

BEFORE THE OMBUDSMAN

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

**24, VASANT VIHAR, PHASE-II,
DEHRADUN-248006**

E-mail: ombudsman_elect_ua@yahoo.co

Case: Representation No. 10 of 2006

Complainant

Respondents

1. M/S Khatima Fibres Ltd.,
P.O. Khatima.
Distt. Udham Singh Nagar
- Vs. 1. Executive Engineer,
Electricity Distribution Division,
Sitarganj (Distt. U. S. Nagar).
2. Uttarakhand Power Corporation Ltd.,
(UPCL) through its C.M.D
3. The Chairman,
Consumers Grievances Redressal Forum,
(CGRF) Kumaon Zone, 132 KV Sub-station,
P.O. Kathgodam (Nainital).

Case: Representation No. 13 of 2006

2. M/S Kashi Vishwanath Steel Ltd,
Bajpur Road, Kashipur.
- Vs. 1. Executive Engineer,
Electricity Distribution Division,
Kashipur
3. M/S Shivangee Crafts Ltd.,
Ramnagar Road, Kashipur.
2. Uttarakhand Power Corporation Ltd.,
through its C.M.D
3. The Chairman,
Consumers Grievances Redressal Forum,
Kumaon Zone, 132 KV Sub-station,
P.O. Kathgodam (Nainital).

Case: Representation No. 14 of 2006

4. M/S Uttrayan Steel Pvt. Ltd.,
Vill. Salempur Rajputana,
Near Ramnagar Industrial Area,
Roorkee, Distt. Haridwar
through Sh. Suresh Sharma.
- Vs. 1. Executive Engineer,
Electricity Distribution Division,
Roorkee
2. Uttarakhand Power Corporation Ltd.,
through its C.M.D
3. The Chairman,
Consumers Grievances Redressal Forum,
(CGRF) Garhwal Zone, Dehra Dun.

Case: Representation No. 15 of 2006

5. M/S Moti Ram Rolling Mills Ltd., Vs. 1. Executive Engineer
104/34 Dehradun Road, Electricity Distribution Division,
Rishikesh, through Sh. Ashish Gupta Roorkee.
2. Uttarakhand Power Corporation Ltd.,
through its C.M.D
3. The Chairman,
Consumers Grievances Redressal Forum,
Garhwal Zone, Dehra Dun.

Counsel for the Complainants:

Sri Pukhraj Kushwaha,
Representative of the Complainants in
Representation No. 10 & 13.

Sri M.K.Kohli,
Counsel for Complainants in
Representation No. 14 & 15

Counsel for the Respondents:

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

In the matter of:

The above Five Complainants have filed a common grievance through a joint Representation in one case and the rest are similar ones that the Licensee (UPCL) had illegally charged and obtained the amounts of System Loading Charges (S.L.Cs) when this particular charge had been categorically disallowed by the Uttaranchal (now Uttarakhand) Electricity Regulatory Commission (UERC) vide its Tariff Order dated 08.09.2003 and that the newly constituted Forums vide their respective orders of 14.11.2006 had wrongfully dismissed their Complaints to refund the said amounts.

QUORUM

Sri J.C.Pant	...	Ombudsman
Date of Award	...	07.02.2007

AWARD

Representation No. 10 of 2006

The representation was received on 27.11.2006 which was sent to the Respondents for submission of point wise reply and the date was fixed for 13.12.2006.

On 13.12.2006 the parties appeared through their Counsels. The reply from the Respondents could not be received. The date for response from the Respondents was fixed for 3.1.2007.

On 3.1.2007 the reply received from the Respondents, was given to the Complainant for submission of their counter reply and the date was fixed for 10.1.2007.

On 10.1.2007 the reply from the Complainant was received and the date 17.1.2007 was fixed for arguments.

On 17.1.2007 the arguments were heard and the date 7.02.2007 was fixed for final orders.

Representation No. 13 of 2006

The Representation was received on 8.12.2006, copy of which was sent to the Respondents for submission of point wise reply and the date was fixed for 27.12.2006.

On 27.12.2006 the reply from the Respondents could not be received and accordingly the date for response from the Respondents was fixed for 3.1.2007.

On 3.1.2007 a copy of the reply received from the Respondents was given to the Complainant for submission of further response and the date was fixed for 10.1.2007.

