

BEFORE

UTTARAKHAND ELECTRICITY REGULATORY
COMMISSION

In the matter of:

Waiver of token penalties imposed by the Commission in the Tariff Order for the FY 2009-10 for late submission of ARR/Tariff filings by licensees and the generating company.

Coram

V. J. Talwar

Chairman

Anand Kumar

Member

Date of Order: 31st March 2010

ORDER

For the past many years the Commission has been observing that the utilities are not filing the ARR/Tariff petitions within the timelines specified for the same in UERC (Conduct of Business) Regulation, 2004. It had further been observed by the Commission that even when the filings were made after much delay, those were either incomplete or infested with lot of data inconsistencies, which derails the process of tariff determination leading to incoherent tariff impacts such as deferment of recovery or disproportionate tariffs hike. Further, late submission of ARR/tariff filings is also against the commercial interest of the utilities (i.e. licensees and

generating companies). The Commission has, accordingly, been highlighting this issue in its past many Tariff Orders but to no avail.

For the FY 2009-10 also the utilities, instead of filing the ARR/tariff petitions by the appointed date i.e. 30th November 2008, first sought extension of time and then submitted the petitions which had numerous deficiencies and data gaps. After removal of deficiencies and data gaps the petitions filed by UPCL, PTCUL and UJVNL were finally admitted by the Commission on June 25, 2009, June 30, 2009 and July 2, 2009 respectively. To curb such tendencies on the part of the utilities so as to avoid incoherent tariff impacts, the Commission while issuing the Tariff Order for the FY 2009-10, in view of excessive delay in submissions of ARR/tariff petitions for the FY 2009-10 by the utilities, imposed token penalties of Rs. 5 Crore on Uttarakhand Power Corporation Limited (UPCL), Rs. 2 Crore on Uttarakhand Jal Vidyut Nigam Limited (UJVNL) and Rs. 1 Crore on Power Transmission Corporation of Uttarakhand Limited (PTCUL). The utilities were required to deposit the above penalty amounts latest by 31st March 2010.

Subsequent to imposition of above penalty by the Commission in the respective Tariff Orders of the utilities, Chief General Manager (Commercial), UPCL, vide its letter no. 1580/UPCL/RM/C-5 dated 27.11.2009, Managing Director, PTCUL vide its letter no. 1645/MD/PTCUL/UERC dated 2.12.2009 and Managing Director, UJVNL, vide its letter no. 3237/MD/UJVNL/U-6 dated 9.12.2009, made requests for waiver of their respective penalties giving clarifications/justifications for delayed submission of ARR/Tariff petitions for the FY 2009-10.

In view of similar request by UPCL, PTCUL and UJVNL (hereinafter jointly referred to as utilities), a joint hearing in the matter was fixed by the Commission on 10.2.2010. During the course of hearing, Managing Director, UPCL/ PTCUL and Managing Director, UJVNL made oral as well as written submissions. The main ground, as extended by the utilities, for delayed submission of ARR/Tariff petition was adoption of Sixth Pay Commission's recommendation by the State Government and its subsequent implementation within the utilities.

In their oral submission MDs of respective utilities mentioned that though the Sixth Pay Commission's recommendations were adopted by the State Government vide order dated 17th Oct 2009 the same were not implemented immediately for the officers and staff of UPCL/PTCUL/UJVNL. The orders in connection with implementation of Sixth Pay Commission's recommendations for officers and staff of UPCL/PTCUL/UJVNL were issued by the GoU only on 2nd March 2009. Subsequent to it, order detailing procedure for pay fixation and options by employees was issued on 19th March 2009. It was also stressed that the exercise of seeking options from officers and staff and fixing them in the appropriate revised structure of Sixth Pay Commission took sufficiently long time. Similarly, it was also stressed that utilities had to do the arrear calculations for the past years i.e. w.e.f. January 2006 to March 2009, to capture the exact impact of 40% burden of such arrear that needed to be paid during the current financial year. It was also submitted by the MDs that capturing the impact of Sixth Pay Commission was important for them as it had lot of bearing on their Annual Revenue Requirements and that it was totally beyond their control. MDs of the utilities ended their submission emphasising the fact that the ARR/Tariff petitions for the FY 2010-11 have been made in time as per the regulations and directions of the Commission.

In addition to above, in the written submissions, it was also submitted by Uttarakhand Power Corporation Limited that they were awaiting final judgement of Hon'ble ATE in the matter of M/s Polyplex Corporation Vs UERC as it could have had major Tariff/Revenue impact for it. Similarly, it in addition to time taken in capturing the impact of Sixth Pay Commission's Recommendations, it was indicated by PTCUL that they had been pursuing the matter of finalization of transfer scheme with the Government so as to arrive at correct value of Gross Fixed Assets and were awaiting the decision of the Government in the matter.

The Commission, while partially agreeing with the main submission of the utilities that they had to do the due diligence for effectively capturing the impact of Sixth Pay Commission's recommendation, which took time and was beyond the control of the utilities is not very convinced with the additional submissions made by UPCL

and PTCUL. As regards the submission made by UPCL that they waited for the order of the Hon'ble ATE in the matter of M/s Polyplex Vs UERC, the Commission is of the view that it is difficult to time the final order of any court, and accordingly, UPCL could have very well submitted the petition in time and made additional submissions on issuance of final order by ATE. Similarly, for PTCUL the Commission observes that transfer scheme has not yet been finalized by the Government and PTCUL had to make the submissions in absence of it. The Commission is of the firm view that utilities should make timely submissions of ARR/Tariff filings, with whatever information they have at that point of time and should make additional submission as and when additional data/information becomes available with them, so as to protect and safeguard their own commercial interests.

The Commission would like to further underline that the main idea behind imposing the penalty was not to penalise the utilities but to ensure regulatory compliance and timely submission of ARR/Tariff filings in the future years. Since the same has been accomplished in this case, the Commission hereby waives the token penalty imposed on them through respective Tariff Orders for the F.Y. 2009-10.

(Anand Kumar)
Member

(V. J. Talwar)
Chairman