

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 15 of 2014

In the matter of:

Petition seeking post facto approval of the Fuel Charge Adjustment (FCA) charged from the consumers for the period from 01.07.2014 to 30.09.2014.

AND

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

CORAM

Shri C.S. Sharma	Member-Chairman
Shri K.P. Singh	Member

Date of Hearing: September 03, 2014

Date of Order: September 11, 2014

The Order relates to Petition filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "Petitioner" or "UPCL" or "Licensee") under Section 86(1)(a) and Section 62(4) of the Electricity Act, 2003 and under provision of Regulation 83(4) seeking post facto approval of the Fuel Charge Adjustment (FCA) charged from the consumers for the period from 01.07.2014 to 30.09.2014.

1. Background

- 1.1 UPCL in its Petition while referring to UERC (Terms and conditions for Determination of Tariff) Regulations, 2011 (hereinafter referred to as "MYT Regulations, 2011") submitted

that Regulation 83 provides for imposition of Fuel Charge Adjustment (FCA) during any quarter of the year if the variable fuel cost during the previous quarter of the year was higher than the approved variable fuel cost for the same period.

- 1.2 The licensee based on the approved variable fuel cost as approved by the Commission vide Tariff Order dated 10.04.2014 and actual variable cost incurred during the first quarter of FY 2014-15, i.e. April-June 2014 submitted the computation of excess of variable charges as follows:

Table 1.1 : Computation of Excess Variable Charges as Submitted by UPCL

S. No	Name of Plants	Approved Variable Charges (Rs./kWh)	Actual Variable Charges			Excess of Actual Variable Charges (Rs. Crore)
			Energy at State Periphery (MU)	Cost (Rs. Crore)	Rate (Rs./kWh)	
1	Singrauli	1.10	192.89	35.91	1.86	14.69
2	F G Unchahar-I	2.43	71.41	24.58	3.44	7.23
3	F G Unchahar-2	2.44	34.10	11.71	3.43	3.39
4	F G Unchahar-3	2.44	26.83	9.29	3.46	2.74
5	N C T Dadri:2	2.86	9.64	2.99	3.10	0.24
6	Rihand-1 STPS	1.37	79.79	16.55	2.07	5.62
7	Rihand-2 STPS	1.38	66.00	14.45	2.19	5.35
8	Rihand-3 STPS	1.35	72.72	12.97	1.78	3.15
9	Kahalgaon-II	2.49	49.35	12.94	2.62	0.65
10	Jhajjar Aravali	3.58	6.23	0.75	1.20	(1.48)
11	Anta Gas	3.29	17.73	4.86	2.74	(0.97)
12	Auraiya Gas	4.02	14.67	4.62	3.15	(1.28)
13	Dadri Gas	3.94	22.71	7.83	3.45	(1.12)
14	NTPC-Barh	2.20	-	-	-	-
Total			664.08	159.46	2.40	38.21

- 1.3 The Petitioner submitted that the Commission in the Tariff Order dated 10.04.2014 had worked out a surplus of Rs. 20.92 Crore available with the Petitioner at the end of FY 2014-15 and at para 5.3.1 of the order had directed the Petitioner to adjust the said surplus against the FCA, if any, becoming due for FY 2014-15. The Petitioner submitted that it has accordingly, worked out the net value of FCA to be charged from the consumers for the period from July, 2014 to September, 2014 as Rs. 38.21 Crore - 20.92 Crore = Rs. 17.29 Crore.
- 1.4 UPCL, in its Petition, for the purpose of computation of average FCA per unit, has calculated quarter wise sales in the ratio of quarterly power purchase approved in the Tariff

Order dated 10.04.2014 and has accordingly, derived the sales for the second quarter as 2953.17 MU and has accordingly, calculated the average FCA of Rs. 0.06/kWh (Rs. 17.29 Crore/2953.17 MU).

- 1.5 UPCL submitted that for the computation of FCA in respect of consumers having kVAh based billing, power factor of 0.95 has been considered by it and, in respect of unmetered supply, the rate of charge of the category has been considered by UPCL as the ABR of that category.
- 1.6 The Commission held a hearing for admissibility of the Petition on 28.07.2014 and while admitting the Petition, the Commission issued an Order dated 28.07.2014 directing UPCL as follows:

"1. The Petitioner to submit on or before 01st August 2014:

(a) Actual sales for the first quarter of FY 2014-15.

