

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

Petition no.493/07

IN THE MATTER OF: Tariff for supply of electricity and payment of bills.

AND

IN THE MATTER OF:

M/s Mawana Sugar Limited
(Former name M/s Siel Ltd.)
5th Floor, Kirti Mahel,
19, Rajendra Place
New Delhi-110008

:Petitioner

1. U.P. Power Corporation Ltd.
(Through its Chairman)
Shakti Bhawan,
14, Ashok Marg,
Lucknow.
2. General Manager
Power Purchase Agreement Directorate
UP Power Corporation Ltd.
14, Floor, Shakti Bhawan Extn.,
14, Ashok Marg,
Lucknow
3. Paschimanchal Vidyut Vitran Nigam Ltd.
Victoria Park,
Meerut

:Respondents

The following were present:

1. Mr G.N Agarwal, GM, M/s Siel Ltd.
2. Mr S.N Dubey, CE, PPA, UPPCL
3. Mr S.P Pandey, EE, PPA, UPPCL
4. Mr Mudit Agarwal, Advocate & Counsel for the Petitioner

ORDER

(Date of hearing 4.2.08 & 26.2.08)

(1) Mr Mudit Agarwal, Advocate & Counsel for the Petitioner has submitted as below -

That, the Petitioner has three sugar units at Nanglamal Sugar Complex, Titawi Sugar Complex & Mawana Sugar Works of following description in UP -

- (a) Nanglamal Sugar Complex has turbo generator sets with total capacity of 6.2 MW commissioned in Dec, 05 exclusively for captive consumption of the sugar mill having no agreement for supply of power

to UP Power Corporation Ltd. (UPPCL) and a Co-generation plant of 20 MW commissioned in 2006. A Power Purchase Agreement (PPA) dt.16.12.06 has been signed with UPPCL for supply of 11 MW from such co-generation plants at 132 KV. There is no parallel operation of the said the co-generation plant with turbo generator sets used for captive consumption. The turbo generator sets are not capable of supplying electricity to UPPCL in any manner.

- (b) Titawi Sugar Complex has turbo generator sets aggregating to 11 MW commissioned in 1992, 1995 & 2004 for captive consumption only. There is no agreement for supply of power to UPPCL from such turbo generator sets. A Co-generation plant comprising of 20 MW and 8 MW units has been set up in 2006-07. A PPA dt.16.12.06 has been signed with UPPCL for supply of power up to 17 MW from the said co-generation plant for supply of electricity at 132 KV. There is no parallel operation of the co-generation plant with turbo generator sets used for captive consumption.
- (c) At Mawana Sugar Works, there is 18 MW 'Sugar Power House' exclusively for captive consumption having various units commissioned prior to 2006. A 9.4 MW co-generation plant was commissioned in March, 06 which has a PPA dt.30.5.05 signed with UPPCL for supply of 9 MW. Subsequently, two units of 19.1 MW and 8 MW were commissioned in March, 07 and a PPA dt.16.12.06 has been entered with UPPCL for supply of additional 10 MW power. There is no parallel operation of co-generation plant comprising of 9.4 MW, 19.1 MW and 8 MW units with 'Sugar Power House' used for captive consumption.

He has also submitted that the UPERC Regulations provides that the tariff for supply of electricity shall be weighted average of the unit capacities if such units are commissioned in different years. The Petitioner has raised bills at weighted average tariff arrived in accordance with the Regulations but the Respondents have made payments on weighted average tariff calculated, for Nanglamal Sugar Complex, Titawi Sugar Complex and Mawana Sugar Works, after taking in account captive capacities which are in exclusive captive use of the Petitioner while there was no PPA for supply of electricity to UPPCL from such units. He has submitted that the weighted average tariff calculated by the

Respondents for payment of bill is contrary to UPERC Regulations and the clarification issued with regard to weighted average tariff of units commissioned in different years in respect to Triveni Engineering & Industries.

