THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2056 of 2023

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

An application under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 51 of the UPERC (Conduct of Business) Regulations, 2019 for review of the order dated 30.06.2023 passed in Suo-Moto proceeding(s) Nos. 59SM of 2022, 60SM of 2022 & 61SM of 2022 in the matter Sou Moto Proceedings under Section 142 of the Electricity Act, 2003 for non-compliance of the DSM framework on State Owned Distribution Licensees in the State of Uttar Pradesh.

AND

IN THE MATTER OF

Uttar Pradesh Power Corporation Limited, 14th Floor, Shakti Bhawan Extension, Ashok Marg, Lucknow, Uttar Pradesh-226001

..... Review Petitioner

VERSUS

Uttar Pradesh State Load Despatch Centre, Phase-II, Vibhuti Khand, Lucknow - 226010

..... Respondent

THE FOLLOWING WERE PRESENT

1. Sh. Divyanshu Bhatt, Advocate, UPPCL
2. Sh. Shashwat Singh, Advocate, UPPCL
3. Sh. Savyasachi Saumitra, Advocate, UPPCL

4. Sh. Deepak Raizada, CE, UPPCL
5. Er. Amarendu, CE, UPSLDC
6. Er. Badshah Hussain Rizvi, AE, UPSLDC

ORDER

(DATE OF HEARING: 04.04.2024)

1. The instant Review Petition has been filed under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 51 of UPERC (Conduct of Business) Regulations, 2019 for review of Order dated 30.06.2023 passed in Suo-Moto proceeding(s) Nos. 59SM of 2022, 60SM of 2022 & 61SM of 2022 in the matter Sou Moto Proceedings under Section 142 of the Electricity Act, 2003 for non-compliance of the DSM framework on State Owned Distribution Licensees in the State of Uttar Pradesh. The Prayers of the Petition are as follows:

   (a) Allow the present Review Petition in terms of the limited grounds and submissions made hereinabove.

   (b) Revise and recalculate the UPPCL's payable DSM Pool Account with respect to the fact that till 30.09.2022, DSM was recovered from NPCL and solar generators by UPSLDC.

   (c) Pass any other further order(s) that the Commission may deem fit in the interest of justice.

2. The Petitioner has also filed an application for condonation of delay and has prayed as follows:

   (a) Condone the delay of 85 days which has occurred in filing the accompanying Review Petition by the Petitioner, UPPCL.

   (b) Pass any other further order(s) that the Commission may deem fit in the interest of justice.

3. The Petitioner has submitted that the date of the Order is 30.06.2023, and the prescribed period of limitation expired on 28.09.2023.

4. Due to the nature of dispute in the captioned case, continuous technical assistance was required from the officials of the Review Petitioner and its

financial consultants, including factual and technical inputs. There were also various documents required to be made available from different departments, which in turn, caused a delay of 85 days in filing the accompanying Review Petition. Thus, the delay caused in filling the accompanying Review Petition is bona-fide and beyond the control of the Petitioner.

Brief of Petition

5. Review Petitioner has preferred this present review Petition with respect to the Order, as the error had crept in the interim Order dated 17.02.2023 but keeping in mind the Doctrine of Merger only the final Order dated 30.06.2023, has been challenged.

6. The Commission has inadvertently allowed UPSLDC to keep whatever DSM was recovered from NPCL and solar generators by UPSLDC prior to 01.10.2022 be adjusted/settled with UPPCL.

UPSLDC was allowed to give commercial effect to weekly DSM accounts of UPPCL from 01.10.2022, while UPPCL was directed to transfer to DSM Pool account of UPSLDC any surplus amount accumulated in between 01.10.2022 to 31.03.2023. The Commission quite inadvertently allowed an error to creep in the Order dated 17.02.2023, wherein the Commission presumed that all the DSM settlements at UP periphery were being carried out solely by UPPCL prior to 01.10.2022. The relevant portion of the Order is being outlined below:

"6. The Commission considered the submissions made by UPSLDC, UPPTCL & UPPCL, and directed following during the course of hearing:

(a) UPSLDC shall give commercial effect to the weekly DSM accounts of UPPCL from 01.10.2022 onwards.

(b) The existing practice of undertaking DSM related financial transactions by UPPCL, on behalf of the State with Central DSM Pool / intra-State entities, shall continue to be in practice till 31.03.2023.

