Petition No 913 of 2013

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Date of Order : 20.03.2014

PRESENT:

1. Hon'ble Sri Desh Deepak Verma, Chairman
2. Hon'ble Smt. Meenakshi Singh, Member
3. Hon'ble Sri Indu Bhushan Pandey, Member

IN THE MATTER OF: Petition under section 61(h), 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 read with Regulation 8 of UPERC (Captive and Non-Converntional Energy Generating Plants) Regulations, 2009..

AND

IN THE MATTER OF

Uttar Pradesh Sugar Mills Co-gen Association.
403, Chintels House,
16, Station Road,
Lucknow – 226 001

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

1. Chief Engineer (PPA), 14th Floor, Shakti Bhawan Extension, 14 Ashok Marg, Lucknow
2. The Managing Director, Madhyanchal Vidyut Vitran Nigam Ltd. , 4 Gokhale Marg, Lucknow
3. The Managing Director, Purvanchal Vidyut Vitran Nigam Ltd., Purvanchal Vidyut Bhawan, P.O. Vidyut Nagar, DLW, Varanasi
4. The Managing Director, Paschimanchal Vidyut Vitran Nigam Ltd. Victoria Park, Meerut.
5. The Managing Director, Dakshinanchal Vidyut Vitran Nigam Ltd., Urja Bhawan 220, K.V. Up-Sansthan Bypass Road, Agra – 282007

--------------- **Respondent**

The following were present:

1. Sri M.G. Ramachandran, Advocate, UP Sugar Mills Co Gen Association
2. Sri Ranjitha Ramachandran, Advocate, UP Sugar Mills Co-Gen Association
3. Sri K.N. Ranasaria, President, UP Sugar Mills Co Gen Association
4. Sri Durga Prasad, Advisor UP Sugar Mills Co Gen Association

5. Sri Anoop Singh , Jt. Vice President, DCM Sriram Consolidates Ltd.
6. Sri A.P. Singh, M.D. Simbholi Power Pvt. Ltd.
7. Sri Anil Gupta , CGM, Balrampur Chini Mills Ltd.
8. Sri Vipin Jindal, AGM, Triveni Engg.& Ind. Ltd.
9. Sri R.K. Pandey, Dy. G.M. Simbholi Power Pvt. Ltd.
10. Sri S.N.M. Tripathi, Director, BHL,
11. Sri Amrendra , Manager, BEPL
12. Sri Arun Gupta, Manager, BEPL
13. Sri Rajiv Srivastava, Advocate, UPPCL

Order

(Date of Hearing 12.02.2014)

1. U.P. Sugar Mills Co-Gen Association has filed this petition under section 61(h), 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 read with Regulation 8 of UPERC (Captive and Non-Conventional Energy Generating Plants) Regulations, 2009 for early review of the Regulations. Regulation 8 is about power to relax under which the Commission, for reasons to be recorded in writing, may vary any of the provisions of these regulations on its own motion or on an application made before it by any interested party. The petitioner has submitted that there has been a radical change in critical financial and operating parameters for determination of tariff, particularly with regard to the fuel prices. The inflation rate has been much higher than anticipated and there has been unprecedented surge in the input cost. The petitioner has requested to allow following as detailed in the petition:

    a. Fuel Price – On the basis of Commission's order dated 20.3.2012 (in case of UPRVUNL), the equivalent baggase price for FY 2013-14 comes as Rs. 1706 per MT whereas, the Regulations provide only Rs. 1487 per MT resulting in a difference of Rs. 219 per MT.

b. Baggase from Outside source – additional Rs. 532 per MT over and above Rs. 219 per MT for Baggase procured from outside sources.

c. Ecalation in baggase price - Escalation of 8.9% instead of 6% as provided in the Regulations.

d. PLF – PLF of 45% for the recovery of fixed cost instead of 50% as provided in the Regulations.

e. Incentive – Incentive at the rate of 50 paise per kwh instead of 25 paise per kwh as provided in the Regulations.

f. Station Heat Rate – The station heat rate for new plants to 3650 Kcal/kwh instead of 3100 Kcal/kwh as provided in the Regulations.

g. O&M Expenditure - The O&M Expenditure for FY 2013-14 for new plants at Rs.16.91 lakh/MW against 15 lakh/MW and for old plants Rs. 19 lakh/MW against 14 lakh/MW.

h. Working Capital – Fuel cost for four month against one month.

i. Interest on Working Capital – 14.5% as against 12.8%

j. Interest on Loan – 14.5% as against 10.25%

k. Capital Cost – Rs. 5.34 Crore/MW as against Rs. 4.5 Crore/MW for FY 2013-14

l. Return on Equity – 20% (pre tax) per annum for 10 years and 24% per annum thereafter as against 16% as provided in the regulations.

m. Delayed payment Surcharge – the payment made by the Discom may first be appropriated towards the delayed payment surcharge and then the bill amount.

