

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION LUCKNOW

Petition No. 252,253,254,255,256 of 2005

Petitioners:

Uttar Pradesh Power Corporation Ltd
Madhyanchal Vidyut Vitran Nigam Ltd
Poorvanchal Vidyut Vitran Nigam Ltd
Paschimanchal Vidyut Vitran Nigam Ltd
Dakshinanchal Vidyut Vitran Nigam Ltd

IN THE MATTER OF:

Application for time extension for determination of Annual Revenue Requirement and
Tariffs for the year 2006-07

ORDER

Chairman, UP Power Corporation Limited has filed an affidavit before the Commission on March, 27, 2006 on behalf of UPPCL and four distribution companies viz Paschimanchal Vidyut Vitran Nigam Ltd., Poorvanchal Vidyut Vitran Nigam Limited, Madhyanchal Vidyut Vitran Nigam Limited and Dakshinanchal Vidyut Vitran Nigam Limited (hereinafter referred to as "Licensee(s)") to grant further time extension for filing ARR/tariff petition for FY 06-07 upto 15th May, 2006 as GOUP is constituting a committee to decide the quantum of subsidy and other issues relating to tariff for FY 2006-07, which is likely to submit its report by 30th April, 2006. However, before discussing and deliberating the present application, it would be in order to recall the sequence of events pertaining to ARR/tariff filing for FY05-06 and FY 06-07 till date in a chronological order to put the whole issue in perspective so that all stake holders involved in the process of tariff determination could appreciate the manner in which the licensees in UP power sector are dealing with the statutory obligations cast upon them as well.

It is pertinent to mention here that under regulation 135 of its (Conduct of Business) Regulations 2004, the Commission, in accordance with section 64 of Electricity Act, 2003, has specified that the application for determination of tariffs shall be filed on or before 120 days of the implementation of the tariff from the beginning of a financial year. In other words the ARR proposal complete in all respects should be filed by 30th November of the previous year.

Accordingly, in pursuance of the provisions of the Electricity Act, 2003 and UPERC Conduct of Business Regulations, the Commission had directed the utilities to file their ARR/Tariff Application for the FY 05-06 by 30 Nov 2004, so that the final tariff order gets issued latest by 31st of March 2005. However, CMD UPPCL, vide letter dated 15 Dec. 2004, submitted an application on affidavit on behalf of UPPCL and the distribution companies seeking for time extension **up-to 31st Jan 2005** for filing of ARR/Tariff Application for the FY 05-06. It was stated in the application that the utilities were still analyzing the impact of tariff order dated 10.11.2004 on the ARR for the FY 05-06. Further, the process of disinvestments of utilities was underway and the same had to be taken into consideration before filing of ARR.

The Commission granted the extension recognizing the genuineness of the prayer. However, while granting the extension, the Commission observed that it was not very clear about the progress on disinvestments of utilities, its likely timeframe as well as its linkages with the present filing, as had been stated in the application.

Meanwhile, CGM (RPMO), UPPCL informed the Commission vide letter dated 14th January, 2005 that ARR and tariff filing for FY 06 will be independently done by the respective Discoms.

Subsequently, Shri A.K. Mishra, CMD, UPPCL, on affidavit dated 31st January, 2005 again requested the Commission to further extend the ARR filing date for transmission company **by 31st March, 2005** as the privatization process of distribution companies was in progress and accordingly, the preparation of business plan in privatized scenario would take some time. Thereafter, Managing Directors of four distribution companies also sought extension up to 31st March, 2005 on similar grounds.

Although, the Commission, in its earlier time extension order had taken cognizance of the fact that it was entrusted with the responsibility to advise the State Government on the matters of promotion of investments in electricity industry along with its re-organization and restructuring therefore, it had a statutory obligation to facilitate the process of disinvestments, but the Commission also underlined that it cannot give the licensees liberty to delay the filing of their ARR by simply submitting a statement *“that the privatization of distribution company is in process and preparation of business plan in privatized scenario is taking some time”* without substantiating it with the progress achieved in the process and the likely time frame to complete the process. Today, it is obvious that the privatization plea for getting extension was nothing more than an excuse for delay. However, the Commission while not buying their argument, tried to accommodate their prayer by granting extension upto 31st March, 2005 appreciating that power sector in U.P was undergoing a transition and it might take some time for the licensees to put systems in place and be responsive to the regulatory requirement. Accordingly, the Commission granted the extension with an observation that in case the licensees fail to file their ARR by 31st March 2005, the Commission would have no other option but to impose a penalty.

