

Before

UTTARANCHAL ELECTRICITY REGULATORY COMMISSION

In the matter of:

Directions given by the Hon'ble Appellate Tribunal for Electricity in order passed in Appeal No. 189 of 2005 on 14.09.2006 regarding Tariff for power sold by Uttaranchal Jal Vidyut Nigam Ltd. from its nine main hydro generating stations located in Uttaranchal for the year 2004-05.

And

In the matter of:

UJVNL's review petition dated 06.11.2006.

.....Petitioner

Coram

Shri Divakar Dev	Chairman
Shri V.K. Khanna	Member
Shri V.J. Talwar	Member

Date of Order: 14th March 2007

ORDER

This order is being issued in compliance with the directions contained in Hon'ble Appellate Tribunal for Electricity (Hon'ble Appellate Tribunal)'s order dated 14.09.2006 passed in Appeal No. 189 of 2005 filed by Uttaranchal Jal Vidyut Nigam Ltd. challenging Commission's order dated December 16, 2004, and Hon'ble Supreme Court's order dated 31.01.2007 passed while admitting Commission's Appeal No. 238 of 2007 against the Hon'ble Appellate Tribunal's said order.

Context and Background

- (2) With coming into effect of the Electricity Act, 2003 (Act), tariff for electricity sold by Uttaranchal Jal Vidyut Nigam Ltd. (UJVNL) to the distribution and supply licensee namely Uttaranchal Power Corporation Ltd. (UPCL) is required to be determined in terms of section 62 (1)(a) of the Act. UJVNL failed to file any proposal for this purpose before the Commission. The Commission, therefore, started *suo-moto* proceedings on 31.08.2004 for determination of tariffs for UJVNL's nine main hydro generating stations transferred to it from UP Jal Vidyut Nigam Ltd. (UPJVNL) and passed an order on 16.12.2004. UJVNL challenged the said order in the Hon'ble High Court of Nainital, who transferred the matter to the Hon'ble Appellate Tribunal. Accordingly, the Hon'ble Appellate Tribunal for Electricity considered UJVNL's Appeal No. 189 of 2005 against the Order dated 16.12.2004. The Hon'ble Tribunal passed an order on this Appeal on 14.09.2006 and, in para 51 of their order directed the Commission, to rework UJVNL's entire ARR and re-fix the tariff as per that order. The Hon'ble Appellate Tribunal were pleased to issue specific directions relating to:

- Calculation of depreciation
- Return on Equity
- Terminal benefits

Each of these is dealt with hereafter.

1 Depreciation

(3) The Hon'ble Appellate Tribunal's directions on this subject are:

i) "..... direct the Commission to sustain the claim of depreciation advanced by the appellant on the value of assets. As claimed by the appellant or at least at the normative value"

[Para 19]

ii) " to allow depreciation for the entire value of machinery of the nine generating stations and its buildings etc. as was hither before evaluated by the U.P. Electricity Regulatory Commission in the earlier determination."

[Para 21]

iii) "..... we set aside the disallowances of depreciation by the UERC and direct the first respondent commission to allow depreciation as prescribed."

[Para 50(b)]

(4) It may be recalled that the Commission in the order dated 16.12.2004 had indeed allowed depreciation on the total capital value of Rs. 503.96 Crore but as no loans were required to be repaid from this amount, as a matter of prudence it had only directed UJVNL to keep this amount in a separate fund so that it is available to meet the cost of replacement of the present assets as and when required. The Commission in para 5.3.3 of its Order dated 16.12.04 had stated that:

"The Commission as a special case is allowing depreciation on these assets, which is normally not permissible, on the condition that this entire amount is credited to the bank account for RMF fund."

The Hon'ble Tribunal, for some reason not elaborated in its order, has concluded that depreciation has not been allowed by the Commission and has directed the Commission to allow the same.

(5) Regulation 23, which specifies the methodology and extent of depreciation to be allowed on the assets, stipulates that depreciation shall be allowed only upto 90% of the asset cost, which is also the normal practice. In Dhakrani, Dhalipur and Khatima generating stations the accumulated depreciation upto 31.03.2004 has exceeded 90% of the assets' cost. In the

order dated 16.12.2004, no correction was made on this account as the excess depreciation so claimed was to be deposited in a separate fund, which has subsequently been faulted with and disallowed by the Hon'ble Tribunal. Necessary correction in this regard is, therefore, being made. The generating station-wise position of depreciation admissible for 2004-05 is given in the table below:

Table 1: GFA and Depreciation for 2004-05 (Rs. Cr.)

