

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Petition No. 03/2008 filed by M/s. Kumaon Garhwal Chamber of Commerce & Industry (KGCCI), seeking review of the Order on Retail Tariff issued by the Commission for Uttarakhand Power Corporation Ltd. (UPCL) dated March 18, 2008 in the matter of Determination of Annual Revenue Requirement (ARR) for FY 2007-08 and FY 2008-09 and retail supply tariff for consumers of UPCL.

**And**

**In the matter of:**

Kumaon Garhwal Chamber of Commerce and Industry (KGCCI), Uttarakhand

.....**Petitioner**

**Coram**

<b>Shri V.J. Talwar</b>	<b>Chairman</b>
<b>Shri Anand Kumar</b>	<b>Member</b>

**ORDER**

**Dated: 23<sup>rd</sup> January 2009**

## **1. Background**

In exercise of powers vested under section 61 and section 62 of the Electricity Act, 2003 (Act) and all other powers enabling it in this behalf, and upon detailed scrutiny of various responses, objections, suggestions, comments made by consumers, UPCL and other key stakeholders as part of their written submissions as well as during the Public Hearing, the Commission passed an Order on March 18, 2008 in the matter of

Determination of Annual Revenue Requirement (ARR) for FY 2007-08 and FY 2008-09 and Retail Tariff for sale to consumers of UPCL.

1.1 Subsequently, KGCCI (Petitioner) filed a Petition, before the Commission on September 21, 2008 seeking review of the Commission's Impugned Order dated March 18, 2008 in the matter of Determination of ARR for FY 2007-08 and FY 2008-09 and Retail Tariff for sale to consumers of UPCL.

1.2 The main prayers in the Review Petition filed by the Petitioner are as under:

- a. *"Set aside the load factor based categorizations especially when the Respondent had made no proposal for the same.*
- b. *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;*
- c. *Review the Impugned Order, to reinstate the rebate abolished and/or reduced the rebate by it which is gravely prejudicing the industrial consumers;*
- d. *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.*
- e. *Set aside Introduction of Minimum MCG Charges over and above the fixed demand charges that are levied on the industrial consumers, causing irreparable loss.*
- f. *Review the 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.*
- g. *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 load shedding.*
- h. *Refund of excess money realized from Petitioner for one month on account of*

*continuous supply higher energy charges;*

- i. Review the decision with respect to treatment of surplus available with the Respondent in terms of the submission above;*
- j. Review the decision with respect to high rate peak hour charges as its contrary to the sectoral practice across states, causing unreasonable burden to the Petitioner;*
- k. Immediate truing up of the entitlements of the industrial users on account of the prayers, prayed herein above;*
- l. Pass any other or further orders required in the interest of justice, equity and fairness".*

1.3 The Commission issued Public Notice on September 28, 2008 in Amar Ujala and Dainik Jagran inviting comments/responses on the Petition for Review from all the stakeholders latest by October 24, 2008. In response to this public notice, a total of 31 stakeholders (List attached as **Annexure 1**) representing industries and industry associations submitted their response in the matter. The Commission also decided to conduct a public hearing in the matter. The first public hearing in the matter was held at Rudrapur on November 20, 2008 wherein a total of 30 participants (List attached as **Annexure 2**) appeared before the Commission and submitted their response in the matter. Further, a hearing was also conducted in Dehradun on 25.11.2008. 6 participants (List attached as **Annexure 3**) appeared and submitted their response before the Commission, including the Consumer Representative, Sh. Rajiv Agarwal, appointed by the Commission under section 94 of the Act.

## **2. Issues raised in the Review Petition**

The various issues and contentions raised by the Petitioner in the Review Petition are summarised below:

### **2.1 Introduction of load factor based tariff for HT Industries**

2.1.1 The Petitioner submitted that the load factor based tariff for HT industry as introduced in the Impugned Order is discriminatory in nature and is not in

accordance with the law as the same has not been provided in the Regulations. They further submitted that the load factor based categorization has been done by the Commission on its own initiative, which was not a part of the ARR submitted by UPCL. The Commission has misapplied/misinterpreted the observations in the Order dated June 06, 2007 of Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal No. 214/2006 where Hon'ble ATE has rejected the discrimination between Power Intensive Units (PIUs) and other HT Industries.

- 2.1.2 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 be created then it should be on the principle of higher the load factor, lower the tariff which is the practice followed in many other States such as Uttar Pradesh.
- 2.1.3 The categories created based on load factor are not based on any cogent data and in the absence of any data submitted by UPCL, the Commission should have undertaken its own study or relied on cogent data, thereby justifying the creation of such narrow categories. In the absence of any data provided for by UPCL 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 penalize large industries operating in the highest slab, is in violation to the principles of natural justice.
- 2.1.4 The Petitioner further submitted that as per the load factor categorization in the Impugned Order, if a consumer has a load factor of 34% or 51% (as the case may be), the consumer will be charged the tariff of the next slab for the entire consumption and, hence, a consumer is being subjected to higher tariff slab merely because it is qualifying for the higher slab by an additional load factor of 1%. The Petitioner suggested that this ambiguity may be resolved by resorting to a methodology whereby a consumer is billed to the extent its load factor falls in a particular slab.
- 2.1.5 The Petitioner requested the Commission to set aside the load factor based

categorization, review the load factor based categorization and introduce the same only after the data leading to categorization is available as against the vague and ambiguous categorization in the Impugned Order.

## **2.2 Abolition/Reduction of Rebate for availing supply at higher voltage**

2.2.1 The Petitioner submitted that the Commission vide its Order dated March 18, 2008 on Retail Tariff for UPCL, has abolished and/or reduced the rebate enjoyed by the industrial consumers in the following manner:

- Abolished the high voltage rebate of 2.5% available to consumers for taking 33 kV connection instead of 11 kV having contracted load above 88 kVA and upto 3000 kVA;
- Reduced the rebate for consumers having a contracted load above 88 kVA and upto 3000 kVA and receiving supply above 66 kV and upto 132 kV to 2.5%;
- Lower rebate at 5% to the consumers receiving supply above 132 kV in the contracted load category above 88 kVA and upto 3000 kVA

2.2.2 The Petitioner submitted that the rebates have been abolished and reduced without assigning reasons for same and no reasoning was submitted for this by UPCL in its Petition. The 33 kV connection consumers enjoy no rebate and comprise majority of the industrial consumers in the State. Further, the Petitioner submitted 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 prior to the Order should be ideally continued.

2.2.3 In context of the above, the Petitioner submitted that the Commission should allow the rebates at the rates specified in the previous Order and set aside the direction contained in the ARR and Tariff Order for FY 2007-08 and FY 2008-09.

### **2.3 Introduction of Minimum Consumption Guarantee (MCG) Charge**

- 2.3.1 The Petitioner submitted that with the introduction of MCG Charges over and above the Fixed/Demand charges, industrial consumers are being burdened with an additional charge to compensate the inefficiency of UPCL in ensuring proper meter reading and billing of its consumers. 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 Commission should direct the Respondent to improve its internal mechanisms to ensure prompt billing and diligent recovery of dues.
- 2.3.2 The Petitioner submitted that although these charges are to be adjusted towards the energy charges paid by the consumers, the introduction of these charges is absurd as the Respondent is able to recover its fixed cost through the levy of fixed and demand charges. The Petitioner further submitted that the Commission has permitted UPCL to recover by way of tariff the Bad & Doubtful debts arising on account of non-recovery of dues by UPCL.
- 2.3.3 In view of the above reasoning, the Petitioner requested the Commission to abolish the MCG Charges.

### **2.4 Increase in minimum Fixed/Demand Charges**

- 2.4.1 The Petitioner submitted that the Commission in its ARR Order for FY 2007-08 and FY 2008-09 has not disclosed the reasons for such steep hike in the Fixed/Demand Charges and has proceeded to merely increase these charges without any discussion on the issue to examine the same if it is reasonable and prudent. The Petitioner submitted that it is not even aware of the reasons for such an increase in the Fixed/Demand Charges which is prejudicial to their interests as any increase in the Fixed/Demand Charges comes with a corresponding financial liability. The Petitioner requested the Commission to review and re-compute the Fixed/Demand Charges.

## **2.5 Levy of 20% higher charges for supply during restricted hours/load shedding**

2.5.1 The Petitioner submitted that it is aggrieved by the decision of the Commission to accept the proposal of UPCL 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 load shedding. The Petitioner submitted that the Commission may review and instead uphold the Petitioner's proposal on the basis of the following reasoning:

- The Commission has ignored/overlooked the proposals submitted by the Petitioner stating that the Petitioner was 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.
- During the entire period of FY 2007-08, the load shedding was for a period of only 45 days. As the continuity of the supply and/or when the UPCL 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 throughout the year and/or there is negligible load shedding throughout the year as was the case in FY 2007-08.
- The consumers who have opted for continuous supply will be required to pay 20% irrespective of whether there is load shedding or not, which would 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.

2.5.2 The Petitioner submitted that in view of the above reasoning the Commission may review 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 supply is restricted.

## **2.6 Refund of excess money realized from KGCCI for one month on account of continuous supply higher energy charges**

2.6.1 The Petitioner submitted that most of the industrial consumers had opted for availing continuous supply pursuant to a directive/order of the Commission dated December 26, 2007 and 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 April 1, 2006 which came to an end with the passing of the present ARR Order for FY 2007-08 and FY 2008-09.

2.6.2 The Petitioner submitted that the consumers who had opted for availing continuous supply in the FY 2006-07 have been charged 20% higher energy charge for availing continuous supply for the month of March 2008 i.e. after the coming into effect of the ARR and Tariff Order for FY 2007-08 and FY 2008-09. The Petitioner submitted that it has, thus, been charged at the new rates for the month of March 2008 without their consent and/or without KGCCI being offered the option to avail continuous supply from the coming into effect of the ARR and Tariff Order for FY 2007-08 and FY 2008-09.

2.6.3 The Petitioner submitted that the Commission should direct UPCL to refund this money collected with interest on the new tariff rates that have come into force by way of the ARR Order for FY 2007-08 and FY 2008-09.

## **2.7 Cross-subsidization of other categories of Tariff**

2.7.1 The Petitioner submitted that the industrial tariff especially for HT & LT industry users has consistently increased and additional charges are levied from time to time and no corresponding increase has been carried out for the tariff in the domestic category and/or in the non-industrial category. Such high cross subsidization is against the norms laid down in the Act, National Tariff Policy and a catena of decisions of the Commission.

2.7.2 The Petitioner submitted 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 introduced gradually and in a phased manner. However, the Commission has made no efforts to reduce cross subsidy to the various domestic categories in the ARR and Tariff Order for FY 2007-08 and FY 2008-09. The Petitioner requested the Commission to lay down a road map stipulating the steps it proposes to undertake to reduce this cross subsidy

## **2.8 Treatment of surplus with UPCL**

2.8.1 The Petitioner submitted that the Commission has erred in treatment of available surplus with UPCL for meeting the revenue gap arising out of the ARR of UPCL for FY 2007-08 and FY 2008-09. The reasoning provided by the Petitioner is as follows:

- The benefit of the surplus has not been adequately factored in the ARR Order allowing UPCL to retain a surplus of an astonishing figure of Rs. 110.70 Crore.
- The Commission found an available surplus of Rs. 333.82 Crore with UPCL as on March 31, 2007. The Commission, instead of giving the benefit of surplus available to the consumers by reduction of tariff, directed that a portion of the surplus be utilized by UPCL for creation of fixed assets. The Petitioner submitted that it itself is an error apparent on the face of the record as this direction goes against the mandate prescribed by the Tribunal in case of the State of Uttarakhand wherein the Tribunal has clearly held that the benefit of any surplus should be given equally to all consumers.
- After apportioning the necessary amount towards creation of fixed assets from the available surplus the remaining surplus of Rs. 237.77 Crore 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 Crore respectively. Though the Commission has given some relief to the consumers by apportioning Rs. 127.07 Crore against the remaining revenue gap for FY 2007-08 thereby curtailing the tariff hike, the Commission has erred in not apportioning the remaining surplus of Rs. 110.70 Crore against the revenue gap for FY 2008-09 and allowing it to be left with UPCL to meet the "impact of finalization of transfer scheme" on ARR for previous years as the same is not known/not ascertainable.

2.8.2 In view of the above reasoning, the Petitioner submitted that the Commission may review its decision on treatment of surplus available with UPCL, 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.

## **2.9 Reduction in Peak Hours**

2.9.1 The Petitioner submitted that the Commission's decision in allowing UPCL to maintain 8 hours as peak hours is causing severe prejudice to KGCCI by causing an unreasonable burden especially when there is no cogent reason for allowing UPCL to treat 8 hours every day as the peak hours. The Petitioner further submitted that the Commission in para 8.3.4 of the ARR Order of UPCL for FY 2007-08 and FY 2008-09 has rejected the submission of abolishing morning peak hours 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".*

2.9.2 The Petitioner submitted that this reasoning given by the Commission 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 UPCL nor the Commission have expounded any cogent rationale in support of this practice.

### **3. Response of Industries**

Since the responses submitted by the individual industries, both in their written and oral submissions, were common in nature they have been clubbed issue-wise and summarised below.

#### **3.1 Provision of charging 20% higher energy charge round the year for industries opting continuous supply during restriction period in Clause 6 of Rate Schedule RTS-7:**

- 3.1.1 Option of continuous supply without scheduled rostering/load shedding, is available after charging 20% extra in energy charge round the financial year, resulting in cost of supply to HT to Rs. 3.95 per kVAh, which is substantially higher than the neighboring states. With 25% loading of energy charges during 'Peak Hours Consumption', levy of additional charges of 20% does not seem to be practical.
- 3.1.2 If there is no other alternative, then levy of only the enhanced energy charges as per actual requirement for purchase power at higher rates during the period of power cut may be considered and 20% enhanced charges levied round the year should be done away with. An industry should not suffer for higher energy charges round the year irrespective of the fact that the power cut/restrictions are imposed for a short duration only, when power banked/generated goes down from required demand load of peak hours. Further, to reduce the consumption in peak hours, the rebate of 5% given on power consumption during off-peak hour should be increased upto 25%, i.e. equivalent to peak hour's surcharge of 25%. It will be helpful in drastic reduction of peak hour's power consumption.
- 3.1.3 The past experience shows that availability of power is affected in the State during winters from January to March only and that too for a few weeks (it was six weeks in 2007-08 & eight weeks in 2006-07) when restrictions need to be imposed. 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 throughout the year and/or there is negligible load shedding throughout the year as was the case in FY 2007-08.

- 3.1.4 The argument given by the Commission in the Order is that during such period energy is purchased at a considerable higher rate by the licensee which has to be made good from 20% higher energy charge. That being so, the higher energy charge based on the power purchase cost at higher rate should be recovered only for the period of restrictions and not for the remaining period of the year when other industries consume supply continuously without paying extra energy charges. The Commission may, accordingly, consider introducing higher energy charge for the period of restrictions only. With the introduction of higher energy charge based on power purchase cost during power cut, the full additional cost for power purchase would be recovered and, hence, the review on this issue will not affect the approved ARR of the licensee.
- 3.1.5 20% higher charges of electricity should not be charged for the day when interruption in power or breakdown in line is observed. Such interruptions are 15 to 20 in a month and breakdowns are for 8 to 10 hours in a month.
- 3.1.6 As the Commission is already considering the finalisation of the clause regarding restriction in usage, this issue should get settled while giving order in respect of restriction in usage.

