

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

**APPEAL No.152 of 2011**

**Dated:27<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, in this Appeal is challenging the Tariff Order dated 10.4.2010 passed by Uttarakhand Electricity Regulatory Commission (State Commission) so far as it relates to RTS-7 : LT & HT Industries in respect of FY 2010-11.
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 Annual Revenue Requirement (ARR) for determination of tariff for Financial Year 2010-11 on 30.11.2009.

(c) After hearing the parties and observing the required procedure, the State Commission passed the impugned order on 10.4.2010 fixing the retail tariff.

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

(e) The impugned order dated 10.4.2010 has been challenged on the following main grounds:

(i) The tariffs approved for FY 2010-11 have been based on the policy directions of the Government of Uttarakhand. The same are not sustainable as this Tribunal has already set-aside the tariff order for the FY 2009-10 which was also based on the policy directions.

(ii) The impugned order is in violation of Section 61 (d) of the Electricity Act, 2003, as it was not based upon the commercial principles of the cost of supply or reduction in cross subsidy and consequently it does not safeguard the consumer's interests.

(iii) The assumption of increase in demand was unjustified. That apart, the industrial policy had committed adequate availability of supply at competitive rates.

(iv) The high line losses projected by the Respondent, UPCL were unsubstantiated as zone wise and circle wise distribution losses were not submitted.

(v) The State Commission ignored the fact that the transmission and distribution loss of 19% was due to the factors attributable to UPCL, the Respondent.

(vi) The UPCL was extremely negligent in raising the demands for its legitimate dues which if recovered would be sufficient to match the revenue deficit projected by it.

4. Elaborating the above issues, the learned Counsel for both the parties have made their detailed submissions.
5. We have carefully considered those submissions and given our anxious consideration to the same.
6. Let us now deal with each of the issues one by one.
7. In respect of the **First Issue**, the Appellant submits that since this Tribunal has already set-aside the tariff order for the FY 2009-10 on the ground that the same was based on the policy directions issued by the State Government, the impugned order passed for the FY 2010-11 also is not

sustainable as this order was also based on the policy directions of the State Government.

8. According to the learned Counsel appearing for the State Commission, this Tribunal gave a judgment on 31.1.2011, i.e. subsequent to the impugned order dated 10.4.2010; and the State Commission would re-determine the tariff while truing-up of expenses and revenues for the FY 2010-11 in line with the judgments of this Tribunal dated 31.1.2011 in Appeal No.41 of 2010. It is also pointed out by the learned Counsel for the State Commission that UPCL has already filed a Petition before the State Commission for the approval of its Annual Revenue Requirement (ARR) and Retail Tariffs for the FY 2012-13 along with truing-up of expenses and revenues for the FY 2010-11. State Commission assured that they would comply with the directions given in Appeal No.41 of 2010 while truing-up for the year 2010-11.
9. In view of the above submissions made by the learned Counsel for the State Commission, we deem it appropriate to direct the State Commission to re-determine the tariff for the FY 2010-11 while truing-up the expenses and revenues for the said order in accordance with the ratio decided by this Tribunal in judgment in Appeal No.41 of 2010 dated 31.1.2011. Accordingly directed, while accepting the claim of the Appellant on this issue.

10. In respect of the **Second Issue**, it is stated by the Appellant that the impugned order was in violation of Section 61 (d) of the Electricity Act, 2003 as it was not based upon the commercial principles and it did not reflect the cost of supply or reduction in cross subsidy and as such, it does not safeguard the consumer's interests.
11. On the other hand, the learned Counsel for the State Commission and the UPCL would submit that the State Commission has rightly applied the principles enumerated u/s 61 (d) of the Electricity Act, 2003 while framing the tariff.
12. The learned Counsel for the State Commission pointed out that the State Commission had dealt with the issue of cross subsidy in detail in Para 8.8 of the impugned order.
13. Let us refer to the relevant paragraph where the State Commission has dealt with this issue:

**8.8 Cross-subsidy**

*Due to issuance of Policy Directions by GoU, the entire exercise of cross-subsidy reduction has to be carried out on the revised cost of supplies considering differential cost of power as mentioned earlier. The extent of category-wise cross-subsidy at approved tariffs is computed at allocated average cost of supply in accordance with GoU Policy Directions and is given in Table below:*