On 10.1.2007 the response from the Complainant was received and the date for arguments was fixed for 17.1.2007

On 17.1.2007 the arguments were heard and the date 7.02.2007 was fixed for final orders.

Representation No. 14 of 2006

The Representation was received on 12.12.2006, copy of which was sent to the Respondents for submission of point wise reply and the date was fixed for 27.12.2006.

On 27.12.2006 the reply from the Respondents could not be received and accordingly the date for response from the Respondents was fixed for 3.01.2007.

On 3.1.2007 a copy of the reply received from the Respondents was given to the Complainant for submission of further response and the date was fixed for 10.1.2007.

On 10.1.2007 the response from the Complainant was received and the date for arguments was fixed for 17.01.2007. On 17.1.2007 the date 31.1.2007 was fixed for arguments.

On 31.1.2007 the arguments were heard and the date 7.02.2007 was fixed for final orders.

Representation No. 15 of 2006

The Representation was received on 12.12.2006, copy of which was sent to the Respondents for submission of point wise reply and the date was fixed for 27.12.2006.

On 27.12.2006 the reply from the Respondents could not be received and accordingly the date for response from the Respondents was fixed for 3.1.2007.

On 3.1.2007 a copy of the reply received from the Respondents was given to the Complainant for submission of further response and the date was fixed for 10.1.2007.

On 10.1.2007 the response from the Complainant was received and the date for arguments was fixed for 17.1.2007.

On 17.1.2007 the date for arguments was fixed for 31.01.2007. On 31.01.2007 the arguments were heard and the date 7.02.2007 was fixed for final orders.

Facts & Circumstances of the Case

1. The above Five Complainants have thus filed a common grievance through a joint Representation in one case and the rest are similar ones that the Licensee (UPCL) had charged and obtained the amounts of System Loading Charges (S.L.Cs) when this particular charge had been categorically disallowed by the Uttaranchal (now Uttarakhand) Electricity Regulatory Commission (UERC) vide its Tariff Order dated 08.09.2003 and that the newly constituted Forums vide their respective orders of 14.11.2006 had wrongfully dismissed their Complaints to refund the said amounts.

2. The details of the Complainants who filed their above Representations against the orders of the concerned Consumers' Grievances Redressal Forums (CGRFs), Kumaon Zone and Garhwal Zones respectively, are as under:-

- i. Representation filed by the Complainant, M/S Khatima Fibres dated 27-11-2006 against the order of the CGRF, Kumaon Zone P.O. Kathgodam, Distt. Nainital dated 14-11-2006, had been registered as Representation No. 10/2006.
- ii. Representation filed by two Complainants, M/S Kashi Vishwanath Steels Ltd., Bazpur Road Kashipur and M/S Shivangi Crafts Ltd., Ramnagar Road, Kashipur dated 8-12-2006, against the order of the CGRF, Kumaon Zone P.O. Kathgodam, Distt. Nainital had been registered as Representation No. 13/2006.
- iii. Representation filed by the Complainant M/S Uttarayan Steels (P) Ltd. Village Salempur Rajputana near Ramnagar Industrial Area, Roorkee through Sri Suresh Sharma dated 12-12-2006, against the order of the CGRF Garhwal Zone Dehradun dated 14-11-2006 and registered as Representation No. 14/2006
- iv. Representation filed by the Complainant M/S Moti Ram Rolling Mills Limited, 104/34 Dehradun Road, Rishikesh, dated 12-12-2006 through its Director Sri Ashish Gupta against the order of the CGRF, Garhwal Zone Dehra Dun dated 14-11-2006 and registered as Representation No. 15/2006.

3. The above decisions of the respective Consumers' Grievance Redressal Forums had followed in compliance of directions of the Hon. High Court of Uttarakhand No. (18) Special Appeal No. 107 of 2006 dated 1-11-2006 given to the Licensee, the Uttaranchal (now Uttarakhand) Power Corporation Limited to re-constitute the C.G.R.Fs and dispose off afresh the previous cases decided by the earlier constituted Forums within a period of 10 days. This much is known to all parties in the matter and this brief reference shall thus suffice for the record. The above order of the Hon. High Court had thus disposed off the Writ Petitions and Special Appeals in the matter of above noted Complainants.