He has further informed that Chief Engineer, PPA, UPPCL, by letter no.404 dt.27.6.07 addressed to Executive Engineer, Transmission, Meerut for Mawana Sugar Works, letter no. 405 dt.27.6.07 addressed to Executive Engineer, Transmission, Meerut for Nanglamal Sugar Complex and letter no.406 dt.27.6.07 addressed to Executive Engineer, Transmission, Muzaffarnagar for Titawi sugar mill, has requested them to inspect the premises of the Petitioner and certify the single line diagrams and report if there is any possibility of mixing of generation from captive units and new units of co-generation plants or any possibility of supply of power from old units during shut down of units in co-generation plants. In reply to the said letters, Executive Engineer, Transmission, Muzaffarnagar and Executive Engineer, Transmission, Meerut, in letters nos.2045 dt.16.7.05 and 2865 dt.25.8.07 & 2866 dt.25.8.07 respectively, have informed that neither the generation of the old units can mix with the generation of new units nor there is any possibility of supply of electricity from the old generating units in case of shut down of new unit(s).

Sri. Mudit Agarwal has prayed that the Respondents be directed to pay bills at weighted average tariffs arrived at after exclusion of the said captive capacities and pay the amount deducted from the bills along with interest. The Petitioner is also seeking award of cost.

The Petitioner also moved on 4.2.08 an Application dt.2.2.08, for approval of change of name of the Petitioner Company from "Siel Limited" to " Mawana sugar Limited" as well as direction for the Respondents to pay a sum of Rs.14,61,397/= being a difference in the amount claimed by the Petitioner and that paid by UPPCL.

- (2) Respondents have not filed replies to the petition. The Representative of UPPCL present in the hearing on 4.2.08 has prayed for framing guidelines for working out the weighted average tariff for supply of electricity from co-generation plants where more than one unit are commissioned in different years.
- (3) The Commission observed that the generating unit with which there is no PPA between the parties could not be considered for calculation of weighted average

tariff under CNCE Regulations. Since, Nanglamal Sugar Complex and Titawi Sugar Complex have one unit each in Co-generation plant having contracted for supply to UPPCL as such the issue of weighted average tariff does not arise in respect to them and the tariff for supply from these complexes shall be the same as provided in Schedule-I of CNCE Regulations corresponding to the year in which the unit was commissioned. In Mawana Sugar Works, situation is otherwise as it has more than one unit commissioned in different years in the co-generation plants.

In view of this, the Petitioner was directed on 4.2.08 to submit the weighted average tariff of supply of electricity from its co-generation plant of Mawana Sugar Works on an affidavit.

- (4) The Petitioner submitted weighted average tariff for supply of electricity from Mawana Sugar Works on an affidavit dt.5.2.08. The weighted average tariff and the application for change in name was discussed in hearing on 26.2.08 . It was observed that the Petitioner has taken full capacities of units for calculation of weighted average tariff as such the Petitioner was directed to submit weighted average tariff based on the contracted capacity in PPAs dt.30.5.05 &16.12.06. Regarding change in name, Sri. G.N Agarwal submitted on behalf of the Petitioner that the scheme of arrangement for amalgamation of Mawana Sugar Ltd. with Siel Limited has been sanctioned by the Hon'ble High Court, Delhi on 11.9.07 and the name of Siel Limited has subsequently been changed to Mawana Sugar Limited as such the name of the Petitioner in the Petition may be changed to Mawana Sugar Limited.

It was observed by the Commission that the power purchase agreements signed by the Petitioner with the Respondents were in the name of 'Mawana Sugar Limited' as such the question arose as to how on a petition filed by "Siel Limited" any order on weighted average tariff could be passed that could be enforced in power purchase agreements to which 'Mawana Sugar Limited' is a party. The Petitioner was, therefore, directed to submit complete sequence of events as to the cause accrued in favour of the petitioner "Siel Limited" to bring the case of weighted average tariff. The Respondent's represented present in the hearing however did not object to prayer of the Petitioner for change of name.

- (5) The Petitioner has made submissions, in compliance to direction issued on 26.2.08, on an affidavit dt.28.2.08 in respect to weighted average tariff and change of name. We would first settle the issue of change of name.

The Petitioner has stated that a Scheme of Arrangement was approved by Hon'ble High Court, Delhi on 11.9.07. In this order, the Hon'ble Court has also allowed to change the name of 'Siel Limited' to 'Mawana Sugar Limited' subject to the Transferee Company complying with all statutory requirements in accordance with law.