Plant	GFA on 14.01.00	Accumulated Depreciation till 14.01.00	Depreciation for 2001-02 to 2003-04	Accumulated Depreciation Till 31.03.04	Maximum Permissible Depreciation	Excess Depreciation	Depreciation allowable for 2004-05
Dhakrani	12.40	10.96	1.23	12.19	11.16	1.03	-1.03
Dhalipur	20.37	18.18	2.04	20.22	18.33	1.89	-1.89
Chibro	87.89	68.21	10.89	79.10	79.10	0.00	0.00
Khodri	73.97	38.01	9.17	47.18	66.57	0.00	1.76
Kulhal	17.51	11.27	2.17	13.44	15.76	0.00	0.42
Ramganga	50.02	37.16	6.20	43.36	45.02	0.00	1.19
Chilla	124.89	59.45	15.48	74.93	112.40	0.00	2.97
Maneri Bhali I	109.72	46.47	13.62	60.09	98.75	0.00	2.61
Khatima	7.19	6.22	0.72	6.94	6.47	0.47	-0.47
Total	503.96	295.93	61.52	357.45	453.56	3.39	5.56

2 Return on Equity (RoE)

The Hon'ble Appellate Tribunal's observations / directions on this are:

i) *"....The non-specification by the State Government as to the allocation of equity may be for ever so many reasons of State reorganisation or it may take some more time but that cannot be a ground for deprivation of return on the investment made in the generating stations, presently held by appellant, which was held by a larger State, now vested with the Government of Uttaranchal on re-organisation...."*

[para 23]

ii) *"The appellant had sought return on equity on 30% of the share capital based/GFA as valued by the Commission. The Commission has assessed the GFA and that being so, the Commission should have allowed RoE at least on that basis....."*

[para 24]

iii) *"The UP Electricity Regulatory Commission in its earlier proceedings, which in since being followed by Uttaranchal Electricity Commission, has fixed the capital cost/GFA for nine hydro generating plants at Rs. 503.96 crores as seen from Table 5.9, Page 48 of the tariff order. It is not only just but also appropriate to provide ROE on 30% on the said capital base, being normative equity."*

[Para 26]

iv) "..... we direct the respondent Regulatory Commission to consequently to allow ROE in terms of its Regulations."

[Para 26]

v) "..... we set aside disallowance of ROE and direct the first respondent commission to allow ROE as directed supra."

[Para 50 (c)]

- (6) In para 23 of the order the Hon'ble Tribunal has held that UJVNL should have been given return at least on the value of equity which was invested in these assets by UPJVNL in the undivided UP State.
- (7) However, in para 24 and again in para 26 of the order, the Hon'ble Tribunal has directed that RoE should have been allowed at least on 30% of the capital value of these assets recognized by the Commission.
- (8) But in para 26 of the order, the Hon'ble Tribunal has directed the Commission to allow RoE in terms of its regulations.
- (9) It may be pointed out here that UPJVNL's equity invested in these nine plants before their transfer to Uttaranchal has been shown in the supplemental power purchase agreement executed between UPJVNL and UPPCL on 16.07.2005 . While the equity investment as reflected in the PPA dated 18.12.2000, which was based on provisional transfer scheme dated 14.01.00 was Rs. 57.92 Crore, the same got reduced to Rs. 8.34 Crore as per the final transfer scheme for unbundling of UPSEB dated 25.01.01 and this was incorporated in the supplemental PPA dated 16.07.05. This figure of Rs. 8.34 Crore is substantially less than Rs. 151.19 Crore, which is 30% of the capital cost of Rs. 503.96 Crore assumed by the Hon'ble Tribunal. Therefore, if return is allowed as per the directions contained in para 23 of the order the same works out to only Rs. 1.17 Crore.
- (10) Notwithstanding the above, if return is to be allowed on UJVNL's assumed investment of 30% of the capital cost as per paras 24 and 26 of the order, the same shoots up to Rs. 21.17 Crore.
- (11) And again, if the return is allowed in terms of Commission's regulations as indeed directed by the Hon'ble Tribunal in para 26 of the order, the same works out to nil as no equity investment, whatsoever, has so far been made in these assets by UJVNL. In this context, proviso to regulation 18(1) of

Uttaranchal Electricity Regulatory Commission (Terms and Condition for Determination of Hydro Generation Tariff) Regulations, 2004 which deals with this issue, and is quite unambiguous, is reproduced below:

“Provided that in case actual equity employed is less than 30%, the actual debt and equity shall be considered for determination of tariff.”

