

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Review Petition no. 14/2007 filed on 04.12.2007 filed by M/s Rai Bahadur Narain Singh  
Sugar Mill Ltd. ....Petitioner

**Coram**

<b>Shri V.J. Talwar</b>	<b>Chairman</b>
<b>Shri V.K. Khanna</b>	<b>Member</b>
<b>Shri Anand Kumar</b>	<b>Member</b>

**Date of Order: August 26, 2008**

**ORDER**

1. This Petition has been filed by M/s. Rai Bahadur Narain Singh Sugar Mills Ltd. (hereinafter referred to as the "Petitioner") on 04.12.2007 seeking review and / or modification in the Commission's order dated 22.10.2007 on Petition no. 2 of 2007 pertaining to tariff determination for Phase-I of the co-generation plant of the Petitioner for financial years 2005-06 to 2014-15.
2. Brief facts of the matter before the Commission are that a Petition for determination of tariff for sale of power to UPCL (the distribution licensee in the State) from Phase I of 14.6 MW of Petitioner's cogeneration plant was filed before the Commission on 31.08.2006. Based on the UERC (Terms & Conditions for Determination of Tariff for Bagasse Based Co-generation Projects) Regulations, 2007 (Regulations) and after examination of the material furnished by the Petitioner and hearing objections filed by different stakeholders, the Commission passed the final order in the matter on 22.10.2007 dealing at length with the various issues pertaining to the tariffs payable

by UPCL for sale of power by the Petitioner's plant. The present Petition seeks certain changes in the above order for reasons listed out in the Petition.

3. A copy of the Review Petition was sent to UPCL on 20.02.2008 for its comments on the same. However, no response has been received from UPCL on the same.
4. On 06.03.2008, a submission was made by the Petitioner that the Commission had since issued the draft UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008, which it may accept as and when notified. Hence, the relief sought by it through its review petition for the period beyond FY 2008-09 would become infructuous and consequently the scope of its review Petition may be deemed to be for the period FY 06 to FY 08 only. The Petitioner, therefore, requested the Commission to defer the adjudication of the review Petition till the new Regulations are notified by the Commission.
5. On 24.06.2008 a submission dated 23.06.2008 was made by the Petitioner before the Commission seeking amendment in the review application filed by it against the Commission's order dated 22.10.2007 for the period 2005-06 to 2014-15. The Petitioner stated that the Commission has now notified its new Regulations titled UERC (Tariff and other terms for supply of electricity from non-conventional and renewable energy sources) Regulations, 2008 providing for levelled tariff and have come into force w.e.f. 01.04.2008 and are applicable prospectively. These Regulations also provide that in case where legally valid PPAs have been entered into with the distribution licensees, the generator will have the option to be covered under these Regulations with a proviso that their PPA will have to be suitably revised.
6. The Petitioner submitted that it now decides to be covered under the new tariff regime as specified in the new Regulations and this intention has been communicated to UPCL requesting it to take necessary steps for amending the existing PPA in consonance with the new Regulations notified by the Commission. The Petitioner also submitted that the reliefs sought by it in the review Petition from FY 09 onwards do not survive and have become infructuous as it has opted to be

covered under the new Regulation. The Petitioner, therefore, requested that the relief sought in the review Petition may be treated to be confined to FY 06, FY 07 and FY 08 only. The Petitioner also requested the Commission for a hearing. The Commission conducted a hearing on 20.08.2008 at Commission's office wherein both the Petitioner and UPCL were heard in the matter. The Commission took note of the views of both the parties and the same have been discussed later in the Order.

