

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Appl. No. 01 of 2017

In the matter of:

Petition to relax or vary the provisions of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 whereby the penalty was imposed in the matter of delay in release of new LT service connections for the period of FY 2008-09 to FY 2015-16.

And

In the matter of:

Uttarakhand Power Corporation of Ltd. (UPCL)

...Petitioner.

Coram

Shri Subhash Kumar Chairman

Date of Hearing: March 10, 2017

Date of Order: May 09, 2017

ORDER

This Order relates to the Miscellaneous Application filed by Uttarakhand Power Corporation Ltd. (hereafter referred as "UPCL" or "Licensee") vide letter No. 48/UPCL/Com dated 06.01.2017 in the matter of relaxation or vary the provisions of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 (hereafter referred as "LT Connection Regulations, 2007" & "LT Connection Regulations, 2013" respectively). The Petition is filed under Regulation 59 (2) of UERC, (The Conduct of Business) Regulations 2014 and Regulation 9(3) of LT Connection Regulations 2007 & 2013.

2. Background

(1) Sub-section 3 of Section 43 of the Electricity Act, 2003 provides that the Distribution licensee shall be liable to pay a penalty if it fails to supply electricity to the new connection applicant within the period specified by the

Commission. Accordingly, appropriate provisions have been included in Regulation 5(12) & 5(13) of LT Connection Regulations 2007 and Regulation 5(14) & 5(15) of LT Connection Regulations 2013.

- (2) In accordance with the requirements of the provisions of the aforesaid Regulations, the licensee is required to submit monthly division-wise report containing details of number of connections that were not energised within specified period and shall also deposit with it the penalty accrued on account of such defaults.
- (3) However, on failing to deposit the requisite penalty amount alongwith these monthly reports since July 2009 onwards, the Commission through its various letters reminded the licensee to submit the report and deposit the penalty in accordance with the Act/Regulations.
- (4) On repeated intimation and direction by the Commission with regard to deposition of penalty, UPCL vide letter dated 03.06.2016 deposited a token penalty of Rs. 65,18,954/- (10% of the total amount) and requested the Commission to take a lenient view and relax the provisions of Regulations including waiver of the penalty.
- (5) Thereafter, the Commission issued an Order dated 05.07.2016, wherein the Commission had observed that:

"...This is blatant contravention of the provisions of the Act/Regulation by the licensee. However, taking a lenient view the Commission has decided to allow UPCL to deposit the penalty in half yearly instalments starting from FY 2017-18 to be recovered in 3 years i.e. by end of FY 2019-20. Accordingly, the schedule of recovery of the balance amount of Rs. 5,86,70,591/- (Rs. 6,51,89,545-Rs. 65,18,954) has been presented in the Table given below:

<i>FY</i>	<i>Installment</i>	<i>Amount</i>	<i>Last date of deposition</i>
2017-18	1 st	9778431.00	30 th April 2017
	2 nd	9778432.00	31 st October 2017
2018-19	3 rd	9778432.00	30 th April 2018
	4 th	9778432.00	31 st October 2018
2019-20	5 th	9778432.00	30 th April 2019
	6 th	9778432.00	31 st October 2019
	<i>Total</i>	<i>58670591.00</i>	

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Further the Commission in the said Order directed that:

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- (i) *With regard to the outstanding penalty upto March 2015, the Commission directs the licensee to deposit the aforesaid installments in accordance with the schedule given in the Table above.*
- (ii) *The licensee to compute the penalty in accordance with Regulation for the defaults in the matter of release of new LT connections made during FY 2015-16 and deposit the same by 30.09.2016.*
- (iii) *The licensee shall ensure strict compliance with the provision of the UERC (Release of New LT Connection, Enhancement and Reduction of Loads) Regulations, 2013 as amended from time to time hereafter.”*

(6) Subsequently, with regard to the direction pertaining to computation of penalty in accordance with Regulations for the defaults in release of New LT connections made during FY 2015-16, UPCL vide its letter No. 3775 dated 04.11.2016 submitted a statement computing the penalty amount as ₹3,64,02,478.00 for FY 2015-16. However, UPCL did not deposit the penalty amount.

