

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. 3/2006 dated 22.3.2006

Complainant

Respondents

M/S Mountain Tours & Resorts
Hotels Pvt. Ltd.,
15 Chander Road, Dehra Dun

Vs

1. Uttaranchal Power Corporation Ltd.
Urja Bhawan, Dehra Dun
through its C.M.D
2. Executive Engineer,
Urban Distribution Division (Central)
Uttaranchal Power Corp. Ltd.
Dehradun.

Counsel for the Complainant:

Counsel for the Respondents:

The Complainant himself,
Representing the Mountain
Tours & Resorts Hotels Pvt.Ltd.

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

In the matter of:

A Representation was filed by the Complainant M/S Mountain Tours & Resorts Hotels Pvt. Ltd., 15-Chander Road, Dehra Dun on 22.3.06 against the decision given on 22-02-2006 by the learned Consumers' Grievances Redressal Forum, Garhwal Zone, Dehra Dun, which had dismissed the grievance against the U.P.C.L. with regard to the assessment bill it had raised as per Order of the Licensee's Zonal Appellate Committee due to wrong meter connections done by U.P.C.L. itself.

QUORUM

Sri J.C.Pant ... Ombudsman.

Date of Award ... 18-10-2006

AWARD

The above Representation was received in this office on 22.3.06 and registered as Representation No. 3/2006.

Accordingly notices were issued to the parties on 29.3.2006 fixing the date for submission of the point wise reply of the Licensee (Respondents) and the presence of the parties.

On 29.3.06 the representative of the Complainant was present but due to closing of the financial year the Licensee could not be present. The next date 26.4.2006 was fixed for submission of reply by the Licensee.

The reply from the Licensee was still awaited on 26.4.2006 as such the next date 3.5.2006 was fixed for submission of their reply.

The reply by the Licensee was still not furnished by 3.5.2006 as such the next date 24.5.2006 was fixed for submission of their reply as per their request.

The reply was submitted by the Licensee on 24.5.2006, copy of the same was given to the Complainant and the next date 14.6.2006 was fixed for submission of his reply. Learned counsel for the Licensee and the Complainant were present.

On 14.6.2006 a copy of the Complainant's reply, was given to the Licensee for submission of their reply and the date for this was fixed for 5.7.2006. Both parties were present.

On 05-07-'06 the reply of the Licensee was not received and the next date for submission of reply and hearing was fixed on 19.7.2006.

Reply from the Licensee was received on 19.07.2006 and accordingly the date 9.8.2006 was fixed for hearing.

However, on 1.8.2006 the date for hearing had to be postponed to 23.8.2006. Parties were informed accordingly.

On 23.8.2006 the date 30.8.2006 was fixed for arguments.

On 30.8.2006 heard the learned Counsel for the Licensee Sri S.M.Jain as well as the Complainant and fixed the date 20th September 2006 for orders. However that date fixed for orders had to be postponed to 27-09-2006. And this again had also to be postponed to 18-10-2006.

Facts and circumstances of the case.

1. The dispute arises over the wrong connections to the meter of the 75 kW RTS-2 (hotel and restaurant) load of the Complainant which occurred at the time of releasing the new connection on 20-11-2003 by the Licensee's own engineers. That wrong connections occurred right from the start has not been disputed by any of the parties. What have been disputed by the Complainant are the Licensee's assessment of this consumption for this period and the basis of making it.