Subsequent to it, the Commission again received a request from CMD UPPCL Mr. Deepak Singhal to extend the time limit for filing the ARR **upto 30th April, 2005** as there was a change of guard in the UPPCL management in terms of new CMD and new Principal Secretary (Energy), who would be taking some time to finalize the documents. Other salient reasons given in the affidavit were as follows:

- “That this year for the first time Distribution companies are filing their ARR independently. Since they have limited skill in this area, it has taken little longer time to prepare the ARR documents”.
- “That all the distribution companies have sizeable number of rural consumers for whom the GoUP provides subsidy, the distribution companies are trying to get the Commitment of GoUP on the amount of subsidy. This is taking some time”.

Request for time extension on similar grounds was also filed by Discoms.

After considering various facts placed before it, the Commission in its order dated 5th April, 2005 stated that change of CMD or Principal Secretary (Energy) should not have any bearing on the delay in submission of ARR and Tariff Applications because submission of ARR is a routine annual statutory requirement thus necessitating a continuing organizational functioning rather than individual inputs. Regarding the argument of limited skill available with Discoms to prepare their ARR documents independently, the Commission pointed out that the very same arguments were placed before it for seeking first extension in filing of ARR for year 2004-05 therefore, it was not proper for the licensees to advance same reason after roughly one and half years of the previous order. The Commission also went on to state that this was a clear case of non-seriousness on the part of licensees towards the process of reform as well as their unwillingness to shoulder statutory obligations. On the matter of subsidy, the Commission observed that since section 65 of the Electricity Act, 2003 puts the onus of grant of advance subsidy on the State Government and therefore, it does not hinder in any way the ARR filing by licensees on time if the State Government is not forthcoming with the subsidy. Otherwise also this issue ought to have been settled before 30th November.

While expressing its concern that the licensees are advancing different reasons for getting time extensions at different points of time without making any reference

whatsoever on the progress of previous reasons for postponement, the Commission observed vide its order dated 5th April, 2005 that it cannot allow the licensees to delay the filing at will, by advancing one reason or other at different times, thereby disabling the Commission from carrying out its legislative responsibility related to tariff determination. While observing that the Commission did not find proper justification in the reasons placed before it for seeking another extension, the Commission allowed the requested extension to UPPCL and four Discoms upto 30th April, 2005 for the last time and through the same order directed the licensees to show cause why an action should not be initiated against them under section 142 of the Electricity Act, 2003 i.e. for non compliance of the directions of the Commission. Full Board of Directors of UPPCL and four Distribution companies i.e. Paschimanchal Vidyut Vitran Nigam Limited, Poorvanchal Vidyut Vitran Nigam Limited, Dakshinanchal Vidyut Vitran Nigam Limited and Madhyanchal Vidyut Vitran Nigam Limited were asked to appear in person before the Commission to explain reasons for delay in filing and why the ARR could not be submitted in accordance with the Directions of the Commission.

Meanwhile, **on 29th April, 2005**, the Commission received applications for determination of Annual Revenue Requirement (ARR) from the four distribution companies viz Paschimanchal Vidyut Vitran Nigam Ltd., Poorvanchal Vidyut Vitran Nigam Limited, Madhyanchal Vidyut Vitran Nigam Limited and Dakshinanchal Vidyut Vitran Nigam Limited and ARR/tariff proposal from UP Power Corporation Limited as Transco for FY 2005-06.

After the receipt of the Petitions, the officers of the Commission carried out a preliminary scrutiny of the Petitions. A detailed deficiency note was served to the Licensees on 27th May, 2005 and the Licensees were requested to provide the information within 15 days, which was partially submitted by the licensees subsequently. The Commission also informed the Licensees that the applications of the Licensees had not been accepted and directed the Licensees to file the ARR Petition along with Tariff Proposal to bridge the revenue gap for FY 05-06 by July 15, 2005.

In this context, the Licensees prayed before the Commission for time extension **up to July 31, 2005** for filing the tariff application. The reason provided for the requirement of time extension was that the Govt. of Uttar Pradesh (GoUP) wanted to provide subsidy to certain categories of consumers and since the matter was under consideration therefore,

the tariff applications would be filed after the commitment of State Government on the quantum of subsidy along with targeted categories. After considering the facts placed before it, the Commission, vide its letter dated July 18, 2005 granted the time extension as prayed by the Licensees as ARR proposal was already submitted by the licensees and licensees had maintained that they wished to abide by the regulatory requirement but filing of tariff was only delayed for want of GoUP decision on subsidy, which was likely to be intimated soon.

