UTTARAKHAND ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR DETERMINATION OF TARIFF) REGULATIONS, 2011

STATEMENT OF OBJECTS & REASONS

1. Introduction

1.1. The Electricity Act, 2003 (hereinafter referred to as "the Act") assigns the following functions to the State Electricity Regulatory Commissions among others:

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

1.2. Section 61 of the Act empowers the Commission to specify, by regulations, the terms and conditions for the determination of tariff in accordance with the provisions of the said section and the National Electricity Policy and Tariff Policy. In terms of clause (zd) of sub-section (2) of section 181 of the Act, the Commission has been vested with the powers to make regulations, by notification, on the terms and conditions of tariff under section 61. As per section 181(3) of the Act, the Commission is required to make previous publication before finalizing any regulation under the Act. Thus, as per the provisions of the Act, the State Commission is mandated to specify, through notification, the terms and conditions for determination of tariff within the State, after previous publication.

1.3. In exercise of the powers vested under sections 61and 181(2) (zd), (ze) and (zf) of the Act and all other enabling powers and in compliance of the requirement under section 181(3) of the Act, the Uttarakhand Electricity Regulatory Commission issued public notice vide advtt. no. 08/11-12 dated 23.09.2011 the draft Uttarakhand Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2011 for the tariff period from 1.4.2013 to 31.3.2016 (hereinafter referred to as the draft regulations). The Commission, through this public notice invited comments/suggestions /objections from all the stakeholders and consumers, if any on the draft regulations. The Commission also called upon the meeting of State Advisory Committee (SAC) on November 28, 2011 for deliberations on the draft regulations.

2. Multi Year Tariff – Objectives and Overview

2.1. The Commission had specified UERC (Terms & Conditions for Determination of Tariff) Regulations, 2004 separately for Generation, Transmission and Distribution Business which were initially valid for a period of 5 years upto 13th May 2009. Subsequently, the applicability of these regulations were extended on numerous occasions and recently, the applicability of these tariff regulations have been extended till April 30, 2012.

2.2. Clause (f) of Section 61 of the Act states that the Commission, while specifying the terms and conditions for the determination of tariff, shall be guided by 'Multi-Year Tariff Principles'. In respect of the tenure of Control Period under MYT framework, Clause 5.3(h)(1) of the Tariff Policy notified by the Ministry of Power, Government of India on January 6, 2006 has stated that *"..... The framework should feature a five-year control period. The initial control period may however be of 3 year duration for transmission and distribution if deemed necessary by the Regulatory Commission on account of data uncertainties and other practical considerations. In cases of lack of reliable data, the Appropriate Commission may state assumptions in MYT for first control period and a fresh control period may be started as and when more reliable data becomes available*."

2.3. Considering the above clause of the Tariff Policy, the Commission has decided to replace the existing separate Regulations for Generation, Transmission and Distribution with a comprehensive MYT Regulation having separate sections for Generation, Transmission, Distribution and SLDC with first Control Period of 03 years staring w.e.f. FY 2013-14..

2.4. The main objectives of Multi-Year Tariff regime are summarised as under:

- Provide regulatory certainty to the Utilities, investors and consumers by promoting transparency, consistency and predictability of regulatory approach, thereby minimizing the perception of regulatory risk.

- Address the risk sharing mechanism between Utilities and consumers based on controllable and uncontrollable factors.
- Ensure financial viability of the sector to attract investment, ensure growth and safeguard the interest of the consumers.
- Review operational norms for Generation, Transmission, Distribution and Supply businesses, related issues and recommend suitable measures to address such issues.
- Promote operational efficiency.
- Rationalise tariffs in the long-term through improvement in operational efficiency.

2.5. Clause 5.4.4 of the National Electricity Policy issued by the Ministry of Power, Government of India on February 12, 2005 also recognised the importance of MYT framework by stating that, *".... Multi-Year Tariff (MYT) framework is an important structural incentive to minimize risks for utilities and consumers, promote efficiency and rapid reduction of system losses. It would serve public interest through economic efficiency and improved service quality. It would also bring greater predictability to consumer tariffs by restricting tariff adjustments to known indicators such as power purchase prices and inflation indices*."

2.6. Further, Multi Year Tariffs (MYT) principles are intended to give clarity to the Generating Companies, Transmission Licensees, Distribution Licensees and consumers, and the other stakeholders regarding the principles governing the determination of revenue requirement and tariffs. Further, it would also detail the tariff methodologies, which can be understood by all, and give a fair idea of the future path. In this way, all stakeholders are made aware of the outcome of various actions/events during the Control Period, so that they could make their plans accordingly. For the Licensees and Generating Companies, the principles provide clarity in rules applied over the control period, and help finance growth and operations better, and facilitate improvement in quality of service to the customers.

