

**BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

Petition no.450/07

**IN THE MATTER OF:** Clarification on the provision of incentive, wheeling of power to sister concern of the sugar mill and sale of surplus power in excess of contracted capacity.

**AND**

**IN THE MATTER OF:**

M/s UP Sugar Mills Co-gen Association  
2/95, Vishal Khand,  
Gomti Nagar  
Lucknow : Petitioner

Vs.

UP Power Corporation Ltd.  
7<sup>th</sup> Floor, Shakti Bhawan,  
14<sup>th</sup> Ashok Marg,  
Lucknow :Respondent

The following were present:

1. Mr R.K Chakravarti
2. Mr S.P Pandey, EE(PPA), UPPCL
3. Mr R.Seth
4. Mr R.L Gupta, Dalmia Chini Mills
5. Mr Durga Prasad, UP Co-gen Association

**ORDER**  
**(Date of hearing 17.9.07)**

- 1.0 We have heard the parties and perused the record.
- 2.0 The issues of clarification in respect to incentive and permission to sale of power beyond the contracted capacity have been settled in Order dt.12.6.07.
- 3.0 Regarding wheeling of power from the banked energy to sister unit of the co-generation plant, the Commission observed as below:

*“....It is observed that the provision of banking and withdrawal of banked energy has been laid down in Regulation-39 of CNCE Regulations according to which the generating plant is allowed to bank power for the purpose of withdrawal of banked power in the event of emergency or shut down or maintenance of the plant subject to conditions stipulated there under. Further, the Regulation 29 (1) provides that the plant shall be allowed to sell power available after sale to concerned distribution licensee to any other licensee or a consumer at mutually agreed rate subject to provisions of Open Access Regulations. Regulation-31 ‘Open Access’ creates right to open access for carrying electricity from the plant as per regulations notified by the Commission in that regard. The transmission & wheeling charges shall be as*

*determined by the Commission vide Regulation-32. The Commission has notified UPERC (Terms & Conditions of Open Access) Regulation, 2004 and Co-generation plant may supply power to its sister units in compliance to above-mentioned provisions of CNCE Regulations read with Open Access Regulations....”*

- 4.0 The Petitioner prayed some more time to bring additional facts on this issue. The prayer was allowed.
- 5.0 The Petitioner has made written submission on 4.6.07 stating that the stand taken by UPPCL, that withdrawal of banked energy is allowed to co-generation plants only in case of emergency and annual maintenance of the plant and not for wheeling to its sister unit, is erroneous in view of the meaning of ‘generating company’ in the CNCE Regulations which gives a wider scope of interpretation allowing benefit of banking to other units falling within the definition of company or body corporate.
- 6.0 In the hearing, the Sri. Durga Prasad, on behalf of the petitioner, has stated that broader meaning to the words ‘generating company’ be given in the context of the withdrawal of banked energy and accordingly wheeling of banked power be allowed to sister units of the plant on payment of wheeling charges. Sri. S.P Pandey, EE(PPA), submitted on behalf of Respondent that under Regulation 39, the banked energy can not be wheeled to the sister unit of the generating plants because the generating plant maintains a separate identity so far as Power Purchase Agreement is concerned.
- 7.0 The definition of ‘Generating Company’ under Regulation 6 of the Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions for Supply of Power and Fixation of Tariff for sale of power from Captive Generating Plants, Co-generation, Renewable Sources of Energy and Other Non-Conventional Sources of and Energy based Plants to a Distribution Licensee) Regulations,2005 (referred to as CNCE Regulations) should be read within the context drawn in Regulation 23 (2) and 29 (1) to arrive at a decision whether it refers to a particular plant of such company or all entities under its control. Regulation 23 (2) & 29 are reproduced below:

Regulation 23 (2)

*“The Plant shall be deemed to be a generating station of a generating company within the meaning of section 7 of the Act which shall establish, operate and maintain a generating station without obtaining a license under the Act if it complies with the standards specified by the authority under section 53 and section 73 of the Act. However, for hydroelectric generation, the provisions of section 8 of the electricity Act,2003 shall apply.”*

Regulation 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 and when notified by the Commission:*

*Provided further that the plant shall be allowed to sell the power available after sale to the concerned distribution licensee to any other licensee or a consumer at mutually agreed rate:*

*Provided further that supply to any distribution licensee other than the distribution licensee of the area in which the plant is located or to any consumer shall be subject to provisions of Open Access Regulations:*

*Note:- Other Non-conventional Sources of Energy shall include, inter alia, generation from wind, solar, municipal waste, industrial wastes including solid, semi solid, liquid and gaseous wastes and bio-gas.”*

The above Regulations state that the plant shall be deemed to be a generating station of a generating company for the purpose of Section 7 of the Act which states that ‘any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act, if it complies with the technical standards relating to connectivity with the grid referred to in class (b) of Section 73’ however an agreement for sale of electricity shall be made on an offer made by the plant and the same shall be signed by the licensee within 2 months. The Regulation 29(1) further provides the plant to sale power, available after sale to distribution licensee of its area, to any other licensee or a consumer at rate mutually agreed subject to provisions made under Open Access Regulations. These regulations and that made for banking in Regulation 39 make references exclusively to the plant only.

Therefore, in consideration of above, we are unable to accept the argument forwarded by the Petitioner that the energy banked by the plant with the distribution licensee could be wheeled for the use of sister unit of generating plant and hold that Regulation 39 provides withdrawal of banked power in the event of emergency or

shutdown or maintenance by the concerned plant for which an Power Purchase Agreement for sale of power has been signed between the parties.

8.0 This order shall be read with Order dt.12.6.07 passed earlier in this petition.

9.0 The petition is disposed of.

(R. D Gupta)  
Member

(P.N Pathak)  
Member

(Vijoy Kumar)  
Chairman

Lucknow; Dated: 25<sup>th</sup> Sep, 2007