

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 160/GT/2012 with I.A.No.49/2012

Subject: 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. Interlocutory Application filed for revision of tariff calculations as on the date of commercial operation of Unit-I (11.11.2010) and Unit-II (19.8.2012)

Petition No. 12/MP/2013 With I.A.No. 3/2013

Subject: Petition under Section 79 (1) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

Date of hearing: 26.3.2013

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

Petitioner: Udipi Power Corporation Ltd., Bangalore

Respondents: Power Company of Karnataka Ltd, Bangalore Electricity Supply Company Ltd, Mangalore Electricity Supply Company Ltd, Gulbarga Electricity Supply Company Ltd, Hubli Electricity Supply Company Ltd, Chamundeshwari Electricity Supply Company Ltd, Punjab State Power Corporation Ltd.

Objector: M/s Janajagrithi Samithi, Karnataka

Parties present: Shri J.J. Bhatt, Senior Advocate, UPCL
Shri L. Vishwanathan, Advocate, UPCL
Shri R.Parthasarathy, UPCL
Shri Soumyanarayanan, UPCL
Shri R.A.Mulla, UPCL
Shri D.S.Murali, UPC
Shri Abhimanue Ghosh, UPCL

Shir Narendar Naik, UPCL
Shri M.G.Ramachandran, Advocate, for Discoms of Karnataka
Shri Anand Ganesan, Advocate for Discoms of Karnataka
Shri V.G.Manjunath, PCKL
Shri Padamjit Singh, PSPCL
Shri Rohit Rao, Advocate for Objector

Record of Proceedings

1. In continuation of the hearing of the previous date, the Petition No. 160/GT/2012 along with Petition No. 12/MP/2013 was taken up for hearing.

2. At the outset, the learned counsel for the respondent-PKCL submitted that Commission has jurisdiction under section 79(1)(b) to entertain the tariff petition filed by the Petitioner in respect of Udupi Thermal Power Station (2 x 600MW) 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. With regard to the tariff claims of the petitioner made in the petition, learned counsel for the respondent submitted as under:

(a) This Commission had vide order dated 25.10.2005 accorded in-principle approval to the capital cost of the project for 1015 MW and capped the capital cost at ₹4299.12 crores including Interest During Construction (IDC) and had specifically observed that no additional cost would be allowed. Therefore, the petitioner is not entitled to claim any additional capital expenditure for the generating station.

(b) Pursuant to the order dated 25.10.2005, the petitioner entered into Power Purchase Agreement with the respondents for supply of 90% of the capacity of the generating station, on the terms and conditions as agreed to in the PPA. The claims made by the petitioner in the tariff petition are contrary to the provisions of the PPA.

(c) Neither the petitioner nor the respondents have challenged the order dated 25.10.2005 and subsequent order dated 7.8.2006 passed by this Commission in Petition No. 40 of 2005.

(d) It is not open to the petitioner to claim any additional capital expenditure at this stage. The only relevant document is the PPA and if there is any grievance with

regard to the PPA, the parties can approach the Commission under section 79(1)(f) of the Act.

- (e) The Petitioner has failed to produce the details of the EPC contract with Dongfang, the Chinese Company who was the EPC Contractor of the project. The entire scheme of the petitioners' proposal for augmentation of capacity is nothing but a collusive effort of UPCL, Lanco Infratech and Dongfang to increase the capital cost for undue enrichment at the cost of respondents, Karnataka Utilities and the consumers.
- (f) The petitioner has not furnished the details relating to the technical qualification and financial capabilities of the bidder, and the evaluation statements like performance guarantees. Moreover, the commercial statements have not been signed by the then authorized person of the petitioner company. Even though the agreements were signed with Lanco Infrastructure Technology Ltd. on 26.12.2006, the same were made available to respondents only in the year 2009.
- (g) The Government of Karnataka vide its letter dated 3.2.2009 has conveyed in principle no objection for the expansion of the project from 1015 MV to 1500 MV subject to specific condition that 90% of the power generated from the additional capacity shall be made available to the respondents as per the original Power Purchase Agreement.
- (h) The capital cost claimed by the petitioner in the present case is substantially higher than the capital cost for other similar projects including the project of the petitioner's sister concern itself, namely, Lanco Anpara of 2x600MV in Uttar Pradesh, which is 4115.00 crores. The learned counsel for the respondent has submitted that in view of the increase in the project capacity from 1015 MW to 1200 MW, an official committee under the Chairmanship of Additional Chief Secretary to the Energy Department of Government of Karnataka was constituted to consider the additional costs to be incurred on account of increase in capacity. After the detailed study and considering the representation made by the petitioner, the said Committee increased the capital cost of the project by ₹131 crores i.e. from ₹4299 crores ₹4430 crores. The decision of the said Committee was acceptable to the respondents.
- (i) On the request of the petitioner, the Government of Karnataka constituted another committee under the Chairmanship of Justice Sh. R. Gururajan (Retd.) to consider the capital cost of the project for the increase in the capacity from 1015 MW to 1200 MW and also suggest amendments to the PPA. The said Committee

submitted its report on 23.9.2010. Government of Karnataka had recommended and approved the increase in project cost by ₹583 crores, subject to final order of the Commission. The recommendations of the Committee and increase in the project cost beyond ₹4430 crores is not acceptable to the respondents, as the above cost of ₹583 crores is over and above the in-principle approved cost of ₹4299.12 crores by this Commission.

3. The learned counsel for the respondent submitted that recommendations of the Justice Sh. R. Gururajan Committee are completely contrary to all legal principles, have no relevance and are not binding on the respondents as well as on the Commission.

4. The learned counsel submitted that the report of Justice Sh. R. Gururajan Committee providing for a higher capital cost of ₹583 crores exclusive of IDC is without any basis. In support of this calculation, learned counsel relied upon a comparative study on the additional cost incurred by the petitioner on account of increase in capacity annexed as 'Annexure-A' to the petition. Learned Counsel emphasized that increase in capacity from 1015 MW to 1200 MW did not necessarily entail a proportionate or a substantial increase in the capital cost, hence there is no justification for the petitioner to claim the capital cost in excess of ₹4430 crores. Learned Counsel submitted that Justice Shri Gururajan Committee has not examined all relevant documents in its report and therefore, the claims of the petitioner allowed by the Committee in its report are without any basis and is liable to be ignored.

5. The arguments of the learned counsel for the respondent remained inconclusive and was posted for further hearing on 9.4.2013.

By the order of the Commission

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T. Rout
Joint Chief (Law)