

Before the Hon'ble Ombudsman

(Appointed by the Uttaranchal Electricity Regulatory Commission under Section 42(6) of the Electricity Act, 2003)

24 Vasant Vihar, Phase-II,

Dehradun-248006

Phone - (0135) 2762120

Case: Representation No. 4/2006 dated 24.5.2006

Complainant

Respondents

Sri Sanjeev Pandey,
Shop No. 2,
Surya Shopping Complex, Vs.
Mukhani, Haldwani.

1. Chairman & Managing Director,
Uttaranchal Power Corpn. Ltd., (UPCL)
Urja Bhawan, Dehra Dun
2. Executive Engineer,
Electricity Distribution Division, (Urban)
Uttaranchal Power Corp. Ltd., (UPCL)
Kaladhungi Chauraha, Haldwani.

Counsel for the Complainant:

Counsel for the Respondents:

The Complainant himself

Sri S.M. Jain, Advocate
Standing Counsel, UPCL, Dehra Dun.

In the matter of:

A Representation was filed by the Complainant Sri Sanjeev Pandey, Shop No.2, Surya Shopping Complex, Mukhani, Haldwani that was registered on 24.5.2006 as Representation No. 4/2006 against the decision of the learned Consumers' Grievances Redressal Forum, Kumaon Zone, P.O. Kathgodam which rejected his complaint against the UPCL of charging assessment rates @ 216 units / kW / month for the period of three months when his meter remained defective (jammed) due to its non replacement on time.

QUORUM

Sri J.C.Pant	...	Ombudsman.
Date of Award	...	13.9.2006

AWARD

- 1.1 The above Representation was registered in this office on 24.5.2006 as Representation No. 4/2006.
- 1.2 Accordingly notices were issued to the parties and date for submission of point wise reply by the Respondents and hearing was fixed for 14.6.2006.
- 1.3 On 14.6.2006 reply from Respondents was received, copy of which was sent to the Complainant for counter reply. The next date for submission of reply by the Complainant and for hearing was fixed for 5.7.2006.
- 1.4 On 5.7.2006 the Complainant was not present and the counter reply from him was awaited. The next date for submission of the reply and hearing was fixed for 19.7.2006.
- 1.5 On 19.7.2006 the reply of the Complainant was received, a copy of the same was sent to Respondents for their reply. The next date was accordingly fixed for 2.8.2006.
- 1.6 The reply from the Licensee and their reply to other queries were awaited on 16.8.2006. That being a holiday a further date for submission of reply and hearing was fixed for 23.8.2006.
- 1.7 Copy of reply which was received from the Respondents was sent to the Complainant on 23.8.2006 for his further reply and arguments and the date was fixed for 30.8.2006.
- 1.8 On 30.8.2006 heard arguments from learned counsel for Licensee. However Complainant was not present.
- 1.9 The date for final order was fixed for 13.9.2006.

Facts & Circumstances of the case:

- 2.1 That in the Complaint made before the Learned Forum dated 28.9.2005 the Complainant had stated that in his shop No. 2 in the Shopping Complex Mukhani, Haldwani (having electric connection no. E 166/083866 of 1 kW) there have been changes of three meters in past 5 years.
- 2.2 That in the month of January 2005 the meter had jammed. That even after applying for its replacement on time the said defective meter was replaced only after one month.
- 2.3 That in the hope that the payment would get adjusted the Complainant deposited the bills for January 2005 and Feb. which had been issued @ 216 units / kW per month (Meter no. LF 0052).
- 2.4 The bill for Jan '05 with due date 26.2.2005 was raised on the basis of "R.D.F."
- 2.5 The Complainant had enclosed another bill from 31-01-2005 to 28-02-2005 which again had been raised @ 216 units / kW / month for the case of "RDF" against meter no. LF0052.