### **3.2 Providing high voltage rebate in energy charge for supply at 33 kV and higher voltages**

- 3.2.1 In the tariff introduced, w.e.f. 1.3.08 2.5% rebate to 33 kV consumers has been abolished and rebate to 132 kV consumers reduced from 5.0% to 2.5%. Such rebate has been prevailing in all previous tariffs enforced by the Commission on the consideration that cost of supply at higher voltages is less. However, in the existing Tariff order, the rebate has been abolished for 33 kV consumers and reduced to 132 kV consumers without any discussion or basis in the

order. The 11 kV & 33 kV consumers have been treated at par in the current tariff. The HT rebate to all 33 kV consumers as provided in various neighboring States may be provided as it is compensation to consumers against transformer losses.

3.2.2 The tariff for the 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.

3.2.3 Any tariff should be simple and, therefore, in normal circumstances, rebates etc. should not be there. However, by resorting to taking higher voltage, if any benefit is accruing to distribution licensee, then such benefit may be allowed to such consumer. However, such rebate/surcharge should only be there for release of power at higher/lower voltage than that specified in the rate schedule. This issue may be examined by the Commission in light of the proposed Regulation for release of new connection to HT industries. As base voltage has been specified for release of new connection, therefore, base tariff for such consumers should be fixed while allowing rebate/surcharge for release of power at higher/lower voltage than that specified in the rate schedule.

### **3.3 Load factor based tariff**

3.3.1 The existing tariff enforced w.e.f. 01.03.08 under review provides disincentive to industries running on continuous basis, like paper, due to the nature of their process as their load factor is always in the range of 65-85 % and, accordingly, they fall in the bracket of highest basic energy rate of Rs. 3.18 per kVAh with consequent peak energy charge of Rs. 3.98 per kVAh and off peak energy charge of Rs. 3.02 per kVAh on whole of their energy consumption. In global competitive regime industry needs to run at full efficiency to sustain financial viability. The load factor slab proposed in the tariff is against the economic fundamentals which are "the more you produce lesser the cost" to become more economical and competitive. Most of the States in the country give load factor rebate for higher load factor for clean and clear business

practices. Opponent to above, the tariff in Uttarakhand is higher for higher load factor, which is contradictory to economical viability of the industry.

3.3.2 Even a small consumption which exceeds load factor above 33% or 50% will burden the industry of higher energy charge on whole of its consumption. This is not at all justified and has no rationale. Such industries are also entitled to lower energy charge for their consumption upto above threshold limits of load factor. Contrary to this provision of tariff, in many other States, industries with higher load factor are given incentive of lower energy rate (rebate) for the consumption above some specified load factors.

3.3.3 This concept has been introduced by the Commission on its own initiative. The ARR Petition of UPCL did not propose the introduction of load factor based tariff. 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 Order, without any factual basis. The categorization is vague and ambiguous as regards the manner in which these categories are to operate. After the re-categorization of HT industry as one class, the Commission should have provided uniform energy charges for all consumers under HT Industry category irrespective of Load Factor. Since the tariff are approved on the basis of nature of use (e.g. industrial, domestic, commercial etc.), the Commission cannot keep adding new grounds to keep increasing the burden on single consumer category. Infact, the load factor based tariff is designed clearly to penalize large industries.

3.3.4 This categorization also encourages unfair practice to avail the rebate as per current tariff. The categorization on the basis of load factor for charging higher tariff on whole of the consumption in the existing tariff is, therefore, totally unscientific and unfair and should be done away. If at all the concept of load factor is to be introduced by the Commission, it should be done to provide incentive to industries consuming more electricity i.e. for higher load factors and not as a deterrent/penalty as in the existing tariff discouraging them for higher consumption. This will also be helpful in utilizing the Power Distribution infrastructure efficiently.

- 3.3.5 One of the stakeholders pointed out that the Commission had rightly fixed tariff on load factor basis and was right in creating different rates for higher load factor usage, it has to be kept in mind that energy availability is scarce and we have to conserve energy. The right of domestic consumers has to be protected at all times on cheap available hydro power of our State. It is, therefore, necessary that clamps must be tightened on high energy consuming consumers. It has to be seen that any extra requirement forces UPCL to arrange for extra power and such extra power comes at higher cost.
- 3.3.6 Section 62(3) of the Act clearly empowers the Appropriate Commission to differentiate according to the consumer's load factor, power factor, voltage, total consumption etc. Hence, fixing of load factor tariff is permitted under the Act.

### **3.4 Long ToD period**

As per ToD, fixation of 'Peak Hours' period is very long, despite the country wide average being approximately 3.00-3.30 hours compared to 5 hours in summer and 8 hours in winters in Uttarakhand. It should be relaxed considering the country wide scenario. The Commission at Para 8.3.4 of the Order has concluded that "Uttarakhand due to its different geographical conditions has distinct morning peak alongwith the normal evening peak during winter season. The Commission has, therefore, decided to maintain *status-quo* in so far as peak hours are concerned." 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 UPCL nor the Commission have expounded any cogent rationale in support of this practice.

### **3.5 Increase in demand charges**

- 3.5.1 The demand charges have been increased from Rs. 125/- per kVA to Rs.1 50/- per kVA (up to 1000 kVA load) and to Rs. 200/- per kVA (above 1000 kVA loads) without providing any reason or rationale for doing so in the tariff order dated 18.03.08. This increase in fixed demand charges is very high,

steep and unjustified. Since the energy charge has been increased considerably to meet out the ARR, there is no justification to increase the demand charges from the existing level of Rs. 125/- per kVA.

3.5.2 Some stakeholders have pointed out that for small Aata Chakkis in hilly interior areas of the State of Uttarakhand, there should not be any demand charges or MCG and the billing should be done only for energy consumption. Supplying energy is the business of UPCL. No business has the principle of charging MCG and Demand Charges. Every time tariff shall be fixed, there are bound to be some changes in fixed/unit charges. This can be taken as part of balancing exercise by the Commission to allow ARR to UPCL.

3.5.3 Tariff for LT connection is highest amongst all consumers but we have accepted such high Tariff in light of the fact that balancing of ARR has to be done between all categories of consumers. Therefore, if Commission undertakes any change to any class then charges for LT consumers deserves to be rationalized first before any change to any other category is incorporated.

### **3.6 Receiving security deposit from industries in the shape of bank guarantee/letter of credit**

3.6.1 UPCL retains additional security to cover an amount equivalent to two months consumption on the basis of monthly average of past year's bills. 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 of 13-15% on the finances being advanced to the industry by the banks. This wide gap in the interest rates results in hardship to industries to meet out their working capitals. Most of the industries use funds borrowed from banks and normally pay 14-16% interest to the banks and moreover security deposited with UPCL is not refinanced by any bank, ultimately creating substantial working capital gap for the industry. In this regard, the following has been suggested:

- 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 i.e. 15% as UPCL is charging or atleast 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.

### **3.7 Introduction of monthly minimum consumption guarantee to industries in the tariff**

3.7.1 In the earlier tariff order, the Commission had advocated against charging of minimum consumption guarantee in any category and had done away with the same. However, in the tariff order dated 18.3.08, the Commission has reintroduced such charges only on industries in addition to the fixed/demand charges being levied on them. Since the fixed cost of the licensee is met from fixed/demand charges being recovered from the consumers, there is no justification to introduce minimum consumption guarantee additionally and, hence, this should be done away. Since the revenue from minimum consumption guarantee has not been accounted in ARR, the approved ARR will not be affected with the doing away of minimum consumption guarantee in the tariff.

3.7.2 No consumer should be burdened with an additional charge to compensate the inefficiency of UPCL in ensuring proper meter reading and billing of its consumers. Thus, the levy of MCG charges over & above fixed/demand charges is not logical. Levy of MCG makes the tariff complicated and increases inefficiency on the part of distributing company. This also encourages wastage of energy as any consumer being charged MCG will not save energy and in this time of scarce availability of power, any such measure which results in wastage of power should not be adopted.

3.7.3 If the concern of the Commission is to ensure that UPCL earns revenue, which

is presently being lost as a result of it being unable to bill its consumers properly; the Commission should have directed it to improve its internal mechanisms to ensure prompt billing and diligent recovery of dues. The Commission has instead provided an avenue to UPCL to continue with its lackluster manner of functioning instead of ensuring that it improves its internal practices. The Commission has also permitted UPCL to recover, by way of tariff, the Bad & Doubtful Debts arising on account of non-recovery of dues by it. Therefore, clearly UPCL is being made to enjoy the fruits of its inefficiency at the cost of higher tariff for the industrial consumers. The levy of MCG charges over and above Fixed/Demand Charges is not logical and no consumer should be burdened with an additional charge to compensate the inefficiency of UPCL. In small scale industries, all the machines do not work throughout the day and many of the machines only work for 1 to 4 hours, hence, the load factor is very low. Levy of MCG charges to such industries has made them unviable.

3.7.4 The issue regarding the failure of UPCL to submit the meter testing data as directed by the Commission in the ARR and Tariff Order 2007-08 and 2008-09 was raised during the hearing. The Commission enquired UPCL regarding the status of the directive issued by the Commission with reference to meter testing to be undertaken for meters of all consumers in non-domestic and LT Industrial categories whose monthly load factor is less than 1%. In response, UPCL submitted that UPCL has completed the meter testing for around 20% to 25% of the consumers and for the balance consumers, UPCL requested the Commission to grant time for completing the meter testing and for submitting the report to the Commission.

### **3.8 Cross-subsidization of other categories by increasing the tariff for industrial category**

3.8.1 All categories of consumers should pay for electricity consumption based on the cost of supply associated with supplying electricity to such consumers. Ministry of Power has notified the Tariff Policy on 06.01.21006 & Para 8.3 of

the Tariff Policy states that the tariff must be linked to cost of service. For achieving the objective that tariff progressively reflects the cost of supply of electricity, the SERCs were directed that they would notify the roadmap within six months with a target that latest by the end of year 2010-11, tariff are within  $\pm 20\%$  of the average cost of supply.

3.8.2 The tariffs for Railway traction should be linked to the cost of supply for railway traction & cross-subsidy level for Railway traction should be gradually reduced.

3.8.3 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. Such high cross-subsidization is against the norms laid down in the Electricity Act, National Tariff Policy and a catena of decisions of this Commission.

3.8.4 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 introduced gradually and in a phased manner. However, it is abundantly clear that no efforts have been made by the Commission to reduce cross-subsidy to the various domestic categories. The Commission should lay down a road map stipulating the steps it proposes to undertake to reduce this cross-subsidy, which is well within its knowledge.

### **3.9 Non-utilization of surplus available with UPCL for meeting the revenue gap for FY 2007-08 & FY 2008-09 in a suitable manner**

3.9.1 The Commission found an available surplus of Rs. 333.82 Crore with UPCL 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 Appellate Tribunal for Electricity in case of the State of

Uttarakhand wherein the Tribunal has clearly held that the benefit of any surplus should be given equally to all consumers.

3.9.2 Furthermore, after apportioning the necessary amount towards creation of fixed assets from the available surplus the remaining surplus (Rs. 237.77 Crore) 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 Crore respectively.

3.9.3 Whilst it is not denied that the Commission has given some relief to the consumers by apportioning Rs. 127.07 Crore 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 Crore) 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. This is a grave error in as much as the Commission has allowed the Respondent to retain an astonishing figure of Rs. 110.70 Crore 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 this revenue gap for FY 2008-09 considerably and reduce the tariff shock to be borne by the consumers. Alternately, 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 12th, 2006 for FY 2006-07.

### **3.10 Reduction in rates of Electricity Duty**

Seeing the decrease in Electricity tariff, the rate of electricity duty was revised to Rs. 0.25/unit w.e.f. 01.12.2003. Now with the increase in Electricity tariff w.e.f. 01.03.2008, the Government should consider to reduce the rate of electricity duty to 9 paise/unit as in other States.

### **3.11 Maintainability**

- 3.11.1 The Commission is entitled to review the orders challenged by the Petitioner only for reasons attributable to any mistake or omission. In the present case of this Review Petition, the Petition does not seem to highlight any mistake or omission in the fixed Tariff. There could be some change/difference from earlier Tariff but then every time any Tariff is fixed, some new concepts/changes will always take place/emerge.
- 3.11.2 In the Petition most of the points raised are a sort of grievances against the orders, which should be raised with the Grievance Forum of the UPCL for which there is an Ombudsman to review. After exhausting all those avenues, then only the Petitioner can go to Hon'ble ATE. Moreover, the Petitioner has itself admitted in the Petition that it is time barred as far as the Commission is concerned. As such, the Commission has no authority to review its own orders after six months of the passing of orders, unless there are very obvious reasons as stated above.

### **3.12 Miscellaneous Comments**

- 3.12.1 The overall impact on account of the increase in tariff has not only been the upward revision of electricity charges but even changing the structure of the plan like introducing minimum consumption charges, increase in demand charges, increase in minimum demand charges, introduction of linking tariff with utilization factor, removal of HT rebate (For a 33 kV consumer) etc.
- 3.12.2 The new industries have been established as the Government had projected the State to be a surplus power State & availability of cheap power. The drastic increase in power tariff is a serious survival threat as such an expense was not accounted in the projections. Thus, the Commission should have a re-look at the proposal and revoke the increase immediately.
- 3.12.3 Fixation of Tariff for distributing company is a balancing exercise of distributing cost of generating company between different classes of consumers. Once tariff is fixed, this means that the interest of all stakeholders including the generating company has been taken care of. Any relief to any

class of consumer after the fixation of tariff shall mean either the distributing company will be put to loss by that much amount or some other class of consumer shall be asked to pay that difference.

3.12.4 The Commission may take cognizance of the Petition but any change should only be incorporated while fixing the next ARR, which is due very shortly.

3.12.5 During the hearings, some of the stakeholders also submitted that the tariffs at this stage should not be revised for FY 2008-09 as around eight months of the year are already over.

## **4. UPCL' Response**

UPCL was asked by the Commission to submit its comment on the Review Petition. UPCL submitted the pointwise reply on the issues raised in the Review Petition which are summarized below:

### **4.1 Maintainability of Review Petition**

The Review Petition filed by KGCCI is time barred and has been filed after more than six months of passing the order and, hence, is not maintainable as per section 94 (1) of the Act read with provisions of UERC (Conduct of Business) Regulations, 2004. As per Regulation 68(1) of the UERC (Conduct of Business) Regulations, 2004, Review Petition is to be filed within 90 days from the date of issuance of the Order. UPCL further submitted that the Commission is entitled to review the Orders only for the reasons attributable to any mistake or omission and in the Review Petition filed by the Petitioner, most of the points are a sort of grievances against the Order which should be raised with the grievance forum of the UPCL.

### **4.2 Introduction of load factor based tariff**

As per section 62(3) of the Act, tariff may be differentiated according to the consumer load factor. As per the provisions of the Act read with UERC (Terms and Conditions of Determination of Distribution Tariff) Regulations, 2004, tariff for each category of consumers is required to be determined on average pooled

cost subject to maintainable level of cross-subsidy. Uttarakhand is energy deficit State in some of the months and merit order dispatch of electricity is applicable. The marginal cost of electricity is much higher than the average pooled cost of the same and, hence, energy consumption over and above the proportionate share in each category should be charged at higher price because of the reason that this energy is procured at higher rate. UPCL also referred to Para 17 and 19 of Hon'ble Appellate Tribunal of Electricity (ATE) Order dated May 23, 2007 and submitted that the Commission in its Order on ARR and Tariff for FY 2007-08 and FY 2008-09 has followed the directions issued by Hon'ble ATE with respect to categorization of HT Industries.