4. The Complainants'-wise amounts that each is seeking for refund by the UPCL are as follows:

- i. M/S Khatima Fibres
Amount of Rs 23, 67,118/- paid through installments from 22-01-2004 to 20-12-2004.
- ii. M/S Kashi Vishwanath Steels
Amount of Rs 27, 30,000/- paid as follows: - Rs 4, 55,000/- through Cheque No. 0014817 dated 03-02-2004 and Rs 22, 75,000/- through adjustment.
- iii. M/S Shivangi Crafts total Rs. 1,60,326.00 deposited as follows:

Cheque No.	Date	Amount (Rs.)
715013	05.06.2004	32500.00
715804	14.07.2004	34938.00
715866	13.08.2004	34450.00
715867	12.09.2004	33963.00
715868	12.10.2004	33475.00
715869	11.11.2004	32988.00

- iv. M/S Uttarayan Steel amount of Rs 3,90,000/- paid vide P.N.B Cheque No. 062581 dated 25-11-2004 and Rs 19,50,000/- vide Pay order No. 314905 dated 12-01-2005, total in all Rs. 23,40,000.00 only.
 - v. M/S Moti Ram Rolling Mills Limited, 104/34 Dehradun Road, Rishikesh, total Rs. 24,27,750.00 (Rs. 23,40,000.00 as SLC + Rs. 87,750.00 as interest thereon) deposited as under:-
 - a. Rs 3,90,000/- on 03-03-2004
 - b. Rs 4,13,400/- on 06-04-2004
 - c. Rs 4,19,250/- on 07-04-2004
 - d. Rs 4,07,550/- on 04-06-2004
 - e. Rs 4,01,700/- on 05-07-2004
 - f. Rs 3,95,850/- on 04-08-2004
5. Recalling the past history the above Complainants had initially sought the above to be refunded by the Licensee when they learnt that the Uttaranchal Electricity Regulatory Commission vide its Tariff Order dated 08-09-2003 had disallowed charging of the S.L.Cs. from the consumers.
 6. Accordingly most of the above mentioned Complainants had filed Complaints against the earlier constituted Forum. That Forum vide its order dated 14-12-2005 had ruled in favour of the Complainants and had ordered the UPCL to refund the said amount of System Loading Charges along with interest till the date of payment.
 7. The above order of the earlier Forum had been challenged by the UPCL through a Writ Petition which had resulted in the events as stated in Para 3. Thus the newly constituted Forum of Kumaon Zone P.O. Kathgodam had reversed the earlier order in its judgment 14-11-2006 and had ruled as under:-

“In view of the above it is ordered that System Loading Charges being not a part of the tariff, the same chargeable by the licensee in respect of the supply of electricity agreement executed upto 31.3.2005 (is justifiable and payable by the consumer as the same were discontinued by the licensee w.e.f. 1-4-2005) and not thereafter as the same were discontinued to be charged by the UPCL w.e.f. 1-4-2005.”.

Similarly the newly constituted Forum of Garhwal Zone, Dehra Dun had concluded as follows:-
“In view of the above no relief can be given to the parties” while upholding the same line of reasoning given by the Licensee for the same type of cases as decided by the C.G.R.F. of Kumaon Zone, Kathgodam.
 8. The Licensee while arguing its case before the above two Forums had followed the same reasoning in both set of Complaints that the SLC formed a part of Capital Expenditure and as such the Regulatory Commission had no jurisdiction to decide over the matter, i.e. whether to hold it chargeable by the Licensee or not. This reasoning had thus been accepted by the learned Forums in their above two orders of 14.11.2006.
 9. It is undisputed that prior to 08-09-2003 the “System Loading Charges” (S.L.Cs) were being charged by the Licensee from industrial consumers and its rationale was that this was necessitated because each release of load puts a burden on the power system that shall require subsequent up-gradation, augmentation and strengthening. These charges were ostensibly for financing such works.

10. The Licensee was charging this in addition to Service Connection Charges, which included the reasonable expenses of providing the line or electrical plant required for giving this new connection.
11. However, with regard to S.L.Cs, the UERC in its Tariff Order dated 08-09-2003 Para 6.4.5.3, Page 147 had ruled as follows:

“At the time of sanction of a new connection one of the charges levied on the applicant is what is being termed as the System Loading Charge. The rationale for levy of this charge that is normally given is that sanction of every new connection increases the load on the transmission and the distribution network necessitating up-gradation and reinforcement of the same. Such strengthening of the network could be done through up-gradation and installation of new substations or transformers, conductors and other related equipment. Any such investment results in creation of additional assets for the licensee. The cost of creating such additional assets to the licensee is also recovered through depreciation and interest/return on capital.