2. The wrong connections were not detected during the intervening period from 20-11-2003 till 14-05-2004 although the above said engineers were taking the monthly reading and the EE Urban Test Division Dehra Dun had also this to say vides his letter No. 392/UTDD/MRI dated 17-06-2004, "...Previously meter reading was also showing R-phase C.T. tamper."
3. On 14-05-2004 the same was detected by the A.E. Meters of the Test Division, Dehra Dun during course of his checking using a Meter Reading Instrument (MRI).
4. The connections were thus set right on 18-05-2004. After setting right the connections the meter started recording correctly from 18.5.2004.
5. No check meter was installed, which could have provided an irrefutable proof that could have shown how "slow" or sluggish was the recording due to the wrong connections of the old meter viz-á-viz the check meter with its correct set of connections.
6. What the Licensee did thereafter was to take the readings recorded during the period from 18.5.2004 to 15.6.2004 that gave consumption for this 28 days period of 28264 units and then used this to project the consumption for the past period i.e. from 20.11.2003 till 18.5.2004 and raised the consolidated bill for Rs.8,03,442.00
7. When the Licensee made this assessment it was disputed by the Complainant on the ground that their business was just commencing but the assessment was based on the consumption of the peak period. The Licensee did not consider the Complainant's protest over this assessment so ultimately the Complainant went to the Appellate Committee of the Licensee on 29-04-2004.
8. As said the Appellate Committee conveyed its decision vide C-206/ GM (D)/UPCL/Com dated 10.12.2004 basing its decision on an amendment to the Tariff of 08-09-2003 vides Licensee's OM 2642/UPCL/Com/E-1 dated 18-03-2004, which is as per the records submitted in the matter and the operative portion of its order is as reproduced below: -

"In view of the discussions held above, the appeal is decided with the following orders:-

1. *The impugned bill for Rs. 8, 03, 442.00 is set aside.*
2. *The respondent will raise a fresh assessment bill as follows:-*
 - a. *for the period of defect in meter due to wrong connections:-*
 - (i). *For first 3 months from 20-11-2003 at the rate of 216 units/k W/month of the contracted load as the average consumption of past 3 billing cycles when the meter was recording correctly is not available in this case being a new connection.*
 - (ii). *For the remaining period upto 18-05-2004 on the basis of the average consumption recorded by the meter from 18-05-04 to 16-06-04.*
 - (iii). *The amount of Rs. 1,20,904.00 paid by the consumer from Nov.-03 to Apr.-04 and Rs. 4,02,000.00 paid under protest towards the assessment bill will be adjusted in the revised bill."*
9. The revised bill as per the Appellate Committee was thereafter the subject of protracted correspondence even to the extent of the Complainant lodging several protest letters.

10. Although the Appellate Committee order was issued vide C-206 dated 10-12-'04 the revised bill was still under correspondence till 13-12-2005 vides E.E. E.D.D (North) Dehra Dun letter no 5470 EDD(N)/Bank dated 13-12-2005.
11. When the Complainant felt his grievance could not be satisfied even after the said Committee's Order it went to the learned Consumers' Grievances Redressal Forum Garhwal Zone, Dehra Dun, which issued its Order on 22-02-2006 vides No. 1472/etc. dated 08-03-2006.
12. The Complainant was still not satisfied by the Order of the Forum so he submitted the present Representation to the Ombudsman.

Issues in the matter.

13. That as per the learned Counsel for the Licensee "the consumer never made this grievance before or make (made) an appeal to the appellate authority within the stipulated period of time. Now it is beyond the jurisdiction of the learned court to review the decision made by the Zonal Appellate Committee/CGRF and it is also time barred".
14. That also raises the question about the Licensee's Appellate Committee's status such as was constituted by the Licensee comprising its own set of officers to decide on the cases of appeal against the assessment raised by the E.E. in the light of the Act of 2003, which was "*An Act to... ..protect interest of consumers ... transparent policies regarding subsidies,...*" (Preamble to the Act).
15. The inadvertent error on the part of the Licensee in connecting the elements providing the voltage and current parameters to the tamper-proof electronic meter that led to this meter recording incorrectly occurred at the time of releasing the new connection in November 2003. But for a recurring monthly period of December '03 to April '04 for the next five months in all when the Licensee's engineers' were duty bound to analyze the consumption for its accuracy during the monthly visit to take the Complainants' meter reading every month the error remained undetected. For such a high load as 75 kW the S.D.O. Distribution and Assistant Engineer Meters are duty bound to take monthly readings and certify these as being correct after making certain mandatory checks.
16. The concerned A. E. Meters, S. D. O. subsequently came to realize that something was remiss that led the A. E. Meters to conduct a Meter Reading Instrument (MRI) test on 14-05-2004, which revealed the wrong connections.
17. Considering the above is the Licensee entitled to raise a seemingly penal assessment for that period by the above said Appellate Committee for apparently no fault of the Complainant?
18. The Licensee may tend to benefit from such an unfortunate situation that was basically created by its own error but in that case is not the aggrieved party also entitled to explore the means provided for redress or should this not be provided? Shall it be justified to withhold such means of redress on grounds such as given by the learned counsel of the Licensee and the Forum?
19. The issue thus arises whether the Licensee is entitled not to go into the above said matters and disregarding the ramifications of such deficiency in service admitted as