#### **4.3 Levy of 20% higher energy charges for the whole year for industries opting for continuous supply**

The Commission decided to finalize the provision for charging 20% higher energy charges round the year for industries opting continuous supply during restricted period at a later date and the process of finalization of these charges is still in process against which Public Hearings have already been completed.

#### **4.4 Voltage Rebate**

As regards abolition/reduction of rebate, UPCL submitted that the existing methodology of allowing voltage rebate is in line with the methodology applicable in erstwhile UPSEB/UPPCL/UPCL for the period upto March 31, 2006. The Commission in its tariff order dated July 12, 2006 had changed this methodology which was based on some fixed voltage and the same has been corrected by the Commission in this Tariff Order. Moreover, the difference in losses at supply voltage at 11 kV and 33 kV are negligible and as such no rebate should be given at 33 kV supply voltage for a HT consumer.

#### **4.5 Levy of Minimum Consumption Guarantee Charges**

UPCL submitted that as per the directions of the Commission, UPCL has checked/analysed the billing data of 770 industrial consumers which confirms

that load factor of some of the consumers is very low even less than 1%, resulting in loss of revenue which is being passed on to other honest consumers. Further, in this context, UPCL submitted that introduction of minimum consumption is necessary to ensure recovery of some part of the fixed cost from the consumers. About 50% of the UPCL's total costs are fixed in nature which should be recovered to a certain extent through fixed charges and levy of minimum guarantee charge is a way of ensuring minimum revenue to licensee from consumers. UPCL further submitted that there may be genuine reasons for low load factor in domestic and non-domestic categories such as premises being locked for longer period and exemption from levy of minimum consumption guarantee charge for other categories is justified and correct as decided by the Commission.

#### **4.6 Non-utilization of surplus available with UPCL for meeting the revenue gap**

UPCL submitted that the Commission has adjusted a surplus of Rs. 127.07 Crore towards uncovered gap of FY 2007-08 in its Tariff Order dated March 18, 2008.

#### **4.7 Rise in Electricity Tariff of Industry**

As per the provisions of the Act, tariff for each consumer category should be determined on the basis of the average cost of supply, keeping in view the maintainable level of cross-subsidy. Tariff in the State was first determined by the Commission vide its Order dated 08.09.2003 for FY 2003-04. The Commission also issued tariff orders for subsequent years on 25.04.2005 and 12.07.2006, however no tariffs were increased. The average cost of supply has increased drastically from 2003-04. The Commission had tried up the revenues and expenses of UPCL for the period from 09.11.2001 to 31.03.2007 and on the basis of the increased cost of supply had increased the tariff for some categories, keeping in view the same level of cross subsidy for industrial consumers. Due to the non-increase of tariff for industrial consumers during the last 4 years, the present tariff may appear to steeply rise, but in comparison

to the level of the rise in cost of supply, the increase in industrial tariff is genuine and still lower in comparison to other States.

## 5. Commission's Analysis and Ruling

### 5.1 Admissibility of the Petition

5.1.1 This Petition for review of certain provisions of Tariff Order for UPCL dated 18.3.2008 has been filed on September 21, 2008, i.e. after the expiry of 6 months from the date of issuance of the impugned order. In this regard, Regulation 68 of UERC (Conduct of Business) Regulations, 2004 stipulates that:

*"68. Review of the decisions, directions and orders*

*(1) The Commission may on its own or on the application of any of the persons or parties concerned, within 90 days of the making of any decision direction or order, review such decisions, directions or orders and pass such appropriate orders as the Commission thinks fit."*

5.1.2 The Petition was, therefore, time barred as it was filed beyond the specified period of 90 days. This objection has also been raised by some of the respondents who have stated that the Petition is not only time barred but also in the nature of grievances against the decisions of the Commission and the Petitioner should be asked to approach appropriate forum for redressal of its grievances.

5.1.3 The Commission admitted the Petition for further examination even after the prescribed time frame as the issues raised were affecting a large section and important category of consumers and in the interest of justice, the requirement of filing review petition within the stipulated time was relaxed in this case.

5.1.4 Now, having heard the Petitioner, the Respondent (UPCL), Consumer Representative and other stakeholders and after considering the material placed on record, the Commission has analysed the various issues raised in the matter.

## **5.2 Powers of Commission and Grounds for Review**

5.2.1 Before going into the merits of the Petition on various issues, the Commission first explores the powers vested in it to review its Orders in order to establish the legality of the Petition. In this regard, reference is drawn to section 94(1)(f) of the Act which specifically empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court would exercise such powers under section 114 and Order XLVII of the Code of Civil Procedure, 1908 (CPC).

5.2.2 The powers available to the Commission in this connection have been defined in section 114 and Order 47 of the CPC. Under the said provisions, review of the Order is permitted on three specific grounds only, namely:

- Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time of passing of the Order.
- Mistake or error apparent on the face of the record; or
- Any other sufficient reasons.

5.2.3 The application for review has to be considered with great caution to necessarily fulfill one of the above requirements to be maintainable under law.

5.2.4 On the discovery of new evidence, the application should conclusively demonstrate that (1) such evidence was available and of undoubted character; (2) that it was so material that its absence might cause miscarriage of justice; (3) that it could not be without reasonable care and diligence brought forward at the time of proceedings/passing of Order. It is well settled that new evidence discovered, if any, must be one, relevant, and second, of such character that had it been given, it might possibly have altered the judgement.

5.2.5 With regard to mistake or error apparent on the face of the record, the error should be apparent enough to be noticed and presented before the Court to

take cognizance. However, if it is a case that the Petitioner was not able to properly explain a legal position at the time of proceedings, it does not make a ground for a review.

5.2.6 With regard to any other sufficient reason, the courts have interpreted these words that such reasons should be at least analogous to those specified immediately above the Clause. The courts have interpreted this phrase on the facts and circumstances of each case.

5.2.7 It is a well-settled law that a review of the Orders of the Court/Commission should be used sparingly after examining the facts placed before the Court. An erroneous view or erroneous judgement is not a ground for review, but if the judgement or order completely ignores a positive rule of law and the error is so patent that it admits of no doubt or dispute, such an error must be corrected in the review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for a patent error. A review can only lie if one of the grounds listed above is made out.

5.2.8 The above legal position emerges out of various judgements of Supreme Court, notably, Smt. Meera Bhanja Vs. Smt. Nirmala Kr. Chaudhary [(1995) 1 SSC 170], Ajit Kumar Rath Vs. State of Orissa and others [(1999) 9 SSC 596] and Devendra Pal Singh Vs. State and another [(2003) 2 SSC 501].

5.2.9 With this background on legality provisions of the Review Petition, the Commission has examined the issues raised by the Petitioner to assess whether the issues raised by the Petitioner qualify for review or not.

### **5.3 Rationale for Commission's Decisions on Issues Raised**

5.3.1 The Commission finds that in most of the issues raised by the Petitioner, a general allegation of not basing the decisions of the Commission on cogent data or analysis of such data and without giving adequate reasoning for the decisions has been made. Therefore, before going into the maintainability of each of the issues raised by the Petitioner in these proceedings, the Commission would like to clarify its position with regard to availability of

data and the reasoning given by it for these issues in the Tariff Order.

5.3.2 The issuance of Tariff Order is an annual exercise which starts from the date of filing of the tariff petition and has to be completed within the stipulated time frame of 120 days as mandated under the Electricity Act, 2003. Unlike other general cases, where there is one or few issues to be decided, the tariff determination exercise involves a plethora of issues/data/information to be examined, processed and then decided for their continuation or modification. Reproducing complete information and detailed discussion on all these issues in the Tariff Order within the prescribed time frame is not only practically impossible but also not warranted as this will unnecessarily mean reproducing/summarizing all the claims in the Petition/Supplementary Petitions which run into more than 1000 pages and giving reasons on each one, whether material or not, for the decision of the Commission. In addition, there are written and oral submissions from typically few hundred stakeholders, which often have larger number of pages than the filing. Further, the spreadsheet model developed by the Commission that gives detailed calculations using the data submitted by the Petitioner, if reproduced in the Order, would unnecessarily make the Order bulkier manifolds without any corresponding benefit. Apart from the documentary and electronic material discussed above, the decisions are based on extensive analysis of various submissions with possible scenarios permissible under the provisions of law. The adequacy of coverage of Petitioner's/stakeholders' submissions on each issue, the base data and extent of reasoning to be given for each decision is definitely within the domain of Commission's authority subject to the condition that the Order needs to be speaking order. The Commission, therefore, while issuing the tariff order thoroughly examines each issue on the basis of available information/data and gives it the coverage deemed necessary to ensure that the philosophy and/or methodology for arriving at the decision is always provided for each issue.

5.3.3 The issues raised by the Petitioner are being perceived by it as against the interests of its members and, therefore, a general remark on adequacy of data

or reasoning has been given for these issues only, while there may be a number of other decisions that might have suited it for which no such complaint has been made. The Petitioner has failed to take cognizance of detailed discussion by the Commission in Chapter 5 of the Tariff Order, wherein the Commission has brought out the anomalies in the billing system of UPCL after examination of detailed billing data of each and every consumer in the State from their bill details for each month for a long period of April 2006 to October 2007. The results of this analysis were also made available on Commission's website after issuance of the Tariff Order and are still available. The general remark of the Petitioner that the Commission has arrived at its decisions without available data and cogent analysis, therefore, seems to be off the cuff remark to support its claims, which is contrary to not only facts but also records. It has also been ignored that some of the decisions in the Impugned Tariff Order have background that has been discussed in detail/provided in previous tariff orders or existing regulations and, hence, implementation or continuation of those measures/provisions does not need the discussion afresh.

5.3.4 In light of the above, in this Order the Commission has first dwelt upon the rationale for each decision, the data base available with the Commission on arriving at that decision and the coverage of each issue in relevant Order/Orders, whereafter the maintainability of the issue under the provisions of law for review has been examined.

#### **5.4 Load Factor based Tariff for HT Industry**

##### **A. Objection: The categorization is discriminatory and not in accordance with law**

5.4.1 The Petitioner in its Review Petition submitted that the load factor based tariff is discriminatory, as this is not provided in the Regulations and the Commission has no jurisdiction to make such classification.

5.4.2 The Commission would like to highlight section 62(3) of the Act, which empowers the Appropriate Commission while determining the tariff to differentiate according to the consumer's load factor, power factor, voltage,

total consumption of electricity etc. Section 62(3) of the Act is reproduced below:

*"The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the **consumer's load factor**, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required" (emphasis added).*

5.4.3 Regulation 20 of UERC (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2004, specifically empowers the Commission to design load factor based tariffs for any category of consumers and is reproduced below:

*".....The category-wise/voltage-wise cost to supply may factor in such characteristics as the **load factor**, voltage, extent of technical and commercial losses etc."*

5.4.4 Clearly, the Commission has powers to differentiate consumers on the basis of their load factor and the contention of the Petitioner in this regard is, therefore, not sustainable.

## **B. Objection: Categorisation incorrect and contrary to practice in other States**

5.4.5 The Petitioner submitted that 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 be created then it should be on the principle of higher the load factor, lower the tariff as is prevalent in other States.

5.4.6 The Commission had introduced the load factor based tariff long back for steel industries in its Order dated 24.8.2004. The Commission had recorded the rationale for load factor based tariff in para 4 of the said Order, which is reproduced below:

*"4. Tariff Design for Power Intensive Units*

*4.1 Approach*

(1) *The tariff for any consumer category should reflect the cost of supply, which comprises of power purchase cost and all other costs that the licensee incurs. For realizing the additional cost of power required to be purchased for meeting their demand from the PIUs themselves, the charges realizable from them will have to be linked to their consumption levels.*

(2) *The power consumption of any unit is a function of its contracted load and the extent of its utilization, which in turn get reflected in the demand charges and energy charges respectively. Both these elements of tariff need to increase with consumption beyond a threshold level.*

(3) *The Two Part Tariff suffers from a drawback that it inherently tends to encourage high consumption as the same reduces the effective per unit composite rate. This inevitable distortion is more pronounced with higher consumption levels. To correct this, tariff also needs to increase in a manner so as to achieve a near uniform composite rate. To do this demand and energy charges would have to increase with every small increase in contracted demand or load utilization percentage. Although theoretically possible, such an approach would make the tariffs too complex, incomprehensible and will pose serious problems in implementation.*

(4) *There is, therefore, a trade off between the simplicity of the tariff structure and precision in correcting the above distortion. The Commission's attempt has been to strike a balance between the two by choosing a uniform rate of demand charge and three rates of energy charges linked to the consumption levels represented by the Load Factor.*

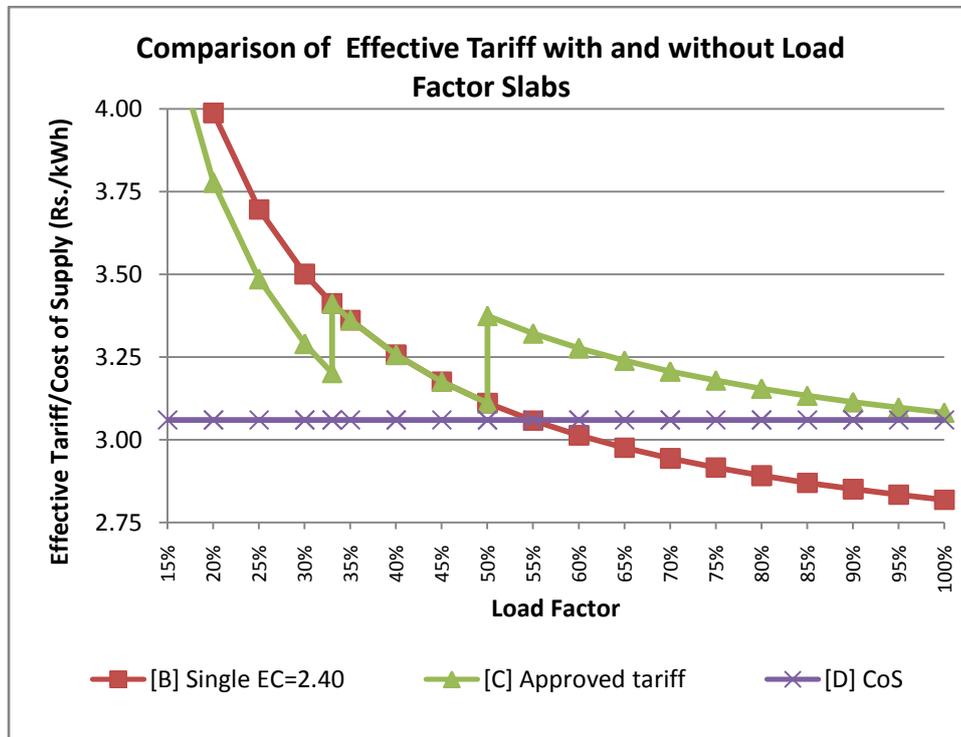
(5) *The Commission has avoided sharp increases in energy charges and has relied more on demand charges to be levied on such consumers. This approach is likely to be helpful in discouraging overuse and wastage by consumers induced by high minimum charges as substantial part of the minimum charge gets subsumed in the demand charges and the temptation to use extra energy gets limited to the balance minimum charge.*

(6) *Accordingly while the demand charges have been increased for all Power Intensive Units, the energy charge has not been changed upto a maximum load factor of 33%, where after it increases in stages."*

5.4.7 The above reasoning can be easily understood by taking an example with the figures of current Tariff Order for 2008-09, where Cost of Supply has been taken as Rs. 3.06/kWh and average tariff from HT industrial consumers has been designed to be Rs. 3.27/kWh (with 21 p/kWh as average cross-subsidy). The following graph with these figures shows that with single energy charge (e.g. Rs. 2.40/kVAh of middle slab and demand charge of Rs. 200/kVA/month) without any load factor slabs (Curve [B]), as demanded by the Petitioner, the effective tariff of an intended cross-subsidising consumer goes down steeply with increasing load factor, thereby reducing the quantum of cross-subsidy charged from it (figures based on the current tariff order). After a threshold level of load factor (55% in this case), this structure leads to an undesirable anomaly that the effective tariff becomes lower than the Cost of Supply (Curve [D]) and the consumer instead of being subsidizing consumer becomes subsidized consumer. Moreover, there is wide variation in effective tariff from Rs. 2.85 to Rs. 3.70/kWh vis-a-vis desired effective tariff of Rs. 3.27/kWh for range of consumer load factor from 25% to 90%. Thus, this structure apart from leading to abovesaid anomaly is highly inequitable amongst the consumers of same category with consumers having low load factor being loaded with much higher tariff and making up for loss due to lower tariff paid by high load factor consumers.

