



**BEFORE**

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

Suo-Motu Case No. 01 of 2014

**IN THE MATTER OF:**

Suo-motu Order on Applicability of the Commission's Order dated 19<sup>th</sup> October, 2012.

**ORDER**

The Commission have initiated Suo-motu proceedings regarding the applicability of the Commission Order dated 19<sup>th</sup> October, 2012 in view of the Judgment of Hon'ble ATE in IA No.92 OF 2014 in APPEAL No.243 OF 2012 and IA No.97 OF 2014 in APPEAL No.243 OF 2012 dated 25<sup>th</sup> April, 2014.

In view of the above mentioned Judgment of the Hon'ble ATE various stakeholders have submitted that the Tariff approved for all the categories of consumers approved by the Commission in its Tariff Order dated 19<sup>th</sup> October, 2012 should be applicable from 1<sup>st</sup> November, 2012 instead of 1<sup>st</sup> October, 2012.

The Commission in the above matter vide its letter no. UPERC / Director (Tariff)/2014-282 dated 23<sup>rd</sup> May, 2014 also directed the Distribution Licensee to ensure compliance of the Hon'ble ATE dated 25<sup>th</sup> April, 2014 which had provided that the Tariff Order of the Commission for FY 2012-13 dated 19<sup>th</sup> October, 2012 shall be deemed to be effective from 1<sup>st</sup> November, 2012 rather than 1<sup>st</sup> October, 2012.

In reply to the above, the Distribution Licensee has submitted that the section (c) of Hon'ble ATE's Judgment dated 25<sup>th</sup> April, 2014 only discusses about the interim order and does not



provide any treatment of Tariff Order viz-a-viz the final order of the Hon'ble ATE. Distribution Licensee submitted that the Section 21 of the Hon'ble ATE Order dated 25<sup>th</sup> April, 2014 provides as below:

*“In the absence of any observation in the final judgment dated 28<sup>th</sup> November, 2013 disturbing the interim order dated 26<sup>th</sup> November, 2012 modifying the impugned order giving the effect of the prospectively from 1<sup>st</sup> November, 2012 by correcting the illegality, gets merged with the final judgment.”*

Licensees submitted that the interim Order of the Hon'ble ATE clearly provided that the Judgment passed on 26<sup>th</sup> November, 2012 will be applicable only to LMV-6 & HV-2 categories therefore, subsequent to merger of this interim order in the final order the facility of prospective implementation of Tariff should be restricted to only LMV-6 & HV-2 categories. Licensees submitted that in view of the same, it has already issued the clarification that the rate schedule for LMV-6 & HV-2 categories as approved by the Commission in its Order dated 19<sup>th</sup> October, 2012 shall be applicable from 1<sup>st</sup> November, 2012. Licensee also sought further direction from the Commission in the above matter.

In respect of the above, the relevant extract order of Hon'ble ATE dated 28<sup>th</sup> November, 2013 is reproduced as follows:

*“11. Regulation, 139 of the UPERC (Conduct of Business) Regulation, 2004 is quoted as below:*

*“139.*

*(1) The licensee or the Generating Company shall publish the tariff or tariffs approved by the Commission in at least two daily newspapers (one English and one Hindi) having circulation in the area of supply as provided in sub section (7) of Section 24 of the UP Reforms Act. The publication shall, besides other things as the Commission may require, include a general description of the tariff amendment and its effect on the Clauses of the Consumer.*



*(2) The tariffs so published under (1) above shall become the notified tariffs applicable in the area of supply and shall come into force after seven days from the last date of such publication of the tariffs, and shall be in force until any amendment to the tariff is approved by the Commission and published. The Commission shall, within seven days of making the order, send a copy of the order to the State Government, the Authority, the concerned licensees and to the person concerned.”*

*12. So, these Regulations would clearly provide that the Tariff order would come into effect only prospectively that too after seven days from the last date of the publication of the Tariff.*

*13. But, in this case, the State Commission has given effect to the Order dated 19.10.2012 from 1.10.2012 itself retrospectively in violation of the Regulation. When this was brought to the notice through the Interim Application, we passed the Interim Order on 26.11.2012 directing that the Impugned Order dated 19.10.2012 would become effective only from 1.11.2012 prospectively as per Regulation 139 of the UPERC (Conduct of Business) Regulations, 2004 pending disposal of the Appeal. Accordingly, this Interim Order was acted upon by the parties.*

...

*25. It cannot be disputed that the State Commission in the Impugned order dated 19.10.2012 has wrongly held that the Order shall come into effect from 1.10.2012 i.e. retrospectively and the same is in contravention of the Regulations, 139 of the UPERC (Conduct of Business) Regulations, 2004. As per this Regulation, the Tariff Order shall come into effect only after 7 days from the last date of publication of the tariff. It specifically provides that the Commission shall within 7 days of making the order will send a copy of the order to the State Government, the authorities concerned, the licensees and the persons concerned. Therefore, the Tariff Order could not have been enforced retrospectively. As such, the direction issued by the State Commission in the Impugned Order that the Tariff Order shall come into effect from 1.10.2012 i.e. retrospectively is illegal as it is contrary to its own*



*Regulations, i.e. Regulations 139 of the UPERC (Conduct of Business) Regulations, 2004 framed by the State Commission. “*

It may be observed from above the findings of the Hon'ble ATE that the Commission's Order dated 19<sup>th</sup> October, 2012 cannot be implemented 1<sup>st</sup> October, 2012 and instead should be applicable from 1<sup>st</sup> November, 2012. In view of the above the Tariff as approved by the Commission in the said Order shall be applicable for all the consumers from 1<sup>st</sup> November, 2012 and not only for LMV-6 and HV-2. Considering the same, the Commission directs the Distribution Licensees namely PuVVNL, PVVNL, MVVNL, DVVNL, KeSCO and NPCL to adjust the excess payment recovered from the consumers on account of the above in the bills of June, 2014 or July, 2014.

**(I. B. Pandey)**  
**Member**

**(Meenakshi Singh)**  
**Member**

**(Desh Deepak Verma)**  
**Chairman**

Place: Lucknow

Date: 6<sup>th</sup> June, 2014