The Petitioner states that the Scheme of Arrangement for amalgamation of 'Mawana Sugar Limited' with 'Siel Limited' could become effective on 15.10.07 upon submitting a certified copy of the Order of the Court with the Registrar of the Companies, NCT, Delhi on Form 21, attached with the affidavit, and company was entitled to operate as Siel Limited from that date onward. However for transfer of name from Siel Limited to Mawana Sugar Limited, as also approved by Hon'ble High Court, Extra ordinary General Meeting was held on 12.12.07. The share holders in that meeting approved the change of name from 'Siel Limited' to 'Mawana Sugar Limited' and an application seeking approval for change of name was made on 3.1.08. The Registrar of Companies has issued a fresh certificate of incorporation on 4.1.08. As per the Certificate dt.4.1.08 issued by Registrar of Companies, National Capital Territory of Delhi & Haryana, the name of the said Company is changed to 'Mawana Sugar Limited'.

In light of above it is observed that 'Siel Limited', filed this petition on 21.11.07 for determination of weighted average tariff. According to the order of the Hon'ble High Court, all contracts, deeds, bonds and other instruments of whatever nature to each of which the transferor company is a party shall remain in force and be effective against or in favor of the Transferee Company and may be enforced as fully and as effectively as if the Transferee Company has been a party thereto. Therefore 'Siel Limited' could bring a case in the subject matter of the Petition since the change in name had not been incorporated by Registrar of Companies by the date of filing of the petition. The Petitioner moved the Application for change of name only after incorporation of change of name on 4.1.08. The above sequence of events establishes that the Application for change of name has been made after completing all statutory requirements as directed by the Hon'ble High Court. In view of above, the Application dt.2.2.08 is allowed so far as it concerns with the

change of name of the Petitioner from 'Siel Limited' to 'Mawana Sugar Limited'. The name of the Petitioner Company from 'Mawana Sugar Limited' to 'Siel Limited' from 15.10.07 to 3.1.08 and back to 'Mawana Sugar Limited' from 4.1.08 onward is allowed.

Now we proceed to determine the weighted average tariff.

- (6) (a) The Respondents are seeking guidelines for calculation of weighted average tariff. The Commission has earlier considered the question of calculation of weighted average tariff on a reference made by UPPCL in connection with Triveni Engineering & Industries and issued clarification in that regard vide UPERC letter no. UPERC/D(G)/ Secy/07-434 dt.18.4.07. The relevant portion of the said letter is reproduced here under:

“(3) Facts in the matter are that:

- (i) Khatauli unit of TEIL has –*
 - (a) 3 MW, 415 V TG set connected to 415 V bus of the sugar powerhouse.*
 - (b) two co-generation units of 23 MW each.*
 - (c) co-gen units connected through 11 KV bus-coupler. Power is exported at 132 KV after transformation by 11/132 KV TRAFO –1&2.*
 - (d) no shown parallel operation of 3 MW TG set with co-gen units as per the single line diagrams submitted by UPPCL.*
- (ii) UPPCL has signed with TEIL agreements –*
 - (a) dt. 31.5.05 for purchase of 17 MW surplus power during season and 20 MW during off-season.*
 - (b) dt.7.4.06 for purchase of 17 MW during season to be generated from additional plant of 23 Mw being set up by TEIL.*
- (iii) There is no agreement for purchase of power between UPPCL & TEIL from 3 MW TG set.*

(4) Earlier, TEIL sought clarification on the question as to how the tariff of the existing plant should be determined, if it has undergone an expansion. The Commission clarified in reference to Reg.3 & 30 of the CNCE Regulations that the tariff of a generating plant, having units commissioned in different years, shall be a weighted average of the capacities vide letter no. UPERC/D(G)/06-1998 dt.11.7.06.

The issue clarified earlier is being re-agitated again by deliberate convoluted interpretation of the Regulations despite explicit provisions made in the CNCE Regulations thus, costing time to the Commission.

(5) Relevant Regulations in relation to the issues raised are reproduced as below:

Reg.29(1)

“All Co-Generation, Renewable Source of Energy and Other Non-Conventional Energy Sources based plants shall be allowed to sell power, over and above the capacity required for their own use, to the

Distribution Licensee in whose area the plant is located at the rate specified in Schedule II:

Provided that purchases under these regulations shall be restricted to 7.5 percent of total power purchased by concerned distribution licensee in MUs. The distribution licensee on an offer made by the said plants for entering into a power purchase agreement, the same shall be signed by such licensee within two months failing which the generating company may approach the commission for suitable remedy. The distribution licensee shall purchase such capacity through competitive bidding process as as and when notified by the Commission.....”