The above provision is in full conformity with the National Tariff Policy and CERC's Regulations, which the Commission is obliged to follow.

- (12) Generating station-wise position of UJVNL's equity presumed to have been invested in these stations as per each of the above directions and return on such presumed investments is given below:

Table 2: Return on Equity (Rs. Crore)

Plant	Based on UJVNL's Actual Equity investment		As per UPJVNL's Equity Investment				Based on assumed Equity investment 30% of Asset Value of 503.96 Cr as directed by Hon'ble Tribunal	
			Based on PPA dated 18.12.2000		Based on PPA dated 16.07.2005			
	Equity	RoE	Equity	RoE	Equity	RoE	Equity	RoE
Dhakrani	0.00	0.00	2.06	0.29	0.05	0.01	3.72	0.52
Dhalipur	0.00	0.00	3.12	0.44	0.08	0.01	6.11	0.86
Chibro	0.00	0.00	14.66	2.05	0.77	0.11	26.37	3.69
Khodri	0.00	0.00	7.33	1.03	1.45	0.20	22.19	3.11
Kulhal	0.00	0.00	1.84	0.26	0.25	0.04	5.25	0.74
Ramganga	0.00	0.00	12.10	1.69	0.50	0.07	15.01	2.10
Chilla	0.00	0.00	8.80	1.23	2.64	0.37	37.47	5.25
Maneri Bhali I	0.00	0.00	5.50	0.77	2.56	0.36	32.92	4.61
Khatima	0.00	0.00	2.53	0.35	0.04	0.01	2.16	0.30
Total	0.00	0.00	57.92	8.11	8.34	1.17	151.19	21.17

To avoid being faulted with on this score or being accused of non-compliance of the Hon'ble Tribunal's directions, the Commission is provisionally taking into account maximum of the above values based on assumed equity investment of 30% in the capital, which is Rs. 21.17 Crore and is substantially higher than Rs. 1.17 Crore the return that would have been allowed if these plants had continued to remain with UPJVNL. As and when details of transfer of these assets from UPJVNL to UJVNL are finalised and UJVNL's actual investment in these assets is known, appropriate revision of this amount will be done and adjustments for the same will be done in future ARR's.

3 Terminal Benefits

(13) The Hon'ble Appellate Tribunal's directions on this are:

i) "..... we direct that all terminal benefits including PF shall be approved on accrual basis." [Para 30]

ii) "..... to allow the claim made by the appellant in respect of terminal benefits and PF, related claims of employees." [Para 50 (d)]

(14) In its Appeal, UJVNL had claimed in its Grounds of Appeal that:

"XVI Because the Appellant states that the Regulations permit deviations in certain cases. In the present case, the Commission clearly failed and neglected to do the same. Some of the specific details of O&M expenses that have not been considered by the UERC are set out herein after:

Employee Benefits – on the issue of employee benefits, particularly those relating to provident fund and related claims of retiring employees, the Learned UERC has failed to appreciate that the Appellant is under a statutory obligation to make payments towards terminal benefits of employees. This burden cannot be discharged by a process of borrowing money for payment of current dues of the Appellant. Since the dues/liability is admitted by the UERC, there is no scope for the Learned UERC to provide a payment mechanism, which requires the Appellant to borrow money for payment for current liability. The said direction is not contemplated under the Regulations, and in any event without jurisdiction. This direction also amounts to an act of excessive regulation of the Appellant entity."

