

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Parmatma Ferro Alloys Pvt. Ltd.  
Ramraj Road, Village Vikrampur, Bazpur,  
Distt. Udham Singh Nagar, Uttarakhand

Vs

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

Representation No. 34/2018

### Order

Date: 25.01.2019

The petitioner, M/s Parmatama Ferro Alloys Pvt. Ltd. is a consumer of UPCL having contracted load of 3000 KVA under connection no. KNO5474 who, aggrieved by the order dated 29.09.2018 of the Consumer Grievance Redressal Forum, Kumaon zone (hereinafter referred to as Forum) has approached the Ombudsman for setting aside the order of the Forum and restraining the opposite party UPCL from enforcing the realization of amount of Rs. 93,43,553.00 pertaining to additional units assessed for the month of December 2016 to June 2017 and raised in the bill for the month of September 2017 and also, from disconnecting the supply of the consumer. After hearing both parties an interim stay on coercive action for recovery of dues was granted on 02.11.2018 till the disposal of this case.

2. Petitioner has stated that meter no. UPC 8056474 installed in his premises has continued to record his consumption accurately and that respondent has been regularly checking the meter and taking MRI and has never pointed out any discrepancy or error. He has further stated that while he manufactures calcium carbide and his consumption depends upon many factors, however the average consumption is mostly uniform and in support of this claim he has filed bills of the period 01.12.2016 to 31.07.2017 which he claim reflect a uniform pattern. Petitioner has also never defaulted in the payment of any bill and neither has any bill remained in arrears.

Another point of information that the petitioner has given is that the feeder supplying power to the petitioner also has 3 other industries drawing power from the same feeder. Petitioner has indicated that the bill for September 2017 was excessive in which respondent included certain units for the months of December 2016 to June 2017. Petitioner submitted a complaint dated 13.11.2017 demanding justification for charging such arrears and requesting correction in the bill. While no justification was given but respondent assured him that the same would be rectified. Petitioner has learnt from the respondent that Executive Engineer (Test) Kashipur has assessed 1956135 units (the correct figure as per EE (Test) letter dated 29.08.2017 is 1955135 units and the same also appeared in bill of September 2017) and the tamper report indicated breakdown due to technical reason at certain intervals and the current in B phase was zero. Accordingly this assessment has been raised as per actual consumption of the petitioner. Petitioner has alleged that all these statements are false and the action of respondent arbitrary and against rules.

3. Petitioner has further alleged that respondent had also made an arbitrary assessment earlier against which case no. 44/2017 was filed (before the Ombudsman) seeking relief from the order of the Forum. That petition against the order of the Forum was allowed on merits and the order of the Forum and assessment struck down. Petitioner claims that the facts of the present matter are similar and while this time also the respondent has charged the petitioner with line losses of the feeder but has clandestinely tried to make it appear as the actual consumption of the petitioner. The total record of consumption of all consumers on the feeder together with reading at the substation end will make it clear that the assessment raised by the respondent is nothing but line losses of the feeder in the garb of consumption. Petitioner has alleged that this has been done by the respondent in order to bypass the above mentioned order of the Ombudsman and cover up their illegal acts. While the petitioner made a complaint before the Forum the basic contention of the respondent was that the MRI record of the meter necessitated an assessment of 1956135 units (correct figure is 1955135 units) and accordingly bills were raised. A copy of written statement filed by respondent before the Forum has also been annexed by the petitioner in the present case. Petitioner claims that the allegations made in the written statement are totally false and misleading and against the Electricity Act and rules. The respondent has in

fact charged line losses of the feeder to the petitioner while three other consumers draw their power from the same feeder. Petitioner has stated that the basis for raising such assessment being the independent feeder loss report of the steel feeder on which the petitioner is connected and if the whole matter including the earlier case which has already been decided by Ombudsman, is seen in continuity, petitioner alleges that effectively, respondent are trying to bill line losses for past 12 months on to the appellant petitioner. Petitioner alleges that the action of the respondent of assessing as per bill of September 2017 is arbitrary and unlawful based on surmise and presumption. Such conclusions are contrary to provisions of the electricity Act and UERC (The Electricity Supply Code) Regulations, 2007 (hereinafter referred to as Supply Code). Further, petitioner was never allowed any opportunity to rebut the raising of arrears in bill or the grounds thereof, which is against the principles of natural justice. Petitioner has also alleged that due to their style of working, respondent are running up high line losses against which they are submitting the details at the time of fixation of the tariff by the UERC. Respondent cannot be permitted twofold benefit against line losses. While the meter installed at the premises of the petitioner was taken away by the respondent and got it tested in their Lab, the meter was found OK. In such a situation it is unclear under what provisions of Regulations, assessment can be raised. In order to bypass the test report petitioner alleges that a false story was concocted that there was no current in B phase of CT/PT (As per report of EE (Test) dated 29.08.2017) which again was revealed to be incorrect (during arguments before the Forum where the CGRF was told that one phase R current was recording low current than other phase current B and Y phase as per MRI report and due to this evident proof it was clear that line losses were increased due to less recording by meter which is fed by CT/PT unit – WS page 1,2 dated 14.11.2018). Petitioner has expressed surprise that the respondent without understanding the meaning of testing the meter which is their legal responsibility did not test the CT/PT and removed the meter for checking in the Laboratory. In case the respondent observed discrepancy it was incumbent upon them to check the meter and the cubicle at site and only upon any suspicion should the meter have been removed from site. This was not the case. Petitioner has also observed that the respondent in order to justify their acts have started claiming that they came to know about B phase missing only from the MRI record. Petitioner being a high end consumer, the

