

## **Before**

### **UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

#### **In the Matter of:**

Shri Ranjit Singh and Others

..... Petitioners

Vs.

1. Uttarakhand Power Corporation Limited, Dehradun, Uttarakhand
2. General Manager, UPCL Kumaun, Haldwani, Uttarakhand
3. Executive Engineers, EDD, UPCL, Rudrapur, Uttarakhand
4. Secretary, Government of Uttarakhand, Dehradun, Uttarakhand
5. Uttar Pradesh Power Corporation Limited, Lucknow, Uttar Pradesh..... Respondents

#### **Coram**

**Shri V J Talwar**

**Chairman**

**Shri Anand Kumar**

**Member**

**Date of Order: 1<sup>st</sup> October 2010**

#### **ORDER**

This order relates to the petition filed by Shri Ranjit Singh and others before this Commission on 27.04.2010. This filing was made by the petitioners on the direction issued by Hon'ble High Court of Uttarakhand to Uttarakhand Electricity Regulatory Commission for adjudicating upon and decides all the dispute and issue of controversy subject matter of the petition filed by Shri Ranjit Singh and others before the Hon'ble High Court. The Hon'ble Court has directed that the Uttarakhand Electricity Regulatory Commission to decide the matter after hearing the parties or their representatives and it shall be open to the Commission to take consideration all the relevant aspects including all the relevant and applicable provision of the Electricity Act, 2003.

The matter was listed and heard by the Commission on 24.05.2010. On the date of Hearing counsel for the petitioners Shri Kanwaljeet Singh, advocate and the representatives of the respondents, except the respondent at Serial Number 4, were present. The Commission passed an interim order on 25.05.2010, wherein all the parties were directed to submit their replies in writing on affidavit within 15 days of the issuance of Commission's order and directed UPCL to maintain status-quo in supplying electricity to petitioners till further orders. It was also directed to the parties to serve a copy of their reply to the petitioners who were required to file their rejoinder, if any, at least one week before the next date of hearing. The Commission also directed Uttaranchal Power Corporation Limited, the respondent company mentioned at Sl. No. 1, 2 & 3 in the respondent list, to clearly mention in its reply complete details of metering, billing, preparation of energy account and final settlement of bills related to consumers residing in the tehsil of Bilaspur in the District Rampur, Uttar Pradesh and to quote the provisions of law under which it is entitled to supply power beyond its licensed area. The Commission had fixed the next date of hearing on 10<sup>th</sup> July 2010. However on the request of the counsel the hearing was rescheduled and held on 18.08.2010.

The hearing on 18.08.2010 was attended by all the parties except respondent number 4. During the hearing, none of the respondent has filed any reply on affidavit as per the directions given in the Commission's order dated 25.05.2010, nor they were able to explain the reasons for delay. The Commission had shown its concern for non serious response from all the respondents. The Respondents have sought time to file their written reply on affidavit. The Petitioners and Respondents were apprised that as per order of Hon'ble High Court of Nainital, the matter should have been decided within a period of 03 months which was delayed for want of replies from Respondents and extension of time for hearing sought by the Petitioners. The Petitioners and Respondents have agreed to request Hon'ble High Court of Nainital for extension of time for a period of another two months.

Accordingly, Respondents were granted ten (10) days time to file their replies on affidavit after serving copy on the other parties and thereafter the Petitioners were required to file the rejoinder within fifteen (15) days with a copy to the other parties as per directions already given in the Commission's order dated 25.05.2010. Parties were also directed to co-operate with the Commission and do not seek any un-necessarily

adjournment for expeditious disposal of the matter. The matter was listed for hearing on 16.09.2010

The matter was heard on 16.09.2010, wherein all the Petitioners along with their counsel and representative of Respondents except Respondent Number 4 appeared. As per the directions given in the Commission's order dated 18.08.2010, only Respondent number 3 & 5 have submitted their replies on affidavit for which Petitioner on Serial Number 1 have submitted his counter reply. The Respondent number 5 submitted the reply on behalf of MD, UPPCL with an authorization from Director, Distribution, UPPCL vide letter number 1061/R.A.U./URC/ dated 15.09.2010. As per UERC (Conduct of Business) Regulations, 2004, only Director of the Company is authorized to file replies/rejoinders on behalf of the Company. However, to dispose-off the case expeditiously, the reply of the Executive Engineer, EDD(II), Rampur along with authorization of Director (Distribution), UPPCL is being acceded to.

