

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.160/GT/2012

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

Date of hearing: **26.7.2012**

Date of Order: **27.8.2012**

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 Narendra Naik, Advocate, UPCL
4. Shri R.A.Mulla, UPCL
5. Shri Parthasarathy, UPCL

6. Shri Soumyanarayanan, UPCL
7. Shri Murali, UPCL
8. Shri Padamjit Singh, PSPCL
9. Shri T.P.S.Bawa, 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 ₹4299.12 crore, inclusive of Interest During Construction (IDC) and Financing Charges (FC), for a capacity of 1015 MW. The petitioner has also entered into a Power Purchase Agreement (PPA) on 26.12.2005 with the respondent Nos. 2 to 6 for sale of 90% of power generated from the project and the balance 10% of power is to be sold to the respondent No.7, PSPCL based on PPA dated 29.9.2006. Subsequently, based on the recommendations of Justice (*Retd*) Gururajan Committee vide its report dated 23.9.2010, the

State Government of Karnataka, accorded in principle approval by its order dated 25.10.2010, for enhancement of the capacity of the generating station from 1015 MW to 1200 MW and allowed an increase in the capital cost amounting to ₹583.85 crore, excluding IDC. 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 with this Commission immediately.

4. The petitioner in its petition filed on 14.12.2011 has submitted that Unit-I of the generating station has been declared under commercial operation on 11.11.2010 and that the declaration of commercial operation of Unit-II which was expected on 1.4.2012, is still pending for want of 400 kV transmission line.

5. Clauses (1) and (2) of Regulation 5 of the 2009 regulations provides as under:

“5. Application for determination of tariff. (1) *The generating company or the transmission licensee, as the case may be, may make an application for determination of tariff in accordance with Central Electricity Regulatory Commission (Procedure for making of application for determination of tariff, publication of the application and other related matters) Regulations, 2004, as amended from time to time or any statutory re-enactment thereof, 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.*

(2) *The generating company or the transmission licensee, as the case may be, shall make an application as per **Appendix I** to these regulations, for determination of tariff based on capital expenditure incurred duly certified by the auditors or projected to be incurred up to the date of commercial operation and additional capital expenditure incurred duly certified by the auditors or projected to be incurred during the tariff period of the generating station or the transmission system:*

Provided that in case of an existing project, the application shall be based on admitted capital cost including any additional capitalization already admitted up to 31.3.2009 and estimated additional capital expenditure for the respective years of the tariff period 2009-14:

Provided further that application shall contain details of underlying assumptions for projected capital cost and additional capital expenditure, where applicable.

6. 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 has been filed by the respondent No. 1 (PCKL), and the respondent No.7 (PSPCL). In addition to this, objection to the tariff petition has also been filed by M/s Janajagrithi Samithi, an NGO based in Karnataka. The petitioner has filed its rejoinder to the replies filed by the Respondents, PKCL and PSPCL and its response to the objections filed by the Objector.

7. The matter was heard on 26.7.2012. During the hearing, the learned counsel for the petitioner prayed that the Commission may consider the grant of provisional /interim tariff for Unit-I of the generating station in terms of Regulation 5(4) of the 2009 Tariff Regulations, considering the claims of the petitioner at actuals, towards IDC and FC, debt equity ratio of 75.64:24.36 and interest on loans at 13.5%. He also submitted that since the Gross Station Heat Rate (GSHR) of 2333 kCal/kWh decided by Justice (Retd) Gururajan Committee is inadequate for running the generating station, the Commission may consider the GSHR of 2400 kCal/kWh for the purpose of tariff.

8. In response to the prayer of the petitioner, the learned counsel for M/s Janajagrithi Samithi (objector) requested the Commission for grant of time to file its reply to the prayer of the petitioner for grant of provisional tariff. Accordingly, in terms of the liberty granted by the Commission, the objector has filed its reply on 27.7.2012. Response to the same has been filed by the petitioner on 7.8.2012. Objection has also been filed by the Respondent No.2 BESCO, on 2.8.2012, against the prayer of the petitioner for grant of provisional tariff for Unit-I of the generating station. Before we proceed to consider the prayer of the petitioner for grant of provisional tariff for Unit-I of the generating station, we shall consider the reply / objections of the respondents/objector in the subsequent paragraphs.

9. 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.”

10. The objections dated 20.1.2012 filed by the Respondent No.1, PCKL is summarized as under:

(i) The delay in the commissioning schedule claimed on account of Earthquake in China and change in visa policy of the Government of India cannot be considered as Force Majeure event and the same is attributable to the petitioner.

(ii) The completion of 400 kV DC line from 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.

(iii) Consider the capital cost of ₹4430 crore for 1200 MW.

