

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEWDELHI**

**I.A No. 62/2021
in
Petition No.21/GT/2021**

Coram:

**Shri P.K. Pujari, Chairperson
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 11th October, 2021

In the matter of

Interlocutory Application seeking amendment of pleadings/prayer in Petition No.21/GT/2021

And

In the matter of

Petition for truing-up of tariff for the 2014-19 tariff period and for determination of tariff for the 2019-24 tariff period in respect of Udupi Thermal Power Plant (1200 MW).

And

In the matter of

Udupi Power Corporation Limited,
No. 160, Om Chambers, 1stMain Road,
Sheshadripuram, Near Total Gaz Pump,
Bengaluru -560020

.....Applicant/ Petitioner

Vs

1. Power Company of Karnataka Limited,
KPTCL Building, Kaveri Bhavan,
K.G Road, Bengaluru- 560009
2. Bangalore Electricity Supply Company Limited,
Krishnarendra Circle, Bengaluru- 560001
3. Mangalore Electricity Supply Company Limited,
Paradigm Plaza, AB Shetty Circle,
Mangalore - 575001
4. Gulbarga Electricity Supply Company Limited,
Station Main Road, Gulbarga- 585102
5. Hubli Electricity Supply Company Limited,
Navanagar, PB Road, Hubli- 580025



6. Chamundeshwari Electricity Supply Company Limited,
No. 927, LJ Avenue, New Kantaraja Urs Road,
Saraswathipuram, Mysore - 570009

7. Punjab State Power Corporation Limited,
The Mall, Patiala- 147001

.....Respondents

Parties present:

Shri Hemant Sahai, Advocate, UPCL
Shri Nitish Gupta, Advocate, UPCL
Ms. Parichita Chowdhury, Advocate, UPCL
Ms. Shefali Tripathi, Advocate, UPCL
Shri M.G. Ramachandran, Senior Advocate, PCKL
Shri Prashant Kumar, Advocate, PCKL
Shri Ahaan Mohan, Advocate, PCKL
Shri K.S. Prasanna, PCKL
Ms. T.L. Padmalatha, PCKL

ORDER

Petition No.21/GT/2021 has been filed by the Petitioner, Udupi Power Corporation Limited (in short 'UPCL') on 26.11.2020, for truing-up of tariff for the 2014-19 tariff period in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as 'the 2014 Tariff Regulations') and for determination of tariff for the 2019-24 tariff period in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as 'the 2019 Tariff Regulations') in respect of Udupi Thermal Power Plant (1200 MW) (in short 'the generating station'). The Commission vide Record of Proceedings (ROP) of the hearing dated 25.5.2021, had directed the Petitioner to file certain additional information and the Petitioner has filed the same vide affidavit dated 30.6.2021, after serving copies to the Respondents.

2. During the pendency of the said tariff petition, the Petitioner has filed the Interlocutory Application (I.A. No.62/2021) on 2.7.2021, seeking amendment of the tariff petition with the following prayers:

(a) Allow the present application seeking amendment of the present Petition;



- (b) Allow replacement of existing paragraph 6.1.2 with new paragraph 6.1.2;
- (c) Allow the addition of para nos. 6.1.52 to 6.1.83 after para 6.5.1 and the addition of para nos. 6.1.13 A, 6.1.18 A, 6.1.21 A, 6.1.34 A, 6.1.40 A, 6.1.44 A and 6.1.51 A;
- (d) Take on record the amended memo of the petition as well annexures/forms annexed herewith as Annexure 1 for all intents and purposes;”

Submissions of the Applicant in I.A No. 62/2021

3. In the IA, the Applicant, UPCL has mainly submitted that keeping in view the developments in relation to security and safety aspects, impact of ecosystem, various environmental and local community concerns etc., it is necessary to bring to the notice of the Commission, a comprehensive and detailed information pertaining to all additional capitalization works that would be required to be executed in next 5 to 10 years at the generating station. The Applicant has also submitted that in order to address the above concerns on sustainable basis and to ensure optimal utilization of the generation capacity, it has envisioned a long term plan of various capital expenditure works necessarily required to be undertaken during the 2019-24 tariff period and subsequent control periods. In the light of the above, the applicant has sought to amend the original petition and bring on record additional components, pertaining to additional capitalization along with additional submissions for components for which additional capitalization has already been sought, as summarized below:

