

# Before the Hon'ble Ombudsman

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

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Case: Representation No. 2/2006 dated 09.03.2006

## Complainant

M/S Kashi Vishwanath Steels Ltd.,  
Narain Nagar, Bazpur Road,  
Kashipur, Dist. Udham Singh Nagar,  
Uttaranchal through its Director

## Respondents

1. Uttaranchal Power Corporation Ltd.,  
through its C.M.D., Urja Bhawan,  
Kanwali Road, Dehra Dun
2. Executive Engineer,  
Electricity Distribution Division,  
Uttaranchal Power Corp. Ltd.,  
Kashipur (Udham Singh Nagar)

## Counsel for the Complainant:

The Complainants themselves,  
Representing,  
M/S Kashi Vishwanath Steels,  
Narain Nagar, Kashipur

## Counsel for the Respondents:

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

## In the matter of:

A Representation was filed by the Complainant against the Order dated 28.01.2006 passed by the Forum for Redressal of Grievances of the Consumers, Kumaon Region, Haldwani (hereinafter referred to as the Forum) which had dismissed his Complaint that the Licensee revise its electricity bills from September 2004 to March 2005 in regard to Off Peak Hour Rates @ Rs 1.80 per kVAh and consequently refund an amount of Rs.45,86,980.00 to the Complainant along with interest @ 15% per annum pendente lite.

## QUORUM

Sri J.C.Pant ... Ombudsman.

Date of Award ... 13-09-2006

## AWARD

The above Representation was received in this office of 9.3.2006 and registered as Representation No. 2/2006.

Accordingly notices were issued to the parties and date for submission of point wise reply by the Respondents was fixed for 29.3.2006.

On 29-03-06 both parties were present; - learned counsel Sri S. M .Jain on behalf of the Licensee and Sri Dinesh Goyal representing the Complainant were thus present. The response from the Licensee was awaited; accordingly the date for submission of reply from the Respondents was fixed for 26.4.2006.

On 26.4.2006 the reply from the Licensee was still awaited; the next date was fixed for 3.5.2006.

On 4.5.2006 there was still no reply from the Licensee as such the next date for submission of their reply was fixed for 24.5.2006.

On 24.5.2006 Licensee's reply was still awaited. The learned counsel for the Licensee Ms. Shashi Yogeshwar was seeking some more time for submission of reply. Accordingly 14.6.2006 was fixed for Licensee's reply. Sri Sanjiv Panwar on behalf of the Complainant was present.

On 14.6.2006 the response of the Licensee was still awaited and further date was fixed for 5.7.2006. Representative from both parties was present.

On 5.7.2006 the reply of the Licensee had been received copy of which was given to the Complainant for their reply and the next date was fixed for 19.7.2006. Both parties were present.

On 19.7.2006 the Complainant had asked further time for submission of their reply and accordingly the date was fixed for 2.8.2006 for their response.

On 01.8.2006 another date for hearing had to be fixed which was done for 16.8.2006; meanwhile reply of Complainant had been received on 18-08-2006. The date of 16-08-2006 being a holiday had to be shifted to 23-08-2006.

On 23-08-2006 only the learned counsel for the Licensee was present. On 23-08-2006, a copy of the Complainant's reply was sent to the Licensee for their reply and the next date 30.8.2006 was fixed for hearing.

On 30.8.2006 learned counsel for Licensee was present but learned counsel for Complainant was unwell. It was thus notified that parties may give their written arguments and 13.9.2006 was fixed for final orders.

## Facts and Circumstances of the case

1. The UERC's Tariff RTS -7 dated 08-09-'03 effective from 20-09-'03 was being applied to all H. T. Consumers including Steel Furnace Consumers (Electric Arc/Induction Furnaces) with a Time of Day (ToD) variation as given on Page 204 of its above Tariff as follows:-

<u>Demand Charges</u> Rs./KVA	125	125	125
<u>Time of day</u>	<u>2200 – 0600 Hrs.</u>	<u>0600 – 0800 Hrs.</u> <u>1000 - 1700 Hrs.</u>	<u>1700 – 2200 Hrs.</u> <u>0800 - 1000 Hrs.</u>
<u>Energy Charges</u> Rs. Per kVAh	1.80	1.90	2.15

The variation in rates was governed by the directive on ToD as per above Tariff Order given on Para 6.4.6.2.2 page 152 reproduced as under:

- *“During peak hours from 0800hrs to 1000 hrs and 1700 hrs to 2200 hrs the energy charge shall be 12.5% higher than normal hours (0600 hrs to 0800 and 1000 hrs to 1700 hrs) and during non-peak hour consumption from 2200 hrs to 0600 hrs the energy charges shall be 5% lower than normal hours (0600 hrs to 0800 and 1000 hrs to 1700 hrs). Such measures would aid the Petitioner in arriving at the optimal flat load curve that would reduce the overall cost of energy.”*

Thus the basic or normal rate was subject to a rebate of 5% during Off Peak Hours and a surcharge of 12.5% for the Peak Hours, while the corresponding hours were also defined as per the above order. This was thus the genesis of the Time of Day regimen enforced by the UERC on all H.T. consumers from 01-01-2004 onwards. Both parties were thus aware of the above said UERC Order.

2. Subsequently, following a Petition from the UPCL the UERC vides its order dated 24-08-'04 issued an amendment to its earlier Tariff that was applicable w.e.f 01-09-'04 to the Power Intensive Units (PIUs) namely the Steel Furnace Consumers (Electric Arc/Induction Furnaces). Simultaneously, the UERC also enhanced the ToD rates for the Peak Hours, which was applicable to all H. T consumers including the PIUs as well. The present dispute concerns the implementation of this amended Rate Schedule to the PIU unit of the Complainant along with its variation in the Time of Day rates that was applicable to it.
3. M/S Kashi Vishwanath Steels being a Steel Furnace Consumer is a P.I.U. Its Representation is thus over the Order given by the learned Consumers' Grievances Redressal Forum, Kumaon Zone, which had dismissed its contention that in the UERC's amendment dated 24-08-2004 only tariff rates regarding electric consumption during Normal Hours and those of Peak Hours were changed (the Peak Hour rate being enhanced by 25 % of the normal rate) but that the rate regarding Off Peak Hours had remained unchanged at Rs 1.80 per kVAh. The above contention thus entailed a refund of Rs. 45, 86, 980.00 by the Licensee, which was rejected by the Forum.

4. The details of the UERC's Amendment order applicable w.e.f. 1.9.2004 are now enumerated. There was to be firstly an enhancement of rates for the PIUs based on the \*load factor of such consumers, which was promulgated as under and is quoted as follows:-

"Para 4.3 Tariff for PIUs

*Considering the above figures, the Commission approves the following for HT-Power Intensive Industrial Units (PIUs), as defined in this order on provisional basis. Further adjustments in the same, if required, will be made when licensee's actual power purchase cost is furnished*

*Table 4.1 Approved tariff for PIUs*

Charge	Existing tariff	Proposed tariff	Approved Tariff PIUs	
Demand Charges (Rs./kVA/month)	125	170	350	
Energy Charges(Rs./KVAh)	1.90	3.00	If *load factor is 33%	1.90
			If load factor Is 33% and upto 50%	2.20
			If load factor is above 50%	2.50
Minimum charges (Rs./kVA of the contracted Demand/month)	350	460	650	

\* *For tariff purposes load factor (%) would be deemed to be=*  

$$\frac{\text{Consumption during the billing period}}{\text{Maximum Demand or contracted demand whichever is less} \times \text{No of hours in the billing period}} \times 100$$

Thus the more intensive use of power there was the higher was to be the rate of charge for energy consumption. This was the raison d'etre of the amended Tariff for the PIU consumers.

It is necessary to qualify here that since a ToD regime was in force the above rates were for the Normal Hours as stood defined by the UERC.

5. The entire speaking order for the operating part of the UERC's Amendment Order is thus reproduced as follows: - "Order

*The Commission having accepted the Licensee's prayer hereby directs that:*

*(a) Effective from 01.09.2004, the tariff provisionally applicable to all steel units whether Induction/Arc furnaces or Rolling Mills, Re-rolling mills, Mini Steel Plants, etc. designated hereby as Power Intensive Industrial Units (PIUs) will be the tariff worked out in this order and*

*given in paragraph 4.3 above. On the basis of the actual power purchase cost incurred by the licensee during each half of any financial year, necessary amendments in this provisional rate will be made and the amended tariff will become the final tariff for that period.*

*(b) Licensee should take immediate effective steps and meet the additional demand of PIUs as directed in Para 3.4(4) above.*

*(c) The Time of Day (ToD) tariff for all HT industrial consumers shall stand modified w.e.f. 01.09.2004 and energy charges for consumption during peak hours as may be defined by the Commission from time to time, will be 25% (earlier 12.5%) higher than the energy charges realizable as per the existing Tariff. Currently the peak hours will be as defined in the Commission's tariff order dated 08.09.2003.*