such by the Licensee, to go on to charge the highest consumption for a period that is by all accounts an off season for the hotel?

20. So would it not be fair in the interest of justice to go into the merits of what the Licensee's Appellate Committee had decided upon?

Examination of the Facts, Circumstances and Issues in the Case:

21. As per facts that are undisputed the Complainant's wrong connections were detected by the A.E. Meters of the Test Division, Dehra Dun during course of his checking on 14-05-2004 and these were thus set right on 18-05-2004.
22. After setting right the connections the meter started recording correctly from 18.5.2004 onwards.
23. What the Licensee did thereafter is reiterated as per the Licensee's Appellate Committee's report as follows: *"The respondent (Licensee) made the assessment for the entire period of wrong connection from 20.11.2003 to 18.5.2004 on the basis of average consumption of 28 days for 180688 units and raised the consolidated bill for consumption up to 15.6.2004 for $180688 + 28264 = 2,08,952$ units for Rs.8,03,442.00 deducting the amount of Rs. 1,20,904 paid by the consumer during the period from Nov. 2003 to April 2004 and a net demand of Rs. 6,82,538.00 was raised on the appellant against which an amount of Rs. 4,02,000.00 was paid under protest."*
24. This was disputed by the Complainant as per the said Committee report in its Para 1.

"The consumer has asserted that the assessment bill was illegal on account of the fact that the business in the premises did not start till 16.12.2003. Being winter season, no air conditioning load which constitutes more than 50% of the consumption was run and the air conditioning was started by the end of April 2004 and further that while taking reading for the month of May 2004, the consumption for May 04 was erroneously taken for billing of the whole previous period. The lift and the air conditioners constituting 32 KW load, were started on 1.5.2004 and therefore taking the consumption of May 04 as the basis of assessment for the whole period is erroneous and uncalled for and thus the impugned assessment bill is incorrect and unjustified. He has stated that against impugned assessment bill an amount of Rs. 4, 02,000.00 has been deposited under protest and requested for rectification of the assessment bill considering the facts raised in the appeal."

The Committee continued as follows in its Para 3.

"The appellant has made his case against assessment bill on the basis of the points given in the appeal that the business did not start till 16.12.2003 and being winter season, no air conditioning load was started till April 04 and that the average taken for the assessment on the basis of consumption recorded during May/June is unjustified and accordingly demanded examination/rectification of the bill in question."

25. The Committee then said as follows:-

"The committee went through the tariff enforced w.e.f. 20.9.2003. The Rate Schedule RTS-2, applicable to the appellant provides as follows in para-7"

"7. 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 which ever may be higher. For this purpose the contracted load of less than 0.5 KW shall be treated as 1 KW. This charge shall be levied till the meter is repaired/replaced and the billing is restored on the actual consumption basis.”