(iv) Consider the Debt-Equity ratio of 80:20 for determination of tariff, under Regulation 44 of the 2009 Tariff Regulations.

(v) GSHR of 2220 kcal/kWh to be considered. Also, Auxiliary consumption of 6.0% (excluding jetty consumption) as specified under Regulation 26(b)(iv) of the 2009 Tariff Regulations may be considered.

(vi) Allow IDC only upto scheduled COD of 26.2.2010 for Unit-I and 26.6.2010 for Unit-II.

(vii) Allow FERV of ₹ 42.72 crore, on FIFO basis, against the claim of ₹145.29 crore.

(viii) Disallow the additional capital expenditure of ₹148.29 crore claimed for 2013-14 since the COD of the project is 1.4.2012 and hence the cut-off date as per the 2009 Tariff Regulations would be 31.3.2015 (next tariff period).

(ix) The rate of depreciation considered by the petitioner does not tally with the details furnished in Form -11 and hence the same may be revised.

(x) The weighted average interest rate applicable as on 30.9.2011 may be considered.

(xi) Energy charge calculations may be in accordance with the Government of Karnataka order dated 3.9.2010 and 29.9.2010 for FOBT price.

11. M/s Janajagrithi Samithi while objecting to prayer of the petitioner for fixation of provisional tariff of Unit-I of the generating station, has filed its objections on 27.7.2012, which are summarized as under:

(i) Regulation 5 of the 2009 Tariff Regulations mandates that provisional tariff can be billed by existing projects. Since the COD of the generating station is 11.11.2010, the petitioner does not fall within the definition of 'existing project' under Regulation 2(17) of the 2009 Tariff Regulations and hence cannot be permitted to levy provisional tariff or raise bills based on provisional tariff. If the petitioner seeks to levy any provisional tariff different from that approved by the Commission, then it has to approach the Commission for permission to levy such tariff.

(ii) In view of the provisions of the 2009 Tariff Regulations read with the Electricity Act, 2003, the Government of Karnataka or the Respondent No.1 have no competence to unilaterally decide to pay provisional tariff to the petitioner at a rate different from the 'in-principle' tariff approved by the Commission.

(iii) No PPA exists between the petitioner and the Respondent Nos. 2 to 7 for 1200 MW capacity of the generating station.

12. The Respondent No.2, BESCO vide its affidavit dated 30.7.2012 has objected to the prayer of petitioner for grant of provisional tariff of Unit-I and has raised the following issues:

(i) No notice has been received by the respondents from the Commission to the tariff petition filed by the petitioner.

(ii) The instant tariff petition has been filed on 14.12.2011 and no action was taken by the petitioner for filing any interim application or otherwise for any provisional tariff to be approved in the meantime.

(iii) Since November, 2010, the petitioner has been paid provisional tariff based on an agreed rate. Also, fuel cost as prevalent and variable charges are being paid to the applicant. No grievance has been raised by the petitioner to the provisional tariff being paid, pending final determination of tariff by this Commission.

(iv) As there is an agreed provisional tariff for the supply of electricity by the petitioner to the distribution licenses in the State of Karnataka, there can be no justification for the petitioner to seek a new provisional tariff before this Commission, especially when the capital cost and other elements claimed by the petitioner are under serious dispute between the parties.

(v) The distribution licenses who are most affected parties with whom the petitioner has PPA have not been issued notices in the matter. There are also other respondents who need to represent before the Commission. In any case, the petitioner cannot seek any provisional tariff ex-parte without any notice to other respondents in the matter, whose interests are

affected. The parties have acted on the basis of the agreed interim tariff for almost two years and there is no justification for seeking ant new interim tariff at this stage.

13. The Respondent No.7, PSPCL, in addition to the reply filed on 7.2.2012 has also filed its written submissions on the grant of provisional tariff to the petitioner, on 3.8.2012, raising issues as under:

(i) Capital cost shall not exceed ₹4299.12 crore (as approved in order dated 25.10.2005). Capital cost is to be reduced by the infirm power generated.

(ii) The Station Heat Rate of 2197.74 kcal/kWh may be adopted. Auxiliary consumption is to be 7.5% or the norms specified by the Commission, whichever is lower.

(iii) Consider the Debt-Equity ratio of 80:20 for determination of tariff and not as claimed by the petitioner.

(iv) IDC beyond the schedule dates worked out on the basis of 38 months and 42 months respectively from 26.12.2006 should not be loaded on tariff to be charged from this respondent.

(v) On account of re-bidding and with the supply of Chinese equipments by M/s Dong Fang, the capital cost of BTG must be lower than the capital cost approved earlier. The Commission may consider these aspects while determining tariff of the generating station.

