



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

**Petition No.1532/2019**

**Date of order: 22 .01.2020**

**PRESENT:**

1. Hon'ble Sri Raj Pratap Singh, Chairman
2. Hon'ble Sri Kaushal Kishore Sharma, Member
3. Hon'ble Sri V.K. Srivastava, Member (Law)

**IN THE MATTER OF:** Seeking review of certain Regulations of CRE, Regulation, 2019.

**Petitioner:**

UP Power Corporation Ltd.,  
(through its Chief Engineer, PPA-R),  
14th Floor, Shakti Bhawan Extension,  
14- Ashok Marg,  
Lucknow

**In the Presence of**

1. Sri V.P. Srivastava, Dir (CP), UPPCL
2. Sri S.K. Sinha, CE- PPA-II UPPCL
3. Sri Mahendra Singh, SE- PPA-II, UPPCL
4. Sri Anil Prakash, EE-PPA-II, UPPCL
5. Sri C.P. Maurya, AE-PPA-II, UPPCL
6. Sri Deepak Gupta, Secretary, Co-gen Association
7. Sri Sandeep Agarwal, Sr. GM
8. Sri Himanshu, Sr. Manager
9. Sri W.H. Zaidi, Asstt. Secretary, UPSMCA
10. Sri Anand Tripathi, UPSMA
11. Sri Rajiv Srivastava, Advocate, UPPCL

**ORDER**

**(Date of hearing: 10.01.2020)**

UPPCL has filed instant petition seeking inclusion of certain provisions/ amendments in CRE Regulations, 2019 as here under:

**General power to amend:**

1. UPPCL submitted that General power to amend clause is not incorporated as provided in earlier (repealed) Regulations. They submitted that "General power to amend" is located in section 21 of General Clause Act, 1897 (which is an interpretation Act) that provides "power to issue include power to amend, vary or rescind notification, orders,



rules, or bye-laws". They contended that review / amendment in provisions of CRE Regulations, 2019 can be undertaken in exercise of General Power to Amend. UPPCL also contended that power of the Commission as defined under section 94 (1) (f) of the Electricity Act, 2003 which provides "reviewing its decision, directions and Orders" is distinct from framing of the Regulations.

2. The Commission recalled following provision of UPERC (Conduct of Business Rules) Regulations, 2004 (CBR):

***"57. Inherent power of the Commission***

*(a). Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to pass such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.*

*(b) Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the applicable legal framework, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for the reasons to be recorded in writing deems it necessary or expedient for dealing with such a matter or class of matters.*

*(c). Nothing in these Regulations shall, expressly or impliedly bar the Commission to deal with any matter or exercise any power under the applicable legal framework for which no Regulation has been framed, and the Commission may deal with such matters and functions in a manner it thinks fit.*

***58. General Power to amend***

*a. The Commission may, at any time and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it, and all necessary amendments shall be made for the purpose of determining the real question or issue arising in the Proceedings. Provided that if the Commission desires to make amendments or rectifications in order to determine the real question or issue arising the Commission shall provide an opportunity to the parties affected by such amendments or rectifications in order to determine the real question or issue arising the Commission shall provide an opportunity to the parties affected by such amendments or rectification touching the real question or issue to make representation and submissions with respect to the proposed amendments or rectification.*

*b. Clerical or arithmetical mistakes in the orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Commission of its own motion or on the application of any of the parties."*

3. The Commission observed that UPERC (Conduct of Business Rules) Regulations, 2019 (CBR) already contains "inherent powers of the Commission" and "power to amend" under its clause 57 & 58 respectively, which enables the Commission to amend or modify





any of the regulations and accordingly there is no requirement of separate provision regarding this under CRE Regulations.

**Banking and withdrawal of banked power:**

4. UPPCL submitted that under Regulation 31 of CRE Regulations, 2019 Banking and withdrawal provision provides that RE Generating Power Plant (except SHP and MSW) to withdraw power that was banked during a quarter within two subsequent quarters. This provision is too flexible and will severely affect the power purchase cost of UPPCL. UPPCL sought similar provision as provided by Maharashtra Electricity Regulatory Commission in this respect, which provides that energy banked during the month is to be adjusted during the same month as per the energy injected in respective Time of Day (ToD) slots.

