

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the Matter of:

Notice issued to MD, UPCL under Section 43(3) of the Electricity Act, 2003 for violation of the provisions of Section 43(1) of the Electricity Act, 2003 in pursuance to the Commission's Order dated 08.07.2014 on the review Petition filed by UPCL on Commission's Order dated 05.05.2014 on the Application seeking approval of releasing additional 6 MVA load (Total of 20 MVA) on Supply Voltage of 33 kV to M/s Birla Tyres , Unit-2, Hardwar.

AND

In the matter of:

MD, Uttarakhand Power Corporation Ltd.

...Respondent

CORAM

Shri C.S. Sharma Member-Chairman

Shri K.P. Singh Member

Date of Order: August 21 , 2014

This Order relates to the Notice issued to MD, UPCL under Section 43(3) of the Electricity Act, 2003 for violation of the provisions of Section 43(1) of the Electricity Act, 2003 in pursuance to the Commission's Order dated 08.07.2014 on the review Petition filed by UPCL on Commission's Order dated 05.05.2014 on the Application seeking approval of releasing additional 6 MVA load (Total of 20 MVA) on Supply Voltage of 33 kV to M/s Birla Tyres , Unit-2, Hardwar.

1. Background and Procedural History

1.1 A Petition was filed by M/s Birla Tyres (hereinafter referred to as "consumer") seeking approval of release of additional 6 MVA load (resultant total load of 20 MVA) on 33 kV. In its Petition, the consumer had submitted that it is having a sanctioned

load of 20 MVA and against the same, load of 14 MVA has been released to it by UPCL till date.

- 1.2 The Commission after hearing the Petitioner and Respondents in the matter and based on the written submissions made by them, issued an Order dated May 05, 2014 allowing release of 4 MVA load in addition to the contracted load of 14 MVA (Total 18 MVA) from the existing 33 kV line supplying to the consumer till completion of the pending 132 kV works and directed UPCL to conduct a meeting with the consumer within 15 days from the date of the aforesaid Order and chalk out an Action Plan for carrying out the required modifications in the existing 33 kV line/system for releasing additional load of 2 MVA through the 33 kV line considering the compliances of safety rules and submit a report to the Commission latest by 26.05.2014.
- 1.3 UPCL filed a Review Petition on Commission's Order dated 05.05.2014 wherein it submitted that allowance for releasing 20 MVA load at 33 kV voltage level would lead to wrong precedence and violate the principles of basic engineering that would also lessen the very spirit of regulations vide which the load were required to be released. After hearing the parties in the matter the Commission vide its Order dated July 08, 2014 dismissed the review Petition as the same was not maintainable.
- 1.4 The Commission in its Order dated July 08, 2014 had held as under:

"Based on the above discussions, it is amply clear that the reasons for delays were attributable to the licensees. Accordingly, the Commission directs its staff to issue notice to MD, UPCL as to why penalty be not imposed on him under Section 43(3) of the Electricity Act, 2003 for non-compliance of Section 43 of the Electricity Act, 2003."
- 1.5 Accordingly, a notice was issued to MD, UPCL on July 16, 2014 to explain as to why penalty be not imposed on him under Section 43(3) of the Electricity Act, 2003 for non-compliance of Section 43 of the Electricity Act, 2003 in meeting its obligation to supply on demand. A personal hearing of MD, UPCL was also fixed in the matter on August 12, 2014.
- 1.6 MD, UPCL submitted its reply to the show cause notice on July 30, 2014, which are dealt in subsequent Section. During the scheduled date of hearing MD, UPCL sought exemption from attending the hearing and authorized Chief Engineer Level I

(Commercial) to attend the hearing alongwith the legal counsel to appear on his behalf.

2. UPCL's Submissions

- 2.1 MD, UPCL in its reply to the show cause notice submitted that the consumer had applied for a load of 10 MVA on 33 kV in 2007 which was sanctioned to it on 17.07.2007 and released on 01.05.2008. Subsequently, the consumer again requested for an additional load of 10 MVA which was sanctioned on 30.04.2009. However, the additional load could be released to the consumer at 132 kV line, the cost of which was to be borne by the consumer, in accordance with the provisions of the UERC (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 (hereinafter referred to as "Regulations").
- 2.2 MD, UPCL also submitted that the consumer was aware of the genuine difficulties being faced by the licensee in constructing 132 kV line and had accepted the reasons for delay. Accordingly, it explored other possibilities for release of additional 4 MVA load on existing 33 kV line as a stop gap arrangement. He also submitted that the consumer had consented to allowing further time for construction of 132 kV line as the reasons were beyond the control of the licensee and hence, UPCL had requested the Commission for granting approval for release of 14 MVA load on 33 kV itself which was allowed by the Commission pending completion of 132 kV works.
- 2.3 MD, UPCL further submitted that the reasons of delay which were considered by the Commission, escalated thereafter as already mentioned by PTCUL in its written submissions. He also submitted that all the records, facts and reasons had already been submitted by PTCUL and the Commission was aware of the same.
- 2.4 MD, UPCL also submitted that provisions of Section 43(3) of the Electricity Act, 2003 are not attracted in the present matter. He also while referring to the timelines provided in the Regulations for carrying out different works, submitted that the contingencies and practical difficulties faced during execution were not taken into consideration and requested the Commission to sympathetically consider various time bound provisions of the Regulations keeping in view the factual difficulty which are beyond the control of the licensee.

