THE UTTAR PRADESH ELECTRICITY REGULATYORY COMMISSION LUCKNOW

Petition No. 482,483,484,485 & 486 of 2007

Petitioners:

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

IN THE MATTER OF:

Application for determination of Annual Revenue Requirement and Tariffs for the FY 2007-08 under section 64 of the Electricity Act 2003.

Order

UPPCL Transco and 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 (hereinafter referred to as "Licensee(s)) submitted their ARR/tariff petition for FY 2007-08 on 4th October, 2007 under section 64 of the Electricity Act, 2003. In this context, it would be in order to reproduce the relevant section of the UPERC (Terms & Conditions for determination of Distribution Tariff) Regulation 2006.

"The Distribution Licensee shall file the Aggregate Revenue Requirement (ARR)/Tariff petitions complete in all respect along with requisite fee as prescribed in the Commission's Fee and Fine Regulations ***on or before 30th November of each year****. The above ARR petition shall contain the details of the estimated expenditure and the expected revenue that it may recover in the ensuing financial year at the prevailing tariff."*

Accordingly, the ARR/tariff for the FY 2007-08 should have been filed by the licensees before 30th November, 2006. Delay in tariff submission and request for repeated time extensions has become a way of life in UP's power sector, which clearly suggests that the licensees in UP are not responding positively to the regulatory requirements thereby putting the statutory functions like tariff determination totally off mark. It must be recalled that in year 2005-06 and 2006-07 State Government owned licensees sought nine time extensions in submitting duly complete tariff application and it is in this context that the tariff application for 2005-06 was dismissed for want of force and ARR/tariff application for 2006-07 could be decided through the tariff order of the Commission issued as late as 10th May, 2007. Subsequent to the issuance of aforesaid tariff order, the licensees again filed review applications before the Commission vide affidavits dated 20th, 28th June, 2007 & 4th July, 2007. The review was sought on following aspects of the tariff order dated 10th May, 2007.

a. Review of hour linked tariff in metered consumers of LMV-1, LMV-2, LMV-4, LMV-6 and 11 kV consumers of HV-2 category

b. Review of the provision of keeping first 100 units free of cost in rural metered consumers under LMV-1, LMV-2 & LMV-5 category

c. Review of tariff for LMV-3 category

d. Review of tariff for LMV-8 category

e. Review of TOD charges under HV-2 Category

While Commission did not accept the review to be maintainable on item numbers c, d & e above, it accepted the review as maintainable on item numbers a & b and admitted the review petition on these two counts for final disposal with direction to charge transitional tariff till the review is finally decided by the Commission. Aggrieved by the rejection of review on item nos. c, d & e above, State owned licensees preferred an appeal before Appellate Tribunal for Electricity vide the appeal filed by UPPCL dated 5th September, 2007 challenging the tariff order dated 10th May, 2007 as well as the review order dated 13th July, 2007 in regard to the reduction of fixed charges in un-metered LMV-8 category (State Tubewell /Panchayati Raj Tubewell/Pump Canals) and also with respect to the new TOD structure as provided through the tariff order. As the appeal is already pending before the Appellate Tribunal of Electricity, the Commission has, vide its order dated 26th September 2007, decided that the proceedings on the review petition, for which the review has been held to be maintainable, would be initiated after the outcome of the matter before the Appellate Tribunal of Electricity. The relevant para of the order dated 26th September 2007 is reproduced for reference ;

"Since tariff order is a composite scheme having close inter-linkages, isolated decisions on revenue streams of different consumer categories/sub categories at different fora is not desirable. Accordingly, the Commission decides that the proceedings on the review petition, as mentioned in para 2 of this order, would be initiated after the outcome of the matter before the Appellate Tribunal of Electricity"

Accordingly, the tariff order 2006-07 issued on 10th May, 2007, which has been implemented w.e.f. 14th August, 2007, is partially under challenge before both this Commission as well as Appellate Tribunal of Electricity thereby by leaving the tariff structure as well as the revenue stream in a state of flux with no certainty in arriving at the gap for next year in particular and a sense of disorganization in the sector in general. Therefore, the tariff structure, as prevalent, in the State of Uttar Pradesh can hardly be termed as an integrated and composite structure since on section of categories rates of tariff order 2004-05 are in vogue in form of transitional tariff (against items for which review has been held as maintainable), for a large number of categories/sub-categories rates are already pegged at 2004-05 level as no change was desired vide tariff application for 2006-07 and for some categories the rates are still hanging in balance of the Appellate Tribunal of Electricity. In such a situation and when the ARR/tariff applications for 2008-09 is due in just a months time i.e. by 30th November, 2007, submission of an ARR application for 2007-08 will add to insurmountable confusion. The fluidity of the situation can be gauged from the fact that licensees in the State have yet not been able to publish a proper rate schedule against the tariff order 2006-07 thereby leading to serious confusion at field level.

