

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

Petition No.426/2006

IN THE MATTER OF: Seeking amendment to the provisions of UPERC(Terms and Conditions of Generation Tariff)Regulations,2004

AND

IN THE MATTER OF: UP Rajay Vidyut Utpadan Nigam Ltd.
14th Floor, Shakti Bhawan Extn.,
14, Ashok Marg,
Lucknow

:Petitioner

Versus

1. U.P. Power Corporation Ltd., 7th Floor, Shakti Bhawan, 14,Ashok Marg, Lucknow.
2. Madhyanchal Vdiyut Vitaran Nigam Ltd., Prag Narain Road, Lucknow.
3. Poorvanchal Vdiyut Vitaran Nigam Ltd., 132 KV S/s, Bhikari Vidyut Nagar, Varanasi.
4. Paschimanchal Vdiyut Vitaran Nigam Ltd., Victoria Park, Meerut.
5. Dakshanchal Vdiyut Vitaran Nigam Ltd.,Vidyut Bhawan, Gailana Road, Agra
6. Kanpur Electric Supply Co. Ltd., KESA House, Kanpur.
7. Noida Power Company Ltd., Commercial Complex, H-Block, Alpha-II Sector, Greater Noida City.

:Respondents

ORDER

(Date of Hearing 27.12.06)

- (1) In this Petition, the Petitioner is seeking review of norms of operation and other terms & conditions of determination of fixed and variable charges, specified in UPERC (Terms and Conditions of Generation Tariff) Regulations, 2004. The Petitioner has pleaded that the norms, specified in these Regulations, change over the year, contrary to the practice of uniform norms adopted by the Central Govt. in its notification dt.30.3.92 and CERC in Notification dt.26.3.04. It is contended that the effect of improved operating norms, fixed over and above the achievable performance level, is to engage the Petitioner in chasing the improved efficiency benchmarks without earning incentive. It is further stated that the operating conditions of its generating stations cannot be compared with central generating stations due to vintage. The Petitioner has admitted that the

poor performance of its plant is due to inadequacy of funds for regular maintenance and timely Renovation & Modernization of plants caused by huge receivables due on UPPCL. The Petitioner has prayed for adequate relief in the matter. In the hearing, the representative of the Petitioner have reiterated the submissions made in the Petition.

- (2) The Petitioner filed earlier a Petition no.228/05 on 4.2.05 seeking, inter alia, relaxation in operating norms. Subsequently in Petition no.426/06, The Petitioner has sought review of operational norms specified in UPERC (Terms & Conditions of Generation Tariff) Regulation, 2004. On an enquiry, the Representatives of the Petitioner, present in the hearing, have clarified that the issues raised in Pet.no.228/05 in respect to operating norms has now been re-agitated in Pet. no.426/06 as such the Petition no.228/05 has become infructuous to that extent.
- (3) The said Regulations have been made after due consideration on the submissions made by the stakeholders, interested parties and the Petitioner and have come into effect from 18.6.05, the date of publication in the official gazette. So far as different norms for different year is concerned, there is no bar on the Commission under the Electricity Act, 2003 to specify so by Regulations. Instead, S.61 of the Act, 2003 mandates the Commission to specify the terms & conditions for determination of tariff which, inter alia, encourage efficiency, economical use of resources, good performance, optimum investment, safeguard consumer interest, specify multi year tariff and reward efficiency in performance. The Regulations framed by the Commission have made due consideration of the said intent of the Act and direct all concerned to achieve the targets. It is observed that since the Regulation came into effect, the Petitioner has failed to show the efforts it might have taken for improvement in its performance in compliance to the provisions of the Act and the Regulations and preferred review of specified parameters for its failure to realize bills from UPPCL. We are conscious that the Law does not direct to perform impossibilities and for that reason, regulation-12 provides that in case of difficulty arising in giving effect to the Regulations, the Commission may, of its own motion or otherwise, make such provisions, not inconsistent with these regulations, as it may appear to be necessary for removing the difficulty. During hearing, the Petitioner has failed to show any operational or technical difficulty being faced in

achieving the prescribed efficiency levels. It may be presumed that the Petitioner might be facing some difficulties in achieving the norms in one or two of its generating stations, but in this Petition, it has sought relaxation of norms for all of its generating stations, which does not stand to any logic. It is a rather indicator of inaction. A perusal of data of actual performance submitted in this petition suggests that the performance of the plants has been allowed a free fall in respect to one or more than one operating parameters in the preceding years. If the prayer is allowed, it would amount to rewarding the inefficiency and uneconomical use of National resources. The realization of bills is essential for ensuring smooth conduct of business. This is the duty of the Petitioner to realize bills instead of agreeing with UPPCL to waive surcharge on bills and delete the Provisions of rebate and surcharge from the Power Purchase Agreements, the contention which was not accepted by the Commission in Pet no. 338/06 vide order dt.24.5.06. The non-payment of dues by the beneficiaries might be brought before the Commission under Regulation 25 but the Petitioner has never agitated this issue until it filed tariff Petitions for year 2005-06 & 2006-07. In view of above, we find that the Petitioner had been extremely complacent in conduct of its business on commercial principals and has even failed to address to the basic issues, which came in its way in discharge of duties and functions. Such failures, if continued, may attract the provisions U/s 142 of the Act, 2003.

- (4) In consideration of above, we are not inclined to accept the prayer of the Petitioner and Petition is hereby dismissed.

(R.D. Gupta)
Member

(P.N Pathak)
Member

(Vijoy Kumar)
Chairman

Lucknow; Dated : 29th Dec, 2006