

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

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

Subject: Determination of tariff of Udipi 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: **9.4.2013**

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 Narendar Naik, Advocate, UPCL
Shri Abhimanyu Ghosh, Advocate, UPCL
Shri R.Parthasarathy, UPCL
Shri Pandurangan, UPCL
Shri Soumyanarayanan, UPCL
Shri S.Mukundan, UPCL
Shri R.A.Mulla, UPCL
Shri D.S.Murali, 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

During the hearing, the learned counsel for the respondent, PCKL handed over a copy of the compilation of documents in the case and continued with his submissions as under:

(a) Referring to page-3, column 3 of the said compilation, it was submitted that project cost (including IDC & FC) for 1015 MW as approved by Commission's order dated 25.10.2005 was ₹4299.12 crore. Consequent upon the increase in capacity to 1200 MW, the project cost was revised to ₹4430.80 crore which was agreed to by the respondents. This project cost was revised by Hon'ble Justice (Retd) Gururajan Committee to ₹4882.97 crore for 1200 MW. However, the petitioner by its affidavit dated 14.12.2011 has revised its project cost claim to ₹5672.70 crore which has been subsequently revised to ₹6378.00 crore vide its affidavit dated 26.9.2012 consequent to the commissioning of Unit-II.

(b) Detailed explanation (item-wise) to the additional amount claimed by the petitioner has been provided from page 5 of the said compilation of documents submitted. There is no justification for the claim of additional amount over and above the project cost of ₹4430.80 crore by the petitioner and the same is also not acceptable.

(c) It is observed from the original petition that the petitioner has not submitted detailed break-up in Form-5C as required under the 2009 Tariff Regulations. The entire claim of the petitioner is based on the recommendations of Hon'ble Justice (Retd) Gururajan Committee report. The findings of the Justice Committee would show that various claims of the petitioner including the revised cost for 1200 MW has been accepted without asking for basic documents and evidence in support.

(d) The petitioner has not disclosed the contracts entered into by their EPC contractor i.e LITL with the sub-contractors for carrying out the scope of works, Civil, Infrastructure and service. The contract between M/s Dongfang Electric Corporation (DEC), China and M/s Lanco Infratech (LITL) was not submitted before the Justice Committee and none of the details including the reason for M/s BHEL's contract termination has been examined.

(e) The submission of the petitioner that M/s BHEL had terminated the contract for non submission of advance payment is not tenable since the petitioner had terminated the contract with BHEL (*referred to document in page 325 of the reply of respondent PCKL*). No proper procedure was adopted for ICB for the said work and the sister concern of the petitioner has been awarded the contract (*date of stamp paper in the agreement dated 24.12.2006 was referred to*)

(f) The increased cost towards civil works, consequent upon the enhancement of the capacity from 1015 MW to 1200 MW is not tenable for the reason that supply contract entered into between LITL and DEC during 16.12.2006 was for a capacity of 1200 MW and accordingly the infrastructure including civil works must have been designed for a capacity of 2 x 600 MW at a firm contract price (*referred to pages 192 to 248 of the compilation*). The Commission may consider to admit only ₹808 crore towards civil works as against the claim of ₹1017.51 crore made by the petitioner.

The learned counsel for the petitioner clarified that the said document is not admitted. In response, the learned counsel for the respondent, PCKL submitted that

the Commission may consider these while determining the tariff of the generating station.

(g) The *erstwhile* Nagarjuna Power Company Ltd (NPCL) had unilaterally terminated the EPC, Civil works and the External coal handling contract and had awarded the same to its sister concern LITL, without following the competitive bidding process. There is no basis for increasing the contract price in respect of all the above contracts consequent to augmentation of capacity from 1015 MW to 1200 MW since all the contracts were on firm basis and NPCL was well aware of the fact that the supply contract entered in to by its EPC contractor with M/s Dongfang was for supply of 1200 MW BTG way back in 2006 itself.

2. The learned counsel for the respondent PCKL also made his submissions on the expenditure regarding cost of land & site development, establishment cost and submitted that the same is not tenable. He also submitted that the supply contract documents (page 339 of the reply) stipulated that the EPC contractor shall be responsible and provide for start-up power. This was objected to by the learned counsel for the petitioner.

3. On being pointed out by the Commission that the project cost of the generating station shall be admissible only after prudence check by the Commission in terms of the 2009 Tariff Regulations and not as per the Justice Committee report, the learned counsel for the respondent, PCKL clarified that it has placed its submissions against the findings of the Justice Committee, keeping in view the prima facie conclusion of the Commission in its order dated 24.12.2012 granting provisional tariff that the capital cost can be revised since the respondents had agreed to the same as per Govt. of Karnataka order dated 25.10.2010 based on the report of the Justice Committee. The learned counsel for the petitioner while pointing out that it was not prudent on the part of the respondent, PCKL to question the Justice Committee report now since it was a party to the said proceedings, submitted that the said report was only subject to the consideration/scrutiny of the Commission. The Commission observed that the order dated 24.12.2012 granting tariff was provisional in nature and pointed out that the report of the Justice Committee was also subject to approval of tariff by this Commission.

4. The representative of the respondent, PSPCL while pointing out to the discrepancy in the documents as regards the capacity indicated (*as per submissions of respondent PCKL*) submitted that the Commission shall scrutinize the documents and call for any documents, if need be, in exercise of its powers to examine if the petitioner had adopted a transparent procedure in bidding process etc. He also submitted that the generating station may be directed to give full details regarding the source of coal. The representative also submitted that Station Heat Rate and Auxiliary consumption shall be considered keeping in view the interest of consumers.

5. The Commission directed the petitioner and the respondents to file its submissions indicating the tariff admissible to the generating station, along with figures and detailed calculations, based on the regulations/PPA, uninfluenced by the report of the Justice Committee, on or before 8.5.2013.

6. Meanwhile, the petitioner is directed to furnish the following information on affidavit;

- (a) A copy of the contract between LITL and DEC, the OEM;
- (b) A copy of the invoice raised by M/s DEC on LITL and in respect of all major equipments including balance of plant;

7. The respondent shall submit on affidavit, the details of equipment and materials along with the price for which certificate was issued by them for availing customs duty exemption.

8. The documents as in paragraph 6 and 7 above shall be filed prior to 8.5.2013. Subject to this order in the petition was reserved.

By order of the Commission

Sd/-
T.Rout
Joint Chief (law)