Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Application filed by M/s Rai Bahadur Narain Singh Sugar Mills Ltd., Haridwar in the matter of misc petition under UERC (Tariff & Other Terms for Supply of Electricity from Renewable Energy Sources and Non-fossil fuel based Co-generating Stations) Regulation, 2010 repealed by UERC (Tariff & Other Terms for Supply of Electricity from Renewable Energy Sources and Non-fossil fuel based Co-generating Stations Regulation, 2013 for relief/relaxation against normative Energy Charge Non-fossil fuel based Cogeneration of Power (Bagasse Based) plant.

AND

In the matter of:

In the matter of Urgency application for hearing of above referred misc Petition filed by M/s Rai Bahadur Narain Singh Sugar Mills Ltd., Haridwar

AND

In the matter of:

M/s Rai Bahadur Narain Singh Sugar Mills Ltd. … Applicant

AND

Uttarakhand Power Corporation Ltd. ... Respondent

CORAM

Shri Jag Mohan Lal **Chairman**
Shri C.S. Sharma **Member**
Shri K.P. Singh **Member**

Date of Hearing: March 24, 2014
Date of Order: April 10, 2014

An Application was received from M/s Rai Bahadur Narain Singh Sugar Mills Ltd. (hereinafter referred to as "M/s RBNS" or "the Generator" or "the Applicant") in the matter of misc petition under UERC (Tariff & Other Terms for Supply of Electricity from Renewable Energy Sources and Non-fossil fuel based Co-generating Stations) Regulation, 2010 repealed by UERC (Tariff & Other Terms for Supply of Electricity from Renewable Energy Sources and Non-fossil fuel based Co-generating Stations Regulation, 2013 for relief/relaxation against normative for Energy Charge Non-fossil fuel based Cogeneration of Power (Bagasse Based) plant. The following relief/relaxation has been requested by M/s Rai Bahadur Narain Singh Sugar Mills Ltd. in its Application:-

(a) To review/relax the restriction on applicability of Chapter 5 put in Para 2 of Chapter 1 defining 'Scope and Extent of application" of Chapter 5 of the "UERC (Tariff & Other Terms for Supply of Electricity from Non-conventional Renewable Energy Sources and Non-fossil fuel based Co-generating Stations) Regulation 2013" to grant relief in variable charge; or

(b) To review/relax the "UERC (Tariff & Other Terms for Supply of Electricity from Non-conventional Renewable Energy Sources and Non-fossil fuel based Co-generating Stations) Regulation 2010" by giving an option to switch-over to Fuel Cost adjustable with actual Index: or

(c) To, one time truing of Fuel cost by Rs 0.30/kwh (being the difference in variable charges for FY 2013-14 under the Regulation of 2010 & Regulation of 2013) may be considered at the beginning of FY 2013-14: or

(d) To pass any other order or orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

1. Background

The generator filed an application under affidavit dated 12.02.2014 in the matter of seeking relaxation as mentioned above. It also filed an Urgency Application on 15.02.2014 in the same matter. A copy of the application submitted by M/s RBNS was forwarded to UPCL for submission of reply by 14.03.2014. UPCL filed its response on the application on 18.03.2014. Submissions made by the Applicant & Respondent are as following:

1.1. M/s RBNS submitted that on notification of UERC (Tariff and other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008 (RE Regulations, 2008) it opted for levelised tariff specified in the RE Regulations, 2008 since relaxation was granted in the above mentioned Regulations by giving an option to generating stations commissioned after 01.01.2002 to be covered under the Regulations. The Applicant submitted that similar provision of relaxations was also given to the generators to be covered under UERC (Tariff & Other Terms for Supply of Electricity from Non-conventional Renewable Energy Sources and Non-fossil fuel based Co-generating Stations) Regulation 2010

(RE Regulations, 2010) and it opted for levelised tariff specified under the same. M/s RBNS opted for Variable Charge at "Normative escalation factor of 5% per annum" on Fuel cost for base year, i.e. FY 2009-10 was mentioned as Rs. 1013/MT. GSHR norm for the base cost was 1.60 by applying formula of SHR 3600 kCal/Kg and Calorific value of fuel at 2250/kCal/Kg and norm for Auxiliary consumption was considered as 8.5%. It submitted that 1.7473 Kg of biomass (Bagasse) fuel is considered to be consumed to generate net salable 1 kWh electricity after auxiliary consumption.

