Petition No. 1067 & 1074 of 2015

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

**Date of Order : 29.01.2016**

**PRESENT:**

1. Hon’ble Sri Desh Deepak Verma, Chairman
2. Hon’ble Sri Indu Bhushan Pandey, Member
3. Hon’ble Sri Suresh Kumar Agarwal, Member

**IN THE MATTER OF:** Issuance of order on extension of applicability of UPERC Tariff order dated 28.03.2011 till the issuance of revised tariff order for the control period 2014-19.

Interim application for seeking relief for extension of tariff order dated 28.03.2011 and to direct UPPCL for not rejecting the bills.

M/s Rosa Power Supply Company Limited

Administrative Block,

Hardoi Road, P.O. Rosar Kothi, Tehsil Sadar

Distt. Shahjahanpur. U.P. - 240401.

Local Office-

Rosa Power Supply Company Ltd.

520, F Block, Kasmanda House,

2 Park Road, Hazratganj,

Lucknow – 226001

**--------------- Petitioner**

AND

1. UP Power Corporation Limited

 (through its Chairman)

 7th Floor, Shakti Bhawan

 14- Ashok Marg, Lucknow.

1. Chief Engineer (PPA)

 UP Power Corporation Limited

 14th Floor, Shakti Bhawan Ext.

 14 Ashok Marg, Lucknow

**…………….Respondent**

The following were present:

1. Shri Vibhav Agarwal, Director, RPSCL
2. Shri J.J. Bhatt, Sr. Advocate, RPSCL
3. Ms. Anjali Chandurkar, Advocate, RPSCL
4. Shri Sumeet Notani, GM, RPSCL
5. Shri Himanshu Agarwal, Sr. Manager, RPSCL
6. Shri Santosh Singh, RPSCL
7. Shri Ambuj Shukla, Manager, RPSCL
8. Shri Sanjay Kr. Singh, Dir(Comm.), UPPCL
9. Shri V.P. Srivastava, C.E. (PPA), UPPCL
10. ShriVivek Dixit, E.E Attached to D(Com), UPPCL
11. Shri C.K. Shukla, UPSLDC
12. Shri Mithilesh K. Gupta, UPSLDC
13. Shri Zahir Ahmad, UPSLDC

**ORDER**

**(Date of Hearing 20th January, 2016)**

1. RPSCL has requested for extension of tariff order dated 28.03.2011 till the issuance of revised tariff order by the Commission for the control period FY 2014-19. In the other petition RPSCL has requested to direct the UPPCL for not rejecting the bills raised by them till the final adjudication of first petition by the Hon’ble Commission.
2. Being on same issue of extension of tariff order dated 28.03.2011, the Commission decided to club both petitions.
3. Shri J.J. Bhatt, Sr. Advocate, RPSCL, submitted that as their tariff determination for FY 2014-19 is under process with the Commission, they were submitting the bills as per earlier tariff order dated 28.03.2011 but UPPCL has stopped accepting the bills. He added that due to this they are facing financial crises and hence they have requested to the Hon’ble Commission that till determination of tariff for FY 2014-19, they should be allowed to bill as per the tariff order dated 28.03.2011 and UPPCL should be directed to accept those bills.
4. Shri Sanjay Kr. Singh, Director (Comm.), UPPCL submitted that they have stopped accepting the bills of RPSCL because even after the new Regulations, 2014 have come into force from 16.12.2014, RPSCL was raising the bills as per the Regulations, 2009.
5. Shri Vibhav Agarwal, Director, RPSCL submitted that on the issues of their hardship due to discrepancy/ inconsistency with the parameters given in the new regulations, they have approached the Hon’ble Commission.
6. The relevant provision of regulation 5(4) of the Regulations, 2014 is reproduced as follows:

*“In case of any conflict between provisions of these regulations and a power purchase agreement signed between a generating company and distribution licensee(s)/beneficiary (ies), the provisions of these regulations shall prevail.*

*Provided that in case of projects where parameters have been agreed to in the power purchase agreement or determined through an earlier regulation prior to 1.04.2014, for any hardship due to discrepancy/inconsistency with parameters given in these Regulations, the Commission may be approached and parameters in such case may be determined by the Commission at the time of tariff determination of respective generating station.”*

1. The Commission finds that it is a generally accepted procedure that till the new tariff is determined, the earlier tariff order continues provisionally. There should not be any doubt that the procedure is being followed by UPPCL with all the state as well as other generating companies situated in U.P. However, in this case, it can be inferred that due to the issues of hardships, established if any, there might be some confusion between parties which requires clarification. Hence, the Commission decides to deliberate upon this.
2. As far as the fixed charges are concerned, in tune with the prevalent practices, till finalization of tariff for FY 2014-2019, it would be provisionally the fixed charge as approved by the Commission for FY 2013-14 in the tariff order dated 28.3.2011.

It is amply clear that the Commission does not determine the variable charges in MYT petition and the variable charges are determined on the parameters given by the Commission in the regulations. In this case, regarding calculation of variable charges during this period, since the application has been filed by RPSCL on hardship which has also been replied by UPPCL vide reply dated 19.1.2016, pending the rejoinder and its reply by RPSCL/UPPCL, pending the submissions on actual data by RPSCL to substantiate its claims on hardships and pending the decision of the Commission, it is not necessary for the Commission to take a view on this issue at this point of time pending the final disposal of MYT petition.

In any case, final payment is subject to the provisions of the regulations which states that any over or under recovery shall be recovered or paid with simple bank interest.

1. In view of above, UPPCL is directed to accept the bill submitted by RPSCL within 7 days and make the payments as per above findings.
2. The petitions are disposed of.

(Suresh Kumar Agarwal) (Indu Bhushan Pandey) (Desh Deepak Verma)

 Member Member Chairman

Place: Lucknow

Dated: 29.01.2016