

UERC (Conduct of Business) Regulations, 2004

**Form-1**

(See Regulation 13)

**BEFORE UTTARAKHAND ELECTRICITY REGULATORY  
COMMISSION, DEHRADUN**

FILE NO.

CASE NO. (To be filled by the Office)

**In the matter of:**

ORDER DATED 18.3.2008 READ PASSED BY THE UTTARAKHAND ELECTRICITY REGULATORY COMMISSION ON THE PETITION FOR APPROVAL OF ANNUAL REVENUE REQUIREMENT FOR CONDUCT OF BUSINESS FOR THE UTTARAKHAND POWER CORPORATION LTD. FOR THE F.Y. 2007-08 & FY 2008-09.

THE PRESENT REVIEW BEING FILED UNDER THE PROVISIONS OF THE ELECTRICITY ACT, 2003 AND THE UTTAR PRADESH ELECTRICITY REFORMS ACT 2000 AND THE UTTARAKHAND ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2004

**And In the matter of:**

KUMAON GARHWAL CHAMBER OF COMMERCE & INDUSTRY

... **PETITIONER**

**VERSUS**

UTTARAKHAND POWER CORPORATION LTD.

A company wholly owned by the State Government of Uttarakhand,

... **RESPONDENT**

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FILED THROUGH: Kumar Sambhava

Executive Secretary, Paper Unit Chapter

KGCCI

PLACE: Dehradun  
 DATED: 21 SEPTEMBER, 2008

**Form-I**

(See Regulation 12)  
 General Heading for Proceedings

**BEFORE THE UTTARAKHAND ELECTRICITY REGULATORY  
 COMMISSION, DEHRADUN**

File No.

Case No.  
 (To be filled by the Office of the Commission)

**In the matter of:**

ORDER DATED 18.3.2008 READ PASSED BY THE UTTARAKHAND ELECTRICITY REGULATORY COMMISSION ON THE PETITION FOR APPROVAL OF ANNUAL REVENUE REQUIREMENT FOR CONDUCT OF BUSINESS FOR THE UTTARAKHAND POWER CORPORATION LTD. FOR THE F.Y. 2007-08 & FY 2008-09.

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**And In the matter of:**

KUMAON GARHWAL CHAMBER OF COMMERCE & INDUSTRY

A [renowned association of industries of Uttarakhand](#), having its registered office at "Chamber House" Industrial Estate, Bazpur Road, Kashipur, Distt- Udham Singh Nagar (Uttarakhand). Through its Authorized Signatory (Mr.Rajeev Ghai)

... PETITIONER

**VERSUS**

UTTARAKHAND POWER CORPORATION LTD.

A company wholly owned by the State Government of Uttarakhand,  
 Registered under the Companies Act, 1956 and having its  
 Registered Office at Urja Bhawan, Kanwali Road, Dehradun.

... RESPONDENT

**1. Specific Legal Provision under which Petition is being filed**

1.1 The Petitioner is constrained to file the present Review Petition under Regulation 68 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 read

with Order XLVII of the Code of Civil Procedure 1908, challenging the order dated 18.3.2008 passed in respect of Petition No. 04 of 2007 filed by the Respondent for fixing of the Retail Supply Tariff and approval of its expected Annual Revenue Requirement (hereinafter, "ARR") filed under the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 (hereinafter, "COB Regulations"). Whilst determining the ARR the Hon'ble Commission has made various observations, allowances/disallowances which are unsustainable in law and facts, being error apparent on the face of the record and in disregard of the sectoral realities and regulatory practice across India.

1.2 The issues impugned by the Petitioner is divided into the following sections for the sake of convenience and to facilitate easy perusal:

- a. The introduction of narrow load factor based categorizations in the HT Industry, which have been introduced on a misconstruction of the judgment of the Hon'ble Appellate Tribunal for Electricity. The creation of these categories is not based on any cogent data and in any event the categories created are vague and ambiguous as explained in detail herein later;
- b. Abolishing the high voltage rebate of 2.5% available to consumers for taking 33kV connection instead of 11kV having contracted load above 88kVA and upto 3000kVA. Furthermore, reducing the rebate for consumers having a contracted load above 88kVA and upto 3000kVA and receiving supply above 66kV and upto 132kV to 2.5%. Further, the consumers receiving supply above 132kV in the same bracket are also facing a lower rebate at 5% from 7.5% earlier. These directions have been passed without assigning any reasons and have prejudiced the consumers, many of whom took the connection based on the existence of the rebate;
- c. Levy of monthly Minimum Consumption Guarantee charges ("MCG", hereinafter) in the tariff despite the fact that the fixed cost of UPCL gets fully recovered through fixed/demand charges already being charged to the consumers;
- d. Levy of 20% higher energy charges for the whole year for industries that opt for continuous supply during load shedding instead of restricting it during the period when there is scarcity of power;
- e. Unexplained and arbitrary increase in fixed demand charges to be paid compulsorily by the industrial consumers;
- f. Non-utilization of surplus available with the Respondent for meeting the revenue gap;
- g. No reduction in peak hours despite the country wide average being approximately 3 hours compared to 5 hours in summer and 8 hours in winters in Uttarakhand.

A copy of the Order on the ARR of the Petitioner is annexed herewith and marked as **Annexure "A/1"** (hereinafter, "**Impugned Order**").

1.3 The Petitioner declares that the subject matter of the direction, decision and order against which the Petitioner wants redressal is within the jurisdiction of this Hon'ble Commission.

## 2 Limitation

The Petitioner declares that the Review Petition could not be filed within 90 days from the passing of the Impugned Order dated 18.3.2008 and for that the petitioner has "sufficient cause" for not filing the Review Petition before the UERC within 90 days as it had preferred an Appeal before the ATE within 45 days of the Impugned Order as prescribed by Section 111 of the Electricity Act, which is the general practice. However, the party subsequently realized that it had a more effective remedy available before the UERC as its grievances could be easily addressed by the UERC in its review jurisdiction rather than by the ATE in its appellate jurisdiction.

