

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s THDC India Ltd.,  
Bhagirathipuram, Tehri Garhwal,  
Uttarakhand through its General Manager (Project)

Vs

The Executive Engineer,  
Electricity Distribution Division,  
Uttarakhand Power Corporation Ltd., New Tehri,  
Tehri Garhwal, Uttarakhand

Representation No. 07/2011

### Order

M/s Tehri Hydro Development Corporation Ltd. (THDC), petitioner, approached the office of Ombudsman on 29.11.2011 with a petition against the judgement dated 30.09.2011, of the Consumer Grievance Redressal Forum, Garhwal Zone (Forum). The complaint is regarding settlement of dispute between petitioner and UPCL (respondent) on account of alleged wrong computation of the net charges, by the respondent, in respect of the 10 MVA construction power connection, given to the petitioner in Tehri, for levying the 25% extra charges as provided for under the applicable tariff for the period 01.01.2002 to 19.09.2003 and the subsequent arrear bill for Rs. 26.54 lac.

2. The complainant in his petition has made the following points
  - (i) Reference to the decision by the Corporate Level Dispute Settlement Committee (CLDSC) on 04.02.2009 on matters between the petitioner and the respondent regarding various issues under dispute between the two parties pertaining to applicable tariff of power supply connection, arrear bills, bifurcation of load, additional charges on electricity bills of Rs. 3.70 crore etc. After settlement of the matter of additional charges on applicable tariff rate imposed by the respondent and release of the payment of 25% additional charges on electricity bills to the respondent as per the decisions of the CLDSC, the case filed by petitioner vide SLP no. 15038 of 2008 was withdrawn from the Hon'ble Supreme Court.
  - (ii) However an arrear bill amounting to Rs. 26.54 lac on account of wrong computation of the rebate of 10 paise per unit for the period 01.01.2002 to 19.09.2003 raised by UPCL was still under dispute as the complainant felt that the rebate worked out by UPCL was not in conformity with the tariff schedule

LMV 9 taken in conjunction with LMV 2 which states “The rate of charge will be corresponding net rates of charge in appropriate schedule + 25%.

- (iii) The rate schedule LMV 2 effective from 01.01.2002 specifically provides the rebate of 10 paisa per unit on the rate of charge applicable under item 4 (b) provided the bill is paid by the due date specified therein. The petitioner contends that therefore the 25% additional charge under LMV 9 should be levied on net rate of charge worked out after applying applicable rebate of 10 paisa per unit.
  - (iv) THDC took up the matter with UPCL vide their letters dated 20.03.2009 and 26.03.2009 requesting that the rebate of 10 paisa per unit should be considered on rate of charge of appropriate schedule in the same fashion as UPCL considered the voltage rebate on rate of charge for arriving at the net rate of charge for applying 25% additional charges.
  - (v) CGM (Commercial), UPCL intimated vide letter dated 19.05.2009 that the arrear amount of Rs. 26.54 lac is payable. He also explained that the net rate of charge is worked out by the formula (energy charge + fixed charge – voltage rebate). On THDC requesting for method of calculation, UPCL informed that the same had been given in the letter of 19.05.2009. Not satisfied, THDC asked UPCL to furnish the directions of the UERC regarding concept of ‘net rate of charge’. UPCL could not provide the same.
  - (vi) THDC made timely payments of all monthly bills wherein voltage rebate, timely payment rebate, fixed charges have always been considered by UPCL while working out net rate of charge in accordance to appropriate rate schedule LMV 2 as per which due payment has been released.
  - (vii) It is not at all justified to levy the rebate followed with the computation of additional charge under LMV 9 as the same has been specified without any ambiguity that 25% additional charges would be levied only on net rate of charge. According to the audit and as per decision of CLDSC dated 04.02.2009 THDC has to deposit only 25% charge on the amount of monthly bills paid during the above period and nothing more is payable.
  - (viii) The matter was referred to CLDSC on 23.10.2009 for consideration of dispute and the same was returned by GM (Commercial), UPCL that the matter did not require any settlement by the Committee. UPCL continued to raise the amount in the monthly power bills.
3. THDC filed a complaint before the Forum to consider that the 25% additional charges may be imposed on net rate of charge after considering the rebate of 10 paisa as per tariff schedule of UERC on the same lines as the high voltage rebate. They requested that the claim of Rs. 26.54 lac be waived.

