



tariff as approved for NPCL, from time to time, till the tariff of the Petitioner is determined.

19. The Petitioner has prayed to allow to levy the proposed Ceiling Tariff on provisional basis to consumers until the tariff for the Petitioner is determined.

### **Commission's View**

20. The Commission is empowered to approve the maximum ceiling of tariff in accordance with Section 62 (1) (d) of the Electricity Act, 2003 in areas where two or more licensees operate in the same area, as reproduced below:

*"Section 62. (Determination of tariff): -- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –*

*...*

*(d) retail sale of electricity:*

*Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity"*

21. The area in which the Petitioner's data center is going to operate, and the area for which it has been granted the distribution license, falls within the area of supply of NPCL, thereby making it a parallel licensee vis a vis NPCL. The requirement of admittance of Tariff petition, publication of submissions of licensee, comment of various stakeholders, requirement of public hearing, etc. arise out of Section 64, which is meant in case the tariff is determined u/s 62. Therefore, if a ceiling tariff is to be determined for proviso of Section 62(d), then the above requirements need to be satisfied. However, in the present case, earlier there was only one licensee, viz. NPCL, working in that area and whose tariff has been determined strictly in accordance with the requirements laid down under Section 64. The maximum price

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or ceiling tariff has been defined by **Black's Law Dictionary** as "*the highest price/ tariff allowed by a government agency or by some other regulatory institution at which a buyer is willing to buy or a consumer is asked to purchase*". Accordingly, the tariff determined for NPCL is in itself a ceiling tariff on which even NPCL can grant any discount if it so desires. Hence, for this purpose, and also for the fact that the data center as distribution licensee, being in building stage, is not in a position to furnish its billing determinants, the tariff specified by the Commission for NPCL will act as a ceiling tariff for the consumers for data center also. Accordingly, there is no requirement or justification for determining a ceiling tariff for the purposes of parallel operation of data center and the statutory requirement as laid down u/s 64 will be considered to be adequately met by considering the NPCL Rate Schedule for FY 2023-24 as ceiling tariff for data center consumers on category to category and subcategory to subcategory basis. Since most of the consumers of data center are HV1 consumers, therefore, HV1 category tariff of NPCL shall act as a ceiling tariff for the consumers of the data center till final tariff for data center is determined by the Commission, or till further Order of the Commission. Further, for the purposes of promoting competition, which is the essence of parallel license, it is desirable that the petitioner should offer lower tariff than the ceiling tariff, which is the determined tariff for NPCL. In this context, it is noteworthy that M/s NIDP Developers Pvt. Ltd. i.e. the data center operating as parallel distribution licensee has offered a discount on NPCL's tariff of HV1 category & LMV-9 category, which are the relevant categories in case of M/s NIDP Developers Pvt. Ltd., while operating as a parallel distribution licensee. Accordingly, the proposed tariff of M/s NIDP Developers Pvt. Ltd., as given in para 17 of this Order is approved by the Commission, which is shown below:



## APPROVED TARIFF FOR M/S NIDP Developers Pvt. Ltd. FOR FY 2023-24

Tariff Category	Fixed Charge*	Energy Charge*
<b>High Voltage</b>		
<b>HV-1</b> Commercial Loads / Private Institutions / Non-domestic bulk power consumer with contracted load 75 kW & above and getting supply at Single Point on <b>11 kV &amp; Above</b> <b>(Proposed Tariff)</b>	Rs.400/kVA/Month	Rs.8.02/kVAh
<b>HV-1</b> Commercial Loads / Private Institutions / Non-domestic bulk power consumer with contracted load 75 kW & above and getting supply at Single Point on <b>11 kV &amp; Above</b> <b>(Proposed Tariff after Regulatory Discount)</b>	Rs.360/kVA/Month	Rs.7.21/kVAh
<b>Low Medium Voltage (LMV)</b>		
<b>LMV – 9:</b> TEMPORARY SUPPLY - C) Metered Supply for all other purposes: Construction Load <b>(Proposed Tariff)</b>	Rs.300.00/kW/ Month	Rs.9.00/kWh
<b>LMV – 9:</b> TEMPORARY SUPPLY - C) Metered Supply for all other purposes: Construction Load <b>(Proposed Tariff after Regulatory Discount)</b>	Rs.270.00/kW/ Month	Rs.8.10/kWh

**Note:** Tariff to be revised based on the Tariff Order issued by the Commission for NPCL, from time to time, till the tariff of the Petitioner is determined. Tariff for other categories not covered in the above table will be same as the tariff as approved for NPCL, from time to time, till the tariff of the Petitioner is determined. All other provisions (general provisions / incentives / discounts / penalty / rebate etc. including Schedule of Miscellaneous Charges) shall be applicable as approved for NPCL in its Tariff Order.

