

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

UPCL's application dated 22.03.2007

Coram

Shri Divakar Dev	Chairman
Shri V.K. Khanna	Member
Shri V.J. Talwar	Member

Date of Order: 30th March 2007

This application has been filed by Shri B.M. Verma, Chairman and Managing Director on behalf of UPCL, seeking time for complying with UERC (Release of New LT Connection Enhancement, and Reduction of Loads) Regulations, 2007. The application does not specify the provision of the Electricity Act, 2003 which is being invoked for seeking this relief and merely states that the same has been moved as the licensee company's field officers are of the view that such relief should be sought as these regulations do not provide for any transition period.

2. With a view to deciding the question of admissibility of this application, the Commission required the applicant to appear before it on 29.03.2007 at 03.30 p.m. and state its case. Commission's hearing was accordingly held as scheduled and Shri S.M. Jain, Advocate represented UPCL, the licensee. Shri B.M. Verma, Chairman and Managing Director and some other officers were also present.

3. The application does not indicate any provision of the Electricity Act, 2003 under which it has been moved. During the hearing also UPCL's representative failed to show the Commission any such provision even when the Commission

specifically asked for it. In this connection, Shri Jain relied on regulations 74 of UERC (Conduct of Business) Regulations, 2004 (CBR) relating to inherent powers of the Commission. This particular regulation stipulates that the provisions of CBR shall not prevent the Commission from doing certain things in interest of justice or in the circumstances listed out in the regulation 74 and regulation 76 stipulates that the same should not be inconsistent with the provisions of the Central Act. Shri Jain was unable to show us how this provision which pertains to regulations contained in the CBR empowers the Commission to suspend or put in abeyance any provisions of the original Act or of the regulations framed and notified under section 181 of the same specially when even for this limited purpose, regulation 76 stipulates that Commission's action will not be inconsistent with the provisions of the Central Act.

4. The application has been filed by Shri B.M. Verma, Chairman and Managing Director, the authority for filing the same is claimed to have been obtained through Board Resolution dated 06.06.2001 while these Regulations have been notified only on 03.03.2007. Uttaranchal Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 stipulates that if a petition is filed on behalf of any company, company's resolution authorising filing of that specific petition should be filed. No such resolution has been filed and the reference given in the affidavit is of a resolution which predates these Regulations by about 6 years and, therefore, can by no stretch of imagination be company's specific authority for moving this petition. Further, during the course of hearing the petitioner's counsel admitted that no specific resolution of the Board as required by the CBR have been obtained. He sought time for now approaching the Board in this connection. Such a resolution if now passed by the Board may be used for filing any subsequent application but will not validate the application under consideration.

5. These Regulations have been framed by the Commission in exercise of its powers under section 181 of the Electricity Act, 2003 following all procedural requirements including that of previous publication. The draft regulations were published on 11.01.2007 seeking responses from various stakeholders. A copy of the draft regulations was specifically sent to the licensee for its response. In order to get a considered response from the licensee, the Commission extended the time

originally stipulated but the licensee failed to file any response or suggestions to the draft regulations. The Commission received a total of 29 responses from other stakeholders. For reasons best known to it the licensee inspite of being given ample and repeated opportunity failed to file any response to the draft regulations. The only response of the licensee was by way of questioning the Commission's judgment relating to certain provisions of the draft regulations. The draft regulations were also considered in the meeting of advisory committee held on 01.02.2007. Thereafter a public hearing on the matter was held on 02.02.2007 but the licensee again failed to put its views before the Commission. After considering all the responses received from various stakeholders and suggestions made by the advisory committee and in absence of any response from licensee, the Commission finalised the regulations on 26.02.2007 and the same were published in the official gazette on 03.03.2007. The Regulations having been finalised and so notified have come into force and are binding on not only the stakeholders but also on the Commission. The Electricity Act, 2003 does not authorise the Commission to put in abeyance any or all provisions of these statutory regulations once they have come into force. The Commission no doubt can review and amend these regulations from time to time, but the same has to be done for good reasons and after following the procedure prescribed for framing of any regulation under the Act, including the requirement of previous publication. Having finalized the regulations only recently, the Commission has no reason to amend the same in less than one month. For this and other reasons indicated above, this petition is not admissible under law.

6. Apart from above, the reason for moving this petition as given in the present application is the view of a section of licensee's officers expressed in some internal meeting. The basis of this view is stated to be absence of any transition period under the regulations. The Commission is not concerned with views of any individual or group of officers of the licensee which are not necessarily the views of the licensee company. The Board of Directors of the licensee company have not authorised filing of this application nor the application makes any such claim and that being so what view officers or employees may singly or jointly hold is not of relevance in these proceedings which are for considering the application ostensibly filed on behalf of the licensee company and not any individual officer or employee. Further, the

regulations have not prescribed any new time schedule but have only reiterated the existing provisions of law. The licensee's obligation to give connection within 30 days stipulated in these regulations has been there in the Electricity Act, 1910 (clause (vi) of the schedule) and in section 43 of the Electricity Act, 2003. A similar obligation was placed on the State Electricity Boards as per section 26 of The Electricity (Supply) Act, 1948. These regulations do not in any way change this obligation but only specify the penalty stipulated under section 43(3) and the time period under section 43(1) of the Electricity Act, 2003 where extension of distribution mains or commissioning of new sub-stations etc. is required. This statutory obligation having been there for almost a century now, it is ridiculous to complain about and seek transition time for its discharge now.

7. Before parting with the matter, it may be pointed out that the need for framing these regulations arose due to wide spread complaints of delays and corruption in handling such requests. Such allegations were strengthened by the data on pending applications furnished by UPCL which shows unacceptably high number of applications pending for a very long time and that too for reasons within the licensee's control. These Regulations aim to check this distortion, bring transparency in handling of such matters and minimize the discretion available at the operational level. Deferring their implementation or diluting them, even if it was possible under law, would defeat the very purpose of framing these Regulations. The so called view of licensee's field officers relied upon by the applicant has to be considered in this context.

8. For reasons given above, the application is not admissible under law and is based on frivolous grounds and is, therefore, hereby rejected.

(V.J. Talwar)
Member

(V.K. Khanna)
Member

(Divakar Dev)
Chairman