

**BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

In the matter of (Petition No.17):

Distribution and Retail Supply License to UPSIDC Power Company Ltd in the industrial area of Tronica city, Loni, Ghaziabad.

And for listening to the parties

In the matter of:

UPSIDC Power Company Ltd,  
UPSIDC Complex, A-1/4, Lakhanpur, Kanpur-208024

---Petitioner

And

1. U.P. Power Corporation Ltd., Lucknow

----Respondents

Lucknow

Date: 16<sup>th</sup> September 2002

## **Prayer**

Government of Uttar Pradesh (hereinafter GOUP) vide their order dated 19<sup>th</sup> June 1992 granted permission to UP State Industrial Development Corporation, Kanpur (UPSIDC) for engaging in the business of supply of electricity in eight industrial areas located in various districts of UP, under Section 28 of the Indian Electricity Act, 1910. Tronica city industrial area (TCIA), Loni, Ghaziabad was one of them. The permission was granted for a period of ten years from the date of order and the State Government under Clause 5 of the said permission imposed the following conditions:

1. UPSIDC will supply power to the industries in these industrial areas, generated from captive power plants, at a tariff and under the conditions to be decided on the basis of procedure for determination of electricity tariff.
2. UP State Electricity Board (UPSEB) shall make standby arrangement for UPSIDC for emergency situations.
3. If there is an excess generation in captive power plant, UPSIDC will supply electricity to UPSEB at the rate at which NTPC supplies electricity to UPSEB.

UPSIDC formed a subsidiary company,- UPSIDC Power Company Ltd (UPSIDCP) for undertaking the task of implementing the project. UPSIDCP (hereinafter called Applicant) has submitted an application to the Commission for grant of electricity distribution and retail supply licence in the Tronica city industrial area (TCIA), Loni, Ghaziabad under Section 15 of the U P Electricity Reforms Act 1999 (hereinafter called Act). The Commission, in its 47<sup>th</sup> meeting dated 5<sup>th</sup> February 2002 accepted the application for consideration of the grant of distribution and retail supply licence in TCIA, Loni, Ghaziabad. The Commission further directed the applicant to issue the required notices as per the provisions of Section 15(2) of the Act. The applicant was also directed to serve a copy of the petition along with all enclosures to GOUP, UP Power Corporation Ltd. (UPPCL), Kanpur Electricity Supply Company (KESCO) and Noida Power Company Limited (NPCL). UPPCL is the successor entity of UPSEB. The applicant has complied with the directions of the Commission. A notice inviting objections to the

grant of Distribution and Retail Supply licence to UPSIDCP was published in Danik Jagran (Hindi) and in The Hindustan Times (English) on 14<sup>th</sup> February 2002.

### **Objections**

In response to the notice only UPPCL has filed objection against granting of licence. UPPCL has raised the following objections and submitted that the request of the applicant be rejected:

1. In early 1990, there was an acute shortage of power and power supply from NTPC was not available. It was feared that the State's industrial growth would suffer on account of non-availability of power. It was against this background that GOUP had granted permission to UPSIDC. But UPSIDC has remained inactive for ten years. The original conditions for grant of permission do not hold any longer, as abundant power is now available to the State through central generating systems. Moreover, the State Government granted permission to UPSIDC without consulting erstwhile UPSEB, which is contrary to Section 28 of the Indian Electricity Act, 1910..

2. Owing to socio-economic reasons, UPPCL has to heavily subsidize rural & urban domestic consumers as well as PTW consumers. This subsidy is met partly through higher tariff for industrial & commercial consumers and railways. The area that the applicant proposes to serve has a concentration of industrial consumers and has no rural, domestic and PTW consumers. Grant of a distribution and retail supply licence to the applicant will, therefore, create unequal competition for UPPCL and deny it a level playing field. It will be an encroachment on the possible profit of UPPCL. Further, it will create a vicious circle necessitating increase of rates for existing industrial consumers of UPPCL.

3. UPSIDC will use HSD as the fuel for generating power. The cost of electricity generation with HSD is around Rs.3.50 to Rs.4 per unit. Therefore, the consumers in the proposed area will have to pay higher charges. This will create problems of differential retail tariff in the State.