- 2.6 The Complainant's complaint in the Representation is it took the Licensee about 3 months to replace the defective/jammed meter.
- 2.7 He has further complained that during this period the rate of assessment @ 216 units / kW/ month which was charged was extortionate as the meter appeared to be defective due to an inherently substandard quality.
- 2.8 That he approached the Executive Engineer to correct the bill on 29.6.2005 and thereafter tried at least ten times to get it corrected but it was not done.
- 2.9 However the learned Forum passed its Order on 19.12.2005 on the above Complaint. The Forum it seems had set its attention on the fact that the Licensee was continuing to charge the rate of 216 units / kW / month even up to the month of September 2005 as was stated in its order.
- 2.10 Further the Licensee could not explain to the Forum the reasons for charging assessed units as above instead of recorded units even after it replaced the defective meter with a functioning meter.
- 2.11 The order also contains the Para stating "The Department pleaded that his bill for Sept. and October 2005 has only revised for Rs. 1.541.00 only", which appears to be having some typing error.
- 2.12 Thereafter in its order the Forum directed the Licensee to charge consumption on actual consumption recorded in the meter and to withdraw the assessed units (based on 216 units / kW/month) that had been charged after replacement of the defective meter. However the Forum found no fault with the Licensee with regard to charging 216 units / kW /month for three months that the meter remained defective. The case was decided accordingly.
- 2.13 In its Representation the Complainant has represented against the decision of the Learned Forum, which had upheld the Licensee's charging @ 216 units'/kW /month for a period of three months w.e.f. January '05 to March '05 when the consumer's meter remained defective.
- 2.14 Further more the Complainant reiterates his complaint that the meter became defective through no fault of his and that it did so because it was of a sub standard quality for which it sought action against the Licensee through this Representation.
- 2.15 And that further the Licensee needed to be restrained from charging what he said was more than five times the normal and thereby making up its losses in power theft and excessive line losses through the Tariff ruling of charging 216 units / kW / month in case of defective meters.
- 2.16 It further represented that the charging of 216 units / kW / month be waived off and bill for March 2006 be revised on the basis of his minimum consumption during the period that his meter remained defective as his actual consumption too was within the minimum consumption chargeable as per the Tariff.

Issue /Issues in the case:

3. The issue at stake is what exactly is the UERC's ruling regarding charging the rate of 216 units / kW / month in case of defective meters both in letter and spirit for the FY 2003 to 31-03-2005.

It says:

"Billing in case of Defective Meters

"In case of defective meter, the energy consumption shall be assessed and billed at an average consumption of past 3 billing cycles when the meter was correctly reading or @216 units per kW per month on the contracted load whichever may be higher. For this purpose the contracted load of less than 0.5 kW shall be treated as 1kW. This shall be levied till the meter is repaired/replaced and the billing is restored on the actual consumption basis.

The billing as in (I) shall continue for a maximum period of 3 months only, during which the Licensee is expected to have replaced the defective meter. Should the Licensee fail to replace the defective meter charges to be levied on such consumers will be the charges applicable to un-metered consumers of the category or the average consumption of the past three billing cycles immediately preceding the date of the meter being found or being reported defective or the monthly minimum charge prescribed in the tariff whichever is higher."

- 3.1 The question arises, whether the Licensee is allowed by existing law not to exercise due diligence to replace a defective meter promptly no sooner that it is brought to its notice or can it continue to exercise its discretion or convenience to take its own time to do so, say for the maximum period of three months which allows it to charge the consumer @ 216 units / kW per month for that period?
- 3.2 Following the above whether the Licensee was entitled to draw the maximum benefit out of an unfortunate position created for the consumer through no fault of his making by its not exercising due diligence and taking due care to replace the defective meter the soonest it came to its notice?
- 3.3 Whether the Licensee had exercised due diligence in purchasing energy meters of the requisite quality?
- 3.4 Whether the Licensee exercises due care and diligence in ensuring that it had ensured the mandatory protective devices for the protection of the meter?
- 3.5 Whether the Licensee is not duty bound under Section 42(1) to ensure that its meters function accurately and that if they do get jammed or defective it is its primary duty to ensure its replacement or rectification at the earliest for which it had set up a separate Test Division?
- 3.6 Whether the above said Division was exercising due diligence to maintain a "watch-register" of entering every report of meter becoming defective that was coming in from the Distribution Division and was it then dispatching the repair staff to redress such complaints on the basis of first come first served, ensuring that due diligence was exercised in this that there was no avoidable delay or dereliction of duty in this task?

3.7 The following is excerpted from the Tariff Report FY 2006-2007 of the UERC with regard to the latest thinking on the Licensee's role towards consumers' metering:

“5.2.2. Billing in case of defective/burnt/not read meters, etc.

