



UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 1235 of 2017

FILED BY

DHARIWAL INFRASTRUCTURE LIMITED (DIL)

IN THE MATTER OF:

**FIXATION OF TARIFF FOR SUPPLY OF 187 MW FROM 300 MW UNIT 2 OF DHARIWAL
INFRASTRUCTURE LIMITED TO NOIDA POWER COMPANY LIMITED FOR THE TARIFF
PERIOD FY 2016-17 TO FY 2018-19**

Lucknow

Dated: 05.02.2019

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Petition Nos. 1235 of 2017

Before

UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Date of Public Hearing: October 30, 2018

Date of Order: 05.02.2019

PRESENT:

1. Hon'ble Shri Raj Pratap Singh, Chairman
2. Hon'ble Shri Suresh Kumar Agarwal, Member
3. Hon'ble Shri Kaushal Kishore Sharma, Member

IN THE MATTER OF:

Approval of Annual Revenue Requirement and Multi-year Generation Tariff for FY 2016-17 to FY 2018-19 for sale of 187 MW Capacity from 300 MW, Unit 2 of Dhariwal Infrastructure Limited (DIL) to Noida Power Company Limited (NPCL)

Between

M/s Dhariwal Infrastructure Ltd. (DIL)

AND

Noida Power Company Ltd. (NPCL)

The Following were present:

1. Sri Parinay Deep Shah, Advocate, DIL
2. Sri Rabi Chowdhary, Director, DIL
3. Sri Subir Kumar Saha, VP (Finance), DIL
4. Sri Bhaskar Kumar Ganguly, GM (Operations), DIL
5. Sri Aveek Chatterjee, Chief Manager, DIL
6. Sri Shubhayu Sanyal, Asst. Manager, DIL



7. Sri Shamik Das, DM, DIL
8. Smt Divya Chaturvedi, Advocate, NPCL
9. Sri R.C. Agarwala, MD & CEO, NPCL
10. Sri Alok Sharma, Head Legal, NPCL
11. Sri A.K. Arora, Resident Manager, NPCL
12. Sri R. S. Awasthi, Consumer representative
13. Sri Manish Garg, Consultant



1. FOREWORD

- 1.1 Dhariwal Infrastructure Ltd. (hereinafter referred as DIL or Petitioner) is a company incorporated under the Companies Act 1956, having its registered office at CESC House, Chowringhee Square, Kolkata- 700001 and State of West Bengal. It is a Generating Company within the meaning of Section 2(28) of the Act.
- 1.2 DIL has set up 2 x 300 MW (Unit-1 and Unit-2) Coal-based thermal generating station located at Tadali, Chandrapur in the State of Maharashtra.
- 1.3 Noida Power Company Ltd. (herein after referred as NPCL) is a Distribution Licensee within the meaning of Section 2(17) of the Act. It is a company incorporated under the Companies Act, 1956, having its registered office at Commercial Complex, H-Block, Sector Alpha-II, Greater Noida- 201308, State of Uttar Pradesh.
- 1.4 Unit-2 of the Project with installed capacity of 300 MW, achieved Date of Commercial Operation (COD) on 02.08.2014 and a Power Purchase Agreement (PPA) was signed on 26.09.2014 between DIL and NPCL for supply of 187 MW power to NPCL.
- 1.5 Subsequently NPCL filed Petition No. 971/2014 before the Commission, for approval of PPA for purchase of 187 MW power from DIL under section 62 read with section 86(1)(b) of the Electricity Act, 2003. The Commission disallowed approval of PPA considering that for long term power purchase, competitive bidding route should only be availed. Against this order of the Commission, NPCL preferred an appeal before Hon'ble APTEL. In its order dated 28.5.2015, Hon'ble APTEL clarified that the State Commissions have been given discretionary powers either to choose Section 62, 62(1)(a) to give approval to the PPA or to direct the distribution licensee to resort to the Competitive Bidding Process as per Clause 5.1 of the National Tariff Policy read with Section 63 of the Electricity Act. Hon'ble APTEL remanded the case to the Commission and in compliance to Hon'ble Tribunal's order, the Commission heard the case afresh on merits.
- 1.6 Vide Order dated 29.9.2015, the Commission asked NPCL that whether the cost of power procurement from this project is competitive vis-a-vis the cost of power available from other sources and vis-a-vis the power available from exchange. NPCL was also asked that how would they ensure that the commitments made by the concerned generator would be adhered to and whether they have made any such condition in their agreement to the effect that if the commitments are not fulfilled, the impact thereof will not be passed on to the consumers. The Commission further enquired about the Fuel Supply Agreement (FSA).



- 1.7 Vide order dated 15.01.2016, the Commission opined that whole case of NPCL is based on the levelized tariff of Rs. 4.79/kwh (for the period of 25 years) and it becomes necessary to firm up the fixed as well as the variable part of the tariff for the whole term of PPA so that the consumer may be ensured to get power at a cheaper rate through this PPA as promised by the parties. The parties submitted firm commitment of Fixed Charges for 25 years period and also submitted that since their Power Plant is already complete and commissioned, hence there is no risk of increase in Capital Cost post approval of the PPA which is a significant advantage compared to tariffs from other MOU projects. The Commission further opined that the variable charges is also required to be as per the levelized tariff of Rs. 4.79/kwh for the period of 25 years except certain variation as mentioned therein.
- 1.8 The parties in their submission dated 19.02.2016 submitted that fuel related risks are not under their control, therefore commitment on variable charges for a period of 25 years will be unsustainable. Further, in compliance to Commission's direction, the parties submitted the summary of deviations in the PPA in tabular form with reasons on 19.02.2016. Subsequently, PPA was approved by the Commission vide Order dated 20.04.2016 read with Order dated 15.01.2016. The Commission also noted that in case of any short fall in the quantity of fuel from domestic linkage, the parties can approach the Commission for prior approval of procurement of fuel from alternative sources.
- 1.9 Thereafter, M/s DIL filed petition No. 1235 of 2017 for approval of ARR & Multi Year Tariff for the period from FY 2016-17 to 2018-19 for sale of 187 MW capacity from 300 MW Unit-2 of DIL to NPCL.
- 1.10 The Commission observed some deficiencies in the Petition and issued three deficiency notes to DIL. Subsequently on submission of reply to the queries to the satisfaction of the Commission by DIL, vide Order dated 08.08.2018, the Commission admitted the Petition. Vide the same order, the Commission also approved the draft public notice seeking comments / objections of the stakeholders on Petition of approval of Multi Year Annual Revenue Requirement and generation tariff for FY 2016-17 to FY 2018-19 for publication in newspapers.
- 1.11 Public Hearing in this matter was conducted on 30.10.2018 in the Court Room of the Commission office, wherein Sri Rama Shanker Awasthi, Consumer Representative, submitted his objections to Commission. DIL submitted its reply to Sri Awasthi's submissions, subsequent to which Mr. Awasthi filed rejoinder.

2. CHRONOLOGY OF EVENTS

- 2.1 Unit 2 of the Project of 300 MW capacity achieved Date of Commercial Operation (COD) on 02.08.2014. A PPA was signed on 26.09.2014 between DIL and NPCL for procurement of 187 MW long term power.



2.2 Subsequently NPCL filed Petition No. 971/2014 before the Commission, for approval of Power Purchase Agreement (PPA) for purchase of 187 MW power from M/s Dhariwal Infrastructure Ltd. under section 62 read with section 86(1)(b) of the Electricity Act, 2003.

2.3 The Commission did not approve PPA considering that long term power purchase should only be procured through competitive bidding. Against this order of the Commission, NPCL preferred an appeal before Hon'ble APTEL. In its order dated 28.5.2015, Hon'ble APTEL clarified that the State Commissions have been given discretionary powers either to choose Section 62, 62(1)(a) to give approval to the PPA or to direct the distribution licensee to resort to the Competitive Bidding Process as per Clause 5.1 of the National Tariff Policy read with Section 63 of the Electricity Act and took following view:

Quote

"24. Reasons introduce clarity and also give assurance to the litigants that their case is considered. In the circumstances, we are of the opinion that this matter needs to be remitted to the State Commission so that submissions of the parties can be considered afresh. While remitting the case, we would like to make it clear that we have not expressed any opinion on the merits of the case of the parties. Nothing said by us in this judgment should be treated as expression of our opinion on the merits of the case of the parties. The State Commission will apply its mind to all contentions raised by the parties independently and in accordance with law and arrive at its conclusions.

*25. In the result, the impugned order is set aside. **The matter is remanded to the State Commission for fresh consideration of all the submissions of the parties, independently and in accordance with law. All contentions raised by the parties are kept open. The appeal is disposed of in the aforestated terms.**"(Emphasis added)*

Unquote

2.4 In compliance to Hon'ble APTEL's above Order, the Commission heard the case afresh on merits. Vide order dated 29.9.2015, the Commission asked NPCL that whether the cost of electricity from this project is competitive vis-a'-vis the cost of power available from other sources and vis-a'-vis the power available from exchange. NPCL was also asked that how would NPCL ensure that the commitments made by the concerned generator would be adhered to and whether they have made any such condition in their agreement to the effect that if the commitments are not fulfilled, the impact thereof will not be passed on to the consumers.



- 2.5 The Commission further enquired from NPCL about the FSA. NPCL was directed to submit detailed reply on above along with supporting documents. NPCL submitted detailed reply on 26.10.2015. Vide Order dated 15.01.2016, the Commission opined that:

Quote

"12. From the above discussions, it is evident that although NPCL has submitted a commitment on fixed charges for 25 years but has not submitted firm view on variable cost for the term of the PPA as promised by them during the hearing. The undertaking submitted by the generator is only for the period till fuel supply agreement is executed. In view of the fact that whole case of NPCL is based on the levelized tariff of Rs. 4.79/kwh (for the period of 25 years), it becomes necessary to firm up the fixed as well as the variable part of the tariff. The table showing fixed charges for 25 years and confirmation that there would be no upward revision in the project cost ensures sanctity of fixed charge. Similarly the component of variable charge also require to be as per the commitment of levelized tariff of Rs. 4.79/kwh for the period of 25 years except for the variation due to CERC escalation rates, over and above the escalation rates taken in calculation of levelized tariff of Rs. 4.79/kwh, which would be additionally allowed in variable charge. Such limitation on variable charge would mean that for the whole term of PPA if there ever is any short supply from SECL and the Seller has to procure fuel from alternative sources then he would bear the additional cost, if any, over the prevailing SECL price plus CERC escalation. In this manner, the consumer may be ensured to get power at a cheaper rate through this PPA as promised by the parties.