3. Consideration of the views of the stakeholders and analysis and findings of the Commission on important issues

3.1. The Commission considered the comments of the stakeholders on the draft regulations, as well as views of the members of the State Advisory Committee expressed during the SAC meeting. The regulations have been finalized after detailed analysis and due consideration of the various issues raised by the stakeholders. The comments/

suggestions/ objections received from the stakeholders and public and the views of the Commission on the same are discussed in subsequent paragraphs.

4. Suggestions and objections of stakeholders on the Draft UERC (Terms & Conditions for Determination of Tariff) Regulations, 2011 and the Commission Views on the same:

4.1. Uttarakhand Jal Vidyut Nigam Ltd

a) In Clause 3(31) of the draft Regulations, 'expenditure incurred' has been defined as follows:

"Expenditure incurred" means the fund, whether the equity or debt or both, actually deployed and paid in cash or cash equivalent, for creation or acquisition of a useful asset and does not include commitments or liabilities for which no payment has been released.

UJNVL suggested that the expenditure incurred may be considered on accrual basis.

The Commission is of the view that the term "Expenditure incurred "is applied in the context of creation or acquisition of useful asset, i.e. for actual Capital expenditure incurred. To promote greater transparency in capital expenditure approval, it is desirable to limit the allowable expenditure to the extent of actual cash investment. In addition, the Regulations also provide for additional capitalisation to meet the expenditure incurred after the date of commercial operation and up to the cut-off date. Therefore, the Commission does not find any merit to incorporate any changes in the definition of expenditure incurred.

b) In Clause 25 of the draft Regulations, 'Special allowance' has been defined under Renovation and Modernisation.

It has also been mentioned that "option of 'special allowance' shall not be available for a generating station or unit for which renovation and modernization has been undertaken and the expenditure has been admitted by the Commission before commencement of these regulations, or for a generating station or unit which is in a depleted condition or operating under relaxed operational and performance norms."

UJVNL submitted that most of its Power Stations have already completed more than 35 years of operation and due to some uncontrollable reasons, the RMU of these power stations could not be taken up earlier. As such, UJVNL has already incurred loss due to less generation because of wear & tear of machines, increased maintenance costs and difficulties in operation of these old plants.

RMU of various old Power Stations is being done unit wise. UJVNL submitted that if RMU works of a particular unit of Power Station is under progress as on April 1, 2013 then special allowance may also be provided to all other units whose RMU has not been done and would be taken up afterwards.

The Commission would like to clarify that the special allowance would be applicable only for undertaking Renovation and Modernisation of thermal generating stations as the cost of undertaking Renovation & Modernisation of thermal power stations has been now standardised to a reasonable extent. However, as the cost of undertaking R&M for hydro power stations and transmission system varies significantly on case to case basis, the Commission will approve the cost for undertaking R&M of hydel power stations and transmission systems on case to case basis subject to prudence check and, hence, the Commission has modified the Regulations.

c) In Clause 27(2) of the draft Regulation, under the heading of Return on Equity, the rate of ROE is defined as:-

Return on equity shall be computed at the rate of 15.5% for Generating Stations, Transmission Licensee and SLDC and at the rate of 16% for Distribution Licensee on a post-tax basis.

UJVNL submitted that the rate of return on equity for generating stations may also be considered at 16%.

The Commission would like to mention the relevant extract of the Tariff Policy, in respect of rate of return for distribution business, which states as follows:
"the rate of return notified by CERC for transmission may be adopted for State Electricity Regulatory Commissions (SERCs) for distribution with appropriate modification taking into view the higher risks involved. For uniform approach in this matter, it would be desirable to arrive at a consensus through the Forum of Regulators".

Hence, the Commission has deliberately kept a higher rate of return of 16% for Distribution Licensees, which is only 0.5% higher in comparison to Transmission Licensee and Generating Company keeping in view the inherent higher risk involved in the distribution business, which is also in line with the rate of return provided in the Model Regulations for Multi Year Distribution Tariff issued by Forum of Regulators as well as Regulations issued by various other State Electricity Regulatory Commissions.

d) In the Regulation norms of operation of hydro generating stations have been specified in clause 50. To compute normative plant availability factor (NAPAF) of hydro generating stations of UJVNL, DPRs of the generating stations would be required to be submitted before the Commission.

UJVNL has suggested that since DPRs of most of the large hydro projects of UJVNL are not available and most of the projects are very old, therefore, the Commission may review the provision of normative plant availability factor in respect of running hydro generating stations of UJVNL.

