

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s B.T.C. Industries Pvt. Ltd.
Village Kishanpur, Tehsil Kiccha,
Distt, Udham Singh Nagar, Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Rudrapur, Distt. Udham Singh Nagar, Uttarakhand.

Representation No. 09/2011

Order

The petitioner, M/s BTC Industries Pvt. Ltd., Village Kishanpur, Tehsil Kiccha, Distt Udham Singh Nagar, Uttarakhand approached the office of the Ombudsman on 24.12.2011 against the order of the Consumer Grievance Redressal Forum, Kumaon zone (hereinafter referred to as Forum) dated 14.12.2011 upholding imposition of peak hour penalty of Rs. 1,19,35,641.00 upon the petitioner by the Uttarakhand Power Corporation Ltd. (hereinafter referred to as respondent) in the bill for August 2011. The petitioner also filed an application for interim stay against the order of the Forum. The application for interim stay was accepted on 10.01.2012. On 16.03.2012 the petitioner was ordered to give a Bank Guarantee of the amount due as penalty by 10.04.2012. The petitioner then approached the Hon'ble High Court against payment of Bank Guarantee. The Hon'ble High Court vide their order dated 30.03.2012 ordered that the order of the Ombudsman be kept in abeyance till disposal of the case.

2. The petitioner is an industrial consumer of the respondent with a contracted load of 5000 KVA. The petitioner claims that he was regularly paying electricity bills raised by the respondent and was not in arrears. The respondent sent a bill for the month of August 2011, wherein in column 16 for misc. charges they had shown '*Ref no. penalty transfer revised Pk. Hr. penalty*' for an amount of Rs. 1,19,35,641.00. On

being asked for an explanation, the respondent did not give any clarification but threatened the petitioner with disconnection if the amount was not deposited.

3. The petitioner filed a complaint before the Forum on 23.08.2011 to set aside the peak hour penalty imposed by the respondent. The forum granted the petitioner interim stay on 24.08.2011 and directed the respondent not to recover the amount till the next date fixed.
4. The Forum in their order stated that the petitioner's contention that there was no provision in the agreement between him and the respondent, for imposition of penalty for using power more than 15% of the contracted load during restricted hours, did not apply in this case. Tariff order of October 2009 was relevant to the agreement and this Tariff Order clearly stated the penalty for usage of power more than 15% of the contracted load during restricted hours. The Forum also held that the respondent had given sufficient publicity to their order for restricted usage. The petitioner's statement that he had used power carefully during peak hours also showed that he had full knowledge of the restrictions placed on industrial units like his. On the question of whether the petitioner had used more than 15% of the contracted load during the restricted hours, the Forum on the basis of the documents viz. load survey report and MRI, was satisfied that the respondent's contention that the petitioner had used more than 15% of the contracted load was correct. Regarding the contention of the petitioner that the levy of the penalty bill was time barred, the Forum did not find any regulations to this effect and hence ruled that the petitioner was liable to pay the penalty as charged by the respondent. They extended the stay for 30 days from the passing of their order.
5. Aggrieved by the order of the Forum, the petitioner approached the office of Ombudsman with the plea that the order of the Forum be set aside and the respondent be restrained from realizing the amount for peak hour penalty for the months of February and March 2010 as shown by the respondent in the bill sent to the petitioner in August 2011.
6. The petitioner put forth the following arguments (a) he was only liable to pay the higher charge of Rs. 4.80 per unit as per the Uttarakhand Electricity Regulatory Commission (hereinafter referred to as UERC) Regulations and he had already paid the higher charge for consumption during peak hours in the month of February and

March 2010; (b) there was no agreement between the petitioner and the respondent for imposing penalty for consumption more than 15% during peak hours; (c) on the one hand, the respondent contended that there were scheduled power cuts for the period 21.01.2010 to 31.03.2010 and on the other imposed penalty for consumption during scheduled power cuts; (d) the Forum failed to see the distinction between peak hours, load shedding and clause 6 of RTS-7; (e) the respondent has not fulfilled the conditions laid down by UERC approving the proposal of the respondent for the load shedding program; and (f) inordinate delay in raising the alleged demand of peak hour violation.