13. It has also been observed by the Commission that many clauses in the draft PPA have been deleted and new insertions have been made. As any deviation is required to be approved by the Commission, it is desired that all such deviations/ insertions should be put up before the Commission in tabular form giving reasons for deletions/insertions."

Unquote

- 2.6 In compliance to Commission's direction, the parties submitted the summary of deviations in the PPA in tabular form with reasons on 19.02.2016.. PPA was approved by the Commission vide Order dated 20.04.2016 read with Order dated 15.01.2016 with a levelized tariff of Rs. 4.79/kwh for 25 years.
- 2.7 Thereafter, M/s DIL (Petitioner) filed Petition No. 1235 of 2017 for approval of ARR & Multi Year Tariff for the period from FY 2016-17 to 2018-19 for sale of 187 MW capacity from 300 MW Unit-2 of DIL to NPCL.



- 2.8 The Commission heard this case first time on 14.12.2017 but due to non availability of the Counsel of DIL, it sought adjournment. Next hearing was fixed on 21.12.2017 and DIL was asked to submit the arguments regarding jurisdiction of Commission in view of the fact that the petitioner is selling energy in more than one State.
- 2.9 Next hearing was again fixed for 06.02.2018 wherein senior Counsel of DIL made his submissions on the maintainability of the petition and requested the Commission to admit the petition. He referred various judgments of Hon'ble Supreme Court in similar cases.
- 2.10 The Commission asked the Sr. Counsel of the petitioner to make the written submissions with copies of quoted judgments within three days. The Petitioner filed written submissions on 09.02.2018, wherein the Petitioner cited provisions of Sec 62 and 64(5) of the Electricity Act 2003, the Hon'ble Supreme Court Judgment dated 11.04.2017 in the matter of Energy Watchdog Vs Central Electricity Regulatory Commission and others (Civil Appeal no. 5399-5400 of 2016), the Hon'ble APTEL judgment dated 4.11.2016 in Appeal no. 15 of 2011 in case of M/s Lanco Power Ltd Vs Haryana Electricity Regulatory Commission and Ors. The Petitioner has also relied on findings of some other Electricity Regulatory Commissions in support of his argument.
- 2.11 The Petitioner also submitted that the composite scheme has come into picture since the generation and distribution licensees are situated in different States, thereby triggering the jurisdiction of the Central Commission under Section 79(1)(b) of the Electricity Act 2003 with the exception of Section 64(5) of the Act which provides that parties can approach the State Commission for determination of tariff for a generating company to the distribution licensee with the territorial jurisdiction of such State Commission, therefore Section 64(5) of the Act has an overriding effect on Section 79 of the Act as it starts with non-obstante clause, "*Notwithstanding anything contained in Part X..*" and Part X of the Act includes Section 79 which deals with the functions of the Central Commission.
- 2.12 The Commission vide Order dated 19.02.2018 opined as follows:
- "On the basis of written submissions made by the Petitioner and after going through the contents of 64(5) of the Act and the position narrated by the Hon'ble Supreme Court, the Commission holds that it has the jurisdiction to determine the tariff under the aforesaid petition."* (Emphasis added)
- 2.13 Subsequently, the Commission directed DIL to submit the tariff stream indicating the levelised tariff for 25 years as per the approved PPA.
- 2.14 The matter was again heard on 23.03.2018, wherein the Petitioner submitted the tariff stream for 25 years and has also made submissions regarding



admissibility of extra cost on account of procurement of additional coal and change in law. The Commission clarified that the extra cost on account of procurement of additional coal and change in law shall be dealt with separately as is done in Case-1. The Commission also clarified that the tariff stream submitted by the Petitioner need to be scrutinized in the Commission and deficiency notes if any shall be communicated to the Petitioner to which the Petitioner will have to reply at the earliest.

- 2.15 Thereafter, the Commission issued 1st Deficiency note on 16.04.2018 and 2nd Deficiency on 02.05.2018 to the Petitioner. The Petitioner submitted its reply vide its submissions dated 23.04.2018 and 22.05.2018 respectively. The Commission vide Order dated 02.05.2018 directed the petitioner to file revised computation of levelized tariff based on the Capital Cost of Rs. 1903 Crore as on cut-off date and all the other information sought by the Commission through deficiency notes.
- 2.16 Subsequent to the submission of all the information by DIL as sought by the Commission through deficiency notes, the Commission vide Order dated 08.08.2018 admitted the Petition and approved the draft notice of DIL about the summary of Annual Revenue Requirement and generation tariff for FY 2106-17 to FY 2018-19 for publication in newspapers.
- 2.17 The Commission also issued 3rd Deficiency note on 26.09.2018. The Petitioner submitted its reply on 15.10.2018.
- 2.18 Public Hearing in this matter was conducted on 30.10.2018 in the Court Room of the Commission, wherein Sri Rama Shanker Awasthi, Public Representative, raised some objections. DIL submitted its reply to Mr. Awasthi's objections vide their submissions dated 12.11.2018, subsequent to which Mr. Awasthi filed rejoinder vide affidavit dated 29.11.2018.
- 2.19 Preliminary Objections raised by the Sri R.S. Awasthi, reply submitted by DIL and rejoinder on the issues filed by Mr. Awasthi are discussed in subsequent chapters.



3. BACKGROUND

3.1. REGULATORY FRAMEWORK

- 3.1.1 The Electricity Act, 2003 (hereinafter referred to as EA, 03) came into effect from June 10, 2003 which repealed all the erstwhile Electricity Acts in the country viz. Indian Electricity Act, 1910 (9 of 1910), The Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998). Under section 61 of EA, 2003, the State Electricity Regulatory Commissions require to notify terms and conditions for determination of tariff of generation, transmission & distribution. Section 86 of the Act mandates the Electricity Regulatory Commission to determine tariff in respect of Generating Companies and Licensees.
- 3.1.2 In exercise of powers conferred under 181 read with the provisions of the section 61 of the EA 2003, UPERC notified the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2004 effective from June 06, 2005, the date of notification, for three years which was later extended for one year. Before expiry of the Regulations, the Commission came up with UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009 (hereinafter referred to as Generation Regulations, 2009) w.e.f. April 01, 2009 amended on March 20, 2012, which remained effective till March 31, 2014.
- 3.1.3 Further the Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2014 have been notified on December 16, 2014. These Regulations shall be applicable for determination of Tariff for a generating station or a unit thereof required to be determined by the Commission under Section 62 of the Act read with Section 86 thereof from April 1, 2014 to a period of 5 years up to March 31, 2019, unless reviewed earlier or extended by an Order of the Commission.

3.2. EARLIER ORDERS OF THE COMMISSION

- 3.2.1 The Commission vide Order dated 20.04.2016 approved the PPA between NPCL and DIL for purchase of 187 MW power, subject to the condition as follows:

Quote

*"4. In view of above, the Commission allows that in case of any shortfall in the quantity of coal supply from the domestic linkage from SECL, DIL and NPCL in consent may approach to the Commission for prior approval of procurement of fuel from alternative sources. **However, it would be ensured by DIL that coal available under FSA would first be utilized for supply of 187 MW to NPCL.***



5. The Commission also approves the deviations in the submitted PPA as annexed.
6. With above changes, the Commission approves the PPA.
7. The petition is disposed of.”(Emphasis added)

Unquote

- 3.2.2 The Commission for Long term power arrangement to NPCL with DIL in the Tariff Order for NPCL dated November 30, 2017 has following observations:

Quote

Commission`s Analysis

4.6.3 The Commission while projecting the quantum of energy available from various sources for FY 2017-18 to FY 2019-20 has made the assumptions as detailed below.

Long Term Contracts:

4.6.4 The petitioner has submitted that it has had entered into a 25-year Power Purchase Arrangement with M/s Dhariwal Infrastructure Limited (DIL) for a period of 25 years for supply of 187 MW (Net 170 MW at Plant Bus after 9% Auxiliary Consumption) under Section-62 of the Electricity Act, 2003 for which the PPA was approved by the Commission vide Order dated April 20, 2016. As per the approval, the power supply under the above PPA was to be commence from May 21, 2016, for the purpose, the Company has applied to UPSLDC for grant of NOC for Long-term access which has been duly provided. As the generating station has already achieved its Commercial operations, the Company further requested UPSLDC to provide NOC for applying Open Access on Medium term basis, which was received on October 20, 2016. Accordingly, the above power supply would commence with effect from April 1, 2018.

4.6.5 The energy availability from DIL during the Control Period along with Fixed and Variable Cost components has been claimed by the petitioner as under:

Table 3-1PROJECTED QUANTUM FROM DIL (UNIT II) (MU)AS SUBMITTED BY PETITIONER

Plant Capacity	Contracted Quantum – 187 MW	FY 2017-18	FY2018-19	FY 2019-20**
2X300 MW	Net Generation	1,267.09	1,267.09	1,270.56
	155 MW *	1170.53	1,170.53	1,173.74

* Approx. delivered at NPCL bus after Auxiliary Consumption and Transmission Losses



**** Leap Year**

Table 3-2 PROJECTED COST FROM DIL (UNIT II) (Rs. Crore) AS SUBMITTED BY PETITIONER

Particulars#	FY 2017-18	FY 2018-19	FY 2019-20
Fixed Charges	261.02	255.95	251.57
Energy Charges	248.35	259.75	273.17
Transmission Charge	104.27	111.67	120.23
Total Power Purchase Cost	613.64	627.37	644.97

#Note: a. Fixed Charges are approved by Hon'ble Commission vide Order dated 20.04.2016.

b. Energy Charges are based on coal prices prevailing at the time of preparation of this petition with applicable escalation. The same may vary when supply commence.

c. Transmission Charges are also based on the figures prevailing at the time of preparation of this petition actual with applicable escalation. The same may vary when actual power supply commence.

