

## **BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

### **In the matter of:**

UPERC (Regulation for industrial units under: Sick Industrial Companies (Special Provisions) Act, 1985, the UP Industrial Undertakings Special Provisions for Prevention of Unemployment Act, 1966)

### **Order**

1. The most important feature of any Act is its preamble, which itemizes the general principles covered under its ambit. Commission is guided by the preamble of Electricity Act to preserve the spirits of the legislation, and to that extent, has to do the balancing act in the matters related to sick industries or those, which are under verge of closure. The preamble of the Act says:

“An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”
2. Differential tariffs are used to cross subsidize the low-end category of consumer by the higher tariff industrial category consumer. Under the Act, these cross subsidies are expected to be abolished in a phased manner.
3. The Commission cannot allow or watch, therefore, that the bulk users, especially at voltages 33 KV and above, where the distribution losses are lower, and who absorb these losses of lower voltage consumers where the distribution losses are higher, besides cross subsidizing them, to close down or to lay off, due to adverse circumstances, like recession in demand in the industry affecting their sales and thereby incurring heavy losses or any other similar reason.
4. The closure or the lay off of the unit does the opposite on the absorption of the losses in the system and thus results in the increase in tariff of low-end consumers. This is the primary cause of Commission's concern. Commission is also concerned at the existing poor state of finances of state discoms. It has to safeguard the interest of all stake holders by taking measures conducive to development of electricity industry,

promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, and ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, so that a fair deal is meted out to the affected parties.

5. Failure to exercise timely discretion, induces unnecessary litigation by parties resulting in loss of resources .It is here that the Commission takes a strong view that the Board of the licensees shall ensure a timely, judicious and adept handling by taking stance that annuls the detrimental effects of the disturbing factors that threatens the licensees steady revenue streams. Needless to emphasize, it shall serve a social cause in prevention of unemployment, loss of production, in addition to serving the low-end consumers by keeping their tariff at affordable levels.
6. While the licensees cannot be restrained from taking action in recovering their undisputed dues under section 56 of the Act 2003, even if the unit is on the verge of closure or lay off, the Commission is of the firm belief that the adverse factors cannot be ignored, and these call for differential treatment. Though the amendment in general rule for meeting the ends of justice in the matters like these, is not called for, nevertheless the Commission is of considered view, that applying discretionary modification for annulment in a few circumstances, so that the literal terms of the rule do not negate the very intent, purpose and the preamble of any legislation, would restore health to units in distress and serve the social cause in global context.
7. With this intent in mind, the Commission, has taken into cognizance the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, the UP Industrial Undertakings Special Provisions for Prevention of Unemployment Act, 1966, the state government G.O No. 720 / 18.4.89, dated 29.11.1989, and also the erstwhile UPSEB Commercial order no. 2879 C-U-2/BIFR dated 26.8.1997, before arriving at its own observation.
8. The Commission, in exercise of its powers vested under section 23 of EA 2003, and power to remove difficulties as per clause 9.5 of Supply Code 2005, in view of extraordinary circumstances as already discussed above, and not contrary to the orders of BIFR under SICA, 1985, or State Government orders under relief undertaking Act 1966, directs the discoms - Board of Directors of concerned discoms, that, based on the broad parameters as reflected in the said SICA 1985, the relief undertaking Act 1966, the said G.O., and the licensee's orders, the unpaid dues of such industries which are supplied at 33 KV and above, and are registered under BIFR and not barred by the Board for further proceedings (subsection (3) of section 22 of SICA), or are declared as relief

undertakings, or are lying disconnected for similar reasons, shall be formalized as hereunder :

- a) If, due to unavoidable circumstances, power cut is necessary on such sick industrial units, suitable relaxation shall be given for such period as may be determined by the licensee in accordance with the orders for the time being in force.
- b) The supply to the industry shall be restored if lying disconnected, on orders of BIFR, or of the State Government under UP Act of 1966, or order by a Court. The MCG / minimum demand charges levied during the period of disconnection shall remain suspended, and shall be recovered as per clearance of BIFR, in equal monthly installments as per the provisions of the Supply Code 2005 or as decided by licensee.
- c) Only current dues shall be realized. A net realizable amount shall be worked out after excluding any disputed amount stayed by orders of court, and shall be recovered in equal monthly installments as per the provisions of the Supply Code- 2005 or as decided by licensee.
- d) The late payment surcharge for the said period of closure may be recovered at not less than bank rates, on orders of BIFR or of the State Government under UP Act of 1966. Provided that in absence of any such order, the prescribed rates as per provisions of Supply Code shall prevail. Provided also, that if the unit commits default in timely payment of instalments granted, the late payment surcharge on arrears thus generated, shall be recovered as per existing provisions of the Supply Code.
- e) The treatment of subsidy by the state Government to any consumer or class of consumers in the tariff determined by the State Commission shall be as per the provisions of Section 65 of Electricity Act 2003.

(R. D. Gupta)  
Member

(P.N.Pathak)  
Member

(Vijoy Kumar)  
Chairman

Lucknow, Dated: 12<sup>th</sup> July, 2005