

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

1. Offence of misleading the electricity consumers of the State by publishing wrongful interpretation of the provisions of the UERC(Release of new LT Connections, Enhancement and Reduction of Loads) Regulations, 2013.
2. Contravention of Regulation 7 of UERC (Release of new LT Connections, Enhancement and Reduction of Loads) Regulations, 2013.

And

In the matter of:

1. S.S Yadav,
Managing Director, UPCL, Dehradun.
2. A.K Agarwal,
Director (Operations), UPCL, Dehradun.
3. H.K Gururani,
Chief Engineer (Distribution), UPCL, Kumaon Zone, Haldwani.
4. Navin Mishra,
Executive Engineer, UPCL, EDD Haldwani (Urban)
5. Nitin Singh Garkhal,
Executive Engineer, UPCL, EDD, Ramnagar, Nanital

.....Respondents

CORAM

Shri Subhash Kumar

Chairman

Shri K.P. Singh

Member

Date of Order: September 20, 2016

The Order relates to the *Suo-Moto* proceedings initiated against the officers of UPCL for issuing 'Press Release' which is in contravention to Regulation 7 of UERC, (Release of new LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 (hereinafter referred as LT Regulations, 2013).

Background

2. It has come to the notice of the Commission through various complaints by the consumers that connection to consumers in distributed plotting and in building(s) having residential/non-residential units having total load upto 25 kW are unnecessarily getting delayed due to different interpretations of Regulation 7 of LT Regulations, 2013.
3. In order to clarify the aforesaid issues and for a uniform interpretation & Implementation of the aforesaid Regulation, a meeting was convened by the officers of the Commission with the officials of UPCL. Thereafter, UPCL submitted a draft clarification dated 18.05.2016 which was approved by the Commission vide its letter dated 20.05.2016. Accordingly, UPCL vide its OM dated 23.05.2016 circulated the clarification on LT Regulations to its field officers to avoid any future confusion/misinterpretation of the Regulations. The said clarification reads as:

“1. Residential/ Residential/Non-Residential Complex, Multiplex, Malls etc. means any Complex comprising of the following:-

“(i) a Building or Buildings having Residential/Commercial/Industrial Units;

(ii) a Common area; and

(iii) any one or more facilities or services such as park, lift, parking space, community hall, common water supply, toilets, watchman room located within a premise and the layout of such premises is approved by an authority under any law for the time being in force.

2. *As per Regulation 3(7) read with Regulation 5(10) of the Regulations, there is no need for release of load on HVDS system by installing a transformer in the cases where requirement of load is upto 25 Kw. Accordingly, where requirement of load in a complex is assessed as per provisions of Regulations not exceeding 25 Kw, there is no need for installation of transformer in that case and the individual applicant of such complex is required to pay service line charges and initial security deposit only as per tables given in Regulation 5(10).”*
4. Whereas, it came to the notice of the Commission that ‘Press Releases’ issued by the officers of UPCL on 21.07.2016 & 25.07.2016 run counter to Regulation 7 of the

UERC(Release of new LT Connections, Enhancement and Reduction of Loads) Regulations, 2013.

5. Taking cognizance of the contravention of the provisions of the aforesaid Regulations the Commission issued show cause notices to MD, UPCL, Director (Operations), UPCL, Chief Engineer, Kumaon Zone, Executive Engineer, Ramnagar & Executive Engineer, Haldwani vide letter dated 01.08.2016 directing them to explain why appropriate action be not taken against them in accordance with the provision of Section 142 read with Section 146 & Section 149 of the Electricity Act, 2003 for contravening the provisions of the Regulations and directed them to make their written submissions to the Commission by 16.08.2016 and to appear for personal hearing on 06.09.2016.
6. In response to the same, Respondent No. 1 vide letter dated 23.08.2016 submitted that many residential areas were being developed in the new developing outskirts in which identity of the developer was not known and in many cases electrical infrastructure as required under Regulation 7 of the aforesaid Regulations were not being created. Whereas, neither the amount was being deposited with UPCL nor the supervision charges were being paid to it therefore, suitability and safety of such electrical works for releasing connection could not be ascertained. In such circumstances it was not possible for it to release connection on the said electrical infrastructure and therefore, applicants for new connection had to bear overhead line charges alongwith service line charges against which the consumers kept complaining.