(b) Total quantum of power purchase for the 1st quarter of FY 2014-15 alongwith power purchase bills for April, May and June, 2014 for all the stations where FCA is attracted.

2. The Petitioner to publish a notice by 31st July, 2014 for information of all the stakeholders and seek their comments, if any, by August 21, 2014 in the form given at Annexure-'A' enclosed."

- 1.7 Complying with the above directives, UPCL published the notice in the following news papers:

Table 1.2: Details of Publication of Notice on News Papers

S.No.	Name of News Paper	Date of Publication
1.	Dainik Jagran	31.07.2014
2.	Amar Ujala	31.07.2014
2.	Hindustan	31.07.2014
3.	Hindustan Times	01.08.2014

- 1.8 Further, UPCL vide its letter dated 01.08.2014 submitted the station wise monthly details of power purchase for the period from April to July 2014. However, in respect of actual sales for the first quarter, UPCL informed that the same is not available at the Corporate Office and that the same shall be collected from its field units and thereafter, submitted before the Commission by 31.08.2014.

- 1.9 On examination of the power purchase details submitted by UPCL as above, the Commission observed discrepancy in respect of details of power purchased from NTPC power station and asked UPCL to clarify on the same. UPCL vide its letter dated 16.08.2014 submitted that in its Petition in the matter submitted earlier, excess power of 3.90 MUs (6.23-2.33) at State periphery was erroneously booked in respect of Jhajjar Aravali power station of NTPC. UPCL further informed that necessary correction has been made by it in its latest submission dated 01.08.2014 and requested the Commission to consider power purchase from Jhajjar Aravali as 2.33 MUs and accordingly, total power purchase of 660.18 MU at State periphery may be considered from NTPC station for the said period.
- 1.10 In response to the public notice in the matter, 9 nos. of stakeholders submitted their objections/suggestions/comments in writing on the Petition filed by UPCL, list enclosed as **Annexure-1**. The comments received were forwarded to UPCL for its response on the same. By and large all the stakeholders have contended that the tariff had already been decided for the complete financial year 2014-15 and UPCL has already been making profit in its operation, therefore, charging Rs 0.06/unit as FCA was highly objectionable. They further submitted that introduction of FCA shall make impact on their power & fuel cost which has not been accounted in their product cost.

In response, UPCL submitted that Regulation 83 of the MYT Regulations, 2011 provides for imposition of FCA during any quarter of the year if the actual variable charges during the previous quarter of the year are higher than the approved variable fuel charges for the same period. UPCL further submitted that after adjustment of surplus of Rs 20.92 Crore available in the approved ARR for FY 2014-15, net FCA recoverable has been computed as Rs 17.29 Crore. Further, UPCL has also submitted that the Commission had not approved the proposed tariff hike of 19.42% for FY 2014-15, hence, it is facing financial crunch and overdrawing funds from banks for making payments of power purchases, O&M etc.

- 1.11 A public hearing was also held by the Commission in the matter on 03.09.2014. The list of participants, mainly industrial consumers, who attended the Public Hearing is enclosed at

Annexure-2 wherein the participants again opposed the levy of FCA by UPCL. However, some of stakeholders also raised the issue of load shedding carried out by UPCL, for which no prior information was provided to them by UPCL, and consequently not only their work force remained idle for which salary had to be paid to them, but also lead to damage of not only their machinery but also the raw materials.

In this regard, the Commission reiterated its views expressed in its previous Tariff Orders and other Orders issued in the matter from time to time and directed Chief Engineer (Level-1), UPCL representing UPCL to take all the necessary steps so as to communicate to the industrial consumers about the scheduled/planned load shedding so that they may plan their process accordingly.

2. Commission's views and decision

2.1.1 Section 62(4) of the Electricity Act, 2003 stipulates as follows:

"No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified."

2.1.2 Further, Hon'ble APTEL vide its Judgment dated November 11, 2011 in OP No. 1 of 2011 had directed as under:

"Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62(4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/ mechanism."

2.1.3 Regulation 83 of the MYT Regulations, 2011 provides that:

"83. Fuel Charge Adjustment (FCA)

(1.) The FCA charge shall be applicable on the entire sale of the Distribution Licensee without any exemption to any consumer.

