Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal no. 180 of 2013

Dated: 18th May, 2015

Present: **Hon'ble Mr. Rakesh Nath, Technical Member**
Hon'ble Mr. Justice Surendra Kumar, Judicial Member

In the matter of:

Uttarakhand Power Corporation Limited …**Appellant**
Urja Bhawan, Kanwali road
Dehradun, Uttarakhand – 248 001

Versus

Uttarakhand Electricity Regulatory Commission …**Respondent**
1st Floor of Institution of Engineers
Building (I) Building
Near ISBT, Majra
Dehradun, Uttarakhand – 248 002

Counsel for the Appellant : **Mr. Amit Kapur**
Mr. Vishal Anand
Mr. Gaurav Dudeja

Counsel for the Respondent: **Mr. Buddy A. Ranganadhan with**
Mr. Raunak Jain for R-1

Mr. M.L. Lahoty]
Ms. Gargi Bhatia Bharati]
Ms. Shally Bhasin]
Mr. Lakshmesh Kumar] For Impleader
Mr. P. Anand]
Mr. Paban K. Sharma]
Mr. Lakshmesh Kumar]

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Uttarakhand Power Corporation Limited (UPCL) challenging the order dated 06.06.2013 passed by Uttarakhand Electricity Regulatory Commission **("State Commission")** regarding true up for FY 2010-13, Annual Revenue Requirement for FYs 2013-14 to 2015-16 and tariff for FY 2013-14. The Appellant is a Distribution company. The State Commission is the Respondent no.1.

2. The following issues have been raised:-

1) Inclusion of entire rebate in non-tariff income:
2) Non-consideration of financing cost on LPSC.
3) Fixation of unrealistic and unachievable distribution loss trajectory.
4) Lower rate of interest on working capital.
5) Incorrect calculation of working capital.
6) Disallowance of past adjustment.
7) True up of distribution losses

3. We have heard Shri Amit Kapur, Learned Counsel for the Appellant and Mr. Buddy A. Ranganadhan, Learned Counsel for the State Commission. Let us take up the issues one by one.

4. The first issue is inclusion of entire rebate in non-tariff income:

5. According to the Appellant, the State Commission has erroneously included the entire rebate earned by the Appellant in non-tariff income which is contrary to the judgment of this Tribunal in Appeal no. 153 of 2009 in the matter of NDPL and DERC, wherein it was held that rebate earned by Discoms over and above 1% is solely on account of Discom and does not form part of non-tariff income. This judgment will squarely be applicable to the facts of the present case as Tariff Regulations of Delhi and Uttarakhand are similar.

6. It is argued by Learned Counsel for the State Commission that the Appellant for the first time in Appeal has raised the issue of rebate above 1% not to be considered as non-tariff income. The Appellant neither mentioned this in the tariff Petition nor submitted the breakup of rebate. The Appellant has been withholding dues to be paid to the State Government and State owned generating companies from which it is not eligible for any rebate for timely payment and has been utilizing

the money elsewhere including payments to central generating stations and IPPs.

7. We find that the Regulations for working capital are different in Delhi and Uttarakhand. As per the Tariff Regulation, 2004 of Uttarakhand receivables for sale of electricity for a period equivalent to billing cycle plus 1 month suitably adjusted for security given by consumers and credit given by suppliers and estimated spares cost for a period approved as minimum inventory in R&M expenses. The billing cycle in Uttarakhand for domestic consumers is two months and other consumers one month. Thus, for domestic consumers Uttarakhand allows three months receivables in working capital. Delhi's Tariff Regulations allow only two months revenue from sale of electricity and do not allow estimated cost of spares. Further, in Delhi Commission's Regulations Power Purchase Cost for one month is deducted in computing working capital which is not so in Uttarakhand Regulations. Therefore, finding of this Tribunal in Appeal no. 153 of 2009 based on Delhi's Tariff Regulations will not be applicable to the present case. Moreover, as argued by Learned Counsel for the State Commission, the Appellant did not raise this issue either in the Petition or in

proceedings before the State Commission. We do not find any merit in the issue raised by the Appellant.