5. The Commission observed that the decision to allow withdrawal of banked power upto two subsequent quarters is a considered opinion keeping in view requirement of seasonal generators particularly sugar industry because their crushing season overlaps 2 financial years and their off-season repairs take place during May-Oct. If withdrawal of banked energy is limited to end of financial year, all their banked energy of previous year ending March will not be available to them and banked energy of month of April in subsequent financial year will be in-sufficient to take care of their off-season repair energy needs for the period May-Oct. when they need it. Nevertheless, if UPPCL can substantiate its claim regarding adverse impact of this provision on their power procurement cost, the Commission may revisit this provision.

6. UPPCL agreed that it is not even a year since the Regulations have come into effect so it would require sometime before credible data is available for gaining insight into the effects of this provision.

7. Considering above, the Commission decides to retain the present provision regarding banking till UPPCL can substantiate an adverse impact on its power procurement cost due to the existing dispensation.

**Tariff for other RE sources:**

8. The tariff for other RE sources was provided in CRE Regulations, 2014 which are primarily industrial waste. It is the case of UPPCL that though CRE Regulations, 2019 under Regulation 24(ii) stated that "in case of other renewable energy-based plants, the tariff for supply of electricity during the period of synchronization and commissioning of the unit shall be equal to 50% of the tariff", but the tariff for other RE sources is not specified. Accordingly, UPPCL has requested that the tariff for same should be provided in current Regulations.

9. The Commission observed that in the CRE Regulations, 2014, the tariff for other RE technologies was provided for the plants commissioned before FY 2014-15 and also for those commissioned in FY 2014-15. Further, the Commission, in the same regulation, had





also observed that tariff for other RE technologies shall be provided on case to case basis in accordance with such terms and conditions as stipulated under relevant orders of the Commission.

Subsequently, the Commission in the matter of tariff for SLOP based power made following observation in an order issued on petition no. 1045 of 2015:

*"11. During the hearing, it was observed by the Commission that so far SLOP is not defined under RE category by MNRE. This is also recognized that so far, no benchmark for tariff fixation is available to decide the tariff for SLOP based power.*

*12. The Commission observes that on one hand it is our duty to promote RE but in doing so it is also our duty to protect interest of the consumers at large. Since there is no benchmark for capital cost and operational norms, it is not prudently possible to decide the tariff for SLOP. In view of this, the Commission decides that power from above plant be sold at APPC (Average Power Purchase Cost) within the agreed terms of PPA along with additional benefit of REC. The benefit of REC, if admissible, may be availed by the generator."*

While framing CRE Regulations, 2019, in its draft, following observations were made under Section-II G of draft:

"

**G. Any other RE source-based generation**

*In accordance with Regulation 4 for any renewable energy technologies approved by MNRE, other than Bagasse Based Generation & Cogeneration Plants, Biomass (Rice Husk Based) Generation Plants, Municipal Solid Waste Based, Generation Plants, Biogas Based Generation Plants, Biomass Gasifier Based Generation Plants, Small Hydro Generation Plants and Solar Power Generation Plants, tariff shall be the average power purchase cost (APPC) of the last FY determined by the Commission."*

10. In line with the draft above, the Commission has retained APPC of the last financial year for various other renewable energy technologies however, it has also inserted a provision that if such Renewable Energy generator satisfies the Commission that its technology has come subsequent to this notification and is recognized by MNRE as Renewable Energy, which necessitates a tariff other than average power purchase cost (APPC), then the Commission may determine tariff for such generating stations on case to case basis.

**Declaration of captive status of plant:**

11. UPPCL cited various orders of ERCs along with order from Hon'ble APTEL to maintain that it is the onus of the Commission to declare a plant "captive" if it qualifies the stipulated criterion in the Act and relevant Rules. UPPCL contended that it is essential to put in place such a procedure.



12. The Commission asked UPPCL what is the current methodology adopted by UPPCL for declaring a plant as captive plant for making these eligible for benefits accruing to captive plants.