*Table 8.18: Cross Subsidy at Allocated Cost of Supply as per GoU Policy Directions*

<b>Category</b>	<b>Average Tariff</b>	<b>Allocated cost of Supply</b>	<b>Average Tariff/Cost of Supply</b>	<b>Cross Subsidy</b>
	<b>Rs./kWh</b>	<b>Rs./kWh</b>	<b>%</b>	<b>%</b>
Domestic	2.46	2.27	108%	8%
PTW	1.05	2.27	46%	-54%
Public Lamps	3.35	2.57	130%	30%
PWW	3.04	2.57	124%	24%
GIS	3.35	2.57	130%	30%
Non Domestic	4.23	4.67	91%	-9%
LT Industrial	4.17	4.67	89%	-11%
HT Industrial	4.18	4.20	100%	0%
Railway	4.18	4.20	100%	01%
Mixed Load	3.22	4.20	77%	-23%

The Commission has also assessed the cross-subsidy at approved tariffs on average cost of supply for the Petitioner as a whole without considering effect of Policy Directions. The extent of category-wise cross subsidy at approved tariffs computed at average cost of supply is given in Table below:

**Table 8.19: Cross Subsidy at Average Cost of Supply\***

<b>Category</b>	<b>Average Tariff</b>	<b>Average Cost of Supply*</b>	<b>Average Tariff/Average cost of Supply*</b>	<b>Cross Subsidy</b>
	<b>Approved Rs./kWhr</b>	<b>Rs./kWhr</b>	<b>Approved %</b>	<b>Approved %</b>
Domestic	2.46	3.68	67%	-33%
PTW	1.05	3.68	29%	-71%
Public Lamps	3.35	3.68	91%	-9%
PWW	3.04	3.68	87%	-13%
GIS	3.35	3.68	91%	-9%
Non Domestic	4.23	3.68	115%	15%
LT Industrial	4.17	3.68	113%	13%
HT Industrial	4.18	3.68	114%	14%
Railway	4.18	3.68	114%	14%
Mixed Load	3.22	3.68	87%	-13%

\*For Petitioner as a whole without considering GoU Policy.

*The above Table clearly indicates that at the approved tariffs, the cross-subsidies for different category of subsidizing consumers is within the range of 20% of average Cost of Supply as specified in the tariff policy to be attained by FY 2010-11.*

*The Tariff Policy stipulates the follows as regards the cross-subsidy:*

*“For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the SERC would notify roadmap within six months with a target that latest by the end of year 2010-2011 tariffs are within  $\pm 20$  % of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy. For example if the average cost of service is Rs 3 per unit, at the end of year 2010-2011 the tariff for the **cross subsidised categories** excluding those referred to in para 1 above should not be lower than Rs 2.40 per unit and that for any of the **cross-subsidising categories** should not go beyond Rs 3.60 per unit (**emphasis added**).”*

*Thus, the cross-subsidy has to be worked out and brought at the desired levels for all the consumers of the entire category taken together. In this regard the Commission would like to highlight that with the approved tariffs the average tariff for all the subsidised categories is within the range of +20% of average cost of supply. Further, once the cross-subsidy level has been reduced to within +20% there is no mandate under the Act or Tariff Policy to reduce it further. However, the criteria of  $\pm 20$  % of the average cost of supply for all the categories including subsidised categories depend upon the consumption mix of the*

*Licensee. However, in case of Petitioner, the consumption mix is skewed towards subsidising categories with subsidising categories constituting 72% of total sales while the consumption by subsidised categories is around 28% of the total consumption. Therefore, in case of Petitioner though the tariff for all the subsidising categories have been within 120% of overall average cost of supply of Petitioner without considering the GoU Policy Directions, the average tariff for some of the subsidised categories is less than 80% of overall average cost of supply of Petitioner even without considering the GoU Policy Directions.*

14. From the reading of the above paragraphs, it is revealed that the State Commission had calculated the cross subsidy both at the allocated cost of supply as per the policy directions as well as the average cost of supply. In fact, the State Commission has specifically observed that the State Commission has assessed the cross subsidy at approved tariffs on average cost of supply as a whole without considering the effect of policy directions.
15. Apart from that, it was pointed out by the learned Counsel for the State Commission that at the approved tariffs, the cross subsidy for different categories of subsidising consumers was found to be within the range of 20% of the average cost of supply as specified in the tariff policy to be attained by the FY 2010-11. We also find that the cross subsidy in respect of LT Industrial and HT Industrial categories is 13 and 14% respectively. However, it is to be

held that if the tariffs for the FY 2010-11 are determined in line with the judgment of this Tribunal dated 31.1.2011, we hope that re-computation of cross subsidy would also be taken in such an exercise and in that event, the State Commission will decide the same in accordance with the said judgment of this Tribunal. So, this issue is also answered accordingly.