14. We notice that the respondents 1 to 6 have not been represented during the hearing of the matter on 26.7.2012 despite notices being issued to them. The Respondent No.2, BESCOM, in its affidavit filed on 30.7.2012, has submitted that none of the respondents have received notice from the Commission. It has also been contended that the petitioner cannot seek provisional tariff ex-parte without notice to the said respondents whose interest are affected. On scrutiny of the records, it is noticed that notice for hearing of the matter on 26.7.2012 has been dispatched by the registry of the Commission to all parties, including the respondents 1 to 6 herein, on 23.7.2012. Based on this, the petitioner, the respondent No.7, PSPCL, and M/s Janajarithi Samithi, (the Objector herein), was represented during the hearing and the matter was heard on the question of grant of provisional tariff to Unit-I of the generating station of the petitioner. Hence, the contention of the respondent, No.2 that no notice was

issued to the distribution licensees (respondent Nos.2 to 6) by the Commission is untenable. It is observed that the tariff petition has been filed by the petitioner on 14.12.2011 and copies of the same have been served on the respondents 1 to 6 herein. Also, in terms of Regulation 3(6) and 3(8) of the Procedure Regulations, notice as regards filing of the tariff petition have been published in newspapers and the same has been filed before the Commission vide affidavit of the petitioner dated 31.12.2011. Excepting PCKL, (the Respondent No.1 herein), none of the respondents 2 to 6 herein, have filed their replies to the said tariff petition. Section 64(3) of the Electricity Act, 2003 (the Act), provides for the consideration of suggestions and objections received from the public before passing a tariff order, and do not mandate a necessity for an oral hearing of the parties by the Commission, including the applicant, except for hearing the applicant, before rejection of his application. Section 94(2) read with Section 64(3) of the Act provides with the power to the Commission to pass such interim order in any proceedings hearing or matters pending before it as it considers appropriate. Hence, the Commission has the powers to grant provisional tariff after considering the suggestions/response received from the parties. In accordance with this, the replies/objections filed by the parties have been considered in this order, for the grant of provisional tariff of Unit-I of the generating station of the petitioner. Even otherwise, no prejudice is caused to the respondents 2 to 6 since the provisional tariff granted would be subject to final tariff to be determined by the Commission based on the submissions of the parties. Thus, the respondents 2 to 6 are at liberty to file its replies and participate in the hearing at the time of determination of final tariff.

15. Another submission of the said respondent No.2, BESCO is that the petitioner having filed the tariff petition on 14.12.2011 had not taken any steps for filing interim application or otherwise for provisional tariff to be approved by the Commission. 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 in paragraph 10 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. This regulation does not envisage filing of a separate interim application for the grant of provisional tariff. 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, after considering the submissions of the parties. The respondent, BESCO has also submitted that there is an agreed provisional tariff for the supply of electricity by the petitioner to the distribution licenses in the State of Karnataka, and there can be no justification for the petitioner to seek a new provisional tariff before this Commission, especially when the capital cost and other elements claimed by the petitioner are under serious dispute between the parties. This submission of the respondent is not acceptable. The Commission has been vested with the power under Section 79(1)(b) of the Act to regulate the tariff of generating companies other than those owned and controlled by the Central Government, if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one state. Accordingly, the Commission by its order dated 25.10.2006 in Petition No. 40/2005 had granted 'in-principle' approval of the capital cost of the project comprising of 1015 MW capacity, based on Regulation 17 of the 2004 Tariff Regulations, as amended on 25.8.2005. Subsequently, based on the recommendations of the Justice (Retd) Gururajan Committee, the State Government of Karnataka had by order dated 25.10.2010,

approved the enhancement of the capacity of the generating station to 1200 MW and has also allowed the increase in capital cost subject to the approval of the same by this Commission. The petitioner having filed this tariff petition for determination of tariff for the period from the date of commercial operation ie from 11.11.2010 to 31.3.2014, in terms of the provisions of the 2009 Tariff Regulations, the Commission has the power to determine the tariff of the generating station in terms of Section 79(1)(b) read with Section 62 (1)(a) of the Act. The rate for supply of power to the respondents as agreed to by the petitioner, is subject to the determination of tariff by this Commission in terms of the provisions of the 2009 Tariff Regulations, from the date of commercial operation of the of the generating station. The disputes if any, raised by the parties would also fall within the scope and functions of the Commission for consideration. Thus, the submissions of the respondent No.2, BESCO is disposed of in terms of the above discussions.

