



Truing up of Tariff for 2X105 MW Panki TPS for the Period 2014-15 to FY 2018-19 for UPRVUNL

	<p>Petitioners, the Petitioner has billed the RoE at 2% for FY 2017-18 and FY 2018-19 and rest of 13.5% has been foregone to take its advantage in Merit Order Dispatch schedule as per the Commission's Order dated June 21, 2016 against Petition No. 1070 of 2015. The Petitioner submitted that the RoE component would be adjusted by UPRVUNL with beneficiary only 2% but requested to approve the capacity charges with RoE @ 15.5% for the control period.</p>
<p>Additional submission 3 dated 10.06.2020</p>	<p>The Petition submitted intimation of profit sharing with UPPCL as per UPERC (Terms and Conditions of Generation Tariff) Regulations 2014 Clause (6). UPRVUNL has done a profit center analysis of each of the station for F.Y. 2014-15 to 2018-19. In this analysis the difference of billing and actual has been computed both for fixed cost and variable cost. UPPCL has adjusted Rs. 200.17 Crores in the running bills and therefore UPRVUNL has claimed Rs. 200.97 Crores as profit share of UPPCL.</p>
<p>Additional submission 4 dated 14.10.2020</p>	<p>The Petitioner submitted details of Additional capitalization</p> <ol style="list-style-type: none">Additional capitalization in Parichha 2x250 MW TPS for purchase of Mandatory spares for additional cost approx. Rs. 5.15 Crore andApproval of revised R&M cost of Harduaganj Unit No. 7 from Rs. 392 Crore to Rs. 475.97 Crore due to increase in IDC.
<p>Additional submission 5 dated 01.12.2020</p>	<p>The Petition submitted information and Prudence check of statutory charges as per UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014.</p>

1.3.1.2 The Commission during the hearing dated 16.03.2021 noted that the additional submissions made are admittedly material change to the original Petition and that the Petitioner has raised several issues related to non-payment and income tax in the combined Petition. The Commission vide its order dated 10.05.21 made following observations:

- The issue raised regarding non-payment by UPPCL would be dealt under Section 86(1)(f) of the Electricity Act, 2003 separately after the finalisation of True Up. UPRVUNL is required to file separate Petition.
- The Commission directed that the issue related to Income Tax shall be dealt in the True Up.

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- (c) A consolidated single Petition has been filed for all generating stations though Petition fee has been paid for all generating stations. The Petitioner has made five additional submissions, the last one being in Dec' 20, covering common / specific issue.
- (d) The Petitioner should take a conscious decision and come clearly on the issue of RoE@2% for MOD Purpose or 15.5% as per UPERC Generation Tariff Regulations, 2014.

1.3.1.3 The Commission directed UPRVUNL to file separate Petition for each generating station covering Common / specific issue covered through additional submissions for each generating station within four weeks. The Commission subsequently further allowed extension of six weeks owing to wide spread of Covid-19. Accordingly, UPRVUNL has submitted separate Petitions along with soft copy of the audited account of UPRVUNL and cost audit report for the period FY 2014-15 to FY 2018-19.

1.3.2 Petition No. 1727/2021

1.3.2.1 UPRVUNL filed instant Petition No. 1727 of 2021 under Regulation 6 of UPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 read with Section 61, Section 62 and Section 86 of Electricity Act, 2003 seeking approval of truing up of Capital Expenditure and Tariff for the Control Period FY 2014-15 to FY 2018-19 on May 24, 2021. UPRVUNL has submitted the following True-up summary for FY 2014-15 to 18-19 and other related issues for consideration:

Table 2: True-up Summary for FY 2014-15 to FY 2018-19 – Panki TPS

Figures in Rs Crore

Particulars	2014-15		2015-16		2016-17		2017-18	
	Order	Actual	Order	Actual	Order	Actual	Order	Actual
Depreciation	7.40	7.62	7.40	7.83	7.40	8.05	7.40	-
Interest on Long Term Loans	2.48	2.68	1.62	2.25	0.77	1.87	0.17	0.96
Return on Equity	5.68	5.92	5.68	6.16	5.68	6.44	5.68	3.36
IoWC	25.85	25.85	26.17	26.17	26.42	26.42	26.72	26.72
O&M	115.37	115.37	120.20	120.20	125.18	125.18	130.28	130.28
Special Allowance	15.75	15.75	16.75	16.75	17.81	17.81	18.94	18.94
Total	172.53	173.19	177.82	179.36	183.26	185.77	189.19	180.26