16. In respect of the **Third Issue**, it is contended by the Appellant that the assumption of increase in demand are unjustified.
17. According to the learned Counsel for the State Commission the State Commission has forecast the sales in accordance with the Regulations and considered the nominal growth rate of 10% for projecting the sales of HT industries for the FY 2010-11 and correctly estimated the consumption of HT industries at 3448.76 MUs for FY 2010-11.
18. Let us see the relevant findings given by the State Commission in the impugned order on this point:

*4.3. However, for projecting the sales for the FY 2010-11, the Commission has analysed the past trends on the actual sales till FY 2008-09 as reported by UPCL without deducting any dubious/spurious sales. The Commission, thereafter, added the sales lost due to load shedding for FY 2008-09 to arrive at unrestricted sales while carrying out the trend analysis. The Commission, accordingly, before projecting the category-wise sales for FY 2010-11, first re-estimated*

*the sales for FY 2009-10 by applying the growth on actual sales for FY 2008-09 including sales lost due to load shedding. The Commission has projected the category-wise sales for FY 2010-11 based on past trends and has then reduced the fictitious/dubious sales from the projected sales for FY 2010-11 for some of the categories in line with the approach adopted in the previous Tariff Order. The approach adopted by the Commission for projecting category-wise sales is discussed in detail under Chapter 7 of this Order.*

***The Commission holds further as under:***

*“As discussed in the Commission’s Approach, in Chapter 4, the Commission has scrutinized Petitioner’s projections for category-wise sales during FY 2010-11 based on the past trends. The Commission has projected category-wise un-restricted sales for FY 2010-11 considering re-estimated sales for FY 2009-10 as base and applying a growth rate equivalent to Compounded Annual Growth Rate (CAGR) of annual sales for past years. For most of the categories, the Commission has considered 5 years CAGR. In cases of deviation from this approach, the reasons for the same have also been recorded. Upon analysis of the billing data, the Commission found that consumption of around 12% for domestic category and 9% for non-domestic and LT industrial category had been booked on normative basis and, hence, is on account of dubious/spurious sales to ghost/non-existent consumers. The Commission, while projecting the sales for FY 2010-11, has reduced such dubious/inflated sales from the sales projected on past trends for different consumer categories.”*

- 19.** According to the Appellant, the industrial policy had committed adequate availability of supply at competitive

rates. It cannot be proper for the Appellant to rely on the industrial policy especially when the Appellant is contesting the policy directions issued by the Government of Uttarakhand u/s 108 as it is not binding upon the State Commission. The Appellant referred to the judgment of this Tribunal dated 6.6.2007 referring to the earlier directions regarding the fixing of rates of 7% growth.

20. As correctly pointed out by the learned Counsel for the State Commission, the above directions of this Tribunal was with reference to the reliance on the data submitted by the State Commission at that point of time. The said directions cannot be read as directions that it would apply for all time to come. Therefore, there is no merit in the contention of the Appellant on this point.
21. The **Next two Issues** relate to the fact that the high line losses projected by UPCL were unsubstantiated and the high losses were due to the factors attributable to UPCL.
22. According to the Appellant, the Respondent UPCL did not submit the zone wise and circle wise details of the distribution losses. This is denied by the learned Counsel for the Respondent UPCL.
23. According to them, table 5.7 at Chapter 5 of the impugned order gives the analysis of top ten Divisions having highest AT&C losses in UPCL. This analysis was based on the data

submitted by the UPCL, the Respondent. The State Commission obtained this data during the course of the proceedings. It is noticed that the State Commission had approved the distribution losses based on the loss targets approved by it instead of actual losses claimed by the UPCL, the Respondent. The UPCL had estimated the distribution loss of 26% as against 20.32% approved by the State Commission for the FY 2009-10. Based on the actual loss level of FY 2009-10, the loss level of 24% for the FY 2010-11 was projected. However, the State Commission approved the distribution loss level of 19% for the FY 2010-11.

