



THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2140 of 2025 along with I.A. No. 1 of 2025

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Petition under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 20 of the UPERC (Terms and Conditions of Generation Tariff) Regulations 2019, on behalf of UPRVUNL for in-principal approval of using the third raised Ash Dyke being constructed for Obra-B Thermal Power Project to dump ash generated from Obra-C Thermal Power Project against Capital Cost of 2x660 MW Obra-C TPS.

AND

IN THE MATTER OF

U.P. Rajya Vidyut Utpadan Nigam Ltd. (UPRVUNL),
Shakti Bhawan, 14-Ashok Marg, Lucknow, U.P. – 226001

...Petitioner

Versus

U.P. Power Corporation Ltd. (UPPCL),
Shakti Bhawan, 14-Ashok Marg, Lucknow, U.P. – 226001

...Respondent

THE FOLLOWING WERE PRESENT

1. Shri Nitish Gupta, Advocate, UPPCL
2. Shri Jagdayak Singh, S.E., UPPCL
3. Shri Shubham Srivastava, AE(PPA), UPPCL
4. Shri Deepak Raizada, C.E. (PPA), UPPCL
5. Shri Raj Kumar Verma, A.E. (Commercial), UPRVUNL
6. Shri Hari Shyam, C.E. (Commercial), UPRVUNL
7. Shri Rajeev Kumar, C.E. (Commercial), UPRVUNL
8. Shri Divyanshu Bhatt, Advocate, UPRVUNL

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9. Shri Shaswat Singh, Advocate, UPRVUNL

ORDER

(DATE OF HEARING: 15.05.2025)

1. The Petitioner, Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (UPRVUNL), has filled this Petition seeking in principle approval of using the third raised Ash Dyke being constructed for Obra-B TPP to dump ash generated from Obra-C TPP against Capital Cost of 2x660 MW Obra-C TPP. The Petitioner has made the following prayers:

Prayer(s) in Petition No. 2140 of 2025:

- Allow the instant petition;
 - Grant liberty to the Petitioner to claim the cost of Third Raising of Ash Dyke to be used for dumping ash generated from combustion of coal in the Unit No. 1 & 2 of the Obra-C TPP from the capital expenditure of Obra-C TPP at the appropriate stage; and
 - Pass such orders that the Commission may deem fit in the present facts and circumstances of the present case;
2. Subsequently, during the case proceedings, the Petitioner has filed an IA dated 17.05.2025. The Petitioner has made the following prayers in IA:

Prayer(s) in I.A. No. 1 of 2025:

- Allow the instant application and take it on record; and
- Permit the amendment sought by the Petitioner to the extent that the provision of the Act, under which the captioned petition has been filed, may be permitted to be amended from 86(1)(f) to 86(1)(a) and any and all references to Section 86(1)(f) of the Act in the captioned petition may be permitted to be amended to and read as Section 86(1)(a) of the Act;

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- c) Pass such orders that the Commission may deem fit in the present facts and circumstances of the case.

Brief of the Case as submitted by the Petitioner:

3. UPRVUNL operates various Thermal Power Plants (TPPs) across the state of Uttar Pradesh, including the Obra-C TPP, which comprises of two units of 660 MW each, first unit having been commissioned on 09.02.2024. The Ministry of Environment, Forest and Climate Change (MoEF&CC) had issued a gazette notification dated 31.12.2021 mandating the requirement of ensuring 100% utilization of fly ash by coal or lignite based TPPs. As per said Notification, UPRVUNL is mandated to ensure 100% utilization and disposal of ash generated from its power plants or face penalties.
4. The Government of Uttar Pradesh, vide gazette notification dated 12.09.2023, had notified that a total civil land area of 72.9230 hectares was required to be acquired for construction of Ash Dyke for the Obra-C project in district Sonebhadra, Uttar Pradesh. After the said land was identified, it was observed that out of the total land area of 112.919 hectares of required land, 39.5680 hectares of land was forest land while the remaining land of 72.9230 hectares was civil land comprising of villages and farmlands.
5. Even after the best efforts of the Petitioner, the required land is yet to be acquired under Section 19 of the Land Acquisition Act, 2013 as well as the provisions of the Forest Protection Act, 1980 and therefore, the District Magistrate, Sonebhadra, vide communication dated 23.08.2024, had sought an extension of 6 months from the State Government to complete the process of land acquisition.
6. Though Obra-C project has started generating electricity, but its dedicated Ash Dyke is delayed due to land acquisition issues and will require an estimated time of about 2 years after completion of land acquisition process. Such delay is on account of reasons beyond the control of the petitioner.
7. Adjacent to the Obra-C project, the Petitioner also operates the 5x200 MW Obra-B TPP which was commissioned in 1978. The Petitioner has raised the Ash Dyke of the