“(a) Deletion of paragraph 6.1.2 of the main petition filed on 26.11.2020 to be replaced by new paragraph 6.1.2 (under Additional capitalization during the year 2019-24 & subsequent to 2019-24 period);

(b) Addition of paragraphs 6.1.52 to 6.1.87 (details of the projected additional capitalization during the respective years of the 2019-24 and 2024-29 tariff periods);

(c) Addition of paragraphs 6.1.18A, 6.1.21A, 6.1.34A, 6.1.40A and 6.1.51A (to place on record the various case laws in respect of the additional capitalization already sought in the petition);

(d) Withdrawal of the proposed additional capitalization of Rs.1180 lakh claimed towards Additional Eco Hoppers with Ash Evacuation system; and

(e) Addition of prayer (d) in the original petition as under:

“(d) In-principally approve the costs towards the proposed works to be undertaken in 2024-29 control period and grant liberty to the Petitioner to approach this Hon'ble Commission after capitalization”



4. The Applicant has further submitted that the present amendment being sought is for bona fide reasons, imperative for proper and effective adjudication of the matter and would not cause prejudice to any of the parties. Placing reliance on the judgment of the Hon'ble Supreme Court in *Revajeetu Builders & Developers v Narayanswamy & sons* (2009) 10 SCC 84, wherein, the principles to be followed while adjudicating an amendment application in terms of Order 6 Rule 17 of the Code of Civil Procedure (in short 'CPC), has been laid down, the applicant has submitted that the amendment does not change the nature and character of the case and the disallowance of the same would lead to injustice.

Reply of the Respondent PCKL

5. The Respondent No.1, PCKL vide its affidavit dated 17.8.2021, has raised preliminary objections with regard to the admissibility of the IA filed by the Applicant mainly on following counts:

(i) Grounds raised by the Petitioner were available to it at the time of filing the original petition and IA has been brought at this stage solely to cause hardship to the Respondents;

(ii) The additional claims sought materially amends the cause of action;

(iii) Applicant had not informed the Commission that it intends to amend the petition, during the hearing on 25.5.2021, but had sought admission of the petition on the pleadings originally filed; and

(iv) The additional capitalization claims relate to the location of the generating station, which was in existence even when the petition for truing-up for the 2014-19 tariff period and the determination of tariff for the 2019-24 tariff period was filed.

6. The Respondent No.1, PCKL has submitted that since no new facts and circumstances have emerged, which necessitate the amendment of the pleadings,



the application for amendment of the present petition may be dismissed.

Rejoinder of the Applicant

7. The Applicant vide its affidavit dated 20.8.2021 has filed its rejoinder to the reply filed by the Respondent PCKL and has pointed out that the submissions of the Respondent PCKL are hyper-technical and liable to be rejected since if everything could have been perceived by the Applicant at the initial stage only, then there was no requirement to seek amendment of pleadings in terms of Order 6 Rule 17 of the CPC. Placing reliance on the judgments of the Hon'ble High Court of Delhi [judgment dated 8.10.2007 in C.S (OS) No.1083/2007 (Merck Kgaa & ors v Bala Hegde & ors) and judgment dated 17.1.2003 FAO (OS) 180/2002 (Vaish Cooperative Adarsh Bank Ltd v Geetanjali Despande &ors), the Applicant has submitted that it is settled law that while deciding the prayer for amendment of the pleadings, courts ought to take a liberal approach and not hyper-technical view. Referring to the decisions of the Hon'ble Supreme Court in B.K.Narayana Pilai v Parameswaran Pillai (20001 SCC 712) and Rajesh Kumar Aggarwal v K.K.Modi (2006 4 SCC 385), the Applicant has submitted that the Commission is empowered to allow the application seeking amendment of pleadings at any stage of the proceedings, if the same (i) does not result in completely changing the nature of the case, (ii) is necessary for the purpose of determining the real question in controversy between the parties and (iii) may result in multiplicity of proceedings. The Applicant has also submitted that all the above criteria apply to the case and the prayer for amendment may be allowed in order to avoid multiplicity of proceedings. It has further stated that the amendments sought by the Applicant are essential in nature for the purpose of determining the real question in controversy and do not alter the nature of proceedings in any way and thus, no prejudice shall be caused to any of the Respondents, if the application is allowed. The Applicant has further stated that its counsel had mentioned the matter before the



Commission on 1.6.2021, seeking permission to file the application for amendment of the petition and the Commission while granting permission, observed that the same will be considered on merits. The Applicant has clarified that increase in capital expenditure from Rs.286 crore to Rs.421 crore is on account of additional capitalization sought to be incurred for the period subsequent to the 2019-24 tariff period.

