



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Petition No. 1940 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

Petition under section 86(1)(a) and (b) and section 86(1)(f) of the Electricity Act, 2003 read with Regulation 20(2) of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2019 and read with relevant provisions of the Power Purchase Agreements executed between UPRVUNL and UPPCL, and read with Regulations 14, 15 and 59 of THE UPERC (Conduct of Business Regulations), 2019 seeking relief due to occurrence of a change in law event.

AND

IN THE MATTER OF

Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (UPRVUNL)

Shakti Bhawan, 14-Ashok Marg, Lucknow

..... Petitioner

Versus

Uttar Pradesh Power Corporation Limited (UPPCL),

Shakti Bhawan, 14-Ashok Marg, Lucknow.

..... Respondent

FOLLOWING WERE PRESENT

1. Shri Deepak Raizada, CE, UPPCL
2. Shri Akhii Kumar, CE, UPRVUNL
3. Shri Haroon Aslam, SE, UPPCL
4. Shri Hari Shyam, SE (Comm.), UPRVUNL
5. Shri Gajendra Singh EE(PPA), UPPCL
6. Shri Abhishek EE, UPRVUNL
7. Shri Shubham Srivastava, AE, UPPCL
8. Shri Arun Kumar Singh AE, UPRVUNL



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9. Shri Harish Awasthi, AE, UPRVUNL
10. Shri Divyanshu Bhatt, Advocate, UPRVUNL
11. Shri Shashwat Singh, Advocate, UPRVUNL
12. Shri Abhishek Kumar, UPPCL
13. Shri Nived Veerapaneni, UPPCL

ORDER

(DATE OF HEARING: 23.11.2023)

1. UPRVUNL has filed this Petition for declaration that MOP Notification dated 08.10.2021 constitutes a Change in law and for grant of approval towards the additional capital expenditure of Rs. 2.37 crores with liberty to true-up the expenditure as per actual, required to be incurred by the Petitioner for altering/ modifying the existing machinery or installation at the Harduaganj Plants of the Petitioner to meet the obligations prescribed by the Change in Law event. The prayer made by the Petitioner are as follows:

Prayer(s):

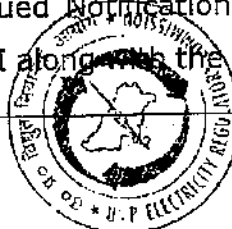
- a) Allow the present petition and declare that both the Communication dated 08.10.2021 issued by the Ministry of Power along with the revised CEA guidelines and CAQM Direction no. 42 dated 17.09.2021 constitute a change-in-law event for the Harduaganj Plants.
- b) Grant an approval towards the additional capital expenditure of Rs. 2.37 crores with liberty to true-up the expenditure as per actual, required to be incurred by the Petitioner for altering/ modifying the existing machinery or installation at the Harduaganj Plants of the Petitioner to meet the obligations prescribed by the Change in Law event, which shall be subject to the prudence check of this Commission; and
- c) Pass any such order(s) as this Commission may deem fit and proper in the facts and circumstances of the present case.

Contents of the Petition:

2. The Petitioner has made following submissions:
 - a) Ministry of Power, Govt of India issued Notification dated 08.10.2021 bearing Communication No. 11/86/2017-Th II along with the revised guidelines issued by

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the Central Electricity Authority, wherein, thermal power plant was mandated to use 5% blend of biomass pellets along with coal.

- b) Pursuant to the promulgation of the said Notification, the Petitioner duly brought the same to the attention of the beneficiary, UPPCL, vide its communication dated 13.01.2022 and accordingly requested UPPCL to grant consent in the matter. UPPCL through its communication dated 05.02.2022, advised the Petitioner to seek approval of the Commission. Subsequently, the Board of Director in its 202nd meeting held on 25.02.2022 passed resolution to take necessary action for the implementation of the said notification and to seek approval from the UPERC as advised by UPPCL for its impact on tariff for the sale of power.
- c) MOEF&CC, Govt. of India, in exercise of the powers under Section 3 of the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021, has constituted the Commission for Air Quality Management in National Capital Region and Adjoining Areas (CAQM). The CAQM vide its Direction No. 42 dated 17.09.2021 has directed as follows:

"14. NOW THEREFORE, in view of the above position and the compelling need to control air pollution from burning of paddy straw and its effective utilization as a resource, the Commission constituted under the provisions of "Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021", hereby directs the Coal Based Thermal Power Plants situated up to a radius 300 km of Delhi:

I. To initiate immediate steps to co-fire biomass-based Pellets, Torrefied Pellets/ Briquettes (with focus on Paddy Straw) with Coal (upto 5-10%) in the power plants through a continuous and uninterrupted supply chain and

II. To take all necessary steps to ensure that co-firing of biomass pellets in Thermal Power Plants begins without any delay."

- d) Thereafter, CAQM vide communication dated 12.11.2021, issued further directions to all the thermal power plants located within 300km radius of Delhi, including the **Harduaganj TPS**, to submit a detailed updated information regarding procurement and utilization of Biomass Pellets/ Torrefied pellets for





co-firing, in pursuance of the Statutory Direction no. 42 dated 17.09.2021, latest by 15.11.2021. In compliance with the directions, the Petitioner promptly commenced blending biomass pellets with coal at Harduaganj Project, which is being continued till date.

- e) To meet the required criteria for biomass pellets. the tentative additional cost of Rs. 139.5 Cr. per year shall be incurred as given in table below:

Sl.	Power Plant	Capacity (MW)	Bio-fuel Quantity required @ 5% mixture (Lakh Metric Tonnes)	Tentative rate of biomass pellet (Rs./MT)	Amount required for procuring the said quantity (Cr.)
1.	1x105 MW + 2x250MW Harduaganj	605	0.90	7350	66.00
2.	1x660 MW Harduaganj Extn.	660	1.00	7350	73.5
3.	Total	1265	1.9		139.5

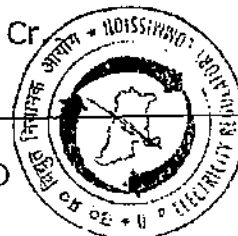
- f) As per clause 3(viii) (a) of the MoP notification dated 08.10.2021, "For projects set up under Section 62 of the Electricity Act, 2003, the increase in cost due to co-firing of biomass pellets shall be pass through in Energy Charge Rate (ECR)".
- g) ECR of Harduaganj Project for the month of September 2022 has been taken for reference in the below-mentioned table.

Name of Project	ECR (Rs. per unit)	Variation of ECR@ 20% (Rs. per unit)
Harduaganj 1X105 MW	4.5552	0.90
Harduaganj Extn. 2x250 MW	4.1856	0.82
Harduaganj Extn-II 1X660 MW	3.4410	0.68

- h) As per the estimate of the Petitioner, the additional fuel expenditure that the Petitioner shall have to incur will increase the ECR by approx. 10 paise per unit. Further, as per the initial estimate of the Petitioner, the approximate total cost required to change the machinery in the Harduaganj power plants as result of the change in law event shall be Rs. 2.37 Cr.

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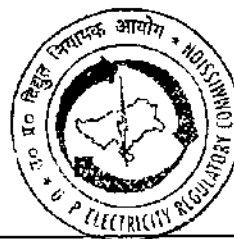
- i) While the instant Petition has been filed in respect of the Harduaganj Plant, the Petitioner, in respect of its thermal power plants at Anpara (3x210 MW Units at Anpara 'A', and 2X500 MW units at Anpara 'B'), Obra (5 X 200 MW Units) and Parichha (2 X 210 MW and 2X 250 MW units) has sought an exemption from the CEA in terms of its Revised Guidelines for exemption from co-firing the respective units with Biomass pellets.

Record of Proceedings

3. The Commission during the hearing on 11.07.2023 allowed UPPCL and UPRVUNL to file their reply and rejoinder. On 16.08.2023, UPPCL filed its reply. During the hearing dated 19.09.2023, the Commission allowed further time to UPRVUNL to file its rejoinder. On 27.10.2023, UPRVUNL filed its rejoinder. During the hearing on 31.10.2023, the Commission adjourned the hearing on the request of UPPCL counsel. On 20.11.2023, UPPCL filed its response to the rejoinder.
4. During the hearing on 23.11.2023, the Commission heard the arguments and reserved the matter with liberty to the parties to file their written submissions. UPRVUNL and UPPCL have filed their written submission in Dec'23 and Jan'24.