1.3.3 Other related issues

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1.3.3.1 Reimbursement of Actual Income Tax

UPRVUNL had paid Income Tax amounting to Rs. 192.65 Crore for FY 2016-17, 35.34 Crore for FY 2017-18 and 36.34 Crore for FY 2018-19. These taxes arise on account of the revenues accrued to the Petitioner from the invoices raised to UPPCL based on the UPERC Tariff order on dated 29th April 2016 & 18th January 2017. The Clause-11G of Tariff order dated 18th January 2017 which provides as below:

"1.98 The Commission found the prayer reasonable and decided that the following shall be added in clause "11" of UPRVUNL's Tariff Order dated 29.04.2016,

(G) Recovery of Statutory Charges and Tax on income etc.

In addition to the above tariff UPRVUNL is allowed to recover the payment of statutory charges like water cess, cost of water, payment to Pollution Control Board, rates and taxes, FBT and Regulatory Fee paid to the Commission and taxes on income etc., on production of details of actual payment made and duly supported with the certificate of the Statutory Auditors....."

However, UPPCL has verified Income Tax amount of Rs. 169.61 crore for FY 2016-17, Rs. 21.75 crore for FY 2017-18 and Rs. 24.09 crore for FY 2018-19. Total gap between amount claimed by UPRVUNL and verified by UPPCL is tune to Rs. 48.73 crore. UPPCL ought to reimburse the tax amount in actuals.

1.3.3.2 Reimbursement of UPSLDC & NRPC Fee

UPRVUNL has paid UPSLDC & NRPC fees towards annual charges during past years but has never been claimed by the UPRVUNL due to non-provision in the Tariff Order. Therefore, the Commission is requested to grant for reimbursement of the UPSLDC and NRPC fees paid in actual by UPRVUNL.

1.3.3.3 Interest on Income Tax

The Tariff Regulations issued by the Commission provides that tax on the income streams of the generating company from its core business shall be computed as an expense and shall be permitted to be recovered from the beneficiaries. Delay in payments by UPPCL affects the capacity of UPRVUNL to make timely payments to statutory authorities in the form of tax etc. Non-payment of taxes to the authorities incurs levy of interest charges on such dues to the authorities. But UPRVUNL has in past also paid interest on Income Tax due to such delay caused by untimely payments from UPPCL. UPPCL is not paying interest on Income Tax.

1.3.4 Intimation of Profit sharing with UPPCL as per UPERC (Terms and Conditions of Generation Tariff) Regulations 2014 Clause 6 (6).



UPRVUNL has shared its profits with UPPCL in accordance with the profit-sharing mechanism specified as per UPERC (Terms and Conditions of Generation Tariff) Regulations 2014 clause 6 (6).; the same is reproduced below:

"(6) The financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries. The financial gains computed as per following formulae in case of generating station on account of operational parameters contained in Clause (4) (a) to (c) above shall be shared in the ratio of 80:20 between generating company and the beneficiaries:

$$\text{Net Gain} = (\text{ECRN} - \text{ECRA}) \times \text{Scheduled Generation}$$

Where;

ECRN - Normative Energy Charge Rate computed on the basis of norms specified/approved for Gross Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption.

ECRA - Actual Energy Charge Rate computed on the basis of actual Gross Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption for the month.

Provided that in case of financial gains on account of parameters contained in Clause (4)(d) above shall be shared in accordance with Clause (i) (e) of Regulation 25& Regulation 44 of these regulations."