8. The Second issue is non-consideration of financing cost on LPSC.

9. According to Appellant, the State Commission while treating LPSC as non-tariff income did not allow financing cost incurred by the Appellant in infusing additional capital due to late payment of bills by the consumers. This approach of State Commission is in contravention of judgment of this Tribunal in Appeal no. 153 of 2009, NDPL Vs. DERC.

10. According to Learned Counsel for the State Commission Tariff Regulations, 2004 is not only allowing collection inefficiency but also two months billing cycle as part of working capital requirements of the Appellant and interest is being allowed on the same. Hence the delay in collecting the dues from consumers has been factored into while calculating working capital requirement. The Commission asked the Appellant to submit whether the actual short term loans raised by the Appellant exceeded the normative working capital and also to justify the increase in working capital requirement in view of approved collection efficiency target of the Appellant. However, no information on the same was submitted by the Appellant. Judgment passed in Appeal no. 153 of 2009 is not applicable as norms of working capital specified

by Delhi Commission does not include capital required to finance such shortfall in collection of current dues. However, Uttarakhand Tariff Regulations includes this component. Collection Efficiency of Appellant for FYs 2010-11 and 2011-12 was 92.56% and 92.67% respectively against 96% and 97% approved by the Commission. Appellant had resort to short term borrowing due to collection inefficiency and the same cannot be passed on to the consumers. Appellant only recognizes portion of delayed payment surcharges as income under non-tariff income which is actually realized from the consumers on cash basis and not the entire amount of DPS billed on accrual basis.

11. We find merits in the argument of the Learned Counsel for the State Commission and reject the contention of the Appellant.

12. The Third issue is fixation of unrealistic and unachievable distribution loss trajectory.

13. The State Commission has ignored the actual loss level existing at the time of fixation of loss trajectory and has fixed the distribution loss trajectory assuming that the Appellant has achieved the distribution loss level of 18% as fixed for the previous year. The Appellant has already been penalized for not achieving the distribution loss targets set up by the State Commission for the previous year and cannot be

penalized twice for the same thing. WESCO Vs DERC:2010 ELR (APTEL) 1254 & BRPL Vs DERC:2009 ELR (APTEL) 0880 have been relied upon.

14. The Learned Counsel for the State Commission has submitted as under:

a) Commission in its Tariff order for FY 2003-04 considered opening losses for FY 2002-03 at 44.32% as against 38% i.e. 6.32% higher than the losses of 38.00% considered under the FRP. For FY 2003-04 Commission allowed distribution loss at 40.32% against 29.52% submitted by the Appellant. Therefore, while fixing the loss reduction trajectory allowed the utility sufficient cushion to the tune of around 10% while fixing the base line loss level for the Appellant. Loss reduction trajectory for till 2007-08 was 4% per annum. Therefore, while determining the UPCL's Annual Revenue Requirement and Retail Supply Tariff for FY 2008-09, the Commission directed UPCL to submit a loss reduction trajectory from FY 2008-09 onwards. However, in the absence of any study conducted by UPCL for realistic assessment of losses in line with past trend, the Commission in its tariff order for the FY 2008-09 specified a distribution loss target of 22.32% for FY 2008-09. Further, the Commission in its tariff order for FY 2009-10 directed the Appellant to reduce the distribution losses of 22.32% fixed for FY 2008-09, by a modest 2% to achieve the distribution loss target of 20.32% for the FY 2009-10. For tariff order for FY 2010-11 and 2011-12, Commission fixed distribution loss reduction target as 1.32% and 1% respectively and the tariff orders were not challenged by the Appellant.

b) In its previous tariff orders, the Commission had directed Appellant to carry out the energy audit study which has not been done by the Appellant till date. The sum of defective meters and meter not read continue to be above 20% of the total consumers for more than 5 years in each billing cycle.

c) The Appellant has accepted the loss reduction trajectories approved in various tariff orders till FY 2012-13 as the Appellant has neither filed any Review Petitions nor challenged the loss level approved by the Commission in its tariff orders till FY 2012-13. When the Appellant itself has accepted the loss level of 18% and 17% for FY 2011-12 and FY 2012-13, the opening level of losses for FY 2012-13 cannot be considered as 19.96%.