16. The objector M/s Janajagrithi Samithi in its affidavit dated 27.7.2012 has submitted that Regulation 5 of the 2009 Tariff Regulations mandates billing of provisional tariff by existing projects, i.e projects which are in operation prior to 1.4.2009, and since the generating station of the petitioner has achieved commercial operation only on 11.11.2010, the same does not fall within the ambit of 'existing projects' and levy of provisional tariff cannot be permitted. The submission of the objector is not accepted. Under Regulation 5(1) of the 2009 Tariff Regulations, a generating company or the transmission licensee, as the case may be, may make an application for determination of tariff in accordance with the Procedure Regulations, 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. Regulation 5(4) of the 2009 Tariff Regulations (as quoted in para 9 above) provides for the grant of provisional tariff to existing and new projects, in case where an application for

determination of tariff has been filed before the Commission in accordance with clauses(1) and (2) of Regulation 5 of the 2009 Tariff Regulations. The petitioner having filed the tariff petition on 14.12.2011 in accordance with Clauses (1) and (2) of Regulation 5 of the 2009 Tariff Regulations, for determination of tariff for the period from date of commercial operation, is entitled to the grant of provisional tariff in terms of Regulation 5(4) of the 2009 Tariff Regulations, subject to adjustment as per proviso to clause (3) of Regulation (5) after final tariff order has been issued. Only under Regulation 5(3), applicable for existing projects (i.e projects commissioned prior to 1.4.2009), the generating company or the transmission licensee, as the case may be, could continue to provisionally bill the beneficiaries/customers with the tariff approved by the Commission as on 31.3.2009, for the period from 1.4.2009, till final tariff is approved by the Commission in accordance with the 2009 Tariff Regulations. One more issue raised by the objector is that the Government of Karnataka or the Respondent No.1, PCKL have no competence to unilaterally decide to pay provisional tariff to the petitioner at a rate different from the 'in-principle ' tariff approved by the Commission. The 'in-principle' approval of the capital cost of the project was accorded by the Commission by its order dated 25.10.2006 in Petition No. 40/2005 based on 1015 MW capacity. Subsequently, based on the recommendations of the Justice (Retd) Gururajan Committee, the State Government of Karnataka had by order dated 25.10.2010, approved the enhancement of the capacity of the generating station to 1200 MW and has also allowed the increase in capital cost subject to the approval of the same by this Commission. 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.

17. 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

18. 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, PCKL 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 is 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 propose to consider only 90% of the capital cost claimed by the petitioner for the purpose of grant of provisional tariff. Accordingly, the provisional tariff of Unit-I of the generating station from 11.11.2010 to 31.3.2014, is determined as under:

Capital cost

19. 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 |

20. As stated in paragraph 18 above, 90% of capital cost claimed is to be 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, Rs.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 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

21. The petitioner has claimed debt-equity ratio of 75.64: 24.36 for the purpose of tariff. The respondents, PCKL 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

22. 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% |

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

Return on Equity

24. 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:

$\text{Rate of pre-tax return on equity} = \text{Base rate} / (1-t)$

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.”

25. 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

26. 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

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

Interest on working Capital

28. 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

29. In terms of the recommendations of Justice (*Retd*) Gururajan Committee, the generating station is entitled to a Gross Station Heat Rate (GSHR) of 2333.43 kcal/Kwh, with an auxiliary consumption of 6.5% after 1.4.2009. However, the petitioner has submitted that the GSHR of 2400 kcal/kWh and Auxiliary consumption of 7.5% may be considered for tariff. The respondents have objected to the same. The respondent No.1, PCKL has submitted that the GSHR of 2220 Kcal/kWh and Auxiliary consumption of 6.0% (excluding jetty consumption) should be considered (as per Regulation 26(b)(iv) of the 2009 Tariff Regulations). The respondent No.7, PSPCL has submitted that the GSHR of 2197.74 kcal/kWh and Auxiliary consumption of 7.5% or the norms specified by the Commission, whichever is lower, may be considered.

30. 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. The Auxiliary consumption of 7.5% has been adopted for the purpose of provisional tariff, considering the special and additional features such as coal jetty at port, intake of sea water, de-salination plant and FGD plant.

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

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

32. 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.

Energy Charge Rate

33. Energy Charge Rate, on month to month basis, shall be calculated in terms of Clauses 5 and 6 (a) of Regulation 21 of the 2009 Tariff Regulations.

34. The petitioner shall revise the figures in the petition taking into consideration the date of commercial operation of Unit-II of the generating station, in terms of the provisions of the 2009 Tariff Regulations, which will be considered in accordance with law.

35. 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.

Sd/-
Sd/-
[M .DEENA DAYALAN]
[S .JAYARAMAN]
MEMBER
MEMBER

Sd/-
Sd/-
[V .S .VERMA]
[DR .PRAMOD DEO]
CHAIRPERSON

MEMBER