

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION
Petition No. 35 of 2019

In the Matter of:

Petition to relax/waive 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 F.Y. 2008-09 to F.Y. 2018-19 and upto Aug-2019.

And

In the Matter of:

Uttarakhand Power Corporation Ltd. V.C.V. Gabar Singh Urja Bhawan, Kanwali Road, Dehradun.

.....**Petitioner**

Coram

Shri D.P. Gairola, Member (Law)

Shri M.K. Jain, Member (Technical)

Date of Hearing: October 22, 2019

Date of Order: January 07, 2020

ORDER

This Order relates to the Petition filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "Petitioner" or "the Licensee" or "UPCL") under the provisions of Regulation 59(2) of UERC (Conduct of Business) Regulations, 2014 seeking relaxation or vary in the provisions of the Regulation 5(12) of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and Regulations 5(14) 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 2018-19 and upto August, 2019.

1. Background

- (1) UPCL vide its letter no. 3108/UPCL/Com/LT Penalty dated 30.09.2019 submitted its Petition before the Commission seeking relaxation/waiver 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, and consequently reconsider/modify Order dated 10.04.2019 of the Commission passed in the matter, so as to reduce/waive the penalty amount of ₹20,79,30,236.00 required to be deposited by UPCL as per the provisions of the aforesaid Regulations and refund of amount of ₹1,22,01,524.00 already deposited vide letter dated 03.06.2016 and 05.09.2017 whereby the penalty was imposed in the matter of delay in release of new LT service connections for the period of F.Y. 2008-09 to F.Y. 2018-19 and upto Aug-2019.

- (2) 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 UERC (Release of New LT Connection, Enhancement and Reduction of Loads) Regulation, 2007 and 5(14) & 5(15) of UERC (Release of New LT Connection, Enhancement and Reduction of Loads) Regulations, 2013 (hereinafter referred to as "Regulations").
- (3) Under the aforesaid provisions of the Regulations, UPCL alongwith the submission of monthly reports, containing details of the number of connections that were not energized within the specified time period, shall also be required to deposit penalty before the Commission accrued on account of such defaults. Accordingly, on the basis of these monthly reports submitted by the licensee, the Commission calculates the month-wise penalty due on UPCL for the said defaults.
- (4) UPCL time and again has been requesting the Commission to waive/refund the penalty for the delay in release of new LT connections which is turned down by the Commission vide its various Orders, further, directing it to ensure compliance of section 43 (3) of the Electricity Act, 2003.

- (5) Moreover, besides the Commission's repeated directions to licensee to deposit the penalty amount in time, the licensee has only partially complied with the same i.e. only a small percentage of the penalty amount accrued on account of such defaults has been deposited by the licensee. Taking cognizance of the same the Commission had initiated a *suo-moto* proceedings in the matter and based on the submissions made by UPCL, the Commission issued an Order dated 10.04.2019 wherein the following have been observed:-

"...UPCL vide its letter dated 07.01.2019 submitted the desired information in the prescribed format before the Commission. On examination of UPCL's aforesaid submission, the following has been observed:

Table- 3

Month	Percentage of delayed Connections (%)
Sep'17	36.4
Oct'17	41.35
Nov'17	37.96
Dec'17	36.48
Jan'18	9.15
Feb'18	5.37
Mar'18	4.99
Apr'18	9.74
May'18	11.25
Jun'18	17.04
Jul'18	23.61
Aug'18	30.04

From the above Table-3, it is evident that although there was improvement in percentage of delayed connections in the last quarter of FY 2017-18, however, the percentage of delayed connections again showed an upward trend in first and second quarter of FY 2018-19 which prima-facie indicated that there has been no systematic change with regard to process of release of new connections no significant progress at UPCL's end.