4.6.6 The Commission vide its letter dated November 6, 2017, directed NPCL to submit the details of Tariff for the complete term of PPA of Unit-II of the DIL i.e. revenue stream for the complete term of 25 years and establish that the levelized tariff for the 25 years will not exceed Rs. 4.79 (at NPCL bus bar) as approved in its order dated 15.1.2016 read with order dated 20.04.2016. NPCL submitted its reply on November 6, 2017. However, the same is not clear. The Commission observed that NPCL had promised that their levelized tariff shall not exceed Rs. 4.79 per unit. To arrive at the cost applicable during the MYT Control Period, NPCL should have submitted the year wise tariff for 25 years. Since, this detail is not submitted even after the directions of the Commission, therefore the per unit power purchase cost from DIL Unit-II (187 MW) is restricted at Rs. 4.79 per unit at UP periphery. The Commission observes that since Case-I bidding in tariff was inclusive of interstate transmission charges therefore interstate transmission charges are included in Rs. 4.79/unit.

.....

4.6.11 Accordingly, the Commission has not considered the power purchase form DIL Unit I for FY 2018-19 and FY 2019-20 and has assumed that the same quantum shall be purchased by NPCL from the short-term sources. Accordingly, the Fixed and Energy charges for the Long Term PPAs with DIL Unit II considered for computation of power purchase cost are as under:



TABLE 3-3 APPROVED POWER PURCHASE COST FROM DIL-II

Source of Power Purchase	FY 2017-18			FY 2018-19			FY 2019-20		
	MU's	Amount Rs. Cr.	Rs./ kWh*	MU's	Amount Rs. Cr.	Rs./ kWh	MU's	Amount Rs. Cr.	Rs./ kWh
M/s Dhariwal Infrastructure Limited, Maharashtra (Unit-II)	1170.53	492.55	4.21	1170.53	487.34	4.16	1173.74	483.13	4.12

**Note: at NPCL bus inclusive of transmission losses but excluding transmission charges*

4.6.12 The Commission has considered the rate of power at NPCL bus, same as projected by the Petitioner. Any variation between the approved power purchase costs and the actual power purchase costs for the period FY 2017-18 to FY 2019-20 would be considered at the time of APR and / or truing up."

Unquote

- 3.2.3 M/s DIL filed petition no. 1235 of 2017 for approval of ARR & Multi Year Generation Tariff for the period from FY 2016-17 to 2018-19 for sale of 187 MW capacity from 300 MW Unit-2 of DIL to NPCL.
- 3.2.4 The Commission vide Order dated 19.02.2018 held that it has the jurisdiction to determine the tariff under the aforesaid petition and directed DIL to submit the tariff stream indicating the levelised tariff for 25 years as decided by the Commission in its earlier Order dt. 15.01.2016 and 20.04.2016. The relevant extract of the Order is as follows:

Quote

"5. The Petitioner has clarified that Section 64(5) of the Electricity Act 2005 clearly mentions that "Section 64. (Procedure for tariff order):(5) Notwithstanding anything contained in Part X, the tariff for any inter-State Supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor."

6. The petitioner has highlighted the Hon'ble Supreme Court judgment dated 11.4.2017 in the matter of Energy Watchdog Vs Central Electricity Regulatory Commission and others (Civil Appeal no.5399-5400 of 2016) which says that Section 64(5) can only apply if the jurisdiction otherwise being with the Central Commission alone, by application of parties concerned, jurisdiction is to be given to the State Commission having

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jurisdiction in respect of licensee who intends to distribute and make payment for electricity.

7. The Petitioner has also submitted that the composite scheme comes into picture since the generation and distribution licensees are situated in different States, thereby triggering the jurisdiction of the Central Commission under Section 79(1)(b) of the Electricity Act 2003 with the exception of Section 64(5) of the Act which provides that parties can approach the State Commission for determination of tariff for a generating company to the distribution licensee with the territorial jurisdiction of such State Commission, therefore Section 64(5) of the Act has an overriding effect on Section 79 of the Act as it starts with non-obstante clause, "Notwithstanding anything contained in Part X.." and Part X of the Act includes Section 79 which deals with the functions of the Central Commission. Hon'ble Appellate Tribunal for Electricity in its judgment dated 4.11.2011 in Appeal no. 15 of 2011: Lanco Power Limited vs. Haryana Electricity Regulatory Commission and Others has held that the State Regulatory Commission of the place where the electricity has been consumed is the appropriate Commission to exercise jurisdiction under Section 64(5) of the Electricity Act. In other cases cited by the Petitioner different State Commissions on the basis of Section 64(5) of the Electricity Act have affirmed the jurisdiction of the State Commissions to determine the tariff by the State Commission of the State in which the distribution licensee is located.

8. On the basis of written submissions made by the Petitioner and after going through the contents of 64(5) of the Act and the position narrated by the Hon'ble Supreme Court **the Commission holds that it has the jurisdiction to determine the tariff under the aforesaid petition.**

9. The Commission in its order dated 15.1.2016 and 20.4.2016 has broadly determined the tariff for sale of 187MW capacity to NPCL. Before the Commission can proceed to determine the tariff for FY 2017-2018 and 2018-2019 **the Petitioner is directed to submit the tariff stream for 25 years on the basis of directions given in the above orders of this Hon'ble Commission along with necessary documents.** The Petitioner shall submit the tariff stream indicating the levelised tariff for 25 years not exceeding Rs. 4.79 per unit as decided by the Commission in the abovementioned orders." **(Emphasis added)**

Unquote

3.2.5 In next hearing, on 23.03.2018 the Commission noted that the Petitioner has submitted the tariff stream for 25 years and has also made submissions



regarding admissibility of extra cost on account of procurement of additional coal and change in law. Sri Sanjay Sen, Senior Counsel appearing on behalf of DIL prayed that they have submitted the tariff stream for 25 years on the basis of earlier orders of the Commission and the submissions also include the impact of additional coal procured by the Petitioner and change in law.

- 3.2.6 In the above hearing the Commission vide Order dated 26.03.2018, clarified that the Commission would like to determine the tariff as per its earlier orders but the extra cost on account of procurement of additional coal and change in law shall be dealt separately, as done in case-1 procurement.
- 3.2.7 Thereafter, the Commission issued Deficiency note 1 on 16.04.2018 and Deficiency note 2 on 02.05.2018 to the Petitioner to which it replied vide its submissions dated 23.04.2018 and 22.05.2018 respectively.
- 3.2.8 Subsequently, the Commission vide Order 02.05.2018 opined as follows:

Quote

1. *"At the outset, the Commission inquired from DIL that why they have not submitted all the information / data sought by the Commission through deficiency note dated 16.04.2018. DIL counsel, Sri Sanjay Sen in reply submitted that their computation of levelized tariff is based on the agreed capital cost of Rs. 1941 Crore, whereas the other information provided are considering the Capital Cost of Rs. 1927 Crore proposed to be capitalized by FY 2018-19. Further DIL counsel submitted that the actual capital expenditure as on cut-off date is Rs. 1903 Crore. The Commission pointed out that the cutoff date of this project is 31.03.2017 and the Commission has to determine the tariff starting from FY 2016-17 and onwards. To facilitate the computation of tariff the details of capital cost, additions and undischarged liability duly certified by the auditors is required. The Petitioner has to submit these details as per the deficiency note.*
2. *The Commission opined that the Capital Cost shall be determined under Section 62 of Electricity Act, 2003 and Multi Year Tariff (MYT) as per UPERC Generation Tariff Regulations, 2014. **However, the ceiling on levelized tariff of 25 years as per the earlier order of the Commission will remain.***
3. *With reference to above, the Commission directed the petitioner to file revised computation of levelized tariff based on the Capital Cost of Rs. 1903 Crore as on cut-off date and all the other information sought by the Commission through deficiency notes. The Commission also directed the petitioner to submit detailed justification that the Coal as per the Fuel*



Supply agreement (FSA) is being utilized for supply of power of 187 MW to NPCL first.

4. Further, the Commission categorically mentioned that the petitioner has to ensure that the levelized tariff based on the Capital Cost of Rs. 1903 Crore as on cut-off date including variable charges taking into consideration the effects due to factor mentioned in the Petition, if approved by the Commission, shall not exceed the approved levelized tariff of Rs. 4.79 / kWh for a period of 25 years at the State periphery. However the petitioner may separately approach to the Commission for effect of change in law, if any.” **(Emphasis added)**

Unquote

- 3.2.9 The Commission vide the aforementioned Order also directed the Petitioner to submit a draft Public Notice detailing the salient information of the Petition for publication as shown below:

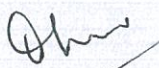
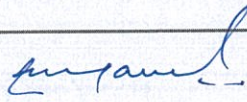
Quote

“6. The petitioner shall publish the tariff in the Newspaper within 3 days from the date of issuance of approval of the draft notice by the Commission. **The Public Notice detailing the salient information and facts of the Petitions, per unit fixed cost based on the capital cost of Rs. 1903 Crore, per unit variable charge considering that the Coal as per the FSA is being utilized for supply of power of 187 MW to NPCL first, and other relevant information, shall be published by the petitioner in at least two daily state wide circulated newspapers (one English and one Hindi) for two successive days for inviting views / comments / suggestions /objections /representations from all stakeholders and public at large within the stipulated time of 15 days from the date of publication of the Public Notice. The Commission also directs the petitioner to put all details on its internet website, with intimation to the Commission in PDF format. The draft of the proposed publication will be filed in the Commission and after the approval of the draft the same will go for publication.”** **(Emphasis added)**

Unquote

- 3.2.10 Subsequent, to the submission of the information by DIL as sought by the Commission through deficiency notes, the Commission vide Order dated 08.08.2018 admitted the Petition and approved the draft notice of DIL about the summary of Annual Revenue Requirement and generation tariff for FY 2016-17 to FY 2018-19 for publication in newspapers. The relevant extract of the Order is shown below:

Quote



2. Subsequently the Commission issued Deficiency note-2 on 02.05.2018 with a direction to submit the reply within 7 days. The Petitioner submitted its reply to the Commission's order dated 02.05.2018 and the Deficiency note-2 on 23-05-2018, wherein the Petitioner has submitted most of the information sought by the Commission.

