

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**APPEAL No.15 of 2012**

**Dated:18<sup>th</sup> Feb, 2013**

**Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,  
CHAIRPERSON  
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**In the Matter of:**

**Kumaon Garhwal Chamber of Commerce,  
Chamber House, Industrial Estate,  
Bazpur Road, Kashipur,  
Distt-Udham Singh Nagar,  
PIN-244 713 (Uttarakhand)**

**...Appellant**

**Versus**

- 1. Uttarakhand Electricity Regulatory Commission,  
1<sup>st</sup> Floor, Institution of Engineers (I) Bldg  
Near ISBT, Majra,  
Dehradun-248 006**
- 2. Uttarakhand Power Corporation Limited (UPCL),  
Urja Bhawan, Kanwali Road,  
Dehradun-248 006**

**...Respondent(s)**

**Counsel for the Appellant(s) : Mr. M. L. Lahoty  
Mr. Paban K. Sharma  
Ms. Gargi Bhatta Bharali**

**Counsel for the Respondent(s): Mr. Buddy Ranganadhan,  
Ms. Richa Bharadwaja for R-1  
Mr. Manoj Kumar Sharma  
Mr. Daleep Kr. Dhayani  
Mr. Pradeep Misra for R-2**

## J U D G M E N T

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON

1. Kumaon Garhwal Chamber of Commerce is the Appellant herein.
2. The Appellant is challenging the Tariff Order dated 24.5.2011 passed by Uttarakhand Electricity Regulatory Commission (State Commission) so far as it relates to RTS-7 : LT & HT Industry.
3. The Short facts are as under:
  - (a) The Appellant, Kumaon Garhwal Chamber of Commerce, represents the interest of the trade, commerce and industry established in the State of Uttarakhand. The members of the Appellant constitute wide-spectrum of Industries falling in the category of High Tension (HT) and Low Tension (LT).
  - (b) Uttarakhand Power Corporation Limited (UPCL), the Second Respondent, filed its ARR for determination of tariff for Financial Year 2011-12 on 29.11.2010 along with the application for determining final truing up for Financial Year 2005-06 and provisional truing up for Financial Year 2009-10.

(c) Earlier, this Tribunal set aside the tariff orders dated 23.10.2009 passed by the State Commission for the Financial Year 2009-10 and directed the State Commission to re-determine the tariffs.

(d) Accordingly, UPCL filed another Petition for re-determination of tariff pertaining to Financial Year 2009-10.

(e) Thereafter, on 28.3.2011, the UPCL filed another Petition for final truing up for expenses and revenue for Financial Year 2006-07, Financial Year 2007-08 and Financial Year 2008-09.

(f) On 4.8.2011, the State Commission decided to combine all the Petitions filed by UPCL and heard the parties. Ultimately, by the impugned order dated 24.5.2011, the State Commission passed the Retail Tariff for Financial Year 2011-12 and re-determined the tariff for the FY 2009-10, Truing-Up of Revenues and expenses from FY 2005-06 to FY 2009-10.

(g) Now, this Appeal has been filed only in respect of the Retail Tariff RTS-7 : LT & HT Industry in relation to the Tariff order in respect of Financial Year 2011-12.

(h) The impugned order dated 24.5.2011 has been challenged on the following main grounds:

- (i) The tariffs for industries have been fixed by applying higher distribution losses of other categories instead of the voltage wise losses;
  - (ii) The Sales forecast for HT and LT Industries are unjustified;
  - (iii) Recovery of huge arrears would have been sufficient to cover the revenue gaps;
  - (iv) Tariff being charged by the industries are higher when compared to the average power purchase cost;
  - (v) The load factor based tariff was not in line with Section 61 of the Act;
  - (vi) Status of compliance of directions given to UPCL.
4. Elaborating the above issues, the learned Counsel for both the parties have made their respective submissions.
  5. We have carefully considered those submissions and given our thoughtful consideration to the same.
  6. Let us now deal with each of the issues one by one.
  7. In respect of the **First Issue**, according to the Appellant, the tariff for industries should have been fixed on the basis of the voltage wise losses but the State Commission has

wrongly fixed the tariff by applying higher distribution losses of other categories.

8. We find that the State Commission has determined the tariff for the Financial Year 2011-12 on the basis of average cost of supply and distribution losses of 18% and not 20.53% as claimed by the UPCL before the State Commission. According to the Learned Counsel for the State Commission, this has been done in accordance with the directions of this Tribunal in judgment dated 31.1.2011 in Appeal No.41, 42 and 43 of 2010 preferred against the tariff order for the Financial Year 2009-10 wherein the State Commission has directed to determine the tariff on the basis of existing Regulations and regulatory principles and the judicial pronouncements including those laid down by this Tribunal from time to time.
9. Regulation 20 of the Tariff Regulations of the State Commission stipulates that the tariffs for various categories/voltages shall be benchmarked and progressively reflect the cost of supply based on costs that are prudently incurred by the distribution licensee in its operations. However, pending the availability of information that reasonably establishes the category wise or voltage-wise cost of supply, average cost of supply shall be used as the benchmark for determining tariffs.

