

**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.

Date of hearing: **16.5.2013**

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

Petitioner: Udupi 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 L. Vishwanathan, Advocate, UPCL
Shri Abhimanyu Ghosh, Advocate, UPCL
Shri S.Mallak Bhatt, Advocate, UPCL
Shri R.Parthasarathy, UPCL
Shri Panduranga Rao, UPCL
Shri Soumyanarayanan, UPCL
Shri R.A.Mulla, UPCL
Shri D.S.Murali, UPCL
Shri M.G.Ramachandran, Advocate, for Discoms of Karnataka
Shri Anand K. Ganesan, Advocate for Discoms of Karnataka
Shri V.G.Manjunath, PCKL
Shri Ananga Bhattacharya, Advocate for Objector

RECORD OF PROCEEDINGS

At the outset, the learned counsel for the respondent, PCKL submitted that the respondent, PCKL had only completed its arguments on some aspects and main issues including delays, IDC, issues on capital cost and variable are yet to be addressed by the respondents. He also submitted that apart from the information called for by the Commission during the hearing on 9.4.2013, the petitioner should also be directed to disclose all other contracts including its amendments if any, entered in to by Lanco Infratech with suppliers of equipments and materials required for power project. The learned counsel prayed that the respondents would be in a position to file its submissions/objections and make oral submissions

on the capital cost of the project upon receipt of all the documents /details to be submitted by the petitioner.

2. The learned counsel for the petitioner clarified that the documents as called for by the Commission has been submitted and additional documents as requested by the respondent, PCKL has been given to the respondent. The learned counsel also submitted that Essentiality certificate submitted by the respondent vide letter dated 15.12.2009 clearly show that approval of the equipment only after approval of the cost. He further submitted that there is urgency in determination of tariff for the generating station keeping in view the huge gap in the expenditure incurred and realized by the petitioner.

3. The learned counsel for the respondent, PCKL placed copy of the letter dated 15.5.2013 of the Principal Secretary, Energy Department, Govt. of Karnataka and clarified that the Essentiality Certificate issued was only for obtaining Customs duty exemption in respect of equipments required for the project. On being objected by the learned counsel for the petitioner that the said letter 15.5.2013 is an afterthought and cannot be taken cognizance of at this stage, the learned counsel for the respondent submitted that the Commission may, if deemed fit, issue notice to the Principal Secretary for clarification. The learned counsel for the respondent, PCKL continued with his arguments and mainly submitted as under:

- (a) The termination of contracts with BHEL, Simplex and Navyuga was unilateral, self serving and fraudulent and the consequence of the same are to be borne by the petitioner and cannot be passed on to the respondent/consumers.
- (b) Though the award of contract was on 24.12.2006, an agreement has been signed by Lanco Infratech, the selected bidder with Dongfang on 16.12.2006 saying that Lanco Infratech has already entered into an agreement for supply of plant etc to the petitioner. The actual agreement which was entered into prior to 16.12.2006 has been suppressed by the petitioner.
- (c) As per approval of the heat balance diagram for the project by Dongfang, it is clear that the project was already approved for 2 x 600 MW instead of 2 x 507.5 MW. In the agreement dated 16.12.2006 (available in part) it is clear that the plant size contracted is 2 x 600 MW and this aspect was not known to the respondents at the time when the additional cost of ₹131 crore was agreed for augmentation of capacity. Hence, any increased claim of the petitioner on account of increase in capacity from 507.5 MW to 600 MW may not be allowed. Moreover, the petitioner has refused to disclose details of the contracts entered in to by Lanco Infratech with the suppliers, including the agreement dated 16.12.2006.
- (d) The petitioner has also not submitted the bidding documents for the purported bidding process conducted and there was no rationale to conduct a competitive bidding process by terminating the contract with BHEL which was based on the approval granted by the Commission.
- (e) Any increase in the capital cost need to be determined in a prudent manner and only such cost as are reasonable admissible and related to such increase in capacity can be allowed.
- (f) The petitioner may be directed to disclose all the contracts including its amendments, as per details given in page 91, para C of the submissions dated 4.5.2013 of the respondent PCKL. The total tariff admissible to the project can only be worked out by the

respondent only after scrutiny of the documents /information to be submitted by the petitioner as aforesaid.

4. The learned counsel for the petitioner reiterated that it has submitted copies of the available documents prayed for by the respondent, PCKL. Submitting a statement containing the analysis of capital cost of the project, the learned counsel submitted that the additions in capital cost was mainly due to increase in EPC value to augmentation, cost over-run, FERV, IDC etc and the grievance of the respondent, PCKL as regards termination of contract etc was unfounded. He also submitted that respondents had no objection to the change in the EPC contractor as they have recommended the equipment after verifying the contractual items. He further clarified that the performance guarantee output warrantee as per contract between LITL and DEC was only in relation to 2 x 507.5 MW and when the same was increased to 2 x 600 MW, an additional cost was involved since the performance guarantee provided earlier was only for 507.5 MW.

5. On a specific observation by the Commission that the cost of supply contract include foreign exchange component as on July, 2009 has gone up to 293.96 million US dollars as against 120 million US dollars in December, 2006 and that the submission of original contract dated 16.12.2006 was necessary in order to work out the details of increase and reasons therefore, the learned counsel for the petitioner clarified that it has been informed by LITL that the said contract dated 16.12.2006 was not available with them. In response to the observations of the Commission that the petitioner should take all efforts to obtain and produce the said document, the learned counsel submitted that it would take all efforts for production of the same before the Commission.

6. The Commission after hearing the parties directed the petitioner to submit all necessary documents/agreements as indicated by the respondent, PCKL in page No. 91, para C of its submissions dated 4.5.2013 including those related to EPC, Civil works and the External coal handling contract entered into between LITL and Dongfang, with all annexures and necessary translations, along with the following:

- (i) Reasons for the increase in FERV from 120 million US dollars as per agreement dated 24.12.2006 to 293.96 million US dollar at the time of enhancement of capacity from 1015 MW to 1200 MW in 4th amendment of agreement dated 10.7.2009;
- (ii) Bidding documents for ICB by the petitioner for selection of EPC contractor after termination of contract of M/s BHEL; and
- (iii) A copy of the contract entered in to between the EPC contractor M/s Lanco Infratech Ltd and M/s Dongfang Electric Corporation on 16.12.2006.

7. The information as required above shall be filed by the petitioner, on affidavit, by 21.5.2013 with advance copies to the respondent, PCKL who shall file its reply/submissions on the same on or before 24.5.2013, with copy to the petitioner.

8. Matter shall be listed for hearing on 28.5.2013 at 2:30 pm.

By order of the Commission

Sd/-
T.Rout
Joint Chief (law)