



BEFORE

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION,
LUCKNOW**

Petition Nos.:

1. DVVNL - 736/2011(ARR FY 2010-11 & FY 2011-12) Dt. 25.03.2011 & 790/2012 (ARR FY 2012-13) Dt. 21.02.2012
2. PVVNL – 737/2011(ARR FY 2010-11 & FY 2011-12) Dt. 25.03.2011 & 791/2012 (ARR FY 2012-13) Dt. 21.02.2012
3. MVVNL – 735/2011(ARR FY 2010-11 & FY 2011-12) Dt. 25.03.2011 & 789/2012 (ARR FY 2012-13) Dt. 21.02.2012
4. PuVVNL - 738/2011(ARR FY 2010-11 & FY 2011-12) Dt. 25.03.2011 & 792/2012 (ARR FY 2012-13) Dt. 21.02.2012
5. KESCO - 751/2011(ARR FY 2010-11 & FY 2011-12) Dt. 25.03.2011 & 798/2012 (ARR FY 2012-13) Dt. 23.03.2012
6. UPPTCL - 739/2011(ARR FY 2010-11 & FY 2011-12) Dt. 28.03.2011 & 793/2012 (ARR FY 2012-13) Dt. 21.02.2012

IN THE MATTER OF:

Aggregate Revenue Requirement (ARR) & Tariff for FY 2010-11, FY 2011-12 and FY 2012-13 by the State owned distribution utilities namely – DVVNL, PVVNL, MVVNL, PuVVNL & KESCO & the State owned transmission utility namely – UPPTCL.

And

IN THE MATTER OF:

Dakshinanchal Vidhyut Vitaran Nigam Limited **Petitioners**
Paschimanchal Vidhyut Vitaran Nigam Limited
Madhyanchal Vidhyut Vitaran Nigam Limited
Poorvanchal Vidhyut Vitaran Nigam Limited
Kanpur Electricity Supply Company Limited
Uttar Pradesh Power Transmission Corporation Limited



Present

1. Hon'ble Shri Rajesh Awasthi, Chairman
2. Hon'ble Shri Shreeram, Member
3. Hon'ble Smt. Meenakshi Singh, Member

ORDER

The State owned distribution utilities namely DVVNL (Dakshinanchal Vidhyut Vitaran Nigam Limited), PVVNL (Paschimanchal Vidhyut Vitaran Nigam Limited), MVVNL (Madhyanchal Vidhyut Vitaran Nigam Limited), PuVVNL (Poorvanchal Vidhyut Vitaran Nigam Limited), KESCO (Kanpur Electricity Supply Company Limited) & State owned transmission utility namely UPPTCL (Uttar Pradesh Power Transmission Corporation Limited) have submitted before the Commission their ARR / Tariff petitions for FY 2010-11 & FY 2011-12 and FY 2012-13 under Section 64 of the Electricity Act, 2003 and the provisions of UPERC (Conduct of Business) Regulations, 2004, UPERC (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2006 & UPERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2006.

1. The UPERC (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2006 and the UPERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2006 require the distribution licensee and the transmission licensee respectively to submit the audited accounts of the revenant year along with the ARR / Tariff petition filings.
2. A bare perusal of the Tariff Regulations reveal that the information to be submitted by the licensee in its ARR / Tariff petition has to be based on audited annual accounts which are to be submitted with the petition, whereas the petitioners have failed to do so.



3. The Hon'ble Appellate Tribunal For Electricity (hereinafter referred to as "APTEL") in its judgement in Appeal No. 121 of 2010 dated 21st October, 2011 vide Para 12.1 has upheld the Tariff Regulations in the matter of requirement of the Audited Accounts for the previous year in any ARR / Tariff filing. The order also stipulates to consider the audited accounts for the previous year and provisional half yearly accounts for the current year as part of the Annual Performance Review. It further held that in case the previous year audited accounts are not available, then the audited accounts for the year prior to the previous year could be taken into consideration.
4. The Hon'ble APTEL vide Para 6.15 gave directions to the petitioner with regards to time lines for filing the audited accounts for FY 2007-08, FY 2008-09 and FY 2009-10 along with directions to State Commission to immediately initiate true-up exercise after receipt of the same. The timelines for submission of the audited accounts by the licensees / petitioners were as follows:

Financial Year	Last date of Submission
2007-08	21.11.2011
2008-09	31.01.2011 (May be read as 31.01.2012)
2009-10	31.03.2011

Relevant para of the Hon'ble APTEL's judgment referred above is reproduced below:

"..Therefore, we direct the respondents 3 to 8 to submit the audited accounts for the FY 2007-08 to the State Commission within one month of the date of this judgment. The audited accounts for the FY 2008-09 and 2009-10 should be furnished by 31.01.2011 and 31.3.2012 respectively to



the State Commission. The State Commission shall initiate the true up exercise upto FY 2006-07 immediately, followed by the true up of the FY 2007-08, 2008-09 and 2009-10 immediately after the receipt of the respective audited accounts...”

5. In view of the Electricity Act, 2003, Tariff Regulations and the Hon'ble APTEL's Judgment referred above it is clear that the audited accounts for the previous year is one of the requirements to be fulfilled for the petition to be admitted. Accordingly for processing of the ARR / Tariff Petition for any financial year the following are required:
 - a. Provisional half year accounts for the current financial year,
 - b. Annual audited accounts for the previous year along with true up petition,
 - c. In case due to any reason the audited accounts for previous year is not available, then the audited accounts for at least the year prior to the previous year is required along with provisional accounts for the previous year.
6. The Commission finds that the non-submission of audited accounts by the petitioners is contrary to the requirement of the Tariff Regulations.
7. The Commission had accordingly convened a hearing on 27th March, 2012, wherein the issue of non-submission of audited accounts was raised. The petitioners informed the Commission that the accounts for FY 2008-09 were under audit by the CAG and would be made available to the Commission by June, 2012. Further it was submitted that the CAG audited accounts for FY 2009-10 would be made available by December, 2012.
8. Accordingly the Commission, vide its order dated 29th March, 2012, had directed the petitioners to file within 15 days the provisional accounts along with the schedules duly certified by Chartered Accountant for FY 2009-10 and FY 2010-11. The petitioner was also directed to submit the tariff proposal, true up petitions up-to FY 2007-08, details of Govt. subsidy, system loading charges etc. within 15 days.