3. The Petitioner has now filed the present Petition requesting the Commission to relax or vary the provisions of the aforesaid Regulations whereby penalty was imposed in the matter of delay in release of new LT service connections for the period of FY 2008-09 to FY 2015-16 which stands to an amount of ₹10, 38, 44,875/-.

4. UPCL in its present Petition has submitted that:

(1) UPCL or erstwhile UPPCL and UPSEB followed a manual procedure for the release of new LT connections and that after implementation of RAPRDRP Part-A scheme the situation of releasing the connection has improved and that the present system is under stabilization process as the IT system needs to be accepted at the lowest level of the organization for which UPCL is working hard to empower its manpower. It has further submitted that encouragement and support is needed considering the geography of the State.

(2) Before the enactment of the LT Connection Regulations 2007 it had a complex system for release of new connections and post enforcement of regulatory regime UPCL could not avail the option of denying connection on the ground of technical feasibility which meant UPCL in any case was required to grant connections and for which had to strengthen and expand the network capacity

to accommodate the prospective load growth and therefore, in the initial years UPCL had focused on capacity building and have made constant efforts in achieving the right equilibrium and has successfully tried in achieving the infrastructural comfort for exponential and voluminous growth. Further, UPCL has submitted that it had decided to develop a provision for online new service connection and billing module beyond the RAPDRP boundaries to cover the State as a whole which reflects its intention to make system responsive. That this online regime is a paradigm shift, though it is in nascent stage and far from stabilization, it has shown sign of improvement.

- (3) Bare minimum staff and workmen in the Corporation was also a matter of concern limiting its performance and now building an IT savvy workforce was itself a daunting task. Further, it has submitted that for installation of poles and wires, it faces resistance from the residents which makes it impossible for it to erect the same. Moreover, non-availability of any of the material like meters, poles etc may cause delay in release of connection. Furthermore, it has submitted that for release of connection above 10 kW load and those pertains to Tube Well category involves Right of Way (ROW) which requires clearances and approvals rendering delay in release of connection.
- (4) The penalty amount will be recovered from the 500 officials/officers posted in different units across the State despite their contribution in achieving the improved present stage of Corporation and would be demotivating to them which may hamper the progress there upon. Further, it has submitted that it would be impossible to ascertain the contribution of any officer in delay in release of connection and hold him liable which would eventually lead to penalizing a person who may not have contributed in delay.
- (5) The Act only provides for imposition of penalty and does not lay down the procedure of calculating the amount of penalty that should be imposed in any particular case keeping in mind the facts and circumstances of the present matter and that the Act does not envisages for not considering the justifiable reasons which is apparent from the fact that no fixed penalty has been laid down and only maximum limit has been fixed. UPCL has further submitted that, the aforesaid Regulations also do not lay down the justifiable reasons

which in times may contribute in causing delay in release of new connection even in cases when delay is beyond the control of the Petitioner.

5. Subsequently, the Commission decided to schedule a hearing in the matter on 10.03.2017 and issued notice for hearing to UPCL vide letter dated 10.02.2017. On the scheduled date of hearing, the Petitioner re-iterated its earlier submissions and further stated that there has been substantial improvement in its system with respect to release of New LT Connections. On the aforesaid submission of the Petitioner, the Commission decided to give an opportunity to the Petitioner for substantiating its statement and issued an Order dated 10.03.2017 directing the Petitioner to submit the following information under affidavit within 10 days from the date of the said Order-

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- (1) Total number of applications received for new LT connections during the Financial Year 2015-16 and 2016-17 (upto Feb 17).
- (2) Total number of LT connections released within the time frame as stipulated in the Regulations for FY 2015-16 and FY 2016-17 (upto Feb 17).
- (3) Total number of LT connections released beyond the time frame as stipulated in the Regulations for FY 2015-16 and FY 2016-17 (upto Feb 17).
- (4) Total number of applications pending at the Petitioner's end at the end of FY 2015-16 and FY 2016-17 (upto Feb 17). “