*There have been regular reports in the newspapers and large numbers of complaints have been received from consumers that majority of consumer meters are either not read regularly by the licensee or if detected defective are not being replaced in time. Billing information picked up at random has revealed that the facility of billing consumers on the basis of their contracted load is being misused on a large scale by the Petitioner ... The facility of billing consumers on normative or assumed basis had been created to help the Petitioner in stray cases when the defective meters could not be replaced timely or could not be read for reasons attributable to consumers. This was supposed to be an exception but as revealed by the figures given above and from the large number of complaints made to the Commission during Public Hearings, the Petitioner is blatantly misusing this facility to make up for its own inaction and inefficiency at the cost of consumers. Installation and timely replacement of defective meters, their regular and correct reading are primary functions of the distribution licensee. If the licensee is failing to perform these functions to a reasonably satisfactory level, the Commission does not see any reason why the cost of this default should be loaded on consumers. **Accordingly, if the consumer meters are damaged or defective or have not been read or for any other reason, the licensee is unable to bill a consumer according to the actual energy consumption, till such time that this situation is rectified, the billing for all categories of such consumers will be done only on the basis of average billing for three billing cycles immediately preceding the date from when correct meter reading is not available.**”*

Examination of Facts and Circumstances

4. The Licensee first replied to the above contentions of the Complainant vide its written statement bearing their office No. 1933/Vi.Vi.Kh (Ha) dated 13.6.2006. It denied taking three months to replace a defective meter. It however admitted that it received an application dated 19.2.2005 and the meter was replaced on 22.3.2005 i.e. after just more than a month. However it further averred that it was within its right as per the U.E.R.C's Tariff provision to charge @ 216 units /kW/month for a period of three months.
 - 4.1 Further, that the Complainant had not paid any bill since the month of 2/2005 and the unpaid amount stood at Rs. 2,333.00 till 3/2006.
 - 4.2 The Complainant countered the above vide his Fax on 18.7.2006 saying that if the Licensee was certain to charge 216 units/kW w.e.f. date from which the meter was taken cognizance of as being defective then it should do so from 19.2.2005 onward and charging this rate for the month of January 2005 was unjustified.
 - 4.3 That even if the Licensee was to act towards changing the meter only after receiving an application from the consumer then the time taken to change the meter from 19.2.2005 to 22.3.2005 was inordinately long.
 - 4.4 That even after change of meter the Licensee charged “√ f/kHkkj ” as it issued wrong bills. That being so the charging of this “√ f/kHkkj ” was wrong.

- 4.5 That the Complainant welcomed the ruling in the latest Tariff w.e.f. 1.4.2006, which has done away with the assessment of 216 units/kW/month in case of defective meters and has imposed instead that “... **the billing for all categories of such consumers will be done only on the basis of average billing for three billing cycles immediately preceding the date from when correct meter reading is not available...**”
- 4.6 In its second reply the Licensee has admitted that its meter reader had checked the Complainant’s meter in January 2005. The Licensee admits that the Complainant had been issued bills for a consumption of 791 units till Dec. ‘04, while the meter showed an actual reading of 243.9 units only in January ‘05. The Licensee fed the meter reading of 243.9 units into the computer billing system which recorded “R.D.F.”, because it does this as it is programmed to do so if the latest reading fed into it happens to be less than the previous reading. The RDF recording was further programmed to charge and issue the bill @ 216 units / kW per month.
- 4.7 The Licensee at this stage does not state why or how the higher number of units (791 units) had already been charged and bills issued corresponding to that.
- 4.8 Nor does the Licensee state as to what action was taken when its meter reader had observed the meter to have obviously jammed.
- 4.9 On 19.02.2005 the Licensee admits to having received the application for changing the defective meter from the Complainant. The E. E. says he ordered “immediate action” to replace the meter.
- 4.10 The Licensee then admits that on 22.03.2005 when the Complainant again intimated about the meter not having been changed it took “prompt action” to get the meter changed the same day!
- 4.11 The Licensee informs that applications regarding defective meters are sent in original to the Assistant Engineer (Meters).
- 4.12 The above Assistant Engineer Meters had no record of how many meters were awaiting replacement during the month of January to March 2005. The Licensee could not also put up any figures of how many such meters could be replaced in a day based on a record kept for making such replacements or of recording such complaints of defective meters for their eventual redress. However it was able to do so for the month July 2006 saying this average of replacing of such meters was 7 meters per day. This last appears to have been the result of seeking queries made on this case.
- 4.13 The Licensee has put up the Complainant’s complaint addressed to the S.D.O. dated 22.03.2005 in which the Complainant had complained that despite orders of the Executive Engineer on his application of 19.2.2005 given on the same day to replace the meter, no action had been taken till 22-03-2005. This corroborates Licensee’s earlier admission in Para 4.9.
- 4.14 No doubt because of the Complainants’ rising disquiet over the delay in the matter, having in all probability come to a head so to say, the meter was replaced that very day on 22.3.2005!
- 4.15 In the matter of what the Complainant’s consumption was subsequently after the meter was replaced the Licensee has informed that this recorded consumption was

28, 28, 35, 11 and 20 units respectively per month for these successive months. So this corroborates the Complainants' averment that there was very little consumption in his shop that qualified for being charged only the minimum charges. So according to him the charging of 216 units per kW per month was extortionate.