To discuss these issues, the Commission held meeting with UJVNL officials on 29th November, 2011.

In this regard, the Commission has taken a view that it will not be appropriate to modify the MYT Regulations at this stage and UJVNL should appoint a technical consultant for estimating NAPAF and other related parameters for all hydro generating stations considering the specific issues of each hydel generating station and submit the same in the Business Plan for Commission's approval. Based on the analysis of the information and data submitted by UJVNL, the Commission will approve the NAPAF for each Generating Station of UJVNL considering the station specific issues as a part of Business Plan Order.

e) In the Regulation at clause No- 54 (2) under the heading demonstration of declared capacity, the quantum of penalty is defined as follows:-

"The quantum of penalty for the first mis-declaration for duration or block in a day shall be the charges corresponding to two days capacity charges. For the second mis-declaration the penalty shall be equivalent to capacity charges for four days and for subsequent mis-declarations, the penalty shall be multiplied in the geometrical progression"

UJVNL submitted that capacity is declared by a hydro power station for the next day on the basis of the river discharge of the previous day and present availability of the machines. The generation for a hydro power station is totally dependent upon the river discharge which cannot be predicted accurately. As such, there can sometime be instances of failure in demonstrating the declared capacity by a power station.

Also sometimes due to equipment failure and other uncontrollable reasons, the declared capacity cannot be achieved. Further, the machines are operated as per the requirement of SLDC, as such many a times the declared capacity pattern of a plant also gets affected.

Therefore, in light of the above stated facts, the capacity charges due to generating company should not be reduced as a measure of penalty on account of failure of demonstration of declared capacity considering various limitations of old power stations. Also the capacity charge would be Nil on 7th mis-declaration as per proposed provisions. Hence in light of the above, it may be reviewed.

The Commission would like to clarify that penalty on account of mis-declaration of Declared Capacity will be levied only in those cases wherein the generating company is unable to demonstrate the Declared Capacity when it has been asked by the SLDC to do so. Further, the Definition of Declared Capacity takes into account the availability of water. Therefore, the Commission does not find any merit to incorporate any changes in the Draft Regulations.

f) UJVNL has pointed out that the term of transformation losses has not been specified in Form 1.1 and 2.1 and calculation is also required to be filled by the generating company against transformation losses whereas definition of transformation losses has not been provided in draft regulation.

The Commission would like to clarify that in the Regulations, the transformation losses have been clubbed with the auxiliary consumption based on the CERC (Terms and Conditions on Tariff) Regulations, 2009. Hence, accordingly, transformation losses in the final Forms 1.1 and 2.1 have been removed from the Formats.

g) UJVNL has further pointed out towards following provisions included in UERC (Terms and Conditions for determination of hydro generation tariff) Regulations, 2004 and CERC (Terms and Condition on Tariff) Regulation 2009.

(i) Clause 31 of UERC Regulation 2004 specifies the following provision related to Deemed Generation:"In case of reduced generation due to the reasons beyond the control of Generating Company such as on account of non-availability of transmission lines for supply to any beneficiary or on receipt of backing down instructions from the State Load Dispatch Centre resulting in spillage of water, the energy charges on account of such spillage shall be payable to the Generating Company"

UJVNL stated that the aforesaid provision of deemed generation has not been provided in the draft Regulation and has submitted that the provision of deemed generation may be incorporated in the revised Regulation.

In the UERC (Terms and Conditions for determination of hydro generation tariff) Regulations, 2004, recovery of energy charges have been provided in cases of reduced generation on account of spillage of water for reasons beyond the control of Generating Company. The Regulation also provided that Energy charges on account of deemed generation shall not be admissible if the energy generated during the year is equal to or more than Design Energy. Hence, the clear objective of allowing Deemed Generation was to provide for the recovery of Annual Fixed charges in case of reduction in actual generation for reasons not attributable to Generating Company.

In the Regulations 2011, Annual Fixed Charges (AFC) has been proposed to be recovered through Capacity Charge and Energy Charges, where recovery from energy charges will be to the extent of 50% of the AFC. Further, the Regulation provides that in case actual total energy generated during a year is less than the Design Energy, within ten years from the date of commercial operation of a generating station, for reasons beyond the control of the Generating Company, the ECR for the year following the year of energy shortfall shall be computed taking the actual energy generated during the year of the shortfall as the design energy, till the Energy Charge shortfall of the previous year has been made up, after which normal ECR shall be applicable. In case of energy shortfall for plant occurs after 10 years of operation, then the design energy for calculating the ECR shall be moderated considering the actual energy generation.

