



Truing-Up of Annual Revenue Requirement & Final Generation Tariff for the Tariff Period FY 2016-17 to FY 2018-19 for sale of 187 MW Gross Contracted Capacity from 300 MW Unit 2 of DIL to NPCL



UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 1500/ 2019

TRUE-UP OF ARR AND FINAL GENERATION 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 2014-15 TO FY 2018-19

ORDER UNDER SECTION 62 & 64 OF THE ELECTRICITY ACT, 2003

22.11., 2021



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Truing-Up of Annual Revenue Requirement & Final Generation Tariff for the Tariff Period FY 2016-17 to FY 2018-19 for sale of 187 MW Gross Contracted Capacity from 300 MW Unit 2 of DIL to NPCL

Petition No. 1500 of 2019
BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

(Date of Order: _____)

PRESENT:

Hon'ble Shri Raj Pratap Singh, Chairman
Hon'ble Shri Kaushal Kishore Sharma, Member
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF: Petition under Regulation 6 read with other relevant provisions of the Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2014 and Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations 2004 for truing-up of Annual Revenue Requirement and final Generation Tariff determined under the MYT Order dated 05.02.2019, for supply of 187 MW Gross Contracted Capacity for the Tariff Period FY 2016-17 to FY 2018-19 from Unit 2 of 2 X300 MW Coal based thermal generating station of Dhariwal Infrastructure Limited located at Tadali, Chandrapur in the State of Maharashtra to Noida Power Company Limited under the long-term Power Purchase Agreement dated 26.09.2014 approved by this Hon'ble Commission vide its Order in Petition No. 971 of 2014 dated 20.04.2016 read with the Order dated 15.01.2016.

Dhariwal Infrastructure Limited (DIL)

Registered Office: CESC House, Chowringhee Square
Kolkata-700001, West Bengal

.... Petitioner

Noida Power Company Limited,

Electric Sub-Station, Knowledge Park-IV
Greater Noida, Gautam Buddha Nagar,
Uttar Pradesh-201310

.... Respondent

The following were present:

1. Shri. Sanjay Sen, Sr. Counsel, DIL
2. Shri. Alok Sharma, DIL
3. Shri. Aveek Chatterjee, DIL
4. Shri. Subir K Saha, DIL



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5. Ms. Divya Chaturvedi, Counsel, NPCL
6. Ms. Srishti Rai, Counsel, NPCL
7. Shri. R.S. Awasthi, Consumer Representative
8. Shri. Divyanshu Bhatt, Counsel, Consumer Representative



1 BACKGROUND AND PROCEDURAL HISTORY

1.1 Background

- 1.1.1 M/s 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 in State of West Bengal. It is a Generating Company within the meaning of Section 2 (28) of the Act.
- 1.1.2 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 (hereinafter referred to as 'Project').
- 1.1.3 Noida Power Company Ltd. (hereinafter referred as 'NPCL' or 'Respondent') 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.
- 1.1.4 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.
- 1.1.5 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. NPCL preferred an appeal before Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as 'Hon'ble APTEL') against this order of the Commission. 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 back the case to the Commission and in compliance to Hon'ble APTEL's order, the Commission heard the case afresh on merits.
- 1.1.6 The Commission, Vide Order dated 29.9.2015, asked NPCL that whether the cost of power procurement from this Project is competitive vis-à-vis the cost of power available from other sources and vis-à-vis the power available



from exchange. Vide Order dated 15.01.2016, NPCL was also asked that how they would 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).