3. Further, in line with the direction of the Commission in order dated 02.05.2018, the Petitioner has submitted the draft Public Notice for the approval of the Commission, wherein the Petitioner has mentioned the summary of Annual Revenue Requirement and Generation Tariff for FY 2016-17 to FY 2018-19, which is as follows:

Particulars	UoM	FY 2016-17	FY 2017-18	FY 2018-19
Capitalized Cost (as on 31 st March)	Rs. Crores	1903.58	1914.08	1927.65
Capacity Charge Rate at 85% NAPLF	Rs/kWh	2.06	2.03	1.96
Energy Charge Rate (Ex-Bus)	Rs/kWh	1.71	2.01	2.12
Transmission Charges & Losses payable to PGCIL	Rs/kWh	0.66	0.67	0.67
Total Tariff at UP Periphery	Rs/kWh	4.43	4.71	4.75

4. The Commission observed that the Petitioner has submitted most of the information sought by the Commission. However, some of the information are still not submitted to the satisfaction of the Commission. **With reference to above, the Commission admits the Petition subject to the condition that the petitioner will submit the remaining required information as and when sought by the Commission.** Further, since the prudence check of the capital cost has not been initiated, the zero date for finalization of tariff shall be considered the date on which the capital cost shall be accepted and approved by the Commission.

5. **With above, the Commission approves the draft notice for publication in the Newspaper.** The Public Notice shall be published by the petitioner in at least two daily state wide circulated newspapers (one English and one Hindi) for two successive days for inviting views/ comments/ suggestions/ objections/ representations from all stakeholders and public at large within the stipulated time of 15 days from the date of publication of the Public Notice. The Commission also directs the petitioner to put all details on its internet website, with intimation to the Commission in PDF format.**(Emphasis added)**

Unquote



3.2.11 Public Notices in this matter was published by the Commission on 26.09.2018. The Commission also issued deficiency note 3 to DIL on 26.09.2018 to which it replied on 15.10.2018.

3.2.12 Public Hearing in this matter was conducted on 30.10.2018 in the Commission wherein Sri Rama Shanker Awasthi on behalf of Public submitted the objections. DIL submitted its replies to Mr. Awasthi's objection on 12.11.2018 subsequent to which Mr. Awasthi filed rejoinder on 28.11.2018.

3.3. PRELIMINARY SCRUTINY OF THE PETITION

3.3.1 A preliminary analysis of the Petition was conducted by the Commission wherein it was observed that some of the critical submissions were missing. In this regard, deficiency note 1 was issued by the Commission on 16.04.2018 in regards to

- Data of fixed charges for 25 years considering the actual capital expenditure till cut-off date as Rs. 1903.58 Crore only
- Additional capital expenditure after cut-off date in FY 2017-18, FY 2018-19 as Rs. 15.07 Crore and Rs. 9.00 Crore respectively,
- Depreciation rate of 5.45% in computation of the levelized tariff,
- Revised Form-5B and Form-9A as on the date of COD of Unit-II,
- PPA with TANGEDCO,
- Interest on loan for the computation of levelized tariff, and
- Details of Fuel Supply Agreement (FSA) with SECL.

3.4.1 The Petitioner vide letter dated 23.04.2018 submitted its reply to some of the queries raised by the Commission. The Commission issued deficiency note 2 vide its letter dated 02.05.2018 directing the Petitioner to submit the remaining information. The Petitioner vide letter dated 22.05.2018 submitted its reply addressing most of the issues.

3.4.2 The Commission admitted the Petition on 08.08.2018 considering the availability of most of the information sought through its deficiency notes and with the condition of subsequent submission of some pending information as and when sought by the Commission.

3.4.3 The Commission vide its deficiency note 3 dated 26.09.2018 sent a list of the deficiencies to be submitted by the Petitioner. The Petitioner submitted its reply to the deficiency note 3 vide its letter dated 15.10.2018 in which it addressed most of the issues except for non-disclosure of the terms and conditions of tariff under the Confidentiality Clause in the TANGEDCO-DIL PPA.

[Signature]

[Signature]

[Signature]



3.4. ADMITTANCE OF THE TARIFF PETITION

- 3.4.1 The Commission through its Admittance Order dated 08.08.2018 admitted the Petition subject to submission of all the information as and when sought by the Commission.
- 3.4.2 In the aforementioned Order the Commission also directed the Petitioner to publish, within 3 days from the date of issue of the Order, the Public Notice detailing the salient information and facts of the Petition, per unit fixed cost based on the capital cost of Rs. 1903 Crore, per unit variable charge considering that the Coal as per the FSA is being utilized for supply of power of 187 MW to NPCL first, and other relevant information at least two daily state-wide circulated newspapers (one English and one Hindi) for two successive days for inviting views / comments / suggestions / objections / representations from all stakeholders and public at large within the stipulated time of 15 days from the date of publication of the Public Notice. The Commission also directed the Petitioner to put all details on its internet website, with intimation to the Commission, in PDF format.

3.5. PUBLICITY OF THE PETITION

- 3.5.1 The Public Notice detailing the salient feature of the Petition No. 1235/ 2017 (M/s Dhariwal Infrastructure Ltd. Vs NPCL) for "Approval of ARR and MYT for FY 2016-17 to FY 2018-19 for sale of 187 MW capacity from 300 MW unit-2 to Noida Power Company Limited (NPCL)" was made by DIL and it appeared in daily newspapers as detailed below, inviting objections from the public at large and all stakeholders:
- Hindustan Times (English) : 10.08.2018 and 11.08.2018
 - Hindustan (Hindi) : 10.08.2018 and 11.08.2018
 - Indian Express (English) : 10.08.2018 and 11.08.2018
- 3.5.2 The Public Notice detailing the salient feature of the aforesaid Petition was also published by the Commission in the following newspapers:
- Hindustan Times (English) : 27.09.2018
 - Hindustan (Hindi) : 27.09.2018

3.6. PUBLIC HEARING PROCESS

- 3.6.1 To provide an opportunity to all sections of the population in the State to express their views and to also obtain feedback from them, public hearing was held by the Commission. The public hearing was conducted on 30.10.2018 at 11.30 am at the conference hall of UPERC.
- 3.6.2 Consumer representatives participated actively in the public hearing process.



- 3.6.3 The views / suggestions / comments / objections / representations on the Tariff Petition received from the public were forwarded to the Petitioner for comments / response. The Commission has considered these submissions of the consumers and the response of the Petitioner before it embarked upon the exercise of determining the ARR/Tariff.
- 3.6.4 Besides this, the Commission, has also taken into consideration the oral and written views / comments / suggestions / objections / representations received from various stakeholders during the public hearings or through post or by e-mail.
- 3.6.5 The Commission has taken note of the views and suggestions submitted by the various stakeholders who provided useful feedback on various issues and the Commission appreciates their participation in the entire process.

VIEWS/COMMENTS/SUGGESTIONS/OBJECTIONS/REPRESENTATIONS ON ARR/TARIFF PETITION

- 3.6.6 The Commission has taken note of the various views / comments / suggestions / objections / representations made by the stakeholders and would like to make specific mention of the following stakeholders for their valuable inputs:
- Shri Rama Shanker Awasthi, Lucknow
- 3.6.7 The Commission has attempted to capture the summary of comments / suggestions / observations in this section. However, in case any comment / suggestion / observation is not specifically elaborated, it does not mean that the same has not been considered. The Commission has considered all the issues raised by the stakeholders and Petitioner's response on these issues while carrying out the detailed analysis of the Petition.
- 3.6.8 The major issues raised therein, the replies given by the Petitioner and the views of the Commission have been summarised as detailed below:

A. Maintainability of the Petition

Comments/Suggestions of the Public

- 3.6.9 Shri R. S. Awasthi vide his submission dated 30.10.2018 contended that the Commission does not have jurisdiction to determine tariff for supply of power from DIL Unit 2 to NPCL, for it being inter-state in nature involving more than two states and therefore, the present Petition is not maintainable before the Commission. Mr. Awasthi sought to argue that in terms of Section 79 of the Electricity Act, 2003 only the Central Electricity Regulatory Commission has the jurisdiction to determine the tariff for Petitioner.



