

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the Matter of:

Determination of Annual Revenue Requirement and Tariff of FY 2011-12 of Uttaranchal Power Corporation Limited

In the Matter of:

Uttaranchal Power Corporation Limited

.....Petitioner

Coram

Shri Anand Kumar

Member

Date of Order: 08th April, 2011

ORDER

The Commission had determined the Retail Tariff for the year 2009-10 vide its Order dated 23.10.2009 in Petition No 2 of 2009. Subsequently, aggrieved by the above order which was issued in pursuance of the provisions of the Electricity Act, 2003 and Policy Direction issued by the Government under section 108 of the Electricity Act, 2003, some consumers approached the Hon'ble Appellate Tribunal for Electricity in appeal against the said Order in Appeals No. 41, 42 and 43 of 2010.

The Hon'ble Appellate Tribunal for Electricity vide its Judgment dated 31.01.2011, inter alia, set aside the Tariff Order dated 23.10.2009 and directed the Commission to re-determine the tariff for the FY 2009-10. The said Judgment of the Appellate Tribunal was received by the Commission through post on 22.02.2011. In the said Judgment, under para 67 the Hon'ble Appellate Tribunal has held, as under:-

"67. As indicated above, we set aside the order impugned and remand the matter to the State Commission for re-determination of the tariff on the basis of the existing Regulations and the regulatory principles and also in the light of the observations made above."

Thereafter, UPCL in Civil Appeal No. 2811 of 2011, approached the Hon'ble Supreme Court of India against the said Judgment of the Hon'ble Appellate Tribunal for Electricity. Vide Order dated 1-4-2011 in the said Civil Appeal, the Hon'ble Supreme Court was pleased to hold as under:-

"... Although we are satisfied with the conclusion, but in order to clarify certain aspects of the policy decision by the State of Uttarakhand, we would like to hear the other side. Hence, notice, returnable within two weeks..."

Earlier, UPCL had filed its Petition for determination of retail tariffs for the year 2011-12 vide its petition dated 30.11.2010. Alongwith above petition UPCL also submitted the provisional accounts for the FY 2009-10 and requested the Commission to true-up of its revenue and expenses for the FY 2009-10. The said Petition was admitted by the Commission on 10.12.2010. The Commission has held public hearings in the said matter on 28.02.2011, 01.03.2011, 07.03.2011 and 11.03.2011.

In terms of the said Judgment dated 31.01.2011 of the Hon'ble Appellate Tribunal for Electricity, the Commission has to re-determine the tariffs for the year 2009-10 and in pursuance thereof, the Commission has already invited comments and suggestions from the stakeholders on the proposed re-determination. UPCL has given its proposals for such re-determination vide their letter No. 589 dated 03.03.2011 and has also subsequently filed a Petition dated 09.03.2011 for the same.

The Commission is of the view that the tariffs as re-determined for the year 2009-10 will have to be given effect to as expeditiously as possible. If the tariffs for 2011-12 are fixed now without giving effect to such re-determination, there would be either of two alternatives before the Commission, they are (i) either the re-determined tariffs would have to be implemented mid-year in 2011-12 or (ii) the implementation of the Hon'ble Appellate Tribunal's Judgment would have to be delayed for a period of one year, i.e. when the tariff for 2012-13 is fixed by the Commission.

The Commission is of the view that the first of the said two alternatives is not in the interests of the Consumers or the Utility and would go against the provision of section 62(4) of the Electricity Act, 2003, as the same mandates that "*Tariffs may not ordinarily be amended more than once in a financial year ...*". Since the Judgment of the Hon'ble Appellate Tribunal is available to the Commission well before the start of the Financial Year 2011-12, the same could not be an extraordinary circumstance warranting a mid-year revision in tariff under Section 62(4).

As regards the second of the above two alternatives, the Commission is of the view that since the tariff for 2011-12 has not yet been issued and the Judgment of the Appellate Tribunal has been received between the course of proceedings, it would not be in keeping with the principles of judicial propriety to determine the tariff for 2011-12, whilst ignoring the Judgment of the Appellate Tribunal, more so in view of the fact that UPCL has also sought true-up for the FY 2009-10 in the petition for ARR/Tariff determination for FY 2011-12. Judicial propriety would require that the effect of the Appellate Tribunal's Judgment be given at the earliest possible opportunity which would be the tariff to be determined for the year 2011-12.

The Commission also notes that that even though the UPCL's tariff petition was admitted by the Commission on 10.12.2010 and the time period of 120 days under Section 64(3) of the Electricity Act, 2003 would normally expire on 09.04.2011. However, having regard to the subsequent development of the Judgment of the Hon'ble Appellate Tribunal and to further the intention of the Electricity Act, 2003 which is to ensure regulatory certainty and consumer interest etc, the Commission is of the view that the effect of re-determination of tariff for the year 2009-10 ought to be given in the tariff as may be determined for the year 2011-12.

In this connection the Commission notes that the UPCL has itself, in its Response No. 589 dated 03.03.2011, inter alia, requested the Commission that the "... impact of tariff revision may be implemented w.e.f. 01.04.2011" i.e. in the year 2011-12 itself.

In the premise, the Commission decides that the retail tariffs for 2011-12 will now be determined by the Commission after taking into account the re-determination of tariff for 2009-10 in terms of the aforesaid Judgment of the Hon'ble Appellate Tribunal of Electricity.

Further, as already indicated in the Tariff order for the FY 2010-11, the existing tariff shall continue to apply till revised by the Commission. Accordingly there would be no gap in the interregnum.

-Sd-

(Anand Kumar)
Member