Therefore, deemed generation has not been considered in the Regulations. To this extent the Commission does not find any merit to incorporate any changes in the Draft Regulations as the Generating Company will be able to recover 50% of Annual Fixed Charges through Capacity Charges and for recovery of balance 50% of Annual Fixed Charges through Energy Charges, in case of reduction in generation, suitable adjustment has already been provided in the Regulations.

(ii) Clause 29 of UERC Regulation 2004 specified provisions relating to incentive for exceeding normative capacitive index.

UJVNL has submitted that draft Regulation does not provide any incentive for exceeding the normative capacity index. Appropriate incentive scheme may be considered to be incorporated.

The Commission has adopted the CERC methodology wherein the concept of capacity index has been replaced with NAPAF accordingly, 50% of Annual Fixed Charges are recovered as Capacity Charges and remaining 50% of Annual Fixed Charges are recovered through Energy Charges. The recovery of capacity charges is dependent upon the Actual Plant Availability Factor achieved during the month. If the Actual Availability Factor exceeds the NAPAF, recovery through capacity charges would be more than 50% of the AFC and vice-versa. Thus, this mechanism has inbuilt incentive/dis-incentive mechanism. Further, in case the actual energy generation exceeds the design energy, then the Generation Company will be able to recover the Energy charges more than 50% of Annual Fixed Charges. Such incentive will be in the form of secondary energy charges. Since the incentive mechanism is already a part of the Regulations, there is no need to specify the Incentive mechanism separately.

(iii) Clause 35 of CERC Regulation 2009 has specified provisions related to late payment surcharge.

UJVNL has submitted that similar kind of provision of late payment may be incorporated in the revised Regulation.

The Commission is of the view that the Late Payment Surcharge is a commercial arrangement between license and the generating company, and therefore, this mechanism should be settled mutually amongst the two in their Power Purchase Agreement.

4.2. **Uttarakhand Power Corporation Ltd**

a) **Return on Equity:** It has been provided in the regulations that return on equity shall be allowed on the amount of allowed equity capital for the assets put to use at the commencement of each financial year.

UPCL has submitted that equity capital invested in capital work-in- progress should also be considered for return on equity otherwise the amount of equity capital invested in capital work-in-progress shall lose its time value for the time spent in completion of fixed assets. It is also submitted that as per the Sixth Schedule of Electricity (Supply) Act, 1948 (financial principals and their application), capital base was required to be calculated which included the cost of work-in-progress and on this capital base, return was admissible. Moreover, capital work-in-progress is also a part of fixed assets as per schedule-VI of the Companies Act, 1956.

The Commission finds it totally unreasonable to provide return on equity on the amount of equity invested in capital work-in-progress. The investments made in the form of equity is considered as risk capital carrying higher rate of return and have perpetual flow of return up to the end of the life of the asset which is not the case with the debt. The Sixth Schedule referred to by UPCL is now not applicable and the tariffs are determined under the Regulations specified by the Commission under the Electricity Act, 2003 which specifically provides for allowing Return on Equity. Further, the Model Regulations for Multi Year Distribution Tariff issued by FOR also specifies allowing Return on Equity rather than allowing Return of Capital Base or on capital employed. Therefore, the Commission finds no merit in the given suggestion.

b) **Depreciation:** It has been provided in the Regulations that deprecation shall not be allowed on the assets funded through consumer contribution and capital subsidies/ grants.

UPCL has submitted that the original cost of construction of fixed assets should be considered for allowing depreciation on the same. This view is as per the provisions laid down in Sixth Schedule of the Electricity (Supply) Act, 1948 (financial principals and their application). This is also necessary in view of the fact that the consumer contribution/grant is received one time out of which asset is created, but the distribution licensee is required to provide the services to the consumer even after expiry of life of such assets. On expiry of the life of such assets, the utility will not be in position to construct new assets in the absence of any fund created for this purpose and this fund can be created out of an amount of depreciation allowed during the life of such assets.

The Commission would like to clarify that in electricity regulatory framework, depreciation is considered as source of funding of repayment of loans as against the normal accounting principles wherein depreciation is considered as source of funding the replacement of the asset.

In this connection, section 43(1) of the Income Tax Act, 1961 is reproduced below:

"Actual cost means the actual cost of the assets to the assessee, reduced by that portion of the cost, thereof, if any, as has been met directly or indirectly by any other person or authority"

Explanation 10 of this subsection is reproduced below:

"Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by

whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee."

