

## **THE ELECTRICITY OMBUDSMAN, UTTARAKHAND**

M/s Tehri Hydro Development Corporation,  
Bhagirathipuram, Tehri Garhwal,  
Uttarakhand through its General Manager (Project)

Vs

The Managing Director  
Uttarakhand Power Corporation Ltd.,  
Urja Bhawan, Kanwali Road, Dehradun Uttarakhand

Representation No. 09/2009

### **Order**

A petition was filed by M/s Tehri Hydro Development Corporation (petitioner) in the office of Ombudsman on 08.06.2009 under section 42 (6) of the Electricity Act, 2003. The petition requested that it be declared that the sanction order of Uttar Pradesh State Electricity Board (UPSEB) dated 23.12.1998 stood modified by the sanction order of Uttarakhand Power Corporation Ltd. (UPCL-respondent) dated 24.06.2002. The second plea was for refund of excess demand charge paid by the petitioner.

2. The petitioner first approached the Consumer Grievance Redressal Forum, Garhwal Zone (Forum) in 2005 for refund/adjustment of additional charges imposed by the respondent. The Forum examined the matter and issued an order on 04.03.2008. Thereafter the petitioner took another 2 years before approaching the office of Ombudsman. As the rules provide that a complainant must file a complaint before the Ombudsman within 30 days of the receipt of the order of the Forum, the petitioner filed an application to condone the delay along with the petition in the above mentioned case. The Ombudsman took exception to the fact that the matter pertained to actions of the erstwhile UPSEB taken in 1998, and instead of taking up the matter with the UPSEB authorities right away, the petitioner took the matter before the Forum in 2005 after 7 years. Further the petitioner company once again sat over the issue for more than 2 years and then filed an application challenging the Forum's order without giving any convincing reason for its inaction. The Ombudsman gave a decision on 22.07.2010 rejecting the representation on the ground that it was time barred and had been made in a non serious manner. Thereafter the petitioner

approached the Hon'ble High Court, Nainital in 2010, against the order of the Ombudsman. The Hon'ble High Court in their order dated 09.12.2010 stated that 'without entering into the merits of the case, since the appeal was admitted by the Ombudsman, the same ought to have been decided on merits instead of rejecting it'. The Court further directed that the Ombudsman shall decide the appeal filed by the petitioner on merits, afresh, after hearing both the parties.'

3. In their petition the petitioner stated that it is a joint venture of Govt. of India and State of UP with a registered office at Bhagirathipuram, Tehri Garhwal. The petitioner and UPSEB (now UPCL) entered into an agreement dated 12.06.1990 by which UPSEB agreed to supply to petitioner a total energy of 6 MVA load from 220 KV substation, Chamba (5 MVA maximum) and from 33 KV substation, Dobata (3 MVA maximum) to meet the requirement for construction of Tehri Dam. The agreement for 6 MVA load was executed on 12.06.1990 with tariff applicable under Rate Schedule LMV2. The agreement maintained that:

*The consumer has also agreed that in any case total electrical energy received at both points in sum will not exceed 6 MVA approximately in demand at a time. For any increase in demand necessary penalty shall be liable from the consumer as per UPSEB rules. Separate metering will be done at each point*

4. Due to the increased demand in power required for construction works of the Dam, petitioner requested UPSEB vide its letter dated 14.03.1997 to sanction additional load of 4 MVA enhancing the sanction load from 6 MVA to 10 MVA in the existing system.
5. Additional 4 MVA load was sanctioned by UPSEB vide OM no. 1497 dated 23.12.1998 at rate schedule LMV9. This sanction of load and its release was however subject to the conditions laid down in the said OM. The OM clearly stated that Tariff would be charged as per LMV-9 and additional load would be released from 220 KV substation, Chamba through a separate bay for which cost would be borne by the petitioner.
6. Petitioner sought an amendment to the above referred order on the ground that 2 nos. 33 KV lines of petitioner from 220 KV substation, Chamba had the capacity to

provide the additional load of 4 MVA and to evacuate the additional load of 4 MVA, there was no need for a separate bay to be constructed.