On the basis of the 'Profit Centre Analysis', UPPCL computed the profit-sharing amount of Rs. 200.97 Crore and UPPCL deducted the profit-sharing amount from the running bills raised by UPRVUNL. The profit shared between UPRVUNL and UPPCL for Rs. 200.97 Crore is summarized as follows:

Table 3: Summary of Profit Sharing for the Period FY 2014-15 to FY 2018-19
Figures in Rs. Crore

S No	TPS Name		2014-15	2015-16	2016-17	2017-18	2018-19
1	Anpara A	Billing	640.82	743.12	751.42	670.16	693.81
		Actual	679.77	715.70	748.30	705.41	714.17
		Profit	-	27.42	3.12	-	-
2	Anpara B	Billing	932.63	1,380.53	1,462.11	1,124.42	1,119.88
		Actual	838.15	1,169.93	1,380.09	1,050.68	1,117.92
		Profit	94.48	210.60	82.02	73.74	1.95
3	Obra A	Billing	90.40	64.05	96.52	9.28	-
		Actual	107.99	94.79	43.38	13.49	-
		Profit	-	-	53.14	-	-
4	Obra B	Billing	625.76	655.78	811.24	835.74	603.12
		Actual	583.51	670.85	854.37	790.82	632.59
		Profit	42.25	-	-	44.92	-
5	Panki	Billing	368.21	201.47	265.35	119.21	-
		Actual	389.20	226.36	347.80	172.68	-
		Profit	-	-	-	-	-
6	Harduaganj	Billing	36.88	154.13	200.05	108.14	70.70
		Actual	71.58	213.34	203.04	95.88	75.76
		Profit	-	-	-	12.26	-
7	Harduaganj Extn	Billing	955.88	925.84	1,006.58	1,025.09	821.56
		Actual	1,115.48	1,066.99	1,057.31	978.16	836.73
		Profit	-	-	-	46.93	-
8	Parichha	Billing	121.54	287.97	175.35	96.75	49.44
		Actual	152.52	327.58	217.23	110.75	61.64



Truing up of Tariff for 2X105 MW Panki TPS for the Period 2014-15 to FY 2018-19 for UPRVUNL

S No	TPS Name		2014-15	2015-16	2016-17	2017-18	2018-19
9	Parichha Extn	Profit	-	-	-	-	-
		Billing	674.66	909.14	930.26	807.10	579.50
		Actual	789.67	949.15	926.89	799.50	580.23
		Profit	-	-	3.37	7.60	-
10	Parichha Extn Stage II	Billing	986.77	1,041.83	1,108.99	946.21	809.07
		Actual	1,034.33	1,024.76	1,076.19	919.20	797.25
		Profit	-	17.08	32.80	27.01	11.81
		Billing	-	-	727.30	834.03	1,186.00
11	Anpara D	Actual	-	-	639.93	811.74	1,083.30
		Profit	-	-	87.37	22.29	102.70
		Grand Total (Profit)	136.73	255.10	261.82	234.75	116.47
Profit Share of UPPCL@20%			27.35	51.02	52.36	46.95	23.29
Total Profit Share to UPPCL for FY 2014-15 to FY 2018-19 (Rs Crore)			200.97				

1.3.5 Prudence Check of Statutory Charges as per UPERC (Terms and Conditions of Generation Tariff) Regulations 2014 Clause 25 (iv)(C) for the period FY 2014-15 to FY 2018-19.

UPRVUNL has submitted information for Prudence Check of Statutory Charges as per UPERC (Terms and Conditions of Generation Tariff) Regulations 2014 clause 25(iv)(c); the same clause is reproduced below:

"(iv) Operation and Maintenance expenses

(a).....

(b).....

(c) The expenses on regulatory fee, payment to pollution control board, impact of pay revision, capital spares, cost of water and water cess shall be paid additionally at actuals subject to prudence check. The details regarding the same shall be furnished along with the petition.

....."
The Tariff Order dated 18.01.2017, Clause- 11G is also reproduced below:

(G) Recovery of Statutory Charges and Tax on income etc.

In addition to the above tariff UPRVUNL is allowed to recover the payment of statutory charges like water cess, cost of water, payment to Pollution Control Board, rates and taxes, FBT and Regulatory Fee paid to the Commission and taxes on income etc., on production of details of actual payment made and duly supported with the certificate of the Statutory Auditors....."

An amount of Rs. 36.48 Crore and Rs. 12.25 Crore totaling Rs. 48.73 Crore has not been verified by the UPPCL on account of Income Tax head. Further, amount of Rs. 7.38 crore on account of Interest on income tax has also not verified by the UPPCL.