## 3. Facts of the case

3.1 The Petitioner is a Chamber of Commerce having its registered office at Kashipur district Udham Singh Nagar (Uttarakhand) engaged in representing and promoting such Projects, Trade, Commerce and Industry in the state. The Petitioner No. 1 has as its members/constituents a wide spectrum of industries falling in the category of High Tension ("**HT**", hereinafter)/Low Tension ("**LT**", hereinafter).

3.2. The Respondent a company wholly owned by the State Government of Uttarakhand, Registered under the Companies Act, 1956 and having its Registered Office at Urja Bhawan, Kanwali Road, Dehradun. The Respondent is engaged in the business of distribution and retail supply of electricity in the specified areas in the State of Uttarakhand and is the sole distribution licensee in the entire state.

3.3 UPCL, which is the sole distribution and supply licensee in the State inter-alia procures electricity from Uttarkhand Jal Vidyut Nigam Ltd. ("**UJVNL**", hereinafter). UJVNL is a company wholly owned by the State Government and engaged in the business of generation of power in the State primarily through nine large hydro generating stations.

3.4 In exercise of powers conferred on it by section 181 of the Act, the Hon'ble Commission has issued detailed Regulations pertaining to determination of tariffs viz. Uttarakhand Electricity Regulatory Commission (Terms & Conditions for Determination of Distribution Tariff) Regulations, 2004 ("**Regulations**", hereinafter). A copy of the Regulations is annexed hereto and marked as **Annexure 'A/2'**.

- 3.5 In accordance with the provisions of Regulation 56(4) of the COB Regulations every licensee is required to submit its petition for determination of ARR by 30<sup>th</sup> November of each year for the ensuing year. After repeated reminders the Respondent had filed its ARR and the tariff proposal for the year 2007-08 on August 17, 2007 which had numerous deficiencies. The Hon'ble Commission had thereafter sought for clarifications in respect to several heads and such information was submitted on October 15, 2007 and November 14, 2007 respectively.
- 3.6 That the said petition was admitted and the stakeholders by way of public notices were invited from the stakeholders. The Petitioner herein filed its responses to the ARR Petition filed by the Respondent and the issues disclosed therein. It is stated that the Petitioner even attended the public hearings conducted by the Hon'ble Commission.
- 3.7 The Respondent was also directed to file its ARR for the year 2008-09 while the ARR and tariff determination for the year 2007-08 was in process. Since the Respondent failed to file the same within the prescribed time limit the Hon'ble Commission initiated *suo-motu* proceedings for determination of UPCL's ARR and tariff determination for the year 2008-09 only on basis of the information already filed by the Hon'ble Commission up to September 2007.
- 3.8 On December 31, 2007, the Respondent submitted the responses to the queries raised by the Hon'ble Commission and further for the third time revised its ARR for the year 2007-08. In compliance of the undertaking given by the Respondent before the Hon'ble ATE in Appeal No. 225 of 2006, the Respondent had filed a truing up petition for the years 2001-02 to 2004-05 on 25<sup>th</sup> January 2008. The Respondent also subsequently revised its claims for truing up for the year 2006-07 through another petition for truing up for 2005-06 and 2006-07.
- 3.9 That the Petitioner submitted its objections to the Commission with respect to the tariff proposal for the year 2008-09 vide its letter on January 22, 2008. Vide this letter the Petitioner brought to the attention of the Hon'ble Commission that the Government of Uttarakhand itself wooed the industries to set up their plants, attracting them with the promise of providing cheap hydro power. The members of the Petitioner invested and had set up units in Uttarakhand based solely on those representations. However these representations have been continuously billed with the prohibitive increase in tariff for the industries alone whilst keeping the tariff reasonable for other categories of consumers. This not only contrary to the representations held out to industry by the State but also the cause for increase in [cross](#) subsidization by industries to the other category of consumers. In furtherance of the objections placed on record by the Petitioner, they had highlighted that if the proposals of the Respondent are accepted it would tantamount to diminishing of the industry in the State and wipe away the industry, which is still in its stage of

infancy. A copy of the Objections filed by the Petitioner are annexed hereto and marked as **Annexure 'A/3'**.

- 3.10 The Hon'ble Commission, however, failed to consider the objections put forth by the Petitioner whilst passing the Impugned Order dated 18.3.2008. The grounds on which the Petitioner seek to assail the Impugned Order are detailed herein below at Para 5.
- 3.12 Constrained by the non-consideration/errors apparent from the record in the Impugned Order of the Hon'ble Commission, on the issues indicated below, the Petitioner prefer the present Review Petition, on the cause of action enumerated herein below. The Petitioner craves leave to amend, add to and modify the cause, if required, at the time of hearing.

#### 4. Cause of action

- 4.1. The Petitioner states that the cause of action arose on 18.3.2008 and is continuing with the introduction of narrow load factor based categorizations in the HT Industry, which have been introduced on a misconstruction of the judgment of the Hon'ble Appellate tribunal for Electricity and that the categorization of HT industries on the basis of load factor is not based on any cogent data and in any event the categories created are vague and ambiguous. Furthermore, the Hon'ble Commission is not justified in abolishing and/or reducing the voltage linked rebates across the various contracted load categories. The Hon'ble Commission was also not justified in levying monthly Minimum Consumption Guarantee charges ("MCG", hereinafter) merely because the Respondent has been inefficient in ensuring recovery of tariff from its consumers, i.e. for burdening the consumers for the inefficiency in operation/loss reduction by the Respondent. This is contrary to the National tariff Policy.
- 4.2. That the Commission erred in approving the levy of 20% higher energy charges for the whole year for industries that opt for continuous supply during load shedding, despite the state having a surplus of power for some part of the year and not restricting the same to shortage periods. Further, the Commission erred in approving the unexplained and arbitrary increase in fixed demand charges to be paid compulsorily by the industrial consumers. The Commission also failed to adjust the surplus available with the Respondent for meeting the revenue gap for FY 2007-08 & 2008-09 in a suitable manner. That the Commission erred in not considering the submission of the stakeholders for reducing the peak hours despite the country wide average being approximately 3 hours compared to 5 hours in summer and 8 hours in winters in Uttarakhand.