26. It then went on to quote an amendment in the said Tariff that was to be made applicable in case of defective meters vide UPCL O.M. No. 2642/UPCL/COM./E-1 dated 18.3.2004 as follows:

“Further the Electricity Regulatory Commission in the petition filed by Dr. S.P.S. Rawat made certain amendment in the Tariff which were clarified by UPCL vide O.M. No. 2642/UPCL/COM./E-1 dated 18-03-04 which has been made effective w.e.f. the date of introduction of Tariff i.e. 20-09-2003. The para-2 of the O.M. states as follows

“mi j kDr I UnfHkR mi HkkDr kv ka ds ehVj 3 ekg dh vof/k I s vf/kd [kjkc jgus dh n'kk ea mi HkkDr kv ka ds fo| r eW; dk fu/kk| .k (fcfyx) V\$Q vkn\$ k fnukd 08-09-03 , t ks fnukd 20-09-2003 I s ykxw g\$ dh vuE; nj I ph @ I fip; ka ds fcUnq7 ds vuq kj dh tkuh ga bl I Ecu/k es ekuuh; vk; kx ds vUr fje vkn\$ k fnukd 09-02-2004 ds da ea funf' kr fd; k tkrk g\$ fd , I s mi HkkDrk ft uds ehVj 3 ekg dh vof/k I s vf/kd I e; rd [kjkc jgrs ga ds fo| r eW; dk fu/kk| .k (fcfyx) fuEkuq kj fd; k t k; &&

d & ehVj [kjkc gkus dh frfFk I s 3 ekg rd 20-09-2003 I s ykxw V\$Q dh vuE; nj I ph @ I fip; ka ds fcUnq7 ds vuq kj A

[k& ehVj [kjkc gkus dh frfFk ds 3 ekg ds lk' pkr 20-09-2003 I s ykxw V\$Q dh vuE; nj I ph @ I fip; ka ds fcUnq5(A) vFkok ehVj [kjkc i k; s t kus dh frfFk I s i wZ ds 3 fcfyx pdz ds vk\$ r fo| r mi Hkkx] t ks Hkh vf/kd gk\$ ds vuq kj A”

The committee went through the above provisions carefully with respect to the impugned bill and found that the assessment raised by the Executive Engineer is not consistent with the provisions of the tariff. He has charged average consumption for the entire period of defective meter from 20-11-2003 to 18-05-2004 on the basis of average consumption recorded by the meter after the connections were set right and the meter started recording correctly. As per provisions of the Tariff as amended vide UPCL O.M. dated 18-03-2004 the assessment for the first 3 months was to be charged at the average of 216 units/KW/month and thereafter on the basis of average consumption recorded by the meter after the connections were set right as taken by him in the impugned bill. The basis decided by the Tariff can not be changed. There was no change in the meter installation from 20-11-2003 to

18-05-2004 and evidently the wrong connections were made on 20-11-2003 itself at the time of release of load/installation of meter. The period of assessment is therefore definite from 20-11-2003 to 18-05-2004”

27. It then went on to give its Order as follows :-

“In view of the discussions held above, the appeal is decided with the following orders:-

3. *The impugned bill for Rs. 8, 03,442.00 is set aside.*

4. *The respondent will raise a fresh assessment bill as follows:-*

a. *for the period of defect in meter due to wrong connections:-*

(i). *For first 3 months from 20-11-2003 at the rate of 216 units/kw/month of the contracted load as the average consumption of past 3 billing cycles when the meter was recording correctly is not available in this case being a new connection.*

(ii). *For the remaining period upto 18-05-2004 on the basis of the average consumption recorded by the meter from 18-05-04 to 16-06-04.*

(iii). *The amount of Rs. 1,20,904.00 paid by the consumer from Nov.-03 to Apr.-04 and Rs. 4,02,000.00 paid under protest towards the assessment bill will be adjusted in the revised bill.”*

28. However the above said amendment quoted by the Appellate Committee of No. 2642/UPCL/Com/E-1 dated 18-03-2004 has been wrongly quoted as it was itself superseded by the UPCL's OM No. 3626/UPCL/Com/E-1 dated 27-08-2004. So this in itself makes the Appellate Committee's ruling liable to be set aside as it is quoting a ruling that had become null and void. This shall be explained further in the coming Paras.