DIL Response

- 3.6.10 DIL vide submission dated 12.11.2018 submitted that the Commission has, after a detailed hearing on this issue, already ruled vide its Order dated 19.02.2018 that it has the jurisdiction to determine tariff in the present case. It further, submitted that the aforesaid Order was uploaded on the website of the Commission immediately after its pronouncement and has been to the knowledge of public at large since then and thus, the Order dated 19.02.2018 has attained finality.
- 3.6.11 The Petitioner further submitted that the Commission after already holding that it has jurisdiction in the matter, cannot revisit or review the issue. It would, therefore, be legally untenable to allow Mr. Awasthi to raise objection to the maintainability of the present petition at this stage before the Commission in light of the Commission's Order dated 19.02.2018.
- 3.6.12 The Petitioner placed reliance on the written submissions dated 09.02.2018 already filed by it wherein it has made submissions on the issue of jurisdiction of the Commission on hearing of the Petition.
- 3.6.13 The Petitioner further submitted that in case of composite scheme, even though normally the jurisdiction for determination of tariff would lie with the CERC but due to virtue of the non-obstante clause occurring in Section 64(5) of the Act, the jurisdiction for tariff would lie with the State Commission as the parties can approach the State Commission for determination of tariff for a generating company supplying power to the distribution licensee within the territorial jurisdiction of such State Commission.
- 3.6.14 The Petitioner further submitted that the restrictive interpretation provided by Mr. Awasthi to the phrase "two States" has to be read in context of Section 79 (1)(b) of the Act which indicates that the 'composite scheme' comes into picture as soon as the generation and sale of power involve 'more than one State'. It was submitted by Petitioner that "more than one State" cannot be construed to be restricted to only "two" as suggested by Mr. Awasthi. In this matter reliance was placed by the Petitioner on the judgment of the Hon'ble Supreme Court in the case of **Pepsico India Holding (P) Ltd. vs. Grocery Market & Shops Board, (2016) 4 SCC 493**, wherein the words "one or more" has been interpreted to mean composite scheme to include various entries. Petitioner also submitted that under 64(5) of the Act, "tariff for any interstate supply involving two States" will qualify for the jurisdiction of the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.



Commission View

- 3.6.15 The Commission has already taken a view on this issue vide order dated 19.02.2018 that UPERC has the jurisdiction to determine the tariff in the present matter. Further, the jurisdiction of the State Commission under Section 64(5) of the Act has to be examined in light of the language of Section 64(5) which does not envisage any restrictive provisions. There is nothing in the language of Section 64(5) which suggests that it applies only in the case of sale by a generator of its whole capacity to the distribution licensee in a different State. In fact, the requirement of provision is 'any inter-state supply'. The term 'supply' has been defined in the Act as "sale of electricity to a licensee or consumer". A harmonious reading of Section 64(5) in light of the statutory definition of "supply" posits that Section 64(5) shall trigger in case of any and each inter-state sale of electricity by a generating company to a distribution licensee involving the territories of two States. In *Union of India & Ors. vs. Hansoli Devi & Ors.*, (2002) 7 SCC 273, the Hon'ble Supreme Court has ruled that, "It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act." For this reason, we are unable to accept the contention of Shri Awasthi made in this respect.

B. Prudence Check of Capital Cost

Comments/Suggestions of the Public

- 3.6.16 Mr. Awasthi submitted that the Petitioner in its Petition has stated that:

Quote

*"12.The Commission while approving the PPA **has already carried out prudence check** and examined various heads of costs as per the Generation Tariff Regulations 2014, to verify the tariff offered by the Petitioner" (Emphasis added)*

whereas, the Commission nowhere in the Order dated 15.01.2016 and 20.04.2016 stated or indicated that prudence check has been conducted by the Commission.

Unquote

DIL Response

- 3.6.17 The Petitioner submitted that the Commission had while approving the PPA conducted various prudence checks/benchmarking exercises based on different



aspects, viz., completed Project Cost, Benchmarking of Capital Cost with CERC Norms, assured fuel linkage, assured long-term transmission corridor, comparison with Case-1 tariffs supplying power to the state of UP, comparison of Fixed Charges with MoU projects supplying power to UP Discoms. In addition to the above, the Commission undertook commitment on Fixed Charges for a period of 25 years from the Petitioner thereby insulating the end consumers from any risks due to increased project development cost. The Commission also reviewed the terms of the PPA and ensured that the PPA contains adequate control for use of alternate coal during shortfall in linkage coal supply during the PPA term. The aforesaid transpires from a bare perusal of the Orders dated 15.01.2016 and 20.04.2016 passed by this Hon'ble Commission.

Commission View

- 3.6.18 The Commission vide order dated 15.01.2016 read with order dated 20.04.2016 approved ceiling fixed charges for 25 years along with the levelized tariff of Rs. 4.79/kWh. The Commission while approving the PPA conducted various prudence checks/benchmarking exercises based on different aspects, viz., completed Project Cost, Benchmarking of Capital Cost with CERC Norms, comparison with Case-1 tariffs supplying power to the state of UP, comparison of Fixed Charges with MoU projects supplying power to UP Discoms. The Commission also examined the trends of power price in short term market in last 3 years. The Commission observed that the availability of power and its price on short term market/power exchanges is not reliable and depends on various factors like sudden changes in weather, availability of fuel, availability of transmission corridor etc. Reliability of power supply is the most important factor for procurement of base load power and therefore it must be procured through long term PPA. In addition to the above, the Commission undertook commitment on Fixed Charges for a period of 25 years and as such the Commission is of the view that since the Capital Cost of Rs. 1903 Crores submitted now as on the Cut Off date is less than the estimated Capital Cost of Rs. 1941 Crores which was approved considering various aspects as mentioned above, the Project Cost of Rs. 1903 Crores may be approved. Approval on any Additional Capitalisation beyond 1903 Crores may however be considered only following the provision of the regulations but strictly within the ceiling of 1941 Crores.

C. Approval of Capital Expenditure to meet MOEFCC notification dated 7.12.2015

Comments/Suggestions of the Public

- 3.6.19 Mr. Awasthi submitted that the Petitioner in its Petition has stated that:



Quote

"11. It is further submitted that Ministry of Environment, Forest and Climate Changes ("MoEFCC") had on 07.12.2015 notified Environment Protection (Amendment) Rules, 2015 ("Amendment Rules"). The Petitioner will need to approach this Hon'ble Commission at an appropriate time for the approval of consequential effect of the same under "Change in Law" as specified in Regulation 16 (10) of Generation Tariff Regulations 2014 read with Article 13 of the approved PPA." (Emphasis added)

Unquote

whereas, MOEFCC guidelines were notified on 07.12.2015 much before the date of final submission by the Petitioner dated 19.02.2016. Petitioner has neither highlighted additional impact on fixed charges on account of MOEFCC notification and nor sought any relaxation in fixed charges on account of this event.

- 3.6.20 Mr. Awasthi further submitted that, thus firm commitment of Petitioner stands, as the 'Change in Law' event is prior to date of approval of PPA viz. 20.04.2016 and not subsequent to the date of approval of PPA.

DIL Response

- 3.6.21 DIL submitted that Ministry of Environment, Forest and Climate Changes (MoEFCC) had on 07.12.2015 notified Environment Protection (Amendment) Rules, 2015 (Amendment Rules). CERC vide its Order dated 20.03.2017 in Petition No. 72/MP/2017 recognized the above event as 'Change in Law' under the provisions of CERC Tariff Regulations 2014. Thereafter, CEA has been authorized to conduct studies and bring out the detailed guidelines on adoption and implementation of the appropriate technology.
- 3.6.22 It further submitted that Ministry of Power (MoP) has vide its recent letter dated 30.05.2018 decided that the MoEFCC Notification dated 07.12.2015 is of the nature of Change in Law and allowed the respective thermal power plants to approach the 'Appropriate Commission' for approval of additional capital expenditure required to meet the new norms. The 'Appropriate Commission' for the Petitioner is this Hon'ble Commission in the instant matter and the Petitioner has rightly approached this Hon'ble Commission vide its MYT Petition for FY 2016-19 to seek the appropriate relief
- 3.6.23 It was further submitted by DIL that the effective date of the PPA is 26.09.2014, i.e., the date of signing of the PPA and the Amendment Rules were notified on 07.12.2015 i.e. about 15 months later from the Effective Date of the PPA. In this



regard, the following definition of Effective Date of the approved PPA is noteworthy:

“Effective Date” means the date of signing of this Agreement by last of both the Parties;”

Further, Change in Law has been defined in the above PPA as follows:

Quote

*“13.1.1 “Change in Law” means the occurrence of any of the following events after the date, **which is seven (7) days prior to the Effective Date:...**” (Emphasis added)*

Unquote

- 3.6.24 It was further submitted by DIL that such Change in law clause is a mandatory part of any long-term PPA entered between a generating company and a distribution licensee either under Section 62 or section 63 route under the Act. In view of above, the Petitioner submitted that such Amendment Rules which were notified much later than the execution of the above PPA is to be construed as Change in Law event in view of the aforesaid developments along with the notification issued by MoP dated 30.05.2018.

Commission View

- 3.6.25 It is clear that the approval for any expenditure which the Petitioner may be required to incur in compliance with the Amendment Rules notified by MoEFCC is not the subject matter of this petition. It is observed that the Petitioner in the present has not made any claim on fixed charges on account of Change in Law event. Hence, the Commission shall take a view on the same when it approaches the Commission with a separate Petition for approval of impact due to Change in Law event.

D. Additional Capitalization

Comments/Suggestions of the Public

- 3.6.26 Mr. Awasthi submitted that the details required to be submitted under Proviso 1 and Proviso 2 of Regulation 22 (as produced herein under) have not been done furnished by DIL-

Quote

22. Additional capitalization:

(1) The following capital expenditure in respect of a new project or an existing project within the original scope of work actually incurred after the



date of commercial operation and up to the cutoff date may be admitted by the Commission, subject to prudence check

(i) Deferred liabilities;

(ii) Works deferred for execution;

(iii) Procurement of initial capital spares in the original scope of work, subject to ceiling specified in Regulation 19;

(iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and

(v) On account of change in law.

Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff.

Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating station.

Unquote

- 3.6.27 Further, Mr. Awasthi requested the Commission to direct the Petitioner to submit the details as per the Regulations. Also, he submitted that an opportunity should be granted to Public to verify the details and make submission and pleadings before the Commission.

DIL Response

- 3.6.28 DIL submitted that it had capitalized Rs 10.50 Crores on cash basis during FY 2017-18 and has estimated a revised projection of Additional Capitalization at Rs 13.57 Crores on cash basis during FY 2018-19. The Additional Capitalization during FY 2017-18 at Rs 10.50 Crores was mainly on account of the deferred works related to Ash Handling System etc. and final settlement of Balance of Plant Package under Original Scope of Work in compliance with Regulation 22 (2) of UPERC Generation Tariff Regulations 2014. It has vide DIL MYT Petition for FY 2016-19 followed by its response dated 23.05.2018 to the Deficiency Notes 1 and 2 issued by the Commission has made detailed submissions regarding Additional Capitalization as per Regulation 22 of UPERC Generation Tariff Regulations 2014.