In view of the aforesaid the Petitioner respectfully submits that the Impugned Order reflects non-consideration of the sectoral realities and is in disregard of the Regulatory practice and is

liable to be quashed thereof for the following grounds, each of which is in the alternative and without prejudice to the other. The Petitioner craves leave to amend, add and modify the grounds, if required.

## 5. Ground of relief

### Re: Introduction of Load Based Factor Tariff for H.T. Industries

5.1 The Impugned Order purportedly towards introducing 'Tariff Rationalization Measures' has introduced the concept of load factor based tariff. By introducing this concept; the Hon'ble Commission has sought to categorize HT Industries as per their load factor. The load factor (in % terms) is to be computed as per the following formula:

$$\frac{\text{Consumption during the Billing Period} \times 100}{\text{Maximum Demand or Contracted Demand (whichever is less)} \times \text{No. of hours in the billing period}}$$

5.2 The three categories of industry as envisaged by the Commission (based on the load factor) are:

- Upto 33%;
- Above 33% and upto 50%
- Above 50% load factor

5.3 **Interestingly, this concept has been introduced by the Commission on its own initiative. The Petitioner states that the ARR Petition of the Respondent did not propose the introduction of load factor based tariff.**

5.4 After the re-categorization of HT Industry as one class; the Hon'ble Commission should have provided uniform energy charges for all consumers under HT Industry category irrespective of Load Factor.

5.5 Therefore, the implication of the Commissions initiative to purportedly rationalize the tariff is that if a HT consumer has a load factor of 34%; he would be categorized in the 2<sup>nd</sup> category i.e. Above 33% and upto 50% and would be subject to a flat energy charge of Rs. 2.40/- per kVAh (irrespective of the contracted load of the consumer).

5.6 The Petitioner is aggrieved by the introduction of this concept on the following grounds:

- (a) The introduction of categorization on the basis of load factor has been done on the own initiative of the Hon'ble Commission. The decision of this Hon'ble Appellate Tribunal in Appeal No. 214 of 2006 has been misconstrued;
- (b) In the alternative, presuming the categorization is held to be valid; the categorization of the industry on the basis of load factor is very narrow and not based on any data leading to the categorization introduced in the Impugned Order, without any factual basis;

(c) Without prejudice to the submission at Serial No. (a) above; it is submitted that the categorization introduced by the Hon'ble Commission is vague and ambiguous as regards the manner in which these categories are to operate.

*I. Introduction of categorization on the basis of load factor on the own initiative of the Hon'ble Commission*

5.7 The Petitioner submits that the categorization of HT industry as introduced by the Hon'ble Commission is on its own initiative and was not even a part of the ARR Petition submitted by the Respondent. Therefore the Petitioner did not get any opportunity to convince the Hon'ble Commission against such an imposition, which is bad in law being in violation of natural justice.

5.8 The [load factor based tariff is discriminatory. Since this is not provided in the Regulations, the Commission has no jurisdiction to make such classification.](#)

5.9 [The Commission has misapplied/misinterpreted the observations in the Order dated 06-06-2007 of Hon'ble Appellate Tribunal in Appeal No. 214/2006, where Hon'ble Tribunal has rejected the discrimination between Power Intensive Units \(PIUs\) and other HT Industries. It is submitted that the Hon'ble Appellate Tribunal has not laid down or approved the categorization of HT consumers on load factor basis.](#)

5.10 Therefore, the conclusion of the Hon'ble Commission in the Impugned Order creating these load factor based categorizations especially when the Respondent No. 1 had made no proposal for the same is an error apparent on the face of the record. Even if the Hon'ble Commission has inherent powers to prescribe the creation of load factor based categorizations; the Petitioner submits that the categorizations done by the Hon'ble Commission are incorrect, vague and ambiguous for reasons detailed herein below.

*II. ,The principle applied for the categorization of the industry on the basis of load factor is incorrect and if at all load factor based categories are to created then it should be on the principal of higher the load factor, lower the tariff.*

5.11 Without prejudice to its submissions above, the Petitioner submits that if it is presumed that the Hon'ble Commission has rightly introduced the categorizations based on load factor; the Petitioner submits that the categories should be created in such a way that higher the load factor ,lower the tarriff by making provision of rebates over and above load factor slabs . This is the practice followed in many Indian states industrial power tariffs like Uttar Pradesh for example