1.2. The Applicant submitted that the Commission again issued a new Regulation namely "UERC (Tariff & Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources and Non-fossil fuel based Co-generating Stations) Regulations, 2013 (RE Regulations, 2013). These regulations are in force w.e.f. 15.04.2013 and with coming into force of these regulations, former RE Regulations, 2010 stood repealed in a limited manner. While referring to provision of RE Regulations, 2013 wherein, applicability of Chapters 4 & Chapter 5 were restricted on the projects commissioned after 15.04.2013 it submitted that there was no change in the said regulations in respect of normative of GSHR, SHR, GCV, CUF, Auxiliary Consumption and normative escalation factor of 5% under Regulation 30 in Chapter 5 relating to 'Non-fossil fuel based Cogeneration Projects'. However, the cost of fuel for base year (2013-14) was revised and considered as Rs. 1531/MT for FY 2013-14..

1.3. M/s RBNS submitted that its fuel cost for FY 2013-14 works out to Rs. 1231/MT only by applying the '5% normative escalation factor' on base fuel cost of Rs. 1013/MT specified for the base year (i.e. FY 2009-10) under RE Regulations, 2010. It further submitted that it also opted for Variable Charge at "Normative escalation factor of 5% per annum" under former RE Regulations, 2010, and it is getting only Rs. 2.15/kWh as Variable charge in FY 2013-14 by restrictive provisions under Chapter I, Para 2 related to 'Scope and Extent of Application' of the Regulations of 2013. However, other generators who have started generation on or after 15.04.2013 will be getting variable charge @ Rs. 2.45/kWh at the same time at same option of normative under Chapter 5, thus, it is debarred from the benefit of truing up of Fuel cost.

1.4. The Applicant further submitted the fuel cost in the base year, i.e. FY 2009-10 in the former RE Regulations, 2010 was Rs 1013/MT and the fuel cost has been specified as Rs. 1531/MT in the base year, i.e. FY 2013-14 as taken in the RE Regulations, 2013 by the Commission. Thus, according to the Applicant a simple average of yearly escalation in fuel cost during FY 2009-10 to FY 2013-14 works out to 12.78% as against the normative escalation factor of 5%.

1.5. M/s RBNS also submitted that the year of CoD of generating plant do not in any way affect the cost of fuel required to be incurred for generation of electricity. Thus, there is no justification of making time based differential Variable charge between generators opting for similar norms under Chapter 5. M/s RBNS submitted that the actual average value of Bagasse fuel for it was Rs. 1379.73/MT in FY 2012-13 and Rs. 1342.61/MT in FY 2011-12. In its support it referred to Note no. 21 of the Audited Balance Sheet. It also submitted a copy of invoices for the period from Dec. 2013 to Jan. 2014 claiming that at present market value of Bagasse worked out to Rs. 1596.51/MT thereby meaning that there is a continuous short recovery of fuel charges. It further submitted that the tariff for Variable Charges fixed by the Commission is excessively low and un-remunerative for the generators restricted to adhere to the RE Regulations, 2010 and, therefore, requires review/relaxation for truing up of fuel cost for earlier entrants.

1.6. It referred to Section 61 (h) of the Electricity Act, 2003, the National Electricity Policy and the National Tariff Policy which enjoins to promote co-generation and generation of electricity from renewable sources of energy while determining the tariff.

1.7. UPCL in response to the application submitted that the proviso to regulation 31(2) of RE Regulations, 2010 clearly provides the generator would give its option for normative or indexed fuel cost to the distribution licensee at least 3 months in advance of the date of commissioning or one month after the date of issuance of the Regulations, whichever is later. It also submitted that the option once exercised shall not be allowed to be changed during the validity period of the PPA. The Respondent vide its above reply submitted that the reliefs claimed in the Petition are vague, relief for review and relaxing the provisions are not same and cannot be granted in the alternative, even the fee to be paid for the relief is different and so is the limitation and ground for filing the petition for review or relaxation. It further submitted that the provisions for relaxing the regulations as referred by the Applicant have been repealed and cannot be given effect.