Subsequently, the Licensees submitted the tariff application along with the revised ARR Petition **on July 28, 2005**. On scrutiny of the tariff applications & revised ARR Petitions as well as the additional information submitted by the Licensees, it was found that there were still several infirmities in the ARR Petitions. The officers of the Commission met with the officials of the Licensees in August for discussing these infirmities. After the meeting, another deficiency note was served to the Licensees on the same day. The Licensees agreed to submit their response on majority of the issues by August 25, 2005 and on remaining by September 2005. The response was submitted vide its letter no. 555/RPMO/ARR & TF FY 06 dated August 26, 2005.

Following this, Shri S. K. Agarwal, Director (Finance) UPPCL, who is also a board member of all Discoms, made a presentation to the Commission on August 31, 2005 on their ARR and Tariff Petitions. On scrutiny of the response submitted earlier and also based on the presentation, the Commission again observed certain key shortcomings in the proposal, which were communicated to the licensees. A response to the same was submitted by the licensees but as the Commission was not fully satisfied with the response therefore, the Commission listed the ARR/Tariff petitions for hearing on 5th October 2005 on admission. UPPCL and four distribution companies were represented through their officers led by Shri S. K. Agarwal, Director (Finance) UPPCL. The Commission raised a number of issues before the licensees including the issues related to applicability of uniform retail tariff, subsidy requirement and more importantly the issue related to trading structure.

On the matter of subsidy, the petitioners were asked regarding the exact status as committed by the State Government in accordance with section 65 of Electricity Act, 2003 whereas; their revised filing showed a GoUP subsidy to the tune of Rs. 1502 crore but the confirmation was only for Rs. 1252 crore, as provided in the State Budget. To

this, the petitioners urged the Commission that it should go ahead with the subsidy figure of Rs. 1252 crore.

Dealing these issues the Commission, in its order dated 10th October, 2005, expressed its serious concern that in spite of specific legal provision in the Act and also reminders to this effect stating that UPPCL as STU was not permitted to remain bulk purchaser of power for all the Discoms after 9th June, 2005, UPPCL was not complying with this legal requirement and was still carrying out this function. The Commission in its order took cognizance of the statement made by UPPCL in the open hearing on 5th October, 2005 that an already constituted trading company was being converted into Transmission Company whereas UPPCL would become a trading company and a holding company within a month or so. In view of this palpable irregularity, the Commission directed UPPCL Transco to make the arrangement effective at an early date and also to seek necessary exemption from the Central Government for sale and purchase of electricity undertaken in the interim period.

More than five months have passed by but the petitioners have neither made a legally compatible arrangement for the purposes of power procurement nor they have been able to submit any exemption to this effect granted by the Central Government. Such a non compliance of the provisions of the Act not only renders the entire power procurement activity arbitrary and illegal but it also undermines the rationale of the reorganization of UP Power Sector as UPPCL still continues to operate in an old monopolistic structure of pre reform era, which is a setback to the reform process.

The Commission also expressed its anguish over the lack of seriousness on the part of petitioner in major commercial issues. For example, the licensee has so far not implemented the fuel cost adjustment order issued by the Commission in the month of July 2005. This just goes on to show the commercial passiveness of the utility as it is not ready to implement an existing order of the Commission, which is in its own commercial interest, and the importance of which has been expressly under scored under section 62(4) of the Act wherein, while refraining any amendment of tariff more frequently than once in a financial year it has been provided that any change on account of fuel cost adjustment will be permitted during the interregnum. Not only this, the categorical direction of the Commission for submitting a proposal on automatic adjustment of fuel cost has also not evoked any response.

Without enlisting various directives issued by the Commission in its various tariff orders for protecting the statutory obligations of the licensees as well as its commercial interest, it is in order to clarify that the licensee has not complied with most of these directives including few important once as mentioned above.

The Commission vide its order dated 10th October, 2005 had made it clear that due to inordinate delay in filing a legally proper and complete petition and repeated requests for time extension, the process of annual tariff determination has gone wide off the mark. Accordingly, while admitting the ARR/tariff petitions for FY 2005-06, the Commission proposed that the licensees should also submit their ARR details for FY 2006-07 within 15 days so that the Commission could process consolidated ARR filings for FY 05-06 and FY 06-07. The proposal was mooted to bring regulatory synchronism and rationality in the process, which had otherwise gone haywire. With this rider, the Commission admitted the ARR/tariff petitions for FY 05-06 under section 64 of the Electricity Act, 2003. The Commission also directed licensees to advertise the salient features of the ARR/tariff petitions for the year 2005-06 in two newspapers inviting objections/suggestions/comments from the interested persons and the State Government.