7. The petitioner maintains that the demand for additional 4 MVA power to be provided to different sites of petitioner through 11 KV feeders of petitioner emanating from 33/11 KV substation of petitioner at Bhagirathipuram was meant for various purposes i.e. the power being used for mixed load requirement remained the same. They claimed that the conditions laid down in the order issued by UPSEB dated 23.12.1998 viz. Tariff to be charged as per LMV-9 and additional load to be released through a separate bay for which cost would be borne by the petitioner, were incorrect and hence the petitioner sought an amendment to these conditions on the ground that :
  - (i) Since the tariff for mixed type requirement did not fall in any of the Tariff structure, LMV-2 Tariff structure was applicable as per the guidelines of Rate Schedule of LMV-2.
  - (ii) The petitioner had also submitted the Technical Feasibility Report of the SE (Distribution) UPSEB, Srinagar, as per which no independent feeder was required to be constructed for grant of additional load as 2 nos. of 33 KV feeders already existed.
8. They requested UPSEB that Tariff for the additional load should be charged as per existing rate applicable under LMV-2. The petitioner maintains that UPSEB assured petitioner that it would amend the Sanction Order, However in spite of repeated requests the UPSEB did not amend the Order.
9. In March 2001, the UPSEB raised an arrear claim on account of excess demand charges for an amount of Rs. 57,99,560.00 for the period August 2000 to January 2001, along with the monthly bill of February 2001. In October 2001 respondent further raised an arrear claim for excess demand charges for an amount of Rs. 1,18,45,180.00 for the period June 1999 to July 2000. In order to protect the interest of project work and to avoid disconnection of electricity, petitioner paid the excess demand charge to respondent. Subsequently petitioner made requests to GM (Distribution) and Director (Operation), UPCL for refund of the excess charged amount.

10. The petitioner contends that the monthly bills raised by UPSEB after the sanction order dated 23.12.1998 did not reflect the excess demand charges and hence no excess demand charges could be levied. Moreover the monthly bills continued to be charged as per the existing tariff i.e. LMV-2. The arrear bill for the period August 2000 to January 2001 was raised in March 2001 and the arrear bill for the period June 1999 to July 2000 was raised in October 2001.
11. After the formation of State of Uttaranchal and Uttaranchal Power Corporation Ltd. coming into existence, the petitioner took up the matter with UPSEB's successor UPCL (respondent) who asked the petitioner to submit a fresh application for enhancement of additional 4 MVA electrical load. Accordingly in May 2002 a fresh application was submitted by petitioner to respondent and respondent sanctioned the same vide its order dated 24.06.2002 with the tariff rate as applicable from time to time. In the meantime, the petitioner despite not having entered into any agreement with the power provider started making use of extra 4 MVA power from June 1999.
12. The petitioner maintains that the respondent's order no. 1512 dated 24.06.2002 was tantamount to modification of the earlier order of the UPSEB dated 23.12.1998. Petitioner from the beginning had been requesting for modification of the 23.12.1998 order and had been assured by UPSEB that the same would be done. After the raising of the excess demand charges and payment by them, the petitioner made repeated requests for refund/adjustment of the amount paid by them as penalty. Failing to get any result, they filed a complaint before the Forum on 24.02.2005 seeking refund/adjustment of the above mentioned amount. It is the petitioner's contention that due to the delay in the sanction order of respondent dated 24.06.2002 petitioner was forced to pay the excess demand charge of Rs. 3.70 crores. The order dated 24.06.2002 should be read as one amending the earlier order dated 23.12.1998 vide which the additional load had already been sanctioned.
13. The Forum in their order stated that additional load of 4 MVA was not released till 03.07.2002 the date of agreement. Excess load was used by petitioner during the period before the agreement of 2002 for which they were billed under the tariff applicable for power used in excess in sanctioned load. The Forum therefore held that there was no error by UPSEB in raising the bills and the petitioner was liable to pay for the excess electricity consumed as per the rates notified in the Tariff Regulation.