4. Forum in their judgement after examining the contentions of both parties gave a decision that rebate @ 10 paisa per unit cannot be taken as a part of rate of charge. The complaint was dismissed.
5. The petitioner has objected to the decision of the Forum on the ground that the Forum has not appreciated the facts of the case and passed the order against the facts. Petitioner has requested that the order of the Forum be set aside and the UPCL be directed to calculate the surcharge amount after deducting the rebate i.e. on net rate and cost of litigation etc. may be granted.
6. UPCL in their reply has informed that the contention of the petitioner that 25% additional charge under LVV-9 is levied only on the net rate of charge which is worked out after applying applicable rebate of 10 paisa per unit is incorrect. LMV 2 is clear that the net rate of charge is arrived at by computing energy charge + fixed charge – voltage rebate, after which 25% is added. The 10 paisa rebate is related to timely payment of the bill only and has no concern with the computation of net rate of charge under LMV 2 + 25% under LMV 9. The decision of the Forum is correct. The petitioner has not paid Rs. 26,54,149.00 out of the amount due for no valid reason. The respondent also questioned the THDC's claim that according to the decision of the CLDSC the petitioner was to deposit only 25% additional charge on the monthly bills paid during the period and nothing more was payable. The CGM, UPCL had communicated to THDC vide his letter 19.05.2009 the formula for calculating net rate of charge.
7. During arguments the counsel for THDC claimed that the first time the bill was raised with surcharge demand in 2005 after which the petitioner went to Court and deposited the amounts in the Court up to 2006. Court advised settlement through CLDSC. The respondent at the time had drawn up the bill with the net rate of charge after deducting both the high voltage rebate and the 10 paisa per unit. Suddenly they decided that wrong calculation had been done and net rate arrived at by deducting the 10 paisa per unit is incorrect and this should have not been deducted and hence sent another bill of Rs. 26.54 lac as arrears payable. No mention of this was made at the time of settlement in 2009 and seems to be an afterthought of the respondents.
8. The petitioner also drew attention to tariff schedule of 1995 claiming that it very clearly showed that the net rate was computable only after deduction of rebate for timely payment. They also claimed that no clarification was received from UERC regarding their request that the Commission give a direction on the net rate charged.
9. The applicable tariff during that time were LMV 2 plus 25% surcharge as provided in LMV 9.

LMV 2 section 4 (b) gives the rate of charge as under

*“In other cases, including consumers getting supply through rural feeders exempted from scheduled rostering/restrictions or through cogenerating radial feeders in*

villages/towns having population up to 10,000 as per 1991 census” – the rate of charge is shown as “fixed charge + energy charge”.

In section 5 rebate and surcharge are given as follows:

5(ii) “The above rate at item 4 (b) is subject to the rebate of 10 paise per KWH provided the bill is paid by the due date specified therein. If the bill is not paid by the due date a late payment surcharge shall be levied”

5 (iv) “If supply is given at voltage above 400 volts a rebate of 5% will be admissible on the rate of charge”.

10. While the explanation for rate of charge had been made in section 4, no explanation has been given on the net rate of charge.
11. LMV 9 which deals with rate schedule for temporary supply provides in C (3) “The rate of charge will be corresponding net rate of charge in appropriate schedule plus 25%.” Again there is no mention as to how net rate of charge is to be computed.
12. There are no orders of UERC on this issue as UERC issues the tariff orders and has not seen fit to clarify the net rate of charge anywhere. During the period under dispute i.e. 01.01.2002 – 19.09.2003, though the new state of Uttarakhand had been formed and UERC had also been setup on 05.09.2002, no Rules and Regulations or tariff order had been formulated by the new Commission and the UPSEB rates of tariff continued to be applicable. Hence the application of LMV 2 and LMV 9.
13. The petitioner made a reference to the 1995 tariff order claiming that this clearly shows that the net rate comes out only after deduction of rebate for timely payment. First of all the 1995 tariff order is regarding rate schedule LMV -3 which is not applicable in this case, secondly the claim made by the petitioner is a misrepresentation as this tariff order under Rebate and Surcharge states “the rate at item 3 (i) is subject to a rebate of 5 paise per KW/h provided the bill is paid by the due date specified therein” 3 (i) talks about rate of charge in case of metered supply which shows for AC supplies the net rate per month would be gross rate – rebate for timely payment. However the notes to this section states ‘(i)in case of DC supply, 25% shall be charged extra on the amount computed as per gross rate of charge for AC supply’. Thus this order clearly states that the 25% would be charged on the gross rate before rebate for timely payment.
14. The petitioner approached CLDSC which in its meeting dated 04.02.2009 held with the representative of UPCL and THDC, decided all the matters relating to payment of dues from the period 01.01.2002 to March 2009, as put up to the said committee. As the arrear bill for Rs. 26.54 lac was shown in the bill for July 2005, it is presumed that this matter was also considered by the CLDSC. This arrear arose due to the wrong calculation previously by the respondent regarding the net rate of charge wherein, they had included the 10 paise rebate before calculating the net rate. The CLDSC in their decision arrived at with the mutual agreement of both parties ordered “the billing