On the day of hearing on 16.09.2010, respondent number 1, 2 & 4 have not submitted any reply on affidavit. However, on behalf of these Respondents, Shri A.K. Johri, Director (Operations), UPCL has revealed that they are ready to handover the consumers under petition to UPPCL as UPPCL is already doing their billing and collection. On behalf of UPPCL, Shri Arun Kumar Verma, Executive Engineer, EDD, Rampur have informed that supply to these consumers of the Petitioners can be catered from their 33/11 kV Dibdiba sub-station, in case supply is disconnected by UPCL by their Bhadaipura sub-station. However, as per copy of the letter written by Director, Distribution, UPPCL to CMD, UPPCL having reference number 425-PSDD/2010 dated 20th July 2010 earlier submitted by UPPCL has stated that the necessary sub-station infrastructure is under construction by UPPCL which is likely to be completed in 5-6 months. During the hearing, it was brought to the notice of the Commission that there are large number of consumers of industrial/agricultural/domestic/commercial categories situated at the boundary of newly bifurcated State of Uttar Pradesh which are getting supply from UPCL system, due to inadequate or no arrangement of electrical infrastructure of UPPCL to cater/continue electricity to these consumers. UPCL could not give any details about these consumers and therefore it becomes important to look into the matter as a whole for all consumers in the

vicinity of Petitioners for transfer from UPCL system to Uttar Pradesh Power Corporation Limited.

Subsequently, Uttaranchal Power Corporation Limited through its MD made submission before the Commission vide their affidavit dated 20.09.2010. In the reply, Uttaranchal Power Corporation Limited submitted that:

- (i) Erstwhile UP. State Electricity Board (UPSEB) was unbundled into U.P. Rajya Vidyut Utpadan Nigam Limited (UPRVUNL), U.P. Jal Vidyut Nigam Limited (UPJVNL) and U.P. Power Corporation limited (UPPCL) on 14.01.2000 through a transfer scheme notified by Government of Uttar Pradesh (GoUP), under the provisions of Uttar Pradesh Electricity Reforms act, 1999. Final transfer scheme in the matter was notified by GoUP vide order number 348/P-1/2001-24, dated 25.01.2001. UPPCL was a State Owned Government Company responsible for carrying out the business of transmission and distribution of electricity in the undivided State of Uttar Pradesh.
- (ii) The State of Uttarakhand was created by carving out some area of the State of Uttar Pradesh on 09.11.2000, as per the provision of Uttar Pradesh Reorganization Act, 2000 (Reorganization Act).
- (iii) Section 63 of the Reorganization Act laid down the broad principles for sharing and transfer of undertaking, assets rights and liabilities with respect to the power sector between the States of Uttarakhand & Uttar Pradesh. Section 63 (1) of the UP Reorganization Act provides that all bodies such as the UPPCL, UPJVNL, UPRVUNL and the Uttar Pradesh Electricity Regulatory Commission (UPERC) would continue to function in those areas in respect of which they were functioning, prior to the segregation, subject to the directions as might have been issued by the Central Government.
- (iv) Section 63 (4) of the Reorganization Act allowed the Government of Uttarakhand (GoU) to constitute a State Power Corporation at any time after the creation of the State. The Uttaranchal Power Corporation Limited (UPCL) was accordingly established under the provisions of the companies Act, 1956, on 12<sup>th</sup> Feb, 2001. UPCL was entrusted with the business of transmission and distribution of electricity

in the State of Uttarakhand. Based on a Memorandum of understanding dated 13<sup>th</sup> March, 2001, between the Governments of Uttarakhand and Uttar Pradesh all work pertaining to the transmission, distribution and supply of electricity in the area of Uttarakhand were transferred from UPPCL to UPCL from 1<sup>st</sup> April 2001.