- 24.** It was pointed out by the learned Counsel for the State Commission that in any event, the high actual loss beyond the approved figures does not cause any prejudice to the Appellant since in the next tariff order for the FY 2011-12, the State Commission has trued-up the figures of distribution losses by treating the difference between the approved losses and actual losses as deemed sales and by including the revenues attributable to such sales in truing-up the ARR in respect of the Tariff Order for the FY 2011-12.
- 25.** Further, the State Commission taking note of the inefficiency of the UPCL to reduce the losses did not revise the loss reduction trajectory approved by it and fixed loss level of

19% for the Financial Year 2010-11. Thus, the impact of higher losses was not passed on to the consumers.

- 26.** Therefore, there is no merit in the contention of the Appellant on this issue.
- 27.** In regard to the **Last Issue**, the Appellant contends that there would be no revenue gap if UPCL have taken proper steps to recover the outstanding arrears.
- 28.** Admittedly, the UPCL's accounting is not on cash basis but on accrual basis. In accrual system, the charges are recognised as income once the bills are raised on accrual basis. Hence they cannot be again realised as income source when the arrears are collected. UPCL maintains its accounts on accrual basis. Therefore, the State Commission also fixes up the tariff on accrual basis. Treating the realization of arrears as an income stream would amount to double counting of income. The first is when the bills are raised and the second is when the arrears are realized. Therefore, the arrears shown in the accounts of the UPCL which have already been considered as income when the bills were raised by UPCL cannot be treated as income again on realization.
- 29.** It is true that the non-realization of old dues leaves the utility cash starved having no option left but to resort to short term borrowing or withholding payment of expenses resulting in

creation of liabilities. Hence realisation of arrears would definitely improve the financial position of the UPCL but, in no way it can be treated as income. Therefore, there is no merit in this contention also.

### **30. Summary of Our Findings**

(a) **Tariff Order as per the directions of the State Government:** The judgment of the Tribunal dated 31.2.2011, in Appeal No.41 of 2010 setting aside the tariff order for FY 2009-10 on the ground that the same was based on the policy direction would also be applicable to the impugned order in this Appeal as the same was also based on the policy directives of the State Government. According to the learned Counsel for the Uttarakhand State Commission, the State Commission would re-determine the tariff while truing-up the expenses and revenues for the FY 2010-11 in line with the judgment of the Tribunal dated 31.1.2011 and that UPCL has already filed the truing up application. In view of the submissions made by the learned Counsel for the State Commission, we deem it appropriate to direct the State Commission to re-determine the tariff for FY 2010-11 while truing up the expenses in accordance with the ratio decided by this Tribunal in the judgment dated 31.1.2011.

- (b) **Cross Subsidy**: We found that the tariff of the Industrial categories is within 20% of the average cost of supply as per the tariff policy. We do not find any infirmity in the same. On re-determination of tariff, the State Commission shall also ensure that the tariff of the Appellant's category is maintained within 20% of the average cost of supply.
- (c) **Assumption of increase in demand**: We do not find any infirmity in the assumption projected growth of sales of HT industries adopted by the State Commission.
- (d) **High Line Losses**: The State Commission has correctly approved the distribution losses based on loss targets instead of actual losses claimed by UPCL.
- (e) **High T&D Losses due to factors attributable to UPCL**- We do not find any substance in the contention of the Appellant as the State Commission has correctly approved the losses as per its loss targets instead of that actually claimed by UPCL.
- (f) **Recovery of Outstanding Arrears**: UPCL maintains its accounts on accrual basis and not on

**cost basis. The State Commission also determines the ARR and tariff on accrual basis. Thus, the recovery of outstanding dues by UPCL cannot be treated as income in the ARR.**

**31.** In view of above findings, the Appeal is partly allowed to the extent indicated above. However, there is no order as to costs.

**32.** Pronounced in the Open Court on 27<sup>th</sup> day of February, 2013.

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

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

Dated:27<sup>th</sup> Feb, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~