(15) It may be recalled that the Commission had already allowed in full UJVNL's Terminal benefit liabilities accruing as per the Actuary's calculations. The amount of Rs. 8.4 crore, not allowed by the Commission relates to payment of provident fund, which is the liability of the still to be divided Provident Fund Trust, and leave encashment etc. which is a part the employee cost. Therefore, while disallowing expenditure in discharge of the PF Trust's liability, which has already been taken over by UP Government, the Commission in its Order dated 16.12.04 had made a transitional arrangement for making payments on this account by allowing carrying cost for the same. However, in view of Hon'ble

Tribunal's directions quoted above, this amount is being allowed without any scrutiny, and there is now no need for allowing interest of Rs. 0.42 Crore as funding cost and the same is being written back. Since this amount is meant only for meeting terminal benefit and liabilities of the PF Trust, UJVNL should set aside this amount in a separate fund and use the same only for that and for no other purpose. Since the liability for payment of provident fund is that of the UP Trust which has subsequently been assumed by UP Government, UJVNL should take effective steps to recover this amount as well as similar amounts already paid by it in the previous years, from the PF Trust. UJVNL shall file with its future ARR's full details of utilisation of this fund and of the reimbursements claimed and received on this account from the UP Trust. As and when the Provident Fund Trust or the UP or Uttaranchal Government reimburses this amount, necessary adjustment for the same will be made in UJVNL's future ARR.

- (16) Operation & Maintenance (O&M) expenses are to be calculated in terms of Regulation 26(1) based on past 5 year expenses. This works out to Rs. 58.69 Crore. However, the Commission for reasons given in Order dated 16.12.04 had allowed relaxation in the Regulations to the extent that only past 3 years' data was taken into account instead of 5 years. Accordingly, the permissible O&M expenses worked out to Rs. 72.45 Crore. This does not include the expenses not hitherto incurred namely regulatory expenses of Rs. 1 Crore and expenses for supply to colonies amounting to Rs. 0.99 Crore. Adding these makes the allowable expenses for 2004-05 as Rs. 74.44 Crore. However, for the reasons given in the Order dated 16.12.04, the Commission had allowed further relaxations in the various heads of O&M expenses and had approved the O&M expenses of Rs. 79.48 Crore. There is no reason why the consumer should be forced to pay higher tariffs by continuing these relaxations. However, the Commission is not reviewing these relaxations allowed for 2004-05 as a one time measure but would like to make it clear that such relaxations shall not be allowed in future. Accordingly, the O&M expenses for the year work out to Rs. 87.88 Crore. Plant-wise break-up of the same is given below:

Table 3: O&M Expenses (Rs. Crore)

Plant	As per Regulations	As per Relaxed Regulations	Allowed on 16.12.04	Additional expenses now approved	Total O&M now approved
Dhakrani	3.82	4.09	5.16	0.44	5.60
Dhalipur	5.75	6.34	5.67	0.68	6.35
Chibro	11.64	15.74	17.81	1.68	19.49
Khodri	4.17	6.83	8.34	0.91	9.25
Kulhal	3.31	3.65	3.84	0.39	4.23
Ramganga	7.36	8.29	8.92	0.97	9.89
Chilla	9.97	12.66	13.65	1.51	15.16
Maneri Bhali I	8.69	10.86	11.86	1.33	13.19
Khatima	3.98	3.99	4.23	0.49	4.72
Total	58.69	72.45	79.48	8.40	87.88

4 Annual Fixed Charges (AFC)

- (17) Based on above, the total AFC for the year 2004-05 works out to Rs. 119.11 Crore. As per regulations, the plant-wise AFC is to be recovered through primary energy charge and capacity charges. For calculating the primary energy rate the formula given in regulation 28 is:

$$\text{Primary energy rate} = \frac{\text{Annual fixed charges}}{\text{Saleable primary energy}}$$

Saleable primary energy is to be calculated in terms of regulation nos. 3(21) and 3(26) by reducing the design energy of the plant by admissible auxiliary consumption and free supply to the host State which in the present case is zero.