UPPCL Reply dated 16.08.2023

5. UPPCL vide its reply dated 16.08.2023 has submitted as follows:
- (a) UPRVUNL has executed three PPAs dated 26.05.2011 and 16.01.2013 with UPPCL read with Supplementary PPA executed for every 5-year tariff period. Neither the PPA nor the supplementary agreements contain a provision which allows the generator to seek in principle approval of additional capital expenditure and operational expenditure, if any.
- (b) Generation Tariff Regulations 2019 do not contain a provision which allows the parties to seek in-principal approval of additional capital expenditure or additional operational expenditure on account of alleged Change in Law event, if any. The same can only be sought, once the said alleged expenditure has actually been incurred.



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(c) In exercise of the powers granted under Section 12 of the CAQM Act, the AQM Commission, on 17.09.2021 issued Direction No. 42, whereby it directed coal based TPPs situated within a radius of 300 km of Delhi to:

(i) Initiate immediate steps to co-fire bio-mass based pellets, Torrefied Pellets/Briquettes (with focus on paddy straw) with coal (up to 5-10%) in the power plants through a continuous and uninterrupted supply chain; and

(ii) Take all necessary steps to ensure that co-firing of bio-mass pellets in thermal power plants begins without any delay.

The said Direction No. 42 has a list of TPPs situated within 300 km radius of Delhi NCR for which co-firing of bio-mass pellets with coal was mandatory. The said list includes only Harduaganj Extension (2x250 MW) - Unit 8 and 9 Only.

(d) On 20.03.2023, the AQM commission issued a press release wherein it reiterated that co-firing of bio-mass pellets with coal is mandatory only for the 11 TPPs which are enlisted in the list of TPPs within range of 300 kms from NCR annexed with Direction No. 42 which admittedly includes only Harduaganj Extension (2x250 MW) i.e., Unit 8 and 9. Considering COD of Unit 10 post Direction No. 42, therefore, UPRVUNL is required to co-fire biomass at Units 8, 9 and 10 only and not in Unit-7.

(e) The applicable Regulations do not provide for computation of energy generated from co-firing of biomass pellets with coal at TPPs.

(f) UPRVUNL has not placed on record any report to demonstrate that it is technically feasible to co-fire bio-mass pellets even at Unit 8 & 9 and Unit 10. The same is required for it to qualify to mandatorily co-fire pellets and proceed to seek any reliefs from this Commission and ultimately from UPPCL on this account.

UPRVUNL Rejoinder dated 27.10.2023:

6. UPPCL vide its rejoinder dated 27.10.2023 has submitted as follows:

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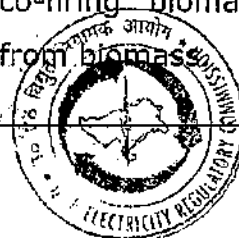
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- a) The reason for the non-inclusion of Unit 7 & 10 in the CAQM list, issued in September 2021, is the fact that Unit-7 was not functioning during the period between Sept. 2021 to February 2022 and Unit 10 was under Commissioning.
- b) UPRVUNL has accomplished R&M of Unit-7 in 2015, the cost of which has been approved by the Commission vide Order dated 30.01.2023 in Petition No. 1354/2018. Thereafter, SPPA has been executed between UPPCL & UPRVUNL on 22.02.2021. Unit-7 should be continued to operate till 2030.
- c) With respect to Unit-10, the COD is 08.02.2022 i.e., after the direction issued by CAQM dated September 2021, but the notification dated 08.10.2021 is applicable to all Thermal units.
- d) The term of the PPA dated 16.01.2013 for Unit 10 is similar to the term of the other PPA entered into between UPPCL & UPRVUNL for all other Harduaganj TPS. It was not possible for any of the parties to foresee any such notification/direction issued by MoP/CAQM.
- e) Various other ERCs like PSERC vide order dated 17.07.2023 in Petition No. 65/2022 have acknowledged Direction No. 42 to be change in Law event.
- f) The co-firing of biomass pellets along with coal is already being carried out by UPRVUNL in Unit 8 & 9 after a detailed visit and study of the NTPC plants doing co-firing. Technical feasibility for co-firing biomass from units 8 & 9 of the Harduaganj TPS is already established since biomass firing of 12500MT has already been done in both units, till date. Further, the Petitioner is also in the process of procuring 90,000 MT biomass for co-firing in Harduaganj TPS.
- g) With respect to the feasibility of Unit 10, UPRVUNL is already in conversation with its OEM in order to understand the best possible and most efficient measures to be taken in order to commence the co-firing of biomass pellets at Unit-10. Once the same is complete, the Petitioner will commence the co-firing in Unit-10 as well.
- h) CERC vide Order dated 19.02.2020 in Suo-moto Petition No. 12/SM/2019 provides the methodology of co-firing biomass pellets with coal for computation of energy generated from biomass.