4. UPPCL is not willing to permit the use of its grid to provide standby support to the applicant. It is also not interested in purchasing the excess power generated by the applicant. UPPCL is of the view that purchase of power from the applicant will not be cost effective due to the latter's high generation cost. UPPCL has offered to sell power to the applicant @ Rs.3.51 per unit based on the load mix intimated by the applicant. This rate will also be subject to revision as per revision of rates by the Commission and variation in load mix.

### **Rejoinder**

A copy of UPPCL's objection was served to the applicant vide letter No. UPERC/Secy/Pet-17/02-682 dated 23<sup>rd</sup> May 2002. The applicant submitted the rejoinder vide 210/SIDC/PM/PPD/UPERC-71 dated 14<sup>th</sup> June 2002. The reply of the applicant is summarized below:

1. The last advertisement inviting objections was published in newspapers on 14<sup>th</sup> February 2002. UPPCL has submitted its comments on 16<sup>th</sup> May 2002. Therefore, it should be rejected as time barred under section 15(2)(b)(i) of the Act.
2. If UPSEB/UPPCL had any objection regarding grant of above permission by GOUP to UPSIDC they should have taken up the matter with the GOUP much earlier.
3. Due to cross subsidization of tariff, inefficiencies of the UPSEB/UPPCL, improper management and its poor financial health, industries are shifting from Uttar Pradesh. Industrialists are no longer seriously interested in setting up industry in U.P. This has affected not only power consumption of industrial consumers but also development of the state in other sectors.
4. The impact of non-availability of reliable and quality power supply on the growth of the state has become more profound today due to competition from neighboring states in attracting industrial investments. The fiscal condition of UPPCL has deteriorated to such an extent that at present it is not in a position to either increase its own generation capacity or import energy from central sectors. As a result, industries are apprehensive about the reliability of power supply in

the State. Increase in industrialization of the State will have a far reaching effect on the State exchequer and will provide other spin-off benefits to society.

5. To implement clause 5 of the permission granted by GOUP, UPSIDC made vigorous efforts to finalize the necessary arrangement with UPSEB. Several meetings were held among Chairman UPSIDC, Secretary (Energy) GOUP, Chairman UPSEB and other senior officers of the UPSIDC, GOUP and UPSEB. Decisions were taken in these meetings, but were not implemented by UPSEB. Due to this, the project could not be implemented.

6. In view of the permission from GOUP, UPSIDC has already gone ahead with the implementation of the project. In the first phase a captive power plant of 11.45 MW capacity is in advanced stages of construction and is expected to be commissioned by December 2002. UPSIDC has now incorporated a hundred per cent owned subsidiary company (UPSIDCP) to manage these operations effectively.

7. UPSIDC has developed an integrated industrial township in 1600 acres of land at Loni, Ghaziabad. To facilitate the growth of industries in this area, UPSIDC has invested about Rs 300 crores in developing its infrastructure. UPSIDC has developed 4342 industrial plots in the region. Of this, 3942 plots have been allotted but due to perceived power shortages, industrial production could commence only in 12 plots. The growth of this area depends on the reliability and quality of power. In the absence of the UPSIDC project, it is unlikely that industry will come to this area.

8. The applicant has requested permission for operating in a very small area. It will not have the benefit of grid operation, range of voltages at which supply could be made and leverage to purchase energy from central sector stations. Therefore, protection in terms of level playing field is required for the applicant rather than for UPPCL.

9. UPSEB, while granting consent for setting up 25 MW captive power plant at Loni, Ghaziabad, has stated in letters No. 1303 & 1347 dated 26-10-99 and 2.11.99 respectively that UPSIDC will be permitted parallel operation with the

grid and UPSEB will purchase surplus power from UPSIDC. However, UPPCL, vide its letter dated 18.5.2001 withdrew these two facilities.

10. The cost of power generation as per the guaranteed parameters of the EPS contract is Rs.2.85 per unit. Therefore, the applicant can service the consumer at a tariff not exceeding that of UPPCL.

11. The rate of Rs.3.51 per unit offered by UPPCL for sale of power to the applicant is much higher than the rates of sale of power to other power distribution companies of the State, viz. KESCO & NPCL. This is in contravention of the provisions of section 24(7) of the Act.

