

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Non-compliance of UERC (The Electricity Supply Code) Regulations, 2007 with regard to 'Additional Security Deposit'.

**And**

**In the matter of:**

Managing Director, Uttarakhand Power Corporation Ltd. (UPCL): Respondent

**And**

**In the matter of:**

Executive Engineer, Urban Distribution Division (South),

UPCL, Dehradun: Respondent

**Coram**

**Shri J.M. Lal**

**Chairman**

**Shri C.S. Sharma**

**Member**

**Shri K.P. Singh**

**Member**

**Date of Hearings: November 22, 2013 & January 08, 2014**

**Date of Order: January 23, 2014**

1. The Commission took *suo-moto* cognizance of a 'Notice' issued by Executive Engineer, Urban Distribution Division (South), [UDD(S)], UPCL, Dehradun to Secretary, UERC vide reference No. 3763/UDD(S) dated 23.09.2013 in the matter of additional security deposit of electricity connection KCC No. 752 of UERC.

2. In the said notice, it was mentioned that:

*“आपके अधिष्ठान पर संयोजित विद्युत संयोजन के0सी0सी0 नं0 752 स्वीकृत भार 40 कि0वा0 के विद्युत उपभोग हेतु विद्युत अधिनियम, 2003 की धारा-47(2) के अंतर्गत अतिरिक्त प्रतिभूति रू0 3,520.00 जमा किये जाने का प्राविधान है, जिसकी सूचना आपको इस कार्यालय द्वारा प्रेषित विद्युत बिल के माध्यम से प्रेषित की गई है।*

*अतः आपसे अनुरोध है कि आप इस नोटिस की प्राप्ति के 30 दिन के अंतर्गत अतिरिक्त प्रतिभूति रू0 3,520.00 इस कार्यालय में नकद अथवा बैंक ड्राफ्ट के माध्यम से जमा कराने का कष्ट करें, अन्यथा आपका विद्युत संयोजन उक्त समय सीमा समाप्त होने पर विद्युत अधिनियम 2003 की धारा 47(3) के अनुसार आपका विद्युत संयोजन विच्छेदित भी किया जा सकता है, जिसके फलस्वरूप होने वाली असुविधा के लिये आप स्वयं उत्तरदायी होंगे।”*

3. The copy of the said notice was also endorsed to SDO, UDSD, Turner Road, Dehradun directing him as *“प्रतिलिपि उपखण्ड अधिकारी, नगरीय विद्युत वितरण उपखण्ड-टर्नर रोड, देहरादून को इस आशय के साथ प्रेषित कि वह सुनिश्चित करें कि यदि उक्त उपभोक्ता द्वारा वांछित अतिरिक्त प्रतिभूति की राशि इस नोटिस के जारी करने के तीन दिन के अन्तर्गत जमा नहीं की जाती है तो उपभोक्ता का संयोजन विच्छेदित कर इस कार्यालय को तुरन्त सूचित करें।”*
4. On examining the electricity bills of KCC Connection No. 752 of UERC, it was observed that the existing security deposit in April 2013 was of ₹44,524.21. Further, considering the interest accrued on the security deposit for FY 2012-13, the security deposit became ₹48,754.01 as shown in the electricity bill of May 2013.
5. In the electricity bills from May 2013 onwards, an amount of ₹3,519.99 had been shown as an ‘Additional Security’ required.
6. Having a security deposit of ₹48,754.01 with UPCL against the said connection, the demand/claim of ₹3,519.99, i.e. less than 10% of the existing security, as additional security through ‘Notice’ was found to be in contravention to the provisions of Regulation 2.3.1 of ‘The Electricity Supply Code’ Regulations and appeared to be malafide with intent of harassment as with regard to the ‘Additional Security’ the Regulation 2.3.1(2) of UERC (The Electricity Supply Code) Regulations, 2007 stipulates that:

*“(2)Based on such review, if the security deposit falls short by not more than 10% of the existing security deposit, no claim shall be made for payment of additional security deposit. In case the security deposit falls short by more than 10% of the existing security deposit, the Licensee shall issue the demand in the ensuing electricity bill.”*