- (2.) *The FCA charge shall be computed and charged on the basis of actual variation in fuel costs relating to power generated from own generation stations and power procured during any month subsequent to such costs being incurred, in accordance with these Regulations, and shall not be computed on the basis of estimated or expected variations in fuel costs.*
- (3.) *The FCA charge for the quarter shall be computed within 15 days of quarter end and shall be charged for the quarter from the first month of second quarter itself, without prior approval of the Commission and under or over recovery shall be carried forward to the next quarter.*
- (4.) *The Distribution Licensee shall submit the details of incremental fuel cost incurred and to be charged to all the consumers for the entire quarter, along with the detailed computations and supporting documents as may be required for verification by the Commission within 30 days of the end of quarter for post facto approval of the Commission.*
- (5.) *The Commission shall examine the FCA computations and approve the same with modifications, if required before the end of second quarter. Any variation in FCA charged by the Distribution Licensee and FCA approved by the Commission will be adjusted in subsequent quarter's FCA computations.*
- (6.) *In case the Distribution Licensee is found guilty of charging unjustified FCA charge to the consumers on regular basis, the Commission shall adjust the unjustified charges along with interest on the same.*
- ..."

2.1.4 In accordance with the above provisions of the Act, directions of Hon'ble APTEL and provisions made in Regulation 83(3) of the MYT Regulations, 2011, the distribution licensee is entitled to compute FCA for the quarter and charge the same from the consumer from the first month of next quarter itself, without seeking prior approval from the Commission. Therefore, the objections raised by the stakeholders regarding the introduction of FCA over and above the approved tariff, cannot be conceded. The provision of claiming FCA has been made so that the licensee would be able to recover shortfall in the variable component of cost of power purchased by licensee in a quarter vis-à-vis that approved by the Commission for the period, which otherwise, would get accumulated till the truing up of expenses for the financial year is carried out by the Commission after the statement of accounts are available in which there is usually a lag

of 1-2 years and hence, such accumulated gaps for a substantial period has a carrying cost which could affect the financial health of the distribution licensee and in turn would result in adversely affecting the quality of supply. Any revenue gaps including the gap in power purchase expenses, on account of truing up are to be borne by the consumers. Allowance of FCA, atleast at the end of each quarter, to some extent minimizes the impact of such gaps on the licensee's operations.

- 2.1.5 In accordance with Regulation 83 of the MYT Regulations, 2010, the Commission has analysed the Petitioner's computation of FCA for the first quarter (i.e. April-July, 2014) based on the power purchase details submitted by the Petitioner and reconciling the same with the monthly bills raised by the Central Sector Thermal generating stations where FCA is attracted. It has been observed that the monthly bills raised by these generating stations for the said period include substantial amount of past year arrears. Regulation 83(2), reproduced in the Order, specifies that the FCA charge shall be computed and charged on the basis of actual variation in power purchase cost on account of increase in cost of fuel during any month. However, the arrears raised by the generating stations for past years do not relate to the cost of fuel consumed by them for the months during the said quarter under review and, therefore, past arrears cannot be included vice actual variation in fuel cost and consequently cannot be taken for computation of FCA for the said period. The Commission, accordingly, has considered only the variations in fuel costs for the months April, 2014 to June, 2014. Based on the above, FCA for the quarter ending June, 2014 has been worked out and the same has been presented in the Table below:

Table 2.1: FCA for the first quarter (April- July, 2014) approved by the Commission