This lower tariff will be considered as a benchmark for the true up of parallel distribution licensee, viz., data center, till final tariff for data center is determined by the Commission.

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### **C. Allowing Cumulative and Composite Procurement of Green Energy for the Current Control Period i.e. till FY 2024-25**

#### **Petitioner's Submission**

22. It is submitted that as per UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2010 read with First Amendment, 2019 the obligated entities are required to fulfil Renewable Purchase Obligation from different technologies such as Solar, Non-Solar and Hydro. The RPO obligation as specified in the Relevant Regulations is outlined as below:

<b>Particulars</b>	<b>FY 2023-24</b>	<b>FY 2024-25</b>
Solar	5.00%	Not yet approved by the Commission
Non-Solar excluding Hydro	7.00%	
Hydro	3.00%	
<b>Total</b>	<b>15.00%</b>	

23. It is further submitted that the estimated demand for FY 2023-24 and FY 2024-25 is quite low (~4 MW) as compared to other Distribution Licensee(s) in the State of Uttar Pradesh. At this estimated load and with requirement of RTC power requirement for its license area, it may not be possible to procure power from different technologies such as Solar, Non-Solar and Hydro to meet the Renewable Purchase Obligation. The Petitioner has therefore prayed to allow Cumulative (for the period of March, 2023 to March, 2024 i.e. 13 months) and Composite Procurement of Green Energy from all renewable energy sources combined together).

#### **Commission's View**

24. The Commission is of the view that if the submission of the Petitioner is not accepted then it will by all means result into situation of impossibility of performance and hence, the Commission allows the relaxation that has been sought under Regulation

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18 of UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulation 2010 i.e. the "Power to Relax". Accordingly, the RPO obligations that will have to be fulfilled by the Petitioner is provided in table below:

Source	Obligation for FY 2023-24 & March 2023 (Cumulative)
Renewable Energy Sources as defined in UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2010 read with First Amendment, 2019 <b>(Composite)</b>	<b>15.00%</b>

25. For FY 2024-25, the Commission has not yet approved the trajectory. However, once the trajectory for FY 2024-25 is approved by the Commission, the same shall be applicable to the Petitioner. Further, the composite procurement of renewable energy is allowed till further Order of the Commission.

#### **D. Relaxation in forming CGRF**

##### **Petitioner's Submission**

26. It is submitted that the eligibility of Nominated Member is provided in Regulation 3.3 of UPERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2022 notified on July 21, 2022. It is further submitted that the Petitioner is going to start its operation from 1st March 2024 and hence does not have any consumers who can satisfy the requisite requirement of the said Regulations for eligibility of the nominated members. Further, it will take some time for the consumer base to develop and hence the criteria of the Nominated Members may not be met at this stage. It is therefore requested to allow the Petitioner to create the CGRF after three years of operation of the Distribution Licensee.

##### **Commission's View**

27. The Commission is of the view that the Petitioner has genuine concerns in establishing the CGRFs in its area. The Commission, under Regulation 9 (Power to

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Remove Difficulty) of UPERC (Consumer Grievance Redressal Forum) Regulations, 2022, therefore allows the prayer of the Petitioner and grants relaxation from creation of CGRF till further Orders. However, in the interest of consumers of the Petitioner, till the establishment of CGRFs in the area of the Petitioner, the consumers of Petitioner may approach Electricity Ombudsman directly for redressal of their grievances. The same was also agreed by the Petitioner.

28. In accordance with Regulation 5.10 of the Uttar Pradesh Electricity Regulatory Commission (Multi Year Tariff for Distribution & Transmission) Regulations, 2019, the Petitioner shall publish the Tariff approved by the Commission in at least two (2) English and two (2) Hindi daily newspapers having wide circulation in the area of supply and shall put up the approved Tariff on its website. The Petitioner is also required to submit the copies of the newspapers and screen shots of the website within 7 days of publication. The Tariff so published shall be in force after seven days from the date of such publication of the Tariffs and unless amended or revoked, shall continue to be in force till issuance of the next Tariff Order or further Orders of the Commission. The Commission may issue clarification / corrigendum / addendum to this Order as it deems fit from time to time with the reasons to be recorded in writing.

29. With above directions for the prayers made by the Petitioner, the Petition is hereby disposed of.

  
(Sanjay Kumar Singh)  
Member

  
(Vinod Kumar Srivastava)  
Member (Law)

  
(Arvind Kumar)  
Chairman

Place: Lucknow

Dated: 09.02.2024