5.4.8 It is, therefore, necessary to correct the tariff structure such that there isn't appreciable change in effective tariff paid by consumers over a wide range of load factor. Accordingly, the Commission decided to keep low energy charge for lower load factor and increase it after defined steps so that effective tariff remains within a small band around the desired tariff for a wide range of load factor. Ideally, to reduce the band width the number of slabs should be large. However, this poses practical problem of complexity in billing and comes at the cost of difficulty in understanding the bills. To strike a balance between complexity in tariff structure and small band of effective tariff, the Commission decided to have three slab structure as is approved in the current Tariff Order also. It may be seen from Curve [C] for currently approved three

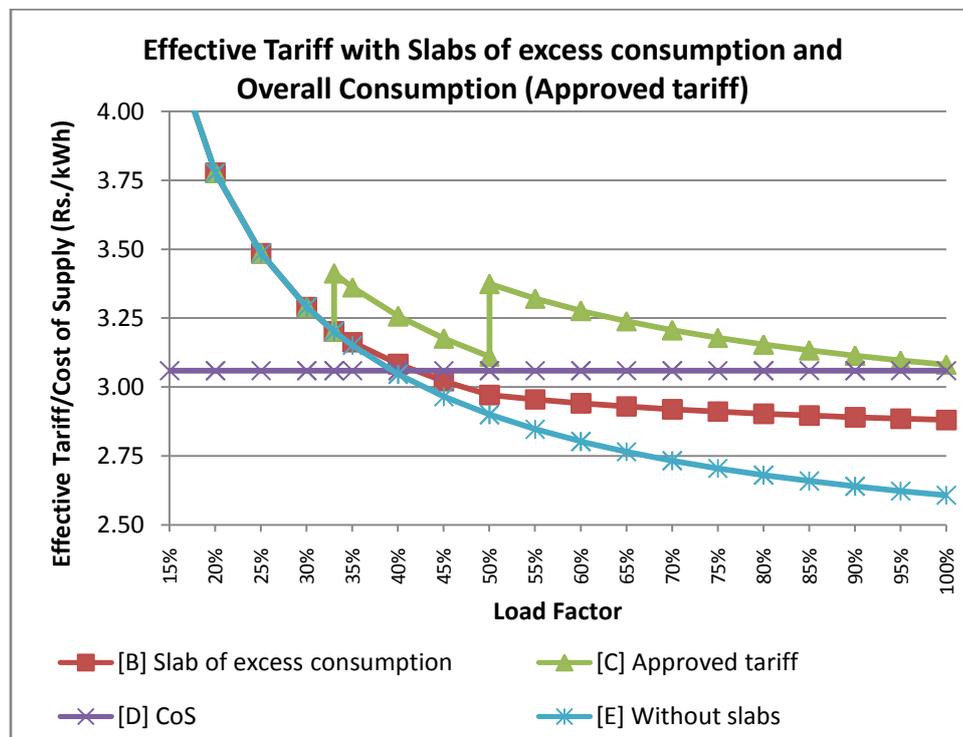
slab structure that the effective tariff now lies in a narrow band of Rs. 3.10 to 3.45/kWh with effective tariff of low load factor consumers coming down and high load factor consumers going up and close to desired tariff. Thus, although it appears from the tariff structure that the consumers with higher load factor are paying higher tariff, actually their effective tariff is being brought closer to others and not higher by staggered rates.



5.4.9 The Commission had brought out in para 8.3.3 of the Tariff Order that slab structure is prevalent in other States, where tariff increases with consumption slabs. Particularly for industrial category, the Commission has collected information on tariff structure of some other States to see whether all other States are giving rebates for higher load factor or consumption. It was found that HPERC and KERC have specified tariff structure for HT industries that increases energy charges after a slab of consumption units/kVA (i.e. a specified load factor), however, the increased rate is applicable only on the excess consumption. Thus, Petitioner's claim that other States do not have such tariffs increasing with load factor is not correct. The Commission has also examined the tariff structures of States allowing rebates for higher load factor such as UP and Maharashtra and the analysis of the same is discussed

hereunder.

5.4.10 The Commission has prepared the chart of effective tariff for various States, which is given in **Annexure 4**, after factoring in the impact of tariff increases/rebates after specified load factors. It may be seen from the Graph that with the above said increases in tariff with load factor for excess consumption the steepness of curves of effective tariffs in HP and Karnataka are slightly reduced but the rates are not able to correct the distortions brought out in para 5.4.7 above. This fact is clearly brought out by the following graph where the existing tariffs in Uttarakhand have been applied on consumption in excess of the currently prescribed load factor slabs. The graph shows that while the steepness of reduction in effective tariff with load factor is slightly reduced, the anomalies of consumers getting cross-subsidized after a particular load factor and wide range of tariffs over different load factors still persists.



5.4.11 Further, there is practical difficulty in implementing slabs of tariffs for excess consumption only as the State of Uttarakhand has ToD tariffs implemented for past few years. Apportionment of various slabs of consumption for different time slots would be very complicated and would have resulted in

disputes between licensee and consumers as consumer would like to book cheapest slab (1<sup>st</sup> slab) against peak hour consumption and highest slab (last slab) against off-peak hour consumption. The licensee, on the other hand, would like to book 1<sup>st</sup> slab against off-peak consumption and last slab under peak hour consumption. Thus, this structure would unnecessarily complicate the billing process and lead to disputes apart from not being able to eradicate the anomalies pointed out earlier. Due to foregoing reasons, the Commission has not applied slab based tariff for excess consumption.

5.4.12 For States such as UP and Maharashtra, where effective tariff goes down slightly with increasing load factor. However, it is noted that the cross-subsidies in these States are so high that even with these rebates and very high load factors, the effective tariff remains above cost of supply. In Uttarakhand, as the cross-subsidies are very low, the tariff needs to be corrected at different load factors to ensure that steepness of the effective tariff curve does not reduce the cross-subsidies to very low level. It is to be further noted that UPCL has to purchase power on Merit Order Principle which implies that as the power purchase increases, the per unit cost of power increases, which in turn increases the Cost of Supply. Since increase in load factor and, hence consumption, results in increase in average power purchase cost for the licensee, it would be inappropriate for the Commission to introduce load factor rebates in the tariffs.

**C. Objection: The Commission misapplied/misinterpreted Hon'ble Tribunal's directions**

5.4.13 The level of tariff in the order dated 24.8.2004 and its continuation in subsequent orders was challenged before the Hon'ble Appellate Tribunal. However, the tariff structure was never challenged before Hon'ble Tribunal. In fact, accepting the load factor based tariff structure, Hon'ble Tribunal had made the following observations in its Order dated June 06, 2007 in Appeal No. 214/2006, which are reproduced as such to avoid any ambiguity in understanding:

*“.....The licensee had made a proposal of a tariff design which took into account the load factor. It proposed, for steel units, fixed charges at Rs.200/- kVA and energy charges at Rs.1.90, kVAh & Rs.2.40/kVAh for load factors upto 50% and above 50% respectively. Similarly it proposed the same rates for the PIU industries for the corresponding load factors. The UERC, however, totally ignored the load factor and fixed the tariff for steel industries uniformly at flat rate of Rs.300/-kVA as fixed charges and Rs.2.35 kVAh for energy charges regardless of load factor. For HT industries also the load factor was totally ignored and tariff fixed was Rs.125/-kVA as fixed charges and Rs.1.90 kVAh as energy charges. The then existing tariff rates had classified the HT units and steel units on the basis of load factors. HT units were charged on the basis of their load factor being below 50% and above 50%. The steel units were classified into three sub classes viz with load factor below 33%, upto 50% and above 50%. The tariff for the HT & PIUs could be equated on the basis of the respective load factors as has been done by the licensee in its proposal. All units with load factor above 50%, whether HT or PIUs should pay a higher tariff and those below 50% or below 33% should pay a comparatively lower tariff. UERC claims to have effectively equated the tariff for HT and PIUs by taking the load factor into consideration. But the irony is that while fixing the tariff the CERC has totally ignored the load factor and has prescribed the same rates for all units irrespective of the load factor. Here we may add that we are not able to verify the distribution of number of PIUs falling in each category of the load factor. Same is the case with the general HT industries.*

*...[Para 17]*

*“No one complained of any difficulty in dealing with staggered rates. The same method could be followed to extract a higher tariff from those having higher load factor. There was no need to work out an average load factor as there were no such necessity or demand. The declared intention of the UERC being to equate the tariffs for HT and PIUs, it could have accepted the proposal of the respondent No.2. The approach adopted has led to make PIUs with assumed 70% load factor to pay*

*substantially higher tariff than that proposed by the licensee itself. On the other hand the tariff for the general HT industries has been effectively and patently reduced at the cost of the PIUs.*

*...[Para 19]*

*"In view of the above, we consider it prudent to remit the matter to UERC to recompute the tariff for the steel units keeping in view our observations as above. We direct accordingly."*

*...*

*[Para 20]*

5.4.14 The above makes it amply clear that Hon'ble Tribunal has unambiguously intended and directed the Commission to design the load factor based tariffs for all HT industrial consumers and there is no scope for any other interpretation of the above directions. The Commission has, accordingly, implemented the above directions of Hon'ble Tribunal. The Petitioner's contention in this regard is, therefore, misconceived and without any basis.

#### **D. Categorisation not proposed by licensee**

5.4.15 With respect to the issue raised by the Petitioner that UPCL in its Petition had not proposed the load factor based tariff and this was the Commission's own initiative, it may be seen that from the above quotation of Hon'ble Tribunal's direction that UPCL itself had proposed load factor based tariff in its previous proposal and Commission's decision rejecting the same did not find favour with the Hon'ble Tribunal. Further, the Commission is empowered under the provisions of the Act and relevant Regulations to rationalize the tariff and the Commission cannot just accept the tariff proposal of the licensees. By specifying the load factor based energy charge for all the HT Industry consumers, the Commission has attempted to further rationalise the tariff structure.

#### **E. Categorisation without data and cogent analysis**

5.4.16 The Commission has already brought out that it had complete billing data for each consumer including industrial category for the period April 2006 to October 2007. This data apart from the normal bill details such as energy

charges, demand charges, etc. also had details of consumption by each HT industrial consumer during peak, off-peak and normal hours. Complete results of this analysis/data, as stated earlier, is available on Commission's website [www.uerc.in](http://www.uerc.in). For previous years, the data as reported by licensee from its CS-3, CS-4 Statements and its audited/provisional accounts was used. To further update the data and for latest pattern for HT industrial category, the Commission also obtained the billing details of each consumers in the following format for the months of November 2007, December 2007 and January 2008:

Sl. No.	Name of Consumers & Address	Category	Contracted Load in kVA	Month		
				Max. Demand	kVAh	kWh
1	2	3	4	5	6	7
1	Pranat Engineers Ltd	General	750	212	33324	25824
2	...	...	...	...	...	...
3	...	...	...	...	...	...
...	...	...	...	...	...	...

5.4.17 From the abovesaid available data, the Commission worked out important proportions such as percentage of consumption for load upto 1000 kVA & that above 1000 kVA and within each of these sub-classes the percentage for consumers having load factor upto 33%, above 33% & upto 50% and above 50%. These proportions are necessary for arriving at projected revenue from the approved tariff structures which is based on this classification. Moreover, an analysis of various tariff alternatives both in terms of structure and rates is essential to arrive at the final structure/rates, which meet the requirements of the provisions of Regulations/Act. Hence, it is wrong to say that the Commission has determined the tariff without any data or cogent analysis of the same.

#### **F. Maintainability**

5.4.18 On maintainability of the issue of Load Factor based tariff for HT Industry raised by the Petitioner, the Commission finds that it does not qualify for review as there is neither an 'error apparent on the face of record' nor there is any new evidence and, hence, this issue is not admissible for review.

## 5.5 Increase in Fixed/ Demand Charges

### A: Petitioner's Submission

5.5.1 The Petitioner submitted that the Commission in its ARR Order for FY 2007-08 and FY 2008-09 has substantially increased the Fixed/Demand Charges. The Petitioner submitted that it is not even aware of the reasons for such increase in these Charges and the Commission has increased these Charges without any discussion on the issue to examine the same if it is reasonable and prudent. Hence, the Petitioner submitted that the Commission should review and re-compute the Fixed/Demand charges.