6. Accordingly, in compliance of the said Order the Petitioner vide letter dated 20.03.2017 submitted the following information before the Commission:-

	No. of applications received	Connections released within the stipulated time frame	Beyond the stipulated time frame	Connections Pending at the Petitioner's end at the end of FY
FY 2015-16	126967	96519	17338	24045
FY 2016-17 (upto Feb 17)	106864	84607	10792	12688

On examination of the above submission, it has been observed that in FY 2015-16 and FY 2016-17, the Petitioner released 17338 & 10792 connections respectively beyond the time limit stipulated in the Act and Regulation. Besides the aforesaid delayed releases, the connections pending at the Petitioner's end at the end of FY

2015-16 and FY 2016-17 (upto Feb 2017) are 24045 & 12688 respectively which reflects that still the situation is grave.

7. In order to verify the veracity of the submissions made by the Petitioner in the matter, the Commission constituted a Committee to inspect the procedure of generating the said Reports and directed its officers to conduct a field visit to nearby Electricity Distribution Circle (EDC) of UPCL. In compliance to this, the Committee visited EDC(R)-Dehradun and EDC-Roorkee between 12.04.2017 and 20.04.2017. Subsequently, the committee submitted its report on 28.04.2017, wherein, the committee has made the following observations:-

(1) The licensee has developed a fully IT based data storage system wherein, the details of an applicant/consumer are stored from the day of submission of its application for new LT connection and accordingly, system generated Reports are available from the software for delay in release in New LT Connections. Whereas, at Sub-division office - Manglore, the committee observed that despite having well defined software, the Staff of the Sub-division is generating manual reports that too in an incorrect format and the same were being forwarded to the Commission.

(2) There were variations amongst the LT Connection Reports for the same duration viz. Report submitted to the Commission were different from the system generated reports of the respective Divisions and Sub-divisions. Even the system generated reports of the Sub-divisions and Divisions were different.

On detailed analysis, the committee observed that the report that were being submitted to the Commission were showing less entries/penalty amount on account of delay in release of New LT connections than the System Generated Reports of the Division which itself questions the authenticity of reports on delay in release of New LT connections being submitted to the Commission.

(3) The Committee, during the scrutiny of the documents related to release of New LT connection observed that several irregularities viz. no proper record keeping, non-issuance of sealing certificates to the consumers, etc. were prevalent in almost all Sub-divisions.

- (4) The committee further observed that there are evidences of manipulations in the preparation of reports as:
 - (a) There is no locking period for entering the information of sealing certificate in the software due to which the assessment of penalty amount pertaining to delay in release of New LT connections was found to be incorrect.
 - (b) During the site visit it has also been observed that there is no mechanism for monitoring /recording of the basic issue of acknowledging and registering the application forms as the concerned officers/officials register the application only as per their convenience.
 - (5) There was an acute shortage of three phase meters throughout the State, which was also evident during the inspection of the Sub-divisions.
8. Besides above, the Committee has reported following general observations related to procedures adopted for release of New LT connections:-
- (1) As per Regulation 5 (2) of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013, the Licensee is required to inspect the applicants installation in accordance with Rule 47 (now Regulation 31 of CEA Safety Regulations, 2010) & Rule 48 (now Regulation 33 of CEA Safety Regulations, 2010) of I.E. Rules 1956. However, on scrutiny of application forms, it has been observed that test result reports were unsigned, with no information of insulation resistance. This clearly shows a very callous approach of the UPCL's staff towards compliance of Safety Checks as per Safety Regulations.
 - (2) Almost in all Sub-Divisions where sample inspection was done, there were problems of connectivity with the Central Server.
 - (3) UPCL's Staff/officers were not aware of the Commission's Regulations and CEA Safety Regulations.

