

Concept Paper on Mode of Payment of Security Deposit

1) Background

- 1.1 The Commission had notified its Uttarakhand Electricity Regulatory Commission (The Electricity Supply Code) Regulations, 2007, Uttarakhand Electricity Regulatory Commission (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and Uttarakhand Electricity Regulatory Commission (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008, in which the Commission had specified the amount of security deposit to be collected at the time of release of new connection and the manner in which additional security deposit was to be raised by the distribution licensee (UPCL).
- 1.2 The Regulation stipulated that the Commission shall from time to time prescribe the rate at which the interest shall be payable on the amount of full security deposit available with the licensee.
- 1.3 The Commission thereafter on representation made by industries to specify the rate of interest issued an Order on 27.07.2007 prescribing the rate of interest payable on Security Deposit of consumers available with the licensee. The extracts of the order, which are relevant in the present case, are reproduced below:

“..... the Commission orders that:

2.3.1 With effect from 1st April 2007, the distribution licensee shall pay interest on Security Deposit of consumer, both consumption and material security, at the Bank Rate as on 1st April of the financial year for which interest is due. Bank Rate shall mean the Rate as notified by Reserve Bank of India u/s 49 of the RBI Act, 1934.

2.3.2 It shall be the responsibility of the distribution licensee to track and maintain record of changes in the Bank Rate.

- 2.3.3 *The interest accrued to the credit of the consumer for the financial year shall be adjusted in their electricity bills in the following financial year latest by 30th June.*
- 2.3.4 *The Licensee shall duly show the period and rate of interest, amount becoming due to the consumer towards interest on the security deposit and adjustment for the same in the relevant bills raised on the consumer.*
- 2.3.5 *Interest shall be payable on the amount of security deposit held by distribution licensee for full calendar month.*
- 2.3.6 *Interest shall be payable only if the security deposit is paid in cash (including cheque or bank draft). No interest shall be payable where security has been provided by way of Bank guarantee, letter of credit, etc.*
- 2.3.7 *In the event of delay in making the adjustment for interest on security deposit by the Licensee, it shall pay interest at 1 ½ times the rate specified under clause (1) above and the burden of additional liability for this delay shall not be allowed to be passed through in tariff."*

1.4 The Commission received representations from industries submitting that UPCL was not accepting security through bank guarantee or Letter of credit and was insisting in getting it deposited through cash or bank draft, etc. The industries requested the Commission to provide them the option to tender security in the shape of bank guarantee/letter of credit as bank guarantee/letter of credit equally served the purpose of the security to the licensee for securitizing its electricity consumption bills.

1.5 The Commission took cognizance of the matter and since the issue had financial implications for both the licensee as well as consumers, the Commission sought UPCL's response in the matter. UPCL, in its response submitted that the licensee is authorized under Section 47 of the Electricity Act, 2003 to collect reasonable security

as determined by the Commission from any person requiring supply of electricity. The Commission in its UERC (The Electricity Supply Code) Regulations, 2007 had specified the procedure for determination of additional security deposit, however, the Regulation did not have any mention about the manner in which the amount of security deposit would be deposited. The Electricity Supply (Consumers) Regulations, 1984 were framed under the provisions of the Electricity (Supply) Act, 1948 and were applicable to UPCL at the time of enactment of the Electricity Act, 2003 which stipulated that the consumers are expected to deposit the security deposit by way of cash or bank draft. The Electricity Act, 2003 although repealed the provisions of the Electricity (Supply) Act, 1948, however, the Regulations framed under the Electricity (Supply) Act, 1948 in so far as they were not inconsistent with the provisions of the Electricity Act, 2003, were deemed to have been done or taken under the corresponding provisions of the Electricity Act, 2003. Thus, UPCL submitted that the amount of security deposits from the consumers may be accepted only in cash and bank drafts.

- 1.6 The Commission also heard both the parties before issuing any order in the matter on 16.12.2008 and thereafter issued its Order in the matter on 06.03.2009.
- 1.7 The Commission while examining the issue observed that since the issue had substantive implications on tariffs for other consumers the Commission restrained itself from making any decision on the same in the Order and held that the decision about the mode would require amendment of the Regulations in accordance with Section 47(1) of the Act through public process. However in the meanwhile, considering the fact that sudden burden of huge amounts of additional security may not be bearable by the H.T. industrial consumers, the Commission using its general power of relaxation in the regulations, allowed such consumers to deposit the additional security in installments, which should be in a span of not more than 12 months. Accordingly, the Commission is issuing this Concept Paper seeking

amendment of the relevant Regulations in order to solicit responses from all the stakeholders.