negligence of the respondent in not scrutinizing the MRI data is shocking and the consequences of such negligence should be borne only by them. Petitioner has also stated that the respondent falsely represented the case before the Forum when they observed that there was no current in a phase at a particular time. Further, the calculation shown by the respondent has no legal or technical basis. Petitioner is reiterating that the respondent were bound to test the meter as a whole which include CT and PT and assessment in a case like the present one could have been made only by installing a check meter which was never done. Petitioner has further drawn attention to the fact that calculation of the units on the basis of average current is not the basis for raising assessment, this calculation has been given only as collateral point without any technical validation. In fact petitioner alleges that total losses of the line were assessed and the difference in the said units were billed to the petitioner. Petitioner has again and again repeated the claim that no assessment can be done on the basis of average current. Petitioner cannot be penalized for the inefficiency and incompetence of the respondent and nor do respondent have any authority to act against the Law and prescribed procedure. Three other industries stand connected on the 33 KV steel feeder which is also used by the petitioner and to attribute to one of the consumers such line losses is arbitrary and cannot be sustained in the eyes of law. Accordingly, petitioner has requested that the Forum order relying on above mentioned reasoning cannot be sustained and be set aside.

4. Forum, in their order dated 29.09.2018, while dismissing the complaint have observed that the opposite party UPCL have exhibited utter carelessness in not examining the MRI report and its detail like tamper report, load survey report, phasor diagram etc. of consumer like petitioner for a period of 7 months which became the cause of this complaint. However, Forum have found petitioner's claim that the line losses of the entire feeder have been booked to him untenable since opposite party have subtracted the consumption of the three other consumers borne on that feeder as measured by their meters as well as the average line losses from the reading at the sending end meter and accordingly derived the assessment of 1955135 units for the period December 2016 to June 2017. Forum have also observed that during the course of hearing the details of the calculation for the assessed units based on actual calculation of Y & B phase on a monthly were presented as the basis for computing the actual

consumption in R phase which exhibited reduced flow of current. It was also revealed that no tamper was found in B phase after detailed investigation which Forum have concluded is also corroborated in the Load Survey Report presented by opposite party. Forum have further observed that opposite party admitted during the course of hearing that B phase have been mistakenly mentioned in place of R phase, which was showing reduced current flow. While this also exhibited gross negligence on the part of the Licensee opposite party, however, Forum concluded that it did not affect the merits of the case. Since there is a difference between the assessment of 1955135 units based on the sending end meter reading after subtracting the other consumers consumption and average line losses, and assessment of 2083595 units on the basis of actual calculation of monthly average of Y&B phase being read into R phase, Forum have observed that readings by these two separate methods cannot be identical. However, since the calculation as per MRI report is less than the other calculation, Forum maintains petitioner is not adversely impacted. Forum have further observed that they have carefully studied the order dated 23.03.2018 of the Ombudsman in the case no. 27/2017 M/s Parmatma Ferro Alloys vs Executive Engineer, EDD, Bazpur. However, the facts of that case are different and hence the order of the Ombudsman is not helpful to the petitioner in this case. Accordingly Forum have found no merit in the complaint and have dismissed the same, while directing appropriate necessary action against the concerned officers/officials of UPCL for their gross negligence over a period of 7 months in this matter.

5. Respondent UPCL in their written statement dated 14.11.2018 have through the Executive Engineer, EDD, Bazpur submitted that assessment of 1955135 units was added in consumer bill of September 2017 on the basis of letter no. 1558 dated 29.08.2017 from Executive Engineer (Test), Kashipur. Respondent have stated that the Executive Engineer (Test) in his aforesaid letter has stated that “because of disturbance in the main metering of M/s Parmatma Ferro Alloys KNO5474 due to frequent breakdown of meter cubicle, meter did not record full energy consumed by consumer. According to tamper report, B phase current was missing in meter of the consumer. Accordingly the Executive Engineer (Test) recommended that bill of the consumer be revised according to independent feeder loss report of steel feeder as follows: Assessment is for 1955135 units add in the bill.” In the written statement the