13. UPPCL could not give a firm answer to this and sought time from the Commission to revert on this issue. UPPCL submitted that they will deliberate on the issue of declaration-procedure for granting captive status to a generator and shall revert to the Commission accordingly. At this stage, UPPCL does not want to pursue this prayer.

**Tariff for bagasse plant commissioned before 2005-06:**

14. UPPCL submitted that tariff for bagasse plant commissioned before 2005-06 is missing from the Regulations, 2019 and accordingly should be provided in the regulations. The Commission acknowledged this as an inadvertent omission in the Regulations and observed that in its draft it was provided that tariff for bagasse-based plant commissioned before 2005-06 will be same as for the bagasse-based plants commissioned in FY 2005-06. Similar provision also existed in the CRE Regulations, 2014.

15. Hence, the Commission decides to allow the same tariff to bagasse-based plants Commissioned before 2005-06 as applicable for the bagasse-based plant commissioned in FY 2005-06, which is being included/amended in the UPERC (CRE) Regulation 2019 as per below:

**A. Bagasse based Generation & Cogeneration Plants**

**i. Tariff for Existing Bagasse based projects Commissioned during FY 2005-06 or earlier \* to FY 2008-09**

The fixed & variable costs and total tariff for the existing plants commissioned during FY 2005-06 or earlier \* to FY 2008-09 shall be as shown below:

**Table 13: Fixed Cost –Bagasse based Existing Projects commissioned during FY 2005-06 or earlier \* to FY 2008-09 (Rs/kWh)**

Year of Commissioning	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
FY 2005-06 or earlier *	1.15	1.18	1.21	1.24	1.27
FY 2006-07	1.17	1.20	1.23	1.26	1.29
FY 2007-08	1.19	1.21	1.24	1.28	1.31
FY 2008-09	1.20	1.23	1.26	1.29	1.33





Table 14: Variable Cost –Bagasse based Existing Projects commissioned during FY 2005-06 or earlier \* to FY 2008-09

Financial Year	Variable Cost (Rs/kWh)
FY 2019-20	1.77
FY 2020-21	1.85
FY 2021-22	1.95
FY 2022-23	2.04
FY 2023-24	2.15

Table 15: Total Tariff –Bagasse based Existing Projects commissioned during FY 2005-06 or earlier \* to FY 2008-09 (Rs/kWh)

Year of Commissioning	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
FY 2005-06 <u>or earlier</u> *	2.92	3.03	3.16	3.29	3.42
FY 2006-07	2.94	3.05	3.18	3.30	3.44
FY 2007-08	2.95	3.07	3.19	3.32	3.46
FY 2008-09	2.97	3.09	3.21	3.34	3.47

Annual Fixed cost for existing plants commissioned during FY 2005-06 or earlier \* to FY 2008-09 for control period of these Regulations shall be as shown in Table below:

Table16: Annual Fixed cost of Bagasse based Existing Projects commissioned during FY 2005-06 or earlier \* to FY 2008-09 (Rs lakhs per MW)

Year of Commissioning	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
FY 2005-06 <u>or earlier</u> *	46.14	47.28	48.49	49.75	51.08
FY 2006-07	46.87	48.01	49.22	50.48	51.81




FY 2007-08	47.53	48.68	49.88	51.14	52.47
FY 2008-09	48.26	49.40	50.61	51.87	53.20


# or earlier \* is being inserted in the Amendment / Addendum of UPERC (CRE) Regulations, 2019.

**Provision regarding sharing of CDM benefits/ carbon credit:**

16. UPPCL sought the provision regarding sharing of CDM benefits/ carbon credit as provided in earlier Regulations. However, during hearing UPPCL decided to not to press this prayer. The Commission allowed UPPCL to withdraw prayer regarding CDM benefits

17. The petition is, accordingly, disposed of with the direction that observations at para no.3, 7, 13, & 16 above do not require interference of the Commission in CRE Regulations, 2019 at this Stage. Further, directions are being issued to amend / insert provisions for implementation of decisions contained in Para no.10 & 15 of this order.

  
(V. K. Srivastava)  
Member (Law)

  
(Kaushal Kishore Sharma)  
Member

  
(Raj Pratap Singh)  
Chairman

Place: Lucknow

Dated: 22.01.2020