Reg.27 (2)

“(2) The generating plant shall enter into a power purchase agreement with the distribution licensee of the area in which the plant is located for a period of 20 years from the date of its commissioning, in line with the Model Power Purchase Agreement agreement available at Annexure-4 to these Regulations. The parties to the agreement may make plant/site specific changes in the Model PPA not inconsistent with the Act, these Regulations and other relevant Regulation. Such changes shall however be subject to approval of the Commission.....”

Reg.30

“The tariff for supply of electricity by the plant to a distribution licensee shall be as per Schedule – II of these Regulations.

Note:

1. The tariff for supply of electricity from the plant, having more than one unit commissioned in different years, shall be based on weighted average of the capacities of the units commissioned in different years.....”

Reg.3

“The tariff in respect of a generating station under these regulations shall be applicable for the whole of the generating station.”

(6)The harmonious construction of interpretation of above-mentioned Regulations is that the generating plant shall make an offer for sale of electricity under Reg.29 (1) to the distribution licensee and on acceptance of offer by the distribution licensee, an agreement shall be signed under Reg.27 (2) as per the model PPA. The tariff for such sale of electricity shall be as per Schedule II of the CNCE Regulation. If, there are more than one unit commissioned in different years then the tariff for supply of electricity from such plant shall be based on weighted average of capacities of units commissioned in different years as per Note -1 to Regulation 30. In this manner, the tariff for the whole of the generating station can be arrived on the basis of agreement reached between the parties for sale of electricity from units of the plant commissioned in different years; the intention vindicated in Reg.3, which specifies that “The tariff in respect of a generating station under these regulations shall be applicable for the whole of the generating station.”

The sum and substance of said provisions is essentially that there must be agreements for sale of electricity between the parties from units commissioned in different years and the tariff of such whole of the generating station, with which the agreements have concern, shall be calculated on the basis of weighted average of the capacities commissioned in different years. Therefore, a unit, for which there is a no agreement for sale electricity between the parties, cannot be considered in calculation of weighted average tariff.

In the instant case, the 3 MW TG set is not a part of co-generation plant as such the controversies between the parties is irrelevant”.

(b) Regulation 30 of CNCE Regulations deals with the determination of tariff where there exist more than one unit commissioned in different years in a co-generation plant and states that tariff for supply of electricity by the plant to a distribution licensee shall be as per Schedule – II of these Regulations and the tariff for supply of electricity from the plant, having more than one unit commissioned in different years, shall be based on weighted average of the capacities of the units commissioned in different years. This provision simply means that only that capacity (ies) of unit(s) shall be considered for tariff or weighted average tariff which is agreed to be supplied as surplus power in ‘power purchase agreement(s)’. Hence, the price shall be paid only for the capacity for which the agreement(s) has been reached.

(c) In light of the provisions of CNCE Regulations and clarifications made above; the procedure for calculation of weighted average tariff shall be as below:

- (i) Identify the unit (s) commissioned in different years.
- (ii) Find out unit(s), in relation to which there is no PPA(s) for supply of surplus power and the same shall not be considered for calculation of weighted average tariff.
- (iii) Separate from (i) & (ii), the unit (s) in relation to which PPA(s) have been signed for supply of surplus power.
- (iv) Mark the surplus contracted capacity in MW to be supplied from the corresponding unit(s) at (iii).
- (v) Find out tariff for each unit at (iii), from schedule II of CNCE Regulations, corresponding to the year of commissioning.
- (vi) The capacity (ies) of unit(s) identified at (iv) above and the tariff thereof at (v) shall be considered for determination of weighted average tariff. Such tariff shall be applicable for billing & payment from the date on which the last contracted unit has become operational.

(vii) Subsequent unit(s), commissioned after those identified at (iii) above, shall be considered for calculation of weighted average tariff provided an agreement has been signed for supply of surplus power from such unit(s) otherwise the same shall be excluded like at (ii).

(viii) The figure of weighted average tariff shall be rounded off to nearest one paisa.

(ix) The weighted average tariff shall be effective from respective date of commissioning of subsequent unit of the co-generation plant.