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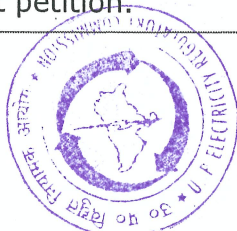
Obra - B project and, as an interim measure, is using the same for dumping the ash produced from Obra-C project along with that from Obra - B. Once the Unit-1 of Obra-C starts running at full capacity, third raising would be required to increase the pondage capacity of the ash pond for the safe disposal of ash generated from Units of Obra-C along with Units of Obra-B.

8. The Petitioner has not claimed any additional capital expenditure for raising and using the Ash dyke constructed for Obra-B TPP and reserved the right to do so before the Commission at an appropriate stage as and when required.

Record of Proceedings:

9. During the hearing dated 11.02.2025, the Commission had observed that UPVUNL commissioned the project without acquiring the land required for construction of ash dyke, which was a planning failure on part of the UPRVUNL. In response to the specific query of the Commission, the representative of UPRVUNL had submitted that UPRVUNL would not claim the duplication of cost due to such expenditure and would justify each cost component during approval of capital cost of Obra C project. The counsel of UPPCL had submitted that there was no provision for in-principal approval under UPERC Generation Tariff Regulations, 2019. The Commission allowed UPPCL to file its reply within four weeks' time and thereafter four weeks for UPRVUNL to file its rejoinder. After that, UPPCL and UPRVUNL filed their reply and rejoinder on 24.03.2025 and 16.04.2025 respectively.
10. During the hearing dated 15.05.2025, in response to the query of the Commission regarding cost of the third raising of Ash dyke, representative of UPRVUNL replied that cost for third raising of the Ash dyke was approximately Rs. 30 crores. After hearing the parties, the Commission observed that the petition has been filed under Section 86(1)(f) of the Electricity Act, 2003, however, the issue does not pertain to Section 86(1)(f) of the Act. Sh. Divyanshu Bhatt, counsel of UPRVUNL, requested the Commission to allow the petitioner to submit an application for amending the present petition from 86(1)(f) to 86(1)(a) of the Act, which deals with determination of tariff. The Commission accepted the request of the petitioner and allowed them to file IA within two days. On 19.05.2025, UPRVUNL filed its application seeking amendment to present petition.

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Reply of UPPCL:

11. UPPCL vide its reply dated 24.03.2025 mainly submitted as under:

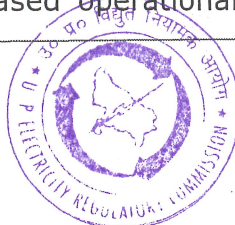
Submission on Maintainability:

- i. The Petitioner has invoked Regulation 20(2) of the UPERC Generation Tariff Regulation, 2019 seeking in-principle approval of the additional expenditure whereas, Regulation 20(2) pertains to additional capitalization after incurring expenses. The Petitioner has still not incurred any expenditure hence there is no reason for granting in-principle approval under 2019 Tariff Regulations. Therefore, the instant petition was not maintainable.
- ii. The Commission vide Order dated 05.11.2020 in Petition No. 1390 of 2018 titled *Rosa Power Supply Company Limited vs. UP Power Corporation Limited* had dismissed a similar request for in-principle approval, affirming that only actual expenditures incurred would be considered at the time of tariff true-up.