14. In their petition before the Ombudsman, besides reiterating the earlier arguments, the petitioner drew attention to clause 12 of the agreement that “the supplier shall submit to the consumer an account of electricity consumed, the maximum demand and the rent of indications and meters etc. during each month and the consumer shall pay for the same within 15 days of the date of such bill.” Petitioner did not fail to make any payment to the UPSEB/respondent of any of the monthly bills raised by them and there was no mention of any excess demand charges up to March 2001. The excess demand charges were loaded purely on the basis of voltage and current recorded from respective indicating meters installed in the control room panels. Since these meters are not sealed and not properly calibrated and not meant for energy metering purpose, the authenticity of readings are much in doubt on the basis of which the assessment was made.
15. The petitioner drew attention to clause 10 of the agreement which states “to assess the maximum demand at each point, separate KVA demand shall be installed by the supplier and till the demand meter(s) is/are not available or remain defective, KVA demand shall be assessed on the basis of volt/ampere meter as per UPCL rules time to time”. The petitioner maintains that no separate demand meters were installed and the said arrear bills raised by UPSEB were based entirely on the log book reading, which was not at all the basis on which the bills were to be raised.
16. The petitioner has claimed that the Forum erred in dismissing their complaint. There was no question of the petitioner drawing excess power as an additional load was sanctioned on 23.12.1998 and the two conditions which were erroneous in the earlier sanction order stood modified by the subsequent sanction order dated 24.06.2002. The arrears demanded by respondent were illegal and contrary to the terms of agreement between the two parties, hence the amount paid by them in excess should be refunded by the respondents.
17. The respondent maintained that the petitioner’s load was sanctioned for construction purposes as per sanction letter dated 30.05.1990. In the application in 1997 the petitioner applied for additional load for construction of power house which included activities of Tehri Dam/power house. The respondent maintains that the construction of power house included all activities including line construction of dam, spill way, staff colony etc. and hence it was wrong for the petitioner to claim that he was entitled

to tariff for mixed load. Moreover the condition mentioned in the sanction letter regarding separate bay was merely stated as a condition of sanction as a separate bay already existed and was not required to be constructed afresh and the petitioner was trying to create a frivolous dispute on this subject.

18. The respondent stated that the petitioner had not entered into any agreement after the sanction dated 23.12.1998 and neither had he completed the other formalities hence he was not entitled to use the excess load. As they started using excess load without any authority they were charged a penalty as per provision of tariff for the period 06/1999 to 07/2000 and 08/2000 to 01/2001. The petitioner was duly informed about the provision of the tariff along with the penalty bills and a copy of the relevant tariff was delivered to the petitioner along with the bill for 06/1999 to 07/2000. Both the excess demand charges were paid by the petitioner without any objection. The new tariff was introduced w.e.f. 23.06.1999 and the provision for penalty was introduced for excess demand charge in this tariff. The petitioner was using construction power for which the applicable tariff was LMV-9 and not LMV-2. Regarding the allegation about the meter not being sealed, not being calibrated etc. and the reading being doubtful, these allegations were an afterthought. The petitioner did not make these allegations before the CGRF. The petitioner erred in stating that the log book reading could not be the basis for assessing the demand. The petitioner's demand could be calculated on the basis of maximum load in the ampere drawn anytime, multiplied by the supplied voltage as given in para 10 of the agreement. The petitioner's demand had been calculated in this manner.
19. The facts of the case are that the petitioner entered into an agreement with the respondent for supply of 6 MVA load in 1990 for construction activities of Tehri Dam/PH. Due to increased demand for power, the petitioner moved the UPSEB (the predecessor of respondent) for an additional load of 4 MVA for construction power for Tehri Dam/Power House. The same was sanctioned by the UPSEB in December 1998. However the sanction had two conditions, tariff rate to be paid at LMV-9 and additional load to be released from 220 KV substation, Chamba through a separate bay for which cost would be borne by the petitioner. Objecting to these conditions the petitioner kept pursuing the UPSEB to remove these two conditions. In the absence of the same no agreement could be entered into by the two parties.