2) Objective

2.1 The Commission proposes to amend its UERC (The Electricity Supply Code) Regulations, 2007, UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and UERC (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 in order to specify the manner in which security deposit, both for consumption as well as material, would be tendered by the consumers so that dues of UPCL are also protected and consumers also do not have to face undue hardships. This paper attempts to lay down the manner in which security deposit alongwith additional security deposit raised by UPCL from time to time, will be deposited by the consumers.

3) Proposal

3.1 Relevant extracts of Section 47 of the Electricity Act, 2003 (Act) stipulates as under:

*“(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, **as determined by regulations**, for the payment to him of all monies which may become due to him -*

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply or to provide the line or plant or meter for the period during which the failure continues.

(2) *Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become **invalid or insufficient**, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.*

(3) *If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues."*

3.2 Thus, it is clear from the above reading of the provisions of the Act that the intent of the Act is to provide the distribution licensee with adequate security against default by any person to whom the licensee supplies electricity and where the security becomes insufficient or invalid, the licensee can require the person to give reasonable security (whether in cash or otherwise) failing which the licensee can discontinue the supply of electricity.

3.3 The Commission in its Order dated 27.07.2007 had specifically mentioned that interest shall be payable only if the security deposit is paid in cash (including cheque or bank draft) and that no interest shall be payable where security has been provided by way of Bank guarantee, letter of credit, etc. The Commission had recognized in the said Order that Bank Guarantee, Letter of credit, etc. could also be a mode of giving the security. However, the licensee doesn't seem keen in accepting the security deposit by a different mode other than cash, cheque or bank draft.

3.4 It would be appropriate to examine as to whether the Bank guarantee and letter of credit provides the similar level of security as is the case with cash and cash equivalents, like cheque, demand draft, etc.

- 3.4.1 In case of Bank Guarantee, a bank guarantees the repayment of money on default by the customer or the payment of money when the customer makes procurements on deferred payment basis.
- 3.4.2 A letter of credit (L/C) is a written undertaking given by a bank on behalf of its customer, who is a buyer, to the seller of goods, promising to pay a certain sum of money provided the seller complies with the terms and conditions given in the L/C. A Letter of Credit is generally required when the seller deals with unknown parties or otherwise feels the necessity to safeguard his interest. By issuing Letter of Credit on behalf of their customers, bank helps them in buying goods or services on credit from sellers who are quite unknown to them. The banker issuing L/C undertakes an unconditional obligation upon himself, and charge a fee for the same. L/Cs can be revocable or irrevocable. In the latter case, the undertaking given by the bank cannot be revoked or withdrawn.
- 3.5 As can be seen from the above readings, the bank, both in the case of bank guarantee as well as letter of credit guarantees the repayment of money on behalf of the customer. The only difference being that in case of L/C, the bank gives an undertaking to pay on behalf of its customer, while in case of Bank guarantee the bank gives an undertaking to pay on behalf of its customers in case of default by its customer. Thus, a seller of goods or services is well protected of his legitimate dues if a bank guarantee or L/C is issued to him on behalf of the buyer.
- 3.6 Further, in electricity sector, letter of credit, bank guarantee is not a new concept. The generating companies selling power, aware of the financial health of the Electricity Boards, used to insist on getting a Letter of credit or bank guarantee in their favour and this is still in practice. The only purpose of this was to secure timely payments by the Boards or licensees getting energy.