d) The Appellant itself has considered the loss level approved by the Commission for claiming the true up for FY 2010-11 and provisional true-up for FY 2011-12.

e) The Appellant itself has committed to reduce the AT&C losses for availing funding under R-APDRP Schemes and in case the Appellant is not able to achieve or sustain the 15% AT&C loss target, it would result in increased burden of loan on the Appellant.

f) R-APDRP scheme mandates to achieve 15% AT&C losses and not the distribution losses as mentioned by the Appellant. Further, the R-APDRP scheme have been taken in those 31 towns in the State of Uttarakhand where distribution losses are highest, hence, it is all the more critical for the licensee to reduce the losses based on the trajectory approved by the Commission.

g) Regulation 78 provides that the Commission may direct the Appellant to conduct energy audit in order to substantiate distribution loss calculations.

h) Despite repeated directions in previous tariff orders, the Appellant has not submitted the voltage wise losses, break up of losses into technical and commercial losses and results of energy Audit.

i) On an overall basis, the Appellant has failed to take actions to address the issues of identification of high loss areas through energy audit and improvement of metering and that of reduction in losses progressively.

15. We find that during the period 2006-07 to 2011-12, the State Commission had given a target of 28.32% to 18% i.e. 10% in a period of 5 years. However, UPCL was able to reduce it to only upto 19.96% at the end of 2011-12. For the year 2012-13 and 2013-14 Commission has fixed target of 17 and 16% respectively i.e. reduction of 1% over the previous year's target. Thereafter for 2014-15 and 2015-16, the reduction in loss level has been reduced to 0.5% per annum. It is clear from the submissions made by State Commission that the Appellant has not been taking action on the directions given by the State Commission on defective meter and meter not read which remained above 20% of total consumers more than five years in each billing cycle. The State Commission UPCL has not taken action for energy audit. We do not find any infirmity in fixing up of loss reduction targets

by the State Commission. The Appellant has not given any instances where funds for capital works for strengthening of distribution system have been denied by the State Commission in ARR. Wesco's case will not be applicable to the present case as in Wesco, the Discom was not allowed adequate amount in Annual Revenue Requirement for capital works. On the other hand the Appellant is also a beneficiary of RAPDRP. This issue is decided against the Appellant.

16. The fourth issue is lower rate of interest on working capital.

17. On this issue it has been agreed by the Learned Counsel for the State Commission that this will be corrected by carrying out the final true up for FY 2011-12 along with carrying cost on the same. This issue is disposed of accordingly.

18. The Fifth issue is incorrect calculation of working capital.

19. Accordingly to the Appellant, the State Commission while calculating working capital has erred in not including capital required to finance delayed payment received from consumers which is contrary to Regulations 14.

20. The State Commission has submitted as under:-

a) Capital required to finance such shortfall in current dues is nothing but the amount derived by multiplying collection inefficiency with the revenue for the year approved by the Commission.

b) Under Tariff Regulations, 2004 is not only allowing the collection inefficiency but also receivables equivalent to 2 month billing cycle is included in the working capital requirement of the Appellant and interest is being allowed on the same in accordance with the Regulations. Hence, the delay in collecting the dues from consumers at prescribed collection efficiency has already been factored in while calculating the working capital requirement.

21. The issue regarding financing cost of LPSC has been dealt by us above under second issue. We find that the Regulations provide for capital required to finance such shortfall in collection of current dues **as may be allowed by the Commission** to be included in the working capital. As stated under the second issue, the Commission sought data from the Appellant whether actual short term loans raised to meet working capital exceeded the normative working capital and also to justify increase in working capital requirement in view of approved

collection efficiency target. However, no information was submitted by the Appellant. Therefore, in the absence of the information the State Commission could not provide for capital required to finance shortfall in collection of dues to be decided by the Commission as per the Regulations. We do not find any reason to interfere with the impugned order in this regard.