7. Section 94(1)(f) of the Electricity Act, 2003, section 114 and order 47 of the CPC and Regulation 139 of UERC (Conduct of Business) Regulations, 2004 deal with the specific issue of Commission's powers to review its order. A combined reading of these sections shows that the powers available to the Commission in this connection are limited and have been defined in section 114 and Order 47 of the CPC. Therefore, for the application to be maintainable under law, it has to necessarily meet the test of fulfilling the requirements of section 114 and order 47 of CPC. As per the above provisions, the specific grounds on which review can be made are (a) if there is a discovery of a new and important matter of evidence which after the exercise of due diligence was not within the knowledge or could not be earlier produced; (b) there are mistakes or errors apparent on the face of the record; and (c) if there exist other sufficient reasons.
8. As laid down by the Hon'ble Supreme Court and Hon'ble High Courts in number of cases the review jurisdiction is not a substitute for an appeal and cannot be exercised for reconsideration of the issues. The errors or mistakes should be apparent on the face of records namely it should be self-evident. There has to be a patent error, which could be detected without advancing long drawn arguments. It is also a settled principle that the expression "any other sufficient reason" should be given a meaning analogous to those specified immediately before, namely error or mistake apparent on the face of the record.
9. The Petitioner claims that the review Petition is based on additional facts, information and documents, which have come into the knowledge of the Petitioner after the passing of the tariff order. The Petitioner also claims that the tariff order has

failed to take into account several relevant and important facts which constitute an error apparent on face of records for which the Petitioner has sought review in the Petition. The contentions of the Petitioner in the review Petition are detailed below:

**Annual Target of ESO is highly onerous in view of the limited days of functioning of the sugar mill:**

10. The Petitioner contends that although the Commission had stipulated in its Order that the Annual Target of Energy Sent Out (ESO) during the year at an annual PLF of 45% have to be calculated by multiplying actual number of working days in a year, however, this assumption does not take into account the ground realities and special circumstances prevalent in the region of Uttarakhand. The expected level of working would cause immense hardship to the Petitioner. The functioning of Petitioner's plant is inextricably linked to working of the sugar plant which is linked to the period when supply of bagasse is available. In Uttarakhand, due to its peculiar geo-climatic factors, the sugarcane matures late with the result the sugar mills commence crushing only in the second week of November every year unlike the sugar mills in the neighbouring state of U.P. where crushing operations begin much earlier. Further, the crushing is closed in about mid of April every year due to non availability of sugar cane. Thus, the working of sugar mills in this region is restricted between 150-170 days. Thereafter, the mill is closed in pursuance to the Order passed by the Cane Commissioner requiring the mills to close due to non-availability of millable cane. Thus, the Petitioner has no control over the seasonal closure of the mill, which is done in pursuance of the order of the Cane Commissioner. Thus, it is clear that the average working days of the sugar mill are much lesser than those taken into account by the Commission which is totally beyond the control of the Petitioner. Sugarcane procurement cannot be made or increased due to reasons of cane area reservation and purchase of sugarcane only from such area is permitted. After separation of the State of Uttarakhand from U.P., the chances of more cane area allocation is also not possible.

11. Thus, an average working of the sugar mills can be said as 160 days with 88% efficiency during which bagasse shall be produced. Even in other parts of the country, the normal working days of the bagasse based cogeneration plant vary in the range of 160-180 days. In those places, the off season days are also counted on the basis of the assumption that the power plant can be operated on the basis of stored bagasse and/or from other biomass which is not possible in Petitioner's case as the Petitioner has installed a low cost back pressure turbine to cater steam requirement of generation plant and sugar mill both to maximize the use of heat energy. The bagasse consumption for this type of turbine is 2.36 kg per kWh as against 1.45 kg per kWh in condensing turbines used for purely generation purposes. Thus, operating the turbine in off-season with bagasse or any other alternate fuel, about 38% energy shall be lost which is not viable. Moreover, other biomass is not available sufficiently during off season and the cost of this fuel is also very high and uneconomical. Thus, there is no scope of operating the plant beyond sugar season. Further, since bagasse is a bulky item it cannot be stored abundantly due to space problem and fire risk. For this reason, sugar mills sell the surplus bagasse during season and store only small quantity of bagasse for start of boiler in next season. Thus, there is not sufficient quantity of bagasse available in off season.
12. Thus, the Petitioner has prayed that the Order may be reviewed and 160 days with 85% efficiency/PLF should be taken as the norm operating for sugar mill and cogeneration plant. The Petitioner has requested to consider a comfort level of 5% in PLF to optimize the targeted ESO and has given the calculation of RFC based on optimum ESO. Based on the PLF of 80% and 160 working days in a year, the Petitioner has arrived at an ESO of 410.39 LU.
13. During the hearing, the Petitioner submitted that the generation would not be viable during the off-season as about 70% of the steam would go waste. Hence, it would not be feasible to run the plant beyond 160 days. UPCL contended that the Regulations specify ESO to be calculated at 45% PLF and the Petitioner should have

mentioned its limitation, when the Regulations were being finalized. Thus, this cannot be the ground of relief at this stage.

