

BEFORE

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Payment of security deposit and additional security deposit by way of Bank guarantee/letter of credit.

Coram

V.J. Talwar Chairman

Anand Kumar Member

Date of Order: 06.03.2009

ORDER

This Order relates to the proceeding initiated by the Commission on the representations made before it by the industries to issue instructions/directions to UPCL to accept additional security deposit as bank guarantee/letter of credit.

1) Background

1.1 The Commission had notified its Uttarakhand Electricity Regulatory Commission (The Electricity Supply Code) Regulations, 2007 (hereinafter referred to as "Supply Code"), 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 (hereinafter

called as “LT Regulations” and “HT Regulations” respectively), in which the Commission had specified the amount of security to be given 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 Regulation 5(10) of LT Regulations clearly stipulates that the stipulated initial security deposit has to be paid by the consumer through cash or demand draft. Regulation 5(10)(iii) specifies that annual adjustment (payment/refund) of additional security has to be made through electricity bills (which is accepted by the licensee through cash or demand draft/cheque). Similarly, Regulation 5(10) of HT Regulations requires upfront payment of initial security deposit amount before release of new connection. Further, Code 2.3.1 of the Supply Code, which is applicable on both LT and HT consumers, also specifies that annual adjustment of additional security shall be made by way of electricity bills and interest shall be payable on full security deposit available with the Licensee.
- 1.3 Regulation 5(10)(iv) of LT Regulations empowers the Commission to lay down the rates of interest payable on security deposits available with the licensee. Similarly, Code 2.3.1(4) of the Supply Code stipulated that the interest shall be payable on the full amount of current security deposit (existing security deposit alongwith additional security deposit) available with the licensee at the rates prescribed by the Commission. The Commission, 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 Commission had stipulated in this Order that the interest shall be payable only if the security deposit is paid in cash (including cheque or bank draft) and no interest shall be payable where security has been provided by way of Bank guarantee, letter of credit, etc.
- 1.4 Certain industries made representations before the Commission stating that various divisions of UPCL had issued notices to the industries for depositing the additional security deposit based on the average billing for two months during the last financial

year. The industries submitted that UPCL was not accepting security through bank guarantee and was insisting in getting it deposited through cash or bank draft, etc. The industries requested the Commission to issue necessary instructions/ guidelines to UPCL to accept additional security deposit through bank guarantee also so that the cash flows of the industries are not affected.

1.5 The Commission decided to take cognizance of the matter and sought UPCL's response in the matter. UPCL in its response on the matter submitted as under:

- a) The licensee is authorized under section 47 of the Electricity Act, 2003 to collect reasonable security as determined by the Commission from any person who requires supply of electricity.
- b) The Commission, in its UERC (The Electricity Supply Code) Regulations, 2007, had specified the procedure for determination of additional security deposit, however, the Regulations did not have any mention about the manner in which the amount of security deposit would be deposited.
- c) The Electricity Act, 2003 repealed the provisions of the Electricity (Supply) Act, 1948. However, notwithstanding such repeal, the Regulations framed under the Electricity (Supply) Act, 1948 are in so far as they were not inconsistent with the provisions of the Electricity Act, 2003, be deemed to have been done or taken under the corresponding provisions of the Electricity Act, 2003.
- d) 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.

- 1.6 Thus, in view of the above, UPCL submitted that the amount of security deposits from the consumers may be accepted only in cash and bank drafts.
- 1.7 In a separate proceeding, the Commission had received responses from the industries that the existing rate of interest payable to consumers on their security deposit with the licensee is 6% p.a. as against the market rate of interest 13-15% on the finances being advanced to the industry by the banks. The wide gap in the interest rates results in hardship to industries to meet out their working capitals. The interest/penalties levied by UPCL against late payment surcharge in bills, if any, is 15%, i.e. 1.25% per month. So, interest given on security deposited, should be at par or atleast be equal to the maximum interest rates offered by bank on fixed deposits. Further, the bank guarantee/letter of credit equally serves the purpose of the security to the licensee for securitizing its electricity consumption bills. The Commission may, therefore, consider providing the option to industries to tender security in the shape of bank guarantee/letter of credit.
- 1.8 The Commission decided to hear both the parties before issuing any order in the matter and held a hearing on 16.12.2008. The date of hearing was personally informed to all the stakeholders who made representations before the Commission in the matter. However, only one representative Sh. Sanjay Kumar representing M/s. Siddharth Papers Ltd. and M/s. Siddheshwari Paper Udyog Ltd. was present in the hearing. UPCL was represented by Shri T. Panda, Director (F). During the hearing, Director (F) UPCL reiterated its stand that security deposit may be allowed to be collected in cash or bank draft, whereas Sh. Sanjay Kumar insisted upon allowing security deposit in the form of bank guarantee and not even letter of credit. Sh. Kumar submitted that providing letter of credit is almost similar to providing cash security and, hence, adversely affects the cash flows of the industry.
- 1.9 During the hearing, it also transpired that the present situation has arisen because of UPCL demanding huge amount of additional security in terms of the provisions of Supply Code enabling UPCL to revise the security on annual basis. The Commission

noticed that similar provision existed even in The Electricity Supply (Consumers) Regulations, 1984 (1984 Regulations), which has been relied upon by UPCL and stipulated as follows:

“16 Consumption Security Deposit

- (i) *Before giving supply, the supplier may require a consumer to deposit security in cash or through bank draft to safeguard recovery of electricity dues for the energy supplied to the consumer on credit.*

The rate of security deposit may be revised from time to time to take into account any change in tariffs and all existing consumers shall have to pay the additional security to replenish their security at the new rates of security deposit.....”