8. Accordingly, the Applicant has prayed that the application for amendment of the petition may be allowed in the interest of justice.

Hearing dated 24.8.2021

9. During the hearing of the IA on 24.8.2021, the learned counsel for the Applicant mainly argued on the lines of its submissions in IA. The learned counsel referred to the judgment of the Hon'ble Supreme Court in Rajesh Kumar Aggarwal v K.K.Modi (2006 4 SCC 385) and submitted that courts should allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side. He also submitted that while considering whether an application for amendment should be allowed or not, the court should not go into the correctness or falsity of the case, at the amendment stage. The learned counsel argued that the court should not record a finding on merits of the amendment at the stage of allowing the prayer for amendment. The learned counsel for the Applicant also placed reliance on the judgment dated 1.11.2020 of APTEL in IA No.288 of 2020 in Appeal No. 201 of 2014 (Reliance Infrastructure Limited (Distribution) v MERC & anr), wherein APTEL had observed that merits of the amendment cannot be looked into and the only aspect which has to be looked into by a court of law is that whether the amendment would help in deciding the real controversy between the parties. Accordingly, the learned counsel for the Applicant prayed that the application for amendment of the petition



may be allowed.

10. In response, the learned Senior counsel for the Respondent PCKL mainly reiterated the submissions made in the reply of the Respondent to the IA. In addition, the learned counsel for the Respondent PCKL pointed out that certain additional capital expenditure claimed by the Applicant do not indicate the specific provision of the Tariff Regulations, under which such claims have been made and, therefore, the claims in respect of such items may be disallowed.

Analysis and Decision

11. We have considered the submissions of the learned counsel for the Applicant and learned Senior counsel for Respondent PCKL with regard to the admissibility of the IA. The issue for consideration is whether the IA for amendment of the main petition is maintainable.

12. There is no specific provision regarding amendment of pleadings in the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. Therefore, we rely on provisions of the Code of Civil Procedure, 1908 (CPC). Order 6 Rule 17 of CPC deals with amendment of pleadings. Rule 17 is extracted as under:

“17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial.”

13. As per the above provision, pleadings can be amended at any stage of the proceedings if in view of the Court the amendments are necessary for the purpose of determining the real questions in controversy between the parties. The proviso to the said rule says that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence,



the party could not have raised the matter before the commencement of trial.

14. In the case of *Revajitu Builders and Developers v Narayanswamy & sons* {(2009) 10 SCC 84}, the Hon'ble Supreme Court enunciated the following principles for allowing the amendment:

“Whether amendment necessary to decide the real controversy

58. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the court's decision discretion in grant or refusal of the amendment.

No prejudice or injury to other party

59. The other important condition which should govern the discretion of the court is potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily if the other side is compensated with costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. The Courts have very wide discretion in the matter of amendment of pleadings but the Court's powers must be exercised judiciously and with great care.

Factors to be taken into consideration while dealing with the application for amendment

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) Whether the amendment sought is imperative for the proper adjudication of the case;*
- (2) Whether the application for amendment is bonafide or malafide;*
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature or character of the case; and*
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

These are some of the important factors which may be kept in mind while dealing with the application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”



15. From the above judicial decision, a cardinal principle is enunciated that the dominant test that needs to be carried out is whether the amendment is required in the interest of justice and for the purpose of determination of real controversy between the parties and to reduce multiple litigations.