Based on the above, the Commission has taken a serious view on the lackadaisical approach of the licensee towards timely release of new LT connections and is of the opinion that ample opportunity has been given to UPCL for reforming its internal

mechanism w.r.t. timely release of new LT connections. However, still the situation remains the same which is confirmed from the above Table-3 and also from the various reports of UPCL summarised in the Table-4 below with regard to status of delayed connections vis-a-vis accrued penalty thereof under the Electricity Act, 2003 and regulations of the Commission :-

Table- 4

(Amount in Rupees)

S. No.	Financial Year	Penalty Amount	No. of Delayed Connections Released during the Period	Penalty Deposited	Penalty Due
1	FY 2009 to FY 2010-11	91,37,875		74,96,797 (July 2009 to March 2015)	5,76,92,748
2	2011-12	1,09,55,550			
3	2012-13	1,73,58,960	11,442		
4	2013-14	1,28,80,240	3,928		
5	2014-15	1,48,56,920	4,757		
6	2015-16	3,64,02,478	9,454	36,40,247	3,27,62,231
7	2016-17	4,43,37,553	9,166	--	4,43,37,553
8	2017-18	3,50,60,990	5,680	--	3,50,60,990
9	2018-19	1,83,74,750	3,151	--	1,83,74,750
Total		19,93,65,316	47,578	1,11,37,044	18,82,28,272

Based on the above, the Commission is of the view that UPCL has been defaulting in releasing the new connections within the time period specified in the Regulations and despite specific provisions in the Regulations that the licensee shall deposit requisite penalty amount as provided in the Act/Regulations on monthly basis, UPCL has failed to adhere to the same.

This is by all means a blatant contravention of the provisions of the Act/Regulations by the licensee and hence the Commission has decided not to waive off the accrued penalty. However, taking a lenient view, the Commission has decided to allow UPCL to deposit the due penalty amount of Rs. 18,82,28,272/- as on March, 2019 on quarterly basis starting from FY 2019-20 to be recovered in 6 years i.e. by end of FY 2024-25."

- (6) Further, the Commission vide its aforesaid Order dated 10.04.2019 had directed UPCL that:-

“

(i) UPCL shall strictly adhere to the schedule of payment of penalty amount as mentioned in Table -5 above.

(ii) From April 2019 onwards, UPCL shall ensure to compute penalty for delay in release of new LT connections as per the provisions of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 as amended from time to time and shall also ensure to deposit the penalty amount alongwith the monthly reports of delay in release of new LT connections.

(iii) Any non-compliance of the directions issued at S. No. (i) & (ii) above, shall be liable for action under Act/Regulations against the licensee.”

(7) Thereafter, UPCL vide letter dated 30.09.2019 filed the instant Petition seeking relaxation in the provisions of the aforesaid Regulations to reduce/waive-off the penalty amount of ₹20,79,30,236.00 [₹18,82,28,272.00 (upto March, 2019) + ₹1,97,01,964.00 (from April, 2019 to August, 2019)] required to be deposited by it as per the provisions of the Regulations and to refund the amount of ₹1,22,01,524.00 already deposited to the Commission and to reconsider/modify Order dated 10.04.2019 passed in the matter by the Commission.

2. Accordingly, the Commission decided to hear the matter on admissibility on 22.10.2019. During the hearing the Commission heard the Petitioner in detail wherein the Petitioner made elaborate submissions which have been discussed in the following paras.

3. Submissions by the Petitioner

(1) The Petitioner in its Petition has attempted to explain as to how it has evolved from a manual system to an Information Technology based system in the organization's day-to-day working. The Petitioner has submitted that in order to make the working transparent it has made online system compatible with the requirement of Regulations and its compliances and that for a long time the system was under process of stabilization as this IT intervention needs to be accepted upto the lowest level of the organization. UPCL has also submitted that it has made its efforts in paradigm shift from manual system to IT enabled

system. Moreover, capacity building of existing manpower/workforce with IT enabled system and stabilization of the same was a daunting task, however, UPCL is working hard to educate its officers/officials to comfortably cope with the requirements.

- (2) Further, UPCL has submitted that Uttarakhand being a hilly State with remote and tough geographical location, still lacks basic amenities and connectivity both in terms of transport and communication for reaching the remote areas. Moreover, due to minimal staff and workmen in the corporation is also affecting the performances.
- (3) Furthermore, UPCL has submitted that besides the new technological updation and limited manpower, during release of new connections the organization also faces challenges/protest from the residents for installing the new electrical infrastructure, delaying the release of connection. Also, the Petitioner has submitted that at times the unavailability of any of the item required for release of new connection causes the delay. In continuation to this, quoting some field incidents/examples UPCL has submitted that *"...on analyzing reasons of delay in release of new LT service connections it is observed that in all consumer categories those pertains to Private Tube Well category (PTW) and consumers where extension of distribution mains required, replacement/installation of Distribution transformer required, involves the construction of lines and installation/replacement of Transformers which in turn requires adequate Right of Way (ROW). In ascertaining the proper Right of Way difficulties like passage through private land, insufficient width of existing roads, non-availability of space on both sides of road due to existing lines, difficulties due to various road crossings & existing line crossings of various voltages, sufficient ground/lateral clearances, consent of land/house owners, different Government approvals related to their land/forest, general social non-acceptance towards erection of line/transformers for non-personal purpose etc. are quite common and poses serious challenges before the licensee for timely release of connections..."*

"...