22. The Sixth issue is disallowance of past adjustment.

23. It is submitted by the Appellant that the State Commission has not allowed the adjustment of the past claim only on the ground that transfer scheme cannot be considered as final based on the documentary evidence submitted by the Appellant. The letter dated 27.04.2012 issued by Government of Uttarakhand is only a letter to UPCL and is not a proper notification on finalization of transfer scheme in accordance with the UP Reorganization Act, 2000. According to the Appellant, the State Commission's finding is contrary to Section 63 of UP Reorganization Act, 2000 under which the transfer scheme was finalized. The transfer scheme was formulated under Section 63 of the Reorganization of Act which does not require the transfer scheme to be notified. Government of Uttarakhand by order dated 27.04.2012 approved the transfer scheme of assets and liabilities executed

between UP Power Corporation Ltd and the Appellant on 12.10.2003. The State Commission has not allowed the past adjustment solely on the ground that the transfer scheme has not been notified by the State Commission.

24. Learned Counsel for the State Commission submitted as under:-

a) For tariff determination, what is relevant is the original cost of acquisition/creation of assets and not the values that may have been assigned to them during each such transfer. In order to have a reliable basis for fixing the opening values of gross fixed assets, the Commission had directed UPCL to get the transfer scheme finalized by the Government at an early date in its previous orders.

b) Order dated 05.11.2001 issued by Government of India in exercise of powers conferred upon it under Section 63(4) of the Act was provisional.

c) In accordance with the GoI's order, the assets located in the State of Uttaranchal were to remain with Uttaranchal at their historical costs and common assets were to be transferred in the ratio of consumption of power. However, in the transfer scheme agreed to between the two corporations, the basis of transfer of fixed assets was entirely different than the methodology proposed in the GOI order. In fact the two corporations agreed upon the transformation capacity as the basis of valuation/apportionment of the assets and considering Uttaranchal as a hilly State a weightage of 1.2 times for infrastructure in hills was taken.

d) Value of assets had been shown differently in different contexts. In the provisional accounts of the Appellant company, filed along with the tariff petition for the year 2003-04, the opening value of fixed assets transferred form UPPCL as on 09.11.2001 was shown as Rs. 478.86 crore. In the same petition this value as on 31.03.2002 was shown as Rs. 507.34 crore. And in the transfer scheme the value of these assets has been claimed to be Rs. 1,058.18 crore as on 09.11.2001 which is a normative value and not on historical value of assets.

e) Transfer scheme for the sharing of assts and liability could only be by an order of the Central Government. The so called "Transfer Scheme" dated 12.10.2012 stated to have been agreed upon between UPPCL and UPCL is not a transfer scheme recognized under Section 63(4) of UP Reorganization Act, 2000.

f) Letter dated 27.04.2013 of the Government of Uttarakhand which itself mandates that the transfer scheme of 12.10.2003 is approved "subject to the condition that the provisions of the said scheme will be complied with in letter and spirit by completing necessary legal and administrative formalities" has necessary to mean the issuance of an order by the Central Government by approving the transfer scheme under the Act.

g) The appellant itself had consistently maintained that the transfer scheme was not finalized and was provisional.

h) Liability towards CPSU dues was a current liability which was transferred to the Appellant. Regulations does not provide for inclusion of current liability in the elements to be included under equity. The amount under equity can only earn return if it is actually invested in formation of assets. The Appellant have placed nothing on record ot substantiate that they invested this money in creation of assets.

25. We feel that since it is matter of transfer scheme and apportioning of value of assets between two States after reorganization, the Appellant should take up the matter with State Government for issuance of

notification on transfer of assets to Uttarakhand from UP. Accordingly decided.

26. The Seventh issue is true up of distribution losses.

27. According to the Appellant, the distribution loss trajectory for FY 2010-11 and 2011-12 was unrealistic and unachievable since the State Commission fixed the loss levels without taking into consideration the actual loss level existing at the time of fixation of loss trajectory.

28. We feel that this issue cannot be raised in the present Appeal as these were decided by the State Commission in the respective tariff orders. No Appeals were filed against those orders and since attained finality. We do not find any reason to interfere with the findings of the State Commission on this issue.

29. In view of above, the Appeal is allowed in part only on the issue of interest on working capital as indicated above. No order as to cost.

30. Pronounced in the open court on this ***18th day of May, 2015.***

(Justice Surendra Kumar)	**(Rakesh Nath)**
Judicial Member	**Technical Member**

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