S. No	Power Stations	Billed Energy (MUs)	Actual Variable Charges Billed (Rs Crore)	Energy at State Periphery (MUs)	Actual Rate of Variable Charges at State Periphery (Rs/kWh)	Approved Variable Charges (Rs/kWh)	Diff in Variable Charges (Rs/kWh)	FCA Recoverable (Rs Crore)	FCA Claimed (Rs Crore)
(i)	(ii)	(iii)	(iv)	(v = 96% of iii)	(vi = iv*10/v)	(vii)	(viii= vi-vii)	(ix = viii*v/10)	(x)
1	Singrauli	200.93	23.78	192.89	1.23	1.10	0.13	2.56	14.69
2	F G Unchahar-1	74.39	23.49	71.41	3.29	2.43	0.86	6.14	7.23
3	F G Unchahar-2	35.53	11.18	34.10	3.28	2.44	0.84	2.86	3.39
4	F G Unchahar-3	27.96	8.85	26.84	3.30	2.44	0.86	2.31	2.74
5	N C T Dadri:2	10.04	3.33	9.64	3.45	2.86	0.59	0.57	0.24
6	Rihand-1 STPS	83.11	14.00	79.79	1.75	1.37	0.38	3.07	5.62
7	Rihand-2 STPS	68.76	11.65	66.00	1.76	1.38	0.38	2.54	5.35
8	Rihand-3 STPS	75.75	12.53	72.72	1.72	1.35	0.37	2.71	3.15
9	Kahalgaoon-II	51.41	12.48	49.35	2.53	2.49	0.04	0.19	0.65
10	Jhajjar Aravali	2.43	0.92	2.33	3.96	3.58	0.38	0.09	-1.48
11	Anta Gas	18.47	4.84	17.73	2.73	3.29	-0.56	-0.99	-0.97
12	Auraiya Gas	15.28	4.85	14.67	3.31	4.02	-0.71	-1.04	-1.28
13	Dadri Gas	23.66	7.76	22.71	3.42	3.94	-0.52	-1.19	-1.12
14	NTPC-Barh	0.00	-	0.00	-	2.20	-	-	-
Total		687.71	139.66	660.20	-	-	-	19.80	38.21

2.1.6 Accordingly, the Commission approves the recoverable FCA for the first quarter of FY 2014-15, i.e. April-June 2014 as Rs. 19.80 Crore against the UPCL's claim of Rs. 38.21 Crore. Since the Commission in its Tariff Order dated 10.04.2014 at Para 5.3.1, had allowed a surplus of Rs. 20.92 Crore, and had directed the licensee as follows:

"The Commission directs the Petitioner to continue to adjust the surplus of Rs. 20.92 Crore till it is exhausted, from the Fuel Cost Adjustment if any, becoming due for FY 2014-15."

Therefore, the above surplus needs to be duly adjusted with the approved FCA of Rs 19.80 Crore. This will leave a net surplus of Rs. 1.12 Crore with UPCL to be utilised in accordance with the above referred directions of the Commission.

2.1.7 Based on the above, it is amply clear that UPCL is still left with a surplus of Rs. 1.12 Crore, accordingly, no FCA charges need be imposed on consumers during the quarter ending September, 2014. Since UPCL has already started raising bills of FCA from July, 2014 onwards it is, therefore, directed to stop charging FCA from consumers with immediate effect. A copy of instructions issued for discontinuing levy of FCA in the remaining month be furnished within one week of issue of order.

- 2.1.8 Regulation 83(5) of the MYT Regulations reproduced in the Order stipulates that any variation in FCA charged by the Distribution Licensee and FCA approved by the Commission will be adjusted in subsequent quarter's FCA computations. The Commission understands that by the time this order is issued UPCL would have raised two bills, i.e. for the month of July, 2014 raised in August, 2014 and for the month of August, 2014 raised in September, 2014 to the consumers including FCA, as proposed in the Petition. Since no FCA is admissible to be recovered from the consumers, as discussed above, the Commission directs UPCL to maintain separate details of the amount billed towards FCA in the aforesaid months and adjust the same in the FCA charges which become due, if any, for the subsequent quarter, i.e. July, 2014 to September, 2014 alongwith the balance surplus of Rs. 1.12 Crore available with UPCL.
- 2.1.9 Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member-Chairman