respondent have drawn attention to arguments before the Forum. It was mentioned that R phase current was recording low current, compared to current in phase Y&B as per MRI report. This resulted in increased line losses due to less recording in the meter which is fed by CT/PT unit. Further, a new Executive Engineer (Test) gave another report on 29.05.2018 after studying the MRI data and recording that R phase was recording only between 12.32 % in January 2017 to 87.58% in May 2017. As such he suggested the assessment should be 2083595 units on this calculative basis. Another point highlighted in the written statement is that B phase was mentioned due to typing error in place of R phase. The respondent have submitted that while the Executive Engineer report of 29.08.2017 stated that B phase was missing as per tamper report, the MRI report quoted in letter dated 29.05.2018 shows low current in R phase resulting in recording of energy on this phase ranging between 12.32% to 87.58% in the months January 2017 to May 2017 as per calculations by the Executive Engineer (Test). Due to the above reason the Executive Engineer (Test) calculated that assessment of 2083595 units should be made on calculation basis .Respondent have also disputed the petitioner's statement linking the present case to the previous case by saying that the main meter MRI was not available in the previous case, assessment was raised due to frequent burning of main meter and assessment was on the basis of pole mounted meter and on IDF basis; while in this case, meter was not burnt and meter data is available and clear evidence of less recording in R phase is available as per MRI report. Respondent have also asserted that the order of the Ombudsman in the previous case is not applicable in this case due to the above reasons and also because a review has been filed before the Ombudsman. (The memo of review petition presented by UPCL for reviewing the order dated 23.03.2018 was disallowed on 12.11.2018 as not maintainable before Ombudsman) In response to petitioner's query how and under what provisions of regulations assessment can be raised when the meter has been tested to be OK, respondent have dismissed this statement as incorrect as EE (Test) found that line losses during this period are higher raising doubts about his meter. While in the primary inspection EE (Test) only checked meter and got it tested in the Lab but after that he studied the full MRI data where he found the main reason of high losses and found meter to be recording less energy. Accordingly, EE (Test) prepared assessment on the basis of independent feeder loss report. The respondent have stated that check meter was not needed as

MRI data clearly shows less consumption having been recorded. Further EE (Test) also prepared assessment on the basis of detailed calculation and both were approximately equal and Ld. CGRF found it right.

6. In a point wise reply to the petition, the respondent have claimed all averments of the petitioner as incorrect and have based their submissions on the observations of the Hon'ble Forum as well as their order and have claimed that the assessment raised for less recording by the meter due to B phase current missing for 1955135 units is as per independent feeder line loss report and is only the actual energy consumed by the petitioner and thus he is liable to pay the same and have claimed that the assessment has been raised as per rules and regulations and is therefore sustained.
7. Petitioner in his rejoinder against the written statement has denied the contents of written statement and also stated that unless specifically admitted nothing in the rejoinder be taken as admitting the statements made in the written statement. The implication of the respondent mentioning certain facts before giving parawise reply to the petitioner's statement in appeal (petition) is that the respondent have admitted that the basis of assessed units added in the bills of the petitioner was the letter no. 1558 dated 29.08.2017. In this letter EE (Test) has categorically mentioned that the bill of the consumer is to be realized as per independent feeder loss report of steel furnace feeder. Petitioner has also stated that respondent admitted at the time of arguments before the Forum, when all pleadings and replies had already been filed, that R phase was recording low current than other phases. On page 2 of the written statement the respondent has again categorically admitted that "Executive Engineer (Test) at that time prepared the assessment on basis of independent feeder loss report". Petitioner has denied the story about new executive Engineer and less recording of the meter due to low current in R Phase. Petitioner has also stated that respondent has failed to establish how consumption in any phase can be used to deduce the consumption of units. Further, why all this was not seen when meter was removed for testing and why check meter was not installed; why if they claim the meter to be show (perhaps petitioner means slow) can they raise assessment without installing a check meter; even if for the sake of argument MRI report is admitted to be correct how can consumption be established from the said report without installing a check meter; in the present case even the slowness of the meter and the percentage of the slowness