- 5.12 As has been stated above, Respondent did not submit any proposal for creation of categories based on the load factor of the HT industry consumers. In the absence of any data submitted by the Distribution [Licensee](#), either the Hon'ble Commission should have undertaken its own study or relied on cogent data, which would justify the creation of such narrow categories. The Petitioner submits that the creation of such narrow categories based on load factor would result in an absurd situation where even if a consumer has a load factor of 34%; it would be placed in a category where the energy charge is higher (by 0.20 paise per kVAh). Therefore, it is necessary that the categories are based on data of load factor of the HT Industry failing which the categories created would not be in tune with the realities of the consumer profile and load factor of such consumers resulting in hardships for the consumers of the HT Industry.
- 5.13 Further, the Petitioner submits that once the Hon'ble Commission introduces a tariff on the basis of nature of use (e.g. industrial, domestic, commercial etc.) the Hon'ble Commission cannot keep adding new grounds to keep increasing the burden on single consumer category. In fact, the Petitioner submits that the load factor based tariff is designed clearly to penalize large industries. In the absence of any data either provided for by Respondent and/or data available before the Commission a load factor based tariff cannot be imposed on to the consumers especially when it can be easily demonstrated that this load factor based tariff will definitely penalize large industries operating in the highest slab. Further failure to provide the industrial users a chance for setting up a load based categorization, is in violation to the principles of natural justice. In light of the above, the Petitioner submits that industries availing higher load factor be given rebates since the cost of supply and service expenses are less or there should be one basic rate for the entire HT industry irrespective of the load factor, as is the sectoral practice prevalent throughout the country. The Petitioner craves leave to refer to and rely upon data at the time of hearing to supplement this submission.
- 5.14 In light of the above, the Petitioner submits that the categories based on load factor created by the Hon'ble Commission are not based on any cogent data. The categories created are very narrow, which will necessarily result in hardships to the consumers for the reasons detailed above. Thus, in the event this Hon'ble Commission upholds the creation of load factor based categories; the Petitioner most respectfully submits that that this Hon'ble Commission may be pleased to re-categorize the consumers on the basis of cogent data of load factor of the consumers in the HT Industry and it should be on the principle of higher the load factor , lower the tariff .

III. *Categorization introduced by the Commission is vague and ambiguous as regards the manner in which these categories are to operate*

5.15 In addition to the above and without prejudice to the submission that the categories based on load factor could not have been created by the Hon'ble Commission, the Petitioner submits that the categories created by the Commission are vague and ambiguous in the manner they are to operate.

5.16 The Petitioner submits that as per the load factor categorization done by the Hon'ble Commission; in the event a consumer has a load factor of 34% or 51% (as the case may be); the consumer will be charged for the entire slab. The Petitioner submits that this is an absurd situation because a consumer is being subjected to a higher tariff slab merely because it is qualifying for the higher slab by an additional load factor of 1%. The Petitioner submits that this anomaly has arisen because the categorization has been done without cogent data based on the consumer profile of the HT Industry. The Petitioner most respectfully submits that such narrow categories coupled with this anomaly that is bound to arise, make it abundantly clear that the categorization of consumers based on the load factor is vague and ambiguous and should be set aside. In the alternative, the Petitioner submits that the ambiguity posed by the creation of these vague categories may be resolved by resorting to a methodology whereby a consumer is billed to the extent its load factor falls in a particular slab. For example, in case the load factor of a consumer is 34%; such a consumer may be charged for the load factor up to 33% at the rates prescribed for that slab and for the additional difference it may be given prescribed rebates to the extent it falls in the higher slab. There may be two such higher slabs for example , first slab at above 33 % load factor and second at above 50 % load factor and rebate %age being further higher in the second higher slab of above 50 % load factor .

**Re: Abolition/Reduction of Rebate for availing supply at voltage higher than base voltage**

5.17 Abolishing the high voltage rebate of 2.5% available to consumers for taking 33kV connection instead of 11kV having contracted load above 88kVA and up to 3000kVA. Furthermore, reducing the rebate for consumers having a contracted load above 88kVA and up to 3000kVA and receiving supply above 66kV and up to 132kV to 2.5%. Further, the consumers receiving supply above 132kV in the same bracket are also facing a lower rebate at 5% from 7.5% earlier. These directions have been passed without assigning any reasons.

5.18 The Hon'ble Commission by way of the Impugned Order has abolished and/or reduced the rebate enjoyed by the industrial consumers in the following manner:

- (a) Abolished the high voltage rebate of 2.5% available to consumers for taking 33kV connection instead of 11kV having contracted load above 88kVA and upto 3000kVA;
- (b) Reducing the rebate for consumers having a contracted load above 88kVA and upto 3000kVA and receiving supply above 66kV and upto 132kV to 2.5%;
- (c) Further, the consumers receiving supply above 132kV in the contracted load category above 88kVA and upto 3000kVA are also facing a lower rebate at 5%.

5.19 The position of rebates prior to the coming into force of the Impugned Order was as under:

<i>Base Voltage</i>	<i>Rebate/(Surcharge) admissible for actual supply voltage at</i>				
	<i>400 Volts</i>	<i>11KV</i>	<i>33KV</i>	<i>66KV</i>	<i>132KV &amp; above</i>
400 Volts	Nil	5%	7.5%	10%	12.5%
11 KV	(10%)	Nil	2.5%	5%	7.5%
33 KV	Not permitted	Not permitted	Nil	2.5%	5%

5.20 Firstly, it is more than clear that the rebate allowed to those consumers who had taken a 33kV connection instead of a 11kV connection in the contracted load category of 88kVA and up to 3000kVA has been selectively reduced without assigning any reasons for such abolition. The rebate in the other contract load categories has been reduced, which is gravely prejudicial to those consumers as well. As regards the 33KV connection consumers the situation is the worse as they enjoy no rebate and comprise majority of the Industrial consumers fall in the State. This selective abolition of rebate for only this class of consumers without assigning reasons for such abolition merits consideration by this Hon'ble Commission.

5.21 Furthermore, the Commission has reduced the rebate for consumers having a contracted load above 88kVA and up to 3000kVA and receiving supply above 66kV and up to 132kV to 2.5%.

5.22 Also, the consumers receiving supply above 132kV in the contracted load category above 88kVA and up to 3000kVA are also facing a lower rebate at 5%.

5.23 **Interestingly, the abolition/deduction in rebate finds no mention in the entire Order except in the chapter title 'Annexures'.** There is no reasoning in support of this reduction that either Respondent has submitted and nor has the Hon'ble Commission examined this issue leave alone provide an iota of reasoning in support of this deductions, which has monetary consequences on the class of consumers affected by such reduction. The Petitioner most respectfully submits that decision is liable to be reviewed and set aside by this Hon'ble Commission on the above grounds.