20. The petitioner started using excess power June 1999 without entering into any agreement for the same. The respondent did not take cognizance of this fact till March 2001 when they raised an arrear claim for the period August/2000 to January/2001 and subsequently in October 2001 for the period June 1999 to July 2000. The petitioner paid the excess demand charges. The petitioner approached the Forum against the excess demand charges paid by them 4 years later, in February 2005.
21. When the Forum's order went against them, the petitioner took another 2 years before it approached the office of Ombudsman. Reason for the delay in first approaching the Forum and then the Ombudsman has not been explained convincingly. In the petition before the Forum and the Ombudsman, the petitioner drew attention to the sanction order issued by the respondents in 2002 and claimed that the same was only a modification of the 1998 order vide which sanction for additional load for 4 MVA had been given.
22. The hearing started from 07.09.2011 and concluded on 20.12.2011. In their arguments, the petitioner claimed that the agreement signed in July 2002 was operational from the back date of the previous sanction as no specific date was mentioned in this agreement from when the agreement was to come into force
23. Respondent quoted section 79 of The Electricity Supply Act, 1948 under which, The Electricity Supply (Consumers), Regulations 1984 was issued and stated that section 10 (a) of this Regulation was applicable at the time of the 1998 sanction for additional power. Under section 10 (a) of this Regulation:

*“A connection for an additional load shall be dealt with in the same manner as an application for a new connection ....”*
24. Respondent also quoted case law viz Punjab State Electricity Board vs M/s Vishwa Caliber Builders Pvt. Ltd. of 2010 wherein it was stated by the Court that *‘for any further enhancement for extension of loads, the Rules and Regulations governing the extension of loads as per State’s Regulations will apply’*. The Court further held the view that *‘the fact that the appellant could not release connection with a load of 2548 KW on account of non availability of transformer for transfer of 8 MVA load from 66 KV substation, GT Road, Ludhiana had no bearing on the issue of consumption of Electricity by the respondent beyond the sanctioned load. Undisputedly in terms of the*

*request made by the respondent the Chief Engineer had sanctioned connection on the existing system with a load of 1500 KW, but the respondent used excess load to the tune of 481.637 KW and this amounted to unauthorized use of electrical energy'*

25. In another case of 2008 – M/s Freedom Industries Ltd. vs Punjab State and Electricity Board, '*Electricity bill was issued alleging that appellant complainant were found using total running load of 647.77 KW against sanctioned load of 495 KW on 12.09.2001 inspection. Appellant has applied for extension of sanctioned load and deposited money as per demand – On the date of inspection however the sanctioned load was still 495 KW. Even if the appellant has applied for extension of load and deposited all necessary amounts demanded from appellants, that by itself, did not authorize them to use extended load.*' In this case the District Forum had held the view that since the appellants were using the load more than the sanctioned load, therefore the demand notice issued by the respondent was legal and valid. This order of the District Forum was upheld by the Consumer Forum.
26. Respondent also drew attention to para 10 of 1998 sanction '*load shall be released after completion of all the laid down formalities.*' Claiming that the formalities had not been completed and hence no agreement had been made and the sanction of 2002 was in response to a fresh application made by the petitioner.
27. Petitioner's contention is that their contracted load stood enhanced to 10 MVA in terms of sanction dated 23.12.1998 and sanction of 4 MVA additional load by UPCL vide order dated 24.06.2002 was a modification of earlier order dated 23.12.1998, in respect of two conditions of this order regarding (1) Tariff and (2) Transmission system for supply of power to them. Assessment for excess demand was wrong and not payable by them (petitioner) and should therefore be refunded/adjusted.
28. The main issue here is whether the 2002 sanction by the respondent for additional 4 MVA load was a fresh sanction or only a modification of the earlier sanction of 1998. The other point raised by the petitioner relates to the calculation of the excess demand.
29. The petitioner's plea that their load stood enhanced from the date of sanction of 4 MVA additional load by UPSEB in 1998 and respondent's sanction dated 24.06.2002 was only a modification of the earlier 1998 order of UPSEB is not maintainable for want of an agreement of additional load after the sanction of 1998. The sanction order