14. The facts presented by the Petitioner are not new facts and these facts always existed. While finalising the draft UERC (Terms & Conditions for Determination of Tariff for Bagasse Based Co-generation Projects) Regulations, 2007, the Commission had envisaged an annual PLF of 60% but on considering the responses revised it to 45% in the Final Regulations. The Petitioner was also given an opportunity to send its comment but it never responded on this issue. Thus, this is clearly not a case of review and the facts submitted by the Petitioner cannot be considered at this stage.

**Draft notification dated 24.10.2007 amending Regulation 23 with regards to the O&M expenses**

15. Petitioner has stated that it was allowed O&M expenses at 3.5% on actual capital cost in accordance with Regulation 23 of the UERC (Terms and Conditions for Determination of Tariff for Bagasse based Cogeneration Project) Regulations, 2007. However, the Commission, thereafter, amended this provision in its Draft UERC (Terms and Conditions for Determination of Tariff for Bagasse based Co-generation Projects) (First Amendment) Regulations, 2007 stipulating that O&M expenses shall be allowed @ 3.5% of the ceiling for capital cost. The Petitioner has, therefore, prayed to review the order and be allowed O&M expenses at the ceiling of the capital cost.
16. During the hearing, UPCL claimed that the draft Regulation referred by the Petitioner were not finalized by the Commission. Hence, this cannot be considered as a ground of review. Further, on Petitioner's contention that the Commission has notified UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008 wherein normative O&M expenses has been stipulated to be 3.5% of the capital cost of Rs. 3.50 Crore/MW and the same should be applied for previous years, UPCL stated that the new Regulation cannot be applied retrospectively. Further, UPCL submitted that actual O&M expenses for the years under review may be furnished by the Petitioner.

This is a difficult exercise as the Petitioner has not maintained separate details of expenses including O&M expenses for sugar and co-generation process and allocation of the same would in itself be a cumbersome job which would require proper scrutiny of the basis taken for allocation of expenses.

17. This issue is not a ground for review. The draft Regulation referred to by the Petitioner were not finalized by the Commission and the Commission decided to include this issue in separate Regulations. The Commission, thereafter, notified UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008 wherein levelled tariffs were specified based on certain norms laid down in the Regulations. However, the new Regulations were applicable w.e.f. 01.04.2008 and thus, cannot be applied retrospectively.

**Lack of adequate incentives and also tariff is much low compared to other States where a uniform tariff level is being fixed:**

18. The Petitioner has stated that Electricity Act enjoins upon the Commission to pay due regard to the need to promote co-generation and generation of electricity from renewable sources of energy while determining the tariff. The National Electricity Policy and National Tariff Policy also reiterate certain additional measures to provide incentive to cogeneration plants. Keeping these factors in mind, various State Commissions have adopted a uniform level tariff for the cogeneration projects commissioned in their respective States due to their beneficial long term impacts. The tariff rate is much higher and is not project specific in other States. Tariff rates have been designed accordingly, which will accrue adequate remuneration to project with high capital cost and at the same time grant incentive and extra benefits to projects where capital costs have been kept low due to prudent management. However, the Petitioner is not getting any incentive in the form of a higher tariff rate or a uniform tariff level. The Petitioner has requested to allow it the maximum tariff under the Regulations, i.e. by allowing the AFC on normative capital cost or to allow

it an incentive for saving in cost on 50:50 basis. Alternatively, a uniform tariff rate as applicable to cogeneration plants in the neighbouring States of U.P. and Haryana may at least be adopted since the Petitioner mill is also similarly placed with those mills in the neighbouring States of U.P. and Haryana.