Recently a petition has been received from the licensee requesting for permitting reduction in these charges. The Commission has taken up this petition on record and shall take a view in the matter after considering the related issues and the submissions made in this regard.”

Again in its Para 8.2.4.4 Page 176 of above Tariff Order under the heading “Industrial Consumers”, UERC had categorically observed “No System Loading Charge will be payable”. Further, under each Rate Schedule, the UERC had added under the heading of “Note” as follows: “Apart from the above and those included in the schedule of miscellaneous charges, no other charges shall be charged from the consumer unless approved by the Commission.”

12. In its next Tariff Order for FY 2005-06, Para 7.2.3 Page 114, the UERC had now forcefully reiterated inter-alia that S.L.Cs shall not be charged and if done so shall be refunded with due interest as follows:

“7.2.3 System Loading Charges

System loading charges were being levied on all categories of consumers at the time of sanction of every new connection for covering the capital costs for up-gradation and strengthening of the system. Levy of such system loading charges was disallowed in the Order dated 08.09.2003, which was clearly stated at the following places in the Order:

- i) At the end of Rate Schedule for each category of consumers: “Apart from the above and those included in the rate schedule of miscellaneous charges, no other charges shall be charged from the consumer unless approved by the Commission”.*
- ii) In Para 8.2.2.4, which specifically stated that for industrial consumers “No system loading charge will be payable”*

While seeking to reintroduce these charges, the licensee has failed to provide any data or argument to support such reintroduction. The Commission, therefore, does not see any reason or justification for reintroducing such charges and takes this opportunity to make it absolutely clear that no such charges are to be levied on new consumers of any category at the time of giving a new connection.

During the Public Hearings, some consumers had alleged that notwithstanding Commission’s categorical directions contained in the tariff order and referred to above, the licensee has continued to levy such charges on new consumers. If these allegations are true, then the licensee is clearly guilty of willfully defying Commission’s orders and recovering unauthorized charges from such consumers. In doing so, the licensee is not only exposing itself to punitive legal action, but is required by section 62(6) of the Electricity Act, 2003 to

*refund such unauthorized/excess amount to the concerned consumer along with interest at bank rate. **The licensee is hereby required to file full and correct facts with the Commission within a month of this order, where after the Commission will take view on this alleged violation.** This, of course, will not in any way come in the way of any aggrieved consumer seeking appropriate relief from the Redressal Forum or any other court."*

13. The UERC in its Regulation No. 4 dated 14-05-2004 provides guidelines for the working of the Ombudsman and defines his jurisdiction with regard to considering the representations against the orders of the Forum as follows:

"Representation" shall mean the representation made to the Ombudsman by or on behalf of a Complainant who is aggrieved by the order of the Forum (including the dismissal order), or non-redressal of his Grievances by the Forum within the specified time and in accordance with the Guidelines:

Provided that the representation does not pertain to the same subject matter for which any proceedings before any court, tribunal, arbitrator or any other authority is pending or a decree or award or a final order has already been passed by any competent court, tribunal, arbitrator or authority."

It is undisputed that the "competent authority" in the matter is the UERC.

14. The Ombudsman is further directed by the Regulation No. 4 of 2004 Para 2(f) which defines one of the grounds of "Complaint" shall be as follows: ***"... cases where Licensee has charged price in excess of the price fixed by Commission or recovered the expenses incurred in excess of charges approved by the Commission in providing any electric line or electric plant."***
15. In the present Representations also the licensee has made the same contention that it did in an earlier case of M/S Kumar Agro Tech Ltd. of Roorkee that there was a pending petition with the UERC in the matter concerning S.L.Cs as if it still remains to be decided by the Commission. The Hon'ble UERC had categorically refuted that no such petition was pending when its attention was drawn to this contention by the Ombudsman. This remains unchanged since the Commission's above reply had in fact covered all such cases.

