

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Datt Infrastructure & Services Ltd. 12-D, Race Course, Dehradun,
Uttarakhand.

Vs

1. Managing Director, Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwali Road, Dehradun, Uttarakhand.
2. Director (Finance), Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwali Road, Dehradun, Uttarakhand.
3. Executive Engineer, Electricity Distribution Division (Rural), Uttarakhand Power Corporation Ltd., Civil Lines, Roorkee, Uttarakhand.

Representation No. 03/2008

Order

M/s Datt Infrastructure & Services Ltd. (petitioner) approached the Ombudsman in January 2008 against the order of the Consumer Grievance Redressal Forum, Garhwal zone (Forum) dated 07.01.2008. His petition was admitted on 25.01.2008.

2. Brief facts of the case are that the petitioner has developed an industrial estate jointly with SIDCUL in village Banda Khedi of Roorkee. The Government of Uttarakhand in view of their policy of Industrial Development in the State and to cater to the anticipated need of new entrepreneurs decided to get certain Industrial estates developed at various places both in public as well as private sector/joint ventures. One of them was that of M/s Datt Infrastructure & Services Ltd. to be developed at Banda Khedi, Roorkee. The Department of Industries, Government of Uttarakhand vide their letter dated 26.12.2003 directed UPCL to make necessary power allocation for these Industrial Estates as mentioned in the letter.
3. In pursuance of this, the petitioner wrote to CMD and Director (Operation), UPCL on 05.04.2004 and 05.05.2004 requesting for power to be allocated for their Industrial Estate as directed by the Government. They were informed by Director (Operation), UPCL vide his letter dated 17.05.2004 that the entire cost of construction of 33 KV lines from concerned 132 KV substation up to the Industrial Estate as well as that of 33/11 KV substation of appropriate capacity along with 11 KV & L.T. lines in the Industrial Estate would have to be borne by them (petitioner), a copy of this letter was also endorsed to Government. *Hence it is clear that it was made known to the petitioner as well as to Government in the very beginning that the cost of all the electrical infrastructures shall be borne by the petitioner.*
4. The petitioner wrote to the respondent (04.11.2004 & 14.02.2005) informing of his purpose to construct a 33 KV feeder from Ramnagar, Roorkee to his estate and proposed 2/5 MW 33/11 KV transformer and 1 no. 11KV/440 volts or 33 KV/440 volts transformer and requested the respondent to depute someone to survey the site and draw up the estimate for the work. In the second letter the petitioner mentioned that

they wish to construct the substation and staff quarters themselves at their own cost, as was the practice in industrial estates setup by UPSIDC etc. He further added that they would be using all UPCL approved equipments and materials for this works. The entire facility would be handed over to UPCL after it was ready, for commissioning by UPCL.

5. Following the instructions of the CMD, UPCL, GM Garhwal Zone accorded approval (24.05.2005) for construction of 10 MVA capacity 33/11 KV substation in compliance with the CMD's letter dated 19.02.2005 and in accordance with existing rules and regulations. The Executive Engineer (Distribution) Roorkee issued a letter dated 25.06.2005 to the petitioner, for depositing Rs. 69,23,592.00 towards the cost of 33 KV Line to be constructed by UPCL from 132 KV substation up to the petitioner's Industrial Estate. The petitioner deposited the amounts Rs 19,45,680.00 on 04.07.2005 and Rs. 49,77,609.00 on 17.12.2005. Thereafter the line was constructed by UPCL through their contractor.
6. The work for setting up the substation and installing the connecting line was completed and on 22.08.2006, the petitioner wrote to the Chairman/CMD UPCL that they had setup the 33/11 KV distribution substation at their own cost even though the responsibility of putting up the substation was of UPCL since *neither he was a power consumer* nor was he taking any single point connection as the units coming up in the estate were consumers of the UPCL. He also stated that the UPCL was now demanding 18.45% supervision charges on the cost of the substation setup by the petitioner and refusing to release connections to different units. Stating that they had taken up the matter with the Government the petitioner requested UPCL to *release the connections pending settlement of the issue whether supervision charges were at all applicable.*
7. He also wrote to the Government (30.08.2006), questioning whether the setting up of 33/11 KV substation in the Industrial Estate was the responsibility of the UPCL or the Government of the State and whether the UPCL was justified in asking for a 15% supervision charge on the cost of the substation when no supervisory function had been performed. He quoted that UPERC Supply Code 2002 Regulations (as applicable to Uttaranchal since UERC had not yet notified the Supply Code regulations in the state) provide for a 15% supervision charge on cost of distribution lines when such lines are setup by a consumer. However there is no mention of supervision charges on cost of 33/11 KV substation. Once again the petitioner stated that "*Neither are we ourselves a consumer nor are we taking a single point connection from UPCL*" There are no papers on record to show the response of the Government to the communication from the petitioner.
8. The petitioner wrote to the UPCL asking for the actual construction cost and after a lot of correspondence the same was finally disclosed as Rs. 61,10,715.00 vide Executive Engineer Roorkee's letter dated 19.05.2007 on the petitioner invoking the Right To Information Act. The petitioner then wrote (31.05.2007) to the Executive Engineer

(Rural) Roorkee asking him to refund the amount Rs. 8,12,574.00 and interest as the same had been paid in excess of the amount due. As no reply was received the petitioner wrote to Director (Finance) UPCL vide letter dated 11.06.2007. In reply the Executive Engineer (Distribution) Roorkee issued a letter dated 28.06.2007 to the petitioner to deposit Rs. 15,78,600.00 as supervision charges @ 15% on the cost amounting to Rs. 1,05,24,000.00 for construction of 33/11 KV substation and H.T, L.T. lines in the Industrial Estate, which were to be constructed by the petitioner as per the guidelines laid down by CMD in his letter dated 19.02.2005. The petitioner did not deposit the amount.

9. He filed a petition before the CGRF on 27.08.2007. The Forum vide their order dated 07.01.2008 stated that the demand of UPCL for 18.45% charges for construction of 33 KV line and 15% supervision charges for construction of substation as demanded by them was justified and the petitioner had to pay the amount Rs. 7,66,026.00 i.e. the difference between excess amount deposited by him for construction of the line and the 15% supervision charges for construction of the substation which had not been paid by him.
10. The petitioner challenged the said order on the following grounds:
 - a) The order has been passed without proper application of mind and is based on a vague order of the erstwhile UPSEB.
 - b) The Forum has erred in clubbing the issue taken by the petitioner to them with an altogether different issue relating to construction of 33/11 KV substation.
 - c) The Forum has not made any effort to ascertain and confirm the relevance and validity of certain orders of erstwhile UPSEB from the Uttarakhand Electricity Regulatory Commission (Commission), who under law are now the sole authority for fixing charges that UPCL can realise from its consumer. Further based on these un-validated orders the Forum has worked out and validated not only the expenditure incurred on the 33 KV line but also on the substation constructed by the petitioner himself and calculated the petitioner's liability relating to the same even though the issue had not been raised before the Forum by the petitioner.
 - d) The Forum has failed to give any finding on the issue whether as per UPSEB's 1984 Supply Code Regulations the supervision charges are payable on the cost of material, labour, plus transport or only on labour and transport, even though this point had been agitated before them.
 - e) In its order, the Forum has justified levy 18.45% charges on the basis of Director (Operation), UPCL's office memorandum dated 30.01.2002 even though he had no authority to prescribe any such charges unless approved by the Regulator.
11. The petitioner demanded
 - a) Refund was due to him and could not be withheld on grounds of supervision charges for the substation. Both are separate matter and could not be interconnected. He also

states in different correspondence that no supervision charges are applicable on the substation as the same was never supervised by UPCL.

- b) The amount of Rs. 7,38,969.00 charged towards supervision and contingency in deposit estimate for 33 KV feeder be revoked and refunded as it was made without the approval of UERC.
 - c) Amount admitted by UPCL as excess amount paid by him for the construction of the line be refunded along with interest.
 - d) UPCL be directed to charge 15% supervision charges on labour and transport, as per provision of UP Supply Code 1984, as against charging on labour + transport + materials.
12. The respondent claimed that the representation was misconceived as the petitioner was not a consumer as per section 2 (15) of the Electricity Act, 2003 and that the petitioner was not the complainant as per the Act and the relevant Regulations. They also felt that the Electricity Supply (Consumer) Regulations 1984 issued by UPSEB continued to be applicable as no Regulations had been issued by the Regulator under the Act. Under Regulation 5 of the above mentioned Code and the prevalent Rules and Regulations the consumer was liable to pay the cost of the service line and other charges. The petitioner himself had written to the respondent (04.11.2004) informing of his purpose to construct a 33 KV feeder from Ramnagar, Roorkee to his estate and proposed 2/5 MW 33/11 KV transformer and 1 no. 11KV/440 volts or 33 KV/440 volts transformer and requested the respondent to depute someone to survey the site and draw up the estimate for the work. The same work was carried out by the respondent and the petitioner was permitted to construct the substation. The petitioner was thus liable to pay the respondent the supervision charges for construction of the substation, which he did not pay. The line charges were paid by him as per estimate given by the respondent. The excuse of the petitioner that the amount for the substation and the line should not be clubbed together is not correct.
13. After hearing counter arguments from both parties, the following issues were framed on 30.04.2008 with the agreement of both the parties.
- i. Whether the petitioner is not the consumer and complainant under the Electricity Act, 2003, if so its effect.
 - ii. Whether the Supply Code, Rules & Regulations of UP Regulatory Commission are applicable, if so its effect.
 - iii. Whether under the Electricity Act, the petitioner is liable to pay the charges for the transmission line?
 - iv. Whether SIDCUL is a necessary party?
 - v. Whether the respondents are entitled to the supervision charges from the petitioner? If so, to what extent.
 - vi. Whether the impugned order is against facts, law and is liable to be set aside?
 - vii. What relief, if any, the petitioner is entitled?

14. The Ombudsman decided issue no. (1) whether the petitioner is a consumer and complainant under Electricity Act 2003 should be taken up first. Giving a reasoned argument, Ombudsman passed an interim order dated 13.08.2008 declaring the petitioner a consumer.
15. The respondents approached the Hon'ble High Court on 10.09.2008 and the Court issued an order staying the proceedings and the interim order of 13.08.2008. Subsequently however, the Hon'ble High Court vide its order dated 23.06.2009 stated *"In the interest of justice it is absolutely necessary that the Ombudsman/Respondent No. 1 may not be restrained to proceed with the other issues. This Writ Petition is therefore being dismissed at this stage with liberty to the petitioner (UPCL) to challenge, in case occasion so arises, the order of the Ombudsman also on the ground of respondent no. 2 being held to be a consumer or not."*
16. The petitioner produced the copy of the Hon'ble High Court order before the Ombudsman on 16.02.2010. The then Ombudsman Shri Divakar Dev made a reference of this case to UERC on 09.03.2010 on the ground that he was associated with the petitioners Shri Pradeep Datta and Shri Rakesh Chandra Agarwal in an NGO. As no reply was received by him to his reference, he did not deal with the case further.
17. On 16.12.2010 UERC communicated that as a new Ombudsman had been appointed, the case may be put up before him. Hearings were started by Shri Neeraj Sati who was holding the charge of Ombudsman. On 05.03.2011 the petitioner submitted a High Court order dated 25.02.2011 wherein the Hon'ble High Court directed the Ombudsman to decide the case within 30 days from the date of production of the order. The next date of hearing was fixed as 15.03.2011. However on that date the petitioner raised objection to the UPCL appearing with counsel. The petitioner objected to the order of the Ombudsman on 15.03.2011, permitting both parties to hire counsels and asked the Ombudsman vide his representation dated 21.03.2011 to review his order dated 15.03.2011. Reply to the representation of the petitioner was sent to him on 28.03.2011 that the application had not been accepted. The petitioner also submitted a representation dated 22.03.2011 claiming that the officiating Ombudsman may not be qualified for appointment as Ombudsman as he did not fulfil the qualifications stipulated in the UERC (Appointment and functioning of Ombudsman) Regulation 2004. The same was mentioned by him during arguments on 28.03.2011.
18. As the case was getting delayed, office of Ombudsman approached the Hon'ble High Court for extension of time and vide its order dated 08.04.2011 Hon'ble High Court allowed time extension up to 30.04.2011 for deciding the case. The new Ombudsman took over on 12.04.2011. However on 13.04.2011 petitioner submitted that as Shri J.M. Lal the new Ombudsman was a member of the CGRF which had passed orders in his case, the case should not be put up before him but be referred to UERC. At the hearing on 28.04.2011 counsel of petitioner again protested against the Ombudsman, Shri J.M. Lal hearing this case. On 29.04.2011 Ombudsman Shri J.M. Lal issued an order

recusing himself from the case. Subsequently office of Ombudsman approached the Hon'ble High Court that the High Court may recall its order of 25.02.2011 and 08.04.2011 fixing a period of 30 days for deciding the case. On 07.05.2011 the Hon'ble High Court issued an order allowing the recall application as the cause shown in the recall application was found sufficient.

19. After the joining of the new Ombudsman, a number of hearings were held. The last hearing was held on 11.01.2012.
20. Of the issues mentioned in para 13 above, issue no 1 was decided by the then Ombudsman vide his order dated 13.08.2008 in favour of the petitioner. The respondents objected to the interim order declaring the petitioner a consumer on the ground that he was claiming to be consumer with respect to some 40 KW connection while the present case was for the connection for the Industrial Estate developed by him for which purpose a load of 10 MVA was sanctioned. However as the issue had been decided, it was felt that the matter should not be reopened and the other six issues decided upon by the two parties should be dealt with. The same are dealt with in the following paragraphs.
21. Issue no. 2 Whether the Supply Code, Rules & Regulations of UP Regulatory Commission are applicable, if so its effect.

As per the MOU between the Ministry of Power, Govt. of India and the Govt. of Uttaranchal on 30.03.2001, "*The UP State Regulatory Commission which has been vested with full power under the UP Electricity (Reforms) Act, 1999, continues to exercise jurisdiction over Uttaranchal. The State Govt. commits itself to extending full support to the Commission in exercise of its statutory duties.*" The UERC Fees & Fines Regulations 2002 also adopted the Regulations in exercise of powers conferred on it by section 52 of the Uttaranchal (UP Electricity Reforms Act) adaption and modification order 2001. This clearly shows that the UP Regulatory body's Rules & Regulations were adopted till the UERC brought out its own.

22. Director (Finance) UPCL vide his letter dated 28.04.2003 to the Secretary, Uttarakhand Electricity Regulatory Commission (UERC) forwarded a petition by the UPCL stating that "*the Electricity Supply (Consumers) Regulations 1984 as notified by UP State Electricity Board and amendment notification dated 01.05.1995 is presently applicable in UPCL. UPCL has applied before Hon'ble Commission to seek License for supply of electricity (Distribution and Retail supply). On grant of the said License, UPCL will be in a position to prepare and submit model conditions of supply as per clause 104 of UERC Regulations 2002 before the Commission for its approval.*" The proposal of Director (Finance) was approved by the UERC vide the letter of Secretary, UERC dated 02.05.2003. In effect the Electricity Supply (Consumers) Regulations 1984 as notified by UP State Electricity Board and amendment notification 1995, UP Electricity Supply Code 2002 and 2005 were applicable in Uttarakhand till the model conditions of

supply were prepared and submitted to the UERC by UPCL. Uttarakhand's own Regulations were only framed in April 2007.

23. The UP Electricity Supply Code 2002 section 4.45 provides *“that the estimate shall be prepared as per the provision of the Indian Electricity Act, 1910 and on the basis of charges approved by the Commission... If the work is to be done by the applicant Licensee shall charge 15% of the estimate as supervision charges that shall need to be deposited before work begins. In other cases, Licensee shall commence the work after the applicant, has deposited the full amount of the estimate”* As the Electricity Act, 2003 had already been promulgated, the Act of 1910 stood repealed in terms of section 185 (1) of the Electricity Act, 2003. However section 185 (2)(a) provides
- (2) Notwithstanding such repeal –
- (a) *“Anything done or any action taken or purported to have been done or taken including any rule notification, inspection, order or notice made or issued or any appointment confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or repealed laws shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;”*
24. The cause of action in this case began in 2003 and continued till 2006. While when the action began UP Electricity Supply Code 2002 was in effect, by the time the contract was completed, the Electricity Act, 2003 had been promulgated and to deal with the new Act, Electricity Supply Code 2005 issued by UPERC supplanted the provisions of Supply Code 2002. The Electricity Supply Code 2005 section 4.8 deals with new connection where extension of distribution mains or commissioning of new substation is required.
25. Section 4.8 (f) also provides that *“the applicant shall have the option to execute the works himself through Licensed Electrical Contractor under the supervision of Licensee for which 15% supervision charges shall be payable to the Licensee.”*
26. Section 4.9 (d) of the Electricity Supply Code 2005 provides that *“responsibility of construction of the required distribution network in cases of ... Industrial complex with load exceeding 25 KW shall be that of the ... promoter that construct such complex.”* This further provides that *“the promoter shall bear the cost of the distribution system (including the cost of transformer and/or substation wherever required) on the basis of sanctioned load... if the load is above 2550 KW up to 8500 KW (10,000 KVA), 33 KV feeder from 33 KV or 132 KV substation... The above limits are indicative, and the Licensee may decide differently the mode of giving supply in individual cases after due approval of its MD, to manage the Infrastructure expeditiously.”*
27. Thus it is clear from the rules applicable at that time i.e. UP Electricity Supply Code 2002 and 2005 that the cost of the works which included the substation and the feeder

line were to be borne by the developer in this case the petitioner. It is also specified that 15% supervision charges were to be paid on the cost of the works executed by the petitioner.

28. The petitioner has been charged 15% supervision charges for the construction of the substation and 18.45% @ contingency charges (3%) and centage charges (15% for establishment, T&P, audit, maintenance during construction and losses of stock), on the construction of the feeder line. Office Memorandum dated 30.01.2002 issued by the UPCL, Director (Operation) outlines the methodology for preparing estimates for all works of the Corporation. It specifies that Centage charges should be incorporated as per the formula given in the above referred OM. The estimate for the construction of the 33 KV line given to the petitioner was drawn up on the basis of this OM, nowhere was there any mention of supervision charges. The UERC Regulations 2007 chapter 6 (5) provide that *“Every distribution Licensee shall, within a period of 4 months from the date of notification of these regulations, modify and update the terms and conditions of supply and all circulars, orders and any other documents or communication relating to the supply of electricity to consumer to make them consistent with these regulations.”*
29. At the time of incidence of this case, the OM of 2002 issued by the Director (Operation) UPCL was valid and only after introduction of the 2007 Regulations would the validity of this and other orders/circulars be over.
30. Under the UP Electricity Supply Code 2002 in case the petitioner had any objection to the estimate given to him by the respondents for the construction of the line, then under section 4.46 of the Code *“disputes regarding the estimate may be referred to the Electrical Inspector for adjudication as per the provision of clause VI (3) of the Schedule of the Indian Electricity Act, 1910.”* He did not do so at any time.
31. Thus it is clear that the supply code Rules & Regulations of the UP Regulatory Commission were applicable in this case. The effect of it is that the charges raised by the respondent against the petitioner both for the substation and the 33 KV line were justified and the petitioner is liable to pay the same.
32. Issue no. 3 Whether under the Electricity Act, 2003 the petitioner is liable to pay the charges for the transmission line.

Section 4.9 of the Electricity Supply Code 2005 provides that *“responsibility of construction of the required distribution network in cases of ... Industrial complex with load exceeding 25 KW shall be that of the ... promoter that construct such complex.”* Section 4.9 (d) further provides that *“the promoter shall bear the cost of the distribution system (including the cost of transformer and/or substation wherever required) on the basis of sanctioned load... if the load is above 2550 KW up to 8500 KW (10,000 KVA), 33 KV feeder from 33 KV or 132 KV substation... The above limits*

are indicative, and the Licensee may decide differently the mode of giving supply in individual cases after due approval of its MD, to manage the Infrastructure expeditiously.”

33. The Electricity Act, 2003 does not specifically deal with provision of electrical infrastructure to industrial estates, however section 43 deals with duty of the distribution Licensee providing supply on request to the owner or occupier of any premises. Section 46 provides that the *“the State Commission may, by Regulations, authorize a distribution Licensee to charge from a person requiring a supply of electricity in pursuance of section 43 expenses reasonably incurred in providing any electric line or electrical plant used for the purpose for giving that supply.”*
34. The UERC Regulations 2007 chapter 6 (5) provide that *“Every distribution Licensee shall, within a period of 4 months from the date of notification of these regulations, modify and update the terms and conditions of supply and all circulars, orders and any other documents or communication relating to the supply of electricity to consumer to make them consistent with these regulations.”*
35. At the time of incidence of this case, the UP Rules and Regulations 2002 and 2005 were applicable. The UERC Regulations 2007 make it clear that the Rules and Regulations at that time of cause of incidence and the office orders of the distributor were valid and only after introduction of the 2007 Regulations would the validity of those rules and orders be over. As per the rules valid at the time of the incident, the petitioner as the developer/promoter of the industrial estate was responsible to pay the cost of distribution system which includes transmission line.
36. Issue no. 4. Whether SIDCUL is a necessary party.

From the papers it appears that the petitioner has developed the Industrial Estate in the Joint/Assisted sector as specified by the Department of Industrial Development, Govt. of Uttaranchal in their letter to the CMD, UPCL dated 26.12.2003. SIDCUL was to provide facilitation only for which it would be provided free equity to the tune of 11% of the total equity capital. The approval letter for layout for Industrial Estates issued by SIDCUL to the petitioner (21.01.2006) for Industrial Estate at village Banda Kheri, Roorkee states in para 2 *“the provision of infrastructure indicated in the plan is the sole responsibility of the developer.”* Hence it is felt that SIDCUL is not a necessary party.

37. Issue no. 5 Whether the respondents are entitled to the supervision charges from the petitioner? If so to what extent.

As per the UP Supply Code 2002 section 4.45, *“If the work is to be done by the applicant Licensee shall charge 15% of the estimate as supervision charges that shall need to be deposited before work begins.”* Hence it is clear that for the substation built by the applicant, the Licensee was entitled to charge 15% of the estimate as supervision

charges. In this case, the petitioner has not paid the same. There is some lapse on the part of the respondent also in not taking the charges before the work began, however this does not excuse non payment of the same by the petitioner when the demand note dated 28.06.2007 was sent to him.

38. In the case of the construction of the 33 KV line which was constructed by the respondent, the second half of section 4.45 – *“In other cases, Licensee shall commence the work after the applicant, has deposited the full amount of the estimate”* is applicable. The UP Supply Code 2002 which was relevant at that time did not specify the method by which the estimate was to be prepared but stated that it would be prepared as per the provisions of the Electricity Act, 1910 and on the basis of charges approved by the Commission. In the present case the estimate has been formulated on the basis of the Office Memorandum of the UPCL dated 30.01.2002. Hence the respondents are entitled to the supervision charges for the construction of the substation and also the full cost of the estimate given to the petitioner, which was deposited by the petitioner.
39. Issue no. 6 Whether the impugned order is against facts, law and is liable to be set aside?

The impugned order of the Forum states that the petitioner is not entitled to demand back the 18.45% charges on the construction of the 33 KV line. Further the respondents are entitled to demand the 15% supervision charges on the estimate of the construction of the substation. Lastly the Forum has stated that the petitioner is liable to pay to the respondent the difference between the supervision charges amounting to Rs. 15,78,600.00 – the excess amount paid by the petitioner, Rs. 8,12,574.00 i.e. the petitioner is to pay Rs. 7,66,026.00 to the respondent. As shown above, the order is as per the existing Rules & Regulations. However the Forum exceeded its jurisdiction in ordering the petitioner to pay Rs. 7,66,026.00 to the respondent, being the difference between amount owed by the petitioner for supervision charges for substation and the excess amount paid by him towards the cost of 33 KV line.

40. Issue no. 7 What relief, if any, the petitioner is entitled?

As brought out above, the petitioner is not entitled to any relief but must abide by the order of the Forum.

41. In his petition before the Ombudsman, the petitioner has demanded certain relief on the ground that the payment made for the construction of the 33 KV line and the demand of the UPCL of supervision charges on the substation are two separate matters and cannot be interconnected to withhold refund payment due to him.
42. I have gone through all the records and heard the arguments presented by both the parties. The petitioner’s contention is that construction of the substation and

construction of the 33 KV line are two different matters and cannot be interconnected is found to be erroneous as from the beginning both matters were being dealt with jointly by the respondent. This is very clear from the letter of Director (Operation) dated 17.05.2004 addressed to the petitioner, that *“As per policy of UPCL entire cost of construction of transmission/distribution lines/substations and associated equipments for the Industrial Estate... will be borne by you as is being done in the case of UPSIDC & SIDCUL etc.”* It is also clear that it was technically necessary to build the 33/11 KV substation and transmission line as one without the other would not have served any purpose.

43. As also pointed out above the UP Supply Code 2005 states in section 4.9 (a) *“the responsibility of construction of the required distribution network in case of a new ... Industrial Complex with load exceeding 25 KW shall be that of the body or agency (promoter) that construct such complex.”* 4.9(d) talks about promoter bearing the cost of the distribution system (including the cost of transformer and/or substation wherever required). Hence the two matters are interconnected.
44. The petitioner further prayed that the amount of Rs. 7,38,969.00 charged towards supervision and contingency charges by UPCL in the deposit estimate for 33 KV feeder be revoked and refunded as it is illegal as they were made without approval of UERC and are against the spirit of the provisions of the Electricity Act, 2003.
45. At the time of this case, the UERC had not yet formulated any Rules but had given approval (02.05.2003) to the proposal of the UPCL for continuation of the Electricity Supply (Consumers) Regulations 1984 and UP Electricity Supply Code 2002 till model code was prepared and approved by UERC. As shown above the charges are as per the UP Regulatory Commission’s Supply Code 2002 and 2005 and hence there is no violation.
46. The petitioner has demanded that UPCL should charge 15% supervision charges only on labour + transport charges as per provisions of UP Supply Code 1984 as against 15% on materials + labour + transport which UPCL is illegally charging.
47. The Electricity Supply (Consumers) Regulations 1984 section 5 provides in subsection (iv) *“If the erection of service line has been taken up by the supplier or has commenced or completed and the intending consumer, for some reason does not want to take supply, the cost of service line deposited may, at the discretion of the supplier, be refunded to the consumer after deduction of the following charges: a) cost of erection and dismantling of line and substation along with cost of unsalvaged materials, b) cartage charges of materials both ways from and to suppliers stores c) 15 % supervision charges on the amount calculated under a) and b) above.”*
48. It is clear from the wording that this clause would only apply if the intended consumer does not want to take the supply, which is not the case in the present instance.

Moreover it is not mandatory but left to the discretion of the supplier in this case the respondent to decide the charges to be refunded. Hence the petitioner's demand cannot be acceded to.