Accounting Standard AS 10 prescribed by Institute of Chartered Accountants have also dealt with this issue and the position stipulated therein is given below:

"Grant should either be shown as a deduction from the gross value of the assets which is thus recognized in the profit and loss statement by way of reduced depreciation charge over the useful life of the asset. Under another method, grants related to the depreciable assets are treated as deferred income which is recognized in the profit and loss statement on a systematic and rationale basis over the useful life of the assets. This grant can either be monetary or non-monetary."

Going by the above readings of the Income Tax Act and also the Accounting standards, any capital subsidy/grant has to be deducted from the gross value of the assets.

Further, the concern of the licensee to construct new assets in the absence of any fund created for this purpose out of depreciation is also totally unwarranted, as the funding mechanism of replacement of any fixed assets is taken care of through approval of Capital Expenditure Plan from time to time by the Commission. Therefore, there is no justification to allow depreciation in respect of assets which are funded through consumer contribution/grant, as it will result in unreasonable gain to the licensee.

c) **Bad and Doubtful debts:** It has been provided in the Regulations that provision for bad and doubtful debts may be allowed upto 0.25% of the amount shown as receivables in the audited accounts subject to actual writing off of bad debts in previous year. Further, the amount of provisioning of bad and doubtful debts is further capped to limit of 5% of the receivables at the beginning of the year.

UPCL has submitted that annual provisioning towards bad and doubtful debts is an accepted method of accounting and considering the peculiarity of retail supply of electricity business, the same has also been recognized by the State Electricity Regulatory Commissions. This amount, if any, written off towards bad debts is only adjusted against the accumulated provisions in the books irrespective of the actual amount of bad debts during any financial year, considering the geographical spread of the large consumer base across the State including a large part of the same prevailing in the difficult terrain and hilly region and the problem of realizing energy dues from retail consumers, provision for bad debts should be allowed @ 5%

of revenue billed during any financial year. It is worthwhile to mention here that the collection efficiency of UPCL varies between 90% to 93%.

The Commission has deliberated on the issue and is of the view that bad and doubtful debts are inherent in any nature of business and moreover, there is no direct relation between receivables and provision for bad and doubtful debts of a business, which normally is a factor of the volume of business. However, the request of the distribution licensee for allowing bad and doubtful debts @ 5% of the revenue billed during a financial year is totally unreasonable as it will amount to passing on the entire burden of collection inefficiency of the distribution licensee to the honest paying consumers.

Therefore, the Commission has decided to amend the provision to the effect that provision for bad and doubtful debts may be allowed upto 1% of the annual revenue subject to actual writing off of bad debts in previous years. Further, the amount of provisioning of bad and doubtful debts is further capped to limit of 5% of the receivables at the beginning of the year. This has been done to ensure that the licensee does not keep on accumulating provisions for bad and doubtful debts but also takes steps for identifying and writing off the bad debts failing which no further provision will be allowed.

d) **Interest on Working Capital**

i) The collection efficiency of UPCL lies between 90% to 93% and therefore capital required to finance such short fall of tariff revenue should be allowed by the Commission as working capital.

ii) Revenue from sale of electricity at the prevailing tariff equivalent to average of two months has been considered for working out of working capital. In this context it is submitted that after one month of supply of electricity, 10 days are spent in preparation of the bills and 15 days are allowed for payment of the bill and 15 more days are allowed as grace period. Therefore, revenue from sale of electricity should be considered equivalent to average of 2& 1/2 months for working out of working capital.

The Commission would like to clarify that the tariff determination exercise is undertaken on accrual basis and not on cash basis for the ensuing year and the Licensee has the opportunity to improve collection efficiency for the ensuing years. In addition, the Commission is also providing two months receivables as part of Working Capital requirement. To say that the collection efficiency of UPCL lies in the range of 90% to 93% and, hence, capital required to finance the shortfall should be allowed as working capital is not acceptable. UPCL has to take steps to improve its collection efficiency so as to bring it close to 100% more so keeping in view the R-APDRP programme of MoP wherein the licensee has to bring its AT&C losses to 15%. In this regard, it is also important to note that the certain amount of revenue not collected in one particular year should be realised in subsequent years and, thus, this will provide a rolling cash flow to the Licensee.

With regard to revenue from sale of electricity, it is clarified that the majority of the revenue from sale of power received by the UPCL is from the HT consumers having billing cycle of 1 month. Therefore, Commission finds no merit in the given case for allowing a higher norm for revenue from sale of electricity for computation of working capital requirement.