- i) The issue of accounting for energy generated from biomass lies beyond the purview of instant Petition, as the methodology shall have to be prescribed by the Commission by way of its own regulations because the aforementioned Change in Law events actually constitute change in law for all generating plants in the country, including those situated in Uttar Pradesh.
- j) The Petitioner on the one hand assesses the availability of biomass in the market and simultaneously assesses the most prudent ways of incurring expenditure in order to comply. As such, it has not been possible for the Petitioner to provide a complete and definite figure pertaining to the additional capitalization amount that it may have to incur.

UPPCL additional submission dated 20.11.2023 in response to UPRVUNL rejoinder dated 27.10.2023:

7. UPPCL vide its addl. Submission dated 20.11.2023 has submitted as follows:
 - a) UPRVUNL's submission that repair & maintenance of Unit 7 was completed in 2015, the cost of which was approved by this Commission vide order dated 30.01.2023 in Petition No. 1354 of 2018, has no bearing on UPRVUNL's claim for change in law sought by way of the present petition.
 - b) As per Clause 2 of the supplementary PPA dated 22.02.2021, the PPA's term has been extended from 01.04.2019 to 31.03.2024. Post execution of SPPA dated 22.02.21, unit-7 was functional and was in service. Therefore, the alleged non-operation of Unit 7 is irrelevant to the issue of inclusion of TPPs in the list for which co-firing is mandatory.
 - c) UPRVUNL vide letter dated 18.09.2023 has intimated regarding floated tender for procurement of bio-mass pellets for co-firing at Unit 8 and 9 and for Unit 10 in future. The said letter has no mention anywhere that the procurement was being done for co-firing at Unit 7.
 - d) UPRVUNL, without informing UPPCL and without undertaking the mandatory feasibility study has confirmed pellets at Unit 8 and 9. The said exercise is in clear violation of the Revised Bio-mass Policy.





- e) With regard to Unit-10, even Toshiba (OEM) vide letter dated 10.08.2022 stated that co-firing of biomass is capable of reducing the boiler efficiency. It is highlighted that conscious of such issues which might arise on co-firing of bio-mass pellets at TPPs, the feasibility study has been mandated as a pre-requisite under Revised Bio-mass Policy by MoP.
- f) Methodology for computation of energy generated from co-firing and resultant impact on ECR shall be prescribed by this Commission by way of regulatory dispensation and the same will apply to all generating companies.
8. The parties made following arguments during the final hearing:

A. UPRVUNL:

- a. The Ministry of Power notification dated 08.10.2021 mandates Co-firing of Bio-mass Pellets and is therefore change in law.
- b. The directions, dated 17.09.2021 issued by CAQM, refer to unit 8 and 9 only as unit 7 was not functional during Sept 21 to Feb. 22 and unit 10 was under commissioning.
- c. The mandatory requirement for unit 7 may be compensated by additional Co-firing of Bio-mass Pellets in unit 8 & 9 and no modification would be required for same.
- d. Co-firing of Bio-mass Pellets in unit 8 & 9 was being done currently and therefore technical feasibility was not required.
- e. While replying to the Commission's query regarding CAPAEX, UPRVUNL replied that this point was not being pressed presently but the said expenditure of Rs. 2.37 crores pertain to unit 8 & 9 only for storage of Pellets.