29. The salient points of the amendment of 27-08-'04 were in fact incorporating the directive of the UERC's order dated 09-08-2004 in Misc. Application No. 36/2004 of Dr. SPS Rawat Vs the UPCL, which read as follows:-

“Uttaranchal Power Corporation Limited has submitted that while it is complying with the directions given in the interim order dated 9.2.2004, the Commission may slightly amend the same “The amendment sought is that “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 charges prescribed in the tariff, whichever is higher.””

30. The Licensee's Appellate Committee had thus ignored the above cited clear orders viz-á-viz the latter part that were aimed at giving a relief to the consumer if the Licensee was so deficient in service as not to rectify the defective meter within 3 months.

It however ignored this and made use of the superseded earlier directions of the Licensee, which are again reproduced as follows: -

“The committee went through the above provisions carefully with respect to the impugned bill and found that the assessment raised by the Executive Engineer is not consistent with the provisions of the tariff. He has charged average consumption for the entire period of defective meter from 20-11-2003 to 18-05-2004 on the basis of average consumption recorded by the meter after the connections were set right and the meter started recording correctly. As per provisions of the Tariff as amended vide UPCL O.M. dated 18-03-2004 the assessment for the first 3 months was to be charged at the average of 216 units/KW/month and thereafter on the basis of average consumption recorded by the meter after the connections were set right as taken by him in the impugned bill. The basis decided by the Tariff can not be changed. There was no change in the meter installation from 20-11-2003 itself at the time of release of load/installation of meter. The period of assessment is therefore definite from 20-11-2003 to 18-05-2004”. (Bold italics have been added in quotation to illustrate the point as shall follow.)

31. The Appellate Committee's matter quoted as above in ***bold italics*** is its own misconstrued interpretation. There is no provision to charge “...***on the basis of average consumption recorded by the meter after the connections were set right...***” As if to add the appearance of being authoritative it says “***The basis decided by the Tariff can not be changed***”! The superseded amendment of the Licensee quoted by the Appellate Committee No. 2642/UPCL/Com/E-1 dated 18-03-2004 had been rendered null and void by the UPCL's OM No. 3626/UPCL/Com/E-1 dated 27-08-2004. So the Appellate Committee's ruling had no legal basis and is thus liable to be set aside as shall be further elaborated.
32. **However the fact was that the case is also not covered by what the Hon'ble Commission was put to deciding** “...***A petition was filed by Dr. SPS Rawat on 03-02-2004 in the matter of excess recovery of charges from consumers whose meters are reported or have been found defective...***” As per the order on 09-08-2004 by the Commission the amendment was necessitated when it came to its notice that the Licensee was unduly delaying the replacement of meters beyond 3 months that had been “found” to have been defective or “reported” so. This was not the case here at all.
33. This is further made clear in the UERC's order dated 09-08-2004, “***The amendment sought is that in case of licensee failing to replace the defective meters within three months....***” This amendment of the Hon'ble UERC following the petition of Dr. SPS Rawat however had no relevance whatsoever in this case particularly so since the Licensee came to the definite conclusion that the meter was defective on 14-05-2004 and rectified the same on 18-05-2004 say within 5 days. So in fact the case is not covered by the above ruling.
34. This case is thus not a simplistic one as was made out by the Licensee's Appellate Committee when it wrongly quoted the above amendment.
35. It was thus not just a case of the meter itself being defective but that of the entire connections being so botched up that the meter started showing a much reduced consumption, which went on for 180 days. However the Appellate Committee failed to go into this.

- (b) “unauthorised use of electricity” means the usage of electricity –
 (i) by any artificial means; or
 (ii) by a means not authorized by the concerned person or authority or licensee;
 or
 (iii) through a tampered meter; or
 (iv) for the purpose other than for which the usage of electricity was authorised.