1.10 In spite of revision of tariffs since this Commission was constituted no revision in rates of security deposit was made by UPCL. In fact, the Supply Code also was notified on April 17, 2007, however, no action for revision of security was taken for almost one year. It is only now that UPCL has enforced the provision of Supply Code for annual adjustment/revision of security deposit through additional security based on average billing of 2 billing cycles.

2) Commission’s Analysis

2.1 Before examining the issue of Mode of payment of security deposit, it would be appropriate to examine the issue of rate of interest payable on security deposit, raised by various industries, as the Commission has already issued an Order dated 27.07.2007 wherein the Commission has laid down the rate of interest payable on security deposit with the licensee equal to the Bank Rate notified by RBI, which is presently 6%.

2.2 Certain consumers had represented that the existing rate of interest payable on the security deposit with the licensee is quite low as compared to the market rate of

interest on the finances being advanced to the industry by the banks. They also submitted that the interest given on security deposit should be at par or atleast be equal to the maximum interest rates offered by bank on fixed deposits.

2.3 The security deposit made by a consumer is not a long term investment made by the consumer. It is of a current nature which might undergo change every year depending on the consumption pattern of the consumer. The licensee can raise additional security if the security deposit falls short by more than 10% of the existing security deposit and may have to refund the excess amount if the security deposit is found to be in excess of more than 10% of the required security deposit. These provisions have been specified in the UERC (The Electricity Supply Code) Regulations, 2007. The rate of interest offered currently by various banks for a fixed deposit for upto 365 days is around 7.50%-9.60% p.a and in the current economic scenario is likely to fluctuate, more likely towards lower side.

2.4 Further, whatever interest the licensee has to pay on the security deposit is allowed as pass-through in tariffs and is treated as part of expenditure for the licensee and its Annual Revenue Requirement (ARR) and is, thus, recovered from consumers in proportion to their consumption, i.e. a consumer having higher consumption will have to pay more interest than a consumer having lower consumption. In other words, higher the rate of interest, the tariffs would have to be higher to ensure the recovery of the same through consumer tariffs and vice-versa. The Commission while determining the ARR of the licensee also ensures that the licensee does not derive any return on the same and whatever interest/income is generated from investment of the security deposit so collected by the licensee is accounted for and passed on to consumers while determining the ARR of the licensee. Therefore, keeping in view the fact that the consumers do not get over burdened in meeting this expenditure and also the requirement of the provisions of the Electricity Act, 2003 (Act) in this regard, the Commission has through its Order dated 27.07.2007, linked it to the Bank Rate as on 1st April of the financial year for which interest is due which

has been the practice in other States as well. Thus, if the Bank Rate undergoes any change, upwards or downwards in any year, the interest rate would also change. It is also to be noted that the net interest accrued would be different if some consumers pay security in cash and others through bank guarantee/letter of credit.

- 2.5 Now coming to the main issue of mode of payment of security deposit, it would be pertinent to go through the requirements of the Act on the matter of security deposit. Section 47(1) of the Act stipulates as under:

*“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.

Further, sub-section (2) and (3) of Section 47 are also reproduced below:

*“(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.

- 2.6 Thus, it is clear from the above reading of the provisions of the Act that the Commission is empowered to determine the reasonable security through its Regulations. Also, the intent of the Act is to provide the distribution licensee 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 him reasonable security failing which the licensee can discontinue the supply of electricity. However, the Act does not stipulate what should be the mode in which the amount of security deposit is to be tendered, which can be determined by the Commission through Regulations.
- 2.7 As brought out earlier, the Commission, in 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, had specified the amount and mode of initial security deposit as well as the additional security deposit for various categories of consumers, in accordance with the requirement of the Act, which is same as that in the 1984 Regulations. Any change in mode of payment shall require amendment in the LT and HT Regulations and Supply Code.
- 2.8 The Commission in its Order dated 27.07.2007, had stipulated that interest shall be payable only if the security deposit is paid in cash (including cheque or bank draft) and no interest shall be payable in case security was provided by way of Bank guarantee, letter of credit, etc. Since present provisions do not allow payment of initial/additional security through bank guarantee/letter of credit, the latter portion of this stipulation is presently not applicable and only clarificatory in nature on applicability of interest clause in case security is allowed to be given in other form in future. Since the licensee doesn't seem keen in accepting the security deposit by a

different mode other than cash, cheque or bank draft, in accordance with the practices being followed by it as per its submission, and the issue of allowing request of industries has substantive implications on tariffs for other consumers, the Commission is restraining itself from making any decision on the same in this Order. The decision about the mode would require amendment of the Regulations in accordance with Section 47(1) of the Act through public process. In order to seek public opinion on the issue, the Commission is preparing a Concept paper for amending the Regulations, which will be published shortly. 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 allows such consumers to deposit the additional security in installments, which should be in a span of not more than 12 months.

2.9 With this, the above proceedings are disposed of.

(Anand Kumar)
Member

(V.J. Talwar)
Chairman