As per the provisions of Regulations, the Commission will allow the interest on working capital based on normative working capital requirement irrespective of actual loans availed for working capital and based on past experience, it is observed that the actual working capital loans availed by the Utilities are much less than the normative working capital requirement, determined as per Regulations, which provides adequate cushion in the working capital.

e) **Power Purchase Cost:** It has been provided in the Regulations that power purchase requirement of the Distribution Licensee shall be estimated based on the sales forecast, the transmission loss and the target distribution loss level for the control period.

UPCL has submitted that it is making its best efforts to achieve the loss level allowed by the Commission, but due to limitation of resources and habits of the general public, this target loss level could not be achieved so far. It is therefore, proposed that the Commission should allow actual power purchase cost and revenue for excess distribution losses may be considered for calculating the tariff revenue of the company.

The Commission will take an appropriate view in the matter depending upon whether the distribution loss target is not achieved due to technical losses or commercial losses. However, in any case the impact of non-achievement of loss reduction target is proposed to be shared under the sharing of gains and loss mechanism.

f) **Administration & General Expenses:** The following formula has been given in the Regulations for calculation of Administrative & General expenses;

A&Gn= (A&Gn-1) x (WPIinflation)

UPCL has submitted that a growth factor should also be considered for providing the additional facilities to the consumers and introduction of latest technologies in consumer services.

The Commission is of the view that the there is no requirement for including a growth factor for providing additional facilities including introduction of latest technologies for the benefit of consumers, as these costs will essentially be of capital nature and will not be covered under the head of Administration & General Expenses. However, the Commission referring to the Model Regulations for Multi Year Distribution Tariff issued by Forum of Regulators has decided to include an additional Provision, which will take care of the revenue cost for various initiatives or other one-time expenses. The additional Provision proposed by the Utilities shall be determined by the Commission while approving the Business Plan based on the prudence check.

g) **Voltage-wise distribution losses & cost of supply:** It has been provided in the Regulations that UPCL shall circulate and provide voltage -wise distribution losses & cost of supply to the Commission.

It is submitted that UPCL is in process to evolve a mechanism for determination of voltage-wise distribution losses and cost of supply. Presently, UPCL is not in a position to calculate voltage wise distribution losses and cost of supply and therefore, the Commission is requested to kindly provide in the Regulations that voltage wise distribution losses and cost of supply shall be made necessary from the second control period.

Technical Distribution Loss & Commercial Distribution Loss: It has been provided in the Regulations that UPCL shall calculate Technical Distribution Loss & Commercial loss separately and provide to the Commission along with the petition for approval of Business Plan for the Control Period.

UPCL has submitted that it is not in a position to determine Technical Distribution loss & Commercial Distribution loss separately and therefore, the Commission is requested to provide in the Regulations that Technical and Commercial Distribution loss shall be provided separately from the second Control Period.

The Commission is of the view that segregation of technical and commercial distribution losses is critical in the MYT framework and is also recognised in the Tariff Policy. Further, determination of voltage-wise distribution loss is also equally important in order to work out voltage-wise cost of supply.

UPCL in its Business Plan for the first control period shall submit concrete and time bound roadmap for introducing the desired systems to provide the desired information to the Commission at an early date. The Commission will accordingly take a view in the matter and issue appropriate directions while approving the Business Plan.

4.3. **Other Comments/Suggestions:**

a) **Start up Power:** Provision for purchase of Electricity by the Generating station/IPP for start-up power for testing and pre commissioning activities and emergency/intermittent power requirement after commercial operation declaration should also be specified. The start-up power requirement for commissioning purpose should be made available at 132 KV and above irrespective of the MVA requirement by the Generator/IPP.

The Commission clarifies that in the Final Regulations separate provision for "**Purchase of Electricity by the Generating station/Start up Power"** has been incorporated as follows:

"Any person, who establishes, maintains and operates a generating station and normally does not need power from the licensee round the year, i.e. who is not a consumer of the licensee, may purchase electricity from any generating company or a distribution licensee in case his plant is not in a position to generate electricity to meet the its own requirement or for start up and consequently power is required to be drawn from distribution licensee.

In case of electricity generated from the plant is sold to the State Distribution Licensee, the electricity (in kWh) procured by the Generating Station from the State Distribution Licensee to meet its requirement of start up power, will be adjusted from the electricity sold to the Distribution Licensee. The Distribution Licensee shall make the payment for net energy sold *to it by the Generating Company, i.e. difference of the total energy supplied by the Generating Company to the Distribution Licensee and energy supplied by the Distribution Licensee to the Generating Company.*