41. **The Licensee being the “assessing officer” has again not based this case as of “unauthorised use of electricity”, nor had provided any prima-facie basis as per any of the above definitions of “unauthorized use” so the above Section cannot be used to decide matters in this case. As said the case has no precedent as referred in Para 38. Thus we feel compelled to find a separate way out in the interest of settling a contentious issue.**
42. Since the Licensee had erred in the matter of connecting the meter in the correct manner right from the date of releasing the connection on 20-11-2004 so it is clear that no amount of misinterpretation or ‘tailoring’ can twist any of the existing orders of the UERC to ‘suit’ this case as had been attempted by the Licensee’s Appellate Committee in the above cited reasoning.
43. It appears that the Licensee’s Appellate Committee being confronted by the problem of prescribing a fair consumption in such circumstances for an entire period of 6 months in which the metering remained defective had thus no “average consumption of past three billing cycles immediately preceding the meter being found defective ...” to fall back upon to evolve a fair basis for the assessment.
44. That being the case if it had applied the UERC’s amendment of 9-08-04 vides UPCL OM 3626 of 27-08-04 it would have had to decide upon giving the Complainant the benefit of basing the assessment on the minimum charges for the month (the other two options not being applicable here). This would then have revealed the absurdity of willfully charging the Complainant even less than what had been charged actually on the basis of the defective metering. Be that as it may, by charging firstly, @ 216 units /KW/month for the first three months and thereafter for the next 3 months based on just 28 days consumption for the succeeding period after the meter was set right which too turns out to be a peak summer period, the Licensee’s Appellate Committee had clearly flouted the existing law.
45. The Appellate Committee could have found a way out by developing a norm as an alternative for the average consumption of past three billing cycles in which the meter was correctly recording that was not available here. It could have been based upon the basis of charging of the “Consumption Security Deposit” as per Para 16 of the Electricity Supply Regulation 1984; it is also provided for under Para 47 of the Electricity Act '03, or say the norm based upon the consumption record of other similar hotel cum restaurant consumers in Dehra Dun, or say the assessment basis indicated in the Electricity Supply (Consumers) Regulations 1984, Para 21 Meters (iii) & (iv) but it failed to do so. However this is a matter of hind sight being mentioned here only to illustrate that recognized alternatives were available.
 - For the reasons as cited above and as also set down in preceding Paras the said order of the Licensee’s Appellate Authority having been rendered null and void the same is thus set aside and the basis of assessment shall be as follows next.

46. Since presently we have a basis of consumption recorded correctly as averred by the Licensee for the corresponding months of November to May in the successive period of the year of 2004-2005 so this shall thus be used to work out the consumption for the period 20-11-2003 to 18-05-2004 for the 180 days that are to be assessed for and it shall be done on a pro-rata basis using the consumption for the corresponding months of the following year 2004-'05. The same is being provided as under: -

S.No.	Month/Period	Consumption recorded as per meter when its connections were wrong (In units)	Assessment awarded by Licensee's Appellate Committee (In units)	Assessment now awarded by considering the corresponding period of the following year
1	20.11.03-30.11.03		216x75 = 16200	6163
2	Dec, 2004	2320	216x75 = 16200	17972
3	Jan. 2005	3904	216x75 = 16200	21136
4	Feb. 2004	4436		19866
5	March 2004	No reading		22808
6	April 2004	16257		24116
7	1 to 18.5.2005	No record		18293
	Total	26917	48600+89839=138439	129741*