- 10.** According to the State Commission, as voltage wise or category wise cost of supply data was not available, the Commission determined the tariff based on the average cost of supply by applying distribution losses of 18% as approved for the Financial Year 2011-12. The tariffs were determined as per the principle laid down in the tariff policy that the tariff for consumers below the poverty line will be at least 50% of the average cost of supply and latest by 2010-11, the tariff will be within  $\pm 20\%$  of the average cost of supply.
- 11.** We find that the State Commission having followed the average cost of supply principle in the absence of voltage wise cost of supply data, has fixed the tariff for various categories with the objective of gradually reducing the cross subsidy with respect of the average cost of supply. We also find that the cross subsidy for industrial category is about 12% and it has not been increased in the Financial year 2011-12. Thus, the tariff for individual category is within  $\pm 20\%$  of the average cost of supply as stipulated in the tariff policy. Therefore, we do not find any infirmity in the impugned order.
- 12.** This Tribunal has laid down the principle of tariff fixation on the basis of the cost of supply in its judgment dated 30.5.2011 in the case of Tata Steel Ltd. Vs Orissa Electricity Regulatory Commission in Appeal No. 102, 103 & 112 of 2010. The State Commission is directed to initiate the study

for voltage wise cost of supply in order to take into account the voltage wise cost of supply as an input for determination of tariffs in future.

13. The **Second Issue** is with reference to Sales forecast for HT and LT Industries.
14. According to the Appellant the sales forecast fixed by the State Commission are unjustified.
15. The State Commission while forecasting the sales for the Financial Year 2011-12 was aware of the fact that various concessions announced were either withdrawn or had lapsed. Therefore, the State Commission has accepted the growth rate of 10% instead of 12% projected by the Distribution Licensee for the year 2011-12. The State Commission has estimated consumption of HT industries as 3939.12 MUs for 2011-12 which is actually lower than the consumption of 3962.76 MU by the industries. Therefore, the Appellant cannot claim that it is aggrieved over this. Further, this is a matter of truing-up. If any correction in the sales is to be made, it will be carried out by the State Commission while truing-up the revenues and expenses for the Financial Year 2011-12. Therefore, there is no merit in the contention urged by the Appellant on this issue.
16. The **Third Issue** is “Recovery of Huge Arrears would have been sufficient to cover the revenue gaps”.

17. The tariff of the Distribution Licensee is determined on accrual basis. The past dues cannot be treated as income of the Distribution Licensee. Thus, it will have no effect on determination of tariff. The electricity charges are recognised as income once the bills are raised on accrual basis. Hence they cannot be recognised as income source when arrears are collected. The State Commission fixed the tariff on accrual basis and not on the cash basis.
18. Treating the realization of arrears as income would amount to double counting of income. Therefore, it cannot be treated as income again on realization. It was also pointed that the State Commission has not allowed any provision for bad and doubtful debts. Under those circumstances, it has to be concluded that there is no force in this contention urged by the Appellant. Thus, this issue is also decided as against the Appellant.
19. The **Fourth Issue** is this: “Tariffs being charged by the industries are higher when compared to the average power purchase cost”.
20. The tariffs have been designed based on the average cost of supply, which not only consists of the power purchase expenses and transmission charges but also other network costs which are passed on to the consumers.

21. As indicated above, the tariff of industries has to be determined in accordance with the average cost of supply as per the tariff policy as well as the Regulations framed by the State Commission. The State commission has approved the total revenue requirement of the Distribution Licensee as Rs.2804.50 Crores and also approved the sale of 7596.16 MUs. Thus, the average cost of the supply comes to Rs.3.69 per unit. The tariff of HT industries has been fixed at Rs.4.12 per unit which is about 11.65% higher than the average cost of supply and is within (plus/minus) (+/-) 20% of the average cost of supply. In other words, against the average cost of supply, the average tariff charged from HT industries is Rs.4.12 per unit, which is about 11.65% higher than average cost of supply. It means that the cross subsidy provided by them is 11.65% which is well within the range of 20% stipulated in the National Tariff Policy. Therefore, it cannot be claimed that the tariff fixed for the industries should not be higher than the average power purchase cost. Since this contention of the Appellant is without any basis, the same is rejected and decided as against the Appellant.