In case of electricity generated from the plant is sold to third party other than the State Distribution Licensee, then such purchase of electricity by the generating company from the State distribution licensee, shall be charged as per the tariff determined by the Commission for temporary supply under appropriate "Rate Schedule of tariff" for Industrial Consumers considering maximum demand during the month as the contracted demand for that month. The Fixed/Demand charges for that month shall be payable for the number of days during which such supply is drawn. Such Generating Company shall, however, be exempted from payment of monthly minimum charges or monthly minimum consumption guarantee charges or any other charges. "

b) Controllable and uncontrollable factors should be specifically indicated whether they relate to generation, transmission and distribution:

The Commission is of the opinion that the factors provided in the Regulations are some of the examples of Controllable and un-Controllable factors and are not exhaustive. There can be other factors also, hence, have not been categorized separately for the utilities.

c) Actual capital expenditure incurred annually should be monitored annually but no adjustment should be carried out annually. Adjustment for the same should be carried out at the end of the control period:

The Commission is of the view that Annual adjustment is necessary for two reasons:

a. Keeping in view the financial health of the utilities, it would be appropriate to adjust the same based on actual expenditure during the performance review otherwise any increase in capital expenditure for reasons beyond the control of the utility may adversely affect the finances of the company.

b. Further, if the adjustment is carried at the end of the control period, the cumulative impact on consumer tariffs may be very high and, hence, it has been proposed to spread this over the period.

d) Detailed analysis of the O&M expenses should be conducted before approving it for first year of the control period based on the expenses approved in the last tariff order. This should be increased on predetermined principle or rate. Since, it is a controllable factor, any loss or gain should not be adjusted in the ARR of the licensee.

   The Commission clarifies that the Regulations already provides that the O&M expenses for the first year of the control period will be approved by the Commission taking in to account the actual O&M expenses for last five years till base year, based on the audited balance sheets, excluding abnormal operation and maintenance expenses, if any, subject to prudence check and any other factors considered appropriate by the Commission. Further, the NTP also specified that at the beginning of the control period "actual" costs shall form the basis for future projections.

   Further, O&M expenses for subsequent years will be calculated by using CPI and WPI respectively over the base year's expenses. All elements of O&M expenses are not controllable. The Utilities in Uttarakhand being Government companies, their salary structure is linked to various Government orders, like DA which is revised twice in a year. Further, being a hilly State, R&M expenses are dependent on vagaries of nature. Further, the Regulations specifies for sharing of gains/losses between the consumers and utilities. Clause 8.2.1(5) of the NTP also stipulates that during the transition period controllable factors should be to the account of utilities and consumers in proportions determined under the MYT framework.

e) Variations in revenue and expenditure due to uncontrollable factors should be trued up every year and for controllable factors truing up should be at the end of control period.

   Reasons for annual adjustments have already been discussed under point (c) of S. No. 4.3.

f) Under applicability, both under generation and transmission tariff, it should be specified that this shall not apply where tariff has been determined through transparent process of bidding.

   This has already been specified under Regulation 2 and Regulation 4(2), hence, is not repeated elsewhere.

g) Distribution tariff should be split up under network business and retail supply business.

The Commission would like to clarify that splitting up of tariff between network business and retail supply business is not required as Commission has already issued Open access Regulations wherein principle for determining wheeling charges have been specified.

h) Regulations should provide that the licensee shall develop a robust and well tested forecasting technique.

The Commission would like to clarify that the Regulations provides that due to the importance of capturing seasonal variation, Monthly Sales Forecast for the Control Period shall be done in respect of each consumer category/sub-category and to each tariff slab within such consumer category/sub-category, based on the past trends and suitable adjustments shall be made to reflect the effect of known and measurable changes with respect to number of consumers, the connected load and the energy consumption, thereby removing any abnormality in the past data.

i) The opening level of AT&C losses should be determined by the Commission as in the last Order and equal sharing should be there between the licensee and consumers on account of gains arising out of better performance.

The Commission would like to clarify that the opening level of losses will be considered by the Commission while issuing the MYT order and cannot be specified in the Regulation as actual losses of FY 2011-12 will also have to be considered. Regarding sharing of gains/losses, the sharing mechanism has been provided in the Regulation.

j) No change is desired in the prevailing Tariff Policy and no change in the same is desired at this stage. If so please make available for appreciation of the Regulations.

The Commission would like to clarify that no deviation is taken from Tariff Policy..

k) Need to mention that it is expected that Licensee/ Company shall submit tariff proposal by November of preceding year and failing which the Commission reserve its right to start suo moto proceedings for deciding the tariff for next financial year.

Recently, Appellate Tribunal for Electricity (ATE) has issued directives to all Commissions directly.