7. The respondent maintained that the petitioner was served the bill for violation of scheduled rostering as per RTS-7 (6) (iii). This provision provides that the consumer not opting for continuous supply shall not be allowed to use power in excess of 15% of their contracted load during the period of restriction approved by UERC from time to time. As no separate column is provided in the Performa of the bill, the penalty was included under the column misc. charges and bill for penalty amount describing it as 'abstract of penalty amount' was attached to the bill. The respondent maintains that a large number of consumers, had violated the peak hour restrictions, to whom penalty bill had been sent. Copy of the Load Survey was given to every consumer. In case the petitioner had not received the same, the petitioner could have made a request for a copy of the same. Regarding the petitioner's complaint that the respondent threatened disconnection, the respondent maintained that the connection is liable to be disconnected for nonpayment as per law.
8. The respondent stated that the scheduled rostering program, duly approved by UERC, was notified for the general public including the petitioner, in prominent newspapers. As evidence copies of newspapers Amar Ujala and Times of India cuttings dated 20.01.2010 were provided. There is no provision for giving individual intimation of scheduled rostering program. Regarding the petitioner's contention that he had already made payment of higher charges @ Rs. 4.80 for consumption of energy during peak hour and hence could not be charged any penalty, the respondent maintained that this payment has nothing to do with the use of power in excess of 15% of the contracted load during restricted hours in the scheduled rostering program approved by UERC. The penalty has been charged as per the provisions of RTS-7 (6) (iii). Further, regarding the petitioner's claim that the agreement between the two

parties did not provide for peak hour penalty, the respondent has stated that this penalty is levied as per the Tariff Order.

9. The respondent has also stated that the petitioner was aware of the rostering program and had complied with the restrictions on certain days in January, February and March 2010. In fact, according to the respondent, the petitioner has admitted in his complaint before the Forum that he has used power economically taking into consideration the peak hours. There are a number of consumers in the area and the petitioner as well as the other consumers complied with the restrictions partially. The respondent claimed that the phrase 'peak hour' is one which has been commonly used in the electricity department for the words 'restricted hours' as has been done in this case. They claimed that the words 'restricted hours' appearing in RTS-7 (6) (iii) mean 'peak hour' and the penalty for violation of peak hour is provided in the Tariff. As the program for rostering/load shedding under section 23 of the Electricity Act was approved by UERC, provisions of RTS-7 (6) of the Tariff were attracted and penalty levied.
10. Regarding delay in raising the bill, the respondent claimed that it took considerable time to develop the KCC Online Software Module. A long period was taken in developing the software and studying the individual load survey reports/feeding the data of individual consumers on the system. Thereafter, time was taken in seeking approval from the GM (Commercial) for the penalty bill and only after completing all these formalities the penalty bills were served on the consumers. The respondent also maintained that the petitioner has not suffered due to delay in submitting the penalty bill but, on the other hand, has benefited financially from paying the penalty amount late.
11. Brief facts of the case are that in January 2010, the respondent was directed by UERC to approach UERC for approval of scheduled load shedding in the State. As per the permission granted, restrictions were approved by UERC from 21.01.2010 to 31.03.2010 from 1700 hours to 2400 hours for induction furnaces and rolling mills. About one and half years later the respondent issued bills, claiming the penalty amount for peak hour violations, to a number of industries including that of the petitioner. The petitioner objected to the imposition of penalty and approached the

Forum which did not give him the relief sought and subsequently he approached the Ombudsman.

12. The respondent in January 2010 applied to UERC vide their letter dated 15.01.2010 for scheduled load shedding in the State with a proposed area wise rostering schedule. UERC, in exercise of its power u/s 23 of the Electricity Act, 2003 vide their order dated 18.01.2010 approved for the period 21.01.2010 to 31.03.2010 (a) area wise power cuts/rostering (b) restriction in usage beyond 15% of contracted load during restricted hours for non continuous industry consumers being supplied from industrial and independent feeders at 132 KV, 33 KV or 11 KV emanating from primary and secondary substations including SIDCUL Haridwar/Pantnagar and Induction Furnaces and Rolling Mills. UERC further directed that ‘irrespective of individual drawals on industrial feeders during restricted hours, UPCL shall be at liberty to cut the feeder, if the situation so warrants, in case the overall loading on the feeder is more than 15% of the total contracted load of all the consumers on the feeder, provided, that such feeder shall not be cut if continuous supply consumer(s) is/are connected to that feeder.’ It was also clarified by UERC that in case of improvement in availability of power during scheduled/unscheduled power cut, UPCL shall grant corresponding relief to consumers and gradually reduce load shedding for them.
13. UERC directed UPCL to take out the full MRI dump with load survey and submit the same to UERC by 15.04.2010. UERC further ordered that (i) UPCL should publicise the schedule to the consumers through public notice in at least one English and two Hindi daily newspapers having wide circulation in the State and stated that the notified scheduled cut/restriction period would become applicable only on or after the date of publication of such notice. They also directed that the notice must contain all the terms and conditions apart from area wise rostering schedule and (ii) UPCL shall intimate the approved plan to the Industrial Associations individually immediately on receipt of UERC’s approval.
14. On receipt of the approval of their proposal, with minor modifications, from UERC, the respondent issued public notice in the Amar Ujala (19.01.2010) and Times of India (20.01.2010). The respondent also wrote to GM (Distribution) to communicate the same to all their subordinate offices and paste a copy of the schedule on the notice board of their offices. A copy of this letter of respondent dated 19.01.2010 was also

marked to President of different Industry Associations at Dehradun, Udham Singh Nagar and Roorkee.