Commission's views & decision

9. On examination and scrutiny of the submissions made in the Petition and subsequent submission with respect to the admissibility, it has been observed that:

(1) UPCL has filed its Petition under Regulation 59 (2) of UERC, (The Conduct of Business) Regulations, 2014 and Regulation 9(3) of UERC (Release of New LT Connection, Enhancement and Reduction of Loads) (First Amendment) Regulations, 2007 & UERC (Release of new LT Connections, Enhancement and Reduction of Loads) Regulations, 2013.

(2) Regulation 59 (2) of UERC, (The Conduct of Business) Regulations 2014 which is reproduced below:-

"(2) Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Central Act or State Act, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient for dealing with such a matter or class of matters." [Emphasis added]

From the above it is emphasized that even if the Commission has power to adopt an approach/procedure which is at variance from any of the provisions of the Regulations, in view of the special circumstances, the same should, however, be in conformity and not in derogation with the Central Act or State Act.

The Central Act (The Electricity Act, 2003, referred to as 'Act' in the Order), which is the mother legislation, states in this regard:-

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(3) *If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."* [Emphasis added]

The Central Act obligates the licensee to pay penalty in case of default. The mandate of the Act is clear and there is no second opinion about it. Therefore, as has been specified in the Regulation 59 (2) above, the same has to be read alongwith the provisions of the Act which in this case obligates the licensee to pay the penalty.

Hence, the submission of the Petitioner to invoke the provisions of the Regulation 59 (2) is not tenable.

- (3) Further, the licensee has also referred Regulation 9(3) of UERC (Release of New LT Connection, Enhancement and Reduction of Loads) (First Amendment) Regulations, 2007 & UERC (Release of new LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 which talks about the power of the Commission to relax or vary any of the provisions of the Regulations which stipulates that:

“The Commission, for reasons to be recorded in writing, may relax or vary any of the provisions of these regulations on its own motion or on an Application made before it by an interested person.”

In this regard it is relevant to quote **Section 181 (1)** of the Electricity Act, 2003 which talks about the Powers of State Commissions to make Regulations:

*“The State Commissions may, by notification, make regulations **consistent with this Act** and the rules generally to carry out the provisions of this Act.”*

Thus, from the above it is observed that the Regulations are subordinate legislation under the Act and are specified so as to elaborate its purpose, operationalise the enabling provision in the Act, implying thereby, that the Regulations have to be in conformity with the provisions of the Act under which they are framed and never in their violation, therefore, the assertion of the Petitioner to invoke Regulation 9(3) is also not tenable.

- (4) Furthermore, it is pertinent to reproduce relevant para 10.7 of the Hon’ble Appellate Tribunal for Electricity Order dated in Appeal No. 130 of 2009 wherein Hon’ble Tribunal, has held that:

“...there has to be sufficient reason to justify relaxation. It has to be exercised only in exceptional case and where non exercise of the discretion would cause hardship and injustice to a party or would lead to unjust result. In the case of relaxation of the Regulations the reasons have to be recorded in writing. Further, it has to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation.”

From reading the above, it is amply clear that the present case is not fit for relaxing the norms of the Regulations as no injustice is being caused to the Petitioner. Also, the penalty devolving upon Petitioner is the outcome of its repeated non-compliance of the provisions of the LT Connection Regulations.

10. Further, while examining the Petition for admissibility, the Commission has also analyzed the submissions of the Petitioner putting forth the reasons for delay in releasing connection. The observations of the Commission, in this regard, are as follows:-

(1) With regard to UPCL's submission pertaining to stabilization of its IT based system and other problems such as ROW issues or difficult geography of the State. The Commission is of the view that over 13 years have elapsed since the enactment of the Electricity Act, 2003 and the Petitioner should have effectively provided end-to-end IT based solutions/systems which to larger extent mitigate the above constraints and ease the whole process from request to release of New Connection in the most efficient and transparent manner in accordance with the New Connection Regulation of the Commission. Such IT based services provided by the Discoms are in existence in most of the States. The Commission does not find any reason as to why till date the Petitioner has failed to switch over effectively from its existing manual practices to more progressive/modern practices in the matter of new connection process generally in vogue in many other Discoms in the Country nowadays. **The Commission, accordingly, directs the Petitioner to implement fully automated end-to-end IT based New connection system/solution including milestone activities such as acknowledgement of application for New connection, site inspection, payment deposit by the consumer, meter/material receiving from stores and meter installation along with proper system log-in at the time of completion of each milestone activities with regard to release of New connections.**