B. UPPCL:

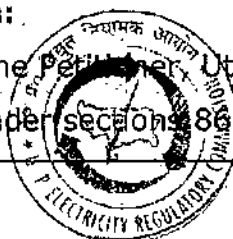
- a. As per letter from Toshiba, the OEM of unit 10, technical feasibility would be required.
- b. Unit 7 PPA is vailed till 31.03.2024 and its extension is under consideration of UPPCL based on its variable charges etc.

Commission's Analysis and Decision:

9. The present petition has been filed by the Petitioner, Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (UPRVUNL) under sections 86(1)(a), (b) and (f) of the

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Electricity Act, 2003 (**Act**) read with Regulation 20(2) of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2019 (**UPERC Tariff Regulations, 2019**) and read with relevant provisions of the power purchase agreements executed between UPRVUNL and Uttar Pradesh Power Corporation Limited (**UPPCL/Respondent**), and read with Regulations 14, 15 and 59 of UPERC (Conduct of Business Regulations), 2019 seeking declaration to the effect that the promulgation of:

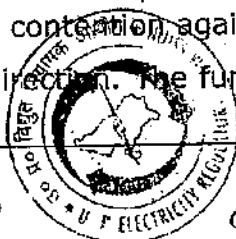
- (i) Notification dated 08.10.2021 issued by Ministry of Power, Government of India (**MoP**) bearing communication no. 11/86/2017-Th II for Bio-mass Utilisation for Power Generation through Co-firing in Coal based Power Plants (**Revised Bio-mass Policy**) along with revised guidelines issued by Central Electricity Authority (**CEA**) dated 04.02.2022 (**Guidelines**); and
- (ii) Commission of Air Quality Management's (**AQM Commission**) Direction No. 42 dated 17.09 2021,

constitute as change in law event. Additionally, UPRVUNL has sought in-principle approval of ₹2.37 crores of additional capital expenditure.

10. Before analyzing and deciding the matter, on factual grounds, it is germane to recall that UPPCL has objected the application of direction no. 42 dated 17.09.2021, issued by CAQM on unit number 7 & 10 of Harduaganj Extension as the list attached to the aforesaid direction categorically included only unit number 8 & 9 of the above project for which there was a mandatory requirement of co-firing of bio-mass pellets with coal. In this context, it is to state that since COD of Harduaganj Extension -II (1X660 MW) – Unit 10 did take place in year 2022 i.e. after the issuance of the above direction, it will have to be considered as covered under the said directions as MOP vide revised Policy dated 08.10.2021 has mandated co-firing of bio-mass pellets in all coal based thermal power plants and has specified percentage use and type of bio-mass pellets to be used for different technical combinations. It also needs to be pointed out that the direction no. 42 dated 17.09.2021, issued by CAQM had no occasion to mention unit number 10 in its list as it was not in existence at the time of issuance of the direction. This is reasoning at its rudimentary and any contention against it will be tantamount to an unreasonable application of the direction. The fundamental legal maxim -

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Lex plus laudatur quando ratione probatur meaning thereby "the law is most worthy of approval, when it is consonant to reason". Hence, any objection on Inclusion of unit number 10 of Harduaganj Extension II under the said direction i.e. 17.09.2021 belies reason and hence, cannot be accepted under law. Similarly, since unit number 7 was not functioning during the period between September 2021 to February 2022, when this direction was issued hence it did not find place in the list but the desired objective or reasoning behind the issuance of this direction makes it abundantly clear that the Unit number 7 is also covered under the above mentioned direction, which can be derived on the legal maxim Ubi Eadem Ratio Ibi Idem Jus meaning "like reason doth make like law".