(c) UPPCL shall transfer to DSM Pool account of UPSLDC any surplus amount accumulated in between 01.10.2022 to 31.03.2023, as per para 6(b) above.

(d) Subsequently from 01.04.2023, all financial transactions related with State DSM Pool shall be routed through UPSLDC. Accordingly, UPSLDC

shall undertake financial transactions and make/ receive payment to/ from Central DSM Pool and intra-State entities from 01.04.2023.

(e) UPPTCL shall submit the implementation plan of SAMAST scheme within a week before the Commission."

7. UPSLDC was receiving and making the payments for the DSM account of NPCL and Solar Generator whereas the payments for DSM accounts for NRPC, State Generating Companies (excluding solar generators) and other licensees were maintained and adjusted by UPPCL. Therefore, even though UPPCL was the sole entity which was carrying out settlements for DSM accounts for all intra state entities/Central DSM Pool prior to 01.10.2022, UPSLDC was settling for DSM accounts of NPCL and solar generators for which a settlement has to be done by UPPCL and UPSLDC after reconciliation of their accounts.

8. The DSM settlement at UP periphery with NRPC has been carried out by UPPCL, so any intra-state DSM amount available with UPSLDC before 01.10.2022 has to be transferred to UPPCL.

The DSM amount available with UPSLDC before 01.10.2022, which has to be transferred to UPPCL comes to about Rs. 73.73 crores. The relevant extract of the affidavit filed by the UPPCL along with the minutes of the committee is being outlined below:

"4. It is to further mention that as before 30.09.2022 the DSM settlement at UP Periphery with NRPC has been carried by UPPCL so any intra state DSM amount available with UPSLDC ***before 30.09.2022 has to be transferred to UPPCL and so same should be transferred/ adjusted with amount to be transferred by UPPCL to UPSLDC*** *as mentioned at point no. 03 above. The following adjustments has to be made by UPSLDC:-*

(a) DSM amount that had been deposited by NPCL before 30.09.2022 to UPSLDC is Rs. 69,28,44,620.00 subject to final reconciliation.

(b) DSM amount of solar generator is being maintained by UPSLDC so the amount collected by them before 30.09.2022 has to be transferred to UPPCL. This amount as intimated by UPSLDC is around Rs. 4,44,49,110/-subject to final reconciliation.

5. After adjustment of amount mentioned at point no. 4 (a) and 4 (b) (amounting to Rs. 73,72,93,730/- say around 73.73 Cr.) above with

the value mentioned at point no. 03 (around Rs. 266,96,00,673/-). The net amount which is to be provisionally transferred by UPPCL to UPSLDC works out to be Rs 193,23,06,943 (Provisionally since the amount collected by UPSLDC against solar generators DSM is to be finally reconciled checked each date and each solar generator entry)"

9. The Commission inadvertently missed to take into account the fact that DSM settlement at UP periphery with NRPC has been carried out by UPPCL, so any intra-state DSM amount available with UPSLDC before 01.10.2022 has to be transferred to UPPCL, and same should be adjusted/ transferred with amount to be transferred by UPPCL to UPSLDC from 01.10.2022 to 31.03.2023.

10. The Commission vide Order dated 21.06.2023 reiterated its view that no adjustment will be made for the period prior to October 2022 as there was no proper DSM accounting system of UPPCL. The Commission inadvertently missed to take into account the submissions made by UPSLDC via its affidavit dated 19.06.2023, in which it quite unequivocally stated that UPSLDC was willing to give effect to weekly DSM accounts from 01.10.2022, to which UPPCL stated that till 30.09.2022, whatever DSM was recovered from NPCL and solar generators by UPSLDC, must be adjusted as well, as prior to 01.10.2022, all the settlements for DSM pool accounts for all the intra state entities were being carried out by UPPCL.

The relevant extract of the Order dated 21.06.2023, is being outlined below:

"6. ....

(a)The Commission observed that the Commission vide Order dated 17.02.2023 had directed UPPCL to transfer in DSM Pool Account of UPSLDC any surplus amount accumulated in between 01.10.2022 to 31.03.2023. Therefore, the Commission reiterated its view that no adjustment will be made for the period prior to October' 2022 as there was no proper DSM accounting system of UPPCL. Furthermore, UPPCL cannot unilaterally raise any claim without any DSM accounting."