- (v) Under Section 87 of the Reorganization Act, the Uttarakhand (Uttar Pradesh Electricity Reforms Act) Adaption and Modification Order 2001 was notified on January 1, 2002.
- (vi) Uttarakhand Electricity Regulatory Commission started its functioning w.e.f. 05.09.2002 and issued Distribution & Retail supply license to UPCL on 20.06.2003. This license was initial issued under the provisions of Reform Act and was notified later on under the provisions of Electricity Act, 2003. As per this license, the area of Distribution and Retail Supply of Electricity of the answering Respondent is defined as follows:

*“The area of Distribution and Retail Supply Licence shall comprise the entire State of Uttarakhand. However, for any Cantonment, Aerodrome, fortress, Arsenal, Dockyard or Camp or any building or place in occupation of the Central Government for defense purpose the license will cease to be effective to that extent if the Central Government has any objection to it any time during validity of this licence.”*

- (vii) Further, the Transmission business of the answering respondent was transferred to the newly formed GoU owned Company, i.e. Power Transmission Corporation of Uttarakhand Limited (PTCUL) through a transfer scheme notified by GoU w.e.f. 01.06.2004. This company is incorporated under the provisions of Companies Act, 1956.
- (viii) After the division of State of Uttar Pradesh and as per the provisions of Reorganization Act, consumes residing in the State of Uttar Pradesh are the consumers of UPPCL for the electricity supply to them. As these consumers were connected to the Distribution system existed in the newly formed State of Uttarakhand, they are being supplied electricity from this Distributions system in the absence of any arrangement made by GoUP so far. This supply is being done on

behalf of UPPCL. Such supply of Electricity is adjusted in the energy account of UPPCL & UPCL. The billing of these consumers is being done by UPPCL.

The Commission, before taking any decision on the petition needs to go into the details of reliefs sought by the petitioners. These are:

1. To direct UPCL (Respondent number 1) to supply electricity to agriculturists in the tehsil Bilaspur, District Rampur (Uttar Pradesh) for the same number of hours in a day as a agriculturists of Uttarakhand state are being supplied.
2. To permit the Uttaranchal Power Corporation Limited in allowing agriculturist of Bilaspur, District Rampur (Uttar Pradesh) to deposit electricity bills directly in the State of Uttarakhand in the same manner as industrial consumers getting supply from Uttaranchal Power Corporation Limited but are situated in tehsil Bilaspur, Dist: Rampur (Uttar Pradesh), are depositing.
3. To restrain the respondent from subjecting agriculturist of tehsil Bilaspur, District Rampur (Uttar Pradesh) to any hostile discrimination in the matter of supply of electricity for agriculture purpose.

In considering the above prayers one by one, the Commission would first like to take respondent UPCL's submissions on these issues. On first prayer, Uttaranchal Power Corporation Limited in its recent affidavit dated 20.09.2010 has denied the petitioner's submission that they are consumers of UPCL and submitted that after the division of Uttar Pradesh and as per the provision of Reorganization Act, the consumers residing in the State of Uttar Pradesh are consumers of Uttar Pradesh Power Corporation Limited (UPPCL) for the supply of electricity to them. They have mentioned that since these consumers were connected to the distribution system existed in the newly formed State of Uttarakhand they are being supplied from their distribution system in the absence of any arrangement made by GoUP. UPCL is supplying electricity to them on behalf of UPPCL. Such supply of electricity is adjusted in the energy account of UPPCL and UPCL. It has also brought to the notice of the Commission that petitioners being consumers of UPPCL their supply is being regulated in the same manner as UP-SLDC (State load dispatch centre) is doing for remaining

consumers in District Rampur, UP. Uttaranchal Power Corporation Limited further submitted that the billing of these consumers is being done by UPPCL.