Besides above, all concerned shall note for the future that there shall be only one agreement for each plant called the 'principal agreement'. Subsequent purchase on account of commissioning of new unit shall be made through a supplementary agreement to the 'principal agreement' mentioning therein the revised weighted average tariff. However, supplementary agreement shall be subject to approval of the Commission.

(7) (a) As per affidavit dt.28.2.08, the weighted average tariff of Mawana Sugar Works is as below:

	Contracted capacity(MW)	Tariff (Rs./kwh)			
		2006-07	2007-08	2008-09	2009-10
PPA dt.30.5.05 and commissioning in 2005-06	9	2.89	2.93	2.97	3.02
PPA dt.16.12.06 and commissioning in 2006-07	10	2.98	3.02	3.06	3.10
Weighted average tariff	19	2.937	2.977	3.017	3.062

(b) As per PPAs signed on 16.12.06 for supply of power from Nanglamal Sugar Complex, Titawi Sugar Complex & Mawana Sugar Works are for supply of surplus power to the extent of 11 MW, 17 MW and 19 MW from 20 MW unit (commissioned in year 2006-07 at Nanglamal Sugar Complex), 20 MW & 8 MW units (commissioned in year 2006-07 at Titawi Sugar Complex) and 9.4 MW, 19.1 MW & 8 MW units (commissioned in years 2005-06 & 2006-07 at Mawana Sugar Works) respectively.

The Petitioner has submitted that there is no parallel operation of co-generation plants with the units set up exclusively for captive consumption, the fact ascertained by Executive Engineers (Transmission) concerned. Still, the Petitioner is directed to ensure that the said captive units are not capable of synchronous operation with the co-generation plants.

- (8) Based on the findings of the Commission in respect to surplus power agreed to be supplied as per PPAs, clarifications and the procedure laid down in foregoing paragraphs, weighted average tariff of supply of electricity from the said three co-generation plants of the petitioner is determined as below:

Effective tariff as Schedule-2 of CNCE Regulations					
	Tariff Year (in Paise per kWh)				
Year of Commissioning	2005- 06	2006- 07	2007- 08	2008- 09	2009- 10
2005- 2006 or any earlier year	286	289	293	297	302
2006-2007		298	302	306	310
2007-2008			311	315	320
2008-2009				325	329
2009-2010					338
Nanglamal Sugar Complex					
Units (MW)	6.2	20			
Schedule year of commissioning of units	2005-06	2006-07			
PPA signed	No	Yes			
Agreement for sale of capacity(MW)	Nil	11			
Tariff (in Paise per kWh) for 11 MW Contracted Capacity					
		2006- 07	2007- 08	2008- 09	2009- 10
		298	302	306	310
Titawi Sugar Complex					
Units/capacities (MW)	11	20	8		
Schedule year of commissioning of units	1992-1995-2004	2006-07	2006-07		
PPA signed	No	Yes	Yes		
Agreement for sale of capacity(MW)	Nil	17			
Tariff (in Paise per kWh) for 17 MW Contracted Capacity					
		2006- 07	2007- 08	2008- 09	2009- 10
		298	302	306	310

Mawana Sugar Works					
Units/capacities (MW)	18	9.4	19.1	8	
Schedule year of commissioning of units	Prior to 2006	2005-06	2006-07	2006-07	
Commissioning in		March,06	March,07	March,07	
PPA signed	No	Yes	Yes	Yes	
Agreement for sale of capacity(MW)	Nil	9	10		
Tariff (in Paise per kWh)					
For 9 MW Contracted Capacity					
	2005- 06	2006- 07			
	286	289*			
For 19 MW Contracted Capacity					
		2006- 07	2007- 08	2008- 09	2009- 10
		294**	298	302	306

* from 1st April,06 and prior to the date of commissioning of 19.1 and 8 MW (contracted capacity 10 MW from both units) units in March,07.

** from the date of commissioning of 19.1 and 8 MW units in March,07.

Petitioner shall raise bill at above tariff and the Respondents shall make payment without demur. The deductions made from bills earlier by the Respondents shall be reconciled and paid or adjusted accordingly.

- (9) The procedure for calculation of weighted average tariff laid down herein shall apply to all cases wherever required.
- (10) The costs are on parties.
- (11) The Petition is disposed of.

(R. D Gupta)
Member

(P.N Pathak)
Member

(Vijoy Kumar)
Chairman

Lucknow; Dated: 17th March, 2008