- 2.5 He also submitted that construction of 132 kV and above voltage lines for licensee's consumer are done by PTCUL which is an independent body and is not in his control.
- 2.6 Accordingly, MD, UPCL requested the Commission to consider the case sympathetically as there was no willful violations of any provisions of the Act and not impose penalty on him under Section 43(3) of the Act.
- 2.7 The same was reiterated by the counsel during the course of the hearing.

3. Commission's Views & Decisions

- 3.1 The Respondent is incorrect in pointing out that Section 43(3) of the Electricity Act, 2003 is not attracted in the present matter. The same has been dealt with by the Commission in Para 2.1.7 of its Order dated 08.07.2014, relevant extract of the same are reproduced hereunder:

"...The above reading of the provisions of the Act makes it amply clear that the Petitioner being a distribution licensee was duty bound to release 20 MVA load to the consumer when it had already sanctioned the load. Further, it may be noted that the consumer had duly deposited the requisite amount in this regard in June, 2009. However, till date the consumer could not get the 20 MVA connection as desired by it. UPCL has merely referred that under the Regulations construction of 132 kV and above network is the responsibility of the transmission licensee and it has no control on the same. However, under the Electricity Act, 2003 it is the duty of the distribution licensee to supply electricity to the consumer on his request and hence, it cannot be absolved of its responsibility by merely stating that construction of the line was the responsibility of PTCUL. The Commission would like to make it clear that in the instant case, PTCUL was merely acting as a contractor for Petitioner and onus of timely completion of work was on the Petitioner. The Petitioner also is liable for attendant penalties for delays."

The present matter, therefore, clearly falls under Section 43(3) of the Electricity Act, 2003 as having already sanctioned a connection of 20 MVA and making the consumer deposit the requisite amount for construction of 132 kV line does not absolve UPCL of its duty by merely stating that it had released a load of 14 MVA to the consumer. The consumer's requirement was of a load of 20 MVA and the same

could not be provided to it. Further, the consumer is also being subjected to the excess demand penalty, in case its maximum demand exceeded 14 MVA.

- 3.2 The submission of MD, UPCL regarding the non-consideration of contingencies and practical difficulties faced during execution while specifying the timelines in the Regulations for carrying out different works also does not have any merit. The Regulations are notified after previous publication and following due consultative process in accordance with Section 181(3) of the Electricity Act, 2003. The Commission considers all the responses/comments on the draft Regulations by various stakeholders before finalization of the Regulations. The submissions, if any, in this regard should have been made at the time when the draft Regulations were issued by the Commission. The present matter is not a ground for agitating against the provisions of the Regulations. If the licensee have any difficulty in complying with the provisions of the Regulations, they are free to approach the Commission separately. However, the same does not give them any freedom to specify their own timelines. Moreover, the submission of the Respondent that the consumer was reasonable and had consented to allowing further time for construction of the 132 kV line does not have any merit as being a regulated entity the licensee has to act within the framework of the Electricity Act, 2003 and the Regulations specified by the Commission.
- 3.3 Regarding his submission on the reasons attributable to the delay, the Commission has examined the issue in detail in its Order dated July 08, 2014 and is not reiterating the same.
- 3.4 The Commission at present taking a lenient view in the matter, by not imposing any penalty on the Respondent for the delay which has already occurred. Though sufficient time has already been allowed to UPCL to release additional load to the consumer in the interim till completion of the pending 132 kV works, however, the Respondent is being afforded another opportunity in the matter. The Commission directs:
1. MD, UPCL to ensure release of 4 MVA load in addition to the contracted load of 14 MVA (Total 18 MVA) from the existing 33 kV line supplying to the consumer till completion of the pending 132 kV works w.e.f. May 05, 2014 in accordance with the Commission's order dated May 05, 2014.

2. MD, UPCL is also directed to ensure release of additional 02 MVA load by 01.11.2014 thereby releasing entire 20 MVA load already sanctioned by UPCL, through this 33 kV line after carrying out the required modifications in the existing 33 kV line/system, if any, and duly considering the compliances of safety rules or by completing construction of the 132 kV line. Non-compliance of the above direction would attract a penalty of Rs. 500/- per day thereafter.

3.5 Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member