- 5.24 The Petitioner further submits that the tariff for their category has to be decided on the basis of cost of supply, which varies at various supply voltages and accordingly the rebates admissible should have ideally continued.
- 5.25 The Petitioner submits that the reduction of rebate in the manner so done by the Hon'ble Commission by way of the Impugned Order seriously prejudices the Petitioner in as much as they lose on rebate guaranteed to them earlier for drawing supply at higher voltages. Thus, it is most respectfully prayed that this Hon'ble Commission may be pleased to allow the rebates at the rates specified in the previous orders and set aside the direction contained in the Impugned Order.

**Re: Introduction of Minimum Monthly Consumption Guarantee Charge**

- 5.26 The Petitioner is aggrieved by the introduction of Minimum MCG Charges over and above the fixed demand charges that are levied on the industrial consumers. The reasoning that weighed with the Hon'ble Commission for introducing these charges is summarized as under:
- Analysis of billing data revealed "shocking facts" such as very low load factor for some of the industrial consumers;
  - Respondent No. 1 is not able to bill the industrial consumers corresponding to their consumption, which in turn is resulting in loss of revenue which is being passed on to other honest consumers;
- 5.27 MCG charges being introduced considering the "deficiencies" in the billing data of UPCL. Thus, clearly a bare perusal of the Impugned Order and the reasoning that weighed with the Hon'ble Commission clearly indicates that the industrial consumers are being burdened with an additional charge to compensate the inefficiency of the Respondent in ensuring proper meter reading and billing of its consumers.
- 5.28 Interestingly, this fact is recognized by the Commission in the Impugned Order and despite recognizing the inefficiency of Respondent No. 1 as also the deficiency in the billing data of Respondent; the Hon'ble Commission has proceeded to levy these charges on the consumers who have to bear the burden of these charges due to the inefficiency of Respondent.
- 5.29 The Petitioner submits that if the concern of the Commission is to ensure that the Respondent earns revenue, which is presently being lost as a result of Respondent being unable to bill its consumers properly; ideally the Hon'ble Commission should direct the Respondent to improve its internal mechanisms to ensure prompt billing and diligent recovery of dues. By way of the Impugned Order; the Hon'ble Commission has instead providing an avenue to the Respondent to continue with its lackluster manner of functioning instead of ensuring that the

Respondent improves its internal practices. This has to be viewed in light of the fact that by way of the Impugned Order the Hon'ble Commission has also permitted Respondent to recover by way of tariff the Bad & Doubtful debts arising on account of non-recovery of dues by the Respondent. Therefore, clearly the Respondent is being made to enjoy the fruits of its inefficiency at the cost of higher tariff for the industrial consumers.

- 5.30 The Petitioner submits that although these charges are to be adjusted towards the energy charges paid by consumers, the introduction of these charges over and above the Fixed Demand Charges is absurd. The Respondent is able to recover its fixed cost through the levy of these charges and any revenue to be earned over and above the fixed demand charges should not be at the cost of the industrial consumers who have to bear the MCG Charges merely because the Respondent is unable to monitor and/or recover tariff from its consumers efficiently.
- 5.31 Thus, in view of the above, it is most respectfully submitted before this Hon'ble Commission to abolish the introduction of these MCG Charges.

**Re: Arbitrary increase in minimum fixed demand charges to be paid by the Industrial Consumers**

- 5.32 The Petitioner is also aggrieved by the increase in the fixed demand charge per month charged as a part of the two part tariff that the Petitioner is liable to pay.
- 5.33 The Petitioner states and submits that that the fixed demand charge for those consumers who have a contracted load of up to 100kVA are now liable to pay Rs. 150/kvA of the billable demand as fixed demand charges and those who have a contracted load of above 1000kVA are liable to pay Rs.200/kVA of the fixed demand charges.
- 5.34 The Petitioner submits that the hike in fixed demand charges is steep and the Impugned Order does not in any manner disclose the reasons for such a hike. The Petitioner most respectfully submits that the Hon'ble Commission has proceeded to merely increase the fixed demand charges without even a discussion on the issue to examine the same if it is reasonable and prudent. The Petitioner is not even aware of the reasons for such an increase, which is prejudicial to their interests as any increase in the fixed demand charges comes with a corresponding financial liability as these charges are mandatory.
- 5.35 Thus, in view of the submissions hereinabove, it is most respectfully submitted before this Hon'ble Commission to review and re-compute the fixed demand charges as the charges fixed presently are without any basis.