- 3.7 Thus, from the reading of the above Paras, it is clearly evident that the Bank Guarantee or letter of credit equally provides the security in case of default by the consumer. The practice of paying security deposit by way of bank guarantee, letter of credit has also been recognized by other State Electricity Regulatory Commissions, like Maharashtra, Chattisgarh, Uttar Pradesh, Karnataka, etc for large consumers.
- 3.8 Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 stipulates that a consumer with a consumption of electricity of not less than one lac (1,00,000) kilo-watt hours per month and with no undisputed sums payable to the Distribution Licensee under Section 56 of the Act may, at the option of such consumer, deposit security under this Regulation 11, by way of cash, irrevocable letter of credit or unconditional bank guarantee issued by a scheduled commercial bank. Chhattisgarh State Electricity Regulatory Commission (Security Deposit -First Amendment) Regulations, 2007 provides that the licensee may consider security deposit for a consumer by way of irrevocable letter of credit or unconditional bank guarantee (BG) issued by a scheduled commercial bank, at the option of such consumer, which shall be subject to authentication by the concerned bank, who has a sanctioned load of 5 MVA and above and has no undisputed sums payable to the Distribution licensee under Section 56 of the Act. The Supply Code issued by UP Electricity Regulatory Commission specifically provides that consumers opting for new connections for contracted load exceeding 10 MW, may have the option of making payment for the security deposit by way of a bank guarantee, valid for an initial period of 5 years, drawn on a branch of a scheduled bank, situated in the district. Karnataka Electricity Regulatory Commission (Security Deposit) Regulations, 2007 also stipulates that both initial and additional security deposit shall be paid in the form of cash / demand draft (DD)/Bank Guarantee drawn in favour of the Licensee.
- 3.9 Having examined the level of security provided by the Bank guarantee and letter of credit as discussed in the above sections, the Commission proposes to allow the

facility of paying security deposit, both initial security deposit and additional security deposit, in the form of unconditional bank guarantee or irrevocable letter of credit to all HT consumers having contracted load of over 1 MVA and above. The minimum requirement of 1 MVA has been stipulated as the licensee would have to put in place the mechanism for monitoring the security being deposited through this mode. Initially the number of consumers having contracted load over 1 MVA would not be large, and hence, the licensee would be able to monitor the same with less difficulty. The Commission may in future consider relaxing the requirement of 1 MVA and allowing it for all HT consumers, depending on the systems in place and response of the industries to this scheme. However, the said changes would require amendment in the existing Regulations, in accordance with the provisions of the Act.

3.10 Thus, the Commission proposes to insert the clause (7) after clause (6) of the Regulation 2.3.1 of UERC (The Electricity Supply Code) Regulations, 2007 which will read as follows:

“(7) A licensee may collect security deposit along with additional security deposit in the form as prescribed by the Commission from time to time.”

3.11 Once the Regulations are amended for specifying the mode of payment, the following draft Order is proposed to be issued:

1. A licensee may collect security deposit from all consumers in respect of the meters, line and plant provided for the connection and supply of energy.
2. All payments shall be made by way of Cash (up to Rs 20000), Banker's Cheque, Cheque and Demand Draft. The cheques and demand drafts shall be payable at any branch of a scheduled commercial bank.
3. The date of payment by cheque shall be deemed to be the date on which the cheque is received in the office of the Licensee, provided that the cheque is encashed within 7 days of presentation to the Bank and is not dishonoured. In case a cheque is not encashed within 7 days of presentation to the bank, the applicant shall deposit the amount in cash or through bank draft along with non-

encashment fee of Rs.500/-, and the consumer shall be liable to other actions as per with the provisions of the Negotiable Instruments Act, including the temporary disconnection.

4. Notwithstanding the provisions contained in the (2) above, regarding the security deposit and additional security deposit by the consumer, the licensee may consider security deposit alongwith the additional security deposit for a consumer by way of irrevocable letter of credit or unconditional bank guarantee (BG), valid for an initial period of 5 years, issued by a scheduled commercial bank situated in the district, at the option of such consumer, which shall be subject to authentication by the concerned bank, who has:
 - i. A contracted load of 1 MVA and above; and
 - ii. Has no undisputed sum payable to the Distribution licensee under Section 56 of the Act.

Provided that, in such cases, the Distribution licensee will not be required to pay any interest on the amount of security deposit made through Bank guarantee/letter of credit. It shall be the responsibility of the consumer to get the bank guarantee renewed for further periods of five year, at least 3 months prior to the date of the expiry of the guarantee, failure to do so may result in disconnection of supply without notice.

Provided further that in the event of non-payment of regular electricity bills within the stipulated period, the distribution licensee shall be free to invoke the BG after giving 15 days notice to the consumer.

4) Request for response on the above issues

The Commission proposes to lay down the above as option available to the consumers for furnishing the Security Deposit alongwith the additional security deposit through amendment of its Regulation. Responses on the above are invited from the stakeholders, including consumers, so as to reach Commission's Office latest by 15.06.2009.