Further, Respondent No. 1 submitted that the press release was based on the interpretation of the Regulations by the officials of concerned Circle to apprise the general public regarding the unauthorised work of colonization and development of various residential complexes and electrical work therein and to ensure that the electrical installations developed by the developer/colonizers were meeting the safety criteria as required under the prevailing Regulations.

Respondent No. 1 submitted that the officials of the concerned Circle has not acted in the right manner as they released the press note without proper approval, sanction or discussion at the Corporate level and has been negligent on their part in interpreting the Regulations in terms of the proposed contents and that notices

have been issued against the responsible officers and requested, notice to Respondent No. 1 & 2 be closed.

7. On the content of the 'Press Release' Respondent No. 2 vide letter dated 16.08.2016 & 23.08.2016 reiterated submissions as made by the Respondent No. 1 and further, submitted that the initial part of the press note is to apprise and caution the general public, whereas, the later part of it wherein, it is mentioned that in case of non-compliance of Regulation 7 of LT Regulations, 2013 connection would not be released in any circumstances, the same does not specify to disentitle the consumer to seek connections in accordance with the other provisions of the said Regulations.
8. Respondent No. 3 has submitted that, the clarification on the Regulation 7 of LT Regulations 2013 approved by the Commission vide letter dated 20.05.2016 was received at his office vide letter dated 23.05.2016 which was required to be circulated to its field officers for necessary compliance. That the same was duly circulated to all the subordinate offices vide letter dated 07.06.2016.
9. In addition to the submissions made by Respondent No. 1 & 2, Respondent No. 4 submitted that said 'Press Release' was based on a meeting held at the office of the Superintending Engineer, Electricity Distribution Circle Haldwani wherein, issues as submitted by the Respondents mentioned above and the issues pertaining to space constraints for installation of multiple transformers were discussed. Further he submits that Superintending Engineer vide his e-mail dated 14.07.2016 had directed him for publication of draft press note. That the intent of the press note was to make the public vigilant on pursuing their rights and ensuring compliance of the Regulations. Therefore, the notice maybe withdrawn.
10. The submissions made by Respondent No. 5 are same as that of Respondent No. 4.
11. On perusal of the submissions of the Respondents the Commission decided to exempt Respondent No. 1, 2 & 3 from personal appearance on the scheduled date of hearing i.e. 06.09.2016 and accordingly issued letter dated 31.08.2016 to the concerned. On the scheduled date of hearing the Commission heard both the Respondent No. 4 & 5 who reiterated their written submissions made before the Commission.

Commission's observations, views and decisions

12. On examination of the written submissions made by the Respondents and on hearing the submissions made during the hearing proceedings, the Commission has observed that there is certain confusion among the officers of UPCL which persist with regard to the interpretation of Regulation 7 of the LT Regulations 2013. Therefore, before delving into the content of the 'Press Release' let us first examine the provisions of Regulations 7 of the LT Regulations, 2013 provides that:

"7. New Electricity Connection in Residential/Non-Residential Complex, Multiplex, Malls etc. to be constructed by Developer/Builder:

- (1) The responsibility of creating required distribution network within such complex from the installed distribution transformer onwards and upto to the point of connection to the installation of each consumer within such complex shall be that of the developer/ builder who has constructed such complex.*
- (2) Based on the normative load to be calculated as per details given in Annexure 3, the capacity of distribution transformer or both 33/11 kV transformers and distribution transformer, as the case may be, to be installed shall be determined by the licensee. The cost of 33/11 kV transformer/ distribution transformer, as the case may be, and associated protection gear shall be borne by the concerned developer/builder. The cost of extending 11 kV or 33 kV line, as the case may be upto the transformer installation shall also be paid by the developer/builder. For this purpose, the cost will be estimated by the distribution licensee and such cost will be payable by the developer/builder subject to recovery/ refund of additional amount on completion of the work. The developer/builder shall have the option to create the required infrastructure i.e. power/distribution transformer sub-station and LT/HT lines alongwith associated equipments, on its own through a licensed contractor, as per the specifications of the licensee, by paying supervision charges to the licensee at the rate of 15% to be levied on estimated material cost, labour cost and shall not include establishment cost.*
- (3) At the time of seeking new connection, the individual Applicant of such complex, shall be required to pay service line charges and initial security deposit only as per tables given in Regulation 5(10) above based on the applicability.*
- (4) The land for installation of power/distribution transformers shall be provided by such developer/builder to the distribution licensee, free of cost."*