Keeping in view the above situation, even a preliminary examination of ARR/tariff application for FY 2007-08 reveals both macro and micro level impediments. At the macro level, it is noteworthy that the structure suggested in 2007-08 application is at significant variance from the 2006-07 structure, especially with respect to hour linked tariffs and provisions of keeping first 100 units free of cost in rural metered category, that is the issues for which review is pending before the Commission. Accordingly, the provisions arrived at through 2006-07 tariff structure after going through the statutory process of public hearing and addressing objection/comments/suggestions may not be done away with through a new order for FY 2007-08 on a fresh application without deciding the review application on merits. Similar is the concern for issues pending before the Appellate Tribunal of Electricity. At the micro level, the examination of the proposal reveals that the submissions are not strictly in accordance with the provisions of the Terms and Conditions for determination of Tariff (Transmission and Distribution) Regulations 2006 notified on 6th October 2006 and are not supported by audited accounts. Further, in the filings by UP Power Transmission Corporation Limited waiver has been sought from submitting information in many of the formats prescribed. It is clear that the fluid situation, as given above, probably warranted a more cautious and systematic approach from the licensees rather than rushing things, which could complicate the situation further.

It is with this objective in mind and also due to inordinate delay in filing the ARR/tariff petition for the FY 2007-08, when the new tariffs may not come much before the expiry of financial year 2007-08 due to statutory requirements involved, the Commission, vide letter dated 10th September, 2007, to restore regulatory synchronism, suggested that the licensees submit the ARR/Tariff application for the FY 2008-09 by 30th November, 2007 along with the data/information for the FY 2007-08. However, observing the ARR/tariff filing for FY 2007-08 as given, a preliminary scrutiny of the licensees revenue requirement reveals a gap of Rs. 5121 crore which has been proposed to be bridged using following measures:

1.	Additional Revenue from proposed tariff	Rs. 121 Cr.
2.	Additional subsidy from Government UP	Rs. 2000 Cr.
3.	Institutional finances against Govt. repayment guarantee	Rs. 3000 Cr.

The above proposal by the licensees substantiates that on consolidated basis the Government owned distribution companies through hike in tariffs require only Rs. 121 crore. It may be observed here that the amount sought through tariff hike is negligible compared to total revenue requirement. Further, in view of the obfuscating situation of tariff order 2006-07, facing review and appeal concurrently, and also the next ARR filing close on heals i.e. mandated to be filed before 30th November, 2007 , the processing of 2007-08 application, involving the detailed process of public hearing and other statutory commitments and which is likely to run into the examination of 2008-09 application, for such small revenue gain through tariff hike may not be a practically gainful exercise keeping in view the confusion it is likely to unleash at the field level both among Discom staff as well as consumers. In this context, it may be recalled that the spirit of Electricity Act, 2003 is also to dissuade frequent revision of tariff as it provides that tariffs may not ordinarily be amended more than once in a financial year except on account of fuel adjustment charge. No doubt, the directive contained in section 62(4) of Electricity Act, 2003, as stated above, is not absolutely prohibitory in nature and the amendment in tariff may be carried out more than once in a financial year but such an exercise should be undertaken only in exceptional situations. The legislative intent behind the above provision is to provide a regulatory certainty to the licensee as well as consumers in terms of tariff design and also to encourage better comprehension and implementation of tariff through a stable tariff framework. It is also noteworthy that frequent changes in tariff may warrant changes in billing software thereby leading to chaos at field level. In the backdrop of above observation, when the implementation of recent tariff order itself is in limbo, recommending an all together different tariff structure on the basis of current filing may further accentuate the complication in tariff implementation.