11. Any such payments made by NPCL and solar generators prior to 01.10.2022, had to be settled by UPPCL instead of UPSLDC, and thus, Rs. 73.73 crores recovered from NPCL and solar generators prior to 01.10.2022, by UPSLDC had to be taken into account by the Commission while issuing directions to

UPPCL to transfer to DSM Pool account of UPSLDC any surplus amount accumulated in between 01.10.2022 to 31.03.2023.

12. The issuance of directions by the Commission with respect to the issue raised before it with respect to the accounting of DSM Pool Account would have resulted in UPPCL's payable DSM Pool Account being reduced to Rs. 193.23 instead of the Rs. 266.96 Crores for the period 01.10.2022 to 31.03.23.

UPPCL Affidavit dated 01.04.2024

13. The Commission vide Order dated 11.03.2024, had directed the Petitioner to file an additional affidavit explaining the 85 days delay in filing of the Review Petition. Therefore, the affidavit is filed in compliance of the said Order, which outlines and justifies the 85 days delay in filing of the Review Petition.

14. The prescribed period of limitation of 90 days for filing a Review Petition before the Commission, as mentioned in Regulation 51 of UPERC (Conduct of Business) Regulations, 2019 shall therefore be calculated from the date of the Order 30.06.2023, and the aforementioned prescribed period of limitation had expired on 28.09.2023.

15. Due to the nature of dispute in the captioned case, continuous technical assistance was required from the officials of the Review Petitioner and its financial consultants, including factual and technical inputs. There were also various documents required to be made available from different departments, which in turn, caused a delay of 85 days in filing the Review Petition.

16. A day wise breakdown for the reasons and process for delay in filing the review petition is being outlined for the perusal of the Commission.

17. The delay caused in filing the accompanying Review Petition is bona-fide and beyond the control. It is a settled law that public institutions/government organisations should be granted latitude keeping in mind the impersonal nature of the Government's functioning so that the institutional interest of the State are not adversely impacted, and thus, while deciding on condonation of delay the Courts require a pragmatic approach in a justice oriented process. The Courts should decide matters on merit unless the same are hopelessly

without merits. Moreover, a substantive relief should not be denied on account of procedural laxity, if any. In view thereof, it is prayed before the Commission to condone the delay of 85 days in filing the accompanying Review Petition.

Hearing dated 04.04.2024

18. Sh. Divyanshu Bhatt, Counsel appearing on behalf of UPPCL submitted that Petitioner has filed the instant Petition to review and rectify the inadvertent error that has crept in while passing of the final Order, which is to direct the UPSLDC that whatever DSM was recovered from NPCL and solar generators by UPSLDC prior to 01.10.2022 be adjusted/settled with UPPCL. He further submitted that the Commission vide Order dated 11.03.2024 had directed the Petitioner to file an additional affidavit explaining the 85 days delay in filing the review Petition. The Petitioner vide affidavit dated 01.04.2024 has submitted a day wise breakdown for the reasons and process for delay in filing the review petition.

19. He further submitted that the Commission had initiated suo-moto proceedings in which multiple issues were considered by the Commission. The Commission may observe that the discussion about initiating this cause of action in fact began even prior to the final order was passed. There were multiple entities that were initiating this conversation and contemplating who would be the entity who should initiate this cause of action before the Commission. He further submitted that the Petitioner is honest about how the files transferred or the cause of action persuaded from one office to other. From the same, it may be observed that the Petitioner has filed this petition within 60 days of when it was asked for the first time between different entities to pursue the matter. It is on 18.10.2023 when file was transferred to the Petitioner and within 60 days from that date, we filed the review petition.

20. He argued that there could have been a better way of approaching this issue or a better way of strategizing how to approach the issue within the given period of time considering the statutory timelines that are prescribed. However, there is no delay on the part of the petitioner in pursuing this cause of action. Apart from that, if this issue has merit in the eyes of the

Commission, then the justification offered for the purposes of delay in initiating that cause of action before the Commission, should not derail the dispensation of a just cause which is being initiated before the Commission.