13. Thus, Regulation 7 provides that the Developer/Builder who constructs Residential/Non-Residential Complex, Multiplex, Malls etc, under the aforesaid provisions of the Regulations is bound to create required distribution network within such complex from the installed distribution transformer onwards and upto the point of connection to the installation of each consumer within such complex.

The terms Developer/Builder as defined in Regulation 2(1) of the LT Regulations, 2013 means:

“...a person or company or organisation or authority that undertakes construction for residential, commercial or industrial complex.”

Thus, from plain reading of the above it is clear that applicability of Regulations 7 is only restricted to a person or company or authority that **undertakes construction** and not to a person who carves out plots from a plain piece of land and sell it to individuals.

Further, from Regulation 7 (2) it is clear that the load is to be determined by the licensee and the cost of the infrastructure is to be borne by the said Developer/Builder by paying the amount to the licensee. The Regulations further provides an option to the Developer/Builder to do the installation of electrical infrastructure on its own by a licensed electrical contractor, paying 15% supervision charges to the licensee.

14. Whereas, the ‘Press Release’ dated 21.07.2016 & 25.07.2016 issued by the officers of UPCL, states that:

“सर्वसाधारण को सूचित करते हुये संज्ञान में लाना है कि उत्तराखण्ड पावर कारपोरेशन लि० के अन्तर्गत विद्युत वितरण खण्ड, हल्द्वानी (नगर/ग्रामीण)/नैनीताल/रामनगर के अधीन विभिन्न शहरीय तथा ग्रामीण क्षेत्रों में कालोनाईजरो/बिल्डरो द्वारा भूमि पर प्लॉट काटकर आवासीय/गैर आवासीय काम्प्लैक्स, मल्टीप्लैक्स, मॉल्स इत्यादि हेतु जनता को बेचे जा रहे है परन्तु उनके द्वारा विद्युत खम्बे, ट्रांसफार्मर, लाईन तथा अन्य सामग्री की धनराशि विभाग में जमा कराये बिना विद्युत खम्बे लाईन, ट्रांसफार्मर आदि प्रतिस्थापित कर लगा दिये जा रहे है, जो माननीय नियामक आयोग, उत्तराखण्ड के आदेशों के विपरीत है। विकासकर्ता/भवन निर्माता द्वारा निर्मित किये जान रहे आवासीय/गैर आवासीय काम्प्लैक्स, मल्टीप्लैक्स, मॉल्स इत्यादि में नये विद्युत संयोजन निर्गत करने पर UERC (Release of New Connection, Enhancement & Reduction of Loads) Regulation 2013 के विनियम संख्या-7 के उपविनियम (1) से (4) का अनुपालन नहीं किये जाने पर तथा बिना धनराशि जमा कराये आवासीय गैर आवासीय काम्प्लैक्स, मल्टीप्लैक्स, मॉल्स हेतु प्लॉट यदि किसी व्यक्ति/संस्था द्वारा क्रय किया जाना है तो इय परिस्थितियों में विद्युत संयोजन अवमुक्त किया जाना सम्भव नहीं हो पायेगा। विकासकर्ता/भवन निर्माता द्वारा आवासीय/गैर आवासीय काम्प्लैक्स मल्टीप्लैक्स, मॉल्स हेतु कालोनाईजरी/बिल्डर्स से प्लॉट भूमि क्रय की जाती है तो यह सुनिश्चित कर लिये जाये कि नियामक आयोग के एल. टी. रेगुलेशन 2013 के विनियम संख्या-7 के उपविनियम (1) से (4) में निहित प्राविधानों का अनुपालन कर सम्बंधित कालोनाईजर/बिल्डर्स द्वारा विद्युत खम्बे, लाईन, ट्रांसफार्मर तथा अन्य सामग्री की धनराशि विभाग में जमा करा दी गई हो तथा विभागीय मानकों के अनुरूप ही विकासकर्ता/भवन निर्माता द्वारा लाईन का निर्माण कराया गया हो। अतः UERC (Release of New Connection, Enhancement & Reduction of Loads) Regulation 2013 के विनियम संख्या-7 के उपविनियम (1) से (4) का अनुपालन न किये जाने पर किसी भी दिशा में विद्युत संयोजन अवमुक्त नहीं किये जायेंगे तथा इसके लिये उत्तराखण्ड पावर कारपोरेशन लि० उत्तरदायी नहीं रहेगा।”