*** Calculation chart for the "Assessment" on basis of the corresponding period of next year**

Period for assessment	No. of days	Calculation	Unit Assessed	Corresponding period of following year	No. of days	Units consumed
20.11.03-29.11.03	9	19104 x9/31	5546	29.10.04-29.11.04	31	19104
29.11.03-29.12.03	30		17972	30.11.04-29.12.04	30	17972
29.12.03-1.2.04	34		21136	30.12.04-1.2.05	34	21136
1.2.04 - 5.3.04	33	19264x33/32	19866	2.2.05 - 5.3.05	33	19866
5.3.04 - 4.4.04	30		22808	6.3.05 - 4.4.05	30	22808
4.4.04 - 30.4.04	26		24116	5.4.05 - 30.4.05	26	24116
30.04.04 - 18.5.04	18	31504x18/31	18293	1.5.05 - 31.5.05	31	31504
	180		129741		215	15 6476

47. The above shall thus give a rational and straightforward basis for making the assessment for all the 180 days for the year 2003-'04 in which the metering remained defective right from the date of giving the connection, by using the consumption basis for the corresponding period of next year i.e. of the same season.

48. The impugned bill based upon the ruling of the Appellate Committee having been set aside a fresh bill on the basis of the above assessment under Para 46 shall be raised and adjustment is therefore to be made accordingly.

49. Another relief that the Complainant had sought, which the Licensee has wrongly charged is that of “the Low Power Factor surcharge” or even the capacitor-charge over and above the assessment done for the metering-defective period. Now as per the Licensee’s own admission its ‘metering’ of that period or rather what purported to be so, was totally wrong so how come it could have shown the correct Power Factor? So what right does it have to claim the surcharge on that basis? Since a representative basis of consumption is being taken to project the “assessment” for that period or even that which was previously charged by the Appellate Committee, so that is a total all-inclusive basis and is thus not amenable to inclusion of any such charges. Even otherwise as far as capacitor charges are concerned the Complainant has given proof of purchase and installation of the same while the Licensee has not given any proof of a notice citing these to be defective especially since the installation was being visited by its engineers every month to take the monthly reading so we see no basis to add such charges over and above a representative basis of consumption which has already been adopted as fair compensation to the Licensee.
50. **Therefore neither the “Capacitor charges” nor the Low Power Factor charges are admissible once an “assessment” is made, so any such charges if realized shall be adjusted in the Complainant’s final bill of this case.**
51. Thus the Licensee cannot misconstrue an unfortunate and avoidable situation created by its own error of omission and commission into one of charging an even higher amount and thereby profiting from this by citing the infallibility of its Appellate Committee. Neither can the Complainant get any further relief as it too is not entirely without blame for not pointing out the abnormally low consumption as also the indication of “R Phase tamper” shown by the Secure-make Tri-Vector Electronic Meter in the monthly meter-reading slip. Surely the hotel management must have made a budget provision of how much it shall spend by way of energy charges, so how come it did not make an enquiry if it was being charged abnormally low?
52. The Licensee shall further refer to the Ex. Engineer Test Division report vides 392 /UTDD/MRI dated 17-06-2004, which informs just what the wrong connections were. It is directed that it shall conduct a test in its Test Lab by selecting two Secure-make meters of the same specifications and model if not the same Secure-make meter as was wrongly connected up by the inadvertent error as per above report and connect one of them with the same set of wrong connections as was originally done at the consumer’s installation, while connecting the other one correctly, so that both record their readings at the Complainant’s average Power Factor now available in the next year’s readings for a set period of time, in order to give the percentage recording of how much “slow” the former wrongly-connected meter is as compared to the correctly connected meter. The result of the same is to be intimated within one month’s time for further action if any.
53. It now transpires that the engineers said to have carried out the connections were new to such an expertise-based job having just joined their posts after a promotion a very short time before. It transpires that was why the “tamper indications” had also come to be ignored to start with. However the Licensee has not given an assurance of making all its personnel including both engineers and technicians proficient in the use of expensive high-end electronic meters since these had been ignorant about connecting them properly.

