

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

In the matter of:

Non Submission of Annual Revenue Requirement for FY04 under section 24 of the Uttar Pradesh Electricity Reforms Act 1999.

And

In the matter of:

Kanpur Electricity Supply Company Limited

Order

Section 10(a) of U P Electricity Reforms Act 1999 (The 'Act' henceforth), empowers the U.P. Electricity Regulatory Commission (herein referred as the "Commission") to determine the bulk and retail supply tariff of licensees operating in the State of Uttar Pradesh. Under Section 24(4) of the Act, read with Regulation 124 of U.P. Electricity Regulatory Commission (Conduct of Business) Regulation 2000, it is required that all licensees shall provide the Commission between the period 15th December to 31st December each year full details of its statements containing calculations for the ensuing financial year of the expected aggregate revenue for charges permitted by the Commission to recover from consumers. The clause 22.2 of the license granted to KESCO also provide for annual filing between the period 15th December to 31st December 2003. In other words, the Commission, under regulation 124 of its (Conduct of Business) Regulations 2000, has fixed the period between 15th December to 31st December every year for the licensee to file the expected aggregate revenue from charges under the currently

approved tariff and the expected cost of providing services for ensuing financial year.

KESCO did not file its ARR as required under regulation 124 of Conduct of Business Regulation 2000. The Commission in its review meeting held with licensees on 26th February 2003 sought an explanation from KESCO for non-submission of ARR. KESCO vide its letter 251/PA(C)/RM II/ARR/FY04 dated 6th March 2003 promised to file ARR by 20th March 2003. Subsequently KESCO vide its letter no. 956/PA(C)/RM II dated 22nd July 2003 promised to file its ARR for FY04 by 15th of August 2003. The Commission vide its letter UPERC/ ARR/ Secy./ 2003/2598 dated 29th August 2003 informed KESCO that it would be held responsible for financial losses and other consequences thereof due to non submission of ARR and compliance report on the directions issued in its order for FY03. In the review meeting held with licensees on 8th September 2003 the Commission again raised the issue of non-submission of ARR by KESCO. MD KESCO promised to file its overdue ARR within one week of the date of meeting. The Commission vide its letter 2675/ UPERC/KESCO/SVM/03 dated 25th September 2003 again took up the issue of non submission of ARR and compliance report on directions issued by the Commission in its previous order. The issue of non-submission of compliance report was also taken with UPPCL as well vide Commission's letter UPERC/Secy./ SVM/ 03-2674 dated 25th September 2003. The Commission directed CMD UPPCL to intervene in this issue and direct KESCO to file ARR for FY04 vide its letter 2751/UPERC/ KESCO/ SVM /03 dated 17th October 2003. The Commission vide its order dated 4th December 2003 directed MD to appear before the Commission in person on 22nd December 2003 at 11 AM to explain the reasons for not filing ARR for FY04.

MD KESCO vide his letter no. 1776/UPERC dated 8th December 2003 has offered an explanation. The explanation offered is being reproduced "*The Honorable Commission is already aware that U. P.*

Power Corporation Ltd./ Govt. of UP was in negotiation for transfer of Equity of KESCO to National Thermal Power Corporation Ltd., New Delhi and it is also understood that a Memorandum of Understanding was to be signed between the parties, as such it was also understood that A.R.R of KESCO will be submitted to the Honorable Commission in terms of final agreement executed between the parties. As such KESCO has no intention of willful default of submission of A.R.R.” KESCO finally submitted its ARR on 19th December 2003. MD KESCO as directed appeared before the Commission. He offered the same explanation as reproduced above in italics and further offered an unconditional apology before the Commission for not submitting the ARR in time.

KESCO submitted its ARR after a lapse of 12 months from the due date of filing ARR for FY04 after several verbal and written reminders. KESCO sought its last time extension for filing its ARR in July 2003 and thereafter it did not seek any extension. KESCO did not respond to directions of the Commission as evident from various letters mentioned above to file its ARR for FY04. The licensee has provided the reason for not filing its ARR only after the Commission issued an Order dated 4th December 2003. The Commission was not informed of the reasons in time for not filing the ARR and it is only now when the Commission is seized of this matter the licensee has provided an explanation for not filing the ARR. The filing of ARR is statutory requirement for KESCO for not only determining the bulk purchase price payable by it to UPPCL for power purchased but also for the revenue of UPPCL as bulk purchase price of KESCO constitutes revenue for UPPCL. In absence of the filing of cost and revenue estimates for FY04 the Commission would not have been able to finalise the ARR for FY05. This act of default of KESCO may delay the exercise of tariff determination in UP for FY05.

The Commission accepts the apology tendered by the licensee. The Commission feels that frequent transfers of MD KESCO may have delayed the process of filing the ARR but for an organization to function

efficiently and discharge its responsibilities it should have a robust organization structure rather than depending upon a single person. The Commission in its order for FY03 had observed that

“There are very severe organizational weaknesses in KESCO.KESCO has no working Regulatory Affairs Units, Company Secretary and full time Directors. The licensee is advised to reorganize its management structure. It would be appropriate to fill these positions by persons of experience from outside the subsidiary or the parent company”

It is the responsibility of the management of the KESCO to develop an appropriate mechanism to fulfill all statutory requirements. KESCO has defaulted in submitting ARR for FY04 in prescribed time and ignoring the directions of the Commission for a year therefore penalty of Rs. One Lakh under section 37(3) of the UP Reforms Act 1999 read with section 142 and section 185 (3) of the Electricity Act 2003 is imposed on the licensee to be paid within 15 days of the order. The fine imposed on the licensee shall not be treated as an item of cost for the purpose of ARR determination.

(Arun Sarkar)

Member

(Vijoy Kumar)

Chairman

Dated: 24.12.2003

Lucknow