1.3.6 UPRVUNL has prayed the following:

(a) The Commission is requested to Accept this Petition for true-up of additional capitalization and associated tariff components for the financial year 2014-15 to 2018-19



- (b) The Commission is requested to Allow recovery of the additional claim generating out of the true up from the beneficiaries in line with the provision of the Regulations or in any manner that the Hon'ble Commission deems appropriate.
- (c) The Commission is requested to Permit recovery of expenses understated/ not considered in this Petition subsequent to the submission of this petition.
- (d) The Commission is requested to direct the UPPCL to reimburse the actual amount on account of Income Tax and Interest on Income Tax to UPRVUNL.
- (e) The Commission is requested to direct the UPPCL to reimburse the UPSLDC and NRPC Charges to UPRVUNL.
- (f) The Commission is requested to Condone any inadvertent omissions / errors / short comings and permit the applicant to add /change /modify / alter this Petition and make further submissions as may be required at later stages
- (g) The Commission is requested to Pass such orders as Hon'ble Commission may deem fit and proper and necessary in the facts and circumstances of the case, to grant relief to the Petitioner.

1.4 UPPCL Counter Affidavit dated 02.07.2021

1.4.1 Counter affidavit dated 02.07.21 on behalf of UPPCL against re-submission of true up petition of 2x105 MW Panki TPS of UPRVUNL for FY 14-15 to 18-19

- i. Delay in filing true-up petition & liability to pay interest: The Commission may not allow UPRVUNL's claim of interest for the period of delay.
- ii. Truing up of tariff basis availability: The Commission may carry out comparing actual availability of plant Vs. target given by the Commission of the year.
- iii. UPRVUNL is claiming additional capitalisation to the tune of Rs. 23.18 Crores and decapitalization of Rs. 183.18 Crores during the Control Period. The MYT petition was filed by UPRVUNL only on 06.07.2015 and the same was disposed of by this Commission by way of the MYT Order. UPRVUNL failed to disclose that it had incurred additional capital expenditure of Rs. 10.41 Crores during FY 2014-15 and Rs. 0.01 Crores during FY 2015-16. UPPCL further submitted that the fact that no claim of additional capitalization was



made by UPRVUNL was also made by UPPCL in its submissions dated 04.02.2016 during the proceedings in Petition No. 1025 of 2015. UPPCL further submitted that the Petitioner has not provided the justification for incurring the additional capitalisation claimed along with the details of relevant regulations under which the additional capitalization has been claimed.

UPPCL further submitted that the Commission has already allowed special allowance for UPRVUNL's Panki TPS as a part of the capacity charges and that Regulation 22(5) of the Tariff Regulations 2014 provides that once special allowance is availed by a generator the same would be included in the annual fixed cost and any revision in capital cost or relaxation in the operational norms will not be permitted. Further, expenditure incurred and utilized from the special allowance shall be maintained separately and such details have to be furnished to this Hon'ble Commission as and when directed. UPPCL submitted that in view of Regulation 22(5), it is clear that since UPRVUNL has availed special allowance for its Panki TPS, it cannot be allowed to claim additional capitalization i.e., revision in capital cost. The Commission may not allow UPPCL's claim of additional capitalization and further direct UPRVUNL to submit the details of expenditure incurred and utilized from the special allowance so that the same can be trued-up.

iv. Incomplete forms and details are submitted by UPRVUNL with respect to the following:

- Form 9A – Statement of Additional Capitalization after COD
- Form 9Bi – Details of assets De-capitalized
- Form 9E – Statement of Capital Cost

v. UPRVUNL was required to submit the following forms

- Form 7 – Details of project specific loan
- Form 8 – Details of allocation of corporate loans to various projects
- Form 10 – Financing of additional capitalization

vi. Depreciation:

Applying the Regulation 25(ii) of the Tariff Regulations 2014, this Commission had worked out the maximum depreciation allowable to Panki TPS as Rs. 142.58 crores which is 90% of Rs. 158.42 crores i.e. Gross Block of Rs. 159.97 crores less Rs. 1.55 crores pertaining to investment made towards land. Since the accumulated depreciation allowed till the end of FY 2018-19 was Rs. 130.82 crores only, which is less than Rs. 142.58 crores, this Commission allowed full depreciation as claimed by UPRVUNL. Additional depreciation claimed on the basis of additional capitalization claimed during FY 2014-19 period (which is over and above the depreciation