*(d) All other conditions given in Rate Schedule RTS-7 for HT industrial consumers in Tariff Order shall apply mutatis-mutandis.*

*(e) Notwithstanding any earlier orders, power supply to all PIUs in the State will be subject to conditions given in para 3.3.2(10) of this order.*

24.08.2004

(Divakar Dev)

Chairman”

### Examination of the Facts/Circumstances/Issues

6. Coming to the implementation part of the amended Tariff, it required the Licensee to find out the Load Factor for the Complainant's load and to determine the corresponding Tariff for the rate of charge for energy consumption (for the Normal Hours that is). This information has been given by the Licensee in its point wise reply submitted on 5.7.2006 Para 7 as follows:-

- For the month of 9/04 Complainant's Load Factor is 44% and energy charges shall be Rs. 2.20 per kVAh.
- For the month of 10/04 to 3/05 the load Factor exceeds 50% except in one month in which the load factor is just 50 % so the energy charges shall be Rs. 2.50 per kVAh.

The above is thus undisputed.

However it is necessary here to qualify again that since a ToD regime was in force the above rates were for the Normal Hours as stood defined by the UERC.

7. Now comes the part of applying the Time of Day Tariff to the Complainant's PIU as per the UERC's Tariff amendment Order dated 24.8.2004, which has been disputed by the Complainant.

- In the earlier Tariff Order of 8.9.2003 there is a clear chart as shown in Para 1, which makes out that the Peak Hours Tariff is higher by around 12.5 % (Rs. 2.15 - Rs. 1.90)/1.90) and the Off Peak Tariff is around 5 % lower (1.90 - 1.80)/1.90, while for the remaining period designated the Normal Period the Tariff Rate of Rs. 1.90 is unchanged (0% variation).
- However in the UERC's amendment order dated 24.8.04 (effective from 1.9.04) no doubt there is no chart as such defining the three Time of Day periods and their respective rates. But the Commission had stated, that *“(c) The Time of Day (ToD) tariff for all HT industrial consumers shall stand modified w.e.f. 01.09.2004 and energy charges for consumption during peak hours as may be defined by the Commission from time to time, will be 25% (earlier 12.5%) higher than the energy charges realizable as per the existing Tariff. Currently the peak hours will be as defined in the Commission's tariff order dated 08.09.2003.*

From the above speaking part it is to be surmised that it is in actual fact an amendment order, which had to be read in conjunction with the main Tariff Order of 8-09-'03 as shall now be elaborated further.

8. The key words in the above quotation are *“The Time of Day (ToD) tariff for all H.T. industrial consumers shall stand modified w.e.f. 01-09-2004 ...”*, and *“Currently the peak hours will be as defined in the Commission's tariff order dated 08-09-2003.”* The words *“peak hours”* is being used in its generic term of usage which includes inter alia the entire gamut of Time of Day periods including not only the Peak Hours but also the Off Peak Hours and the Normal Hours that stand defined in the Hon'ble Commission's Tariff Order dated 08-09-2003 Para 6.4.6.2.2 Page 152, which is again reproduced as follows:

- *“During peak hours from 0800hrs to 1000 hrs and 1700 hrs to 2200 hrs the energy charge shall be 12.5% higher than normal hours (0600 hrs to 0800 and 1000 hrs to 1700 hrs) and during non-peak hour consumption from 2200 hrs to 0600 hrs the energy charges shall be 5% lower than normal hours (0600 hrs to 0800 and 1000 hrs to 1700 hrs). Such measures would aid the Petitioner in arriving at the optimal flat load curve that would reduce the overall cost of energy.”*

9. The last line of the above states in simple terms the principle behind the introduction of the ToD regime which provides a lower rate than normal for the Off Peak Hours and a disincentive of a much higher rate for using supply in the Peak Hours. The above had thus to be read and implemented in conjunction with the operative part of the Order in the Amendment of 24-08-'04 Para (a) to (e). This Amendment, which had increased the Normal hours Tariff for the PIUs, was also thus amenable to the

ToD variations now in force, i.e. a 5% decrease for the Off Peak Hours as before but with a 25 % increase now for the Peak Hours use, which had earlier only a 12.5 % increase and a 0% variation for the Normal Hours.

Thus there had to be the three distinct ToD slabs as per the ToD regime in force based now on the Normal rates prescribed by the Amendment order.