19. This contention is also not a case of review. The Electricity Act, 2003 requires the State Commission to be guided by its Regulations while determining tariffs. Regulations clearly stipulate that tariffs would be two part tariff. Regulations also lay down the manner in which the Annual Fixed Charges and Energy charges would be determined and recovered. The contention of the Petitioner that uniform tariff rates as applicable to cogeneration plants in the neighbouring States of U.P. and Haryana may be adopted since its mill is also similarly placed with those mills in the neighbouring States are refuted by the Petitioner itself when in first issue raised by it, it has stated that the crushing seasons of the Petitioner's mill is lower as compared to U.P. U.P. Commission has fixed an annual PLF of 60% taking number of working days as 225. In other States also the annual PLF fixed ranges from 55% to 60%. Thus, where on one hand the Petitioner wants incentive on the same grounds as other States have done, yet it wants relaxation in certain operational parameters.
20. While framing the Regulations, the practices and norms followed in other States were analysed. All the norms so fixed are comparable with what has been allowed in other States. The Petitioner was given an opportunity to send its responses on the draft Regulation, but the Petitioner did not submit its response on the issue. The issues raised by the Petitioner pertain to review of the Regulations which cannot be opened at this stage. However, the Commission has issued separate Regulations specifying the tariffs and other terms for supply of electricity from non-conventional and renewable energy sources in which the Commission has determined a levelled tariff on principles as claimed by the Petitioner based on the normative values.

**Special Factors as mentioned in Section 62(3) of the Act, i.e. Differential Tariff depending upon the time of supply and geographical position of any area, not considered:**

21. The Petitioner has stated that the cogeneration plant commences production in the winter season and supply is made during the time when due to extremely chilly weather in the region, the gap between demand and supply rises multifold. The region is normally power deficient during this period due to low lying water in the rivers for hydro plants and so UPCL is forced to purchase electricity at very high rates to overcome the deficit. Therefore, the contribution made by the Petitioner's plant during this period carries more value and significance compared to power supplied during times when the demand is not high. This factor brings immense benefit to UPCL as well as the consumers in terms of its value addition due to time and geographical location. The Consumers will not be in any manner affected adversely if proper incentives are given as per the mandate of section 62(3) in the tariff determined for the Petitioner company. Therefore, the Petitioner has prayed that the order may be reviewed and adequate incentives in terms of a higher tariff rates may be provided to the Petitioner company.
22. The reference to Section 62(3) made by the Petitioner is not relevant to the generating company. It talks about tariff for consumers and this was also pointed out by UPCL. Regarding supply by cogeneration plants during winters, the Commission well acknowledges this fact and has considered it while framing the Regulations. Further, the issue has already been discussed above. Hence, this issue does not pertain to review.

**Loss Incurred due to non completion of transmission lines not taken into account**

23. The Petitioner has submitted that its project was complete in all respect and was ready to deliver power to UPCL but it could not deliver whole power to the Grid due to non-completion of 132 kV transmission line in October 2006 as committed by

PTCUL/UPCL. Consequently, the Petitioner Company could run its generator at very low capacity and only 50% of the power could be transmitted through a low capacity temporary transmission line of 33 kV which is full of interruptions like low frequency/low voltage trippings and breakdowns. Therefore, due to delay in construction of transmission lines, the Petitioner company is not being able to supply the total energy generated with the result its revenue requirements for the cogeneration plant have remained unfulfilled. The resultant non-evacuation of available electricity and coupled with the low tariff, the economic viability of the project is gravely affected. It is also facing under-recovery of fixed charges due to supply of lesser units as compared to targeted supply due to non-commissioning of transmission lines.

24. This is not a tariff issue and has to be resolved between the generator and the licensee. In case of any dispute the parties can come before the Commission for adjudication of disputes.
25. Thus, none of the issues raised by the Petitioner meets the test of fulfilling the requirements of section 114 and order 47 of CPC for review of Order.
26. The Petition is disposed off accordingly.

**(Anand Kumar)**  
**Member**

**(V.K. Khanna)**  
**Member**

**(V.J. Talwar)**  
**Chairman**