- 4.16 The Licensee has further reported that at present regular readings are being taken by a meter reader and that a list of defective meters is also being sent regularly to the Test Division/Test Lab each month for necessary action.

5 Findings.

- 5.1 During course of past representations the matter of meters being of doubtful quality have been raised by complainants so that lends credence to this Complainants' repeated assertions about allegations of sub standard meters being installed on his shop. For this he seeks that the consumer must neither be blamed nor penalized by the assessment for defective meters that is not reflective of his actual consumption when the meter was correctly recording if such a meter gets prematurely defective.

- 5.2 Interestingly the Licensee has not cared to intimate just what is the main cause behind the above meter becoming defective, while as per this Complainant's averment a meter installed 40 years past in his residence is said to be working all right. This has not been denied by the Licensee.

- 5.3 Now comes the issue about what the Hon'ble Commission's intention was behind ordering the provision for billing in case of defective meters in the tariff of 8.9.2003 "In case of defective meter, the energy consumption shall be assessed and billed at an average consumption of past 3 billing cycles when the meter was correctly reading or @216 units per kW per month on the contracted load whichever may be higher. " This was subsequently amended in the order given on the petition of Dr. S.P.S. Rawat of Petition No 36/2004, in which the Hon'ble Commission had observed as follows:-

- "The intention of this provision was that during the period between the meter being found defective and its replacement by the licensee, the consumer should be asked to pay charges as near as possible to his likely consumption. The underlying presumption was that the licensee would take action to replace the defective meter within reasonable time."
- Subsequently the UERC amended its earlier ruling as follows: "in case of licensee failing to replace the defective meters within three months, the charges leviable on such consumers should be those applicable to un-metered consumers of that category, or the average consumption of the past three billing cycles immediately preceding the date of the meter being found or being reported defective, or the monthly minimum charge prescribed in the tariff, whichever is higher."

- 5.4 However the ruling regarding "Defective meters" in the tariff for the year 2006-07 dispenses with the raising of assessment @ 216 units/kw altogether and these orders are as follows: ***Accordingly, if the consumer meters are damaged or defective or have not been read or for any other reason, the licensee is unable to bill a consumer according to the actual energy consumption, till such time that this situation is rectified, the billing for all categories of such consumers will be done only on the basis of average billing for three billing cycles immediately preceding the date from when correct meter reading is not available.***

- 5.5 That said we shall examine closely just what the Tariff applicable on this case in January 2005 had prescribed. The crucial ruling here is “The charges shall be levied till the Meter is Repaired/replaced and the billing is restored on the actual consumption basis”
- 5.6 That brings us to the issue confronting this Representation whether the Licensee is entitled to benefit from the unfortunate position in which the consumer is put to if his meter becomes defective through no fault of his.
- 5.7 While upholding the right of the Licensee to charge @ 216 units/kw per month in case the consumers’ previous 3 months average consumption happens to be less than this amount in the light of the Tariff provision what cannot be upheld is the Licensees’ assertion that it can take all the full period of 3 months to replace a defective meter which took just only one day to do so when it had no excuse to put it off further.
- 5.8 What makes the Licensee’s case weaker on the above ground is that it knew of the jammed meter in January 2005 itself when the meter reader saw the jammed meter and took its reading. So it seems the Licensee took advantage of the penal assessment rate and did nothing about informing the Test Lab to replace the jammed meter or if it did so then the Test Lab did not move itself in the matter.
- 5.9 The fact that has also to be considered is that the AE Meter of the Test Lab did nothing on the Complainants’ application bearing the Executive Engineer Distribution’s noting to “take action promptly” and from all accounts did not enter this in its diary register in Feb. ‘05 which points to that application either being lost or reduced to rubbish. That being so it is quite plausible that the Complainant had made an application in January 2005 itself as per his statement.
- 5.10 The latter however is not the point. The fact to be considered is that the Licensee was fully aware of the meter being jammed in January 2005 and did nothing about till it was goaded into doing so at the Complainant’s prodding in March 2005. That points to deficiency in its service.
- 5.11 Rather there is evidence of a whole lot of deficiencies in what constitutes proper service that are best enumerated here.
- i). There was no action on the meter readers report to get the Test Lab moving in the direction of replacing the defective meter in Jan. ‘05 itself.
 - ii). The ruling in the Tariff @ 216 units/kw/month was thus being unfairly made use of to gloss over its inaction.
 - iii). Even after the Complainant approached the Ex. Engr. Distribution on 19.02.2005 there was no prompt redress of the grievance regarding the defective meter.
 - iv). There was thus no coordination between the Licensee’s in-house units to render consumer satisfaction.
 - v). The Test Lab could not put up any “watch register” that kept a record of consumer complaints regarding defective meters which thus pointed to lack of due diligence to render due care over replacing or attending to defective meters on a date wise priority basis of first come first served.