54. It is therefore impressed that the Licensee shall inform about the compliance of the following: -
- The accuracy-class of the instrument transformers used shall be of the same accuracy-class and quality as of the meter.
 - If inadvertent errors like this occur it shows lack of expertise and due diligence on the part of field-level personnel of the Licensee. The Licensee shall give an assurance of making all its personnel including both engineers and technicians proficient in the use of expensive high-end electronic meters especially with regard to connecting them properly and of correctly billing them based on MRI-conducted readings.
 - The only redeeming feature that appears is that the error was detected relatively early on by the use of the Meter Reading Instrument (MRI) initiated at the level of the AE Meters who was earlier part of the team, which had made wrong connections and in this he was guided by the Executive Engineer (Test) of the Urban Test Division, Dehra Dun. That is thus a pointer to the efficacy of using the MRI under the supervision of highly proficient engineers and points towards the need to inculcate such services in the lower field-level officers as well.
 - Previous connections of such loads released by the above if any as they were new to their posts as also by their predecessors must also be checked up with MRI and rectified if not already done so.
 - Therefore the role of knowledgeable engineers like that of the above referred Executive Engineer Urban Test Division needs also to be expanded in training field engineers and technicians in all aspects of Metering-Technology of such high-end electronic meters.
 - Monthly readings of all such loads shall invariably be taken with the MRI.
 - Consumption-analysis of such heavy loads must also be a necessary adjunct to relying only on technology as at the time of taking monthly meter readings.
55. The Licensee's long delays over submitting replies to the Complainant's Representation as also to the queries during the proceedings of the case had conveyed an impression that it had either failed to take this matter with sufficient seriousness or that it was being evasive or both. These have thus delayed the finalization of this case.

AWARD

Having diligently considered all the facts and circumstances of this Representation and after giving due hearing 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 on 22-02-2006 that the dispute regarding the assessment for the period of 20-11-2003 till 18-05-2004 when the Licensee's metering remained defective "was already satisfied by the UPCL Zonal Appellate Committee" was wrongly concluded to be so, because the said Zonal Appellate Committee had based its decision on a superseded and defunct amendment to the Tariff vide its order on 19-11- 2004 which thus rendered the

Committee's decision null and void and further that its conclusion that the directions given by the Forum for correcting the impugned bill had also been complied with by the Licensee's AE (Rev) to the Complainant's satisfaction, were also found to be equally erroneous.

The case was found to have no exact precedent; - in this case the Licensee had installed a high-tech electronic meter ostensibly to prevent tampering of its meter and prevent energy theft but its engineers and technicians were found so deficient in knowledge that they could not make the correct connections to this current-transformer connected meter provided for the Complainant's 75 kW hotel and restaurant business load with the result that the meter failed to record correctly right from the start and gave low consumption.

However the above said engineers felt something was remiss and reported their doubts to their Executive Engineer (Test) who being an expert in this field conducted a Meter Reading Instrument (MRI) test and the error was detected within six months.

That being so, the assessment basis of the Licensee Zonal Appellate Committee based upon a superseded amendment to its Tariff Order of 8-09-2003 of the Uttaranchal Electricity Commission is thus rendered null and void on that count. Accordingly the above said order of the Licensee's Zonal Appellate Committee as also the decision of the Forum is set aside.

Since the Licensee's admitted error in making the proper connections to the Complainant's Secure-make Electronic Tri-Vector Meter (SETVM) had rendered a billing dispute of six months duration right from the very start of this new 75 kW connection therefore in such an unprecedented situation the consumption recorded for the corresponding period in the succeeding year (this being a seasonal load) shall thus form the basis of billing for the disputed period as per the details given in Para 46, and the Licensee shall prepare the complainant's bill accordingly and adjust all charges paid so far towards consumption of that period as per the above.

The capacitor and/or low power factor charges levied by the Licensee for the period its metering remained defective is also rendered inadmissible on that count. No such charges shall thus be charged over and above the assessment-bill based upon the corresponding next year's consumption.

Since all readings and payment figures are readily available the above matter shall therefore be settled within one month of the date of this Award and compliance in all matters shall be reported accordingly.

18-10- 2006

(J.C. Pant)
(Ombudsman)