12. In view of the above, it is requested that in addition to grant of distribution and retail supply licence for TCIA, Loni, Ghaziabad, UPPCL may be instructed to provide standby support and purchase surplus power from the applicant. The tariff for sale of energy by UPPCL should be at par with other distribution companies operating in the State.

The Commission limits the scope of this application to the grant of licence only. The other issues such as sale/purchase of power, grid support etc will arise only after the grant of the licence and will be decided under the existing rules and regulations for which the applicant may file a separate application.

As the applicant is a wholly owned subsidiary of UPSIDC, the current application of the licence is, in a way, a request for renewal of the permission granted by GOUP to UPSIDC in 1992 for engaging in the business of supply of electricity in the Tronica city industrial area (TCIA), Loni, Ghaziabad.

The applicant has submitted that UPPCL's objections dated 16<sup>th</sup> May 2002 are time barred and should be rejected under Section 15(2)(b)(i) of the Act. This sub section of the Act states that the Commission shall not grant a licence until the objections, if any, received within three months from the date of last publication of the notice have been considered by the Commission. This specifies only a minimum time limit and not the maximum period. Three months from the last publication of the notice expired on 14<sup>th</sup> May 2002. Thus, the delay

is only of two days and the Commission condones the delay and proceeds to consider the objections of the UPPCL.

The sub section (1-A) of the section 28 of the Indian Electricity Act, 1910 states that the State Government shall not give any sanction except after consulting the State Electricity Board. It was contented by the respondent that the said permission was granted by GOUP without consulting UPSEB. At that time no objection was raised by UPSEB nor was any protest lodged. On the contrary UPSEB/UPPCL continued to participate in meetings with GOUP & UPSIDC for making necessary arrangements for sale/purchase of power, standby emergency supply etc. Therefore, UPPCL is not on strong ground for stating that that they were not consulted by GOUP before grant of permission to UPSIDC in 1992. Hence, this objection is rejected.

Ten years have elapsed since the grant of permission by GOUP but UPSIDC too has been quite lackadaisical in implementing the licence granted to them. However, the performance of UPPCL has also not been satisfactory in recent years and the reliability & quality of the power supply and consumer services need a great deal of improvement. If in 1992, UPSEB was short of power on account of low generation, at present, UPPCL is unable to purchase its allocated quota of electricity from central power stations due to shortage of fund. Given this situation more & more industries are taking recourse to setting up captive power plants instead of relying exclusively on UPPCL's supply.

Power is a crucial input to the industrialization. The adoption of sophisticated, computerized technology by the industries has increased the demand of reliable & quality power. UPPCL has failed to meet this challenge. The consumption of electricity by industrial consumers has declined from 27.3% in 1991-92 to 17.2% in 2001-02. Absence of reliable and quality power supply is one of the reasons for industrialist not choosing Uttar Pradesh as a preferred destination for setting up new units. The applicant is attempting to attract investment by providing reliable & quality power supply and other infrastructure support. UPPCL cannot claim that its revenue will be adversely affected if the applicant is permitted to serve these industries because the latter will come to the

area only as a result of the effort and promotion by the applicant. In the absence of the promise of better power supply, they might not come at all.

The applicant has submitted that their cost of electricity generation as per EPS contract is Rs.2.80 per unit and that they will serve consumers at a tariff not exceeding that of UPPCL. UPPCL has calculated the generation cost of the applicant's project assuming HSD as fuel. The applicant, however, is proposing to utilize furnace oil, which is cheaper than HSD. Moreover, since the applicant has stated that it will be supplying power at a retail tariff not exceeding that of UPPCL the issue of differential tariff will not arise.

**ORDER**

**Thus the objections raised by UPPCL are rejected and in exercise of power under Section 15 of the Act, the Commission hereby grants licence to the applicant for engaging in the business of distribution and retail supply of electricity in the Tronica city industrial area (TCIA), Loni, Ghaziabad as per the terms & conditions detailed in the enclosed document.**

(Arun Sarkar)  
Member

(S.C.Dhingra)  
Member

(J.L.Bajaj)  
Chairman

Lucknow:

16<sup>th</sup> September 2002.