### B: Commission's View

5.5.2 The Commission would like to reproduce the relevant section of the Current Tariff Order, where the basic philosophy of tariff design has been discussed:

#### *"4.8 Tariff Design*

*Regulation 25 specifies in this regard that:*

#### *"20. Cost standard*

*The tariffs for various categories/voltages shall be benchmarked with and shall progressively reflect the cost of supply based on costs that are prudently incurred by the distribution licensee in its operations. Pending the availability of information that reasonably establishes the categorywise/voltage-wise cost to supply, average cost of supply shall be used as the benchmark for determining tariffs. The category-wise/voltage-wise cost to supply may factor in such characteristics as the load factor, voltage, extent of technical and commercial losses etc.*

#### *21. Rationalization of the tariff structure*

*Suitable mergers of categories and of sub categories may be done to evolve a simple, easy to comprehend and logical tariff structure.*

#### *22. Peak and Off-peak Tariffs*

*A differential tariff for peak and off-peak hours may be designed to promote demand side management."*

#### *"2. Amendment of Regulation 20:*

*After the last line of the existing regulation the following shall be inserted,*

*namely:*

*"Provided that for protecting interest of other consumers, tariff for any category of consumers could be evolved in a manner that prevailing market conditions get reflected in it suitably."*

*Accordingly, the Commission has designed tariff for various categories of consumers considering average cost of supply at approved sales and expenses. The Commission has also attempted to bring down the level of cross-subsidies for cross-subsidising consumers as has been discussed in detail in Section 8. Simultaneously, the Commission has tried to reduce the impact of tariff shock to each category of consumers."*

- 5.5.3 Having given the general approach to tariff design, the Commission has dealt with all important aspects of tariff design in detail in Chapter 8 under the Section 8.3 "Commission's Views on Tariff Rationalisation Measures" and 8.4 Other Tariff Rationalisation Measures, where detailed reasoning for each of the rationalization measure taken by Commission has been given apart from a discussion on tariff design of individual categories in Section 8.6 "Categorywise Tariff Design". Therefore, the Commission does not agree with the allegations made by the Petitioner that the Fixed/Demand Charges have been increased without giving any reasons and without any discussion on the issue. In fact, the Commission in Para 8.3.1 of the Order has deliberated on this issue in detail and has given detailed rationale for introduction/increase of fixed charges for all the categories. The demand/fixed charges have been increased to enable UPCL to recover atleast some part of its fixed cost.
- 5.5.4 The Commission has designed the tariff for recovery of the current year's ARR determined in Chapter 7 as Rs. 1567.94 Crore, according to which average cost of supply for meeting only current year's expenses works out to Rs. 3.02/kWh. However, considering the tentative burden of additional amount of Rs. 25.54 Crore for refund/adjustment of previous years for Steel Units/Railways, the average cost of supply (CoS) for recovery from tariff worked out to Rs. 3.06/kWh for total approved sales of 5213.94 MUs

(including efficiency improvement of 134.32 MUs) as brought out in the following Table:

Particulars	Total Cost	Per Unit Cost
	(Rs. Crore)	(Rs./kWh)
ARR for 2008-09	1590.34	3.05
Less: Non-tariff revenue	22.4	0.04
Net ARR	1567.94	3.02
Add: Refunds/Adjustments	25.54	0.04
<b>Required Tariff Revenue</b>		
<b>Average Cost of Supply (CoS)</b>	<b>1593.48</b>	<b>3.06</b>

5.5.5 The Regulation 20 quoted above required that pending the availability of information that reasonably establishes the categorywise/voltage-wise cost to supply, average cost of supply shall be used as the benchmark for determining tariffs. Since the Commission did not have category-wise/voltage-wise cost to supply, the tariff were to be based on average cost of supply as has been pointed out in the Tariff Order also. The Average CoS of Rs. 3.06 was to be recovered through a combination of fixed/minimum and energy charges. The following table gives the break-up of fixed and variable cost of energy that was available with the commission:

Particulars	Total Cost	Per Unit Cost
	(Rs. Crore)	(Rs./kWh)
Fixed Cost	738.52	1.42
Energy Cost	854.96	1.64
<b>Required Tariff Revenue</b>		
<b>Average Cost of Supply (CoS)</b>	<b>1593.48</b>	<b>3.06</b>

5.5.6 Thus, as brought out in the Current Tariff Order also, about 45% of the total cost of the licensee is fixed in nature and for recovery of fixed cost of Rs. 1.42/kWh from each category would have lead to allocation of the total fixed cost of Rs. 738.52 Crore as shown in the following Table (The total fixed cost of Rs. 719.51 Crore in this Table does not include the sales and hence portion of fixed cost allocated to efficiency improvement of 134.32 MUs).

5.5.7 It may be seen from the Table that only a portion of this cost (27.34%) is being recovered through demand/fixed charges. Entire recovery of the fixed costs would have necessitated further increase particularly in industrial category. However, to ensure that no consumer category gets tariff shock the

Commission has increased/introduced the demand/fixed charges to a reasonable level. The comparative chart of prevailing level of cross-subsidies in Uttarakhand and other States is presented in **Annexure-5** which shows that Uttarakhand is amongst the States that charge lowest cross-subsidies.

Category	Consumption	Allocated Fixed Cost	Contracted Load	Fixed Cost to be Charged for 100% recovery	*Approved Fixed Charges	Approved Total Fixed Charges	%age Recovery of Fixed Charges
	(MU)	(Rs. Crore)	*(MW)	#(Rs./kW/ month)	#(Rs./kW/ month)	(Rs. Crore)	(%)
(a)	(b)	(c)=1.42x(b)/10	(d)	(e)=(c)x10000/(12x(d))	(f)	(g)=(d)x(f)x12 / 10000	(h)=100x(g)/(e)
<b>[A] Cross-subsidising categories</b>							
1) LT Industries	199.12	28.20	157.58	149.16	70.00	13.24	46.94%
2) HT Industries upto 1000 kVA	731.07	103.55	212.51	385.75	150.00	40.27	38.89%
3) HT Industries above 1000 kVA	1,530.20	216.74	396.24	433.05	200.00	100.10	46.18%
4) Others	618.45	87.60	407.27	179.24	19.19	9.38	10.71%
<b>Sub-total [A]</b>	<b>3,078.84</b>	<b>436.10</b>	<b>1,173.59</b>	<b>309.66</b>	<b>115.73</b>	<b>162.99</b>	<b>37.37%</b>
<b>[B] Cross-subsidised categories</b>							
1) Domestic	1,305.06	184.85	1,482.31	103.92	15.00	28.13	15.22%
2) Others	695.80	98.56	212.26	386.93	21.98	5.60	5.68%
<b>Sub-total</b>	<b>2,000.86</b>	<b>283.41</b>	<b>1,694.57</b>	<b>139.37</b>	<b>16.59</b>	<b>33.73</b>	<b>11.90%</b>
<b>Total ([A]+[B])</b>	<b>5,079.70</b>	<b>719.51</b>	<b>2,868.17</b>	<b>209.05</b>	<b>57.16</b>	<b>196.72</b>	<b>27.34%</b>

\* For HT industries the above Table shows 80% of their contracted load in MW, as billing demand considers 80% of contracted load for levy of demand charges  
#For HT industries fixed cost/charges are reflected in Rs./kVA/month by considering 0.95 PF

5.5.8

### C: Maintainability

5.5.9 The contentions raised by the Petitioner on this issue are baseless as the issue has been deliberated in the Order and there is no error apparent, the issue is not admissible for review.

## 5.6 Introduction of Minimum Consumption Guarantee (MCG) Charge

### A: Petitioner's Submission

5.6.1 The Petitioner submitted that the introduction of MCG charges over and above the Fixed /Demand Charges is absurd. The Petitioner further submitted that UPCL is able to recover its fixed cost through the levy of fixed/demand charges and any revenue to be earned over and above should not be at the cost of the industrial consumers who have to bear the MCG Charges merely because UPCL is unable to monitor and/or recover tariff from its consumers efficiently.

## **B: Commission's View**

5.6.2 On the issue raised by the Petitioner that UPCL is recovering the fixed costs through levy of fixed/demand charges and levy of minimum charges will lead to additional revenue to UPCL, the Commission in Para 8.3.1 of the impugned Order had observed as under:

*"About 45% of the UPCL's costs are fixed in nature including the capacity/fixed charges of power purchase. It is a well-accepted economic principle that the fixed costs of the Utility should be recovered to a certain extent through fixed charges to ensure revenue stability. At the same time, the Commission recognizes that if the entire fixed cost is recovered through fixed charges, then the Utility shall have no incentive to bother about sales and, hence, quality of supply may suffer. Historically, the fixed recovery has been done through a mix of minimum charges and fixed charges. Levy of Monthly Minimum Charges (MMC) is a way of ensuring minimum revenue to the Utility from the consumers, however if the consumption exceeds specified amount, then no MMC are levied on the consumers and, hence, entire charges recovered by the Utility are through energy/fixed charges."*

5.6.3 As brought out earlier in this Order, from the tariffs approved by the Commission, only 27.34% of UPCL's Fixed Cost is being recovered through Fixed and demand charges for 2008-09. The recovery of fixed cost from industrial consumers itself is only 38 to 47%. Although minimum charges are subsumed for consumers above minimum threshold level of consumption, which comes at a very low load factor of about 10% for LT industries and 15% for HT industries, a small amount in excess of energy charges that is paid due to minimum charges by consumer having lower load factors compensates the licensee only partially for the unrecovered fixed cost from this category of consumers. Moreover, the Petitioner on one hand is seeking lowering of tariffs through rebates for higher load factor and on the other hand seeking abolition of minimum charges, which apply only for very low load factors. Same consumer cannot be aggrieved by both these provisions as both are

mutually exclusive.

5.6.4 Another noteworthy point in this case is that NTP recognizes consumption upto 30 units/month as domestic consumption for Below Poverty Line (BPL) consumers. Since BPL consumers have load upto 1 kW only, this consumption translates to a load factor of about 4%. The Commission, in Chapter 5 of the Current Tariff Order, had pointed out that the load factors of some of the industrial consumers were consistently below 1%. Industrial consumption being even lower than domestic BPL consumption for large number of consumers is simply not possible. At such low load factors either the industry would be not be operating or the consumption was not being recorded properly for one reason or the other. This necessitated proper checking of such consumers' metering equipment and consumption pattern analysis. Till this checking is carried out in a reasonable time frame, the Commission thought it proper to re-introduce minimum charges.

5.6.5 The Commission has discussed the merits and demerits of MCG in its Current Tariff Order in detail in Para 8.3.1, which are not being repeated for the sake of brevity. In this context, the Commission would like to reiterate the reasoning given by the Commission in the ARR Order for FY 2007-08 and FY 2008-09 that the MCG charges for Industrial Category have been re-introduced considering the deficiencies observed in the billing data of UPCL.

5.6.6 Further, the Commission in para 5.4 of ARR Order for FY 2007-08 and FY 2008-09 had directed UPCL to check the reasons including by testing of meters, for extremely low load factors for non-domestic and LT industrial categories. The extract of the same is reproduced below:

*"Petitioner is directed to undertake testing of meters of all such consumers in non-domestic and LT Industrial categories whose monthly load factor is less than 10% within six months from issue of this order and report compliance along with results of such testing by the following month end. (Ref. Section 5.4)"*

5.6.7 The Commission during the Public Hearing held at Dehradun had enquired

about the status of this compliance and UPCL submitted that about 20% to 25% of the activity is over and UPCL would complete the meter testing and submit the report to the Commission by March 31, 2009. While the report for some of the divisions has been submitted, the report for others is still awaited. **The Commission directs UPCL to expedite the same and submit the complete report on this issue to the Commission by March 15, 2009.**

5.6.8 Even the part report submitted by UPCL showed that out of 1675 cases checked by UPCL, 136 cases of malpractices and 31 cases of theft have been detected in the list of consumers having very low load factor supplied to UPCL by the Commission. Further, the load factor of 879 consumers has increased to more than 10% and the current energy charges have exceeded the MCG, thereby making the MCG charges not applicable. In fact, as the consumers have option to reduce their contracted load, quite a few consumers have reduced their contracted load, which helps in improving their load factor substantially and hence leading to energy charges getting subsumed in MCG. The report also shows 136 cases of accumulated reading, where the readings were not regularly taken and bills were being raised on assumed consumption basis, which was much lower than actual consumption and hence leading to MCG recovery. This report has not only validated Commission's findings in Chapter 5 of the Tariff Order, but also forced the Commission to look into the billing database of important segment of consumers under their centralized billing viz. non-domestic and industrial consumers above 25 kW. However, the important finding is that although UPCL is taking action for correcting the above anomalies, the same would take some time till the same are brought to minimum/controllable level and Commission's decision in its Tariff Order for re-introduction of MCG is validated. UPCL is, however, cautioned not to show complacency in the matter as the Commission would take a stock of progress made by it in removing the above anomalies and depending upon its seriousness and the gravity of this problem at field level, would take a view on continuation or abolition of MCG in the next tariff order.

### **C: Maintainability**

5.6.9 In any case, the issue raised by the Petitioner does not qualify for review as there is no error apparent on the face of the record. Considering the submissions made by the stakeholders, the Commission will re-examine this matter while processing the ARR and Tariff Petition of UPCL for FY 2009-10 after analyzing the meter testing report of consumers having load factor less

than 1%.

## **5.7 Levy of 20% higher charges for supply during restricted hours/load shedding**

### **A: Commission's View**

5.7.1 The provisions of the Clause under "restriction in usage" stipulated in the impugned Order were same as the provisions in previous Tariff Orders right from the first Tariff Order dated 08.09.2003 and continued to be applicable till 29.02.2008. The said provisions were never challenged and in the present Tariff Order, the Commission only clarified the provision with regard to the period of applicability of 20% higher charges. These provisions were never invoked till 2006-07, when restriction in usage was approved by the Commission for the first time for the period 09.01.2007 to 15.03.2007. Five industries that opted for continuous supply during this period have been billed and also have paid 20% higher charges for the entire year 2007-08 including the period when there was no restriction. No industrial consumer challenged this provision.

5.7.2 Commission would like to emphasize that getting continuous supply by paying 20% higher charges is optional. Out of 154 industries that had opted for continuous supply as on February 2008 only about 40 industries opted out when option was given. Commission, in its order on penalty for excess usage of power during restricted period of 2007-08 dated 24<sup>th</sup> July 2008, again permitted such industries to opt out and only 07 industries opted out and 117 industries have still opted for continuous supply by paying 20% higher energy charges. Commission would also like impress upon the fact that many industries which are operating in single shift and do not have continuous process have also opted for continuous power and are paying 20% higher energy charges amply demonstrate that 20% higher charges are not for getting continuous supply during restriction period only but for getting premium supply throughout the year. The Commission has also amplified the rational for charging reasonable premium in energy charges throughout the year in para 8.3.6 of the Impugned Order.

5.7.3 Further, the conditions under "restriction in usage" stipulated in the impugned Order was provisional and subject to revision by the Commission at a later date as was discussed by the Commission in Section 8.4.6 of the impugned order.

5.7.4 Subsequently, the Commission initiated a *suo-moto* proceeding to finalise Clause-6 of RTS-7 in the tariff order and after hearing all the stakeholders and UPCL issued a separate Order dated December 5, 2008 finalizing Clause 6 of RTS 7 of the Tariff Order.

5.7.5 The Commission would, however, like to reiterate its view that in order to motivate the licensee to make long term arrangements for continuous supply of power and to avoid higher impact on consumers during load shedding period, there is merit for charging reasonable premium in energy charges throughout the year. Moreover, the option of taking continuous supply is with the consumer and if the consumer perceives these charges are on higher side, he is free to opt out and pay only normal tariff.

#### **B: Maintainability**

5.7.6 Thus, this is also not a ground for review and have been dealt adequately by the Commission in its Order dated 05.12.2008.

### **5.8 Cross-subsidization**

#### **A: Petitioner's Submission**

5.8.1 The Petitioner submitted that the industrial tariff especially for HT & LT industry users has consistently increased and additional charges are levied from time to time and no corresponding increase has been carried out for the tariff in the domestic category and/or in the non-industrial category. The Petitioner further submitted that such high cross-subsidization is against the norms laid down in the Electricity Act, 2003 (Act) and National Tariff Policy (NTP).