15. During arguments the petitioner raised the following points

- (a) The respondent did not implement the order of UERC as approved by them in their order dated 18.01.2010 as they did not mention the various conditions laid down by UERC in their order while approving the proposal of the respondent. Penalty for violation should have been clearly mentioned in the publication.

Correct position

While it is true that the full and complete orders of UERC were not mentioned in the advertisements, at the same time it was the duty of the consumers to seek full details either from the respondent or by consulting the website of the respondent. The respondent was bound to charge for violation of restricted hours as per the order of UERC as the Tariff Order has no provision to allow non charging of penalty if individual consumers were not aware of the fact that penalty was leviable, on use of power beyond 15% of the contracted load, during notified restricted hours.

- (b) Application of penalty during peak hours has been raised, levy of penalty not warranted. It has been contended that use of power during peak hours attracts a higher tariff and hence penalty on the same cannot be imposed. Moreover, the agreement between the petitioner and the respondent does not talk about any penalty during peak hours.

Correct position

The agreement is very clear that the consumer is bound by Tariff Orders issued from time to time. In the present case the Tariff Order, issued by UERC in 23.10.2009 for the period 01.10.2009 to 31.03.2010, is applicable. The Tariff Order RTS-7 (6) (iii) states

6. Continuous and Non-continuous supply

(iii) Consumers not opting for continuous supply (Non-continuous supply) shall not be allowed to use power in excess of 15% of their contracted demand during restricted hours of the period of restriction in usage approved by the Commission from time to time. For such consumers Energy charge, Demand charge and other charges as per rate of charge given above shall be applicable.

However, any violation detected in usage of power during restricted hours (above 15% of contracted load) shall attract a penalty, continuous supply surcharge and other terms as specified below:

a) There shall be graded penalty for violation of load during restricted hours of each day beyond a limit of 15% of Contracted Demand (rounded off to next higher integer) based on the following two factors:

- *Quantum of load used beyond of 15% in each time slot (30 minutes duration) of restricted hours*
- *No. of time slots during which violation occurred in restricted hours*

b) For each time slot of restricted hours penalty shall be zero for load upto 15% and shall be proportional to load beyond this limit.

(c) Caution: Industrial consumers are cautioned that even under this moderated graded penalty, consumption of power beyond 15% would be prohibitively expensive and hence, they are advised to restrict the consumption during the period of restriction within the said limit.

Thus, the Tariff Order has made it clear that violation of restricted hours would attract penalty.

- (c) The petitioner has alleged that a number of procedural mistakes were made. (i) no bill for peak hour penalty was given, only an abstract of penalty amount was provided; (ii) The demand for peak hour penalty was in compliance to a letter dated 21.04.2010 of the MD, UPCL. There was no order of UERC in this respect; (iii) Para 3 of MD UPCL letter specifically mentioned that penalty bill after being signed and verified by the concern GM will be sent. No such bill was sent to the petitioner. Further the letter also mentioned that the penalty bill would be automatically added to the bill for the coming month. 'Peak hour penalty' amount has been added by the EE by hand in the bill for the month of December 2011. The abstract of peak hour penalty is dated 30.09.2011. If the abstract had been verified and signed in September, why was the same not added in the bill for September, October, November or December; (iv) Provisions under which peak hour penalty had been imposed have not been disclosed; (v) The proposal sent to UERC was for a load shedding schedule; and (vi) The statement of the respondent that more than 400 consumers in the

division had not complied with the load shedding schedule goes to prove that the said schedule was not known to the consumers.

Correct position

The points referred to in points (i) – (iii) refer mainly to procedural lapses by the respondent and can in no way be used to excuse overdrawal of power by the petitioner during restricted hours. (iv) Provision under which peak hour penalty has been imposed has already been specified above in reply to point (b). (v) reply to this is covered below in (d). (vi) not relevant.

- (d) The petitioner emphasized the point that the respondent was not clear regarding restricted hours, rostering/load shedding.