Commission View

- 3.6.29 The Commission vide order dated 15.01.2016 read with order dated 20.04.2016 approved ceiling fixed charges for 25 years along with the levelized tariff of Rs. 4.79/kWh. Since the Capital Cost of Rs. 1903 Crores submitted now by the



Petitioner as on Cut Off date is less than the estimated Capital Cost of Rs. 1941 Crores which was approved considering various prudence check/bench marking exercises, the Project Cost of Rs. 1903 Crores may be approved.

- 3.6.30 Approval on any Additional Capitalization may however be considered by the Commission only following the provision of regulations but strictly within the ceiling cost of Rs. 1941 Crores. However, the Commission at this point has not considered the additional capital cost beyond cut-off date and has approved the tariff considering 1903 Crores as on Cut Off date based on the provision laid in the order for approval of PPA read with the provision of UPERC Tariff Regulations, 2014.

E. Extension in Cut Off Date

Comments/Suggestions of the Public

- 3.6.31 Mr. Awasthi submitted that cut-off date of the project was 31.03.2017 and it is out of his understanding that what benefit shall accrue to DIL if cut- off date is extended beyond 31.03.2017. If the only reason for seeking extension of cut- off date is to meet undischarged liability of Rs 24.07 Crores, same can anyway be allowed as additional capital expenditure, provided the overall cost is within the initial estimated capital cost of Rs 1941 Crores. In this case, tariff of fixed charges for 25 years would need to be re-determined as tariff incidence shall get deferred.

DIL Response

- 3.6.32 The Petitioner has responded to this query jointly with its reply on the issue of Additional Capitalization.

Commission View

- 3.6.33 The matter pertains to approval of additional capital cost, hence in line with the view taken by the Commission above, the same shall be dealt separately as per the extant regulations.

F. Station Heat Rate

Comments/Suggestions of the Public

- 3.6.34 Mr. Awasthi submitted that DIL has not stated in the Petition that to determine ceiling tariff of Rs 4.79/kWh the Station Heat rate considered was 2327 kcal/kWh or was it 2460 kcal/kWh.



- 3.6.35 Further, Mr. Awasthi submitted that DIL may be directed to provide technical details based on which station Heat Rate of 2327 kcal/kwh has been computed.
- 3.6.36 Further, Mr. Awasthi submitted that a combined reading of the Commission's Order dated 15.1.2016 and 20.4.2016 makes it abundantly clear that variable charges are firmed up while deciding levelized tariff of Rs. 4.79/kwh, subject to CERC Escalation and relaxation in event of shortfall which can be met from alternative sources subject to prior approval and relaxation in Station Heat rate is not one of the concessions granted by the Commission while granting approval to PPA vide Order dated 20.4.2016 and thus requested of DIL to increase station heat rate to 2460 kcal/kWh is liable to be rejected.

DIL Response

- 3.6.37 DIL has submitted that in its written submission dated 14.03.2018 and response to Deficiency Note 2 dated 23.05.2018, considered the SHR at 2327 kcal/kWh in line with the UPERC Generation Tariff Regulations 2014. However, at no stage it has agreed to or committed itself to firm Energy Charges.

Commission View

- 3.6.38 The Commission had already taken a view in the order dated 20.04.2016 read with Order dated 15.01.2016 for approval of PPA, that the Energy Charge shall be computed based on the Energy charge considered in levelized tariff of Rs. 4.79 /kWh approved by the Commission except for the variation due to CERC escalation rates, over and above the escalation rates considered. Accordingly, the Commission approves the energy as approved in the order for approval of PPA and any claim with regard to additional energy charge on account of change in law and additional procurement of coal shall be dealt separately.

G. Auxiliary Power Consumption

Comments/Suggestions of the Public

- 3.6.39 Mr. Awasthi submitted that in Form 2, Part 1, DIL has mentioned that boiler feed Pumps are 'motor driven'. It is not stated that whether these pumps are electrically driven or steam driven.
- 3.6.40 Further, Mr. Awasthi requested the Commission to direct DIL to provide copies of OEM technical specifications and share it with public at large.

DIL Response

- 3.6.41 DIL submitted that it has in its MYT Petition for FY 2016-19 sought for approval of Auxiliary Power Consumption at 9% and specific oil consumption at 0.75ml/kWh as per the norms specified in UPERC Generation Tariff Regulations



2014 applicable for the units with electrically-driven Boiler Feed Pumps and Induced Draft Cooling Tower.

Commission View

- 3.6.42 In accordance to Regulation 18(v) of the UPERC Generation Tariff Regulations, 2014, thermal generating stations of rated capacity of 300 MW and having electrically driven feed pumps are eligible for 9.0% auxiliary consumption and specific oil consumption at 0.75 ml/kWh. Hence, the same is approved by the Commission.

H. Low/Partial Loading

Comments/Suggestions of the Public

- 3.6.43 Mr. Awasthi submitted that at the time of approval of PPA, no concession was granted by the Commission as far as change in operational parameters are concerned. Further, low/partial loading may be on account of poor off take of power by beneficiaries or any other technical reason. It needs to be evaluated if the low/partial loading takes place due to non-off take of power by Tamil Nadu. He requested the Commission to disallow request of DIL for change in operational parameters due to low/partial loading of the unit.

DIL Response

- 3.6.44 DIL submitted that in MYT Petition for FY 2016-19, it merely sought the liberty to approach the Commission at appropriate time for any change in operational parameters due to low/partial loading of the Unit as per applicable Regulations. It further submitted that Fourth Amendment of Indian Electricity Grid Code ("IEGC") notified by Central Commission (CERC) dated 06.04.2016 stipulates for certain relaxation in case of low/partial loading of the Units in line with the settled technical and commercial principles of Indian power sector.

Commission View

- 3.6.45 The issue is not relevant at this stage as no relief has been sought by the Petitioner and it has only sought the liberty to approach the Commission at appropriate time.

I. Energy Charges

Comments/Suggestions of the Public

- 3.6.46 Mr. Awasthi submitted that request of DIL is in gross violation of terms of approval of PPA by the Commission and its earlier commitment in this matter.



The Commission has given a ceiling to variable charges subject to certain concessions which are clearly mentioned in the Order dated 15.01.2016 and 20.04.2016.

DIL Response

- 3.6.47 DIL submitted that the Commission had in the Order dated 15.01.2016 and 20.04.2016 allowed the variation in the CERC Escalation Indices over and above the escalation rate that was used for computing levelized tariff of Rs 4.79/unit. Further, the Commission allowed the procurement of additional Coal in the event of short supply of Coal from CIL or its subsidiaries under the FSA subject to prior approval of the Commission.
- 3.6.48 DIL further submitted that Article 13 of the approved PPA provides relief to the generator under various events of 'Change in Law' which may impact tariff for supply of power during the term of PPA. Further, Clause 7.4.4 of Schedule 7 of the PPA approved by the Commission read with relevant provisions of UPERC Generation Tariff Regulations 2014 stipulates the components of Landed Price of Coal for computation of the Energy Charges.
- 3.6.49 DIL further submitted that pursuant to the submission of MYT Petition, it has vide its written submission dated 14.03.2018 and response to Deficiency Note 2 dated 23.05.2018 submitted the Energy Charges based on the directions of the Commission vide its Orders dated 15.01.2016 and 20.04.2016 read with relevant provisions of the approved PPA as per UPERC Generation Tariff Regulations 2014. So, it is entitled to the energy charges in terms of the UPERC Generation Tariff Regulations 2014.

Commission View

- 3.6.50 The Commission in the order dated 20.04.2016 read with Order dated 15.01.2016 for approval of PPA, that the Energy Charge shall be computed based on the Energy charge considered in levelized tariff of Rs. 4.79 /kWh except for the variation due to CERC escalation rates, over and above the escalation rates. Accordingly, the Commission approves the energy charge rate as approved in the order for approval of PPA as per UPERC Generation Tariff Regulation 2014. Any claim with regard to additional energy charge on account of change in law and additional procurement of coal shall be dealt separately.

J. Sampling of Coal

Comments/Suggestions of the Public

- 3.6.51 Mr. Awasthi submitted that more than one year elapsed since PPA approval was given the Commission when Petition was filed by the DIL. It is really surprising



that it has taken more than one year to put in place a procedure for third party sampling. This is for a plant which was operational at the date of PPA approval. Further, there is no update by DIL that currently whether system for third party sampling has been put in place.

- 3.6.52 He requested the Commission to direct petitioner to inform whether system of third party sampling has been put in place, and if yes, when. He also requested the Commission to direct petitioner to share the outcomes so that appropriate discounting may be applied to figures of August, September, October 2016 to bring them in line with provisions of Tariff Regulations.

DIL Response

- 3.6.53 DIL submitted that the arrangement of coal sampling by third party at receiving end was in place from April 2017 and result for the period April to December 2017 has already been shared vide their submission dated 14.03.2018.
- 3.6.54 DIL submitted that the Commission has vide its Order dated 26.03.2018 clarified that it would deal with the issues of additional Coal and Change in Law separately.

Commission View

- 3.6.55 Regarding quality of coal, the Commission has noted the objections as well as Petitioner's reply on the issue of third party sampling analysis for GCV of coal. Coal is a principal raw material of any thermal power station constituting a very significant proportion of tariff /cost of generation. The determination of actual quality of coal is the core issue here. As per the approved PPA and under the Tariff Regulations 2014, a generator is entitled to be reimbursed the actual price of coal corresponding to the grade/quality of coal within the ceiling of efficiency norms. To promote impartiality as well as transparency for sampling and testing of coal, the concept of independent, reliable, NABL accredited third party has been introduced, who are only entitled for coal sampling, preparation and testing at the power plant end. The results of such agencies only are considered acceptable for actual quality of coal on as received basis at the unloading point. The Commission has considered the issue in details and finding on this issue is set out in Section 4.2 of the Order.

