

APTEL Holds UPERC Erred in Denying IoWC Truing-Up and Excluding Un-Discharged Liabilities in Rosa Power Tariff Order



On 30th May 2025, the Appellate Tribunal for Electricity (“**APTEL**”) has allowed Rosa Power Supply Company’s (“**Rosa Power**”) appeal and dismissed the challenge raised by Uttar Pradesh Power Corporation Ltd. (“**UPPCL**”) against Multi Year Tariff Order dated 22.08.2017 (“**Impugned Order**”) passed by Uttar Pradesh Electricity Regulatory Commission (“**UPERC**”). The UPERC had passed the Impugned Order determining and truing up the tariff in relation to Stage I and Stage II of the Rosa’s Thermal Power Project in the State of Uttar Pradesh.

Rosa Power’s grievance pertained to (i) refusal to true-up Interest on Working Capital (“**IoWC**”) despite actual escalation in coal costs; (ii) non-inclusion of Un-discharged Liabilities (“**UDL**”) in the computation of capital cost; and (iii) erroneous adoption of normative Secondary Fuel Oil Consumption (“**SFOC**”) inconsistent with the PPA. UPPCL, on the other hand, Rosa Power challenged the common order passed by the UPERC on limited grounds, seeking disallowance of the claims towards reinstatement of IoWC based on actual landed coal costs, non-consideration of UDL in the computation of capital cost and alleging error in the computation of SFOC for Stage II. On the other hand, UPPCL filed a cross appeal, assailing the MYT order 2017 on the grounds of alleged excess allowance of capital cost, inadequacies in the prudence check of EPC and other associated contracts and lack of appropriate scrutiny of claims related to Interest During Construction (“**IDC**”), overheads and operating parameters. Rosa Power submitted that the Tariff Order passed for Stage I by the UPERC had computed IoWC based on indicative assumptions, specifically a 5% year-on-year escalation in coal and secondary fuel oil prices. It was contended that this was a notional framework and called for adjustments on the basis of actual costs incurred, particularly due to import of coal and spot market purchases due to shortage of domestic linkage coal. It was also contended by Rosa Power that such actual costs had a material bearing on the working capital requirements and therefore warranted truing-up. However, UPERC rejected this claim on the ground that truing up of IoWC was neither envisaged under 2009 UPERC Tariff Regulations nor in the Power Purchase Agreement (“**PPA**”) executed by Rosa Power.

Additionally, Rosa Power was aggrieved by the approach adopted by UPERC in adjustment of UDL in the capital cost as UPERC only considered the actual cash dispensation. It was contended that as per the agreed terms of the PPA liabilities in question, even if not fully paid, represented committed expenditure and were part of the total capital cost of the project, and hence retention payments and other payables were contractual obligations accordingly had been capitalised with applicable accounting standards. The UPERC had held that 2009 Regulations mandate only actual expenditure

paid in cash, or cash equivalent could be considered.

On the issue of SFOC for Stage II, Rosa Power argued that the value adopted by the commission did not reflect the actual performance and operating data of the generating units and was in variance with the terms of the PPA. UPERC used a normative SFOC of 1 ml/kWh for Stage II during FYs 2011-12 to 2013-14, while the PPA provided for SFOC at 2 ml/kWh.

After due consideration of the matter, the APTEL held that the 2009 Regulations did not explicitly include provisions for truing-up. However, it was noted the UPERC was a competent authority to exercise its regulatory functions under Section 86(1)(b) of the Electricity Act, 2003. In *Power Grid Corporation of India Ltd. V. MPPTCCL*, the Supreme Court held that the absence of a specific regulation does not bar a regulatory commission from acting to fill a regulatory vacuum where necessary. Hence, the APTEL found that the UPERC should have conducted a truing-up of IoWC, given significant variations attributable to fuel procurement from alternative sources due to shortage of indigenous coal. Accordingly, the APTEL set aside the UPERC’s findings on IoWC truing up and remanded the matter for reconsideration and truing-up of IoWC based on actual data.

The APTEL also referred to its earlier decisions and reiterated that “actual expenditure incurred” must include committed liabilities and not be limited to cash outflows only. The APTEL observed that deferred liabilities, retention money and performance-related deposits are consistent with industry norms and should not be excluded merely due to timing of payments. Basis this, the APTEL directed the UPERC to access the computation of the capital cost for Stage I by including the UDL for FYs 2010-11 to 2013-14.

The APTEL also noted the parameters used by UPERC for SFOC computation and found that the issue also required re-examination to ensure consistency with actual operating data and regulatory norms. The matter was remanded by to the UPERC for fresh consideration on the issue of computation of the SFOC.

Click [here](#) to access the APTEL’s judgement

Rosa Power Supply Company Limited was represented before the Appellate Tribunal for Electricity by Sr. Adv. Sajjan Poovayya, assisted by Shri Venkatesh (Founding Partner), Suhael Buttan (Partner), Vineet Kumar (Senior Associate) and Nikunj Bhatnagar (Associate) of SKV Law Offices.