On the second prayer, Uttaranchal Power Corporation Limited further replied about the present supply arrangement made to certain industries which are situated in Uttar Pradesh, but getting supply and bills from UPCL, that in the absence of supply arrangement made by GoUP, UPCL is supplying electricity to such industries. However, the billing of all such consumers has already been transferred to distribution utility of Uttar Pradesh. As far as hours of supply to the consumers located in Uttar Pradesh is concerned, UPCL pointed out that the power to such consumers of State of Uttar Pradesh connected to their system is being made available as per the schedule applicable in the State of Uttar Pradesh.

Finally on the third prayer, UPCL submitted that since UPCL was given the distribution and retail supply license on 20.06.2003 under the provisions of Reforms Act, 2001 and later was modified as per provisions of Electricity Act, 2003. As per license conditions the area of distribution and retail supply of electricity of UPCL is as follow:

*“The area of Distribution and Retail Supply License shall comprise the entire State of Uttarakhand. However, for any Cantonment, Aerodrome, fortress, Arsenal, Dockyard or Camp or any building or place in occupation of the Central Government for defense purpose the license will cease to be effective to that extent if the Central Government has any objection to it at any time during validity of this license.”*

UPCL has therefore, submitted that as per the conditions of the license UPCL can only supply electricity to the consumers of the State of Uttarakhand and requested to the Commission to direct UPPCL to ensure supply electricity to their own distribution system to the petitioners.

Similarly Uttar Pradesh Power Corporation Limited, the respondent at serial number 5 through its Executive Engineers, Distribution Division (II) District Rampur informed the Commission through its affidavit that the supply to petitioners can be provided through their distribution network emanating from the 33/11 KV sub-station

Dibdiba situated in Uttar Pradesh. UPPCL through its Director (Distribution) has authorized Executive Engineers to submit the affidavit to the Commission.

### **Commission's View**

The Commission has examined all major issues related to this petition before deciding the petition:

#### **1. Terms and Conditions of License to supply**

Before taking a view while deciding the jurisdiction of State's Licensee, following sections of the prevailing law in the country Electricity Act, 2003 shall be read, which are as follows:

a) Section 43 of Electricity Act, 2003 speaks about the duties of the licensee to supply electricity. It says " Every distribution license, shall on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply."

b) Section 2 of Electricity Act, 2003 provides following definitions:

(3) Area of supply - "area of supply" means the area within which a distribution licensee is authorized by his license to supply electricity.

(38) "License" means a license granted under section 14.

(39) "Licensee" means a person who has been granted a license under section 14.

(15) "consumer" means any person who is supplied with electricity for his own use by the licensee....

(17) "distribution licensee" means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

c) As per section 12 of the Electricity Act, 2003 " No person shall-

- i) Transmit electricity: or
- ii) Distribute electricity: or
- iii) Undertake trading in electricity.

Unless he is authorized to do so by a license issued under section 14 or is exempt under section 13"

d) Section 13 speaks of Power to exempt

"The Appropriate Commission may on the recommendations, of the Appropriate Government, in accordance with the national policy formulated under section 5 and in the public interest direct, by notification that subject to such conditions and restrictions, if any,



and for such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users' association, co-operative societies, non-government organizations, or franchisees."

e) Section 14 is about Grant of license

"The Appropriate Commission may, on an application made to it under section 15, grant a license to any person-

- i) To transmit electricity as a transmission license; or
- ii) To distribute electricity as a distribution license; or
- iii) To undertake trading in electricity as an electricity trader,

In any area as may be specified in the license." ...

