

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Indian Oil Corporation Ltd.
LPG Bottling Plant,
Bahadarabad Industrial Estate,
Bahadarabad, Distt. Haridwar, Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Haridwar, Uttarakhand.

Representation No. 01/2013

Order

The petitioner, M/s Indian Oil Corporation Ltd., LPG Bottling plant, Bahadarabad, Haridwar, Uttarakhand approached the office of the Ombudsman on 21.02.2013 against the order of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) dated 23.01.2013 upholding imposition of peak hour penalty of Rs.7,68,837.00 upon the petitioner by the Uttarakhand Power Corporation Ltd. (hereinafter referred to as respondent) in the bill for January 2012.

2. The petitioner is a Govt. of India undertaking running a LPG bottling plant in Distt. Haridwar. The plant is operated in two shifts 0600 hrs to 1400 hrs and 1400 hrs to 2200 hrs. The bottling plant being run by the company is catering to the domestic LPG requirement of the state of Uttarakhand for Garhwal region. LPG falls under “essential commodity” and is highly subsidized. The petitioner claims that he was regularly paying electricity bills raised by the respondent and was not in arrears. The first intimation of penalty was received by him when the penalty was charged in the bill for January 2012. On receipt of the bill the petitioner applied to the respondent to waive off the penalty amount. Petitioner was informed by the respondent that the demand could not be waived. On account of threat of disconnection the petitioner deposited the full amount with the respondent on 31.03.2012 under protest.

3. The petitioner maintains that the respondent did not issue any notice regarding restriction of use of electricity during peak hours and the petitioner was never informed of the restrictions placed during January to March 2010. When the petitioner did not get any relief from the respondent he approached the Forum.
4. The respondent stated that the scheduled rostering program, duly approved by the Uttarakhand Electricity Regulatory Commission (hereinafter referred to as 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. The respondent stated that there was no provision for giving individual intimation of scheduled rostering program. 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. Regarding delay in raising the bill, the respondent claims 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.
5. The Forum vide their order dated 23.01.2013 stated that the petitioner has admitted that its plant runs from 0600 hrs to 1400 hrs and 1400 hrs to 2200 hrs. Thus energy has been consumed as alleged by the respondent. The MRI report of the meter installed at the premises of the petitioner fortifies the fact of violation of peak hour by the consumer. Hence, penalty imposed on account of these facts is wholly justified and legal. On this basis, the Forum dismissed the complaint of the petitioner.
6. The petitioner aggrieved by the order of the Forum approached the office of Ombudsman with the plea that the order of the Forum be set aside. The petitioner has prayed that (a) a decree declaring that the respondent is not entitled to recover the amount of Rs. 7,68,837.00; and (b) the respondent be directed to refund the whole amount deposited by the petitioner on 31.03.2012 under protest.

7. Brief facts of the case are that in January 2010, the respondent was directed by the UERC to approach the Commission 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 and from 1800 to 2300 hours for all industrial consumers being fed through industrial and independent feeders except continuous category dedicated industrial consumers. 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.
8. 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.
9. UERC directed UPCL to take out the full MRI dump with load survey and submit the same to the Commission 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.

10. 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.
11. A large number of cases relating to peak hour penalty imposed by the respondents on (a) Induction Furnace and Rolling Mills and (b) All non continuous process industries fed through independent or industrial feeders emanating from primary / secondary substations, have been received.
12. Arguments that are common to a number of cases are mentioned below.
 - (i) 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 the 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.

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

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.

- (iii) Use of terminology by the respondent different than that used in the Tariff Order.

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. 11 of the publication which relates to 'all industrial consumers being fed through industrial and independent feeders except dedicated continuous category consumers'.

- (iv) Non intimation of rostering to consumers.

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.

- (v) Practice of information about restricted hours being given by the respondent's local staff.

Correct position

The respondent is not bound to individually intimate consumers about restricted hours. Where such information was given in the past was a matter of courtesy extended to the consumer.

- (vi) Non compliance of orders of UERC - The respondent did not follow the orders of UERC (a) by not including terms and conditions in their publication; (b) 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; (c) restrictions to be closely monitored and UPCL to take out full MRI dump with full load survey and submit to the Commission by 15.04.2010; and (d) the respondent also did not follow the provisions of the Tariff Order that copy of the MRI and load survey

should be provided to the consumer being billed for violation of the restrictions imposed on certain categories of industrial consumers.

Correct position

(a) The advertisement/public notice was sufficient. Consumers who were so inclined could have sought more details from the local staff of the respondent or seen the full details on the website of the respondent; (b) it was the option of the respondent to disconnect the feeder, hence the consumer cannot claim relief because the feeder was not disconnected; (c) this was between UERC and the respondent; and (d) while it is correct that the respondent did not provide the MRI report along with the demand for the penalty, it is equally true that wherever the consumer asked for it, the information was provided.

(vii) 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.

13. While 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 MRI and load survey reports confirm the use and, therefore, the violation of the restricted hours. The penalty charged by the respondent is in accordance with the Tariff Order of October 2009 approved by UERC.
14. 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.
15. 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 the 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.

16. In the present case of M/s Indian Oil Corporation Ltd., there were violations in multiple slots during January, February and March 2010. 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.
17. The order of the Forum is upheld. Petition is dismissed.

Dated: 25.09.2013

(Renuka Muttoo)
Ombudsman