11. The Commission notes that MoP vide revised Policy dated 08.10.2021, which mandates co-firing of biomass pellets in all coal based thermal power plants and has specified percentage use and type of bio-mass pellets to be used for different technical combinations would constitute a change in Law. It is a general rule that non-compliance of mandatory requirements results in nullification of the act, however, it is subject to only two exceptions. One exception is when performance of the requirement is impossible; performance is then excused. Second exception is of waiver, if no public interest is involved. It is clear from the nature of direction that the same has been issued in public interest accordingly, the second exception is of no avail in the present case. As far as first exception is concerned, the procedure to avail this exception is already provided in accordance with the procedure prescribed in the Policy. Therefore, not only unit 8 & 9, but unit 7 & 10 would also have to comply with the policy directions subject to conducting technical feasibility and seeking exemptions, if any, as per procedure prescribed in the Policy.

12. The Commission, in the following paragraphs, has first dealt with the issue of co-firing at Unit-7, Unit-10 alongwith Unit-8 & 9 also and then has proceeded to deal with the issue of in-principle approval of ₹2.37 crores of additional capital expenditure.

Unit-7



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13. The reason for the non-inclusion of Unit 7 & 10 in the CAQM list, issued in September 2021, as per UPRVUNL, is that Unit-7 was not functioning during the period between Sept. 2021 to February 2022 and Unit 10 was under Commissioning.

14. The Commission has noted that the Petitioner has already accomplished R&M of Unit No. 7 in 2015, the cost of which has been approved by the Commission vide its order dated 30.01.2023 in Petition No. 1354 of 2018 and thereafter, a Supplementary Power Purchase Agreement dated 22.02.2021 has been executed between the Petitioner and UPPCL and approved by the Commission vide its order dated 08.03.2021 in Petition No. 1577 of 2020.

15. The abovesaid SPPA is valid till 31.03.2024 and UPRVUNL has submitted that the Unit -7 shall be in operation till 2030. UPPCL has submitted that the renewal of SPPA dated 22.02.2021 is under consideration. UPRVUNL has also argued that mandatory requirement for unit 7 may be compensated by additional Co-firing of Bio-mass Pellets in unit 8 & 9 and no modification would be required for same.

Commission's View

16. **The co-firing of bio-mass pellets has been mandated to be undertaken at all TPPs. Unit-7, part of Harduaganj TPS, is currently operational and its SPPA extension is under consideration with UPPCL beyond 31.3.2024. Therefore, UPRVUNL, depending upon period of SPPA extension, may undertake additional co-firing at other units of Harduaganj plant to compensate for equivalent obligation of Unit-7.**

Unit-10

17. Unit 10 was under Commissioning at the time of CAQM direction dated 17.09.21 and thus was not included in the CAQM list, issued in September 2021. Unit 10 achieved COD on 08.02.2022 and is operational. Pursuant to its commissioning on 08.02.2022, UPRVUNL through its letters requested its original equipment manufacturer (OEM), Toshiba JSW Power System Pvt. Ltd. (Toshiba) to confirm the feasibility of co-firing of bio-mass pellets at Unit 10. Toshiba vide its letter dated 10.08.2022 has raised serious issues in this regard. The relevant extracts of the said letter are reproduced below:





"In same regard UPRVUNL may appreciate that presently, TJPS view point is towards the completion of the Project as per the conditions of the signed Contract. **Any new compliance of Government policy such as introduction of 5-7% Bio-mass Pellets along with Coal Boiler at this stage of Project is neither practical (as envisaged during the original decision of the PG package) nor feasible** unless the Contract compliances are demonstrated and established. This matter can be studied and implemented post closure of Warranty period by TJPS/Boiler OEM subject to receipt of additional order from UPRVUNL.

Note that the co-firing of Bio-mass Pellets along with the Coal will vary the performance of the Boiler hence not acceptable at this stage. Also, UPRVUNL may kindly note that the Warranty of Boiler and associated systems shall not be applicable from the date of introduction of Bio-mass Pellets, in case UPRVUNL decides and introduce the Bio-mass Pellets in Boiler along with Coal before the end of Warranty period.