(2) Submission of the Petitioner that due to inadequate manpower, it is unable to comply with the provisions of the Regulations with respect to timely release of new connections cannot be accepted since the Petitioner is a commercial organisation which has to plan in advance the required manpower and take all necessary actions for recruitment in the right earnest. Also, the submission of the Petitioner that due to non-availability of the meters and timely availability of other material goods, the process of release of new connection are getting delayed. The Commission would like to remind the Petitioner about the

relevant provisions in the New Connection Regulations wherein it has been explicitly provided that:

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

Therefore, such excuses submitted by the Petitioner seeking consent of the Commission to obviate the licensee from discharging its obligation to supply to the applicant for new connection is highly reprehensible and in contradiction to the provisions of the Act/Regulations in this regard.

- (3) On the submission mentioned at para 4(5) above w.r.t. the calculation of penalty, the provisions and the intent of the Act are enabled in the Regulations wherein the methodology/procedure for calculating the penalty is given. Moreover, the provisions of the Act & Regulations are amply clear and explicit leaving no room for divergent interpretations. The practices, operations and intent of the Petitioner should be such that they abide by the provisions of the Act/regulations.
11. Further, on the observations of the committee mentioned at para 7 above, the Commission is of the view that the field officers of UPCL are unaware of the provisions of the relevant Regulations and are least bothered to even see/check the procedures specified in the Regulations, thereby, making the system inefficient and causing inconvenience to the consumers. Further, with regard to the Reports on delay in Release of new LT connection, it is also evident that the Reports submitted to the Commission are different from the records at site and also different from reports generated from the online systems in the field offices, thus the information submitted before the Commission is meaningless to analyse and cannot be relied upon. It is appalling to see that on one hand the petitioner is requesting to waive off the penalty which on the other it is submitting reports prescribed under the Regulations which are erroneous, hence, not acceptable.
12. In this regard, the Commission is also of the view that the licensee:-
 - (1) Should workout a lock-in period for entering the information of sealing certificate against a particular connection in its software application for release of New LT connections. Any entry beyond the lock-in period would be entered in the system only after approval of the concerned S.E.

- (2) Should strictly ensure the compliance of the provisions of the Regulations pertaining to the initial installation and replacement of energy meters, specifically, issuance of Sealing certificate to the consumers at the time of installation of meters must be ensured.
 - (3) Should ensure submission of correct monthly system generated reports pertaining to delay in release of New LT connections for all of its Divisions.
 - (4) Should ensure adequate availability of single phase & three phase meters and other associated accessories required for release of new connection in its stores.
 - (5) Should formulate an internal time-frame for stores with regard to availability of materials required for release of new connections in accordance with the time-frames as stipulated in the LT Connection Regulations, 2013 and take corrective action against the errant officials responsible for delay in availability of material in the stores.
 - (6) Should explore the possibility of integrating its billing & collection, material management, human resource, asset management, supply chain management etc. functions under a single integrated enterprise resource planning software.
13. In light of the above, the Commission is of the view that none of the submissions of UPCL in the Petition absolves it from its obligations under the Act and Regulations. Further, the applicability of the provisions of the Act/Regulations under which the Petition has been filed cannot be attained for the reasons as discussed in the paras above. Moreover, the requirements of the provisions of the Act are further elaborated in the Regulations which cannot be curtailed or obviated for any such reason as submitted by the licensee.
14. Therefore, the Commission holds the Petition as not maintainable and decides to reject it.

Ordered accordingly.

(Subhash Kumar)
Chairman