The Commission after beginning its functions in the State of Uttarakhand issued license of distribution and retail supply to UPCL on 20.06.2003 as per the provision of Uttaranchal (Uttar Pradesh Electricity Reforms Act) Adoption and modification order, 2001. Subsequently, after coming of Electricity Act, 2003, the Commission has modified some terms and conditions of UPCL's license inconsonance with the Act and issued revised terms and conditions on 03.06.2004. The Commission has authorized UPCL through the license for distribution and retail supply of electricity to supply electricity to any premises in the area of supply set out in the schedule 1 of the license. As per the definition given in the license –“the area of supply” - means the geographical area referred to in Schedule I of the license within which any activity authorized by the license is allowed.

schedule 1 of the License is being reproduced:

***“Schedule 1: Area of Distribution and Retail Supply***

*The Area of Distribution and Retail Supply shall comprise the entire State of Uttarakhand. However, for any Cantonment, Aerodrome, fortress, Arsenal, Dockyard or Camp or any building or place in occupation of the Central Government for defense purposes the licence will cease to be effective to that extent if the Central Government has any objection to it at any time during validity of this Licence.”*

Further, under license condition 5.2 (b) the licensees, without the approval of the Commission, cannot sale electricity to any person other than pursuant to the license issued to them.

In the license, the area of supply for Uttaranchal Power Corporation Limited is the entire State of Uttarakhand and they are authorized to sale electricity to the consumers of the Uttarakhand only.

Keeping in mind the above provisions of law the Commission see no reasons to accept that consumers of area which is not specified in the license can be given electricity from the licensee who is only authorized for supplying electricity to an area specified in the given license. So it is clear that Uttaranchal Power Corporation Limited is authorized to supply electricity to their consumers residing in the State of Uttarakhand. Similarly, the consumers residing in Uttar Pradesh shall get electricity from the distribution licensee of the Uttar Pradesh i.e. UPPCL.

## **2. Discrimination among Petitioners and other similarly placed consumers**

From the above, it is clear that UPCL is only authorized to sale electricity within the Uttarakhand and raised and collect bills from consumers residing in the State of Uttarakhand. Since, it has brought to the notice of the Commission that there are similar consumers other than petitioners who are getting supply from UPCL but are residing in Uttar Pradesh, the Commission has taken a view that there should not be any activity done by the licensees which are not legally tenable and similar treatment should be given to all consumers by the licensee. This exercise may take some time so as to arrive at a final solution. Both the licensees of Uttarakhand and Uttar Pradesh have to sit together and find out the details of consumers residing in Uttar Pradesh but getting supply through UPCL and take necessary steps for transferring such consumers to UPPCL.

### **Order**

#### **Prayer 1**

*To direct UPCL to supply electricity to agriculturists in the tehsil Bilaspur, District Rampur (Uttar Pradesh) for the same number of hours in a day as a agriculturists of Uttarakhand state are being supplied.*

#### **Prayer 2**

*To permit UPCL in allowing agriculturist of Bilaspur, District Rampur (Uttar Pradesh) to deposit electricity bills directly in the State of Uttarakhand in the same manner as industrial consumers getting supply from Uttaranchal Power*

*Corporation Limited but are situated in tehsil Bilaspur, Dist: Rampur (Uttar Pradesh), are depositing.*

**Prayer 3**

*To restrain the respondent from subjecting agriculturist of tehsil Bilaspur, District Rampur (Uttar Pradesh) to any hostile discrimination in the matter of supply of electricity for agriculture purpose.*

As per the terms and condition of the Distribution and Retail Supply license issued under Electricity Act, 2003, UPCL is the licensee of Uttarakhand State and is authorized to supply electricity to the consumers of their area of supply. Therefore no comparison of Hours of supply and tariff can be made among two different State's Consumers. However, till such time transfer of consumers residing in Uttar Pradesh but getting supply from UPCL take place, the status-quo shall be maintained by UPCL in supplying electricity to petitioners. However billing and scheduling of supply of such consumers residing in Uttar Pradesh shall be done by their Licensee Uttar Pradesh Power Corporation Limited.

In the interest of justice and to avoid discrimination, the Commission hereby directs MD, UPCL and MD, UPPCL to sit together for deciding the transfer of consumers in their respective areas in totality and to ensure that after 31st March 2011 all the consumers should be transferred to UPPCL.

The matter is hereby disposed-off. Compliance of the order of Hon'ble High Court be reported.

-Sd-  
(Anand Kumar)  
Member

-Sd-  
(V J Talwar)  
Chairman