#### **B: Commissions' View**

5.8.2 The Commission in determining the category-wise tariffs has been guided by

the principle that consumer tariffs should reflect the cost of supply. The Commission has given due consideration to the provisions of the Act and NTP in this regard. Accordingly, the Commission has designed tariff for various categories of consumers for full recovery of approved Annual Revenue Requirement for 2008-09. This issue has been deliberated by the Commission in Para 8.6 of its Tariff Order which stipulates as follows:

*“Several respondents from consumer categories have opposed the increase in tariff proposed by the Petitioner and submitted that the existing electricity tariffs in the State of Uttarakhand are reasonable. In this regard, the Commission would like to highlight that the average cost of supply has increased from approved average cost of supply of Rs. 2.30/kWh in 2003-04 to Rs. 3.02/kWh in 2008-09. In spite of reduction in losses as per trajectory, one of the factors attributable to increase in cost of supply is substantial increase in power purchase requirement to meet the energy requirement of large number of new industrial consumers in the State. During 2003-04, industrial consumption was around 26% of total consumption which has increased to around 49% of total consumption in 2007-08. In MW terms Industrial load has increased from 266 MW in 2003-04 to 763 MW as on 31<sup>st</sup> Oct, 2007 and expected to go up to around 900 MW by the end of FY 2008-09. This necessitates purchase of costly power by the licensee even beyond the allocated quota for the State. Further, to meet the additional energy requirement, the Petitioner had to purchase power through UI overdrawals at more than Rs. 5/unit during peak hours. In case of certain HT industries (having high load factor), which were supposed to be cross-subsidizing earlier, the actual cost of supply eclipsed their effective tariff and such industries un-intentionally got cross-subsidized. Therefore, the Commission while designing the category-wise tariffs has considered this aspect in accordance with the provision of Regulation 20 and attempted to strike a balance between the interests of various consumer categories and the Licensee”.*

5.8.3 As far as the contention of the Petitioner, that there has been sudden and steep increase in tariff, which has rendered their business projections unviable, is concerned, the Commission would like to remind that it had

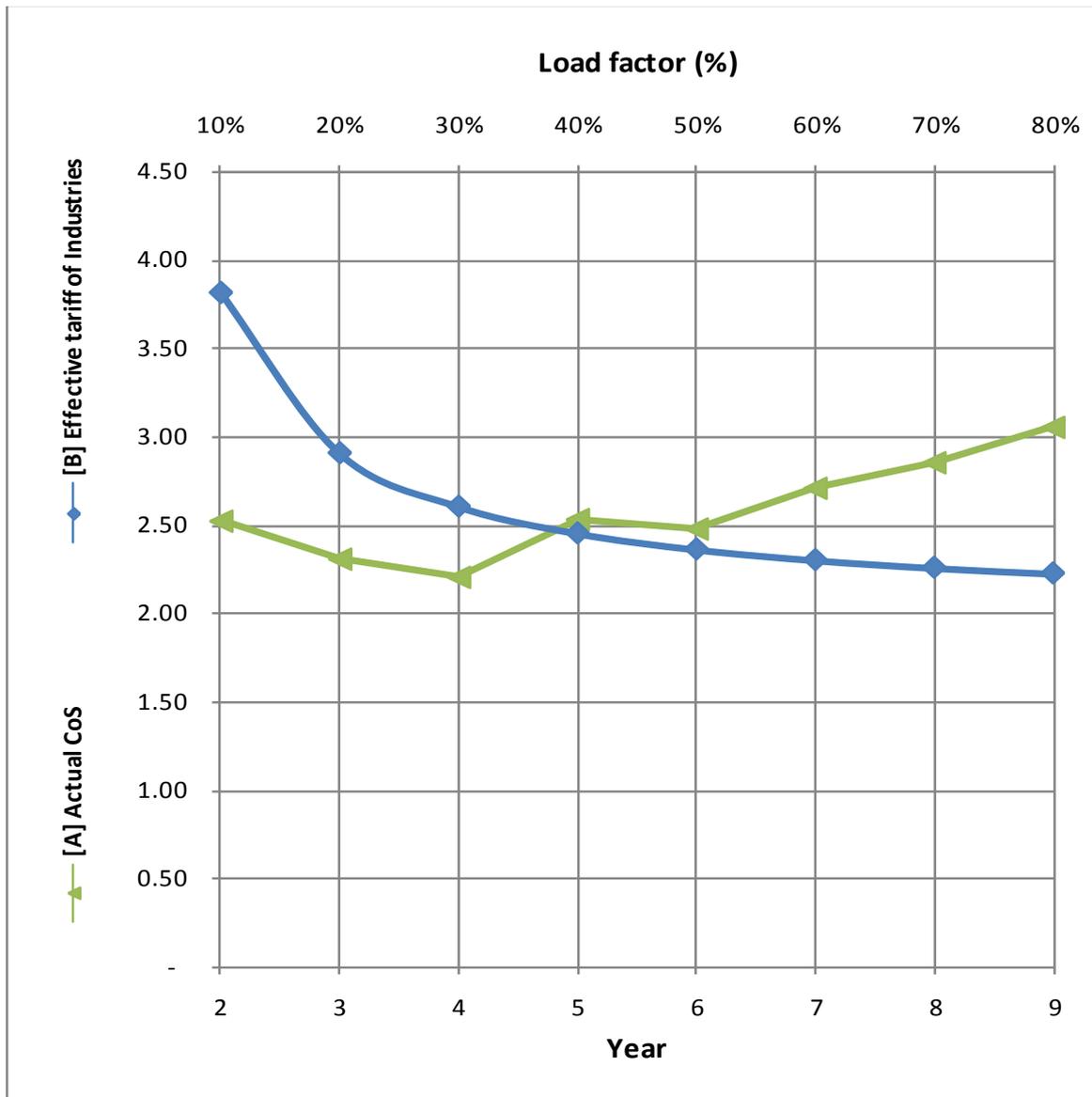
pointed out in the Tariff Order dated 8.9.2003 about sudden reduction in power purchase cost of UPCL after separation of the State against the cost approved by UPERC before this Commission was constituted. This lead to substantial surpluses during 2001-02 and 2002-03. Further, due to substantial reduction in tariff in 2003-04, particularly in industrial category, and various fiscal and other incentives available in the State, industrial growth took place in the State at an unprecedented rate. The consumption pattern of the State improved favourably with more %age of cross-subsidising consumers adding to the overall consumption than estimated by the Commission. This further lead to some surplus in subsequent years. However, pending true-up of ARRs for the past years and in the absence of requisite details, the quantum of this surplus could only be estimated and refined by the Commission to different values determined in its previous Orders. The exact value of the surplus could be ascertained only in the Current Tariff Order, where true up of all these years was carried out together. This true up may also undergo revision with availability of more reliable information such as audited accounts for 2005-06 and 2006-07. These fact has been discussed in detail in various tariff orders of the Commission including the Current Tariff Order.

5.8.4 Commission's finding of surplus being available with the licensee did not warrant any tariff hike in previous years since 2003-04, except for steel units which was later on revised retrospectively, in-spite-of cost of supply going up steadily. This lead to a situation where the designed level of cross-subsidies, particularly from HT industrial consumers unintentionally kept on going down drastically. The year wise position of applicable tariffs for HT industries and the average cost of supply (trued-up figures upto 2006-07 and approved figures for 2007-08 & 2008-09) is presented in the following table:

Particulars	2001-02	2002-2003	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	
Energy Charge (Rs./kVAh)	3.17	3.17	1.90	1.90	1.90	1.90	1.90	LF upto 33%	2.20
								LF above 33% & upto 50%	2.40
								Above 50%	2.65
Demand Charge (Rs./kVA/month)	162	162	125	125	125	125	125	Upto 1000 kVA	150
								Above 1000 kVA	200

Cost of Supply (Rs./kWh)	2.53	2.31	2.21	2.54	2.49	2.72	2.86	3.06
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5.8.5 The above situation is depicted in the following graph for the financial years 02 to 09 and for HT industrial consumers having load factor in the range 10% to 80%. While the effective tariff with variation in load factor of a consumer (shown on top of X-axis) remained same for the years 2003-04 to 2007-08, the cost of supply over these years (shown at the bottom of X-axis) rose up steadily.



5.8.6 This graph clearly shows that not only the level of cross-subsidy (difference between effective tariff and Actual CoS) reduced drastically over the years for all HT industrial consumers but also that the consumers above 40% load factor got unintentionally cross-subsidised from the year 2004-05 onwards.

Gradual reduction of cross-subsidy is within the domain of Commission's functions within provisions of the Electricity Act, 2003 and the National Tariff Policy. This unintentional sudden reduction of cross-subsidy could not be corrected by the Commission in previous years due to lack of requisite data and was inevitable in the current year as the costs have further gone up. Ideally, the corrections should have been applied for previous years also, but considering the fact that this would lead to sudden heavy burden for past years on industrial consumers, the Commission did not carry out the same. Accordingly, the hike given by the Commission for industrial consumers in this Tariff Order cannot be said to be excessive.

5.8.7 Thus, Petitioner's contention that tariff for industry users has consistently increased and additional charges are levied from time to time is also not factually correct as has been brought out above.

5.8.8 The argument of viability of cost/revenue projections of industrial units is also not tenable as any prudent projection should have taken at least inflationary increases in tariff, which were actually not there till 2006-07, and the increase from 2003-04 to 2008-09 barely meet the inflationary increases as CPI\* has grown by 37.05% and WPI# by 34.68% in these years. In fact, the tariff has not increased since 2001-02 and the inflationary increases from 2001-02 to 2008-09 work out to 48% for CPI and 46.87% for WPI. The Commission has calculated the percentage increase in tariff by calculating billing impact on individual consumer at various load factors in the following table, which varies from 23% to 42% with reference to the tariff prevailing in 2003-04. In fact, the increase with reference to the tariff in the year 2001-02 to the year 2008-09 works out to be negative for the entire range of load factors.

Load factor	Consumption (units/kVA)	Bill at 2003-04 approved Tariffs (Rs.)			Bill as per Current Tariff Order (Rs.)					% Increase in Bills	
		Demand Charges (Rs.)	Energy Charges (Rs.)	Total (Rs.)	Demand Charges (i.a)	Demand Charges (i.b)	Energy Charges (ii)	Total with DC as Rs. 150 /kVA(I.a)	Total with DC as Rs. 200 /kVA(II.b)	With DC as Rs. 150 /kVA(I.a)	With DC as Rs. 200 /kVA(I.b)
10%	72	125	137	262	150	200	173	323	373	23%	42%
20%	144	125	274	399	150	200	346	496	546	24%	37%
30%	216	125	410	535	150	200	518	668	718	25%	34%

40%	288	125	547	672	150	200	691	841	891	25%	33%
50%	360	125	684	809	150	200	864	1,014	1,064	25%	32%
60%	432	125	821	946	150	200	1,145	1,295	1,345	37%	42%
70%	504	125	958	1,083	150	200	1,336	1,486	1,536	37%	42%
80%	576	125	1,094	1,219	150	200	1,526	1,676	1,726	37%	42%
90%	648	125	1,231	1,356	150	200	1,717	1,867	1,917	38%	41%
100%	720	125	1,368	1,493	150	200	1,908	2,058	2,108	38%	41%

\* Upto November 2008, Source – Labour Bureau

#Upto October 2008, Source – Office of Economic Advisor to GoI

5.8.9 The Petitioner has tried to justify that its claim by saying that there has not been any increase for other categories of consumers at the cost of industrial consumers. In this regard, it may be noted that the surplus available with the licensee could have been distributed among various categories of consumers maintaining gradual reduction trajectory of the cross-subsidy from industrial consumer to reach 20% in 2010-11, which might have resulted in relief to other categories of consumers. However, the Commission passed on the benefit of a part of the surplus to all consumers by adjusting it in the ARR for 2007-08, which has therefore been passed on to industrial consumers as well. In fact, by introduction of fixed charges and corrections in cross-subsidy levels in other categories, their average tariffs have increased from 7% to 32%, including that of domestic category, against overall increase of only 23.15% for industries as brought out below (based on Table 7.20 and Table 8.14 of the Current Tariff Order):

S.No.	Category	2008-09	2008-09	% Increase
		Revenue at Existing tariff	Revenue at Approved Tariff	
		(Rs. Crore)	(Rs. Crore)	
1	Domestic	255.40	278.59	9.08%
3	Non-domestic, incl Commercial	214.31	230.90	7.74%
4	Public Lamps	11.70	14.00	19.66%
5	PTW/GIS	38.96	43.74	12.27%
7	Public Water Works	60.35	80.11	32.74%
8	Industrial Consumers	714.12	879.46	23.15%
9	Mixed Load	18.32	20.01	9.22%
10	Railway Traction	4.29	5.61	30.77%
	<b>TOTAL</b>	<b>1,317.45</b>	<b>1,552.42</b>	<b>17.84%</b>

5.8.10 The Commission has prepared graphs showing comparison of the effective tariffs for HT Industries at 11 kV, 33 kV and 132 kV and above (taking effect of load factor and voltage rebates available) in the State of Uttarakhand and other States like HP, Delhi, Maharashtra, MP, UP, AP, Punjab and Rajasthan. These graphs are available at **Annexure 4**. It may be seen that the tariffs in

Uttarakhand are lowest and comparable to HP for HT Industries.

5.8.11 The Commission had worked out the level of cross-subsidies for cross-subsidising categories with revenues at approved tariffs (Table 8.14 of the Tariff Order) and the same is presented in the following Table:

Category	Consumption	Approved Revenue	Average Tariff	Average CoS	Cross subsidy	% Cross Subsidy
	(MU)	(Rs. Crore)	(Rs./kWh)	(Rs./kWh)	(Rs./kWh)	(%)
1) LT Industries	199.12	68.25	3.43	3.06	0.37	12.15%
2)(a) HT Industries at normal tariff-	2,261.27	738.95	3.27	3.06	0.21	6.93%
(b) Peak/off peak hour-net revenue		22.85	0.10	-	0.10	3.31%
(c) Continuous Supply Surcharge		49.41	0.22	-	0.22	7.15%
(d) Sub-total - HT Industries	2,261.27	811.21	3.59	3.06	0.53	17.38%
3) Others	618.45	236.51	3.82	3.06	0.77	25.13%
<b>Total</b>	<b>3,078.84</b>	<b>1,115.97</b>	<b>3.62</b>	<b>3.06</b>	<b>0.57</b>	<b>18.60%</b>

5.8.12 Thus, in the impugned Tariff Order, the cross-subsidy envisaged from HT industrial consumers has been only 17.38%, which is within the ceiling of 20% stipulated in the Tariff Policy to be attained till 2010-11. For other categories also the cross-subsidies have been maintained at reasonable levels. The Commission is well aware of its responsibility to comply with law and is endeavouring to bring the cross-subsidy within the ceilings stipulated under the law.

5.8.13 The Commission would also like to point out that the levels of cross-subsidies (in Rs./kWh) in the State of Uttarakhand are still very low for HT Industries as is evident from the graphs given at **Annexure 5**.

### **C: Maintainability**

5.8.14 There is no error apparent or new evidence with respect to issue of cross-subsidy raised by the Petitioner and hence the issue is not admissible for review.

## **5.9 Treatment of surplus with UPCL**

### **A: Commission's View**

5.9.1 The Commission would like to reiterate the approach adopted for treatment

of surplus in the Tariff Order:

- The Commission taking into consideration **severe tariff shock** to the consumers, if the entire revenue gap for FY 2007-08 and FY 2008-09 would have been allowed to be recovered during the period March 2008 to March 2009, has decided to utilize the surplus to the extent of Rs. 127.07 Crore to meet the uncovered gap of 2007-08.
- Considering the **uncertainty of the impact of finalisation of transfer scheme** and related issues on ARR for previous years the Commission had decided to leave the balance surplus of Rs. 110.70 Crore to take care of the impact of finalisation of transfer scheme on ARR for previous years to avoid any tariff shock to consumers in future years.

5.9.2 The Commission had estimated the net surplus available with UPCL to be Rs. 333.82 Crore. Out of this surplus the Commission had considered the financing of Rs. 96.05 Crore as utilized towards creation of fixed assets leaving the net surplus of Rs. 237.77 Crore. This was done to avoid the burden of servicing costs for loans and equity on consumer tariffs, if the assets were financed through normal financing with 70:30 norm. This approach ensured that consumers are benefited by not only getting lower tariffs but also better and reliable supply by making funds available to utility for system improvement. Thus, utilization of this part of surplus in fixed assets has been indirectly passed on to the all the consumers equitably. The Commission would also like to clarify that the quantum of surplus now utilised is not separate from the Network Development Fund (NDF) created in Tariff Order dated 12.7.2006, but the NDF has been reduced to Rs. 96.05 Crore in the Current Tariff Order after truing up the earlier figure of surplus to Rs. 333.82 Crore upto 31.3.2007.