21. Further he submitted that the Commission vide Order dated 17.02.2023 had directed that from 01.10.2022 to 31.03.2023, all the amounts that have been accumulated with UPPCL, need to be transferred to UPSLDC. This was also complied with by UPPCL. However, there was an oversight that prior to 01.10.2022, the interaction with regional grid or the national Grid was being carried out by UPPCL for all of the UP entities. The problem was that, while UPPCL was making DSM settlements with the regional grid for all, UPSLDC was in receipt of amounts from NPCL and some other solar entities, whose DSM bills were being prepared by UPSLDC even prior to 01.10.2022. Thus, the payments for DSM accounts for NRPC, state generating companies, excluding solar generators and NPCL were maintained and adjusted by UPPCL. Therefore, prior to 01.10.2022, the DSM settlement at UP periphery with NRPC has been carried out by UPPCL, so any intra state DSM amount available with UPSLDC before 01.10.2022 has to be transferred to UPPCL, and the same should be adjusted/transferred with the amount to be transferred by UPPCL to UPSLDC from 01.10.2022 to 31.03.2023.The DSM amount available with UPSLDC before 01.10.2022, which has to be transferred to UPPCL comes to about Rs. 73.73 crores. Now, there is error apparent on record because while the Commission was very cognizant about what is to be the treatment done between 01.10.2022 to 31.03.2023 and beyond for the DSM, the Commission quite inadvertently missed to take into account the fact that DSM settlement at UP periphery with NRPC has been carried out by UPPCL, so any intra state DSM amount available with UPSLDC before 01.10.2022 has to be transferred to UPPCL, and the same should be adjusted/transferred with the amount to be transferred by UPPCL to UPSLDC from 01.10.2022 to 31.03.2023. Therefore, the Commission quite inadvertently persisted with the error that had crept in Order dated 17.02.2023, wherein the Commission had presumed that all the DSM settlements at UP periphery were being carried out solely by UPPCL prior to 01.10.2022.

Commission's view

22. The Commission vide Order dated 11.03.2024 had observed that Petitioner did not submit proper and detailed reasons/ justification for the 85 days delay in filing the review Petition and such large delay could not be condoned without proper justification. Therefore, the Commission directed the Petitioner to file an additional affidavit explaining the 85 days delay in filing the Review Petition within two weeks and decided to hear the matter on admissibility on account of delay in filing of the Petition. Accordingly, the Commission heard the matter at length on 04.04.2024 regarding admissibility of the Petition.

23. The Commission, after careful perusal and examination of submissions made by the Petitioner, has observed that pursuant to the Order dated 21.06.2023 and 30.06.2023 issued by the Commission, the Petitioner only initiated the process of filing review Petition in its organisation on 21.10.2023 i.e. after delay of more than 3 months whereas as per Regulation 51 of UPERC (Conduct of Business) Regulations 2019, any person aggrieved by a decision or order of the Commission has to file a review within 90 days of the date of the decision or order. Further, it is observed that deliberations within Petitioner's organisation about whether the Review Petition is to be filed or not, was not even started up to the time limit for filing the review petition. The timelines provided by the Commission in the Regulations are very generous as the Supreme Court Rules, 1966, provides only 30 days for the Review application to be entertained. Further, it is pertinent to mention that the power to condone the delay or to admit the review preferred after the expiry of time is discretionary but must be exercised with caution only after being satisfied that the reason of delay in filing the Petition are bonafied and definitely not emerging out of careless or negligent behaviour of Petitioner. The Hon'ble Supreme Court in 1962 in the case of Ramlal, Motilal and Chhotelal vs. Rewa Coalfields Ltd. has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. **The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay**

depending upon the bona fides of the party. Further, the Hon'ble Supreme Court in Maqbul Ahmad and Ors. vs. Onkar Pratap Narain Singh and Ors., had held that the court cannot grant an exemption from limitation on equitable consideration or on the ground of hardship. **It has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone.**

24. Considering above, the Commission at the very outset observes that the Petitioner was negligent in pursuing the reference and then in filing the proposed Review. It is not only in this case but in various other cases also that the conduct of UPPCL, has been found as wanting in adhering to the timelines. The Commission has also gone upto the reasons of delay and is compelled to observe that unless UPPCL cuts out the labyrinth of level of approvals and sluggishness associated with each level, it will probably fail to meet the timeline without exception. The Commission is in no way satisfied with conduct of the Petitioner and the arguments placed before it for delay condonation. Therefore, the Commission, after careful consideration of the facts and circumstances of the case has not found it fit to exercise its discretionary jurisdiction of condoning the delay. Thus, the Petition is not admitted and dismissed accordingly.

(Sanjay Kumar Singh) **Member**	**(Vinod Kumar Srivastava)** **Member (Law)**	**(Arvind Kumar)** **Chairman**

Place: Lucknow

Dated: 19 .04.2024