At this stage, it is of paramount importance for us to focus on the compliance of the existing Contract conditions and get the Boiler setting and tuning done based on the Design Coal (i.e. Range of Coal as per Contract). For this, we will request UPRVUNL to provide the sufficient quantity of Design Coal and & also provide us time to check/do the required setting / tuning. **Therefore, this situation will also not allow us to make any feasibility study and provide you response about the Biomass co-firing.**"

18. From the above, it is evident that as per Toshiba, the OEM, the co-firing of biomass pellets along with coal shall vary the performance of the boiler and furthermore, the same shall also amount to breach of warranty of boiler from the date of introduction of bio-mass pellets in terms of the agreement entered between UPRVUNL and OEM. Apparently, conscious of such issues, which might arise on co-firing of bio-mass pellets at TPPs, the feasibility study has been mandated as a pre-requisite under Revised Bio-mass Policy by MoP. Therefore, it is necessary to ascertain whether it is feasible to co-fire pellets at a TPP.

19. Accordingly, UPRVUNL's act of observing studies at NTPC plants and undertaking trial runs at its own plants does not in any manner fulfill the mandatory requirement of undertaking technical feasibility study. Therefore, it would be prudent for UPRVUNL to conduct the technical feasibility study before claiming any relief on that account or else follow the procedure for exemption, if required. The cost of technical feasibility study shall be recoverable by UPRVUNL from UPPCL, its beneficiary.





Commission's View

20. UPRVUNL may first fulfill the mandate of undertaking feasibility study under the Revised Bio-mass Policy before claiming any relief on this account failing which follow the procedure for exemption, if required.

Unit 8 & 9

21. UPRVUNL has submitted that co-firing has already been carried out by UPRVUNL at Unit 8 and 9, after having undertaken detailed study at plants in NTPC. As per UPRVUNL, since, UPRVUNL has already fired 12500 MT of biomass in two units and is in process of procuring 90000 MT biomass for co-firing, technical feasibility has already been established. This contention of UPRVUNL does not cut ice in the face of express provision of undertaking feasibility study on the unit itself as "cut & paste" applications seldom don't work in desired manner in the technical matters. The Commission has grappled with the issue of feasibility study in case of co-firing of biomass pellets in the case of Lalitpur's thermal power plant hence, it will act as precursor in such other cases also.

22. This Commission vide its order dated 26.09.2023 in Petition No. 1898 of 2022 titled as *Lalitpur Power Generation Corporation Limited vs. Uttar Pradesh Power Corporation Limited* has acknowledged that the process of undertaking feasibility study is mandatory and has accordingly directed the petitioner in that case to conduct the study first and approach this Hon'ble Commission by way of a separate petition based on the outcome of the study:

"41. **For Compliance to Bio -mass Policy dated 08.10.2021, in terms of mandatorily use of 5 per cent blend of biomass pellets along with coal with effect from one year of the date of issue of this guideline, Coal based thermal power plants, as a prerequisite, are required to assess useful economic life of plant, technical feasibility with any additional capital / operation expenditure required, if any, and technical constraints for enabling co-firing while ensuring safety aspects.**

42. Coal based thermal power plants, as a prerequisite, are also required to assess procurement of Agro residue-based Bio-mass pellets in line with technical specification issued by CEA, sourcing, and supply chain constraints against Model Contract document issued by MoP, frame site specific standard operating procedure (SOP) in line with standard SOP issued by MoP etc.





43. **Subsequent to the assessment of above aspects, the plant can approach CEA as per Guidelines/procedure prescribed for examining the request of the power plants for seeking exemption/relaxation from bio-mass co-firing, in case of exemption/ relaxation required.**
44. LPGCL shall undertake the technical feasibility study in terms of Bio-mass Policy as stated above...
45. The Commission, upon submission of aforesaid details by the Petitioner, may devise a methodology for determination of ECR using bio-mass co-firing, accounting of energy generated of bio-mass co-firing for the purpose of RPO benefit. **Further, any methodology, if required, for claiming additional capital / operational expenditure etc. may also be devised by the Commission.**

In view of the above, the Petitioner is directed to share the technical feasibility study report with UPPCL for their comments and approach this Commission through a separate Petition with the report and comments of UPPCL along with consequential impact on ECR within six months."

