

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Docket No.38/GT/2013

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

Date of Order: 29.5.2013

In the matter of

Determination of tariff of UNOSUGEN Power Plant (382.5 MW) of Torrent Power Ltd for the period from the date of its commercial operation to 31.3.2014

And

In the matter of

Grant of provisional tariff of UNOSUGEN Power Plant (382.5 MW) of Torrent Power Ltd for the period from the date of its commercial operation to 31.3.2014

And

In the matter of

Torrent Power Ltd, Ahmedabad

.....**Petitioner**

Vs

1. Torrent Power Ltd, Ahmedabad

2. Torrent Power Ltd, Surat

3. PTC India Ltd, New Delhi

4. Madhya Pradesh Power Management Company Ltd, Jabalpur

.... **Respondents**

ORDER

This petition has been filed by the petitioner, Torrent Power Ltd, for approval of tariff of UNOSUGEN Power Plant (382.5 MW) (hereinafter referred to as “the generating station”) located at Taluka Kamrej, District Surat in the State of Gujarat for the period from the date of commercial operation up to 31.3.2014, 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, Torrent Power Limited (TPL) is a public limited company incorporated under companies Act 1956 and carrying on the business of generation and distribution of electricity in the cities of Ahmedabad, Surat, Gandhinagar, Bhiwandi and Agra.

3. The petitioner has set up the 382.5 MW UNOSUGEN Power Plant at the premises where the SUGEN power plant (1147 MW) is located. The present generation capacity of the petitioner is around 1697 MW and two other projects of around 1583 MW are at an advanced stage of implementation. The project has been awarded Mega Power status by the Government of India vide its letter dated 29.7.2010.

4. The petitioner has submitted that commissioning activities and trial operations of the project are ongoing and the Commercial operation of the project is expected on 27.3.2013. The project will consume fuel comprising a mix of domestic natural gas and Regasified Liquefied Natural gas (R-LNG).

5. The petitioner has entered into long term Power Purchase Agreement (PPA) with PTC India Ltd for sale of 35 MW of power and PTC will sell the power on back-to-back basis to the respondent, MPPMCL, the beneficiary herein. Also, the petitioner will supply 278 MW of power to licensed distribution divisions of Ahmadabad, Gandhinagar and Surat of Torrent Power Ltd. under the long term PPAs to be approved by the Gujarat Electricity Regulatory Commission. The residual power would be sold by the petitioner through short term bilateral contract/or through Power Exchange.

6. In view of the fact that PPA for supply of 35 MW of power by the petitioner to the respondent, MPPMCL is through back to back agreements with PTC, a trader, the issue for

consideration is whether the Commission has the jurisdiction to determine tariff for such supply made by the petitioner to the respondent, MPPMCL through PTC, an inter-state trader. The Commission in its order dated 11.1.2010 in Petition No.109/2009 had determining the tariff of SUGEN power plant of the petitioner for the period from 19.7.2009 to 31.3.2014.

7. In PTC India Limited v Jaiprakash Power Ventures Limited, The High Court after examining the relevant provisions of the Act, the Statement of Reasons of the Act and the various decisions of the Hon'ble Supreme Court and Appellate Tribunal observed in its judgment dated 15.5.2012 as under:

"55.The words "supply of electricity by a generating company to a distribution licensee" occurring in Section 62 would, in the above context, envisage apart from a direct supply from a generating company to a distribution licensee, also a supply from a generating company to a trading licensee who in turn sells to a distribution licensee.The trader could intervene either in the supply by a generating company to a consumer or he could intervene in the supply by a generating company to the distribution licensee. The latter transaction would certainly form the subject matter of regulation by the appropriate Commission within the meaning of Section 62 read with Para 4 (x) of the SOR.

56.It appears inconceivable that where a trading licensee is selling to a distribution licensee and not directly to a consumer, the tariff for such a supply by the generating company to the trading licensee would not be amendable to the regulatory jurisdiction of CERC or SERC under Section 62 of the EA. An interpretation to the contrary would defeat the rights of the consumers which are intended to be protected by the CERC and SERCs. The only freedom was given to the direct commercial relationship between a generating company and consumer where presumably there would be bulk consumption by such consumer. However, in cases like the present one where the trader is selling electricity to a distribution licensee who is eventually selling or supplying electricity to the consumer, the tariff would necessarily have to be regulated. Otherwise, every generating company would route the sale of electricity through a trading licensee to evade the applicability of the regulatory framework EA."

8. In view of the above and since the generating station has a composite scheme for generation and sale of power in more than one state, the Commission has the jurisdiction to determine tariff for the supply of 35 MW of power by the petitioner to the respondent, MPPMCL through PTC in terms of Section 62(1)(a) read with Section 79(1)(b) of the Electricity Act, 2003.

9. The petitioner by its supplementary affidavit dated 29.4.2013 has revised the tariff of the generating station on account of the generating station achieving commercial operation on

4.4.2013. The petitioner has accordingly prayed for grant of provisional tariff of the generating station for the period from the date of commercial operation to 31.3.2014 as per Regulation 5(4) of the 2009 Tariff Regulations.