10. The above principle governing the ToD-wise rebate and surcharge thus remained unaltered and stands maintained consistently from 08-09-2003 onwards. When the UERC revised the Tariff for the FY 2005 –'06 w.e.f. 1.4.05 it had again promulgated a clear cut Time of Day Chart specifying the respective variations on the normal Tariff (-) 5% for the Off Peak and (+) 25% for the Peak Hours respectively. A 0% variation is also specified for the Normal Period (This is as on Page 153 of UERC's Tariff w.e.f. 1.4.05).
11. This is again so for the next revision in the Tariff FY 2006-2007 as on page 98 Para 3.1 i.e. of the current Tariff. No doubt all these had been in force successively upon the Complainant's connection, so he is well aware of the consistency in the application of the principle and timings of ToD tariff all along. In short both the Off Peak rebate for the relevant electricity rates in force as well as the Peak Hour surcharge on it is a sine qua non of the ToD load curve flattening objective as per the UERC directive and has been operative since introduction of the ToD Tariff regime w.e.f. 01-01-2004.
12. That being so, it is clear that the contention of the Complainant is clearly based on a selective reading and a misconstrued interpretation of the Order on 24-08-2004 to erroneously put forward his case that the Off Peak Rate had not been changed in the Amendment order of 24-08-'04 and was to remain @ Rs.1.80 per kVAh for this particular time of the day, which was thus quite regardless of what the Hon'ble Commission had ordered and enunciated in its above said Amendment with its modification on the ToD Tariff. There is thus no merit in the Complainant's contention to avail of Rs. 1.80 per kVAh, which means he is in fact agitating for an Off Peak rebate of 28 % on the Normal rate of Rs2.50 per kVAh!
13. If this contention were at all accepted it would negate the entire raison d'etre of the deliberations of the Tariff Amendment Order of 24-08-2004 which had led the UERC to order a higher rated tariff for the Arc/Induction Furnace consumers (the Power Intensive Units) and create a separate class of such consumers besides also ordering the increase in the Time of Day Tariff for the Peak Hour as well thus rendering that entire exercise in-fructuous.
14. The UERC had clearly stated its avowed intention in its Amendment order of 24-08-2004 on Page 33 Para (6) "Accordingly while the demand charges have been increased for all Power Intensive Units, the energy charge has not been changed up to a maximum load factor of 33 %, where after it increases in stages." This is a clear statement of intent that the more intensely heavy the consumption of power there is the higher shall be the rates for such consumers.
15. It is only if the Complainant's load-factor is less than or equal to 33% that its Off Peak rate shall come to be Rs. 1.80 per kVAh, when its Normal period rate (based on load factor of 33 %) is Rs. 1.90 per kVAh and its Peak Hour rates shall be higher

by 25% of its Normal Rates. However the moment the consumer exceeds the Load – Factor above 33 % say beyond 50- 55 % as has been the case with the Complainant it means drawing on a much higher quantum of power which shall thus attract a correspondingly higher rate of charge (Normal Rate) since this was the avowed aim of the new tariff to discourage such heavy consumption.

16. Thus the Off Peak and Peak Hour Rates are not independent entities in themselves but are determined by the tariff rates of the current tariff applicable to the consumer.
17. In the present case the applicable tariff was the amended tariff of 24-08-2004 for the PIU category of this consumer upon which the normal rate was to be further determined by the load-factor; thereafter the Off Peak and the Peak hour Rates were to be modified by the factors of (-) 5 % and (+) 25 % respectively. Thus these are in themselves inseparable from the applicable tariff rate, i.e. the Normal rate, which in the Complainants case is as per the rates worked out by the Licensee in Para 6.
18. That said it does not mean that the decision of the learned Consumers' Grievances Redressal Forum Kumaon Zone, Kathgodam in rejecting the Complainants' complaint in toto is correct.
19. The Forum has grossly erred in overlooking the violation of the Hon'ble Commission's orders by the Licensee which is clear in its circular vides GM (Commercial) UPCL No. 4068 dated 25-09-2004. This firstly dispenses with the UERC's ruling of three slabs of rates for the ToD Tariff regime enforced by it since 01-01-2004. The Licensee has reduced them to only two slabs of rates i.e. one for the Normal Period and the other for the Peak Hours Period as per Licensee's letters 4068 dated 25-09-2004 and re-iterated by it vides R-1518 dated 16-06-2005. The slab given by the Licensee is as follows:-

Time of Day	10 00-17 00 Hrs 22 00-08 00 Hrs	17 00-22 00 Hrs 08 00-10 00 Hrs
Energy Charges	1 keU; nj a	1 keU; nj a + 1 keU; nj ka dk „†%

Secondly it eliminates the Off Peak rebate of 5% and in effect increases the Off Peak rates in clear violation of the Hon'ble Commissions authority.