7. Therefore, the Commission decided to initiate a suo-moto proceeding in the matter and issued the notices to MD, UPCL and Executive Engineer, UDD(South), UPCL, Dehradun vide reference No. 963 & 962 dated 09.10.2013 respectively, to show cause and explain as to why appropriate action be not taken against them in accordance with the provision of section 142 of the Electricity Act, 2003 for non-compliance of the Commission’s Regulation.
8. In the above show cause notice Executive Engineer, UDD (South), UPCL, Dehradun was also directed to submit the following information under affidavit along with his reply by 18.10.2013:
  - i) *No. of such notices issued to consumers from FY 2011-12 to FY2013-14, alongwith the details of amount deposited in this regard.*
  - ii) *Details of No. of cases where demand for additional security raised was less than 10% of the amount of Security held/existing Security.*
  - iii) *Details of No. of disconnections made from FY 2011-12 to FY2013-14 on non-receipt of amount from the consumers demanded through such notices.*
9. In compliance to the direction given in the show cause Notice dated 09.10.2013, Executive Engineer, UDD (South), UPCL, Dehradun submitted its reply on affidavit vide letter no. C-58/ नविविख(द०) dated 18.10.2013 stating that:

*“... खण्ड कार्यालय द्वारा निर्गत किये जाने वाले के०सी०सी० बिल का फारमेट मुख्यालय द्वारा तैयार किया गया है, जिसमें कि उपभोक्ता द्वारा जमा की गई जमानत राशि एवं देय जमानत राशि का विवरण आता है। विभागीय नियमानुसार उपभोक्ता द्वारा देय जमानत राशि की गणना प्रत्येक वित्तीय वर्ष के अन्त में बिलिंग हेतु प्रयोग में लाये जा रहे साफ्टवेयर द्वारा स्वयं कर ली जाती है, जिसकी राशि उपभोक्ता के विद्युत बिल में परिलक्षित होती है और उसी के आधार पर जिन उपभोक्ताओं के विरुद्ध अतिरिक्त जमानत*

राशि वांछनीय होती है, को इस कार्यालय द्वारा देय जमानत राशि के लिए एक सामान्य प्रक्रिया के तहत नोटिस निर्गत कर दिये जाते हैं। यहां यह भी उल्लेख करना चाहूंगा कि बिलिंग साफ्टवेयर में मा10 विद्युत नियामक आयोग द्वारा जारी सप्लार्ई कोड-2007 के बिन्दु 2.3.1(2) के तहत जमा की गयी जमानत राशि के 10 प्रतिशत कम/ज्यादा की गणना का प्राविधान नहीं है और इसी कारण जिन उपभोक्ताओं की अतिरिक्त जमानत राशि उनकी पूर्व में जमा **जमानत राशि** के 10 प्रतिशत की गणना से कम होने पर भी उनके बिल में परिलक्षित हुई है, को भी त्रुटिवश इस कार्यालय द्वारा नोटिस निर्गत कर दिये गये।

इस सम्बन्ध में यह भी अवगत कराना है कि उपरोक्त वर्णित मद में जारी किये गये नोटिसों की समीक्षा करते हुए जिन उपभोक्ताओं को गलत नोटिस निर्गत कर दिये गये थे, उनको निरस्त करने की कार्यवाही अधोहस्ताक्षरी द्वारा की जा रही है।”

10. While, in connection to the Commission’s Notice, MD, UPCL requested for extension of time for filing of its reply upto 20.11.2013 vide its letter No. 2278/UPCL/RM/D-52 dated 17.10.2013, which was accepted by the Commission.
11. In the meantime, Executive Engineer, UDD (South), UPCL, Dehradun vide letter No. 4285/नविबिख(द0)/752 dated 28.10.2013 cancelled its ‘Notice’ dated 23.09.2013 in the matter of additional security deposit, which was in accordance with the reply dated 18.10.2013 submitted by him before the Commission.
12. The Commission examined the submission of Executive Engineer, UDD(South), UPCL, Dehradun and found that information on point No. (i) & (ii) was furnished, however information required to be submitted against point No. (iii) was not submitted. Through the said point No. (iii), Executive Engineer, UDD (South), Dehradun was directed to furnish the details of no. of disconnections made against non-receipt of demanded amount during the period. The Commission found the reply unsatisfactory and hence, Executive Engineer, UDD (South), UPCL, Dehradun was called for hearing on 22.11.2013 at 11:30 AM vide letter No. 1101 dated 11.11.2013.
13. Meanwhile, MD, UPCL submitted its reply to the Show Cause Notice dated 09.10.2013 vide letter No. 2741 dated 18.11.2013 stating that:

1. The demand of additional security deposit of ₹3,519.99 raised against connection No. KCC-752 was as per provisions of Regulation 2.3.1 (1) and 2.3.1(2) of the UERC (The Electricity Supply Code) Regulations, 2007 and para 3 of Commission's Order dated 27.07.2007. The para 3 of the Commission's aforesaid Order provided that:

*"The interest accrued to the credit of consumer for the financial year shall be adjusted in their electricity bills in the following financial years latest by 30<sup>th</sup> June."*

2. MD, UPCL in para 2.4 of its reply attempted to justify the demand of additional security showing detailed computation.
14. The reply submitted by MD, UPCL was not found satisfactory by the Commission and the Commission observed that the approach of UPCL in computation of additional security deposit was deviating from the basic spirit of the provisions of relevant Regulations and subsequent Orders, and moreover against the interest of consumers, therefore, decided to fix a hearing in the matter on 06.12.2013 at 11:30 AM which was postponed due to unavoidable circumstances and further rescheduled for 08.01.2014 at 12:30 Hrs., wherein MD, UPCL was required to attend the hearing personally.
  15. On 22.11.2013, the Commission heard Executive Engineer, UDD (South), UPCL, Dehradun in the matter. Executive Engineer reiterated the submissions made by him in its reply dated 18.11.2013 to the show cause notice issued by the Commission.
  16. During the hearing, the Commission enquired about the number of disconnection made on non-receipt of amount from the consumers demanded through such notices during FY 2011-12 to FY 2013-14. Executive Engineer, UDD (South), UPCL, Dehradun submitted that no such disconnections were made for this reason during the aforesaid period. The Commission also pointed out that merely issuing notice would not serve any purpose unless the dues against

additional security are recovered from the defaulting consumers. The Commission expressed its displeasure on inaction of UPCL for not realizing the outstanding against additional security from the defaulting consumers and recognize the act of issuing wrong notices to be malafide with the intent of harassing the consumers.

17. The Commission heard the matter on schedule date, i.e. on 08.01.2014. Despite the fact that MD, UPCL was required to appear personally before the Commission, he did not present himself in the hearing without seeking any exemption from the Commission.
18. During the hearing, the Commission enquired about the absence of MD, UPCL as he was required to appear personally. Further, the Commission also enquired that whether MD, UPCL has sought any exemption for his non-appearance from the hearing. The representative of UPCL submitted that due to unscheduled meeting called by Hon'ble Chief Minister, MD, UPCL was not able to personally appear before the Commission. Further, representative of UPCL reiterated the written submission of MD, UPCL, which was made before the Commission in the reply to the Show Cause Notice. The representative of UPCL narrated the mechanism of charging for Additional Security being practised in UPCL and submitted that as per the understanding of the provisions of Regulations and subsequent Order dated 27.07.2007, method of computation of additional security adopted by UPCL is in accordance with the same.

**19. Commission's View:**

- (i) With regard to the 'Additional Security Deposit' Regulation 2.3.1 of UERC (The Electricity Supply Code) Regulations, 2007 stipulates that:

*"(2) Based on such review, if the security deposit falls short by not more than 10% of the existing security deposit, no claim shall be made for payment of additional security deposit. In case the security deposit falls short by more than 10% of the existing security deposit, the Licensee shall issue the demand in the ensuing electricity bill."*

- (ii) The Commission has taken cognizance of the facts that the security deposit of ₹48,754.01 already existing with UPCL against the said connection, hence the demand/claim of ₹3,519.99 was illegitimate since, the same is less than 10% of the existing security and holds that demand of additional security through 'Notices' to the consumers having additional security within 10% is harassment of honest consumer and the 'Notice' issued by the licensee/officer of the licensee is in contravention to the provisions of 'The Electricity Supply Code' regulation referred above.
- (iii) Besides above, it was also observed from the submission of Executive Engineer, UDD (South), Dehradun that during FY 2011-12 total 38 notices were issued for the amount of 47.70 lac against which only 09 consumers deposited the demanded amount and during FY 2012-13, no notice was issued with regard to additional security deposit. In FY 2013-14, total 70 notices for ₹109.49 lac were issued out of which only 13 consumers deposited the amount claimed in this regard.
- (iv) In addition to the above, from the submission, it was also observed that:
- (a) In FY 2011-12, additional security required from 13 consumers was more than ₹1.00 lac, out of which only 01 consumer had deposited the amount claimed by the licensee in this regard.
- (b) In FY 2013-14, total 23 consumers had been listed for additional security required beyond ₹1.00 lac, out of which only 06 consumers deposited the amount claimed by the licensee in this regard.
- (v) The Commission is of the view that merely issuing notice would not serve any purpose unless the dues against additional security are realized by the licensee from the defaulting consumers. The Commission expressed its displeasure on the lackadaisical approach of the licensee for not putting efforts in realization of outstanding against additional security from the defaulting consumers. The licensee should have taken appropriate action

against such consumers who failed to deposit the outstanding amount in accordance with the provisions of the Act/Regulation.