16. In paragraph 6.1.2 of the main petition, the Applicant has claimed projected additional capitalisation of the following components for the years 2020-21 and 2021-22:

Particulars	Amount (in Rs lakhs)
Proposed Additional Capitalization for FY 2020-21	9160.34
Proposed Additional Capitalization for FY 2021-22	15224.00
Total	24384.34

Table 16: Statement of Hard Cost for Projected Additional Capitalization for FY 2020-21

Sl. No.	Head of Work / Equipment	(Rs. in lakh)
		Additional Capital Expenditure Claimed (Projected)
1	CERC Approved Additional Capitalization for Staff Colony	6000.00
2	400 kV Line reactor - 2 Nos	2872.34
3	CCTV Camera	288.00
	Total	9160.34

Table 17: Statement of Hard Cost for Projected Additional Capitalization for 2021-22

Sl. No.	Head of Work / Equipment	(Rs. in lakh)
		Additional Capital Expenditure Claimed (Projected)
1	Induced Draft Cooling Tower	4450
2	Additional Eco Hoppers with Ash Evacuation System	1180
3	Installation of standby Auxiliary Cooling Water pipe line with Corrosion coating from Auxiliary Cooling Water Pump House up to U#1 & U#2 Plant Heat Exchanger	649
4	Impressed current cathodic protection system (ICCP) for Auxiliary Cooling Water pipe line	590
5	Sea Water Intake System	7768
6	Laying of alternate source of electric supply for External Coal Handling Plant	254
7	Rain water harvesting	333
	Total	15224

17. The following prayers have been made by the Applicant, in the main petition:

- a) Allow the present Petition seeking True-up of ARR for the period from 01.04.2014 to 31.03.2019 and determine the tariff for the period from 01.04.2019 to 31.03.2024 as sought by the Petitioner hereinabove;
- b) Allow the claimed trued up capital cost for the tariff period 2014-19 and the projected additional capitalization for the period 2019-24;



- c) Allow the necessary additional capital expenditure to be incurred towards CCTV during FY 2020-21 as an interim relief considering the recommendation from Intelligence Bureau and security advisory from CEA for strict compliance.
- d) Direct the Respondents to pay filing fees and publication fees for the instant Petition;
- e) Allow the Petitioner to carry out additions / alterations / changes / modifications to the Petition at a future date, if necessary;
- f) Pass any other further order(s) that this Hon'ble Commission may consider fit, in the interest of equity and justice."

18. In the IA, the Applicant has claimed projected additional capitalisation of the following components for the 2019-24 and 2024-29 tariff periods, as replacement to paragraph 6.1.2 of the main petition (the prayers of the Applicant in the IA are extracted in paragraph 2 above):

Particulars	Amount (in Rs. lakhs)
Proposed Additional Capitalization for FY 2019-24	31799
Proposed Additional Capitalization for FY 2024-29	10387
Total	42186

Table 16: Statement of Hard Cost for Projected Additional Capitalization for FY 2019-24

		<i>(Rs. in lakh)</i>
Sl. No.	Head of Work / Equipment	Additional capital Expenditure claimed (Projected)
	FY 2019-20	
1	Ventilation System for Track Hopper	190
	FY 2020-21	
2	400 kV Line reactor - 2 Nos	2872
	FY 2021-22	
3	CERC Approved Additional Capitalization for Staff Colony	6000
4	CCTV Camera	288
5	Induced Draft Cooling Tower	4450
6	Installation of standby Auxiliary Cooling Water pipe line with Corrosion coating from Auxiliary Cooling Water Pump House up to U#1 & U#2 Plant Heat Exchanger	649
7	Impressed current cathodic protection system (ICCP) for Auxiliary Cooling Water pipe line	590
8	Sea Water Intake System	7768
9	Laying of alternate source of electric supply for External Coal Handling Plant	254
10	Rain water harvesting	333
11	Auto DV type Fire Protection system for CHP	145
12	Up-gradation of North & South Offshore Return Line	7300
	FY 2023-24	
13	Cathodic Protection System for NMPT RCC Jetty Structure	960
	Total	31799

Table 17: Statement of Hard Cost for Projected Additional Capitalization for 2024-29

		<i>(Rs. in lakh)</i>
Sl. No.	Head of Work / Equipment	Additional capital Expenditure Claimed



		(Projected)
1	Sea Water Stand-by Supply and Return Line from Pump House to Main Plant	9587
2	Installation of Clarifiers	800
	Total	10387