K. Landed Price of Coal

Comments/Suggestions of the Public

- 3.6.56 Mr. Awasthi submitted that it strange that Landed cost of Coal has increased from Rs.2490/Ton (for G-11 ROM grade coal) in November 2015 to Rs.3664/ Ton



from August to October 2016. In a span of less than one year there is 40% increase in price of coal and railway freight. It is well known that landed cost of coal has significant component of taxes like Clean energy cess, etc and railway transportation. These charges are based on quantity and not on value. In event of higher grade of coal, with higher calorific value, per unit variable charges are bound to reduce and not otherwise. Thus, the assertion by DIL is misplaced. Similarly, washery coal though slightly expensive (by Rs.800/MT), provides benefit in terms of higher GCV (5000-6000 Kcal). DIL needs to substantiate its assertion with actual data.

- 3.6.57 Further, Mr. Awasthi submitted that PPA approval by UPERC has clearly stated ceiling limit of variable charges along with concessions allowable in its order dated 15.1.2016 and 20.4.2016. The grounds offered by DIL are not covered in the PPA approval order and hence have no bearing on determination of variable charges. Further, as per terms of approval of PPA vide order dated 20.4.2016, DIL was required to obtain prior approval of Commission which it has not obtained.

DIL Response

- 3.6.58 DIL submitted that it has in compliance with the directions of the Commission dated 20.04.2016 read with its Orders dated 15.01.2016 and 26.03.2018 filed Petitions for approval of procurement of Additional Coal for FY2017-18 and FY 2018-19 on 25.04.2018 and the above Petitions are yet to be listed for proceedings.

Commission View

- 3.6.59 The Commission has approved the Energy charge based on the view taken in the order for approval of PPA. The Commission will take a view on increase in cost of coal in the separate petitions filed by the Petitioner for approval of procurement of additional coal. Hence, this issue is not relevant in the said matter.

L. Levelized Tariff

Comments/Suggestions of the Public

- 3.6.60 Mr. Awasthi submitted that DIL has in its affidavit dated 22.5.2018 in reply to deficiency note 2 (Para 9, page 13) stated that *"it is respectfully submitted that levelized tariff does not have any bearing with the determination of tariff under Section 62 of the Act undertaken with instant MYT petition."* The contention of the Petitioner is quite strange. The Commission has in its order dated 15.1.2016 observed that *"In view of the fact that whole case of NPCL is based on the*



levelized tariff of Rs. 4.79/kwh (for the period of 25 years), it becomes necessary to firm up the fixed as well as the variable part of the tariff."

DIL Response

- 3.6.61 DIL submitted that the Regulation 34 read with Regulation 16(15) of the UPERC Generation Tariff Regulations, 2014 clearly provides for declaration of capacity for the purpose of determination of capacity charges at 'ex-bus' and not at the UP Periphery. Also, Appendix-II of the said Regulations which provides the Tariff Filling Forms (Thermal) requires that total energy charge shall be worked out on 'ex bus' basis.
- 3.6.62 Further, DIL submitted that, in compliance to the Order dated 08.08.2018 passed by the Hon'ble Commission, it published the Public Notice with respect to the DIL MYT Petition for FY 2016-19 on 10.08.2018 and 11.08.2018 in widely circulated newspapers of Uttar Pradesh, wherein the total tariff including the Transmission Charges and Losses up to UP State Periphery has been furnished for FY 2016-17 to FY 2018-19.
- 3.6.63 Further, DIL submitted that, Mr. Awasthi has selectively chosen to quote the portions of the Order in Petition Nos. 1145-1146/2016 passed by the Commission, since in the subsequent paragraphs of the above Order, the Commission has noted that the tariff so indicated by NPCL in its said petitions are subject to truing-up. DIL further submitted that the Commission had in the Order dated 15.01.2016 and 20.04.2016 allowed the variation in the CERC Escalation Indices over and above the escalation rate that was used for computing levelized tariff of Rs 4.79/unit.

Commission View

- 3.6.64 The Commission has noted the objections and the Commission's findings on this issue is set out in Section 4.2 of the Order.

M. ARR & Generation Tariff at UP State periphery

Comments/Suggestions of the Public

- A. Mr. Awasthi submitted that DIL has in prayer, Para 56(b), page 51 of the MYT petition requested the Commission to *"Approve the annual revenue requirement and ex Bus generation tariff for FY 2016-19 as proposed by the petitioner."*
- 3.6.65 Further, Mr. Awasthi submitted that UPERC has already considered this issue in NPCL Tariff Order dated November 30, 2017, wherein the Commission had clearly stated that the approved tariff of Rs. 4.79/kWh is at UP Periphery.



DIL Response

- 3.6.66 DIL submitted that pursuant to the submission of DIL MYT Petition, the Petitioner has submitted Written Submission dated 14.03.2018 and Response to Deficiency Note 2 dated 23.05.2018 based on the directions of the Hon'ble Commission vide its Orders dated 15.01.2016 and 20.04.2016 read with relevant provisions of the approved PPA as per UPERC Generation Tariff Regulations, 2014 which adequately address the instant query raised by Mr. Awasthi.

Commission View

- 3.6.67 The Commission approved the levelized tariff of Rs. 4.79/kWh at UP Periphery which was clarified by the Commission in MYT Tariff Order of NPCL dated November 30, 2017.



4. FIXATION OF TARIFF FOR THE PERIOD FY 2016-17 TO FY 2018-19

4.1 INTRODUCTION

4.1.1 DIL has submitted the Tariff Petition for the control period of FY 2016-17 to FY 2018-19, to determine Generation Tariff in accordance with the provisions of the approved PPA.

4.1.2 The Petitioner has requested the Commission to:

- a. Approve the ARR and Ex-bus Generation Tariff for FY 2016-17 to FY 2018-19 as proposed by the Petitioner in the instant Petition in accordance with appropriate provisions of Generation Tariff Regulations 2014 and other UPERC Regulations along with the PPA approved by the Commission vide its Order dated 20.04.2016 read with its Order dated 15.01.2016;
- b. Allow the Petitioner to recover the Capacity Charges to the extent of its operationalized Contracted Capacity with NPCL under Regulation 34 of Generation Tariff Regulations 2014 read with appropriate provisions of the PPA approved by the Commission vide its Order dated 20.04.2016 read with the Order dated 15.01.2016;
- c. Allow the Petitioner to recover the Energy Charges to the extent of Scheduled Generation under Regulations 17 (3), 18 and 26 of Generation Tariff Regulations 2014 read with appropriate provisions of the PPA approved by the Commission vide its Order dated 20.04.2016 read with the Order dated 15.01.2016;
- d. Approve the proposed Revised Cut-off Date of 31.03.2019 under Regulation 15 ("**Power to Relax**") of Generation Tariff Regulations 2015 in order to capitalize a marginal additional amount of Rs 24.07 Crores under Original Scope of Work in FY 2017-18 and FY 2018-19;
- e. Allow the Petitioner for use of coal from the alternative sources in the exigent event of short supply of linkage coal from SECL from FY 2017-18 onwards to the extent as prescribed in Generation Tariff Regulations 2014;
- f. Allow the Petitioner to approach the Commission at appropriate time under applicable Regulations for any change in operational parameters due to low/partial loading of the Unit;
- g. Allow the Petitioner to approach the Commission for seeking approval for any expenditure under "Change in Law" as per Regulation 16 (10) of Generation Tariff Regulations 2014 read with Article 13 of the approved PPA, which may be required to be incurred in compliance with Amendment Rules notified by MoEFCC dated 07.12.2015 on revised Environment Norms;



4.2 TARIFF DESIGN AND APPROACH FOR DETERMINATION OF TARIFF FOR FY 2016-17 TO FY 2018-19

- 4.2.1 The Commission approved the PPA vide order dated 20.04.2016 read with Order dated 15.01.2016. In the said order the Commission approved the fixed charges for 25 years based on the estimated capital cost of Rs. 1941 Crore with a levelized tariff of Rs. 4.79/kWh at UP Periphery.
- 4.2.2 The Petitioner in the Petition has submitted that the projected capital expenditure has been revised to Rs. 1927.65 Crore as compared to the estimated capital cost of Rs. 1941 Crore considered by the Commission during approval of the PPA. Further, the Petitioner has submitted that the capital expenditure till cut off date i.e. 31.03.2017 is Rs. 1903.58 Crore. The Petitioner has proposed to capitalise the capital expenditure of Rs. 10.50 Crore and Rs. 13.57 Crore in FY 2017-18 and FY 2018-19 respectively.
- 4.2.3 The Commission vide order dated 15.01.2016 read with order dated 20.04.2016 approved the fixed charges for 25 years along with the levelized tariff of Rs. 4.79/kWh. The Commission while approving the PPA conducted various prudence checks/benchmarking exercises based on different aspects, viz., completed Project Cost, Benchmarking of Capital Cost with CERC Norms and comparison with Case-1 tariffs supplying power to the state of UP, comparison of Fixed Charges with MoU projects supplying power to UP Discoms. The Commission also examined the trends of power price in short term market in last 3 years. The Commission observed that the availability of power and its price on short term market/power exchanges is not reliable and depends on various factors like sudden changes in weather, availability of fuel, availability of transmission corridor etc. Reliability of power supply is the most important factor for procurement of base load power and therefore it must be procured through long term PPA. In addition to the above, the Commission undertook commitment on Fixed Charges for a period of 25 years. The Commission is of the view that since the Capital Cost of Rs. 1903 crore submitted now as on Cut Off date is less than the estimated Capital Cost of Rs. 1941 crore which was approved considering various aspects as mentioned above, therefore, the Commission approves the tariff considering the capital cost at Rs.1903 crore as on Cut Off date based on the provision laid in the order for approval of PPA read with the provision of UPERC Tariff Regulations, 2014. Approval on any Additional Capitalization beyond 1903 Crores may however be considered only following the provision of the PPA subject to Regulations but strictly within the overall ceiling of 1941 Crores.
- 4.2.4 The Commission vide deficiency note sought justification for claiming additional capital expenditure beyond cut-off date in FY 2017-18 and FY 2018-19. The Petitioner submitted that the additional capital expenditure in FY 2017-18 and FY



2018-19 has been claimed under Regulation 22(2) of the UPERC Generation Tariff Regulations, 2014.