- (vi) UPCL in its written submission and also during the course of hearing proceedings informed the Commission that from the combined reading of Regulation 2.3.1 (1), 2.3.1 (2) of the Supply Code and para 3 of the Commission's Order dated 27.07.2007, it had appeared to the licensee that the interest allowed in security deposit of the previous year is not the part of existing security deposit.
- (vii) The Commission does not agree with the above interpretation of UPCL and accordingly does not find the reply of UPCL convincing and is of the opinion that UPCL should also view this issue from the consumers' perspective and if it had seen from the consumers' point of view it would not have arrived at such erroneous claims of additional security deposit from the consumers. Further, the Commission is of the view and hold that:
  - (a) In accordance with the para 3 of the Commission's Order dated 27.07.2007, accrued interest on the existing security deposit should either be adjusted in the electricity bills of the consumers or added to existing security deposits available with the licensee. In addition, it would be relevant to note that interest on security deposit is paid for the Financial Year i.e. from April to March. Even though the Commission has laid down that adjustment should be made latest by 30th June of the following year, however, interest on security deposit is calculated upto March 31st of the previous year and should form part of security deposit as on 1st April of the ensuing financial year. Accordingly, for estimating the requirement of additional security deposit the existing security deposit alongwith interest accrued thereon should be considered.



- (b) MD, UPCL in its reply in the computation of demand of additional security raised, has calculated interest on security deposit for complete financial year and accordingly, the interest accrued as on 31st March of the previous year has been calculated which forms part of security deposit even in the accounts of UPCL as on 31st March of the year.
- (c) Hence, in view of the above, the contention of UPCL appears to be incorrect. The Commission in its Order dated 27.07.2007 had provided that interest on security deposit was to be adjusted latest by 30 June of the succeeding year. However, there was no bar on the licensee to adjust it in the month of April itself, as these adjustments are carried out by software. Further, interest accrued till 31st March of the previous year forms part of the security deposit held by the licensee even though adjustments are carried out belatedly.
- (viii) The Commission took strong view on the non appearance of MD, UPCL in the proceedings of personal hearing and directs MD, UPCL to take note of the provision of Section 95 the Act and directives issued by the Commission from time to time. The Commission further cautions MD, UPCL that in future any laxity in this regard would not be pardoned and stern action shall be taken for such violations and non-compliance in accordance with the relevant provisions of the Act/Regulation.

### **Section 95 of the Electricity Act, 2003**

*“95. All proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appropriate Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.”*

In light of above, the Commission hereby orders:

- 1) Managing Director, UPCL shall submit an explanation for his non-appearance during the hearing inspite of the Notice issued for Personal Hearing within 10 days from the date of issuance of the Order.

- 2) In accordance with the para 3 of the Commission's Order dated 27.07.2007, accrued interest on the existing security deposit should either be adjusted in the electricity bills of the consumers or added to existing security deposits available with the licensee. Hence, UPCL is required to calculate the interest on security deposit upto March 31<sup>st</sup> of the previous year which would form part of security deposit as on 1<sup>st</sup> April of the ensuing financial year. Accordingly, for estimating the requirement of additional security deposit the existing security deposit alongwith interest accrued thereon should be considered.
  - 3) UPCL is required to incorporate appropriate logic in its billing software accordingly.
  - 4) UPCL is required to ensure that the notices under Section 47 (3) of the Electricity Act, 2003 should be issued to only those consumers who are actually in default and once the notices have been issued, the licensee should ensure the realization of such claimed additional security under the provision of Act/Regulations.
20. The compliance report of the direction issued at Sl. No. 3 shall be submitted by the licensee latest by 28.02.2014.

(K.P. Singh)  
Member

(C.S. Sharma)  
Member

(Jag Mohan Lal)  
Chairman