**Re:Levy of 20% higher charges for supply during restricted hours/load shedding**

- 5.36 The Petitioner is aggrieved by the decision of this Hon'ble Commission wherein the Hon'ble Commission accepted the proposal of the Respondent to levy 20% higher charges for ensuring continuous supply to those consumers who have opted to avail continuous supply during the restricted hours and/or when there is loadshedding.
- 5.37 The Petitioner submits that the Hon'ble Commission has ignored/overlooked the proposals submitted by the Petitioner that they are ready and willing to pay a higher charge i.e. above 20% for ensuring continuous supply to their units only for the load shedding period instead of paying a higher charge throughout the year. However, the Hon'ble Commission instead chose to adopt the proposal of the Respondent as a consequence of which the consumers opting for continuous supply are to pay a compulsory charge irrespective of any interruption in supply and/or any load shedding declared by the Respondent.
- 5.38 The Petitioner submits that during the entire period of FY 2007-08; the load shedding was for a period of only 45 days. Since, the continuity of the supply and/or when the Respondent can declare load shedding is not predictable and nor is the duration; it is absurd to levy a charge of 20% throughout the year especially when there may be a situation where there is no load shedding through out the year and/or there is negligible load shedding through the year as was the case in FY 2007-08.
- 5.39 Therefore, the Petitioner who has opted for continuous supply through the year will be required to pay 20% irrespective of whether there is loadshedding or not. This will allow the utility to earn excess money from willing consumers for an assurance of providing continuous supply even if there is no anticipated shortfall and/or expected load shedding. The Petitioner submits that the absurdity of such a proposal is writ large and it is needless to elaborate the hardship that may be caused by such a proposal.
- 5.40 Further, it is imperative to note that there is no basis for fixing 20% as the additional charge for availing of continuous supply. Any charge fixed, which is to be levied on consumers needs to be supported by some cogent data and/or empirical analysis for imposing the levy. The figure of 20% is arbitrary and the Petitioner submits that such levy would tantamount to inappropriate collections from the consumers with the stamp of approval of the Commission when such levy could be higher or lower.
- 5.41 Therefore, in view of the submissions above, the Petitioner most respectfully submits that this Hon'ble Commission may be pleased to review and set aside the Impugned Order to this extent and instead uphold the proposal of the Petitioner i.e. to levy a charge only for the period when there is actual load shedding and/or reply is restricted.

**Re: Refund of excess money realized from Petitioner for one month on account of continuous supply higher energy charges**

- 5.42 The Petitioner submits that most of the industrial consumers had opted for availing continuous supply pursuant to a directive/order of the Hon'ble Commission dated 26.12.2007. The option to opt for continuous supply was also exercised by the industries. The office memorandum issued by the Respondent confirming the same is annexed hereto and marked as **Annexure A/4**.
- 5.43 Pursuant to exercising this option; the consumers were liable to pay for such higher energy charge as per the provision contained in the applicable rate schedule for Tariff Order for FY 2006-07, which was effective from 1.4.2006. This Tariff Order came to an end with the passing of the present Impugned Tariff Order.
- 5.44 However, the units who had opted for availing continuous in the FY 2006-07 have been charged the 20% higher energy charge for availing continuous supply for the month of March 2008 i.e. after the coming into effect of the Impugned Tariff Order at the rates contained in the present Impugned Order.
- 5.45 The Petitioner has thus been charged at the new rates for the month of March 2008 without their consent and/or without the Petitioner being offered the option to avail continuous supply from the coming into effect of the Impugned Order.
- 5.46 Thus, the Petitioner most respectfully submits before the Hon'ble Commission to refund this money collected on the new tariff rates that have been come into force by way of the Impugned Order. It is most respectfully submitted that this money may be refunded with interest.

**Re: Cross Subsidization of other categories of Tariff by the increasing Tariffs for the Industrial Sector**

- 5.47 The Petitioner submits that no increase has been made in the tariff for domestic consumers, which account for 25%-30% energy sales. Similarly the tariff for the private tube wells category has not been increased and has been kept at Rs. 0.74 per KWH against average cost of supply of Rs. 3.02 per KWH.
- 5.48 The Petitioner submits such high cross subsidization is against the norms laid down in the Electricity Act, National Tariff Policy and a catena of decisions of this Hon'ble Commission.
- 5.49 The Petitioner submits that it is a well settled principle that all categories of consumers pay for electricity consumption on the cost of supply associated with supplying electricity to

such consumers. It is not denied that these measures have to be done introduced gradually and in a phased manner. However, it is abundantly clear in the case of the Hon'ble Commission in Uttarakhand that no efforts have been made by the Commission to reduce cost subsidy to the various domestic categories in the Impugned Order.

- 5.50 It has been made more than abundant from the grounds enumerated above, that the industrial tariff especially for HT & LT industry users has consistently increased and additional charges are levied from time to time. The Petitioner submits that no corresponding increase has been carried out for the tariff in the domestic category and/or in the non-industrial category. These actions are contrary to the provisions of the Electricity Act, National Tariff Policy and decisions of this Hon'ble Commission mandating that steps be taken to reduce the cross-subsidy and thus are liable to be collected. The Petitioner submits before the Commission to lay down a road map stipulating the steps it proposes to undertake to reduce this cross subsidy, which is well within its knowledge.

**Re: Non-utilization of surplus available with the Respondent for meeting the revenue gap for FY 2007-08 & FY 2008-09 in a suitable manner**

- 5.51 The Petitioner is aggrieved by the treatment of available surplus with the Respondent for meeting the revenue gap arising out of the ARR of the Respondent for FY 2007-08 & FY 2008-09. The Commission has erred in the treatment of this surplus, which has adversely affected the Petitioner in as much as the benefit of the surplus has not been adequately factored in the Impugned Order allowing the Respondent to retain a surplus of an astonishing figure of Rs. 110.70 crores.
- 5.52 The Commission found an available surplus of Rs. 333.82 crores with the Respondent as on 31.03.2007. Instead of giving the benefit of surplus available to the consumers by reduction of tariff, the Commission directed that a portion of the surplus be utilized for creation of fixed assets. This in itself is an error apparent on the face of the record as this direction goes against the mandate prescribed by the Hon'ble Appellate Tribunal for Electricity in case of the state of Uttarakhand wherein the Hon'ble Tribunal has clearly held that the benefit of any surpluses should be given equally to all consumers. The Petitioner craves leave to refer to and rely upon these decisions at the time of hearing.
- 5.53 Furthermore, after apportioning the necessary amount towards creation of fixed assets from the available surplus the remaining surplus (Rs. 237.77 crores) was also not utilized towards meeting the revenue gap for FY 2007-08 and FY 2008-09, which was determined at Rs. 145.07 crore and Rs. 215.67 crores respectively. Instead of apportioning the entire surplus available with the Respondent to meet the revenue gap for the two financial years; the

Commission allowed the Respondent to recover Rs. 18 crores by way of increased tariffs whereas it had the option of apportioning the entire surplus to meet the revenue gap of Rs. 145.07 crores for FY 2007-08. Thus, the Commission has erred in allowing the Respondent to recover Rs. 18 crores by way of revised/increased tariffs whereas it had the option of adopting a tariff-neutral approach.