of 1998 provided that the load would only be released after fulfilment of necessary conditions. These conditions included entering into an agreement between the two parties, which was not done. Hence the sanction order of 1998 never came into effect and as such the sanction of 2002 could not be treated as a modification of the earlier sanction. The agreement for additional 4 MVA load was only executed on 03.07.2002 so, load may be treated as 10 MVA w.e.f. 03.07.2002.

30. Moreover in their letter dated 23.12.2000 to the Chief Engineer, UPCL, the petitioner has written on the subject "Enhancement of electrical load" that due to differences with UPSEB on tariff structure and power evacuation system they were not able to enter into an agreement for the additional load. The petitioner therefore requested the respondent to look into the matter 'to draw additional power' so that necessary action to draw the additional enhanced power could be done at their end. It is also pertinent to mention that the petitioner in their application dated 06.05.2002 for sanction of 4MVA additional load made no reference of their earlier sanction of 4 MVA additional load by UPSEB's OM dated 23.12.1998 and in fact in the column against present connection load nos. and date of sanction, it has only been mentioned 6 MVA load vide sanction letter no. 775 date 30.05.1990 EDD, Tehri. This shows that petitioners themselves were aware of the fact that the earlier sanction of 4 MVA load by UPSEB (1497 dated 23.12.1998) had lapsed. By signing this agreement the petitioner has agreed that his existing sanction is of 6 MVA load only. Therefore any demand beyond 6 MVA shall be treated as excess and liable for levy of penalty.
31. As for the contention of the petitioner of violation of clause 12 and clause 10 of the agreement by the respondent, it may be mentioned that the petitioner has countered his own argument because clause 10 of the agreement clearly states that "KVA demand shall be assessed on the basis of volt ampere meter as per respondent's rules time to time and this was the methodology used for calculating the demand.
32. For reasons discussed above, the petitioner's claim that the penalty for use of excess power was incorrect, is turned down. It is held that no agreement for additional 4 MVA load existed before 03.07.2002, the date on which the agreement between the two parties was signed and hence use of power beyond 6 MVA load by the petitioner prior to this date was a violation of the earlier agreement. The agreement entered into by the petitioner in 1990 clearly stated that "the consumer has also agreed that in any

case total energy received at both points will not exceed 6 MVA approximately in demand at a time. For any increase in demand, necessary penalty shall be liable from the consumer as per UPSEB rules.” The penalty has been rightly imposed and is payable by the petitioner. The order of the Forum is upheld.

33. Respondent may also examine that while violation by the petitioner of use of excess power happened from June 1999, the respondent only raised the arrear claim after a period of 2 years. The way in which the issue of arrears was raised is also curious as the first bill for excess payment related to the latter half i.e. from August 2000 to January 2001 was raised in March 2001 and a subsequent bill after 6 months (in October 2001) raised the issue of excess demand for an earlier period viz. June 1999 to July 2000. There appears to be some degree of incompetence shown by the officers involved in evaluating the power used and raising the correct bills. The department may after examination take corrective measures to ensure that such lapses do not occur in future.

Dated: 18.01.2012

Renuka Muttoo  
Ombudsman