

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 64/2003

Present:

1. Shri J.L. Bajaj, Chairman
2. Shri S.C. Dhingra, Member
3. Shri Arun Sarkar, Member

In the matter of:

Review of the Commission's Order dated 16th December 2002 (Petition No.14/2002)

And

In the matter of:

U.P. Power Corporation Ltd., Lucknow
Represented by Shri S.C Tripathi, Sri. Vijay Kumar Sharma , UPPCL and Sri. D.D
Chopra, advocate

---Petitioner

And

M/s Simbhaoli Sugar Mills Ltd., Ghaziabad
Represented by Shri Ram Sharma, advocate

----Respondents

Date: 17th July, 2003
Lucknow

ORDER

UPPCL Vs. M/s Simbhaoli Sugar Mills Ltd, Ghaziabad

UPPCL has filed a petition on 24th March 2003, under regulation No. 138 of the Commission's conduct of Business Regulations 2000, requesting the Commission to review its Order dated 16th December 2002 in matter of M/s Simbhaoli Sugar Mills Ltd, Ghaziabad Vs. UPPCL (Petition No. 14/2002). The salient points of the Commission's order dated 16th December 2002 are reproduced below for easy referencing.

2. In the petition No. 14/2002, M/s Simbhaoli Sugar prayed to the Commission for recovery of Rs.49, 77, 338/= illegally deducted by UPPCL from the energy export bills of M/s Simbhaoli Sugar. UPPCL deducted the amount on account of fuel surcharge, ED charge, power factor surcharge etc. The General Manager (PPA) UPPCL in his letter No.906 dated 25th November 2002 addressed to General Manager (Meerut Zone) UPPCL has clarified that these charges are not payable by M/s Simbhaoli Sugar. According to the power purchase agreement (herein after referred as PPA) signed between M/s Simbhaoli Sugar & UPPCL also, these charges are not payable by the petitioner. On this basis, the Commission vide its order dated 16th December 2002 directed UPPCL to refund Rs.49, 77, 388/= to M/s Simbhaoli Sugar within one month from the date of issue of this order. The Commission also directed UPPCL to pay interest to M/s Simbhaoli Sugar at the rate paid by the State Bank of India on deposits for the periods for which the amount has been with UPPCL.
3. In the review petition, UPPCL has prayed to the Commission that penalty in the form of interest payable to M/s Simbhaoli Sugar by UPPCL (as directed by the Commission in its order dated 16th December 2002) may be waived off. UPPCL has submitted following grounds for review:

- a) UPPCL has not deducted the amount of Rs.49,77,338/= on its own but on the observation of the special audit team.
 - b) Prior to the decision of the Commission, UPPCL has taken action to rectify the mistake as evident from the letter No.906 dated 25th November 2002 of GM, PPA
4. M/s Simbhaoli Sugar has submitted counter affidavit to the petition on 26th April 2003. The respondents have submitted that the interest penalty should not be waived off due to following main reasons: -
- a) UPPCL has utilized the amount of Rs.49,77,893/=. It is clear from the letter dated 17th March 2003 of Executive Engineer, EDD, Hapur addressed to DGM, UPPCL, Lucknow which states that the interest payment may be made from the head quarter as money was with them.
 - b) Even after receipt of letter No.906 dated 25th November 2002 of GM, PPA, UPPCL has not made payment to M/s Simbhaoli Sugar. UPPCL made payment only after the Commission's order dated 16th December 2002.
 - c) Observations of special audit party are internal matters of UPPCL.
 - d) From another energy export bill UPPCL has wrongly deducted Rs.2,85,655/= on account of electricity duty on the banked energy. Even after clear instructions from UPPCL head quarter and from the Commission this amount has not yet been paid back by UPPCL to M/s Simbhaoli Sugar.
5. As special audit of the division is conducted only on the specific instructions of UPPCL, the Commission feels that special audit is an internal matter of UPPCL and is not a sufficient ground for deduction of the amount from the energy export bill of the respondents. In fact according to the letter of GM, PPA, the decision to refund the amount, recovered against fuel surcharge, ED charge etc, had been taken before the decision of the Commission. It is logical, therefore, that UPPCL pay interest for the amount wrongly deducted

by them. UPPCL should have no hesitation in paying interest at a rate which is lower than that at which they are borrowing.

6. The Commission rejects the appeal of the petitioner to review the order dated 16th December 2002 and the review petition is dismissed.

(Arun Sarkar)
Member

(S.C Dhingra)
Member

(J.L Bajaj)
Chairman

17th July, 2003
Lucknow