1.8. According to the Respondent in the circumstances as stated by the Applicant neither the provisions of any Regulation are required to be relaxed nor can be relaxed, more so of the repealed Regulation and also no review is maintainable. UPCL submitted that there is a time period prescribed for filing a review petition and the petition for review in any case is barred by time and no application for condonation of delay has been sought. It has also submitted that review of Regulations cannot be undertaken by the Commission through a judicial order and also contended that the petition is barred by limitation.

1.9. Hearing was held in the matter on 24.03.2014 wherein, the Applicant reiterated its submissions and the Respondent objected to the maintainability of the application.

2. Commission's views & decision

(a) Sub-Regulation (2) of Regulation 11 of the RE Regulations, 2010 provides that:

"(2)The RE Based Generating Stations and Co-generating Stations, except those mentioned under Proviso 1 & 2 to sub- Regulation (1) of Regulation 2, may opt for the generic tariff, as determined based on norms specified in these Regulations for different technologies, or may file a petition before the Commission for determination of "Project Specific Tariff". For this purpose RE Based Generating Stations and Co-generating Stations shall give its option to the distribution licensee at least 3 months in advance of date of commissioning or one month after the date of issuance of these Regulations, whichever is later. ***The option once exercised shall not be allowed to be changed during the validity period of the PPA****."*

(Emphasis added)

(b) Sub-Regulation (9) of Regulation 15 of the RE Regulations, 2010 provides that:

"(9) The tariff being normative, ***any shortfall or gain due to performance or other reasons is to be borne/retained by the RE Based Generating Stations and Co-generating Stations and no true up of any parameter, including additional capitalisation for whatsoever reasons****, shall be taken up during the validity of the tariff."*

(Emphasis added)

(c) W.r.t. applicability of fuel cost the generator had to give option for normative escalation or indexed fuel cost relevant proviso of sub-Regulation (2) of Regulation 31 of the RE Regulations, 2010 stipulates that:

Provided that the generator has to give his option for normative or indexed fuel cost to the distribution licensee at least 3 months in advance of date of commissioning or one month after the date of issuance of these Regulations, whichever is later. ***The option once exercised shall not be allowed to be changed during the validity period of the PPA****.*

(Emphasis added)

(d) The Commission observes that there exists valid long term PPA executed between the Applicant and the Respondent for sale of power at Rs 2.50 per unit in respect of the aforesaid project. The above referred Regulations 11(2) & 31(2) of the RE Regulations, 2010 prevents the generator to change its option once exercised by it. Further, Regulation 15(9) clearly states that any shortfall or gain due to performance or other reasons is to be borne/retained by the generator. In addition, relevant Regulation 30(1) of the existing RE Regulations, 2013 specifies applicable fuel cost only for the projects commissioned on or after 01.04.2013.

Thus, the readings of the above referred Regulations clearly provides that the option once exercised cannot be allowed to be changed. Therefore, the Commission holds that prayer of the Petitioner for review/relax of the provisions of the Regulations is not maintainable as relaxation/amendment of Regulations cannot be undertaken by the Commission while discharging its judicial function.

(e) In this regard, reference made by the Applicant to Regulation 50 of RE Regulations, 2013 is not valid. Regulation 50 is reproduced here:

*"**50. Power to Relax***

The Commission, for reasons to be recorded in writing, may vary any of the provisions of these regulations on its own motion or on an application made before it by an interested person."

The Commission has powers to relax the provisions of the Regulations, however, such powers cannot be exercised by the Commission while discharging its judicial function. Any relaxation or amendment to any provisions of the Regulations can only be done through Regulations & not by way of Orders.

(f) Moreover, the Commission has also taken note of the fact that the RE Regulations, 2013 and its subsequent amendment have been notified following the due procedure after seeking comments/suggestions from stakeholders. The generator had not made any representation in the matter though it had submitted its comments on other issues of the draft RE Regulations, 2013. Instant application of the generator appears to be an afterthought to seek coverage under provisions of the existing RE Regulations, 2013 which is clearly prohibited under the same.

(g) With the above observations, the petition stands disposed off as not maintainable.

(h) Ordered accordingly.

(K.P. Singh) **Member**	**(C.S. Sharma)** **Member**	**(Jag Mohan Lal)** **Chairman**