5.54 Whilst it is not denied that the Commission has given some relief to the consumers by apportioning Rs. 127.07 crores against the remaining revenue gap for FY 2007-08 thereby curtailing the tariff hike, the Commission has erred in not apportioning the remaining surplus (Rs. 110.70 crores) against the revenue gap for FY 2008-09. Apparently, this amount has been left with the Respondent to meet the "*impact of finalization of transfer scheme*" as the same is not known/not ascertainable. The Petitioner submits that this is a grave error in as much as the Commission has allowed the Respondent to retain an astonishing figure of Rs. 110.70 towards meeting a liability, which is at best a contingent liability and there is no certainty when the same will be crystallized and/or impact the Respondent. Instead the Commission had the option of reducing the revenue gap for FY 2008-09 considerably and reduce the tariff shock to be borne by the consumers. Alternatively, the Commission could have balanced the interest of all stakeholders and allowed a portion of the surplus to be retained by the Commission and apportion the remaining surplus from the revenue gap for FY 2008-09. This treatment of surplus should not be viewed in isolation of the surplus amount transferred to a 'Network Development Fund' created under the Tariff Order dated July 12<sup>th</sup> 2006 for FY 2006-07 (pending challenge before the Hon'ble Appellate Tribunal for Electricity).

5.55 Thus, the Petitioner submits that the Commission may review its decision on treatment of surplus available with the Respondent keeping in view the interests of the consumers and reduce the tariff shock to be borne by the consumers in view of the increased tariff payable.

**Re: No reduction in peak hours despite the country wide average being approximately 3 hours compared to 5 hours in summer and 8 hours in winter in Uttarakhand**

5.56 The Petitioner is further aggrieved by the fact that the Commission has allowed the Respondent to maintain the current classification of peak hours at 8 hours per day as against the practice in other states of having 3 to 5 hours as peak hours and that too only during the evening hours.

5.57 The Petitioner submits that allowing the Respondent to maintain 8 hours as peak hours (which allows them to charge over and above the normal rate) is causing severe prejudice to

the Petitioner by causing an unreasonable burden especially when there is no cogent reason for allowing Respondent to treat 8 hours every day as the peak hours.

5.58 Whilst the Respondent has not responded to this submission of the Petitioner at all, the Commission has overlooked such a fact, which is so apparent that it deserves to be reserved. The Commission at para 8.3.4 of the Impugned Order has rejected this submission by concluding that *“Uttarakhand due to its different geographical conditions has distinct morning peak along with the normal evening peak during winter season. The Commission has therefore, decided to maintain status quo in so far as peak hours are concerned”*. The Petitioner most respectfully submits that this reasoning is unsustainable in law and deserves to be set aside for the reason that the Commission has committed an error in upholding the fact that 8 hours of a day are to be treated as peak hours especially when neither the Respondent nor the Commission have expounded any cogent rationale in support of this practice.

5.59 In view of the submissions above and especially in light of the fact that no other state in India has such a high rate of peak hours the Commission has acted contrary to what is accepted in other jurisdictions. Further, by not giving any cogent reasoning in support of its conclusion, the Hon’ble Commission has exposed its Order to be reviewed for this error in not directing the Respondent to reduce the number of peak hours in a day.

## **6. Detail of remedies exhausted**

The Petitioner declares that he has availed all the remedies available to him under the relevant provisions of applicable law and rules/regulations framed thereunder.

## **7. Matter not previously filed for pending with any other court**

The Petitioner further declares that he has previously filed an Appeal before the Hon’ble Appellate Tribunal for Electricity at New Delhi regarding the matter in respect of which this petition has been made, before the Commission. The said Appeal has been withdrawn to pursue the present petition. Apart from the above mentioned no suits, writ petition or any petition is pending before any court or any other authority.

## **8. Relief sought**

In view of the facts and the grounds mentioned above, points in dispute and questions of law set out hereinabove; the Petitioner prays for the following relief(s):

- (a) Allow the Review Petition as prayed for above;

- (b) Set aside the load factor based categorizations especially when the Respondent had made no proposal for the same.
- (c) The Hon'ble Commission in the alternative to review the Impugned Order with respect to the categorization of the industry on the basis of load factor and introduce the same only after the data leading to the categorization is available as opposed to the vague and ambiguous categorization in the Impugned Order;
- (d) The Hon'ble Commission to review the Impugned Order, to reinstate the rebate abolished and/or reduced the rebate by it which is gravely prejudicing the industrial consumers;
- (e) The Hon'ble Commission to extend the rebate in the other contract load categories to the industrial category wherein majority of the consumer's fall thereby avoiding selective abolition of rebate without assigning reasons.
- (f) The Hon'ble Commission to set aside Introduction of Minimum MCG Charges over and above the fixed demand charges that are levied on the industrial consumers, causing irreparable loss.
- (g) The Hon'ble Commission to review its order to the extent as the Petitioner is aggrieved by the increase in the fixed demand charge per month charged as a part of the two part tariff that the Petitioner is liable to pay.
- (h) The Hon'ble Commission to review the decision with respect to accepting the proposal of the Respondent to levy 20% higher charges for ensuring continuous supply to those consumers who have opted to avail continuous supply during the restricted hours and/or when there is loadshedding.
- (i) Refund of excess money realized from Petitioner for one month on account of continuous supply higher energy charges;
- (j) The Hon'ble Commission to review its decision with respect to treatment of surplus available with the Respondent in terms of the submission above;
- (k) The Hon'ble Commission to review its decision with respect to such high rate peak hour charges as its contrary to the sectoral practice across states, causing unreasonable burden to the Petitioner;
- (l) Immediate truing up of the entitlements of the industrial users on account of the prayers, prayed herein above;
- (m) Pass any other or further orders required in the interest of justice, equity and fairness.