has also not been established; at the time of argument before Forum respondent admitted that the MRI report was used for calculative basis meaning thereby that the basis of assessment is not the MRI but still the line loss report of steel furnace (feeder). While respondent has associated the line loss with the MRI report, which is incorrect, if such was the case other factor would have been same and the same percentage of variation as in the R phase current would have been reflected in the MRI and energy sent at the substation end. The respondent has knowingly not presented any record of the MRI and billing data of other consumers on the same feeder, since comparative study of the same would reveal that the contentions of the respondent are wrong. Petitioner has also alleged that the respondent has not established the line losses on the steel furnace (feeder) and just made a bare statement without establishing possibility of any miscalculation error, or even manipulation in the preparation and keeping of record, which cannot be ruled out. Petitioner has also claimed that unless respondent produces the MRI of the meter at substation end in order to show total energy sent, report of the correctness of the said meter and the total statement together with actual bills of the consumers on the feeder, the actual difference in energy loss and correct state of affairs will not be known. Petitioner has also stated that the Licensee are duty bound to follow regulations and they cannot be permitted to derive their own method of doing the same and seeking approval of their unjust action from judicial authorities. Except para 1 to 5 which petitioner refers vague and incomprehensible and therefore cannot be replied, and para 6 which petitioner claims is an admission of the contentions of the petitioner and further that respondent has admitted that the clarification was given only before the Forum admitting the contentions made by the petitioner in para 6, all other paragraphs and statements of the respondent in their written statement have been referred as wrong and denied. The specific points where further reiteration of points made in the appeal/representation have been made are presented below. Less recording of current has no direct correlation with the actual units of consumption. Petitioner has also referred that in the earlier case, respondent relied heavily on pole mounted meter as the basis of assessment but surprisingly in the present matter no mention of the pole mounted meter has been made. The respondent have also admitted that the bill for the relevant period are on the basis of line losses hence the same is liable to be struck off. That being so petitioner relies on the earlier order of the Ombudsman where it was

held that the line losses cannot be charged from the consumer and the proper course to be followed in such cases had been laid down in that case. Petitioner has also stated that since the bills have to mandatorily be raised as per MRI and his bills have been raised through MRI, no assessment can be raised neither any bill can be revised unless a testing of the said meter shows that the MRI was incorrect. Assessment as given in bill of September 2017 would imply circumventing the provisions of regulations regarding assessment for slow meter. This also suggests that respondent are burdening petitioner with line losses to save their skin. In para 9 of the petition, petitioner had referred to a complaint made before the Forum and did not repeat the pleadings of the same for the sake of brevity. However, respondent have not replied to para 9 of the petition and therefore petitioner maintains that his contentions included in his complaint dated 23.11.2017 before the Forum, stand admitted by the respondent, which are being reiterated as being correct. In para 10 & 11 respondent have given a story without any details or records to justify the same. Action mentioned in para 10 and 11 is not justified by the provisions of any regulation and cannot be accepted. Petitioner has further stated that the assessment has not been done at the instance of the respondent but at the asking of Test Division. Respondent have mechanically and without applying himself followed instructions of the Test Division whereas the responsibility of correct billing of consumer lies upon the divisional Executive Engineer. In reply to para 12, petitioner has again reiterated his own contention and stated that respondent's assessment is totally devoid of any basis and against rules and regulations. Respondent are not entitled to subtract the consumption of remaining consumers from the substation meter reading and charge the petitioner with the same. Being charged for line losses of the feeder is totally against law unless the respondent submitted duly verified details of all industries connected on the said feeder, reading of the pole mounted meter, reading of consumer meter, units for which the bills were raised during the relevant time, together with the relevant record of substation meter. In para 16 of the written statement petitioner alleges that respondent keeps stating without any basis that the demand is for actual consumption because they are aware that the said demand is not for actual consumption. In reply to para 18 of the written statement, in para 12 of the rejoinder while reiterating the contents of para 18 of the appeal, petitioner has again stated that the respondent's actions are against regulations and they are obliged to check the MRI dump before sending the bills and the sending

of the bills itself means that the MRI has been assessed because bills cannot be sent otherwise. If there were doubts about the accuracy of the meter the first thing to be done was to check the MRI and then install a check meter. Taking away the meter for testing without established reason is not justified. Despite all these stories petitioner maintains that the respondent is still emphasizing on their illegal act by reiterating that the assessment is done on the basis of line losses. In para 19 petitioner has reiterated that unless all causes of slowness of meter are eliminated the meter cannot be removed and the meter is removed only when there is theft or suspected theft of electricity and the reason for lesser consumption cannot be found otherwise than by testing the meter. But before that all other possibilities have to be explored and assessed before taking the last resort. Testing of CT and PT are integral part of the testing and since respondent have failed to show why CT and PT were not tested respondent should disclose what tests are mandated to be carried out at premises and whether the same were complied. While denying para 21 of the written statement petitioner has again reiterated para 21 of the appeal and emphasized that UPCL cannot state that they are asking for the amount for energy used by the consumer without justifying and establishing such consumption as per rules and regulations. Denying para 27 of the written statement wherein respondent have stated that since MRI shows that R phase current is recording less, the same can happen due to fault of meter or due to fault in CT/PT. Respondent's assertion that since meter was tested and found OK hence CT/PT fault is responsible for this, petitioner finds this stand illogical. Petitioner also states that lesser consumption in any phase does not establish that the actual consumption has not been recorded neither does it equip the respondent to make any assumption regarding units consumed on the basis of the current or voltage in the CT or PT respectively.

8. Under para 18 of rejoinder, the petitioner has held para 25 of the written statement of the respondent as wrong and has denied the same further claiming that in para 25 of his representation he has alleged that the Forum have failed to appreciate the evidence on record and the applicability of the relevant law and thus maintains that contents in para 25 of the appeal are correct and reiterated.
9. Both parties have been heard and record available, including the file of the Forum which has been called, carefully studied. Petitioner requested for permission to file

written arguments which was granted and the date 07.01.2019 was stipulated and respondent was given opportunity to also file written arguments, if they so require. Petitioner filed written arguments on 07.01.2019 in which apart from reiterating positions already stated in his petition/rejoinder, he has highlighted 3 issues afresh. Firstly, it has been alleged that out of total 4 industries borne on the same feeder, the pattern of past consumption of 3 industries is mostly same. However, one of the industries, having similar load and process as that of the petitioner, has, in the relevant month(s) shown remarkable reduction in consumption. Yet the respondent rather than investigating the same has somehow, without any basis, deemed it fit to burden the petitioner with such line losses. Details of the consumption of industries connected on the feeder has been attached as Annexure B to written arguments. Petitioner has also elaborated on the provisions of Regulations regarding metering and reading of the meter as provided by CEA Regulations and in the Supply Code. In the provisions quoted therein, it has been recorded that in the event of consumer meter readings not commensurate with the consumption of electricity, stoppage of meter, damage to the seal, etc. licensee shall take necessary steps as per the procedures given in the Supply Code. Further, petitioner has also highlighted the judgment of Hon'ble APTEL in the matter of M/s Aditya Industries vs HPERC dated 09.09.2015 in which they have held that the APTEL have passed orders that a consumer cannot be billed on the basis of energy recorded by the sending end meter installed at respondent's substation, which has been referred by the Ombudsman in a recent judgment in the matter of M/s Rana Industries in representation no. 17/2018.

10. In the written arguments on behalf of respondent, submitted on 21.01.2019, a letter from EE (Dist.) dated 19.01.2019 is enclosed. In this letter two main points have been made a) consumption figures given by the petitioner in Annexure A is misleading since the consumption of petitioner in February 2016 is higher (1539200 units) compared to what has been shown (1282650 units) b) respondent have also argued that there is no discrepancy between the current and voltage of the other three consumers borne on this feeder whereas the R phase current in the case of petitioner is disbalanced because of which the line losses on the steel feeder went up between December 2016 to June 2017. There was no variation visible in the load survey of the other three consumers. In addition, respondent have also stated that EE (Test) did not

find it necessary to install a test meter since the MRI load survey report of the petitioner was available for this period. As such the EE (Dist) maintains that MRI load survey report is the basis for assessment rather than independent feeder line losses. The EE has also stated that the other arguments raised by the petitioner are baseless. The petitioner vide his letter dated 22.01.2019 has clarified the discrepancy in the bills for February 2016 and March 2016 which were accepted by the respondent and made necessary corrections in the bills.

11. From the documents available on file as well as arguments, preferred, it is clear that the assessment for the disputed period i.e. December 2016 to June 2017 is based on the report of Executive Engineer (Test) of 29.08.2017 stating that B phase current was missing as shown in tamper report due to which meter was recording less and with a concomitant increase in line losses. Hence, an assessment of 1955135 units amounting to Rs. 93,43,553.00 was incorporated in the bill of September 2017. In the arguments before the Forum, another letter of Executive Engineer (Test) dated 29.05.2018, was referenced, according to which it was maintained that a detailed study of the MRI revealed that in the disputed period i.e. December 2016 to June 2017 it was not B phase that was missing or tampered but R phase that was showing low current and accordingly average of B and Y phase was used to work out the quantum of less energy recorded on R phase due to low current, as 2083595 units. The assessment of 1955135 units is therefore correct being very close to the calculated units of 2083595. Forum, further used the argument that the assessment of 1955135 units based on the average of B and Y phase current in the disputed period had no relationship to line losses on the steel feeder and hence the earlier order of the Ombudsman in representation no. 17/2018 will not be of any assistance to the petitioner. A perusal of the record however indicates clearly that the only assessment that has been communicated by Executive Engineer (Distribution) Bazpur to the petitioner is through their bill of September 2017. This assessment draws its justification from the letter of EE (Test) dated 29.08.2017. Whatever calculations or arguments regarding assessment may be adduced by the respondent before the Forum or before the Ombudsman the fact remains that the assessment to the petitioner remains for 1955135 units equivalent to Rs. 93,43,553.00. This assessment as explained above and as recommended in the letter of EE (Test) dated 29.08.2017 is

based on B phase current missing in the meter and bill to be revised for 1955135 units according to independent feeder loss report of the steel feeder.

12. Since respondent have stated before the Forum and before the Ombudsman that upon perusal of load survey report of the MRI it was found that B phase current was not missing, as such the basis for assessment of 1955135 units communicated in bill of September 2017 has been knocked away. Subsequent justifications for the assessment that R phase current was low, that consumption of other consumers borne on the feeder and assumed average line losses on the feeder have been subtracted from the sending end meter units, are justifications being given in the Forum and before the Ombudsman but do not constitute the basis for assessment communicated to the petitioner. Forum observation that since the assessment of 1955135 units is less than the figure (2083595 units) arrived at in the calculation of current in R phase being low and using the average of B and Y phase consumption to determine escaped units of energy, there is no adverse impact on the petitioner, begs the question. The issue to be decided is not whether 1955135 is nearly the same as 2083595 units but whether 1955135 units is correct measure of electricity consumed but not recorded, as per facts and whether the same is sustained as per law and regulations governing assessment. Quite apart from the method which has to guide revision of firm bill as per MRI which will be examined presently in the context of relevant regulations and provisions of tariff, even if for the sake of argument it is accepted that the respondent were entitled to make such an assessment, the documentary evidence/parameters appearing in the metering equipment connected to the consumer must substantiate such an assessment. As observed above, since the B phase missing is not a reality as admitted by the respondent and the effect of R phase low current on energy recorded in the meter has, apart from not being established through a check meter or any other objective methodology, has not been communicated to the petitioner through revision of his assessment, this is considered extraneous to the case at hand and cannot be considered as of any relevance in deciding the matter. The assessment against which petitioner has approached the Ombudsman is the one communicated vide letter dated 28.09.2017 and incorporated in bill of September 2017. The grounds for this assessment were i) B phase was missing. The excessive line losses could be billed to petitioner because his B phase was missing, which is now established as not missing.

Further, petitioner requested after receiving the bill for September 2017 with assessment of 1955135 units amounting to Rs. 93,43,553.00, why he had been charged this amount. The response to this request was sent vide letter dated 28.10.2017 referring to letter of EE (Test) dated 29.08.2017 establishing once again that the only rationale for assessment of Rs. 93,43,553.00 was excessive line losses on the feeder and B phase missing as per the tamper report. It is clear therefore that this assessment does not have legs to stand on since current in B phase was not missing as established by the respondent themselves duly substantiated through MRI load survey report and communicated to the respondent executive engineer by the executive engineer (Test) vide his letter dated 29.05.2018.

13. The issues to be decided are

- A) Whether this assessment of 1955135 units is proven as energy consumed by petitioner but which has escaped recording; if so, is the same caused by (a) frequent breakdown of metering cubicle resulting in meter not recording full energy consumed by the consumer and high line losses. (b) Evidence used by EE (Test) in letter dated 29.08.2017 i) tamper report showing B phase current missing in the meter ii) independent feeder loss report.
- B) Whether such assessment is sustained in the light of provisions of Law and UERC Regulations.
- C) The precedent and case law in respect of indicated decision.

14. The issues are decided as below:

- A) Whether this assessment of 1955135 units is proven as energy consumed by petitioner but which has escaped recording; if so, is the same caused by (a) frequent breakdown of metering cubicle resulting in meter not recording full energy consumed by the consumer and high line losses. (b) Evidence used by EE (Test) in letter dated 29.08.2017 i) tamper report showing B phase current missing in the meter ii) independent feeder loss report.
  - i) Respondent on the recommendations of Executive Engineer (Test), Kashipur as per his letter dated 29.08.2017 has billed the petitioner for additional 1955135 units for a sum of Rs. 93,43,553.00 for the period December 2016

to June 2017 through an entry in the bill for the month of September 2017. These units as per recommendation of the Executive Engineer (Test) have been assessed for excessive line losses on the independent steel feeder attributable to B phase current missing in the meter of the petitioner over the period under dispute. The quantum of energy 1955135 units assessed as aforesaid, has been worked out by deducting the metered consumption of all the consumers including the petitioner connected to the independent feeder, billed as per MRI report through their monthly bills for the said period, and assumed average line loss of the feeder from the energy sent out from the sending end meter installed at the substation, and thus the difference of energy which has been worked out as 1955135 units is the excessive line losses that have been billed to the petitioner through the bill for September 2017. The same bill is under dispute for which the petitioner has complained to the Forum and being aggrieved with the said Forum order, the petitioner has preferred this appeal. While the respondent, based on the recommendations of the EE (Test) in his letter dated 29.08.2017, have claimed that the B phase current in the meter of the petitioner was missing as per tamper report, resulting into lesser energy recording in the meter than what the consumer has actually consumed, and thus they have claimed the cost of additional energy of 1955135 units as per independent feeder line losses, attributable to B phase current missing in petitioner's meter, but in their subsequent assertions in the written statement as well as in Executive Engineer (Test) letter dated 29.05.2018 they have reversed their earlier stand of B phase current missing and have asserted that as per MRI load survey report, B phase current was not missing, but current in R phase was low and as such they have claimed that it is not a case of B phase current missing but a case of low current in R phase. This fact that B phase was not missing is further established from the stand they have taken to work out the quantum of lesser energy recorded as 2083595 units based on average monthly consumption on Y and B phases in order to make up for less recording in R phase. However, they have not revised the assessment as per these calculated units and have held that the earlier assessment of 1955135 units is correct as per respondent's letter no. 895 dated 14.08.2018 submitted before

the Forum. Since respondent have themselves asserted that B phase current was not missing (which has been corroborated by MRI Load Survey Report), assessment based on B phase current missing resulting in excess line losses is not factually correct. Even if for the sake of argument it is assumed that B phase current was missing due to which the full energy that might have been actually consumed by the petitioner could not be recorded in the meter and thus 1955135 units billed to the consumer is the units of consumption that escaped recording, the methodology adopted by the respondent i.e. assessment based on independent feeder line losses, inconsistent with the provisions in relevant rate schedule which stipulates that in case line losses on a steel feeder are found to be more than 3%, the respondent is required to investigate the matter and take corrective action. Such investigation has not been conducted nor adduced before Forum or before the Ombudsman and in the absence of such procedure having been followed the assessment raised could not have been sustained even if B phase current was actually missing. As far as the point of frequent breakdown of metering cubicle resulting in meter not recording full energy is concerned, mentioned in letter dated 29.08.2017, while petitioner made a complaint in his petition to the Forum that his power supply is obstructed in the last one and half two years due to moisture in the cable for which he is taking remedial steps in his cubicle, but respondent have not helped resolve the problem, no evidence has been adduced by either party to establish that in the disputed period i.e. December 2016 till 30.06.2017, when the metering cubicle was opened and all three CTs were changed, that the metering cubicle was facing frequent breakdowns. On 09.05.2017 EE (Test) had found that line losses for this period are higher raising a doubt about petitioner's meter. As meter is an equipment and may be faulty so in primary inspection EE (Test) checked meter only. After removing and replacing it on 09.05.2017 and testing meter in lab, it was found OK. In the sealing certificate of 30.06.2017 it is mentioned "*miHkksDrk ds ehVj D;wfcdy eas QkYV gksus ds dkj.k ehVj D;wfcdy [kksyk x;k ,oa CT pSEcj esa ik;k fd miHkksDrk ds R-Phase dh CT*

secondary dk wire carbonise Fkk ,oa CT Hkh carbonised gks x;h Fkh rhuks CT cnydj u;h CT yxk;h x;h R-Phase CT secondary dk wire, CT Terminal Is carbonize gksus ds dkj.k ekid esa R-Phase dh viq.kZ [kir fjdkMZ gks jgh Fkh vr% miHkksDrk dk fcy fu/kkZj.k fu;kequqlkj MRI fjiksVZ ,oa s/s end ekid ds vuqlkj fu;keqlkj gksuk gSA” Despite this finding in the sealing certificate on 30.06.2017 that R phase is recording low current because of CT being carbonized, and that assessment should be raised on the basis of MRI report and substation end meter, the assessment raised in the letter of EE (Test) dated 29.08.2017 is based on B phase current missing. The two factors in the letter of assessment of EE (Test) namely frequent breakdown of metering cubicle and B phase current missing have both been disproved by respondent own observation that B phase was not missing and meter is OK and no evidence of frequent breakdown of metering cubicle between December 2016 to June 2017. Respondent for their own reasons did not check the CT/PT of the metering equipment to ascertain accuracy of metering equipment. The only basis for assessment that remains as per letter of EE (Test) dated 29.08.2017 is therefore high line losses on the feeder.

- ii) Further, as alternatively pleaded by the respondent that the current in R phase was low and the lesser energy recorded was due to low current in R phase and not B phase current missing and thus they have calculated the quantum of such less recorded energy as 2083595 units by a theory and formula designed by themselves which is not provided in any Regulation and in that case also the assessed units could not have been worked out as they have done, although the assessment raised for 1955135 units based on independent feeder losses due to B phase current missing has been said to be correct and has not been revised on the basis of calculated units worked out due to low R phase current. In fact, if in any investigation it is found that the meter of any consumer is not getting proper or complete current input, the correct way of assessing the effect of any incomplete current input to the meter, is a study by installing a comparison meter on separate CT and PT or in case where more than one consumers are connected on an independent