(xi) Similarly in case of Jwalapur division for the month of Jan-2019 it is examined that delay in release of connections happened due to ROW issues/ consumer premises

locked/meter room not prepared in case of PTW connections and pole/transformer location not found in system whereas the connection released in time for the proof meter sealing reports/billing history etc has been provided. Approx 98% of penalty imposed due to these reasons, the report is enclosed as Annex-A for kind reference of Hon'ble Commission. UPCL is working on strengthening the NSC release module."

Pondering upon ROW issues UPCL also submitted that;

"...When distribution network in a planned way is laid down it involves public interest because of which licensee exercises its statutory power to lay down lines for such works whereas when public interest is not involved there is obviously an acute difficulty to cater to ROW situations and it appears that in such situations recourse to the authorities in case of ROW issues shall be the responsibility of the individual consumer seeking connection. In various States the responsibility for resolving the ROW issues has been fixed upon the consumer therefore it is requested on ROW situation or any other such analogous situation the responsibility shall be fixed upon the consumer and it would not be just to make provisions for penalty in such cases."

- (4) With regard to the efforts of UPCL in reducing the number of delayed connections, it has submitted that;

"That it is also pertinent that if number of delayed connections are compared on year on year basis then it clearly shows that despite of increasing consumers every year numbers of delayed connections are reducing, which shows the efforts of our officials/officers and their sensitivity in the issue. The year wise details are hereby submitted before Commission as below:-

Sl. No.	Financial year	Number of billed consumers.	No. of delayed connections.
1	FY 2015-16	18,15,454	9805
2	FY 2016-17	19,15,855	9166
3	FY 2017-18	20,24,578	5680
4	FY 2018-19	22,03,032	3151

- (5) Further, UPCL has submitted that penalty is irrecoverable component and any loss to it on account of this can only be recouped through the miscellaneous

recovery from the officers/officials remained posted in different units across the State and any recovery from them would be very de-motivating to them. Supplementing this, UPCL has also submitted that in cases when the cumulative delay has occurred it sometimes become impossible to ascertain individually the contribution of each official independently so as to hold him liable for the delay. There is a great possibility to penalize the officer even in cases when actually the delay may not have been caused by him. Further, UPCL has cited reasons like ROW issue/consumer premises/force majeure conditions and shortage of staff in the corporation as the driving factor for delay in release of new connections.

- (6) Furthermore, UPCL while referring to Section 43(3) of the Electricity Act, 2003 has stated that the Commission while imposing the penalty has to consider certain factors which are beyond the reasonable control of the licensee and in such uncontrollable situations it cannot be just and fair to impose any penalty. The situations enumerated by licensee are as follows:
- (a) Revision of estimates due to practical reasons whereby delay is caused by consumer in depositing the revised amount.
 - (b) Right of way problems even after prompt and effective steps in releasing the connection.
 - (c) Non availability of consumer and premises access.
 - (d) Land ownership disputes or objection by other person/agencies.
 - (e) Crop in field.
 - (f) Force majeure conditions.
- (7) Substantiating the reasons enumerated at para 3(6) above, UPCL in its instant Petition at Sl. No. 6 (x), (xi), (xii) and (xiii) has attempted to provide certain quantified information such as, the percentage of cases in which the reasons for delay in release of new LT connections were narrated as Right of Way (ROW), consumer premises locked and certain Force Majeure Conditions which are being reproduced below:-