It is clear that the content of the ‘Press Release’ infringes the provisions of the Regulations at two instances:

- (i) Inclusion of the term 'Plot' in the 'Press Release' which is nowhere mentioned in the aforesaid provisions of the Regulations.
- (ii) Making a statement that if the Developer/Builder is not complying to the provisions of the Regulation 7 of the LT Regulations then the connection cannot be released in any circumstances.

With regard to, the inclusion of the term 'Plot', it is relevant to mention that the Commission while drafting and finalizing the LT Regulations, 2013 had considered comments of various stake holders and on considering and analyzing the same the Commission had deliberately separated the activity of selling out plots from a larger piece of land by a person from that of a Developer/Builder who undertakes construction of Residential/Non-Residential Complex, Multiplex, Malls etc. as defined in Regulation 2(1) of the LT Regulations, 2013. Thus, the person involved in only carving out and selling plots does not fall under the provisions of Regulation 7 of the aforesaid Regulations, since the load assessment cannot be done on a piece of land without any construction on it. Therefore, for assessment of load some construction /built up area should exist on ground as per Annexure 3 as stated in Regulation 7(1) of LT Regulations, 2013. Consequently, inclusion of 'Plot' was kept out of the purview of Regulation 7 of the said Regulations.

With regard to the statement that *"in case Developer/Builder is not complying the provisions of the Regulation 7 of the LT Regulations, 2013 then the connection cannot be released to the consumer in any circumstances,"* it is observed that by making such statement licensee is trying to disregard the requirement of law and its duty to supply on request as per Section 43 of the Electricity Act, 2003 by an applicant of new connection and is also flouting the provisions of the Regulations 4 (5) of the LT Regulations, 2013 which provides as:

"No Application for new connection shall be returned by the licensee for reasons such as "technically not feasible" or due to any material constraint."

From the above it is clear that the licensee is duty bound to supply electricity to an applicant and therefore, statements such as above by the licensee is misleading to the consumers of the State and is percolating wrong information to the public.

15. The Commission is of the view that while issuing such 'Press Release' UPCL should refrain from misinterpreting the Regulations. The content of the 'Press

Release' is totally out of place and defeat the purpose and object of exhaustive spirit of the Regulations.

16. UPCL by the 'Press Release', knowingly or unknowingly, has not only attempted to mislead the consumers of the State but took the charge of wrongful interpretation of the provisions of the Regulations having no capacity to do so. Regulations are subordinate legislations and interpretation of the same is to be delivered by a Court or the body empowered in this behalf which in the instant case is the Commission.
17. Further, it is pertinent to acknowledge that Uttarakhand being a developing State has a best potential for development of the real estate sector, therefore, publishing such incomplete and ambiguous information will lead to chaos among the general public and may open doors to litigation among real estate developers/Builders, the applicants of new connection and the licensee.
18. In light of the above, the licensee is cautioned from making such attempts of misleading the general public by inappropriate interpretation of the Regulations and is directed to take extreme caution in future while issuing public information which can have far reaching consequences.

Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman