

Before the Hon'ble Ombudsman
U.E.R.C., 24 Vasant Vihar, Phase-II,
Dehradun-248006
Phone -(0135) 2762120

Case: Representation No. 8/2005 dated 12.7.2005

Complainant

M/S Polyplex Corporation Ltd.,
(Works at Lohia Head Road),
Khatima, Distt. Udham Singh Nagar.
H.O., B-17 Sector- 1,
Noida Distt. Ghaziabad.

Vs.

Respondents

1. Chairman Consumers' Grievances
Redressal Forum, Kumaon Zone,
132 KV S/S Compound,
P.O. Kathgodam,
District Nainital.
2. Uttaranchal Power Corporation
Ltd., through its C.M.D.
3. Executive Engineer,
Electricity Distribution Division,
Uttaranchal Power Corp. Ltd
P.O. Rudrapur,
Distt: Udham Singh Nagar.

Counsel for Complainants,
Sri B.C. Rai, Advocate, the
High Court at Allahabad
Enrollment No. 7574/95

Counsel for the Respondents,
Sri S.M. Jain, Advocate
Reg. No. 4719/62 Ex D.G.C.
(Civil), Dehradun .

In the matter of:

A Representation against the dismissal of the Complaint by the learned Consumers' Grievances Redressal Forum, Kumaon Zone, 132 KV Sub-Station Compound, P.O. Kathgodam has been filed by the Complainant seeking annulment of the 15% extra charge provided for under the Rate Schedule HV-2 that was enforced w.e.f. 9.8.2000 till 15.9.2001 by the U.P. State Regulatory Commission as per its Tariff Order dated 27.7.2000. The Forum has partially allowed the Complaint with regard to grant of the statutory provision of interest as per section 62(6) of the Act 2003 in the matter of the refunded amount that was held to be charged in excess by the Uttaranchal Electricity Regulatory Commission (UERC) order in the matter.

Quorum

Sri J.C.Pant
Date of Award

...
...

Ombudsman.
29.11.2005

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AWARD

The above Representation was received in the office on 12.7.2005. Copy of the Representation was sent to the Respondents including Respondent No. 3 for presence of the parties and submission of the point wise reply by 27.7 2005.

On 27.7.2005 the Complainant was not present and the learned Counsel for the Respondents (the Licensee) had informed that he would not be present due to some unexpected urgent work. It was found that the Complainant had wrongly impleaded Executive Engineer, Khatima instead of Executive Engineer, Rudrapur. The next date for hearing and reports was fixed for 10.8.2005 and notices were issued accordingly. The Complainant was directed therein to make the required correction and send the copy of the corrected Representation directly to the Executive Engineer, Rudrapur along with copies to this office and the UPCL.

On 10.8.2005 the Complainant was absent again. Licensee was represented by their learned Counsel Ms. Shashi Yogeshwar. Licensee had filed a reply on this date. The next date was fixed for 24.8.2005 for presence of the Complainant. Notices were issued accordingly and the Complainant was again reminded to correct the mistake in his Representation.

On 24.8.2005 Sri Arun Goel representative of the Complainant had appeared with a request to adjourn the hearing of the Complaint. He was told that two notices had been sent to the Complainant to make the correction in the Representation before hearing could take place. He was again advised to do so. Thereafter 31.8.2005 was given as the date for correcting the Representation and notices were issued accordingly.

On 31.8.2005 the Counsel for Licensee Sri S.M.Jain was present. Complainant was again absent but had corrected the Representation. The next date was fixed for 21.9.2005 for arguments and notices were issued accordingly to the parties.

On 21.9.2005 the arguments of the learned Counsel for the Licensee Sri S.M.Jain were heard. Sri Umed Singh Bist representative of the Complainants heard these arguments. Complainant was given time up to 13.10.2005 to file their written arguments and next hearing was fixed for 19.10.2005.

On 19.10.2005 arguments presented by the learned Counsel for the Complainant were heard. Learned Counsel for the Licensee requested that he would argue his case later. The date 16.11.2005 was fixed for further arguments and the notices were issued accordingly.

On 16.11.2005 the Complainant submitted some documents. Copies of the same were also given to the Counsel for the Licensee Ms. Shashi Yogeshwar. The next date 23.11.2005 was fixed for hearing arguments of the Licensee and notices were issued accordingly.

On 23.11.2005 learned Counsel for the Licensee presented his arguments and these were heard besides those of the Complainant as well. The next date 29.11.2005 was fixed for the Award.

Although the Representation had been received on 12 -07 -`2005 the fact of wrongly impleading the Respondent whether by mistake or otherwise, which had been pointed out for correction was only corrected by the Complainant on 31 -08 -'05 The delay on the part of the Complainant was possibly due to some additional time that was being sought by the Complainant to cite a judgment allegedly in a supposedly similar case from the Hon'ble High Court at Allahabad. Be that as it may, the effective date of the Representation has been considered to be 31-08-2005.

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Facts and circumstances of the case

1. The Complainant runs a factory manufacturing Polyester Chips, with a load of 1000 KVA for which it chose to get its connection through an "independent feeder" as it stood defined and practiced in usage in the UPSEB, the then Supplier, vide its Circular 38HC/2(243)C/73 dated June 16, 1980. The Voltage of this independent feeder was 33KV.
2. This chosen independent feeder for delivery of power was emanating from the 132 KV sub-station of the Hydro Electric Power Generating Station, at Lohia Head (Khatima) and the former was connected through two 132 KV individual circuits or lines with the Grid at Dohna, Bareilly. All these factors of a Hydro Power Generating Station and the two 132 interconnecting power lines ensured the highest standards of continuity and reliability of supply at the above 132 KV Sub station. It is thus an un-disputed fact that the power supply emanating from such a reliable power source as this 132 KV Hydro Power Station sub-station was the one chosen by the Complainant by paying the costs to get connected to it.
3. Not just the Complainant's above connection but three other connections had also been connected to this independent feeder of which one was also owned by the Complainant.
4. The Complainant was the first consumer to seek the connection for its Polyester Film Unit load 2500 KVA from the aforesaid Hydro Power Station by seeking to use a redundant 33 KV line and paying the cost involved in such adoption to its use as an "independent feeder" for its power connection.
5. The costs were paid for by the Complainant in accordance with the standing rules of the then UPSEB applicable in the above case as per its circular No. 38 dated 16.6.1980. Similarly the other consumers also paid the costs involved in getting their industrial loads connected to this very same "independent feeder".
6. In order to illustrate the issues involved it is herewith stated that if the Complainant had been requested to pay for the cost of an entirely new line emanating from the 132 kV Hydro Power Station sub-station it could have been done, provided it was firstly, technically feasible i.e. there was space in the switch yard for its extension to install a separate 33 kV circuit breaker and secondly, the Complainant was willing to pay for the substantially higher costs of not only the extension work in the yard but also for the full costs of the new line for the entire distance from the 132 KV sub-station up to the site of the connection. The conversion of the redundant 33 KV line to its use by the Complainant was thus not only economical but it also served to eliminate the possible disputes contesting the "right of way", which were very much possible in the case of an entirely new line being announced for much a major industrial connection.
7. This illustration applies equally well in the case of each of the above successive connections if each had sought an entirely new line from the above 132 kV sub-station. Whether that could have been possible in the light of the "right of way" disputes posed by the affected rural/urban land owners is easily answered. If at all these would have been allowed by the land owners or was technically feasible it would invariably have involved huge outlays of time and money for the Complainant and the other industrial consumers.
8. So it was in the mutual interest of the Complainant and the UPSEB if not more so for the former to obtain his two connections from this "independent feeder". In order to ensure that this line was converted into its independent feeder use the UPSEB had dismantled the line at its farthest end. So no other beneficiary existed except for these four industrial consumers of which two are owned by the Complainant.

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- 9 In effect the facility and benefits of four separate lines had been coalesced into one as the required technical norms for supply of uninterrupted guaranteed power as available in the Grid had been observed. More importantly all of the parties accepted this "independent feeder" status right from its inception from 1.10.1986 onwards till the HV-2 Tariff came to be enforced and was subsequently challenged some times from September 2000 onwards
- 10 It is also a fact that the UPERC had recognized the differing status of power availability "viz-a-viz" the type of feeders in use in the UPSEB and its successor the UPPCL, namely "Rural Feeders", "Urban Feeders", "State Tube Well feeders" and "Independent Feeders"
- 11 It is admitted by the Complainant that it had entered into an Agreement with the UPSEB on 7.11.98 that stipulated inter alia "whereas the consumer has requested the Supplier to supply him electric energy in bulk and the Supplier had agreed to afford such supply to the consumer on the terms and condition hereinafter contained."
- "SUBJECT TO THE PROVISIONS hereinafter contained and during the continuance of the agreement that the Supplier shall supply to the consumer at Khatima (place) for polyester chips (process) electrical energy in the form of a three phase alternating current at a declared pressure of 33000 volts between phases a declared frequency of 50 cycles per second and a power not exceeding 1000 Kilovolt amperes (hereinafter referred to as the contracted load/contracted Demand) and the supply shall be made available to the consumer from the Board's mains in accordance with the availability in the Grid PROVIDED ALWAYS that the supplier shall not be liable for any claim for any loss, damage or compensation whatever arising out of any accidental failure of supply or stoppage or curtailment or diminution or variation in supply or any failure, rostering, as a result of any direct or indirect direction or orders of Government or other competent authority in respect to the distribution of power, or due to war, mutiny, commotion, riot, strike, lock-out, fire, floods, lightening, earthquake or other causes beyond the control of the Supplier".....
- 12 What the entire agreement of the UPSEB period goes to state in simple practical terms is that the supply of electric energy of the prescribed parameters and load shall be made available to the consumer to the extent it is available in the Grid.
- 13 It is no doubt illustrative of the situation prevailing in the Power Sector prior to the Reforms initiated in it in the undivided U.P. under the Uttar Pradesh Reforms Act 1999 w.e.f. 14.1.2000 (Act No. 24), by the Uttar Pradesh Regulatory Commission (UPERC).
- 14 The 90 Page Tariff Order for the year 2000-2001 of the UPERC dated 27 7.2000 was thus a major step in that direction and Was issued under its Regulatory Functions under the Law.
- 15 The Complainant's connection falls under the Rate Schedule HV-2 of the above Tariff Order, which has now been challenged for the period 9.8.2000 up to 15.9.2001.
- 16 The same had been illegally altered to benefit some of the HV-2 Tariff consumers including the Complainant till it was struck down by the Hon'ble High Court at Allahabad.

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ISSUES IN THE CASE

- 1) M/S Polyplex Corp. Ltd seeks refund of the 15 % surcharge that was part of the HV-2 Tariff as per UPERC Tariff Order dated 27 July 2000, which was applicable to the Large and Heavy Power Consumers connected to independent feeders emanating from 400/220/132 kV sub stations w.e.f. 9-8-2000 till 15-09-2001. The full Tariff Order pertaining to this class of consumers is contained in Pages 69 to 72 but also includes inter-alia Rebates and Penalties on Pages 75 to 76 applicable to High Voltage Consumers.
- 2) The above Tariff in so far as only its 15 % surcharge levy was concerned had been earlier sought to be circumvented by the Complainant through the then UPPCL circular No.1423 dated 08-09-2000, which was subsequently declared null and void by the Hon'ble High Court at Allahabad in the LML Vs State of UP case. The HC had observed inter alia regarding the above UPPCL order that "...the 15 % surcharge would not be levied in case a consumer getting supply from an independent feeder emanating from 400/220/132 KV substation gave an option that he did not want a guarantee of 500 hours in a month is contrary to the tariff approved by the Commission." The circular was held to be "...clear alteration of the approved tariff, which is not permissible in law."
- 3) M/S Polyplex Corp was one such consumer that had earlier exercised the option held illegal vides its letter No. PCL/KHTM/DSR/01 Dated 24-01-'03 in order to evade paying the extra charge of 15 % provided for in the Tariff for that year. The option letter addressed to the Executive Engineer Distribution UPPCL, Kashipur read as follows: " With due regards, we are paying 15 % extra amount for independent feeder for our Service connection No. H .P. -18. We do not want to continue this independent feeder facility in future. Hence the 15 % extra charges for independent feeder may kindly be withdrawn at the earliest."
- 4) The Complainant had fully accepted the independent feeder status of its connection as per the above declaration. The E. E. Distribution waived aside the 15 % surcharge vides his O. M. No. 947 dated 31-03 -'01 with effect from 1.4.'01. How a connection connected to an independent feeder could be undone physically without stating how it was at all to be done is a mystery but points to a contrived effort to undo the UPERC's provision of this extra charge.
- 5) The E. E. Office Memo is also reflective of this: It says, "As per request made by M/S Polyplex Corporation Ltd Khatima vide their letter no. PCL/KHTM/DSR/01 dt. 24 -3- 2001, the consumer does not want assure/ Guaranteed supply on 33kV independent-feeder. Hence the 15 % extra charges being charged in their electricity bill is hereby withdrawn w.e.f. 1-4 - 2001 ' The order is endorsed to the Complainant in reference to his above cited 'option'
- 6) The waiver of the 15 % surcharge was an additional benefit not provided for in the tariff, which the UPPCL had no authority or jurisdiction to grant to the consumer. The Hon'ble High Court in its judgment Para 16 in the M/S LML vs. the State of U. P. and others had further dwelt at length upon the authority and powers vested in the UPERC under the U. P. Act No 24 of 1999. It had observed that a determination of the tariff by a body other than the Commission or to alter or vary the same constituted a violation of its powers and the UPERC was empowered to impose fines and failure to comply with any direction or order, was an offence punishable with imprisonment up to one year or a fine up to Rs 5 Lacs. The Hon'ble H. C's reiteration of these awesome powers of the Commission in its judgment must not be lost sight of to caution against any ill-considered, frivolous, or unauthorized interpretation or action that is construed as or becomes an alteration of the duly approved tariff.

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- 7) In the present case the Complainant has thus raised another contention by which it seeks to annul the levy of the 15 % surcharge. To begin with it has erroneously called the extra charge for getting/ availing an assured supply of at least 500 hours in a month, an "independent feeder surcharge". No such nomenclature exists in the UPERC Tariff Order. Thereafter it has sought to build up a case as if the liability of paying a 15 % surcharge rests on having paid the entire amount for the construction of this independent feeder or for being the only industrial consumer connected to it. No such implication or definition exists in the tariff order. What the Complainant suppresses is the fact that it had availed an assured supply of at least 500 hours in a month which in fact was the benefit granted in the Tariff to be paid for with an extra charge of 15 %. **It was not the fact of the independent feeder (emanating from a 400/220/132 k V sub station), which imposed this additional charge but the assured supply that was made possible through it.** Had the UPPCL defaulted in providing the minimum assured supply of at least 500 hours in a month despite its providing the independent feeder it was bound to give a rebate of 1 % for every 10 hours or part thereof of supply shortfall on the demand and consumption in the month. The Complainant has made no such averment of the facts, which could thus be held to constitute a matter of "suppressio veri" and "sugestio falsi".
- 8) It is necessary at this stage itself to observe that the Complainant was free to agitate this case before the Hon'ble UPERC right through out the period 9-08-2000 and onwards through 15-09-2001 till September '02, when the UPERC assumed authority to decide on such matters in the erstwhile undivided UPPCL, which continued to function in the Uttaranchal region even after the division of UP. Rather the UPERC was still the authority for deciding the tariff related issues even as late as September '02, before the Uttaranchal Electricity Regulatory Commission took over. But the Complainant has significantly omitted to do so.
- 9) This omission cannot be a mere oversight. The Complainant was deeply agitated over the issue as is borne out by its letters of protests against the levy of the 15 % extra charge But it initially sought its annulment through the impugned order of the UPPCL, which was declared null and void by the Hon'ble High Court. Thereafter it refrained from agitating this matter before the UPERC even after the High Court's order dwelling at length on the Commission's powers that could well have been a pointer to potential complainants to seek any redress regarding alteration in the Tariff from that august body.
- 10) This then puts the onerous responsibility of deciding this matter upon the Ombudsman in the light of what the UPERC may well have observed or decided if such an appeal had been preferred before it. But with regard to deciding an issue that in any way annuls, modifies, alters or varies the tariff that too over a retrospective period that may well concern a large number of consumers affecting enormous financial stakes calls for the widest circumspection that such a decision shall not transgress the authority of the then UPERC both in spirit and substance in its aforesaid Tariff Order of 27 - 07-2000.
- 11) The dispute now raised is thus primarily over the HV-2 Tariff for the year 2000-'01 when it is applied to the consumers connected to what constitutes the erstwhile UPSEB's definition or nomenclature of an "independent feeder" emanating from a 400/220/132 KV sub station i. e. the type of delivery system to which such consumers were connected in order to ensure a minimum guaranteed supply of 500 hours in a month that was in fact ensured in this case as stipulated in the above tariff.

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Examining the issues

- 1) A close examination of the entire UPERC Tariff Order reveals that the UPERC, in its HV-2 Tariff had made the condition of ensuring an "assured supply of minimum 500 hours in a month" an integral part of its Tariff order for the industrial class of consumers. Quoting its own words it says "15 % surcharge on demand and energy charges and have the assured supply of minimum 500 hours in a month. In case of shortfall in the guaranteed hours of the supply, a rebate at the rate of 1 % per ten hours or part thereof shall be admissible on the total amount as computed under rate of charge." It cannot be over emphasized at present that the UPERC had stipulated a quid pro quo - the 15 % additional surcharge is for the assured supply of a minimum of 500 hours. The Complainant has nowhere averred that he was not given a supply of an assured minimum of 500 hours in a month. He has in fact admitted it in his Representation Para16, Page 6. So it has availed a benefit for which it was liable to pay as per the tariff when in fact there were other classes of consumers who were going without this benefit of assured supplies according to a diligent reading of the UPERC Tariff order of 27 -7 -2000.
- 2) As the facts bear out the Complainant had moved the application dated 24 -03-'01 stating "we are paying 15 % extra amount for independent feeder We do not want this independent feeder facility in future..." This was in the first place a patently wrong assertion. The UPERC neither has stated nor even implied that the 15 % extra charge was for an independent feeder. It was for the guaranteed assured supply that could in fact be ensured only through independent feeders that too only from those emanating from 400/220/132 k V sub stations as it does not say from those emanating from 66/33/11 k V sub stations.
- 3) The official response vide the E. E. order was even more of a prevarication. He said the complainant "...does not want assure(d) / Guaranteed supply on 33kv independent feeder. Hence the extra charges being charged in their electricity bill is hereby withdrawn w .e. f. 1-4-'01". The Complainant was being given supplies from the 132 kV Lohiahead Hydro-Power Sub Station, which was in fact a Hydro Power Station itself a pointer to assured supplies. It was open to the Complainant to take its supplies from say the 33 kV Khatima sub station but it preferred to do so from the aforesaid Hydro Power Station, which had a near 100 % power availability all throughout the year except perhaps in cases of planned maintenance shut-downs. That was not just a coincidence but a deliberate choice based on the reality of all round power availability, which no industrialist can truthfully deny. But here it was being asserted otherwise by one such industrialist and that too having in fact availed of the guaranteed supply of at least 500 hours! To say this was not needed amounts to a deliberate falsification of facts - it is a `suppressio veri" and a "suggestio falsi".
- 4) It becomes necessary at this stage to go into just what was the spirit behind the substance of the UPERC Tariff Order of 27 -07 -2000. Unreliability of supply in the then undivided U.P. was taken note of by the UPERC when it stated on page 27 Para 5.10 "Several consumer interest groups complained about the poor quality of power. They mentioned that there are frequent unscheduled power cuts, trippings, voltage fluctuations and low frequency, which result in production loss and damage to equipment....."

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The UPERC was particularly concerned about the plight of the industrial sector particularly for the industrial consumers of HV-2 category. It had said inter alia, in its Section 2.4 Page 10, "...this is evident from the fact that in Uttar Pradesh there had been an absolute decline in electricity consumption by the industrial sector... If supply and service conditions do not improve substantially more consumers will opt out of the system. It is therefore of prime importance to improve the institutional capability of UPPCL to enhance electricity supply and improve the quality of service..."

Then on Section 3.0 Page 11 it says "...During the same period, all-India total connected load increased at a CAGR (Compound Annual Growth Rate) of 6.6 per cent. Industrial connected load in Uttar Pradesh, during the same period posted a CAGR of only 1.6 per cent as opposed to the all India figure of 5 per cent. Similar observations can be made on electricity consumption."

Continuing in this vein it says "More disconcertingly, the gap between industrial growth in Uttar Pradesh and India during 1993-'94 to 1998-'99 was starker and in large part can be attributed to the sorry state of the electricity sector"... "...the share of industry in energy consumption has decreased from 27.3 % in 1991-'92 to 20.7 % in 1998-'99(see table 2) (Section 3.3 Page 12)

"In 1998-'99 the average revenue realized from Industry was 385 per cent of the average revenue realization from domestic consumers... (Section 3.5 Page12)

"In all parts of the State consumers have consistently complained to the Commission about lack of availability of electricity. In the circumstances when availability is not a constraint, all efforts should be made to provide adequate supply of electricity to the paying consumers (Section 5.14 page 28).

- 5) The above are only a limited number of extracts from the thorough mass of consumer opinions and documentation that comprises the UPERC Tariff Report 2000-'01. It thus gives a factual insight into the underlying view of the Commission that the Industrial Sector in the erstwhile undivided Uttar Pradesh needed a better deal especially with regard to an assured supply, at a rate which offered incentives to improved consumption consistent with improved productivity. It had noted the fact that the Industrial Sector was a better paying class of consumers so was deserving of the above considerations.
- 6) So there is no doubt that the Commission put an emphasis on improved availability of supply to the Industrial consumers. This was specified by its order of supplying at least a guaranteed minimum of 500 hours of electricity in a month. To this end the Commission put a quid pro quo, of the industrial consumer paying just an extra charge of 15 %. But it also imposed a penalty on the UPPCL in case of shortfall in the guaranteed hours of supply of giving a rebate @ 1 % per ten hours or part thereof on the total amount as computed under rate of charge.
- 7) Not content with just this step of assured power supplies the Commission has given additional benefits to the industrial consumers in its Rate Schedule HV-2 that hinge upon reliability of power. If supply is availed at Voltages 11 kilo-Volts and higher (Page 71), in this case it is 33 kV; a rebate of 5 % was admissible on the amount calculated as per the rate of charge.

Again on Pages 75 and 76 are additional rebates or incentives. Apart from the power Factor Rebate for HV Consumers, which was a maximum of 1 % there was in the words of the Commission "In order to encourage industries , we feel that consumers maintaining higher load factor should be given some incentives. The Uttar Pradesh Reforms Act 1999 also empowers the Commission to make distinction between consumers having different load factor or power factor.

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In view of this we feel that all consumption in HV-2 & 3 categories in excess of 60 % annual average load factor shall receive a rebate of 10 % of the energy charge per unit."

- 8) It is thus an obvious fact that all these rebates or incentives are most beneficial rather it may even be said, to be possible only if there is a guaranteed minimum assured supply of 500 hours in a month, which is again dependent, or rather these guaranteed supplies are possible only through independent feeders emanating from 400/220/132 kV sub stations. The Complainant has again suppressed these facts and has omitted to aver whether he has availed these benefits or not, which are incentives to a more efficient use of the electric power. In any case these go to prove that the 15 % extra charge was for a guaranteed minimum 500 hours supply that was possible only if the consumer was connected to an independent feeder emanating from a 400/220/132 kV sub station. Further more the 15 % extra charge was an inalienable part of the entire composite scheme of benefits and incentives to higher industrial productivity per unit of power made available to mutually benefit both the UPPCL and the industrial consumer.

Recalling the UPERC's observations in Para 15 "...this is evident from the fact that in Uttar Pradesh there had been an absolute decline in electricity consumption by the industrial sector... If supply and service conditions do not improve substantially more consumers will opt out of the system. It is therefore of prime importance to improve the institutional capability of UPPCL to enhance electricity supply and improve the quality of service..." The concluding part to improve the institutional capability of the UPPCL must not be lost sight of in putting a waiver to the 15 % extra charge based as it was on a diligent and erudite tariff determination exercise by the duly constituted lawful body. The UPPCL's institutional capability to enhance electricity supply implies its healthy financial position to buy more power and to do better servicing in order to render more power availability.

- 9) As if to clinch this issue beyond doubt in the very same HV-2 Tariff, the UPERC makes the telling difference between industrial consumers connected to independent feeders (that too emanating from 400/220/132 kV sub stations) and those connected to "rural feeders". It says "• For connection in rural area getting power supply as per rural schedule a rebate of 10 % on the demand charge and energy charge will be given." In the undivided U. P. for which the Tariff was formulated the rural areas got supplies only for restricted hours in each day. These supply hours per month were certainly far less than the guaranteed 500 hours for which the extra 15 % was levied. So for industrial consumers suffering restricted power supplies of say 10 -12 hours per day only the Commission in its fair-mindedness gave a 10 % rebate.
- 10) This distinction must remove all doubts as to what the UPERC had in mind and which we too have so far been at pains to point out. That this was so is obvious from the fact that the UPERC put a higher price on the electric energy that was reliable and could be effectively "controlled" to ensure its reliability through the Central Load Despatch Station (CLDS) and the Area Load Despatch Stations (ALDSs). This was not the case with the "rural feeders" that were given supplies for certain restricted hours each day. Apart from that it could not be ruled out that these "rural feeders" would not be beset by "break downs" and load shedding. Load shedding was carried out by the CLDS and ALDSs according to a pre-planned "rostering programme", which was aimed at shedding off relatively less important loads just when there was a sudden shortage of power availability to its system, which progressed to shedding off increasingly important loads if the shortage demanded it. Needless to say even the "rural feeders" suffered as did the "urban feeders" but the independent feeders from the "controlled sub stations" meaning the 400/220/132 kV sub stations were in the relatively well protected category of loads, which were shed off only in the worst shortfall situations or when it became inevitable to save the system from collapsing.

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- 11) The UPERC has clearly exercised fairness in determining the HV-2 Tariff when it had on one hand imposed in its own words a "15 % surcharge on demand and energy charges and have the assured supply of minimum 500 hours in a month. ..." and on the other hand gave a 10 % rebate ".For connection in rural area getting power supply as per rural schedule a rebate of 10 % on the demand charge and energy charge.. ".

Rather the UPERC had gone so far as to determine lower tariffs based on considerations of quantum/ quality of supply availability in other classes of consumers as well. For example on page 66 in case of Medium Power (Industrial/ Agro-Industrial) Loads for a connection getting supply on "rural feeders" as per "rural schedule" the Commission had fixed lower tariffs than for those getting supply on "urban feeders".

Again in case of Commercial Light & Fan Consumers on Page 58, the Commission has charged only a fixed rate per each connection (up to 2 kW) for such connections in villages/towns with population less than 10 000 as per the '91 census getting unmetered supply as per rural schedule, while it has charged a much higher rate for consumers "In all other cases, including consumers getting supply through rural feeders exempted from scheduled rostering/restrictions or through co-generating radial feeders in villages towns having population up to 10 000 as per '91 census. The quid pro quo of enhanced supply availability to increased rates of supply is thus clear. The same was true for Light & Fan consumers as on Page 56-57.

A more dramatic illustration is provided by the tariff for private tube-wells for irrigation as on Page 61. Under the heading "a. For consumers getting supply as per rural schedule:", the rates are fixed @ Rs. 55/60 for motive power up to 10 HP and above 10 HP per month, respectively. Say, a total of Rs. 550 for a 10 HP tube well per month, besides, there was to be no metering on these.

But for "b. For consumers getting supply as per urban schedule (metered supply)" there was to be an energy charge @, 290 Paise per unit along with a minimum charge of Rs. 90. 0 per BHP per month. The enhanced rates thus work out to a minimum of Rs. 900 for a 10 HP connection.

- 12) This reiteration of the point of charging higher @15 % in case of industrial consumers emanating from the "controlled" Extra High Voltage sub stations by quoting examples from the UPERC tariff for other consumers as well, is to once again highlight the point that higher rates were for higher quantity of power supply as also for better quality of power, of its being assured with a minimum of at least 500 hours in a month with also a safe guard of imposing a penal rebate on the Power Corporation in case for each short fall
- 13) The UPERC was thus fully aware of the nomenclature and power reliability (assured power supply) status of each of the type of feeders mentioned in the Tariff Order, be they rural feeders, urban feeders, World Bank Tube well feeders as well as independent feeders.
- 14) That the independent feeders did not necessarily mean having only one consumer at its end was made clear in the UPSEB circular No. 38-H C/2(243)c/73 dated 16.6.1980, which sets out that consumers having the same and/or similar process(es) may be given connection from such an independent feeder. This condition safeguards the consumers' interest vis-a-vis the reliability and continuity of supply as is itself shown in the example of the cold-storage quoted in the above UPSEB orders.

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It has been already been proved as is also well known even at present in Uttaranchal that industrial consumers connected on independent feeders are protected from unplanned power cuts that become inevitable when major power generating units trip out. Other power connections/consumers that needed to be protected from such load-sheddings were the State Tube Wells/Pump Canals as mentioned in the order No 38 of 16 - 6 - '80, which go to prove that the concept of the independent feeder had evolved only to safeguard the power reliability factor of the most vulnerable class of such consumers. This included industrial consumers that are hardest hit by unreliable power supply whether it is through loss of industrial production, paying for idle labour, loss of processed raw material or other such related reasons that ultimately raise the cost of production and erode profits.

- 15) It is herewith again re-iterated that calling the 15 % extra charge an "independent feeder surcharge" was thus to render an obfuscation, which wrongly tends to alter the perspective with which this additional charge begins to get viewed as if it had nothing to do with the enhanced reliability of an assured minimum of power supply with which the UPERC was primarily concerned in its tariff formulation and on the contrary everything to do if more than one consumer with the same process or one with a similar process came to get connected on it.

Here it must be stated that the Complainant was fully aware of the status and connotation carried by the word "Independent feeder", which was evolved as part of practical usage in the then UPSEB to ensure the reliability of power supply to the single or limited numbers of connected consumers in a power system prone to frequent load shedding. The Complainant had admitted as such as stated earlier in Para in 3 when he took recourse to the ruse of exercising an option "not to require 500 hours guaranteed supply" The usage of the word independent feeder was practically related to the 500 hours guaranteed supply.

- 16) We have no grounds to believe that the U.P.E.R.C. had questioned the U.P.S.E.B's definition of what shall constitute an independent feeder when it promulgated its Tariff w.e.f. 9.8.2000. The fact remains that the U.P.E.R.C. had thus not disputed the U.P.S.E.B's definition of what shall constitute an "independent feeder" to prescribe its own formulation. Nor is it now open to us to surmise that the U.P.E.R.C. was lacking in due diligence and methodical study to be ignorant of this standing order of the U.P.S.E.B. and its practical connotation considering that this involved the feeding arrangements to one of its most important class of consumers, namely the Large & Heavy Industrial consumers "a paying class of consumers". It was fully aware of what the feeding arrangements were for all classes of consumers and how much they were benefiting or not benefiting from it as can be made out from the examples of charging higher rates for more reliable and assured supplies that have been extensively quoted in earlier Paras.
- 17) As regards the Complainant's contention that the U.P.E.R.C. did away with the 15% surcharge in its next revision w.e.f. 1.9.2001 it is also a fact that it did not see it fit to rescind its earlier order of 27 -7- 2000 with retrospective effect that is w.e.f. 9.8.2000 as is now being contended in this Representation. So we cannot apply hind sight into something in which we have no jurisdiction. We have thus no other course except to conclude that the U.P.E R C took recourse to the U.P.S.E.B's definition of what constituted an independent feeder as per the definition given in circular dated 16.6.1980 (already referred to earlier) and issued its Tariff Order in that light.
- 18) The arguments put forth by the Complainant that this particular feeder to which the Complainant's load is connected by virtue of its serving four consumers violates the UPERC Tariff has to be viewed in terms of the UPERC Tariff HV-2, of gaining the advantage of not only the minimum guaranteed 500 hours of supply but also the comprehensive lists of benefits accruing through availing this assured supply from an

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independent feeder as has been described in Paras 17, 18 and 19. We find that were not eroded when any or all of the other similar process consumers came to be connected to this particular independent feeder. The Complainant has not averred as much in his Complaint and there is no mention of its being put to any disadvantage. So the spirit and substance of the Tariff order of UPERC was fully enforced by providing reliable supply of at least 500 hours in a month along with a comprehensive list of benefits and rebates, which we have no doubt were fully availed by the Complainant.

- 19)** We now come to the point that the learned Counsel for the Respondents has cited the principle of law enshrined in Section 115 of the Evidence Act in his rejoinder. The merits of his arguments therein persuades us to agree with him when he cites the fact that the Complainant had fully sought the "independent feeder" that was then provided to him under the terms of the UPSEB circular of 16.6.1980, for which he duly paid the cost in full acceptance of what its connotation and usage entailed.

There have been protracted arguments and considerable exercise put in mainly by the Complainant into just what constitutes an independent feeder ignoring the fact that the same had been defined by the UPSEB vide its circular No. 1535-HC/2(243) C/73 dated July 6, 1978 amended to O.M. No. 38-HC/2(243) C/73 dated June 16, 1980 and had come to be accepted by all the relevant consumers for well over 20 years and for over 13 years by the Complainant. We have already brought out the practical merits of the UPSEB's definition contained in its circular dated 16.6.80 during the earlier course of this Award.

- 20)** This then brings out the fact that this voluminous exercise at defining an independent feeder anew on the basis of dictionary meaning of the word "independent" is not germane to the issue before the Ombudsman when we see the Complainant's "independent feeder" as an energy delivery system that has served to supply the desired quality of the power supply and to deliver the declared minimum guaranteed quantity of supply of at least 500 hours in a month as was stipulated by the UPERC and which was not possible had this "independent feeder" delivery system not existed. Had the Complainant's connection been given from a rural feeder instead then accordingly to the UPERC's order, " ... private tube wells are being supplied power on the rural supply schedule which is currently about 10 hours per day".
- 21)** The Agreement has also been cited by the Complainant to rebut the Respondent's arguments but its examination reveals that it is centered on the issue of the sale (supply) of energy and its payment in accordance with the tariff that is liable to change from time to time and substantially nothing more. The Agreement is therefore relevant only to examine the issue of supply of electricity and what the prevailing tariff had been, as was decided by the UPERC w.e.f. 9.8.2000 till 15.9.2001 under the Law (U.P. Act 24 of 1999).
- 22)** It was for the first time and indicative of the benefits of the Regulatory Process that the UPERC introduced a legal and financial binding upon the UPPCL to supply guaranteed minimum of power supply which was a substantial benefit previously denied and had to be paid for by an extra 15% charge but in contrast industrial consumers connected to rural feeders were getting only around 10 hours supply per day (say, 300 hours per month) and were thus given a rebate of 10% because of that. The discussion on the delivery system of the "independent feeder" is thus relevant only in so far that it made possible a guaranteed supply of a minimum of 500 hours per month and nothing more.
- 23)** It is in the above context that we have now to consider the arguments of the Complainant citing the Hon'ble High Court judgment in the case of M/S Northern Coal Fields Ltd. Vs the UPPCL. We have considered these but we find they cannot