49. Findings are summarised below

- (i) The petitioner developed an industrial estate jointly with SIDCUL, for which electricity was needed. It was made very clear from the beginning that the provision of infrastructure was the sole responsibility of the developer, hence provision of electricity supply whatever it entailed was the responsibility of the petitioner. A demand was placed on the UPCL by the Department of Industries, Government of Uttarakhand. The petitioner followed it up by writing directly to the respondent for power to be allocated to their industrial estate and the respondents informed him at the very beginning that the entire cost of construction of 33 KV line as well as of the 33/11 KV substation would have to be borne by the petitioner.
- (ii) While at the time, the petitioner did not object to this contention of the respondent, he later raised the question whether setting up of 33/11 KV substation in industrial estates is the responsibility of UPCL/the Government. It is made clear here that the UPCL (respondent) has not been charged in its charter or anywhere else with the responsibility of developing an industrial estate or creating electrical infrastructure for those estates.
- (iii) The petitioner wrote to the respondent in November 2004 and again in February 2005 that they proposed to construct a 33 KV feeder, 33/11 KV transformers and requested the respondent to depute a concerned official for survey of the site and for drawing up the estimate for the works. The petitioner followed up in the second letter by stating that they wish to construct the substation themselves and would be using all UPCL approved equipment and materials. As a first step the petitioner was given an estimate in 2005 for the construction of the 33 KV line. The money for the same was deposited by the petitioner as demanded by the respondent.
- (iv) Subsequently instead of waiting for the estimate regarding the construction of the 33 KV substation including supervision charges, the petitioner started pressing for the actual cost of construction of the 33 KV line. He obtained the same through RTI without settling the demand of supervision charges for the substation. The respondents subsequently provided the estimate for the construction of the substation showing Rs. 15,78,600.00 due as supervision charges @ 15% for construction of the 33/11 KV substation constructed by the petitioner.
- (v) Instead of depositing the amount demanded by the respondent, the petitioner approached the Forum with only one half of the story i.e. the excess amount paid by him for construction of the 33 KV line. When the respondents raised the connected matter of amount owed to them as supervision charges for the construction of the 33/11 KV substation, the petitioner tried to show that the two were separate matters. This however is not the correct projection as both matters

are interconnected and the petitioner erred in pressing for payment due to him without waiting for the second bill for half the project i.e. the construction of the substation. The respondent unnecessarily delayed submission of the demand note for the supervision charges due on the construction of the substation. As per the existing Rules and Regulations the demand note should have been sent by the respondent before the start of work by the petitioner.

(vi) Thus the petitioner's demand that he should be refunded the excess amount (Rs. 8,12,574.00) paid by him for the construction of the 33 KV line from the substation to his Industrial estate together with interest and also subtracting the 18.45% supervision charges, cannot be acceded to as

(a) He owes the respondent's money for supervision charges for construction of substation, an amount of Rs. 15,78,600.00. His contention that the two are separate matters is not correct as has been brought out in the paras above and hence the two have to be dealt together,

(b) He cannot be given the interest on the excess amount demanded by him as he is not entitled to any payment when the amount due from him for construction of the substation is taken into account, in fact he is liable for making a payment to the respondent

(c) The petitioner has claimed Rs. 7,38,969.00 has been charged as supervision and contingency charges @ 18.45%. The reply of the Executive Engineer in his letter dated 19.05.2007 does not show any charge for supervision etc. but merely gives the actual amount required to be deposited. It is not clear from where the petitioner got the fact that 18.45% supervision charges had been taken from him. In fact in his letter dated 31.05.2007 he has not raised this matter but has only demanded the refund of the excess paid by him along with interest. It is only in his petition before the Forum (24.08.2007) that he has raised the subject of 18.45% supervision and construction charges. As no such supervision charges have been made, there is no question of the same being returned to him.

50. It is concluded that the petitioner has paid an excess amount of Rs. 8,12,574.00 towards construction of the 33 KV line, which is refundable to him, however at the same time it has been proved that he owes the respondent a sum of Rs. 15,7,8600.00 as supervision charges @ 15% for construction of substation. Relief sought by the petitioner cannot be granted.

(Renuka Muttoo)
Ombudsman

Dated: 09.05.2012