Annexure-1

List of Stakeholders who have submitted comments

Sl.	Name	Designation	Organization	Address
1.	-	-	M/s Karam Industries	C-35-A, Phase-III, ESIP, Sitarganj, Distt. Udham Singh Nagar, Uttarakhand-262405
2.	Sh. Bharat Saigal	Director	M/s Innovative Textiles Ltd.	Plot No. 8, Block-B, Phase-1, Sidcul Industrial Park, Sitarganj, Udham Singh Nagar
3.	Sh. Suresh Kumar	President (Works)	M/s La Opala RG Ltd.	B-108, Eldeco Sidcul Industrial Park, Sitarganj, Udham Singh Nagar
4.	Sh. Samarendu Roy	General Manager	M/s SSP Pvt. Ltd.	Unit IV, Sitarganj, Dist. Udham Singh Nagar
5.	Sh. Hem Chandra Sati	Asst. Works Manager	M/s Zenplas Pipes Ltd.	Plot No. C-06, Phase-III, E.S.I.P. Sitarganj-262405, Dist. Udham Singh Nagar
6.	Sh. Raj Kumar Sharma	Manager (HR & Admin)	M/s Packaging India Pvt. Ltd.	Plot No. C-60B, Eldeco Sidcul Industrial Park, Sitarganj, Distt. Udham Singh Nagar, Uttarakhand - 262405
7.	Sh. V. K. Aggarwal	-	M/s Balaji Action Buildwel	Plot No: C-34 & C-34(a) to (d), ESIP, Sitarganj, Distt. Udham Singh Nagar
8.	Sh. Kewal Krishan Dhiman	Sr. General Manager-Plant	M/s ITDL Imagetic Ltd.	D-11, Phase-II, Eldeco-Sidcul Industrial Park, Sitarganj-262405, Distt. Udham Singh Nagar
9.	Sh. Ashok Bansal	President	Kumaon Garhwal Chamber of Commerce & Industry	Chamber House, Industrial Estate, Bazpur Road, Kashipur, Distt. Udham Singh Nagar

List of Participants who have attended the hearing

Sl.	Name	Designation	Organization	Address
1.	Shri S.K. Tamta	Chief Engineer (Commercial)	Uttarakhand Power Corporation Ltd.	Victoria Cross Vijeyta Gabar Singh Bhawan, Kanwali Road, Balliwala Chowk, Dehradun-248001
2.	Shri Mahender Kumar	Sr. Law Officer	Uttarakhand Power Corporation Ltd.	Victoria Cross Vijeyta Gabar Singh Bhawan, Kanwali Road, Balliwala Chowk, Dehradun
3.	Shri S.K. Mehta	Assistant Accounts Officer	Uttarakhand Power Corporation Ltd.	Victoria Cross Vijeyta Gabar Singh Bhawan, Kanwali Road, Balliwala Chowk, Dehradun
4.	Shri Suresh Kumar	President (Works)	M/s La Opala RG Ltd.	B-108, Eldeco Sidcul Industrial Park, Sitarganj, Udham Singh Nagar
5.	Shri R.K. Gupta	Secretary General	M/s Kumaon Garhwal Chamber of Commerce & Industry	Chamber House, Industrial Estate, Bazpur Road, Kashipur, Distt. Udham Singh Nagar
6.	Shri Satya Prakash Goel	Executive Officer	M/s Kumaon Garhwal Chamber of Commerce & Industry	Chamber House, Industrial Estate, Bazpur Road, Kashipur, Distt. Udham Singh Nagar
7.	Shri Munish Talwar	Head-Electrical	M/s Asahi India Glass Ltd.	Integrated Glass Plant, Village-Latherdeva Hoon, Manglaur-Jhabrera Road, P.O. Jhabrera, Tehsil Roorkee, Distt. Haridwar, Uttarakhand
8.	Shri Dalbir Singh Rawat	Facility Manager	M/s Air Liquide North India Pvt. Ltd.	C/o AIS Industrial Area, Village-Latherdeva Hoon, Manglaur-Jhabrera Road, P.O. Jhabrera, Tehsil Roorkee, Distt. Haridwar, Uttarakhand
9.	Shri Sanket Gupta	Executive	M/s Mittal Processors	1002,1004 Antriksh Bhawan 22, Kasturba Gandhi Marg, New Delhi - 110001
10.	Shri Bharat Saigal	Director	M/s Innovative Textiles Ltd.	Plot No. 8, Block-B, Phase-1, Sidcul Industrial Park, Sitarganj, Udham Singh Nagar
11.	Shri P.K. Katiyar	Sr. General Manager	M/s Innovative Textiles Ltd.	B-8, Phase-1, ESIP, Sitarganj, Distt. Udham Singh Nagar
12.	Shri Raj Kumar Sharma	H.R. Manager	M/s Packaging India Pvt. Ltd.	Plot No. C-60B, Eldeco Sidcul Industrial Park, Sitarganj, Distt. Udham Singh Nagar, Uttarakhand - 262405
13.	Shri Aman Kumar	Asst. Manager	M/s Manikaran Power Ltd.	A-49, 3 rd Floor, Dwarka Sector-8, New Delhi-110075