Submission on Merits

- iii. Unit-1 of Obra-C project was commissioned on 09.02.2024, but the Petitioner stated that it will take two more years to build a dedicated Ash Dyke. Obra-C is an extension project in the premise of 1382 MW Obra Thermal Power Project and the land required for the project was already owned by the Petitioner. It remains unclear as to how the Petitioner has failed to undertake construction of a dedicated Ash Dyke while it evidently commissioned Unit-1 of Obra-C project. Further, the 2009 DPR explicitly mentions that the existing Ash Dyke for Obra A & B have sufficient capacity to accommodate the ash generated by both the current and proposed units (i.e. Obra-C) for approximately 10 years, assuming progressive ash utilization. The current requirement of 112.919 hectares (279.03 acres) of land for Ash Dyke exceeds the projection (150 acres) under the DPR.
- iv. The Petitioner has initiated its communication with the DM, Sonebhadra, in February 2024 and with the Forest Settlement Officer in August 2024 only at the time when the Obra-C Project was nearing completion. This delay in seeking approval may lead to increased operational risks, increased costs, potential

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disruptions in supply of power and increases the possibility of temporary project shutdowns. This delay is solely attributable to UPRVUNL, and any financial impact arising from it should not be passed on to consumers in the form of increased tariffs.

- v. In terms of various Notifications issued by MoEFCC issued from time to time including the Notification dated 31.12.2021 and its amendment, there has been no embargo on utilization of Ash Dyke. The Petitioner has not adequately demonstrated efforts to use 100% Fly Ash generated from its TPP for eco-friendly purposes (e.g., road construction, mine backfilling), which could have avoided the need for raising the Ash Dyke.
- vi. The Petitioner has sought liberty to claim the cost of Third Raising of Ash Dyke from the capital expenditure of Obra-C TPP at the appropriate stage. However, the Petitioner has submitted an invoice of Second Raising of Obra-B amounting to Rs. 30.33 Crores.
- vii. Further, if the land acquisition for Obra-C's dedicated Ash Dyke is later approved and developed, the expense already incurred for raising Obra-B's Ash Dyke could become redundant. Such redundancy would lead to inefficient capital expenditure, thereby affecting the overall financial structure of the project.
- viii. Without prejudice to the grounds urged on maintainability of the present Petition, the absence of any cost-estimate or financial data for the purpose of Third Raising renders the present petition premature. In view of the above, the present petition ought to be dismissed by the Commission.

Rejoinder on behalf of UPRVUNL:

12.The UPRVUNL vide affidavit dated 16.04.2025 submitted as under.

Regarding Maintainability

- i. In-Principal approval sought by the Petitioner is limited to the issue of accounting and auditing purposes so as to include the cost of the third raising of Obra-B Ash

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Dyke in Obra-C's capital expenditure, since the ash generated by Obra-C is being dumped there.

- ii. This case is distinguished from past precedents relied upon by the UPPCL for refusal of In-Principal approval, on facts as in those cases, the in-principle approvals were sought for expansion of Ash Dyke where a previous Ash Dyke was already constructed, however, in the instant case, there is no dedicated Ash Dyke constructed for Obra-C.
- iii. While there is no explicit provision for in-principle approval provided in the UPERC Generation Tariff Regulation, 2019, the Commission is not barred from granting such approvals, especially to ensure smooth and transparent functioning of the entities.

Regarding Merits

i. Regarding Ash not being utilized by the Petitioner for purpose of manufacturing ash-based products:

- a. Regarding UPPCL's claim that the ash produced by the Obra Thermal Power Plants (TPPs), operated by UPRVUNL, is not being utilized for eco-friendly purposes as required by the MOEFCC, it is clarified that the Obra B & C TPPs are located in a region with multiple other large TPPs, collectively generating a high volume of ash. However, the region lacks sufficient industrial and infrastructure projects to fully utilize this ash.
- b. UPRVUNL has entered into agreements with Ultratech for sale of 3 Lakh Ton of ash per year generated from Unit-1 of the Obra -C TPP, and with ACC Limited for lifting of approximately 4000-4500 MT of dry fly ash per day.

ii. Regarding Land required for construction of Ash Dyke for Obra C already available with the Petitioner and therefore no acquisition is required

- a. The originally identified land in the DPR of the Obra C for constructing the Ash Dyke was found unsuitable, as it falls within 500 meters of the flood level of the River Renuka, thus violating MOEFCC guidelines. As a result, the Petitioner

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identified and acquired a new land parcel that complies with environmental regulations and obtained the required No Objection Certificate (NOC).