Issue/Issues in the case:

16. The issue thus arises whether the Licensee had flouted clear cut orders of the Hon'ble Commission dated 8.9.2003 effective from 20.9.2003 that System Loading Charges will not be payable when it continued to levy system loading charges on the Complainant as per the details of the amounts realized from them in Para 4. The UERC had directed *"No system Loading Charge will be payable"* and at the end of its RTS-7 Tariff Schedule for L.T. & H.T. Industry Para 17 under the heading "Note" had again directed *"Apart from the above and those included in the schedule of miscellaneous charges, no other charges shall be charged from the consumer unless approved by the Commission."*
17. Then again the UERC had in the next Tariff effective from 1.4.2005 referred to its earlier orders on 8.9.2003 as per Para 7.2.3 on Page 114 quoted earlier in full and had gone on to say that: *"During the Public Hearings, some consumers had alleged that notwithstanding Commission's*

categorical directions contained in the tariff order and referred to above, the licensee has continued to levy such charges on new consumers. If these allegations are true, then the licensee is clearly guilty of willfully defying Commission's orders and recovering unauthorized charges from such consumers. In doing so, the licensee is not only exposing itself to punitive legal action, but is required by section 62(6) of the Electricity Act, 2003 to refund such unauthorized/excess amount to the concerned consumer along with interest at bank rate....."

18. Whether the newly constituted Forums by their respective orders of 14-11-2006 in upholding the Licensee's action in charging and then not refunding the said S.L.Cs had gone beyond their powers as defined in the UERC Regulations and had thus flouted the authority of the UERC or not.

Examination of the facts, circumstance and issues

19. The Complainants through their respective learned counsels had cited above orders of the Hon'ble Commission, which are clear in themselves that any charging of the System Loading Charges (SLC) by the Licensee even after issue of the said order on 8.9.2003 shall constitute a willful violation of the Commissions' authority making the Licensee liable for punitive action.
20. The said S.L.Cs were recovered in these Representations between the period 22-01-2004 and 12-01-2005 as given in the Para No. 4 i.e. after the promulgation of the Tariff Order dated 8-09-2003 that prohibited the Licensee from charging the same.
21. In the grievance/complaints, coming up before the concerned learned Forums the learned counsel for the Licensee had tendered the following arguments that are inter-alia as follows (and are reproduced thus):-".....
- i. *Section 62 of the Electricity Act empowers the UERC to approve the revenue requirement of the licensee and in the process to lay down the rates of supply of electricity to the consumer (this power does not lay down the rated of supply of electricity to the consumer (this power does not include to lay down the expenses which the licensee has to incur in supplying electricity to the consumers).*
 - ii. *For expenses the legislature has made a provision in Section 46 for the UERC to make regulations for charging authorized expenses. This is not mandatory. It is the discretion of the commission to make regulations in respect of the expenses to be charged by the licensee or not make any such regulations. In the absence of such regulations, the licensee will continue to charge the expenses from the applicants for supply of electrical energy including system loading charges. Charging of system loading charges in (is) thus expenses which do not require any approval or sanction from the Commission. It is, however, within the jurisdiction of the commission to make regulations in that regard, which the UERC has not done so far. Hence, any comment by the UERC about expense in the Tariff Order for 2003-04 is out of the context and without any jurisdiction, and hence is without jurisdiction and is void and is not enforceable.*

- iii. *The UERC has not yet decided the petition filed by the UPCL for reduction of system loading charges by 25% and has kept the matter pending which it has acknowledged in the tariff order itself as stated above.*
 - iv. *Thus the UPCL is within its rights to charge system loading charges from the applicants and the charges levied in this case are correct and the applicant is not entitled to refund of the said amount as alleged....”*
22. The Licensee has thus raised a contentious issue before the Ombudsman; - this is whether the UERC is the competent authority in the matter of scrutinizing and approving Capital Expenditure as part of its regulatory duties or not? It is a matter of astonishment that it appears unclear to the Licensee that the Ombudsman is not the competent authority to decide on the jurisdiction and competence of the Hon'ble Uttarakhand Electricity Regulatory Commission.
23. That the Licensee should bring up such an issue before it is to be thoroughly deprecated in the light of the **UERC's Regulation No. 4 dated 14-05-2004** that provides guidelines for the working of the Ombudsman and defines his jurisdiction as also the **Regulation No. 1/2004 dated 10-02-2004** which defined the guideline for the Forums for Redressal of the Grievances of the Consumers. In both the Regulations the matter of 'Complaint' stands defined as also it does in the latest **Regulation dated 17-01-2007**. In this latest Regulation the UERC has re-iterated the scope of the "Complaint", as it was earlier that states inter-alia ***“Cases where licensee(s) has charged price in excess of the price fixed by the Commission or has recovered the expenses incurred in excess of charges approved by the Commission in providing any electric line or electric plant.”***
24. In the **UERC Regulation No. 4 dated 14-05-2004** it had defined the jurisdiction and guideline for the working of the Ombudsman which stated inter-alia as follows:
“.....Provided that the representation does not pertain to the same subject matter for which any proceedings before any court, tribunal, arbitrator or any other authority is pending or a decree or award or a final order has already been passed by any competent court, tribunal, arbitrator or authority.”
 The “competent authority” in the case is very much the UERC, which has thus passed its final orders on the matter of S.L.Cs.
25. Therefore, when the UERC disallowed the charging of SLC under the Tariff Order, it is binding upon the Forums as also upon the Ombudsman to uphold the same. Whether to allow S.L.Cs or not has thus been examined by the UERC under its capacity as the “competent authority” to do so. So the Ombudsman is not the competent authority to reopen the matter whether SLC is to be charged or not or even to listen to the pros and cons of it. The Ombudsman has therefore no authority to question the merits of the case except to see that the orders of the UERC are being followed in spirit and substance in the matter of charging S.L.Cs by the Licensee and the consumer or not.
26. Thus the UERC had disallowed the System Loading Charges for the simple reason that the Licensee has already been provided the means to carry out augmentation, strengthening, increase of capacity et al through various capital works that provide for carrying out the above. So again charging individual consumers for such works was disallowed by the UERC. This fact has not been admitted by the Licensee and cannot be said to have been an error of omission.

27. It is also a fact that the Licensee has stopped charging S.L.Cs w.e.f. 1-4-2005. So it has effectively conceded the point that it is not necessary to charge the same from individual consumers and the provision for augmentation and strengthening of the system is being undertaken by it through various capital works that are to be got approved from the Commission.
28. The learned counsels/representatives on behalf of the complainants have cited Section 62 of the Electricity Act 2003 to aver that the Licensee cannot incur expenditures without approval of the Commission. They have cited Section 62(5) specifically to aver this. The Act makes clear the functions of the Commission vide Section 61 and again under Section 62. There is no doubt that the Commission is fully competent in the matter of regulating investments and approvals thereon for the distribution and supply of electricity by the Licensee. As stated this is an issue beyond the purview of the Forums or the Ombudsman to question or to even examine. Therefore the Licensee's contentions as quoted under Para 21 are not just misconceived but are ill-founded in challenging the authority of the UERC.
29. The learned counsels/representative of the Complainants have also argued that Section 46 of the Electricity Act 2003 provides that the Licensee can charge from a person requiring electric supply any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving their supply.
30. The Licensee has already charged an estimate of work involved in giving the aforesaid supply which work thus comes under the definition of expenses "reasonably incurred". The emphasis on the words "reasonably incurred" needs particular attention. It clearly means what it says that only those expenses are to be recovered which shall be reasonably incurred in providing the electric plant and electric line used for the purpose of giving only that particular supply. Therefore, the estimate of the work should cover all that expense and nothing else and be done with it.
31. What is clearly implied is that the cost of charging expenses reasonably incurred has to be done in a transparent manner. The Act, therefore, prescribes transparency in the transaction under the above mentioned Section. There is thus no scope for charging "hidden costs". The SLC appears to be one such hidden cost.
32. The learned counsel/representative of the Complainants had also made the point that apart from allowing all expenses reasonably incurred, the UERC has disallowed the System Loading Charges under Section 46 for the reason already cited by the Commission, being thus charges that did not appear reasonable. The above argument of the representative/counsel for the Complainants is, therefore correct based as it is on what the Act and the UERC had promulgated respectively in the matter.
33. The learned counsel for the Licensee has averred that there is a petition pending before the UERC regarding reduction of System Loading Charges by 25% and that the same has not been disposed off. With regard to the above it is to state that the Commission holds that it found no valid grounds in the first place to charge the system loading charges, so the question of reducing