Correct position

While the respondent would be well advised to use the terminology employed in the relevant Order the essence of the order is well known and understood among the industrial consumers whatever might be the terminology used. As per the approval taken by the respondent from UERC there was an effort to conserve electricity due to shortage of power with the respondent. With this purpose in mind the respondent had requested UERC to permit them to (a) impose restrictions during certain hours on certain types of industries; and (b) carry out area wise rostering/load shedding during certain periods of the day on the rest of the consumers. The petitioner in the present case is covered under sr. 10 of the publication which relates to ‘induction furnaces and rolling mills’. As per the approval taken by the respondent from UERC there was an effort to conserve electricity due to shortage of power with the respondent. With this purpose in mind the respondent had requested UERC to permit them to (a) impose restrictions during certain hours on certain types of industries and (b) carry out area wise rostering/load shedding during certain periods of the day on the rest of the consumers.

- (e) The petitioner contended that there was no communication that penalty would be attracted in case of violation of restricted hours.

Correct Position

Publicity regarding the restrictions was wide spread as besides publication in newspapers, the information about the restrictions was also displayed on the website of the respondent and letters were sent to all industrial associations in the State. It was the duty of the consumers to seek full details either from the

respondent or by consulting the website of the respondent. The respondent was bound to charge for violation of restricted hours as per the order of UERC as the Tariff Order has no provision to allow non charging of penalty if individual consumers were not aware of the fact that penalty was leviable, on use of power beyond 15% of the contracted load, during notified restricted hours.

- (f) The petitioner claimed that the respondent's local staff usually informed them in case of rostering and the same was not done in this case.

Correct position

Intimation regarding the restrictions was given through publication of notices in newspapers, information about the restrictions was also displayed on the website of the respondent and letters were sent to all industrial associations in the State. Lack of knowledge of the restrictions, therefore, cannot be taken as a valid ground for violation of restricted hours.

While information given by the local staff of the respondent is a courtesy being extended to the consumer, in view of wide spread publicity it was not necessary that each consumer be informed individually each day.

- (g) The petitioner stated that as per UERC order of 18.01.2010 a copy of the MRI and load survey should have been provided to the consumer being billed for violation of the restrictions imposed on certain categories of industrial consumers.

Correct position

While this is correct, it does not excuse the consumer from paying for the violations. The penalty charged by the respondent is in accordance with the rate schedule approved by UERC. A copy of the MRI was subsequently provided to the petitioner when demanded from the respondent.

- (h) The petitioner has also raised the point regarding signatures not being available on a number of copies of the abstract bills and the fact that the bill was verified and signed in September 2011 while the bill was raised in the month of July 2011. He has also stated that no penalty bill was given to the consumer only reference of penalty amount was made in the bill for July/August 2011. Petitioner has maintained that there was no justification for raising the bill after a gap of almost two years and claimed that such charges were time barred.

Correct position

Where there have been procedural deficiencies committed by the respondent, it does not gainsay the use of load more than 15% of the contracted load during restricted hours. The penalty charged by the respondent is in accordance with the Tariff Order of October 2009 approved by UERC.

- (i) Delay in raising penalty bill - Petitioner has maintained that there was no justification for raising the bill after a gap of almost two years and claimed that such charges were time barred.

Correct position

Section 56 (2) of the Electricity Act clearly provides that bills can be submitted up to two years after the period when they became due. In view of this the bills submitted between July 2011 – December 2011 cannot be considered time barred.

16. I have examined all the documents and listened to the arguments of the both parties and am of the view that despite the procedural shortcomings, on part of the respondent, there is no doubt that the restrictions imposed by the order dated 18.01.2010 of UERC were violated by the petitioner and therefore the petitioner is liable to pay the penalty for these violations.
17. Meanwhile, the respondent informed UERC on 08.02.2012 that ‘their field officers had confirmed that there was drifting in clock in the meters of some industrial consumers for the period from 21.01.2010 to 31.03.2010’. The respondent recommended that ‘the benefit of clock drifting may be allowed to the consumers who used power during restricted hours only maximum of one time slot in a day either first slot or last slot during the entire period of restrictions’. UERC vide their letter dated 05.03.2012 approved that ‘the benefit of clock drifting for one slot to the consumers till the meter clock are synchronized should be allowed.’ In view of the orders of UERC, the benefit of clock drifting for violations in one time slot either at the beginning or the end during the restricted hours has to be applied wherever relevant for each day during the period 21.01.2010 to 31.03.2010.
18. In the present case of BTC Industries there were no violations during January 2010. There were a number of violations during the period 1700 to 2400 hours in February and in March. As these violations occurred during the entire period of restriction, the

benefit of clock drifting as approved by UERC cannot be given to the petitioner. The order of the Forum is upheld. The petition is dismissed.

Dated: 26.09.2013

(Renuka Muttoo)
Ombudsman