These letters of the Licensee and more so its letter of 16-06-2005 makes it all the more of a stunning violation when the ToD Tariff regime ordered by the Commission was already in practice for nearly one and a half years since its enforcement from 01-01-2004.

20. Thus the Licensee has acted perversely and in violation of the UERC's Order when it dispensed with the Off Peak Period slot (with its reduced rate of 5 %) and substituted instead just two slabs and correspondingly just two rates i.e. the Peak Hour Rate @ 25 % higher for the defined Peak Hours and then designated the rest of the period of the day as a "Normal" period and levied the Normal charges even for the Off Peak Hours hitherto defined separately as Off Peak by the UERC.

The above is clearly a violation of the UERC's Order. Thus the order of the Forum, which upholds the above violation of the UERC's order, is herewith set aside being null and void.

21. The only relief which the Complainant can obtain is based upon what the orders of the UERC contain. Thus, there shall be three slabs of ToD rates as per the following chart based on the lines of the original chart of RTS – 7 on Page 204 of the Tariff dated 809-2003, which shall be further incorporating therein the rates as per Amendment in the Tariff dated 24.8.2004.

• Demand Charges Rs. 350 per KVA

Time of Day	2200 – 0600 Hours	0600 – 0800 Hours 1000 – 1700 Hours	1700–2200Hours 0800-1000 Hours
Energy charges Rs. / KVAH	(-) 5% of Normal rates as per Load Factor	Normal rates as per Load Factor	(+) 25% of Normal rates as per Load Factor

22. This thus makes it clear that the Complainant's contention that the rate of Rs. 1.80 per kVAh for the Off Peak Hours consumption had remained unchanged even after the said Amendment order of the UERC of 24-08-2004 is devoid of any merit and is rejected.
23. **The order No 4068 dated 25-09-2004 of the Licensee has clearly imposed a higher rate for the Off Peak Period by dispensing with the Off Peak Time of Day period altogether along with its rebate for which it had no authority to do so and is thus null and void. The Licensee is hereby directed to refund the excess amount charged from the Complainant with due interest at bank rate as stipulated under Section 62 (6) of The Electricity Act 2003 payable till the date of refund. In no case should the refund be delayed beyond 15 days from the date of this Award.**
24. The Licensee is also called upon to check up thoroughly if it has violated the ToD regimen enforced by the UERC in other cases as well and has thus mulcted consumers of a rebate that was rightly theirs. As it has involved a violation of the Tariff the Hon'ble Commission is also being informed of it if it may like to take any further action in the matter.
25. The case was prolonged beyond the stipulated period by the Licensee's excessive delay in submitting its replies as also somewhat due to ill health of the Complainant's counsel that has delayed the outcome, which is thus put on record.

### AWARD

**Having diligently considered all the facts and circumstances of this Representation and after giving due hearings to both parties and having considered arguments from both sides, I come to the conclusion that the decision given by the learned Consumers' Grievances Redressal Forum, Kumaon Zone, P.O. Kathgodam in rejecting the Complainant's demand for charging a rate of Rs. 1.80 per kVAh and consequently for refunding of Rs. 45,86,980.00 is only partially correct.**

The Forum has however grossly erred in overlooking the violation of the UERC's Time of Day Tariff by the Licensee vide its order No. 4068 dated 25-09-2004 that had thus imposed a higher rate for the Off Peak period by dispensing with the Off Peak Time of Day period itself along with its rebate for which it had no authority to do so, hence its said order is set aside being thus null and void.

The Licensee is hereby directed to give to the Complainant the rebate of 5% for the Off Period consumption based on the Normal rate as per the Tariff applicable vide the Amendment Order dated 24-08-2004 w.e.f. 1-09-2004. The excess amount so charged shall be refunded to the Complainant along with interest at bank rate as per Section 62(6) of The Electricity Act 2003 payable up to the date of refund, which shall in no case be later than fifteen days from the date of this Award.

Since this is clearly a case of violation of the Tariff Order promulgated under the authority of the Hon'ble Uttaranchal Electricity Regulatory Commission the same is being reported to it for such action as it may deem fit.

The compliance of this Award by the Licensee shall be duly reported by 3-10-2006.

Dated 13-09-2006

(J.C. Pant)  
Ombudsman