19. On perusal of the main Petition No. 21/GT/2021 as well as the IA, it is evident that the projected additional capitalisation claimed for the years 2020-21 and 2021-22 in the main Petition is sought to be replaced by the Applicant in the IA, by claiming projected additional capitalisation for the 2019-24 and 2024-29 tariff periods, *albeit* with the inclusion of certain additional components and withdrawal of one component for additional capitalisation (additional Eco Hoppers with Ash Evacuation system in 2021-22). The other additional paragraphs in the IA (viz., paragraphs 6.1.52 to 6.1.87 and paragraphs 6.1.18A, 6.1.21A, 6.1.34A, 6.1.40A and 6.1.51A is) are added only to provide details of the projected additional capitalization claimed during the respective years of the 2019-24 and 2024-29 tariff periods and to place on record the case laws in support of the additional capitalization claimed in the main petition. Also, the inclusion of a new prayer i.e prayer (d) by the Applicant as reproduced in paragraph 3 above is consequence of the claim for projected additional capitalization for the 2024-29 tariff period.

20. The Applicant has submitted that on account of the developments with regard to security & safety aspects, impact of eco-system, various environmental & local community concerns etc., it has proposed a long-term plan in respect of the various additional capitalization items, which are required to be undertaken during the 2019-24 tariff period and 2024-29 tariff period respectively.

21. Per contra, the Respondent PCKL has submitted that the Applicant has failed to establish that it could not have raised the claims in the IA on the date when it initially filed the main petition. It has also argued that the amendment proposed materially amends the cause of action and causes hardship to the Respondents.



22. We note that the main petition was heard on 25.5.2021 and the Applicant was directed to file certain additional information. Further, the Applicant on 1.6.2021 had mentioned the matter seeking permission of the Commission to file the IA for amendment of the main petition. Based on this, the present application has been filed for addition/ replacement of certain paragraphs, as mentioned above. Keeping in view that tariff of the generating station is to be determined in terms of the Tariff Regulations in force, the amendments sought do not in any manner change the nature of the proceedings and are imperative to be considered, in order to determine the claims involved in the present case. Moreover, the amendment application has been filed at a stage when the Applicant has been directed to file certain additional information and the parties have been directed to complete pleadings in the matter, prior to the hearing of the main petition. Therefore, no prejudice will be caused to the Respondents including the Respondent, PCKL, if the prayer of the Applicant for amendment is allowed, as the Respondents will have ample opportunity to examine the claims on merits and file their responses, prior to the matter being finally heard by the Commission. On the contrary, if the amendments prayed for is not allowed, the same will cause prejudice to the Applicant and will result in multiple litigations. Therefore, we are of the considered view that the amendments sought by the Applicant, through the present IA, satisfy the condition of Order 6 Rule 17 of the CPC i.e. the amendments are necessary for the purpose of determining the real question in controversy between the parties and we find no force in objections of the Respondent PCKL.

23. Accordingly, the IA for amendment of the main petition is allowed and the amended petition is taken on record, forming part of the main petition.

24. The Petitioner is further directed to file the following additional information,



after serving copy to the Respondents, on or before 28.10.2021.

(i) The gross block as shown at Form-11 is at variance with that as per Form-9E. The variance needs to be clarified with modification of necessary tariff forms;

(ii) Reconcile the exclusions claimed in Form-9D submitted vide affidavit date 30.6.2021 with the exclusions stated in Form-9C submitted vide affidavit dated 1.7.2021, for the year 2015-16 and 2017-18;

(iii) Reconcile the total addition in gross block as per Form-9A &9D with the addition in gross block as per Form-9E, for the year 2014-15, 2015-16 and 2017-18;

(iv) Form-9Bi shall be furnished in respect of de-capitalization of assets;

(v) A copy of referred M/s Lahmeyer International India Pvt. Ltd. Report of January 2017 suggesting capital expenditure requirements.

25. The Respondent PCKL shall furnish the copy of report of the joint site visit done with Karnataka Power Corporation Ltd, in furtherance to M/s Lahmeyer International India Pvt. Ltd. Report regarding capital expenditure, after serving the same to the Petitioner.

26. The Respondents are directed to file their reply to the amended petition, on or before 10.11.2021, after serving copy to the Petitioner, who may file its rejoinder if any, on the above, by 17.11.2021.

27. I.A. No.62/2021 is disposed of in terms of the above. Petition No. 21/GT/2021 shall be listed along with Petition No.155/MP/2019 for hearing in due course, for which notice will be sent to the parties.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(P.K. Pujari)
Chairperson