

Before

UTTARANCHAL ELECTRICITY REGULATORY COMMISSION

Case No. : Misc. Application No. 06/2004-05 dated 27.04.2004 filed before the Commission by Uttaranchal Jal Vidyut Nigam Ltd.

In the matter of:

Change in the adhoc power purchase rate of 37 paise/unit fixed in Tariff order dated 8th September 2003.

In the matter of:

Uttaranchal Jal Vidyut Nigam Ltd.
UJJWAL, G.M.S. Road,
Dehradun

..... Applicant

Coram

Sri Divakar Dev Chairman

Date of Order 12th July, 2004

ORDER

This is yet another Application filed by Uttaranchal Jal Vidyut Nigam Ltd. (UJVNL) pertaining to Commission's order dated 08.09.2003 by which Uttaranchal

Power Corporation Ltd. (UPCL)'s tariff application for the year 2003-04 was disposed off.

2. It may be recalled that while examining the cost of power to be purchased by UPCL from UJVNL, the Commission had concluded in the above order that the power purchase rate of 60.5 paisa/unit (including royalty) that had been proposed by UPCL was neither in accordance with the Power Purchase Agreement (PPA) existing between the two companies nor determined in accordance with relevant legal provisions and therefore the Commission did not allow the same. Since a PPA between the two companies already existed and Power purchase rate for UPPCL had already been worked out under it and approved by UPERC, an updated rate for such purchases was to be worked out and got approved from the Commission, which was not done. Therefore while directing the licensee to do so, pending such revision, the Commission allowed power to be purchased from UJVNL on the rate earlier approved for this purpose by UPERC for the year 2001-02, that is, before creation of separate state of Uttaranchal. No such updated rate has been worked out between the parties and put up to the Commission for approval so far.

3. In this application, the Commission has now been requested to;

- a) Confirm and declare the above rate of 60.5 paisa/unit as the valid rate upto 19.09.2003.
- b) Determine the final updated rate to replace the adhoc rate of 37 paisa/unit allowed in the Tariff Order.
- c) Declare the rate of 60.5 paisa/unit referred to in (a) above as the valid rate payable from 20th September 2003 till determination of UJVNL's generation tariff under section 62 (1) of the Electricity Act, 2003.

4. UJVNL's above prayers listed in para 22 (i) & (iii) of the application read together amount to approval and further continuation of the power purchase rate of 60.5 paisa/unit already rejected by the Commission. In other words the prayer is to undo Commission's earlier findings contained in the Tariff Order dated 08.09.2003 and in turn change the tariff fixed for different categories of consumers through that

order. In effect the Commission is being asked to pass a fresh order in place of the order of 08.09.2003. Similar request was made earlier through a review application which has already been rejected by the Commission.

5. The application was therefore, listed for preliminary hearing on 04.06.2004 and the applicant was represented by his counsel Shri Hemant Sahai. The Commission was assisted by Shri S.C. Virmani. It has been argued on behalf of the applicant that the tariff of 60.5 paisa/unit approved conditionally by the State Government on 22.02.2002 was the legally valid tariff as this Commission had not been constituted till then; the Commission has no authority to fixed the adhoc tariff of 37 paisa/unit as has been done in the tariff order; the adhoc tariff of 37 paisa/unit allowed in the tariff order ceased to be valid after 31.12.2003 and the applicant's applications for review of the tariff order, for clarification on certain points raised by the applicant and for restoration of the power purchase rate of 60.5 paisa/unit have not been disposed off.

6. Commission's counsel has pointed out that UPCL, the other party to the PPA has not been impleaded; the applicant has been filing multiple applications in one form or another all seeking validation of the power purchase rate of 60.5 paisa/unit which the Commission has adequately dealt with in the Tariff Order dated 08.09.2003, and held the same to be without basis, legally not valid and therefore rejected. The applicant has been filing one application after another all seeking to somehow undo Commission's above action and in the process is wasting everybody's time and is prevented from doing so under law as per Order II Rule 2 of the CPC. It has been further pointed out that a PPA approved by UPERC between UJVNL and UPCL spelt out the principles for calculating the power purchase rate. Instead of doing that with the purchaser and getting the rate so worked out approved from the Commission, the petitioner is only trying to somehow bring back the rate of 60.5 paisa/unit, which the Commission has found to be without basis and therefore, categorically rejected. This matter pertaining to the rate of power purchase from UJVNL having already been dealt with in depth in the Tariff Order dated 08.09.2003, there is neither any need nor any occasion for the Commission to reopen that issue and determine it again.

7. The Commission has carefully gone through the papers and heard the arguments presented by the applicant. The issue of rate for purchase of Power by UPCL from UJVNL has been dealt with extensively in para 5.6.2.2.1 of the Tariff Order dated 08.09.2003. The Commission has clearly rejected the Power purchase rate of 60.5 paisa/unit fixed by the State Government on 22.02.2002 in anticipation of Commission's approval and reasons for doing so are also discussed in the Tariff Order. The present application once again seeks restoration of the already rejected rate first upto 19.09.2003 and then again from 20.09.2003. This is nothing but another attempt to nullify relevant findings in the Commission's Tariff order dated 08.09.2003. Applicant's earlier application seeking similar relief through review of the Tariff order dated 08.09.2003 has already been rejected by the Commission. There has to be some finality in such matters and the Commission can not go on revising its findings and orders in response to applications being filed, time and again, under one garb or another, and all seeking the same result. Interestingly, while the applicant is relentlessly continuing with his attempts to get the power purchase rate stipulated in the tariff order dated 08.09.03 replaced by the rejected rate of 60.5 paise through these multiple applications, he has not bothered to do the obvious and straightforward thing of filing proper petition before the Commission for determination of his tariff in terms of sections 62 and 64 of the Electricity Act, 2003.

8. The Commission having already decided this issue of Power purchase rate unambiguously and that too after giving the applicant opportunity to justify the proposed rate of 60.5 p/unit that had been proposed, there is no reason or occasion for reopening this question now by admitting the present application. Commission accordingly sees no reason to admit this application for hearing and rejects the same.

9. Relentless efforts to get an unpalatable order reversed indirectly through one application after another, given on varying grounds and in different forms, as is being done by the applicant, is nothing but deliberate misuse of remedy provided in law for addressing genuine difficulties and results only in avoidable waste of time and money. Applicant being a Public Sector Company such wastage does not seem to hurt any individual. Hence such brazen attempts at trivialization of legal processes, which are condemnable and can not be permitted. Shri Ajay Garg, who

has been making these applications has been quite brazen in this area and appears to be taking the law and proceedings under it too casually. Even some of the statements made on oath by this particular officer are incorrect or misleading. The Commission takes serious note of his actions and proposes to take appropriate legal action against him in this regard:

10. Accordingly Shri Ajay Garg who has filed this affidavit is hereby required to personally appear before the Commission on 12.08.04 at 11 am and show cause as to why action should not be taken against him for his unacceptable conduct.

(Divakar Dev)
Chairman