- 1.1.7 The Commission, in its order dated 15.01.2016 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 Project 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 charge 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.
- 1.1.8 Further, 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.
- 1.1.9 The Commission also noted that the DIL shall be entitled to 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. Further, in case of any shortfall in the quantity of fuel from domestic linkage, the parties can approach the Commission for prior approval of procurement of fuel from alternative sources. The orders dated 15.01.2016 and 20.04.2016 are hereinafter jointly and severally referred to as '**PPA Approval Order**'.
- 1.1.10 Thereafter, 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.
- 1.1.11 Vide order dated 05.02.2019, the Commission approved the fixed charges



as submitted by the Petitioner considering the capital expenditure of Rs. 1903.58 Crore (as on cut-off date i.e., 31.03.2017) and the actual interest on loan for FY 2016-17 to FY 2018-19. As regards the additional capitalisation of Rs. 10.50 Cr. (incurred) and Rs. 13.57 Cr. (projected) on cash basis during FY 2017-18 and 2018-19 respectively, the Commission directed the Petitioner to submit such claim for additional capital expenditure during truing up in terms of the Regulations.

1.1.12 The Commission approved the energy charge same as approved in PPA considering allowable variation in CERC escalation rates and as per Generation Tariff Regulations 2014. Any claim with regard to energy charge on account of change in law and additional procurement of coal were held to be dealt separately. The energy charges approved by the Commission in the order considered the Escalation rate of CERC as applicable till 31.03.2014 which was held to be subject to true up. It was also clarified in the order that the tariff approved therein shall be subject to true up based on the Generation Tariff Regulations 2014 for which 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. The order dated 05.02.2019 is hereinafter referred to as '**MYT Order**'.

1.2 **Generation Tariff Regulation**

1.2.1 The Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2014 (referred to as "Generation Tariff Regulations 2014" in this order) were notified on 16.12.2014 reckoned to have come into force with effect from 01.04.2014 for a period of five years i.e. up to 31.03.2019.

1.2.2 These Regulations are applicable in all cases where tariff for a generating station or a unit thereof is required to be determined by the Commission under Section 62 of the Act read with Section 86 thereof. There are only two exceptions to the application of these Regulations, namely, (i) generating station whose tariff has been discovered through tariff based competitive bidding in accordance with the guidelines issued by the Central Government and adopted by the Commission under Section 63 of the Act; and (ii) generating station based on renewable sources of energy whose tariff is determined in accordance with the UPERC (Captive and Non-Conventional Energy Generating Plants) Regulations, 2009 as amended from time to time or any subsequent enactment. The power procurement from Petitioner's Project by the Respondent have been subjected to the



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Commission's order dated 15.01.2016 read with order dated 20.04.2016, the provisions of the Generation Tariff Regulations.

1.3 DIL'S Petition for Truing Up of Annual Revenue Requirement (ARR) and Determination of Final Generation Tariff for the Tariff Period FY 2016-17 to FY 2018-19

- 1.3.1 The Commission, vide its Tariff Order dated 05.02.2019, approved the ARR 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 DIL to NPCL.
- 1.3.2 As per the provisions of the Generation Tariff Regulations 2014, the generating company is required to make an application for carrying out truing up exercise in respect of the generating station or any of its units or block of units thereof by 31.10.2019.
- 1.3.3 Accordingly, the Petitioner / DIL filed the present petition under Regulation 6 read with relevant provisions of the UPERC tariff Regulations, 2014 and prayed to the Commission to:
- a. Admit the Instant Petition
 - b. Approve the trued-up Annual Revenue Requirement for FY 2016-19 as proposed by 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 in Petition No. 971 of 2014 and the MYT Order dated 05.02.2019 in Petition No. 1235 of 2017.
 - c. Approve the estimated Revenue Gap for the tariff period FY 2016-19 and direct the Respondent to make payment of the same till the date of actual payment in six equal monthly instalments starting within three months from the date of issuance of order on the instant Truing-up Petition, along with applicable Carrying Cost (simple interest) till the date of actual payment in compliance with Regulations 6 (8), 6 (9) and 6 (10) of Generation Tariff Regulations 2014.
 - d. Allow the Petitioner to capitalize the balance Rs. 7.32 Crores out of Rs. 1927.65 Crores during the tariff period FY 2019-24.

Record of Proceedings

- 1.3.4 The petition was taken up for hearing by the Commission on 24.11.2020.