10. 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.

11. The petitioner has filed the petition in compliance with Clause (1) and (2) of Regulation 5 of the 2009 regulations. Since the generating station has been declared under commercial operation with effect from 4.4.2013, we consider the grant of provisional tariff in respect of the generating station from the date of commercial operation (i.e. 4.4.2013) by this order, based on the petition filed in terms of Regulation 5(1) of the 2009 Tariff Regulations.

12. Regulation 5 (4) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2011 provides as under:

“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.”

13. In exercise of power under Clause 4 of Regulation 5 of the 2009 regulations and after prudence check, we hereby grant provisional tariff in respect of the generating station from 4.4.2013 to 31.3.2014, pending determination of the final tariff, as stated in the subsequent paragraphs.

Capital Cost

14. The petitioner has estimated a total project capital cost of ₹185827.56 lakh (inclusive of IDC, FC, FERV & Hedging cost amounting to ₹21307.33 lakh) which includes actual capital expenditure of ₹173131.04 lakh as on 30.4.2013 and additional capital expenditure of ₹12696.53 lakh towards liabilities, provisions and notional IDC of ₹ 494 lakh during 2013-14. The break-up of capital cost as on 30.4.2013 is as under:

<i>(Rs. in lakh)</i>	
	Capital expenditure on cash basis as on 30.4.2013
Capital cost excluding IDC, FC, FERV and Hedging Cost	154410.11
Add: IDC, FC , FERV	18720.93
Total Capital cost as on 30.4.2013	173131.04

15. The total capital cost of ₹185827.56 lakh including additional capitalization during 2013-14 works out to ₹4.86Cr./MW. It is observed that there is an increase in commissioning fuel cost, originally assessed at ₹4200 lakh (on assumption that domestic gas will be made available for commissioning purpose and the relevant prices after deducting revenue earned from sale of infirm power) and has increased to ₹15343.35 lakh, resulting in an increase of ₹11143.35 lakh. In this regard, the petitioner has submitted that the Ministry of Petroleum and Natural Gas, Govt. of India, had earlier conveyed that the commissioning fuel has to be sourced from sources other than domestic gas. Accordingly, the cost of commissioning fuel is based on spot price/MMBTU of R-LNG which is in the range of 18-22 USD/ MMBTU and the actual quantity of commissioning

fuel. The commissioning fuel cost includes the landed cost of R-LNG on spot basis and cost of transportation thereto. One more reason for the increase in capital cost is due to variation in Foreign Exchange Rate amounting to ₹51.40 crore. Since the reasonability of capital cost claimed by the petitioner is to be examined in detail at the time of determination of final tariff of the generating station, after hearing the parties, we are of the view that the capital cost for provisional tariff should be restricted to 90% of the capital cost as on 30.4.2013. We order accordingly. Based on this, capital cost considered as on COD of the generating station (i.e 4.4.2013) for the purpose of provisional tariff is ₹1558179 lakh (i.e 90% of ₹173131.04 lakh)

Projected Additional Capital Expenditure during 2013-14

16. The petitioner has claimed projected additional capital expenditure from the COD of the generating station (4.4.2013) to 31.3.2014 as under:

		(₹ in lakh)
S. No.		2013-14
1	Payment of un-discharged liabilities towards EPC & EOH Cost	6325.52
2	Non-EPC works and employee related liabilities	3660.18
3	CSR Initiatives	182.00
4	Expected receivable for commissioning related activities.	(-) 551.58
	Sub-Total	9616.12
5	IDC and FC (including FERV as capitalized being paid.)	2586.40
6	Notional IDC	494.00
	Total	12696.53

17. The un-discharged liabilities towards EPC & EOH cost and the Non-EPC works and employee's related liabilities represent the balance works and balance of payments which have been claimed under Regulation 9(1) of the 2009 Tariff Regulations. Similarly, the expenditure of ₹182 lakh towards CSR initiatives is as per the direction of the Ministry of Environment and Forest (MOEF), Govt. of India and represent the balance of works which have been claimed under Regulation 9(1). In view of this, the expenditure is allowed. However, only 90% of the claim has been considered for the purpose of provisional tariff. Accordingly, out of the total

expenditure of ₹10167.370 lakh (for Sl. No. 1 to 3 in the table above), only an expenditure of ₹9150.93 lakh is allowed for the purpose of provisional tariff.

18. The amount of (-) ₹551.58 lakh shown towards 'expected receivable for commissioning related activities' being a negative entry has been allowed. The discharges of IDC and FC have been allowed to the extent of 90%. However, the petitioner's claim for notional IDC shall be dealt with at the time of final tariff determination after hearing the parties.