Having observed the impediments in tariff implementation process in the given situation, the Commission appreciates the uneasiness of the licensees emerging out of the fact that tariffs in the State of Uttar Pradesh have remained almost unchanged in last three years, although at the request of the licensees itself, in face of escalating fuel prices. Accordingly, the Commission intends to give a plausible treatment to the request of the licensees regarding tariff hike, which may help them to generate additional revenue with immediate effect and at the same time burden the consumer in least possible manner, that too subject to true up, without disturbing the tariff structure as such, which remains the core concern of the Commission, as discussed in previous paragraphs of this order. However, before imparting any treatment to the request of the licensee regarding tariff hike, it would be prudent to underline that the proposed tariff structure, by way of current filings, contains large scale changes in both fixed as well as energy charges for garnering the additional revenue of Rs. 121 core and the proposed structure is also a major departure than the structure recommended through the tariff order 2006-07. The Commission feels that apart from the fact that tariff order 2006-07 is already subjudice, if the new filing is offered a proper treatment by way of detailed scrutiny and statutory requirements then not only it will run into 2008-09 tariff order but it will also give very little time for revenue recovery by way of tariff hike due to impending close of the financial year. Therefore, in the given situation, without tinkering too much with the prevalent rate schedule and also to provide equitable treatment to the additional revenue sought by way of tariff intervention, the Commission decides to address the issue of revenue recovery to the tune of Rs. 121 crore, as requested by the licensees, in a provisional manner subject to true up, by way of uniform hike in fixed charges across the categories and sub categories with the exception of domestic category i.e. LMV-1 and Private Tube Wells i.e. LMV -5, which are to a great extent subsidized by the Government. In this context, it needs to be emphasized that the Commission vide its order dated 10th May, 2007 had taken into account the short term loans as only 1151 crore against the State Government commitment of Rs. 2500 crore in order to balance the revenue requirement thereby leaving sufficient cushion in terms of finances available to the licensee. Since the State Government, invariably intends to support and subsidize domestic and private tube well consumers accordingly, the Commission does not intend to impose any burden on these categories more so in view of the balance reserve existing with the licensee, as stated above, which can be utilized for the purpose while upholding the intent of the Government to spare these two categories from unwarranted tariff hike. It needs to be stressed here that such an alteration/ change in tariff will address the request of the licensee without disturbing the implementation and comprehension of the rate schedule. In the ARR/tariff filing for the financial year 2007-08 State owned distribution licensees have projected the number of consumers and connected load as below:

Projected Nos. (Consolidated Discoms) for the FY 2007-08							
Total Consumers	Total Connected Load (kW)	Total No. of Domestic Consumers	Total Connected Load Domestic (kW)	Total No. of Commercial Consumers	Total Connected Load Commercial kW)	Total No. of PTW Consumers	Total Connected Load PTW (kW)
10119078	**24346525**	**8180871**	**13270964**	**927279**	**1831480**	**699556**	**3320058**

Accordingly, to garner additional revenues of Rs. 121 crore, a hike of Rs. /kW/ month =Additional Revenue Requirement/[total connected load-(domestic+PTW+.25* commercial) connected load*12)]=(121*10000000)/ [total connected load - (domestic +PTW +.25* commercial) connected load*12)] = Rs.**13.82/kW/month** in fixed charges should suffice their requirement. Above calculation has been derived by taking a diversity of 0.75 in the commercial load. However, since some part of the revenue requirement of Rs. 121 crore, as proposed by the licensee, may be met with the cushion available in form of unutilized short term loans, as evident from FY 2006 - 07 tariff order, in lieu of tariff hikes in domestic and PTW consumers, accordingly, even if the Commission gives a provisional hike of Rs. 10/kW/month in place of Rs. 13.82/kW/month, as calculated above, it will yield licensees a revenue of approximately Rs. 90 crore and balance of Rs. 31 crore to be met through the cushion of short term loans. Further, since it is a provisional treatment subject to true up in the next tariff order therefore, the Commission recommends a uniform tariff hike of Rs.

10/kW/month in the fixed charges/ demand charges across the categories and sub categories other than Domestic Consumers (i.e. LMV-1) and Private Tubewell (i.e LMV-5). After specifying the provisional hike in fixed charges in the retail tariff across the categories, the Commission also deliberated on the ARR/tariff proposal filed by UP Power Transmission Corporation Limited. The proposed transmission charges in the above filing are Rs. 0.191/unit, the impact of which has been captured by the distribution licensees in their filings in the form of additional revenue of Rs. 121 crore through tariff hike. Since, the Commission has already provided treatment the aforesaid additional revenue in form of provisional hike of fixed charges of Rs. 10/kW/month in retail tariff accordingly, the proposed transmission charges of Rs. 0.191/unit stands provisionally approved subject to true up.

After imparting aforesaid provisional treatment to the ARR/tariff filing of FY 2007-08, the Commission reiterates its stand, as stated vide letter dated 10th September, 2007 and mentioned in the previous paragraphs of this order, that in order to ensure regulatory synchronism and also to streamline the process of ARR determination in consonance with regulatory calendar, the licensees should file the FY 2007-08 data along with the filing of FY 2008-09 before 30th November, 2007. The data of FY 2007-08 providing clarity on the figures of connected load/contracted load would be a must for true up exercise. The licensees are also directed to expedite their case before Appellate Tribunal of Electricity so that the tariff scenario for FY 2007-08 becomes clear not only from the perspective of implementation but also for the purposes of carrying out future computations in the next tariff order.

The provisional hike in fixed/demand charges as approved above shall also apply on KESCO and NPCL.

(R. D. Gupta) Member	(P. N. Pathak) Member	(Vijoy Kumar) Chairman

Dated : 19th October, 2007
Lucknow