22. The **Fifth Issue** is as follows: “The Load factor based tariff was not in line with Section 61 of the Act”.

23. Section 62(3) of the Act empowers the State Commission to differentiate according to consumer’s load factor, power factor, voltage, total consumption of electricity etc., Further,

Regulation 20 of the UERC (Terms and Conditions for Determination of Distribution Tariff) Regulation, 2004 also empowers the State Commission to design a tariff based on load factor for any category of consumer. The same is reproduced below:

*“...The category wise/voltage wise cost to supply made factor in such characteristics as the load factor, voltage, extent of technical and commercial losses etc.”*

- 24.** The tariff applicable to Appellant is two part tariff. The Appellant has to pay fixed charges at the rate of Rs.160 per KVA per moth for the contracted load up to 1000 KVA and the Appellant has to pay the fixed up charges at the rate of Rs.220 per month of the billable demand in respect of the contracted load of more than 1000 KVA. However, there is no change in the energy charges but the fixed charges are the same. Hence, the rate per unit will decrease as per the higher load factor.
- 25.** It is pointed out by the State Commission that in Uttarakhand, as the cross subsidy charges are very low, the tariff needs to be corrected at different load factors to ensure that steepness of the effective tariff curve does not reduce the cross subsidies to very low level or make them negative. In fact, the slab based tariff specifying higher rate for higher slab of consumption is applicable in almost all the States of the Country even for the subsidized domestic and cross

subsidising non-domestic category. Therefore, this contention urged by the Appellant also would fail.

**26.** The **Last Issue** is “Status of compliance of directions given to UPCL”.

**27.** Of course, the State Commission had issued various directions to UPCL in its previous tariff order and sought compliance of the same from UPCL.

**28.** According to the State Commission, the UPCL has actually submitted the compliance report on 2.1.2012 which is being examined by the State Commission. According to the State Commission, appropriate decision on the same will be taken by the State Commission while issuing the tariff order for the Financial Year 2012-13. Therefore, this alleged non compliance would not impact the tariff determination for the Financial Year 2011-12. Therefore, this issue is also decided as against the Appellant.

**29. Summary of Our Findings**

(a) **The State Commission has determined the tariff for the Financial Year 2011-12, as per the average cost of supply in the absence of the data for voltage wise cost of supply with the objective of gradually reducing the cross subsidy with respect of average cost of supply according to the Regulations framed by the State Commission. The**

cross subsidy for the industrial category is 12% and it has not been increased in the Financial Year 2011-12. Thus, the tariff for industrial category is within  $\pm 20\%$  of the average cost of supply as stipulated in the tariff policy. Therefore, we do not find any infirmity in the impugned order. However, we have given directions for initiation of study for voltage wise cost supply as per the findings of this Tribunal in judgment dated 30.5.2011 in Appeal Nos.102, 103 & 112 of 2010 in order to take into account the voltage wise cost of supply as an input for determination of tariff in future.

(b) According to the Appellant, the sales forecast fixed by the State Commission are unjustified. This statement is not correct. The State Commission has estimated consumption of HT industries as 3939.12 MUs for the Financial Year 2011-12 which is actually lower than the consumption of 3962.76 MUs by the industries. Therefore, the Appellants cannot claim any grievance over this.

(c) The tariff of the Distribution Licensee is determined on accrual basis and not on cash basis. Treating the realisation of arrears as income would amount to double counting of income. Therefore, it cannot be treated as income again on realization.

(d) The State Commission has approved the total revenue requirements of the Distribution Licensee as 2804.50 Crores and also approved the sale of 7596.16 MUs. Thus, the average cost of the supply comes to Rs.3.69 per unit. The tariff of HT industries has been fixed at Rs.4.12 per unit which is about 11.65% higher than the average cost of supply and is within (+/-) 20% of the average cost of supply as specified in the Tariff Policy.

(e) Both the Act as well as 2004 Regulations, would empower the State Commission to design a tariff based on load factor for any category of consumer. The tariff applicable to the Appellant is two part tariff. There is a change in the energy charges but the fixed charges are the same. Hence, the rate per unit will decrease at higher load factor.

(f) The UPCL has actually submitted the compliance report on 2.1.2012. The State Commission is examining the same. According to State Commission, it will take appropriate decision on the same while issuing the tariff for the Financial Year 2012-13.

**30.** In view of our above findings by which the impugned order is confirmed, we do not find any reason to interfere with the impugned order.

**31.** Accordingly, the Appeal is dismissed being devoid of merit. However, there is no order as to costs.

***(Rakesh Nath)***  
***Technical Member***

***(Justice M. Karpaga Vinayagam)***  
***Chairperson***

Dated:18<sup>th</sup> Feb, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~