rates claimed as above have been considered for the purpose of provisional tariff.

Return on Equity

42. The petitioner has claimed grossed up Return on Equity @ 19.36% during 2010-11 and 19.38% for the years 2011-12, 2012-13 and 2013-14. Regulation 15 of the 2009 regulations provides as under:

“(1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation.

Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in Appendix-II.

Provided further that the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever.

(3) The rate of return on equity shall be computed by grossing up the base rate with the Minimum Alternate/Corporate Income Tax Rate for the year 2008-09, as per the Income Tax Act, 1961, as applicable to the concerned generating company or the transmission licensee, as the case may be.

(4) Rate of return on equity shall be rounded off to three decimal points and be computed as per the formula given below:

Rate of pre-tax return on equity = Base rate / (1-t)

Where t is the applicable tax rate in accordance with clause (3) of this regulation.

(5) The generating company or the transmission licensee, as the case may be, shall recover the shortfall or refund the excess Annual Fixed Charge on account of Return on Equity due to change in applicable Minimum Alternate/Corporate Income Tax Rate as per the Income Tax Act, 1961 (as amended from time to time) of the respective financial year directly without making any application before the Commission:

Provided further that Annual Fixed Charge with respect to the tax rate applicable to the generating company or the transmission licensee, as the case may be, in line with the provisions of the relevant Finance Acts of the respective year during the tariff period shall be trued up in accordance with Regulation 6 of these regulations.”

43. Regulation 5 provides that the generating company or the transmission licensee shall recover the shortfall or refund the excess annual fixed charge on account of return on equity due to change in MAT rate etc, of the respective financial year directly, without making any application before the Commission. Unit-I of the generating station has been declared under commercial operation during the year 2010-11, and the MAT rate applicable for the years 2010-11 and 2011-12 are known. Hence, the MAT rate for the years 2010-11 and 2011-12 has been considered for the purpose of provisional tariff.

Depreciation

44. The petitioner has claimed depreciation of 5.22576% for Unit-I. However, the depreciation rate of 5.1749% as worked out as per the 2009 Tariff Regulations has been considered.

O&M Expenses

45. O&M expenses as specified under Regulations 19 (a) of the 2009 Tariff Regulations has been considered.

Interest on working Capital

46. In terms of Regulation 18 (3) (ii) of the 2009 Tariff Regulations, amended on 21.6.2011, the SBI base rate of 7.5% as on 1.7.2010 with markup of 350 bps totaling 11%, has been considered.

Gross Station Heat Rate and Auxiliary consumption

47. In terms of the methodology specified under Regulation 26(II)(B)(a) of the 2009 Tariff Regulations, the Gross Station Heat Rate has been worked out as 2333.43 kcal/kWh and the same has been considered. As stated, the Auxiliary consumption of 6% has been adopted for the purpose of provisional tariff.

48. Based on the above discussions, the provisional tariff of the Unit-I (600 MW) of the generating station is allowed as under:

	(₹ in lakh)			
	2010-11	2011-12	2012-13	2013-14
Annual Fixed Charges	58618.06	60457.13	61403.53	60139.98

49. The provisional annual fixed charges determined on annualized basis as above, is applicable *pro rata* to the number of days the said Unit-I shall run from the date of commercial operation till 31.3.2014 or till the final disposal of the petition, whichever is earlier.

50. The provisional annual fixed charges allowed above is subject to adjustment as per proviso to Clause (3) of Regulation 5 of the 2009 Tariff Regulations.

Energy Charge Rate

51. Energy Charge Rate (ECR), considering the Station Heat Rate of 2333.43 kcal/kWh, the Auxiliary consumption of 6.0% and GCV and weighted average price of oil, coal and lime works out to ₹2.085/kWh and is allowed. ECR on month to month basis, shall be calculated in terms of Clauses 5 and 6 (a) of Regulation 21 of the 2009 Tariff Regulations.

52. As prayed for by the parties during the hearing, pleadings in the petition shall be completed before final hearing of the matter, the date for which shall be intimated to the parties.

53. As copies of the interlocutory application I.A. 49/2012 have been served on the respondents/objector, reply shall be filed by these parties, within two weeks, with advance copy to the petitioner, who shall file its rejoinder, within a week thereafter. The matter shall be listed for hearing for which the parties shall be intimated in due course.

Sd/-
[M.DEENA DAYALAN]
MEMBER

Sd/-
[V.S.VERMA]
MEMBER

Sd/-
[DR.PRAMOD DEO]
CHAIRPERSON