“

6. Grounds for Relief:

- (x) *That on analyzing reasons of delay in release of new LT service connections it is observed that in all consumer categories those pertains to private Tube Well category (PTW) and consumers where extension of distribution mains required, replacement/installation of Distribution transformer required, involves the construction of lines and installation/replacement of Transformers which in turn requires adequate **Right of Way (ROW)**. In ascertaining the proper Right of Way difficulties like passage through private land, insufficient width of existing roads, non-availability of space on both sides of road due to existing lines, difficulties due to various road crossings & existing line crossings of various voltages, sufficient ground/lateral clearances, consent of land/house owners, different Government approvals related to their land/forest, general social non-acceptance towards erection of line/transformers for non-personal purpose etc. are quite common and poses serious challenges before the licensee for timely release of connections. These hindrances are generally resolved at distribution level itself and are not reported at the higher levels; moreover the numbers are quite big, of course with different level & nature of problems, and solutions based on selection of alternative feasible route, compromises between different individuals, sections etc., arrangement for proper clearances by augmenting existing lines, help of District Administration etc. requires considerable time and efforts.*

From presently generated online data by deducting consumer end delay penalty when the connection is kept on hold by field officials, connection delayed from F.Y. 2017-18 and F.Y.2018-19 suggested that out of the total delay penalty such above category of consumers contributed approximately more than 55% in F.Y. 2017-18 and more than 35% in F.Y. 2018-19 .

It is also to pertinent to mention here that most of the divisions are not mentioning the case by case reasons of delay , UPCL is working on strengthening the NSC release module.

- (xi) *Similarly in case of Jwalapur division for the month of Jan-2019 it is examined that delay in release of connections happened due to ROW issues/ consumer premises locked/meter room not prepared in case of PTW connections and pole/transformer location not found in system whereas the connection released in time for the proof meter sealing reports/billing history etc has been provided. Approx 98% of penalty imposed due to these reasons, the report is enclosed as Annex-A for kind reference of Hon'ble Commission. UPCL is working on strengthening the NSC release module.*
- (xii) *Further under Rishikesh division for the financial year 2018-19 it is examined that delay in connections happened due to ROW issue/*

consumer premises locked and approx 42.72 % of penalty imposed due to these reasons of the shortage of staff and workmen in the Corporation, the report is enclosed as Annex- B for kind reference of Hon'ble Commission.

*(xiii) It is also be humbly submitted before the Commission that a detailed analysis on reasons of delay in few divisions have been performed by authorized SE(EDC) and CE(Distribution) and it is examined that in **Rudrapur Circle in the month of July-2019 and December -2018 in mostly cases delay happened due to ROW issue/on consumer demand/premises locked/rain troubles and approx. 93% of penalty imposed is due to these reasons i.e. beyond control of UPCL, the report is enclosed as Annex-C for kind reference of Hon'ble Commission. [Emphasis Added]***

- (8) Besides the above reason quoted by UPCL for delay in release of connection, it has also submitted that the delay is also caused due to the situations where work is to be executed by the third party contractor who breaches the provisions of the contract and the licensee finds himself helpless in executing the contract.
- (9) Further, UPCL has submitted that the Electricity Act, 2003 do not provide any fixed penalty and only maximum a limit has been fixed at Section 43(3) of the EA, 2003.
- (10) The Petitioner has also submitted that it is financially not in a position to deposit the penalty amount as the accumulated loss to Corporation is ₹3121.95 Crores as per the balance sheet of 2018-19. Thus, the Petitioner has requested the Commission to relax/waive-off 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, and consequently reconsider/modify Order dated 10.04.2019 passed in the matter, so as to reduce/waive the penalty amount of ₹20,79,30,236.00 required to be deposited by UPCL as per the provisions of the aforesaid Regulations and refund of amount of ₹1,22,01,524.00 already deposited by it.

4. Commission's Observations, Views & Directions

On examination and scrutiny of the submissions made in the Petition, the Commission decides to admit the Petition. During the hearing, the Commission has made certain observations which are discussed in the following paras:-

- (1) With regard to the submission of the Petitioner that due to the shift of its organization from a manual based system to an IT based system and adaptation to the same has been one of the reason for delay in effectively releasing the connection in time. It is observed that the Petitioner has been repeatedly submitting this reason before the Commission for years now which has already been addressed by the Commission in its earlier orders. in its Order dated 09.05.2017 the Commission has observed that;

“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.”

More than two years have elapsed since the issuance of the said Order and to this day UPCL is quoting such reason which glaringly shows its inefficiency not only

w.r.t. releasing new connection but also being unable to adapt to new technological changes.