5.9.3 Although UPCL had submitted that the surplus, if any, upto March 31, 2007 may not be adjusted against the ARR of the future years pending finalization of the Transfer Scheme and resolution of the issues related to it, yet the

Commission felt that if the surplus was not used for bridging the estimated revenue gap of 2007-08 and 2008-09, the tariff increase required to meet the gap of two years i.e. 2007-08 and 2008-09 in 13 months period i.e. March 2008 to March 2009 would lead to a severe tariff shock to the consumers. At the same time, as the impact of finalisation of transfer scheme and related issues on ARR for previous years was not known, the Commission felt it preferable to leave certain portion of net surplus at the end of 2006-07 to take care of the impact of finalisation of transfer scheme on ARR for previous years. In view of the above, the Commission decided to utilize the surplus only to the extent of Rs. 127.07 Crore to meet the uncovered gap of 2007-08 rather than passing the entire surplus to the consumers, so that the consumers are not burdened again when the liability for transfer scheme arises. However, the Commission has stipulated in the Order that it would consider the utilization of balance surplus of Rs. 110.70 Crore in future years ARR including the impact of finalisation of transfer scheme on ARR for previous years. In this regard, the Commission would like to highlight the provision of Regulation 7 of the UERC (Terms and Conditions for Truing Up of Tariffs) Regulations, 2008, which empowers the Commission to utilize the surplus for making provision of tariff control reserve. The relevant extract is reproduced below:

*"7. Contingency Reserve*

*(1) The consumer share of the gains in controllable items shall be treated as and transferred to a contingency reserve/regulatory liability to be used for maintaining stability in consumer Tariffs, if deemed appropriate by the Commission."*

**B: Maintainability**

5.9.4 In view of the above, the Commission would like to state here that the Commission has not erred in the treatment of Surplus and has primarily considered consumers interest while dealing with the issue, and hence the issue is not admissible for review.

**5.10 Abolition/Reduction of Rebate for availing supply at higher voltage**

### **A: Petitioner's Submission**

5.10.1 The Petitioner submitted that the Commission in the impugned Order has abolished and/or reduced the rebate enjoyed by the industrial consumers which has monetary consequences. The Petitioner also submitted that the Commission should allow the rebates at the rates specified in the previous Orders and set aside the direction contained in ARR Order for FY 2007-08 and FY 2008-09 for UPCL.

### **B: Commission's View**

5.10.2 It is to be noted that the rebate mechanism approved by the Commission in the Tariff Order for FY 2007-08 and FY 2008-09 is in line with Tariff Orders for earlier years i.e., FY 2003-04 and FY 2005-06 which was never challenged or questioned by the Petitioner or any other stakeholder. This mechanism is based on rebates applicable to both demand as well as energy charges and is designed to induce the consumers above 100 BHP/88 kVA for taking supply at 132 kV and above. As per the prevailing norms, for consumers above 88 kVA and upto 3 MVA the connection is required to be released not below a voltage of 11 kV. Similarly, all loads above 3 MVA and upto 10 MVA are necessarily to be released at or above 33 kV. This is purely a technical requirement as was brought out in Current Tariff Order in Para 3.29.15:

*"The Commission would like to clarify that specification of base voltage is based on system's technical requirement and not on the actual voltage of use for end equipment. Techno-economically, a load of 1000 kVA cannot be supplied at 400 Volts. Similarly, load exceeding 3000 kVA cannot be techno-economically supplied at 11 kV. Accordingly, considering the technical requirements of the system, the Commission has revised the base voltage for some of the categories, which have been specified in the revised Rate Schedule."*

5.10.3 In an attempt to present the rebate mechanism in simpler and Tabular form, the rebate mechanism was linked to energy charges in the Tariff Order FY 2006-07 dated July 12, 2006. However, an unintended benefit was passed on to consumers availing supply at 33 kV and above through this Order that was

not existing earlier. The Commission, therefore, restored the rebate mechanism applicable till FY 2006-07. Since the rebate is now on both energy as well as demand charges, the lower rebate of 2.5% available at 132 kV to certain extent compensates for 5% rebate only on energy charges earlier. For some consumers, it may lead to more rebate in absolute terms and for others less depending on the consumption profile of the consumers. The rebate cannot be, therefore, said to have been reduced.

5.10.4 The Commission has already pointed out that as per existing regulations, pending availability of voltage-wise information, the Commission is to be guided by the average cost of supply irrespective of supply voltage. The surcharge/rebate mechanism presently available in the tariff can at best be construed as the incentive/disincentive mechanism for availing supply at a particular voltage for a particular load. Thus, the Commission is of the view that the rebate cannot be claimed as matter of right by the consumers till voltage-wise tariffs are devised by the Commission based voltage-wise cost data supplied by the licensee. It is, therefore, Commission's prerogative to decide on the quantum and eligibility for rebate depending upon necessity in each case. Further, for balancing the ARR and revenue from tariffs, the amount of rebate given to a particular consumer category needs to be recovered from all the categories including the category to which such rebate is given.

5.10.5 As brought out above, in the absence of voltage wise data, the Commission is not determining tariff based on cost to supply. However, that the Commission also notes that allowing a rebate as incentive for migrating to higher voltage would help the system as well as the consumers through reduced losses. The Commission would take a view on admissibility of this claim in the next ARR after considering the actual data from field. **The Commission, therefore, directs UPCL to submit data on parameters of lines and substation equipments in UPCL's distribution system being used for supply to HT consumers and also the data on actual losses for deciding the quantum of rebate for such savings latest by 29.02.2009.**

### **C: Maintainability**

5.10.6 Thus, as there is no error apparent on this issue raised by the Petitioner, the issue is not admissible for review.

## **5.11 Reduction in Peak Hours**

### **A: Commission's View**

5.11.1 The Commission introduced ToD tariffs in the State in its Order dated 08.09.2003 for reasons given in Para 6.4.6.2 of the said Order. In Para 6.4.6.2.1 of this Order, the Commission has discussed in detail the concept of ToD metering and its various advantages. The objective of introducing ToD tariff has also been clearly stated as follows:

*"...In other words, the objective of ToD metering is to shift the time of peak demand, thereby flattening the load curve and making the diversity factor close to unity."*

[Para 6.4.6.2.1]

*"Some of the stakeholders including the petitioner have recommended the introduction of Time of Day (ToD) metering. Due to aforesaid reasons the Commission feels a need to incentivise off-peak consumption, while disincentivising peak hour consumption for bulk consumers, so that such consumers are motivated to shift from peak to off-peak hours...."*

[Para 6.4.6.2.2]

5.11.2 The Commission decided the duration of peak, off-peak and normal hours based on the data provided by UPCL as brought out in Para 6.4.6.2.1 of the said Order:

*"The Commission has examined the load flow curves as made available by the SLDC that indicate a predominant evening system peak throughout the year....."*

*"....The load requirement of consumers in Uttaranchal, as depicted in the daily load curves submitted by the Petitioner, varies at different time of the day."*

5.11.3 Further, during the tariff proceedings for the year 2005-06, the Commission had received the following suggestion from the industries, as observed in Para 3.1.13 of the Commission's Order dated 25.04.2005:

*"The industrial consumers have submitted that the timing of application of the ToD tariff needs to be reviewed by the Commission as the pattern changes drastically during summer and winter months....."*

5.11.4 The Commission, accordingly, examined the data on hourly demand and based on its analysis abolished the morning peak hours during summers. The Commission also fine tuned the timings of peak hours based on this analysis. Relevant extract of the reasoning as given in Para 7.3.1 of the Order dated 25.04.2005 is being reproduced below:

*".....Further, the Commission has examined the latest available position of peak hours from the load curves obtained from UPCL. It was noted that there is no morning peak in summers and, accordingly, the Commission has fixed the following hours and rebate/surcharge in energy charges for different time of day use."*

5.11.5 The status quo as far as timings of peak and off peak hours is concerned, was maintained in tariff order dated 12.07.2006, which continued to be in vogue till the issuance of the Current Tariff Order on 18.03.2008.

5.11.6 The peak hours approved by the Commission in its earlier tariff orders were not challenged by the Petitioner or for that matter any other industry till the

issuance of tariff order dated 18.03.2008. The Commission has applied the same duration for peak hour in its Order dated 18.03.2008 which has now been subjected to review. The peak hours continued by the Commission in its Tariff Orders have been based on detailed analysis of data available with the Commission, which is regularly submitted by SLDC, and availability of such data has already been brought out in the above extracts of tariff orders. Therefore, the Petitioner's contention that there is no cogent reason to treat 8 hours a day as peak hours is baseless. In fact, the morning peak during winters is more pronounced than the evening peak as is brought out by the load curves given in **Annexure 6** for sample days of previous year and current year. The winter and summer load curves in this Annexure also justify the duration of peak and off-peak hours in these seasons.

5.11.7 It is also amply clear from the above extracts that the Commission had introduced ToD tariffs for helping the system through flattening the load curve by inducing the consumers to only shift their consumption using price incentive/disincentives mechanism. Since the peaks are still present in the load curves even with 25% peak hour surcharge, the position would worsen if the peak hour surcharge is reduced as demanded by the Petitioner. In fact, due to existence of these peaks, UPCL had proposed upward revision of peak hour surcharge for inducing the consumers to shift their load, as brought out in Current Tariff Order at Para 3.4.5.2:

*"UPCL has determined time differential tariffs considering the load curve of the state. Despite existing rates for peak hours, the consumption pattern has not been moderated to a desirable extent. The peak hours have been determined considering the period when the frequency of the grid has been observed to be low in comparison to other periods in the day. So it is in the interest of grid and Transmission & Distribution system to discourage the consumption during this period. Moreover the Petitioner is required to buy power at high rate during this period. Keeping the above in view, higher rate has been proposed during the peak hours."*

5.11.8 Comparison made by the Petitioner regarding the peak hours prevalent in

other States does not have any merit as the conditions differ from State to State. Most of the States in the country are having peak hours ranging from 3-5 hours. The Commission had considered this objection, and UPCL's proposal, and after analysis of data available with it had observed in the Current Tariff Order at Para 8.3.4 that:

*"Several respondents submitted that morning peak hours should be abolished and there should be only evening peak hours during which the peak hour surcharge should be levied as applicable in most of the other States.*

*The Commission is unable to accept his demand of consumers on the basis of peak hours followed in other States. 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."*

#### **B: Maintainability**

5.11.9 Thus, as there is no error apparent on this issue raised by the Petitioner, the issue is not admissible for review.

#### **5.12 Other Issues**

5.12.1 The issue of refund of excess money realized for one month on account of continuous supply charges does not pertain to this year's tariff order and has been decided by the Commission in its order dated 24.07.2008.

5.12.2 The issue of receiving security deposit in the form of bank guarantee/letter of credit is also related to UERC (Supply Code) Regulations, 2007 & hence not within the scope of Review Petition.

5.12.3 Reduction in electricity duty is the prerogative of the State Government and is outside the jurisdiction of the Commission.

With this Order, the Commission disposes of KGCCI's Petition No. 03 of 2008

**(Anand Kumar)**  
**Member**

**(V.J. Talwar)**  
**Chairman**

**Annexure 1: List of Respondents to Review Petition of KGCCI**

Sl. No.	Name	Designation	Organization	Address
1.	Shri Jitendra Kumar	Managing Director	M/s Sidharth Papers Ltd.	7 <sup>th</sup> KM, Moradabad Road, Kashipur-244713, U.S. Nagar
2.	Shri Sushil Kumar	Executive Director	M/s Sidharth Papers Ltd.	Unit-2(Board Division) 7 <sup>th</sup> KM, Moradabad Road, Kashipur-244713, U.S. Nagar
3.	Shri R.C. Rastogi	Chairman & Managing Director	M/s Khatema Fibres Ltd.	UPSIDC Industrial Area, Khatima-262308, U.S. Nagar
4.	Shri Vineet Kumar	Director	M/s Siddeshwari Paper Udyog Ltd.	7 <sup>th</sup> Km. Moradabad Road, Kashipur-244713, U.S. Nagar
5.	Shri Vikas Jain	Director	M/s Vishvakarma Paper & Boards Ltd.	Works & Regd. Office : 4.5 Km., Ramnagar Road, Kashipur-244713, U.S. Nagar
6.	Shri Jasbir Singh Goraya	Managing Director	M/s Banwari Paper Mills Ltd.	4th Km. Stone, Ramnagar Road, Kashipur-244713, U.S. Nagar
7.	Shri Harjeet Singh Sahota	Managing Director	M/s Sahota Papers Ltd.	9/398, Moradabad Road, Opp-KPC School, Kashipur, U.S. Nagar-244713
8.		Director	M/s Shree Shyam Pulp & Board Mills Ltd.	5 Km., Moradabad Road, Kashipur, U.S. Nagar-244713
9.		Director	M/s M/s PSB Papers Ltd.	Beria Road, Bazpur-262401, U.S. Nagar
10.	Shri R.K. Atoliya	Chief Electrical Distribution Engineer	Northern Railway	Hd. Qrs. Office, Baroda House, New Delhi-110001
11.		Authorised Signatory/Unit Head	M/s Micro Turners	Unit-V, Plot No. 13, Sector-10, I.I.E., Pant Nagar, U.S. Nagar-263153
12.	Shri H.G. Seshadri	AGM-Manufacturing	M/s Voltas Ltd.	(UPBG, Unit-1), Plot No. 2 to 5, Sector 8, IIE Pantnagar, Rudrapur-263153, U.S. Nagar
13.	Shri K.K. Katyal	Managing Director	M/s FIBREMARX Papers Ltd.	7th Km. Stone, Kashipur Road, Vill. Haldua Sahu, P.O. Shivrajpur, U.S. Nagar-244713
14.		Partner	M/s Uday Paper Mills	Vill. & P.O. Vikrampur, Rana Farm, Bazpur, U.S. Nagar
15.		Authorised Signatory/Unit Head	M/s Riddhi Siddhi Gluco Biols Ltd.	Plot No. 12, Sector-9, IIE, Pantnagar, U.S. Nagar

Sl. No.	Name	Designation	Organization	Address
16.	Shri Manish Kumar	Plant Manager	M/s Bisleri International Pvt. Ltd.	Plot No. 55&65, Sector-4, IIE, Pant Nagar, Rudrapur, U.S. Nagar
17.	Shri V.V. Joshi	AGM-CPED	M/s Tata Motors Ltd.	Plot No. 1, Sector 11, Integrated Industrial Estate, SIDCUL, Pantnagar-263153, U.S. Nagar
18.	Shri P.M. Dindorkar	Plant Head	M/s Bajaj Distinctly Ahead	Bajaj Auto Limited, Plot-2, Sec.-10, IIE, Sidcul, Rudrapur, U.S. Nagar
19.	Shri Rajeev Ghai	Member	State Advisory Committee, UERC	Chamber House, Industrial Esatate, Bazpur Road, Kashipur, U.S. Nagar
20.	Shri Lakhiram Singh Sajwan	Jila Mahamantri	Jila Udyog Sangh	PO-Dunda, Distt. Uttarkashi
21.	Shri S.N. Karan		M/s The Bombay Burmah Trading Corporation Ltd.	Plot No-23 to 26 & 46 to 48, Sector-5, IIE, Pantnagar, Rudrapur-263153, U.S. Nagar
22.	Shri Sunil Jain	Authorized Signatory	M/s Minda Industries Ltd.	Plot No. 5, Sector-10, IIE, Pantnagar, U.S. Nagar-263153
23.	Shri Sharat Goel	Secretary General	M/s Kumaun Garhwal Chamber of Commerce & Industry	Chamber House, Industrial Esatate, Bazpur Road, Kashipur, U.S. Nagar
24.	Shri Rajiv Kumar Agrawal	Consumer Representative	-	32, Inder Road, Dalanwala, Dehradun
25.	Brig. K. G. Behl	President	All India Consumers Council (AICC), Uttaranchal	8-A, Nemi Road, Dehradun-248001
26.	Shri S.K. Nair	Plant Head	M/s Badve Engineering Ltd.	Plot No. 15, Sector No. 10, Integrated Industrial Estate, IIE, Pantnagar, U.S. Nagar-263145
27.	Shri P.B.S. Rawat	Unit Head	M/s Roop Polymers Ltd.	Plot No. 19, Sector 9, IIE, Sidcul, Pantnagar, U.S. Nagar
28.	Shri R.K. Gupta	General Manager	M/s Gujarat Ambuja Exports Ltd.	C-50, ELDECO, Sidcul, Industrial Park, Sitarganj, U.S. Nagar-262405
29.	Shri Pankaj Gupta	President	M/s Industrial Association of Uttarakhand	Mohabewala Industrial Area, Dehradun-248110
30.		Authorised Signatory/Unit Head	M/s Pioneer Polyleathers Pvt. Ltd.	Plot No. 74, 75 & 76, Sector-IV, IIE, Sidcul, Pantnagar(Rudrapur), U.S. Nagar
31.		All Members	Vidyut Shakti Oopbhokta Sangh	Vidyut Shakti Oopbhokta Sangh, Pachawadon