the same just did not arise. This was stated as much in its Tariff Order of 8-09-2003 as remarked by it in its Para 6.4.5.3 Page 147 (already quoted under Para 11). Furthermore the UERC vide its letter No. 130/UERC/SLC/06 dated 11 May, 2006 to the Licensee had categorically stated that the matter of reintroduction of system loading charges had been dealt with and disposed off in the Commission's Tariff Order dated 25-04-05. Earlier, the UERC vide its No. 812/UERC/06 dated 21-02-2006 had sent a copy of the order passed by the Hon'ble Commission on 21-02-2006, which categorically refutes that the Licensee's application pertaining to system loading charges dated 20-08-2003 was still pending for the Commission's decision. The Hon'ble Commission then went on to state the following:

"4. Prima-facie UPCL is guilty of continued non-compliance of not only the directions contained in Commission's Tariff Order but also of flouting the Consumer Redressal Forum's specific order given on 14/17.12.2005 for refund of excess amount realized from these consumers, after 20.09.2003."

34. Therefore, the learned counsel for the Licensee is clearly ignoring the above facts or concealing the same and there is thus no ground to accept that any petition is pending before the Hon'ble Commission that seeks to reintroduce the system loading charges, or to reduce them when it had held that the rationale given by the Licensee to uphold it was untenable in the light of facts given by the Commission in its Para 6.4.5.3 Page 147, of its Tariff Order of 8-09-2003.
35. The learned counsel/representative for the Complainants has averred that the opening afresh of a matter that has already been settled by the competent court or authority (the UERC) and accepted earlier by the Licensee when it unconditionally withdrew its Writ Petition challenging the Tariff Order of 08-09-2003, cannot thus be pursued further by it in this manner being a matter of *res judicata*. This argument is thus upheld and the Licensee has consistently erred in holding that the S.L.Cs is chargeable for the period 20-09-2003 to 31-03-2005 when the Hon'ble UERC had disallowed charging of the same.
36. Examining the matter in its entirety in all the above said Representations it is concluded that the Licensee has erred in the matter of flouting the orders of the Uttarakhand Electricity Regulatory Commission in the matter of charging System Loading Charges that stand abolished by the Commission w.e.f. 20-09-2003 and furthermore both the Forums in upholding that these are payable by the Complainants for the period 20-09-2003 upto 31-03-2005 have also flouted the authority of the Hon'ble Commission and have further violated the standing Regulations of the UERC defining their limitations of functioning and jurisdiction in such matters, therefore their respective decisions dated 14-11-2006 are ultra vires and are thus rendered null and void and hence set aside. The Licensee shall, therefore, refund the amount charged by it from each of the respective Complainants as detailed under Para 4 within 15 days of this Award along with interest till the date of payment as per Section 62(6) of the Electricity Act.

Award

Having diligently considered and examined all the facts and circumstances of these Representations and after giving due hearings to all parties and having heard arguments from both sides, I come to the conclusion that the decisions given on 14-11-2006 by the learned Consumers' Grievances Redressal Forums of Kumaon Zone, P.O Kathgodam and Garhwal Zone, Dehra Dun, respectively in rejecting the Complainants' demands for refund of their respective amounts charged as System Loading Charges as contained in Para 4 of this Award have clearly flouted the authority of the Hon'ble Uttarakhand Electricity Commission that had issued clear cut directions to the Licensee that the System Loading Charges are no longer payable vide its Tariff Order of 08-09-2003 effective from 20-09-2003 and that furthermore vide its Tariff Order of 25-04-2005 it had not only reiterated its earlier order that such charges should not have been charged but that if realized despite the Commission's Orders between 20-09-2003 and 31-03-2005, these shall stand to be refunded to the concerned consumers along with due interest payable as per Section 62(6) of The Electricity Act 2003 at bank rate.

The aforesaid Forums have further violated the standing Regulations of the UERC defining their limitations of functioning and jurisdiction in such matters, therefore their respective decisions dated 14-11-2006 are ultra vires and are thus rendered null and void. Hence the orders of the aforesaid Consumers' Grievances Redressal Forums of Kumaon and Garhwal Zones respectively are set aside, being null and void and thus the Licensee is directed to refund the above said amounts to each of the respective Complainants 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.

The compliance of this Award by the Licensee is to be duly reported by 28 - 02 -2007.

Dated 07-02-2007

(J. C. Pant)
Ombudsman