However, subsequent to the above order of the Commission, the licensee again requested for some time extension on the ground that they wanted to file a joint petition for FY 05-06 and FY 06-07 and that the data collation for FY 06-07 was likely to take some more time. Licensee also deferred publication of the salient features of the ARR on the same ground. The response of the licensee was held as improper by the Commission in view of regulatory propriety as the licensee instead of seeking a proper waiver from the Commission regarding the condition of publishing the salient features in newspapers, decided at its own to defer the advertisement of salient features of ARR and tariff petition. Nevertheless, the Commission granted another extension up to **30th November, 2005** as the cutoff date for filing the FY 06-07 application also was 30th November, 2005 and therefore, even if the licensee had filed the joint petition by 30th November 2005 at least the FY 06-07 tariff order would have been passed as per regulatory time frame.

However, the licensees once again sought a time extension up to **31st December, 2005**

without citing any specific reason apart from the fact that the submission of required details relating to ARR and tariff FY 06-07 was taking a little more time. Although not satisfied with the reasons advanced by of the licensee for the delay, the Commission allowed one more extension up to 31st December, 2005 thinking that the time period for applicability of FY 05-06 tariff had in any case elapsed and as far as FY 06-07 order was concerned the Commission would expedite its own processing and would try to complete the tariff determination process within 90 days so that at least FY 06-07 tariffs could become applicable at the scheduled time i.e. 1st April, 2006.

As if it was not enough, the licensee again sought a time extension up to **28th February, 2006** on the ground that the collection of details related to FY 06-07 would take some more time. In view of repeated time extension sought by the licensee without providing any cogent reason, the Commission, while granting the time extension upto 28th February 2006 for filing of FY 06-07 ARR/tariff petition, dismissed the ARR/tariff petition for FY 05-06 as it had already lost its relevance. While dismissing the 05-06 petition, the Commission also observed that the repeated time extensions sought by the licensee show lack of respect to the regulatory process and accountability.

The foregoing review of repeated time extensions sought by the licensee reveal that extensions have been sought in a rather casual manner either on the pretext of structural changes and problems related to data collation or on the ground of decision of GoUP on subsidy related issues. It needs to be clarified at the outset that utilities in most other States, which have undergone such structural changes, are responding positively to the regulatory requirements. Therefore, UPPCL cannot be treated as an exception especially in view of the fact that UP was amongst one of the first states to embark on the path of reforms. As far as data collation issues are concerned, the same is a major governance failure as the Commission has been urging the licensees to be alive to a robust MIS requirement through plethora of directives under its various tariff orders and otherwise also. Extension on account of recommendation of subsidy by GoUP is nothing more than an attempt by the management of the licensees to wish away their inefficiency under the excuse of lack of autonomy given the express provision of subsidy under Electricity Act, 2003.

After having decided that ARR/tariff petition for FY 05-06 stands dismissed the Commission takes up the present affidavit filed by Chairman UPPCL and four Discoms

to grant further time extension for filing ARR/tariff petition for FY 06-07 by 15th May, 2006. As already stated, this extension has been sought in view of the fact that GoUP is constituting a committee to decide quantum of subsidy and other issues relating to tariff for FY 06-07, which is likely to finalize its report by 30th April, 2006. However, the requested extension needs to be examined in light of following express provision of tariff policy, notified in compliance with section 3 of Electricity Act, 2003 on 6th January, 2006:

“It is desirable that requisite tariff changes come into effect from the date of commencement of each financial year and any gap on account of delay in filing should be on account of licensee.”

It is abundantly clear from the above that if there is a delay in filing by the licensee, which is not properly justified then the revenue gap arising on this account shall be attributable to the licensee meaning thereby that burden of such a gap should not be transferred to the consumers. As is obvious from the body of this order, that after accommodating more than six requests for time extension for one reason or another, the Commission feels that this entire exercise has been an exercise of predominance of executive instructions over policy directions, which appears to be by-product of the procedural rather than, commercial rationality. Accordingly, the Commission in view of the aforesaid provision of the tariff policy and also the unbecoming behaviour of the licensee directs that the licensee may file its ARR/tariff petitions for FY 06-07 by 15th May, 2006 but no revenue gap on account of part year of FY 06-07 i.e. from 1st April 2006 to 15th September, 2006 (considering submission on 15th May, 2006 + 120 days for processing the order) may be admissible to be passed on to consumers and the gap shall be on account of licensee.

(R. D. Gupta)
Member

(P.N. Pathak)
Member

(Vijoy Kumar)
Chairman

Dated : 12th April, 2006
Lucknow