- b. The DPR nowhere categorically mentions that the originally available 150 acres would be used for the Ash Dyke, thus acquisition of new land is justified. Further, regarding UPPCL's contention that the Petitioner is acquiring more land than mentioned in the DPR for construction of Ash Dyke, it is submitted that as per CEA Guidelines dated Sept 2022, 0.10 hectares per MW is needed for Ash Dyke construction. Accordingly, for 1320 MW (Obra C), 132 hectares are required.
- c. The invoice annexed in the petition pertains to the second raised Obra -B Ash Dyke and was only indicative and for the information of the Commission. The same is nowhere admittance of any estimation for the cost incurred for the third raised Obra -B Ash Dyke as the cost incurred for the same would be presented before the Commission at the stage of determination of capital cost.

Submission of UPRVUNL in I.A. No. 1/2025

13. UPRVUNL has filed I.A. No. 1/2025 dated 17.05.2025 seeking an amendment of the captioned petition to the extent that the provision which has been invoked for filing of the captioned petition be permitted to be amended from 86(1)(f) to 86(1)(a). Additionally, UPRVUNL submitted that if the Commission finds the petition premature and not suitable for in-principle approval at this stage, the Commission may allow the Petitioner to raise the issue later as part of their Multi Year Tariff (MYT) Petition.

Commission's View:

14. The Petitioner has filed the present petition under Section 86(1)(f) of the Act read with Regulation 20 of the UPERC (Terms and Conditions of Generation Tariff) Regulations 2019 seeking in-principle approval of using the third raised Ash Dyke being constructed for Obra-B project to dump ash generated from Obra-C project against Capital Cost of 2x660 MW Obra-C project. Subsequently, the Petitioner vide I.A. No. 1/2025 dated 17.05.2025 prayed the Commission to amend the present petition from 86(1)(f) to 86(1)(a) of the Act.





15. Regulation 20(2) of the UPERC (Terms and Conditions of Generation Tariff) Regulations 2019 provides as under:

"20. Additional capitalization:

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*(2) Subject to the provisions of clause (3) of this Regulation, the capital expenditure of the following counts for new or existing projects **actually incurred** after the cutoff date may be admitted by the Commission, subject to prudence check:*

- (i) Liabilities to meet award of arbitration or for compliance of the directions or Order of any statutory authority, or Order or decree of a Court;*
- (ii) Change in Law;*
- (iii) Force majeure events;*
- (iv) Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies of statutory authorities responsible for national security/internal security;*
- (v) Deferred works relating to ash pond or ash handling system in the original scope of work;*

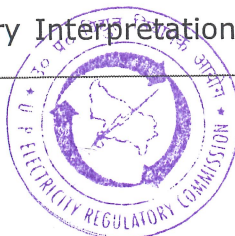
Provided also that if any expenditure has been claimed under Renovation and Modernisation (R&M), or repairs and maintenance under (O&M) expenses, same expenditure cannot be claimed under this Regulation.

- (vi) **Raising of ash dyke as a part of ash disposal system;***
- (vii) Liability for works executed prior to the cut-off date;*
- (viii) Liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;*

....."

16. Based on the perusal of Regulation 20(2) of the UPERC Generation Tariff Regulations, 2019, the additional capital expenditure to be incurred by a generator is subject to approval by the Commission in terms of its Prudence but only after it has been actually incurred by the Petitioner. When the UPERC Generation Tariff Regulations 2019 permit the Petitioner to seek approval of additional capital expenditure for raising of ash dyke as a part of ash disposal system once it has been incurred, the Petitioner cannot be permitted to claim the same in any other manner. It is a settled principle of Statutory Interpretation that if statute mandates some

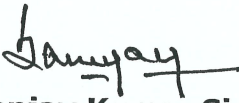
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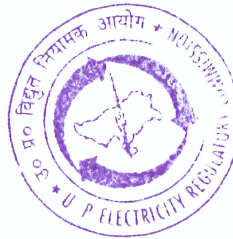




activity to be done in a specific manner then that activity can be done in only that manner and not by way of any other manner. Therefore, the Petitioner needs to file its claim in the manner as provided under the UPERC Generation Tariff Regulations, 2019. An in-principle approval for additional capitalization is not permitted in terms of the UPERC Generation Tariff Regulations, 2019 hence the Commission directs the Petitioner to approach the Commission with the details of additional capitalization during the MYT Petition with appropriate justifications in terms of the UPERC Generation Tariff Regulations, 2019.

17. The Petition No. 2140 of 2025 along with I.A. No. 1 of 2025 stands disposed of in terms of the above.


(Sanjay Kumar Singh)
Member




(Arvind Kumar)
Chairman

Place: Lucknow

Dated: 16.06.2025