However, in the earlier order dated 16.12.2004, for calculating the primary energy rate, the Commission had allowed computation of saleable primary energy on the basis of a lower value. This was the average generation for last 15 years or the design energy mutually agreed between UPJVNL and UPPCL, whichever was lower. Accordingly, instead of actual Design Energy, which was 3484 MUs, the Primary Energy Generation was assumed to be 3169.13 MUs for this purpose. By distributing the total AFC on this lower value, instead of the saleable primary energy derived as per Regulations, from the plant's actual Design Energy, comparatively higher rates of primary energy had been allowed. Although there is no direction of Hon'ble Appellate Tribunal in this regard, the Commission is not making any change in this approach and for the purposes of this order is continuing with the relaxations earlier allowed, along with, the attendant

direction, given in para 5.3.9 of the order dated 16.12.04, stipulating that secondary energy will be computed only when the actual generation exceeds the actual Design Energy. In this context, it may be recalled that in its Order dated 16.12.04, the Commission had observed in para 4.3 that:

"...The Commission finds that the concept and definition of Design Energy itself are sound and logical and feels that the same need not be diluted or tampered with. If genuine problem exists on account of degeneration of machines in some generating plant, as has been claimed, the right thing to do is to review such plant's capacity. For doing so, the Petitioner is free to approach the Commission alongwith all supporting data. The Commission will take a view on each such request after taking into account all relevant factors and such other inputs as may be relevant."

In spite of sufficient time having elapsed, no such request has been received by the Commission and there is no reason for Commission to continue relaxing its relevant regulations on this account in future.

- (18) Generating station-wise comparative position of AFCs and Tariffs calculated as per Regulations, those allowed in the Order dated 16.12.04 and those being now allowed as per Hon'ble Tribunal's directions is given in the Table below:

Table 4: Annual Fixed Charges and Tariff for 2004-05

Plant	As per Regulations			Approved on 16.12.04			Now Approved		
	AFC	Saleable Energy	Primary Energy Rate	AFC	Saleable Energy	Primary Energy Rate	AFC	Saleable Energy	Primary Energy Rate
	(Rs.Cr.)	(MU)	(p/u)	(Rs.Cr.)	(MU)	(p/u)	(Rs.Cr.)	(MU)	(p/u)
Dhokrani	3.36	167.82	20.03	5.79	155.78	37.19	5.72	155.78	36.70
Dhalipur	4.31	190.66	22.63	6.18	190.66	32.42	5.81	190.66	30.45
Chibro	12.25	743.25	16.49	18.69	743.25	25.15	23.96	743.25	32.24
Khodri	6.33	342.59	18.47	10.66	342.58	31.10	14.62	342.58	42.68
Kulhal	3.89	162.85	23.87	4.44	152.83	29.03	5.56	152.83	36.39
Ramganga	8.95	382.31	23.40	10.65	308.82	34.48	13.62	308.82	44.09
Chilla	13.45	719.93	18.68	17.29	666.59	25.95	23.98	666.59	35.97
Maneri							21.07	392.24	53.71
Bhali I	11.88	542.18	21.90	15.17	392.24	38.69			
Khatima	3.72	206.54	18.01	4.47	192.69	23.21	4.77	192.69	24.77
Total	68.14	3458.11	19.70	93.35	3145.44	29.68	119.11	3145.44	37.87

The weighted average of these rates is shown in the last row of the table. It may be noted that as per Regulations the weighted average tariff for

these generating stations works out to only 19.70 p/u against 29.68 p/u approved in Order dated 16.12.2004, and 37.87 p/u now being allowed in this order and against 37.2 p/u approved by UPERC when these plants were with UPJVNL. Consequential effect of this on Consumer Tariffs is obvious and needs no elaboration.

- (19) As stated earlier in this order, for want of final details of transfer of these assets from UPJVNL to UJVNL, certain values have been assumed in this order. Necessary corrections for these values will be made in future tariffs as and when the correct values become known.
- (20) Further, this order and its consequences are subject to Hon'ble Supreme Court's Order dated 31.01.2007, which stipulates that:

"Pending disposal of the appeal, the direction contained in paragraph 51 of the impugned order shall be complied with but the increase on account of revision may be collected from the consumers only for the years 2004-05 and onwards, and not in respect of the period prior to the year 2004-05.

We further clarify that if, in terms of the order of the Appellate Tribunal, any amount is to be refunded by the respondent no. 1 to the consumers for the period prior to 2004-05, that shall be refunded.

This order is subject to the result of the appeal."

- (21) The petitioner and the licensee shall ensure full compliance of the Hon'ble Supreme Court's above directions while making any adjustments in the cost of power purchased.

Sd/-
V.J. Talwar
Member

Sd/-
V.K. Khanna
Member

Sd/-
Divakar Dev
Chairman