**Annexure 2: List of Participants in the Public Hearing at Rudrapur on 20.11.2008**

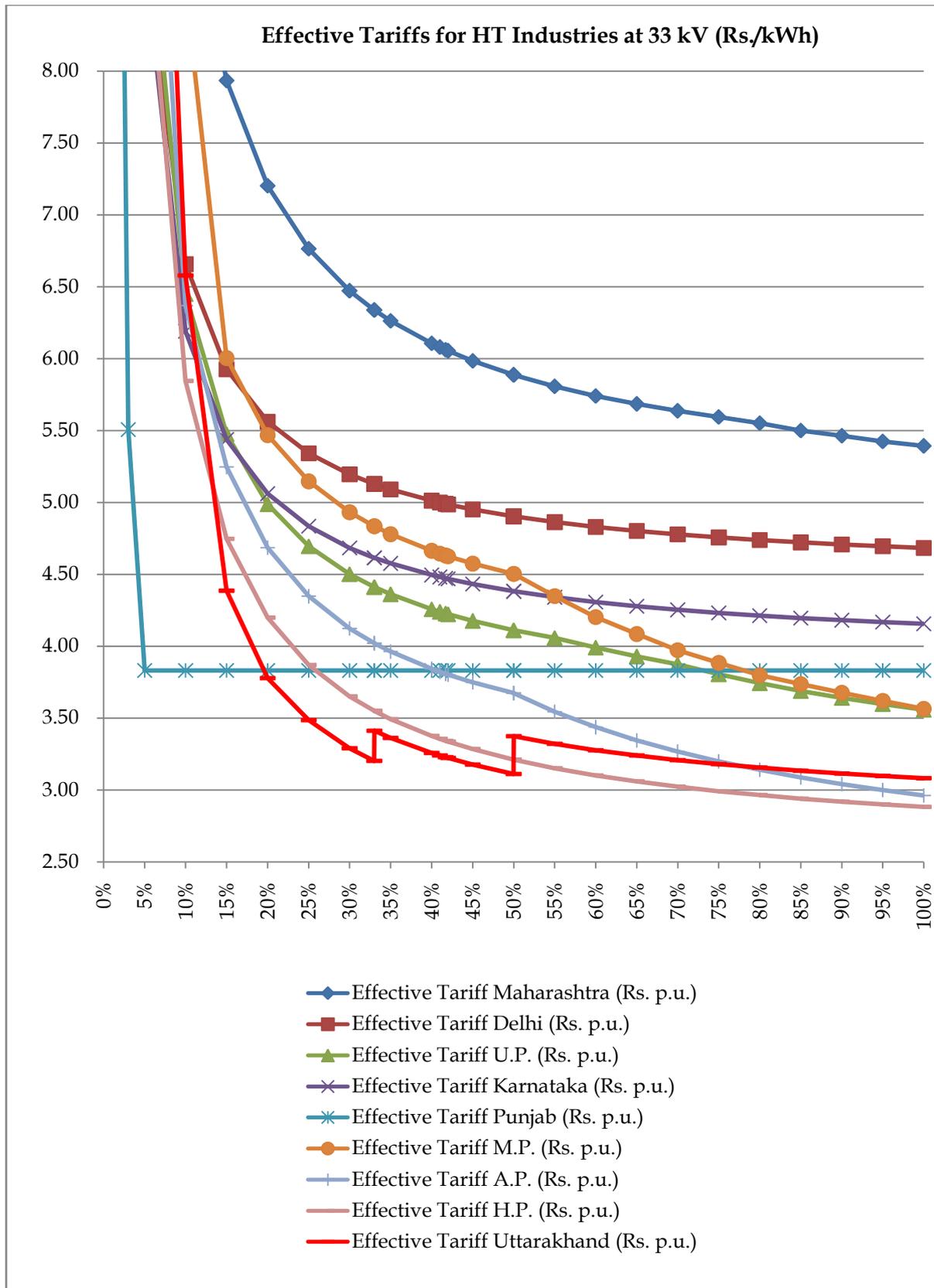
Sl. No.	Name	Designation	Organization	Address
1.	Shri V.V. Joshi	AGM, CPD	M/s Tata Motors Ltd.	Plot No. 1, Sector 11, IIE, Sidcul, Pantnagar-263145, U.S. Nagar
2.	Shri R.K. Singh	Sr. Manager, CPD	M/s Tata Motors Ltd.	Plot No. 1, Sector 11, IIE, Sidcul, Pantnagar-263145, U.S. Nagar
3.	Shri Rajeev Ghai	President	M/s Kumaun Garhwal Chamber of Commerce & Industry	Chamber House, Industrial Estate, Bazpur Road, Kashipur, U.S. Nagar
4.	Sh. Jitendra Kumar	Chairman	Paper Unit Chapter, KGCCI	Chamber House, Industrial Estate, Bazpur Road, Kashipur, Udhamsingh Nagar
5.	Shri Ashok Bansal	Sr. Vice President	M/s Kumaun Garhwal Chamber of Commerce & Industry	Chamber House, Industrial Estate, Bazpur Road, Kashipur, U.S. Nagar
6.	Shri C.K. Arora		M/s Kumaun Garhwal Chamber of Commerce & Industry	Chamber House, Industrial Estate, Bazpur Road, Kashipur, U.S. Nagar
7.	Dr. N.P. Singh		M/s Kumaun Garhwal Chamber of Commerce & Industry	Chamber House, Industrial Estate, Bazpur Road, Kashipur, U.S. Nagar
8.	Shri Atul Kr. Bansal		M/s Aurangabad Electricals Ltd.	P. No. 6, Sector 10, Sidcul, Pantnagar, U.S. Nagar
9.	Shri P.S. Khurana		M/s Endurance Tech Pvt. Ltd.	Plot No. 3, Sector-10, IIE, Pantnagar, Rudrapur, U.S. Nagar
10.	Shri H.K. Kohli		M/s Varroc Engg. Pvt. Ltd.	Plot No. 20, Sector-9, Sidcul, Pantnagar, U.S. Nagar
11.	Shri Vinod Vyas		M/s Endurance Tech Pvt. Ltd.	Plot No. 3, Sector-10, IIE, Pantnagar, Rudrapur, U.S. Nagar
12.	Shri S. Tiwari		M/s Vamz Aurangabad Electricals	SIDCUL, Pantnagar, U.S. Nagar
13.	Shri Abhijeet Singh		M/s Vamz Aurangabad Electricals	SIDCUL, Pantnagar, U.S. Nagar
14.	Shri D.R. Mehetre		M/s Badve Engg. Ltd.	Sector 10, Plot-15, SIDCUL, Pantnagar, U.S. Nagar
15.	Shri S. Bhushan		M/s Badve Engg. Ltd.	Plot No. 15, Sector No. 10, Integrated Industrial Estate, IIE, Pantnagar, U.S. Nagar-263145
16.	Shri S.K. Mittal		M/s Salasar Pipes	Plot No. 35, Sector - 6, IIE, Pantnagar, Rudrapur, Udhamsingh Nagar

Sl. No.	Name	Designation	Organization	Address
17.	Shri Manish Yadav		M/s Advik Hi Tech	SIDCUL, Pantnagar, U.S. Nagar
18.	Shri Ashok Kumar Bajaj		M/s. Radiant Polymers	SIDCUL, Pantnagar, U.S. Nagar
19.	Shri Pavan Kumar		M/s S.P. Solvent Ltd.	Udhamsingh Nagar
20.	Shri Raman Sibal		M/s L.B. Electro-Plating	
21.	Shri P.K. Mishra		M/s BST Textile Mills Pvt. Ltd.	Plot-9, Sector-9, Sidcul, Pantnagar, Rudrapur, U.S. Nagar-263153
22.	Shri S.K. Garg		M/s BST Textile Mills Pvt. Ltd.	Plot-9, Sector-9, Sidcul, Pantnagar, Rudrapur, U.S. Nagar-263153
23.	Shri Amit		M/s Minda Corporation Ltd.	
24.	Shri Rajeev Anand		M/s Nainital Alu. Udg. & Gold	
25.	Shri G.S. Dangi		M/s Thai Summit Neel Auto Ltd.	Plot No-4, Sector-10, Sidcul, Pantnagar, U.S. Nagar
26.	Shri G.V. Dixit		M/s Thai Summit Neel Auto Ltd.	Plot No-4, Sector-10, Sidcul, Pantnagar, U.S. Nagar
27.	Shri Prashant Khandelwal		M/s Ganesh Polytex Ltd.	Plot No. 6, Sector-2, Sidcul, IIE, Pantnagar, Rudrapur, U.S. Nagar
28.	Shri Shamsher		M/s Bajaj Auto	Plot No. 2, Sector-10, Sidcul, IIE, Pantnagar, U.S. Nagar
29.	Shri C.S. Mehta		M/s Sansera Engineering (P) Ltd.	SIDCUL, Pantnagar, U.S. Nagar
30.	Shri Sunil Jain		M/s. Minda Ind. Ltd.	Plot No. 5, Sector 10, Pant Nagar

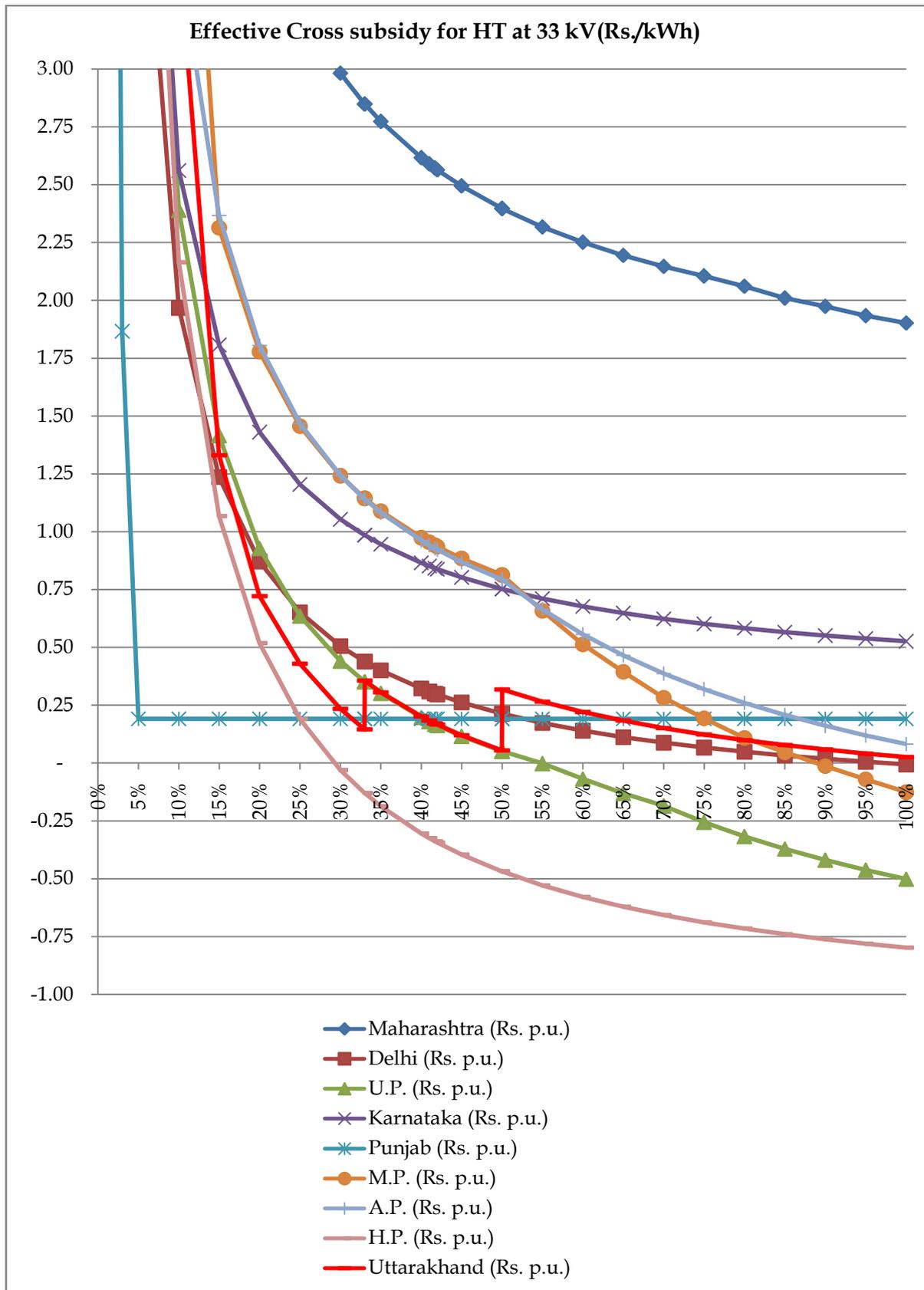
**Annexure 3: List of Participants in the Public Hearing at Dehradun on 25.11.2008**

Sl. No.	Name	Designation	Organization	Address
1.	Shri Rajiv Kumar Agrawal	Consumer Representative	-	32, Inder Road, Dalanwala, Dehradun
2.	Shri Pankaj Gupta	President	Industrial Association of Uttarakhand	C/o Satya Industries, Mohabbewala Industrial Area, Dehradun-248110
3.	Shri Rajeev Ghai	President	M/s Kumaun Garhwal Chamber of Commerce & Industry	Chamber House, Industrial Esatate, Bazpur Road, Kashipur, U.S. Nagar
4.	Shri R.K. Singh	Sr. Manager, CPD	M/s Tata Motors Ltd.	Plot No. 1, Sector 11, IIE, Sidcul, Pantnagar-263145, U.S. Nagar
5.	Brig. K. G. Behl	President	All India Consumers Council (AICC), Uttaranchal	8-A, Nemi Road, Dehradun-248001
6.	Sh. D.K. Shukla		All India Consumers Council (AICC), Uttaranchal	8-A, Nemi Road, Dehradun-248001

### Annexure 4: Comparative Chart of Effective Tariffs in other States at different Load Factors



### Annexure 5: Comparative Chart of Effective Cross-subsidies in other States at different Load Factors



### Annexure 6: Daily Load Curves for previous and Current Financial Years