2. UPPCL in its counter has submitted that CNCE Regulations 2009 at Regulation 2 mentions that these regulations shall be reckoned to have come into force from 1st October 2009 and shall remain inforce upto 31.3.2014 unless reviewed earlier or extended by the Commission therefore, review of regulations cannot be sought on application. UPPCL has further submitted that the tariff regulations can only be made by following the procedure of inviting objections and suggestions on draft regulations and so cannot be done on an application made by a group of generating companies. UPPCL has also submitted that why CERC Regulations dated 6.2.2012 or UPERC order dated 20.03.2012 have not been invoked earlier by the petitioner. Regarding the figures mentioned in the petition, UPPCL has not submitted any reply and stated that if the Hon'ble Commission decides to consider the petition on merit then they should be given opportunity to file their comments. UPPCL has stated that since the period of existing regulations is only upto 31.3.2014 and the exercise to frame the new regulations for FY 2014-19 is soon to be taken by the Hon'ble Commission therefore, the concerns raised in the petition may very well be factored in the new regulations.

3. Sri M.G. Ramchandran, Advocate, UP Sugar Mill Co-gen Association submitted that their petition was filed on 28.10.2013 for early review of regulations. Sri Ramchandran cited order of the APTEL in appeal no. 132 of 2012 (Junagarh Power Vs. Gujrat Urja) vide which the State Commission was directed to reconsider and redetermine the biomass fuel price. UPPCL replied that the cited order was regarding biomass price and so cannot be construed as applicable in this case.

4. The Commission considers that the cited order of Hon'ble APTEL was on issue where the tariff had been determined by the State Commission for

biomass based generation and the same was disputed by the generator in the State Commission. On dismissal by the State Commission, appeal was filed to Hon'ble APTEL who disposed of the matter directing State Commission to reconsider and redetermine the biomass fuel price. The Commission however, does not find this case to be applicable in this particular case in view of very different facts and circumstance as this case is for early review of the existing regulations which is ending on 31.3.2014. Since the effective period of the existing regulations is expiring on 31.3.2014, it would be prudent to consider the revision in the next tariff period which would be effective with effect from 1.4.2014 and for which the process has already been initiated. This is also the only recourse available as the regulations can not have retrospective implementation.

5. The tariff is determined for these sources on preferential basis under the regulations so as to promote renewable sources of energy. It is done following the due process of inviting comments from public / stakeholders on the concept paper, preparing the draft regulations and after conducting the public hearings. The preferential tariff for bagasse based generation is determined strictly on normative basis and not on cost plus basis. It is also relevant with the fact that it is an agricultural residue and its availability and cost varies from place to place and season to season. For determination of tariff afresh, the time allowed under the Act is 120 days from the date of admittance of the petition. The tariff under regulations is determined through due process which remains applicable for the period of the effective regulations which is upto 31.3.2014 in this case. The tariff provided under the regulations comes into effect prospectively and can not be implemented retrospectively. Therefore considering the fact that under the regulations neither it is a cost plus tariff nor it can be implemented retrospectively, the Commission does not consider it feasible to allow the prayer of the petitioners in this case.

6. However, hearing both the parties, the Commission finds that the issues raised by the petitioners may be taken up for consideration under the process of review of the existing Regulations which is due for review w.e.f. 1.4.2014 and for which the process has already been initiated. It would be rational as the issues brought before the Commission includes the effects of changing market forces which should be addressed to keep the pace of augmentation in generation from renewable sources in the State.

7. The petition is disposed of.

(Indu Bhushan Pandey)	(Meenakshi Singh)	(Desh Deepak Verma)
Member	Member	Chairman

Place : Lucknow
Dated: 20.03.2014