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change or undo the reasoning behind the UPERC's deliberations leading up to its determination of the tariff for the year 2000-01. It is thus our considered view that having availed of guaranteed supplies for the period 9.8.2000 till 15.9.2001 the Complainant cannot escape its financial obligations to pay for it as per the Tariff approved by the UPERC, which was to safeguard the interests of both the consumer (the Complainant) and the supplier (the UPPCL). That is the position we find when we weigh what the UPERC had deliberated and what the Hon'ble High Court has observed in their judgment referred to above.

- 24) As such the Tariff Order concerning the HV -2 tariff was fully implemented and any refund of the 15% surcharge w. e. f. 09-08-2000 to 15 -09 -2001 becomes a violation of the UPERC order, which is illegal, beyond the authority or powers of this body and as such would be a violation of law. The Representation is thus untenable, devoid of merit and liable to be dismissed.
- 25) The rightful course open before the Complainant was to seek relief from the UPERC during the course of the period 9.8.2000 till 15.9.2001 and perhaps even after that till it continued to hold Regulatory Authority over Uttaranchal up to September 2002 when the UERC was constituted but agitating this matter now before the Ombudsman cannot help the Complainant in any way. As said we are neither authorized to, nor inclined to read any other meaning into the provisions of the Tariff laid down by the UPERC and what constituted therein the meaning given to an independent feeder except that which had been ordered and was prevailing in usage at the time of UPSEB and its successor the UPPCL.
- 26) We also take cognizance of the fact that the Appellate Committee deliberated upon this matter and vide its order 1997 of 30.12.2003 held that the 15% surcharge was to be levied from the Complainant in accordance with the UPERC Tariff Order of 27.7.2000.
- 27) Finally we see no ground for the Complainant to contend that the learned Forum had not applied its mind. Considering its diligent examination of the rules regulations and the Acts of Law in this case, we find ample proof of its sincere application of its collective mind to be fair-minded in its decision in adherence to the law.
- 28) Regarding the interest it is payable as per the provision under the Electricity Act Section 62 (6) and as was laid down by the UERC in its order of 27-01-2004.
- 29) We therefore see no merit in the Representation against the order of the Forum and the same is dismissed.

AWARD

Having diligently considered and examined all the facts and circumstances of the Complainant's Representation against the decision of the learned Consumers' Grievances Redressal Forum, Kumaon Zone, Kathgodam, Dist. Nainital and after giving due hearings to both parties, and having thus considered their arguments as given in the preceding paragraphs, I come to the conclusion that the decision given by the aforesaid learned Forum is correct but it is necessary herein to qualify that the core issue in the matter namely to determine the Tariff for the year 2000-01 had been the legal authority of the Hon'ble U.P. Electricity Regulatory Commission to decide, which it did in its Tariff Order of the year 2000-01 for all class of consumers including that of the Complainant's class of HV-2 consumers by relating the quantum of guaranteed minimum supply delivered to the consumer to the cost he had to pay for it. Accordingly in this case of an Industrial HV-2

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consumer it was a minimum guaranteed 500 hours of supply in a month delivered to the Complainant by the delivery system created for this need by the erstwhile UPSEB and so accepted by the Complainant, that had to be paid for with an extra charge of 15% while the same class of a consumer connected to a rural power supply delivery system was instead to be given a rebate of 10%. The UPERC Tariff Order for the Industrial HV-2 consumers is thus a composite package of not just an extra charge but is also that of various rebates that accrue as benefits with the guaranteed minimum supply. The judgment of the Hon'ble High Court at Allahabad cited by the Complainant does not relate to the issue of guaranteed minimum supply herein dealt with nor are the intricacies of the power delivery system of this case have any bearing with the delivery system specified by the UPERC in its Tariff Order, which in the Complainant's case had been created for his power connections at his cost and so accepted by him. The Complainant's Representation to annul the 15% charge while fully availing of the benefits accruing to him with a guaranteed minimum 500 hours of supply is thus devoid of merit, untenable and is rejected. The decision of the learned Forum in this matter is thus upheld and this Representation against it is accordingly dismissed.

However, the Complainant's case for demanding interest in so far as it has been accepted by the learned Forum is also upheld and as also separately decided by the Hon'ble UERC in another case, interest as provided in the Electricity Act 2003 Section 62(6) will be payable to the Complainant.

The Representation is thus accordingly decided.

Dated: 29.11.2005

(J.C.Pant)
OMBUDSMAN
Seal of Ombudsman