### 9. Interim Order, if any, prayed for

Pending final decision on the application the petitioner seeks issue of the following interim order:

- a) Interim Stay till disposal of the Petition.

### 10. Details of Index

An index containing the details of the documents in chronological order relied upon is enclosed.

### 11. Particulars of fee remitted

In respect of the fee for Revision Petition, a Demand Draft on AXIS Bank Ltd., (Dehradun Branch) for an amount of Rs. 50000/- dated 18.09.2008 in the name of "Secretary, Uttarakhand Electricity Regulatory Commission, payable at Uttarakhand, Dehradun.

### 12. List of enclosures

1. Copy of the Impugned Tariff Order dated 18.3.2008;
2. Copy of the Uttarakhand Electricity Regulatory Commission (Terms & Conditions for Determination of Distribution Tariff) Regulations, 2004;
3. Objections dated 22.1.2008 filed by the BST Textiles before the Hon'ble Commission;
4. Office Memorandum dated 31.12.2007 issued by the Respondent.
5. Copy of receipt of case withdrawal from tribunal court.
6. Copy of Draft.

*(Signature of Petitioner)*

### Verification

I, Rajeev Ghai, son of Late KC Ghai age 52 years working for gain at Kumaon Garhwal Chamber of Commerce and Industry, residing at Ghai villa, Bazpur Road, Kashipur, Uttarakhand-244713, do hereby verify that the contents of the Para 3, 5 to 7 are true to my knowledge and derived from record, and Para 1, 2, 4, 8 and 9 believed to be true on legal advice and that I have not suppressed any material fact.

*(Signature of Petitioner)*

**Note:**

1. The petition has to be signed, and verified only by the Managing Director or Director, along with resolution of the company for specific petition.
2. The petition has to accompany with the affidavit of the petitioner, duly authenticated by Notary public, as provided under the Notaries Act-1952 (Act No. LIII of 1952).

UERC (Conduct of Business) Regulations, 2004**Form-2**

(See Regulation 13)

**BEFORE UTTARAKHAND ELECTRICITY REGULATORY  
COMMISSION, DEHRADUN**

FILE NO.

CASE NO. (To be filled by the Office)

**In the matter of:**

ORDER DATED 18.3.2008 READ PASSED BY THE UTTARAKHAND ELECTRICITY REGULATORY COMMISSION ON THE PETITION FOR APPROVAL OF ANNUAL REVENUE REQUIREMENT FOR CONDUCT OF BUSINESS FOR THE UTTARAKHAND POWER CORPORATION LTD. FOR THE F.Y. 2007-08 & FY 2008-09.

THE PRESENT REVIEW BEING FILED UNDER THE PROVISIONS OF THE ELECTRICITY ACT, 2003 AND THE UTTAR PRADESH ELECTRICITY REFORMS ACT 2000 AND THE UTTARAKHAND ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2004

**And In the matter of:**

## 1. KUMAON GARHWAL CHAMBER OF COMMERCE &amp; INDUSTRY

A [renowned association of industries of Uttarakhand](#), having its registered office at "Chamber House" Industrial Estate, Bazpur Road, Kashipur, Distt- Udham [Singh Nagar \(Uttarakhand\)](#). Through its Authorized Signatory (Mr.Rajeev Ghai)

## 2. BST TEXTILE MILLS PVT. LIMITED,

A Company Registered under the Companies Act, 1956 and having its Registered Office at 04 Timmy Arcade, Makwana Road Off Andheri Kurla Road, Andheri (East), Mumbai-400 059 and having its factory at SIDCUL, Pant Nagar, Uttarakhand.

... PETITIONER

**VERSUS**

UTTARAKHAND POWER CORPORATION LTD.

A company wholly owned by the State Government of Uttarakhand, Registered under the Companies Act, 1956 and having its Registered Office at Urja Bhawan, Kanwali Road, Dehradun.

... RESPONDENT

**Affidavit**

I, Rajeev Ghai, son of Late. K. C. Ghai age 52 years working for gain at Kumaon Garhwal Chamber of Commerce and Industry, residing at Ghai villa, Bazpur Road, Kashipur, Uttarakhand-244713, the deponent named above do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the President and the Authorized Signatory of the Petitioner and state that I am fully conversant with the records of the case and am duly authorized and competent to affirm this Affidavit. and is acquainted with the facts deposed to below.
2. I, the deponent named above do hereby verify that the contents of the paragraph No. 3, 5 to 7 of the accompanying petition are based on the perusal of records and those of the paragraph Nos. 1, 2, 4, 8 and 9 of the accompanying petition are based on the legal advice which I believe to be true and verify that no part of this affidavit is false and nothing material has been concealed.

**(Deponent)**

I, \_\_\_\_\_ Advocate, \_\_\_\_\_, do hereby declare that the person making this affidavit is known to me through the perusal of records and I am satisfied that he is the same person alleging to be deponent himself.

**Advocate**

Solemnly affirmed before me on this \_\_\_\_\_ day of September 2008 at \_\_\_\_\_ a.m. / p.m. by the deponent who has been identified by the aforesaid Advocate. I have satisfied myself by examining the deponent that he understood the contents of the affidavit which has been read over and explained to him. He has also been explained about section 193 of Indian Penal Code that whoever intentionally gives false evidence in any of the proceedings of the Commission or fabricates evidence for purpose of being used in any of the proceedings shall be liable for punishment as per law.

**(Notary Public)**