In the light of APTEL Judgment dated November 11, 2011 on the Tariff Revision (Suo-Motu action on the letter received from Ministry of Power) and Model Regulations for Multi Year Distribution Tariff published by Forum of Regulators, the Commission has incorporated appropriate provisions in respect of Suo-Motu proceedings in the Final Regulations, in case of delay/ non- submission of the application for determination of tariff and annual performance review beyond one month from the scheduled date of submission.

l) Tariff Order shall determine tariff with and without Government subsidy not received at advance.

The Commission has incorporated the necessary provisions in the Regulations.

m) The Commission needs to ask Distribution Licensee to improve its performance or Government to change the management of Distribution Licensee and absorb losses suffered by the same for cash shortage.

This is beyond the purview of the Commission.

n) In case generation tariff increases during the period the increased cost should be allowed to be recovered quarterly from the consumers.

The Commission has incorporated FCA mechanism in Regulations to pass on the impact of increase in fuel related costs of power purchase.

o) Regulatory Asset should not be encouraged beyond two years.

The Commission has taken a note of the same.

p) In case additional energy is purchased by the Distribution Licensee except for the reasons such as natural calamity or exigencies the cost of additional power purchase needs to be compensated by state government or passed on to the next year tariff.

Compensation towards the cost of additional power purchase by the Government is beyond the purview of the Commission as the Commission can only seek Government's view on payment of subsidy to any consumer category while determining tariffs. However, with regard to passing the additional power purchase cost in the next tariff exercise, it is relevant to mention that in the light of APTEL Judgment dated November 11, 2011 on the Tariff Revision (Suo-Motu action on the letter received from Ministry of Power) and Model Regulations for Multi Year Distribution Tariff published by Forum of Regulators, as well as the comments received in respect of incorporation of provision for quarterly recovery fuel and power purchase adjustments from the consumers during the period in between the issue of two tariff orders, the Commission has now incorporated the Fuel Charge Adjustment Mechanism in the Final Regulations.

q) It is imperative for the Commission to introduce TOD tariff for HT consumers to avoid open access in future. The same needs to be mentioned in Regulations.

The Commission will take view in the matter to TOD Tariffs while issuing the Tariff Orders.

4.4. **Other Changes made in the Regulations:**

This section contains the rationale of amendments being made in the Draft Regulations published by the Commission for stakeholders' comments and suggestions and the Final Regulations now being notified other than those which are already covered in the previous sections:

a) **<u>Sharing of Gains & Losses:</u>**

Clause 8.1 (2) of the Tariff Policy states that while implementation of MYT framework, the State Commissions should introduce mechanism for sharing of excess profits and losses with the consumers. It also stated that with a view to incentivize accelerated performance improvement and reduction in losses, which is ultimately in long term interest of consumers, the incentives for the Utilities may be kept asymmetric in the first control period. The means the percentage of the excess profits being retained by the utility may be set at higher levels than the percentage of losses to be borne by the utility.

The issue was also deliberated in the meeting of State Advisory Committee held on November 28, 2011, wherein it was also pointed out by the Members that in the previous Regulations, licensee's inefficiency in non-reduction of distribution losses was not passed on to the consumers in tariffs. However, in the draft MYT Regulations, the sharing mechanism of losses on account of controllable factors was proposed to be shared in the proportion of 50:50. This would not only over-burden the consumer tariffs but UPCL would also be under no further pressure to reduce its losses and therefore the impact of sharing of losses should be more on the utility than the consumer. The Members proposed that higher proportion of gains would be allowed to be retained by the utility so as to incentivize them to reduce their losses.

In the light of provisions mentioned in the Tariff Policy as well as taking into consideration the essence of the opinion of the State Advisory Committee, the Commission has now revised the mechanism of sharing of gains & losses between consumer and distribution licensee from 'equal' to 'asymmetric' in favour of distribution licensee for the first control period. The approved aggregate gain will be shared in the ratio of 20:80 between Consumers & Utility and approved aggregate loss will be shared in the ratio of 25:75 between Consumers & Utility.

b) **Incorporation of Secondary Fuel Cost in the Fixed Charges**

The secondary fuel expense, which was inadvertently missed in the Draft Regulations, has now been incorporated in the Fixed Charges in the Final Regulations.

c) **Fuel Charge Adjustment (FCA)**

In the light of APTEL Judgment dated November 11, 2011 on the Tariff Revision (Suo-Motu action on the letter received from Ministry of Power) and Model Regulations for Multi Year Distribution Tariff published by Forum of Regulators, as well as the comment received in respect of incorporation of provision for quarterly recovery fuel and power purchase adjustments from the consumers during the period in between the issue of two tariff orders, the Commission has now incorporated the Fuel Charge Adjustment Mechanism in the Final Regulations.