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9. The petitioners in compliance to the directives of the Commission had filed the additional data / clarifications along with the provisional accounts for FY 2009-10 and FY 2010-11 vide letter Nos. 514/RAU/ARR & Tariff FY 2012-13 dated 12th April, 2012 & 605/RAU/ARR & Tariff FY 2012-13 dated 25th April, 2012.
10. Further the Commission convened another hearing on 17th May, 2012, wherein the issue of non-submission of audited accounts was again raised. The petitioners submitted that the times lines as submitted by them in the previous hearing would be adhered to. The Commission observed that the ARR petitions filed by the State owned distribution utilities shows a large revenue gap, whereas the petitions are void of any tariff proposal or methodology to mitigate this gap. As per Regulation 2.1 (4) of the Distribution Tariff Regulations, it is mandatory for the licensee to submit along with the ARR a proposal for recovery of the revenue gap. Also, if the gap is proposed to be amortised through a tariff hike, the ARR petition should include the tariff proposal of the licensee. The Commission also observed that in the absence of any tariff revision the licensees, already burdened with heavy debts, may face severe cash flow problems.
11. The petitioners, in compliance to the directives of the Commission, filed their tariff proposal on 24th May, 2012.
12. Further, UPPCL, UPPTCL, MVVNL, PVVNL, PuVVNL & DVVNL filed the true-up petition (Petition No. 809/2012) for FY 2000-01 to FY 2007-08 on 28th May, 2012. The petitioners have claimed a true-up of Rs. 14,638.64 Crs. and a carrying cost of Rs. 11,352 Crs. This petition shall be taken up by the Commission separately.
13. The Commission vide its letters dt. 31st May, 2012 & 5th June, 2012 pointed out some important data gaps / inconsistencies in the submissions made. In response to this the petitioners submitted the revised provisional accounts for FY 2009-10 & FY 2010-11 along with the revised data in tariff formats on 15th June, 2012. The same was found to be at variance with the data submitted earlier. This was brought to the notice of the petitioner
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vide Commission's letter dt. 19th June, 2012, wherein it was also informed to the petitioners that the Commission takes it that this set of data supersedes all the corresponding data submitted by them earlier.

14. The Commission observes that to proceed further in the matter of determination of ARR / Tariff it has to refer to the data submitted by the licensees in their petitions including the various additional data / clarifications submissions made by them from time to time. However as the petitions do not contain the data as per the Tariff Regulations in respect to the audited accounts, they are liable not to be accepted. In such a scenario the Commission can proceed suo-motto, for determination of the ARR / Tariff, vide powers conferred to it under the Section 26 of the UPERC (Conduct of Business) Regulations, 2004. However, it is pertinent to note that while proceeding suo-moto the Commission would be referring to all the data submitted by the licensees vide their petitions including the various additional data / clarifications submissions made from time to time. As such there would be no difference in the analysis and the finalization of the ARR / Tariff orders if the petitions are accepted in their present form. The only difference would be that in suo-moto proceedings the petitioners would play a passive role in the process involving issue of public notices and holding of public hearings. The Commission therefore is of the firm view that it would be best for the power sector of the State to actively involve the petitioner, who is also the biggest stakeholder in the whole process. Required course correction with data based on audited accounts can be carried out as and when true up exercise is taken up with the audited accounts for the respective years. Also it is now clear from the perusal of the True up petition submitted for FY 2000-01 to FY 2007-08 that there is a very large gap which needs to be addressed. This gap cannot be bridged fully by the present tariff proposal covering only the three years i.e. FY 2010-11, FY 2011-12 & FY 2012-13 as the hike in tariff required would amount to a tariff shock. Taking all the above factors into consideration the Commission admits the ARR / Tariff petitions along with the tariff proposal for FY 2010-11 & FY 2011-12 and FY 2012-13.



15. The Commission further directs each licensee to publish within 3 days from the issue of this order the Public Notice detailing the salient information and facts of the ARR / Tariff petitions along with the tariff proposal for FY 2010-11 & FY 2011-12 and FY 2012-13 along with their website address in at least two daily newspapers (One English and One Hindi) for two successive days inviting views / comments / suggestions / objections / representations till 14th July, 2012 by all stakeholders and public at large. The Commission further directs each licensee to upload the submitted petitions along with the additional data / clarifications on their website for the same purpose. The Commission also directs MVVNL, PVVNL, PuVVNL and DVVNL to furnish a copy of the above petitions along with the additional data / clarifications to UPPCL, UPPTCL and the State Government. Similarly UPPTCL is directed to furnish a copy of the above petitions along with the additional data / clarifications to MVVNL, PVVNL, PuVVNL, DVVNL, UPPCL and the State Government

16. The Commission reserves the right to seek any further information / clarifications as deemed necessary during the processing of the ARR / Tariff of FY 2010-11 & FY 2011-12 and FY 2012-13.

(Meenakshi Singh)
Member

(Shree Ram)
Member

(Rajesh Awasthi)
Chairman

Place: Lucknow
Date: 25.06.2012