*(excluding LPS) of the consumer for the period 01.01.2002 to July 2006 is correct and therefore payable”, Further the CLDSC ordered that the petitioner would not raise any dispute in the matter before any authority/Court of Law etc. at any time in future.*

15. Having agreed to this decision of the CLDSC the petitioner should not have taken up the matter again with any Forum. However the petitioner again approached the CLDSC on September 2009 on the subject that rebate of 10 paisa per unit should be considered on rate of charge. The GM (Commercial) UPCL, a member of the CLDSC informed the petitioner in November 2009 that the matter stood clarified and did not require any settlement by the Committee. Subsequently the petitioner lodged a complaint with the CGRF, Garhwal Zone, Dehradun who admitted the same and passed orders dated 30.09.2011 against the petitioner. Aggrieved with the Forum’s orders the petitioner preferred an appeal before the Ombudsman.
16. As the CLDSC gave a decision in 2009 and the arrear bill was submitted by the respondents in July 2005, it is supposed that this matter also had been examined by the CLDSC before giving their findings. Moreover the findings were given after they were mutually agreed between the petitioner and the respondent, why did the petitioner not raise this issue at that point? The petitioner has also averred in his petition that according to the decision of the CLDSC, THDC was to deposit only 25% additional charges on the amount of monthly bills paid during the above period and nothing more other than this was payable. Examination of the CLDSC order does not show any such categorical statement.
17. After hearing arguments and going through the documents presented by both parties, the findings are given below:
18. From the above it is very clear that the tariff applicable in the case is LMV 2 read with LMV 9. While neither of the two tariff orders give any explanation on the net rate of charge, the rate of charge has been shown as fixed charge + energy charge. Two rebates have been mentioned one is provisional i.e. rebate of 10 paisa in case the bill is paid by the due date. The second is a 5% rebate which is mandatory for all cases as given below:

*A 5% rebate has been given in cases where voltage of supply which is 230 volts for single phase and 400 volts for 3 phase load is higher i.e. for loads more than 150 KVA being supplied at higher voltage. This rebate is in fact to compensate the consumer the expenditure to be incurred by him for stepping down the supply to 400 volts, putting up LT line and for losses in step down transformation and LT line.*

19. As the above mentioned rebate has been given to compensate the consumer for the expenditure and losses which could occur due to the supply of electricity by the corporation at higher voltage, it is only justifiable that this rebate should be included in the net rate charges as has been shown by the CGM in his letter dated 19.05.2009 (formula – energy charge + fixed charge – voltage rebate).

20. The rebate of 10 paisa per unit is not a fixed rebate, it is only a rebate/discount which is given to the consumer for action by him i.e. timely payment of a bill. Thus it is a provisional rebate dependent on the action of the consumer. In fact it is an added benefit being provided by the corporation to the consumer and not a matter of right. The petitioner's argument that this rebate should also be included in working out the net rate of charge, does not hold much water as this rebate is dependent on an action by the consumer i.e. the timely payment of electricity dues by him. It is entirely dependent on the facts of each case.
21. I do not find any merit in the case of the petitioner and the decision of the Forum is found to be correct and is upheld. The petition is dismissed.

Dated: 30.05.2012

Renuka Muttoo  
Ombudsman