23. While UPRVUNL may have commenced co-firing at Units 8 & 9 to comply with the time-bound directions of AQM Commission, the requirement of technical feasibility study should not be discounted. Particularly, UPRVUNL's submissions regarding observation of co-firing at NTPC's plants or co-firing pellets after the said study does not fulfill the requirement of undertaking technical feasibility study to analyze the practical viability and feasibility of co-firing at Units 8 & 9. Therefore, in absence of technical feasibility if operational implications arise in future, the risk and consequences of which may entail both cost and deficiency in reliability of power supply, will be thrust on the consumers of State.

Commission's View

24. UPRVUNL should fulfill the mandate of undertaking feasibility study under the Revised Bio-mass Policy. Further, the cost of co-firing biomass pellets at Units 8 & 9, along with cost of technical feasibility shall be recoverable from UPPCL, its beneficiary and the energy so generated shall be accounted towards renewable purchase obligation.

In principle approval of additional capitalization required to be incurred as a result of change in law events

25. UPRVUNL, during final hearing on 23.11.2023 has not pressed this issue of incurring additional capital expenditure for altering/modifying the existing

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machinery for installation at Unit-8 & 9 of Harduaganj Plant. UPERC Tariff Regulations 2019 strictly prohibits in principle approval of additional capital expenditure and provides that the same can only be claimed at the true up stage at actuals.

Commission's View

26. Therefore, the additional capital expenditure, if any, on account of co-firing of bio-Pellets, as Change in Law event, can only be allowed on actuals subject to prudence check at the time of truing up of tariff in line with the UPERC Tariff Regulations 2019.

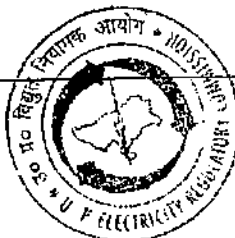
Summary of the Commission's decisions:

27. The Commission's decision are summarized hereunder:

- (i) The Commission notes that MoP vide revised Policy dated 08.10.2021, which mandates co-firing of biomass pellets in all coal based thermal power plants and has specified percentage use and type of bio-mass pellets to be used for different technical combinations would constitute a change in Law. It is a general rule that non-compliance of mandatory requirements results in nullification of the act, however, it is subject to only two exceptions. One exception is when performance of the requirement is impossible; performance is then excused. Second exception is of waiver, if no public interest is involved. It is clear from the nature of direction that the same has been issued in public interest accordingly, the second exception is of no avail in the present case. As far as first exception is concerned, the procedure to avail this exception is already provided in accordance with the procedure prescribed in the Policy. Therefore, not only unit 8 & 9, but unit 7 & 10 would also have to comply with the policy directions subject to conducting technical feasibility and seeking exemptions, if any, as per procedure prescribed in the Policy.
- (ii) Unit-7, part of Harduaganj TPS, is currently operational and its SPPA extension is under consideration with UPPCL beyond 31.3.2024. Therefore, UPRVUNL, depending upon period of SPPA extension, may undertake additional co-firing at other units of Harduaganj plant to compensate for equivalent obligation of Unit-7.

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- (iii) For Unit-10, UPRVUNL may first fulfill the mandate of undertaking feasibility study under the Revised Bio-mass Policy before claiming any relief on this account, failing which follow the procedure for exemption, if required.
- (iv) For Unit 8 & 9, UPRVUNL should fulfill the mandate of undertaking feasibility study under the Revised Bio-mass Policy. Further, the cost of co-firing biomass pellets at Units 8 & 9, along with cost of technical feasibility shall be recoverable from UPPCL, its beneficiary and the energy so generated shall be accounted towards renewable purchase obligation.
- (v) the additional capital expenditure, if any, on account of co-firing of bio-Pellets, as Change in Law event, can only be allowed on actuals subject to prudence check at the time of truing up of tariff in line with the UPERC Tariff Regulations 2019.

The Petition is disposed of accordingly in terms of the above,

(Sanjay Kumar Singh)

Member

(Vinod Kumar Srivastava)

Member (Law)

(Arvind Kumar)

Chairman

Place: Lucknow

Dated: 28.02.2024