- 4.2.5 Accordingly, in line with the approved PPA, the Commission vide Deficiency note 2 dated 02.05.2018 had sought computation of levelized tariff based on the revised capital expenditure of Rs. 1927.65 Crore and Rs. 1903.58 Crore (Capital Cost as on Cut-off Date).
- 4.2.6 On scrutiny of the computation of levelized tariff it was observed that the levelized tariff has been computed based on the projected values of Energy Charges, PGCIL Charges, PGCIL Losses and Discounting Factor etc. The levelized tariff submitted by the Petitioner at UP Periphery is as follows:

Table-1: COMPARISON OF LEVELIZED TARIFF SUBMITTED BY THE PETITIONER

Capital Cost (Rs. Crore)	Levelized Fixed Charges	Levelized Energy Charges	POC Charges	POC Losses	Total Levelized Tariff
1941	Rs. 1.93 /kWh	Rs. 2.21 / kWh	Rs. 0.49/kWh	Rs. 0.16/kWh	Rs. 4.79/kWh
1927.65	Rs. 1.88/kWh	Rs.2.21/kWh	Rs. 0.49/kWh	Rs. 0.16/kWh	Rs. 4.74/kWh
1903.58	Rs. 1.86/kWh	Rs.2.21/kWh	Rs. 0.49/kWh	Rs. 0.16/kWh	Rs. 4.73/kWh

- 4.2.7 The comparison of levelized tariff has been done based on the Capital Cost as on Cut Off date and additional capitalisation proposed by the Petitioner beyond the Cut Off date. The effect of variations allowed by the Commission over and above the levelized tariff as per Order dated 15.01.2016 and 20.04.2016 viz. CERC Index, change in law and actual variation in inter-state transmission charges have accordingly been excluded in above comparison.
- 4.2.8 From above, it can be observed that the levelized tariff submitted by the petitioner is within the value of levelized tariff of Rs. 4.79/kWh at UP Periphery.
- 4.2.9 The tariff at UP periphery shall have following components:
- Fixed Charges
 - Energy Charges
 - Inter State transmission Losses
 - Inter State transmission Charges
- 4.2.10 From above, it can be observed that the PGCIL charges and losses are beyond the control of the Petitioner, hence are to be reimbursed to the Petitioner as per actuals. The only fixed component is the fixed charges (treatment of energy charge is discussed subsequently). Therefore, the fixed charges shall be approved as follows:
- If levelized Fixed Charge claimed by Petitioner $\leq$ Rs. 1.93/kWh then the fixed charges as claimed by the Petitioner shall be approved

- If levelized Fixed Charge claimed by Petitioner >Rs. 1.93/kWh, then the fixed charges shall be limited so that the levelized fixed charges does not exceed Rs 1.93/kWh.

4.2.11 It is observed from the petitioner's submission on computation of levelized tariff considering the capital expenditure of Rs. 1903.58 Crore (as on cut-off date) and the actual interest on loan for FY 2016-17 to FY 2018-19, that the levelized fixed charge is less than Rs 1.93/kWh (i.e. Rs. 1.86/kWh). Therefore, the Commission has approved the fixed charges as submitted by the Petitioner considering the capital cost of Rs. 1903.58 crore.

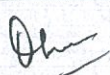
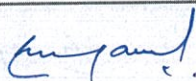
4.2.12 A Comparison of the Fixed charges approved by the Commission with the PPA vis-à-vis claimed by the Petitioner and approved by the Commission in this Order is as follows:

TABLE-2: COMPARISON OF FIXED CHARGES AS APPROVED IN PPA VS CLAIMED BY THE PETITIONER (RS./KWH)

Particulars	As per Fixed Charges approved in PPA	As claimed in the MYT Petition	Revised submission as per capital cost as on Cut off date	Fixed Charges considering Refinancing Cost claimed in FY 2017-18	Fixed Charges approved by the Commission
FY 2016-17	2.11	2.08	2.05	2.05	2.05
FY 2017-18	2.06	2.02	1.94	1.99	1.99
FY 2018-19	2.02	1.95	1.90	1.90	1.90
Levelized Fixed Tariff (25 years)	1.93	1.93	1.86	1.87	1.87

Note: 1. Revised submission is considered based on the capital cost of Rs. 1903.58 crore.

2. The levelized fixed charges has been computed based on CERC issued discounting rate of 13.10% applicable till 31.03.2014 (CERC stopped giving discounting factor for computation of levelised tariff after change in bidding documents), and financial principles (i.e. Escalation in O&M Expense, Interest on Working Capital, Depreciation, Return on Equity and Interest on Loan) as per UPERC Tariff Regulations, 2014.
3. The Petitioner has vide its response to the queries raised by the Commission in Deficiency Note 2 dated 2-5-2018 stated that it has incurred one-time cost towards the fees and charges of Rs.9.67 Cr. associated with refinancing of domestic loan relating to the Unit 2 (300 MW). The Petitioner in terms of Regulation 25 (i) (e) has claimed to recover Rs. 6.03 Cr. in FY 2017-18 apportioned to the contracted capacity of 187 MW (Gross) from Unit 2 of the project. Since the 2/3rd of the benefit of reduction in rate of interest arising out of refinancing has been passed on to the Procurer, the one-time refinancing cost has been approved as claimed in FY 2017-18.
4. During approval of the PPA, estimated capital cost of Rs.1941 Cr. was considered. However, the Petitioner has vide its response to the queries raised by the Commission in Deficiency Note 2 dated 02.05.2018, submitted a total capital




expenditure of Rs. 1927.65 Cr. with Rs. 1903.58 Cr. incurred on cash basis as on cut-off date of the project i.e. 31-3-2017 with further additional capitalisation of Rs. 10.50 Cr. and Rs. 13.57 Cr. (projected) on cash basis during FY 2017-18 and 2018-19 respectively. The Petitioner is directed to submit such claim for additional capital expenditure during true up in terms of the Regulations.

5. The Petitioner has vide its response to the queries raised by the Commission in Deficiency Note 2 dated 02.05.2018 proposed to recover income tax in terms of Regulation 9 from the Beneficiary as and when such liability is incurred subject to the ceiling limit as prescribed therein. The Petitioner is directed to make such claim with the Procurer as and when such liability is incurred with evidence of payment.
6. The aforesaid approved rates for recovery of fixed charges are computed on the basis of NAPAF of 85%, subject to adjustments if any, in terms of Regulation 27 of UPERC Generation Tariff, 2014.

4.2.13 Further, with regard to approval of energy charge, it is observed that the Petitioner has claimed energy charge based on quality of coal as per third party test analysis at plant. Energy charge on account of change in law and additional coal procured other than FSA coal, will be dealt by the Hon'ble Commission separately vide Commission's Order 19.02.2018. On the FSA Grade coal, the Commission had already taken a view in the order dated 20.04.2016 read with Order dated 15.01.2016 while approving the PPA. Accordingly, the Commission approves the energy charge same as approved in PPA considering allowable variation in CERC escalation rates and as per Tariff Regulations 2014. Any claim with regard to additional energy charge on account of change in law and additional procurement of coal shall be dealt separately. Thus, the energy charges as per the levelized tariff approved in the PPA, energy charges claimed by the Petitioner and energy charges as approved in this Order by the Commission is given in Table below:

TABLE-3: COMPARISON OF ENERGY CHARGES AS CONSIDERED ORDER FOR APPROVAL OF PPA VS CLAIMED BY THE PETITIONER (Rs./kWh)

Particulars	As per Energy Charges approved in PPA	As claimed in the MYT Petition	Revised submission as per capital cost as on Cut-off date	Energy Charges approved by the Commission
FY 2016-17	1.65	2.177	1.65	1.65
FY 2017-18	1.72	2.177	1.72	1.72
FY 2018-19	1.80	2.177	1.80	1.80
Levelized Fixed Tariff (25 years)	2.21	2.34	2.21	2.21

Note: The Escalation rate of CERC has been considered as applicable till 31.03.2014, which is subject to true up

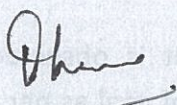
4.2.14 The tariff approved above shall be subject to true up provisions based on the Tariff Regulations 2014. The Petitioner shall be required to submit all relevant



details including actual figures on coal quality (GCV as received basis tested at plant) corresponding to each FY in the entire control period certified by an independent agency of repute for scrutiny of the Commission while truing up.

5. IMPLEMENTATION OF ORDER

5.1 This order shall be reckoned to have come into effect from respective 01st day of each year of the Multi Year Tariff period of FY 2016-17 to FY 2018-19 and shall remain effective till further order. DIL is entitled to raise the bills as per this order with necessary adjustments if any on receivable/ refundable.


(K.K. Sharma)
Member


(S. K. Agarwal)
Member


(R.P. Singh)
Chairman

Place: Lucknow

Date: 05.02.2019

TABLE A: COMPARISON OF ENERGY CHARGES AS COMPLETED ORDER FOR APPROVAL OF PPA VS CLAIMED BY THE PETITIONER (Rs. kWh)

Particulars	Agreed Energy Charges approved in PPA	As claimed by the petitioner	Revised capital cost as per out-of-date	Energy Charges approved by the Commission
FY 2016-17	1.82	2.17	1.82	1.82
FY 2017-18	1.75	2.17	1.75	1.75
FY 2018-19	1.80	2.17	1.80	1.80
Grand Total (over 3 years)	5.37	6.51	5.37	5.37