- (2) Further, with regard to the submission of UPCL that due to inadequate manpower in its organization and due to material constraints at times, results in delay in release of connection are such reasons which could be considered in a scenario where increasing the manpower and purchase of material for releasing the connection are not in the hands of UPCL, which in reality is not true. UPCL is at liberty to increase its manpower as per its need. Likewise, UPCL shall procure material in advance and keep its stores ready for releasing material whenever the need be. Being a commercial organization it has to plan in advance the required manpower & required material and take all necessary actions for the same in the right earnest.

Moreover, the Commission in its Order dated 09.05.2017 had observed that;

“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.”

From reading the above it becomes amply clear that UPCL rather than taking effective measures for releasing connection in time is using these excuses as shield to cover its own inabilities.

- (3) Besides above, UPCL in the instant Petition has cited some specific reasons for consideration which are enumerated below:-
- (a) Revision of estimates due to practical reasons whereby delay is caused by consumer in depositing the revised amount.
 - (b) Right of way problems even after prompt and effective steps in releasing the connection.
 - (c) Non availability of consumer and premises access.
 - (d) Land ownership disputes or objection by other person/agencies.
 - (e) Crop in field.
 - (f) Force majeure conditions.
 - (g) Non-availability of sufficient manpower/workforce for timely release on new LT connections.
- (4) On analyzing the submissions made by UPCL at para 3(7) of this order regarding the reasons for delay beyond its control elaborated at Sl. No. 6 (x), (xi), (xii) and (xiii) of the instant Petition, it is relevant to read the same in light of Section 44 of the Electricity Act, 2003 which provides for the circumstances where the Distribution licensee maybe exempted from its duty to supply under section 43 of the Act. Section 44 of the Act provides that:-

"44. Exceptions from duty to supply electricity.- Nothing contained in Section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control."

- (5) Thus, from the above it is observed that UPCL has brought certain quantified information along with specific reasons for delay in release of new LT connections and has also enclosed details for the same, which on examination depicts that the delay in release of the connections were not solely due the distribution licensee but in certain cases force majeure events and other

occurrences beyond the distribution licensee were responsible for delay. Therefore, the Commission is of the view that an opportunity may be given to the Petitioner for substantiating its claim for presenting the quantified information alongwith specific reasons for individual cases, in which delay was caused either due to force majeure events or other occurrences beyond the control of the Petitioner hindering it from releasing new LT connection as per the stipulated time-frames provided in the Regulations.

- (6) However, it is also relevant to highlight here that the distribution licensee has never been restricted from bringing the facts before the Commission responsible for delay in release of new LT connections. Merely putting up the instant Petition before the Commission for relaxation/waiver of penalty do not provide grounds for exemption against the already issued directions of Commission's Order dated 10.04.2019 wherein, the Petitioner was directed to adhere to the installment schedule framed by the Commission. Therefore, as the final opportunity, the Commission is allowing UPCL to submit the quantified information alongwith specific reasons for individual cases, in which delay was caused either due to force majeure events or other occurrences beyond the control of the Petitioner hindering it from releasing new LT connection as per the stipulated time-frames provided in the Regulations upto September, 2019.

5. In light of the above, it is ordered that:-

- (a) UPCL is allowed a period of six months for substantiating its claim by revalidating the calculated penalty of past period i.e. upto March, 2019 w.r.t. the delays caused due to force-majeure events or other occurrences beyond its control, subject to prudence check. Further, UPCL is also directed to complete the above exercise by 30.06.2020 till then the operation of the Commission's Order dated 10.04.2019 shall be stayed.
- (b) For the period April, 2019 onwards, UPCL shall ensure to compute penalty for delay in release of new LT connections as per the provisions of UERC (Release of New LT Connection, Enhancement and Reduction of Loads) Regulations, 2013 as amended from time to time deducting the number of days during which

the new connections could not be released either due to force majeure events or other occurrences beyond the control of UPCL and shall also ensure to provide specific reasons for delay in release of new LT connections in its reports, highlighting the cases in which delay occurred. Further, UPCL is also directed to ensure deposition of the penalty amount due for FY 2019-20 alongwith the revised reports.

- (c) Staff of the Commission is directed to incorporate the provisions specifying the uncontrollable factors adversely affecting the timely release of new LT connections in the proposed amendments in LT Regulations.

Ordered accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)