19. Accordingly, the capital cost allowed for the purpose of provisional tariff is as under:

	<i>(₹ in lakh)</i>
	2013-14 (4.4.2013 to 31.3.2014)
Opening capital cost	155817.94
Add: Projected additional capital expenditure	10927.11
Closing capital cost	166745.05
Average capital cost	161281.49

20. The interest rates on loans, rate of depreciation and working capital as claimed by the petitioner as on the anticipated date of commercial operation of the respective units and Return on Equity with MAT rate applicable for the year 2013-14 have been considered. All other components have been considered as per the provisions of the 2009 Tariff Regulations.

Operation & Maintenance Expenses

21. The 2009 Tariff Regulations provide for the following O&M expense norms for Open Cycle Gas Turbine / Combined Cycle generating stations:

	<i>(₹ in lakh)</i>
	2013-14
Gas Turbine / Combined Cycle generating stations	18.49

22. The petitioner has claimed the year-wise O&M expenses including the cost attributable under Long Term Supply Agreement entered into between Torrent and Siemens Germany for the generating station as per the following norms:-

	2013-14
O&M Expense norms (Rs.lakh/MW)	29.98
O&M Expenses (Rs. lakh)	11466.55

23. The O&M expenses claimed by the petitioner are in line with the norms allowed by the Commission in respect of SUGEN Power Plant (1147.5 MW) of the petitioner vide order dated 11.1.2010 in Petition No. 109/2009. In view of this, O&M expenses of ₹11466.55 lakh for 2013-14 claimed by the petitioner has been considered for the purpose of provisional tariff. The O&M norms shall be decided in due consideration of the O&M contract entered into by the petitioner with OEM at the time of final determination of tariff.

Operational Norms

24. The following norms of operation for Gas Turbine / Combined Cycle generating stations have been considered by the petitioner:

Target Availability	85%
Heat Rate (kcal/kwh)	1853.88
Auxiliary Power Consumption	3.0%

25. The norms considered above are in accordance with operational norms specified by the Commission under the 2009 Tariff Regulations and hence considered

Energy Charge Rate (ECR) and Fuel cost in Working Capital

26. The petitioner has claimed Energy Charge Rate (ECR) of 398.94 paisa/kWh, based on expected use of mix of domestic gas (70%) and LNG (15%) for operation of the plant for 85% PLF. The estimated fuel cost is derived based on (a) cost on domestic fuel @ USD 8.48 /

MMBTU (GHV) and (b) cost of RLNG @ USD15 /MMBTU (GHV). The corresponding Foreign Exchange rate as on COD is considered @ 1 USD = ₹54.6460. During the preceding three months from the date of COD, the petitioner has used fuel (RLNG) at the cost of 18-22 USD/MMBTU from spot market. The ECR with such a price works out to be ₹8.451 /kwh which is higher. Therefore, the claim of the petitioner for ECR of ₹3.9894/ kwh based on fuel mix of APM gas (70%) & RLNG (15%) has been considered for the purpose of provisional tariff. Month to month ECR on ex-power plant basis shall be calculated to three decimal places in accordance with the formula given in Regulation 21(6) (a) of the 2009 Tariff Regulations.

Fuel Cost in working capital

27. The petitioner has claimed fuel cost of ₹9184.42 lakh for 2013-14, based on Energy Charge Rate of ₹3.9894/ kwh. The claim of the petitioner is found reasonable and is considered for the purpose of tariff.

Maintenance Spares in Working Capital

28. The petitioner has claimed the cost of maintenance spares as ₹3439.97 lakh for 2013-14 in the working capital. The maintenance spares claimed is based on O&M expenses of ₹11466.55 lakh for 2013-14 considering the operational norm of Rs. 29.98 lakh/MW/year). In view of the fact that O&M expense norm of ₹29.98 lakh/MW/year has been considered for provisional tariff, the maintenance spares of ₹3439.97 lakh claimed is in order and has been considered for the Interest on working calculations.

O&M Expenses for one month

29. O&M expenses for one month claimed by the petitioner for the purpose of working capital is ₹955.55 lakh for 2013-14. The O&M expenses for one month claimed are based on O&M expenses of ₹11466.55 lakh for 2013-14, considering the O&M expense norms of ₹29.98

lakh/MW/year. In view of the fact that O&M expense norm of ₹29.98 lakh/MW/year has been considered for provisional tariff, the O&M expenses for one month for ₹955.55 lakh claimed is in order and has been considered for the Interest on working calculations.

30. The annual fixed charges claimed by the petitioner for the period from COD (4.4.2013) to 31.3.2014 is ₹51302.76 lakh. Based on the discussions in the preceding paragraphs, the annual fixed charges allowed for the generating station from 4.4.2013 to 31.3.2014 is ₹46540.95 lakh. The provisional annual fixed charges allowed are subject adjustment in terms of clause (4) of Regulation 5 of 2009 Tariff Regulations.

31. The provisional annual fixed charges determined on annualized basis as above is applicable *pro rata* to the number of days the units have run during the corresponding period.

Sd/-
[V.S.Verma]
Member

Sd/-
[Dr.Pramod Deo]
Chairperson