vi). That even after the meter was replaced on 22.3.2005 the Complainant continued to be billed @ 216 units/kW/month till September 2005 as per the finding of the learned Forum, which set aside the assessment after the actual readings were available from the date of replacement. This excessive billing was thus a disservice with a vengeance so to say.

vii). The said meter could be replaced in just within a day so it was all the more reason that it could have occurred much earlier had the Licensees' Test Lab cared to treat the consumers' application with due care and concern and had not lost it or not cared to act upon it.

viii). The Licensee failed to answer just how many meters were getting defective in a month and what was the monthly average of setting them right or replacing them during the period Jan to March 2005 and further onwards, which could show if it was under a rush or of pressure of work that could answer or condone the delay.

ix). The Licensee appears to have started on the course of keeping such a record from July 2006 when it was asked for this record and has reported an average of 7 meters per day for the Test Lab.

x). The Licensee has failed to respond to the query if it is going into the causes of meters going defective and has not made assurance of their quality.

5.12 There is thus no ground to allow the Licensee to benefit at the Complainant's expense by allowing it to charge 216 units/kW per month on the Complainant's load for all the three months when it failed to exercise due diligence to ensure that the meter was replaced within the most reasonable and thus the shortest time.

5.13 The Licensee has thus been found deficient in rendering service to this consumer in not making a timely replacement of a defective meter as also on other counts. However by virtue of the tariff promulgated by the Hon'ble Commission for the year 2003 – 05 the Licensee in this particular case can avail of a grace period of just one month in which to charge the assessment of 216 units / kW/ month but not beyond that. This shall however remain an exceptional case of giving such a relief and is not amenable to any type of generalized interpretation in any other case.

Award

Having diligently considered all the facts and circumstances of this Representation and after giving due hearing to both parties though the Complainant has preferred to tender written arguments sent by fax or post while the learned counsel for the Licensee has done so in person, I come to the conclusion that the learned Consumers' Grievance Redressal Forum Kumaon Zone P.O. Kathgodam has given considerable relief to the Complainant but it has nevertheless condoned many acts of omission and commission by the Licensee that have amounted to disservice and harassment to a prudent and sparing user of electricity for his shop.

No doubt the Licensee is entitled to charge 216 units/kW per month of electricity to a commercial consumer (in this case 1 kW load) whose meter becomes defective but the Licensee has not denied why the meter must become defective so often-thrice in

five years and that too of a consumer using only 28,28,35,11 and 20 units per month respectively that was recorded even after replacement of the defective meter (average say 25 units per month!). To charge @ 216 units per kW per month for three months is taking advantage of a ruling in the Tariff that is amounting to taking recourse to a legal excess, which in the case is not deserved by the Licensee as the deliberations have made out.

Accordingly the consumption of 216 units charged for each of three months of Jan, Feb and March 2005 successively is reduced to being charged for just the first one month to the consumer i.e. @ 216 units for the month of January '05 in deference to the prevailing Tariff as the Licensee has failed to establish that the meter became defective due to the Complainants' fault and then it failed to act with due diligence to replace it promptly having no dearth of meters to be able to do so. Since the Rule of the prevailing Tariff should not be transgressed the Licensee must itself bear the remaining amount of the charges it levied upon the Complainant i.e. 2X216 units for the months of Feb. and March 2005, respectively when it was making the Complainant run repeatedly to get his meter and his bills set right while the Licensee could not even care to save his application for acting upon it.

The bill for the period under dispute must thus be revised accordingly and payment is to be obtained as per relief granted in this Award within the next 15 days and compliance shall thus have to be reported by 3.10.2006.

Dated 13-09-2006

(J.C. Pant)
Ombudsman