feeder, as in the instant case, the correct way of ascertaining the quantum of energy that escaped recording, if any, due to incomplete current input to the meter of a consumer, is the simultaneous checking of the complete metering equipments of all such consumers connected to that independent feeder including such study of the sending end meter also. In the instant case respondent have not made an assessment on the basis of R phase current being low, nor have they conducted a study as required and as pointed out above. Respondent in their written arguments have observed that EE (Test) did not find it necessary to install a test meter since MRI load survey report was available and that it is the load survey report that is the basis for assessment rather than independent feeder line losses. In this context it bears repetition that while the MRI load survey report may point to a malfunction/discrepancy in the metering equipment, the exact measure of the discrepancy will be known only if a check meter is installed on a separate CT/PT in the instant case, and only then can the ground for assessment and quantum of energy, if any, which escaped recording, be correctly established. Further, the other point raised in the written arguments by the respondent that consumption figure given by petitioner for the month of February 2016 is misleading as the consumption in February 2016 was 1539200 units compared to 1282650 units as shown by the petitioner in Annexure A in their written argument. It may be borne in mind that the petitioner vide his letter dated 22.01.2019 has submitted his clarification wherein it has been mentioned that the actual consumption for the month of February 2016 as per MRI report was in fact 1282650 units and not 1539200 units billed in the bill for the month of February 2016. It has further been clarified that the actual consumption in the month of March 2016 as per MRI was 1290750 and not 1034200 units as billed by the respondent. If consumption of both these months as billed and as per MRI it comes 2573400 units and he has therefore argued that the figures in Annexure A of his written arguments are correct. Petitioner has further stated that the respondent have agreed to his submission and have accordingly allowed necessary adjustment in the bill of February 2016, March 2016 and April 2016. It is therefore clear that respondent's allegation regarding submission

of wrong figures in Annexure A is not supported by bills issued by the respondent. The only assessment that has been raised is that communicated by respondent's letter dated 28.09.2017 where R phase current is not in the picture but the assessment is said to have been raised as per EE (Test) letter no. 1558 dated 29.08.2017. Even subsequently no amended assessment has been raised through any communication to the consumer. As such, the exercise of determining monthly average units which escaped recording between December 2016 and June 2017 on the basis of R phase current being low is hypothetical, fictitious and only collateral and has no meaning in the case presently before us. This also addresses the point raised by the respondent in their written arguments dated 19.01.2019 that amongst the four consumers borne on the feeder, the petitioner is the only one in whose meter R phase current was being recorded low as per MRI load survey report.

- iii) The finding of high line losses recorded by EE (Test) in his letter of assessment dated 29.08.2017 could be assessed to one consumer on a feeder on which four consumers are borne, as per established procedure in the Tariff. Sending end meter at the substation end cannot be considered for the purpose of billing of one consumer as provided in the definition of main meter under the CEA (Installation and Operation of Meters) Regulations, 2006.
- iv) As the respondent have not conducted any study to investigate the high line losses on the feeder beyond prescribed limit of 3% as aforesaid, the assessment raised by them is based on assumption, but not established.

B) Whether such assessment is sustained in the light of provisions of Law and UERC Regulations.

Again for the sake of argument if we assume that this assessment as per B phase missing or even the assessment which has been imagined by respondent on the basis of low current in R phase, was correct we need to examine the basis in law for revising firm bills issued on the basis of MRI for the period December 2016 to June 2017.

- i) Assessment against a firm bill issued on metered consumption as per MRI report can be modified as per provisions of Supply Code, UERC (Release of New HT & EHT Connections, Enhancement of Loads) Regulations, 2008 or Tariff provisions as may be applicable in a particular case. The provisions of HT Regulations, 2008 sub regulation 14 stipulate as under:

*“14. Meter Reading*

*The readings of the meters or meter referred to in Clause 12 above shall be taken at regular intervals by distribution licensee through MRI and the readings so taken shall be conclusive and binding on both the consumer and the distribution licensee as to the amount of maximum demand and electrical energy supplied to the consumer, except in case of tampering of such metes whereby distribution licensee shall have right to proceed as deemed fit. Distribution licensee shall provide a copy of MRI report alongwith the monthly bill. Distribution licensee also agrees to provide full MRI report along with load survey on payment of amount as decided by the Commission from time to time.”*

Supply Code sub regulation 3.1.3 stipulates testing of meter for the purpose of ascertaining accuracy of the metering equipment as below:

*“The Licensee shall conduct periodical inspection/testing and calibration of the meters as per Rule 57 of the Electricity Rules, in the following manner:*

*(1) Periodicity of meter tests - The Licensee shall observe following time schedule for regular meter testing:*

<b>Category</b>	<b>Interval of testing</b>
<i>Bulk supply meters (HT)</i>	<i>1 year</i>
<i>LT meters</i>	<i>5 years</i>

*CT ratio and accuracy of CT/PT, wherever applicable, shall also be tested along with meter.”*

In case the meter is alleged to be slow, which is not the case in the instant case, provisions of sub regulation 3.1.3 (6) apply which provide as follows:

*“(6) When the meter is found to be slow beyond permissible limits, as specified in Rule 57 (1) of the Indian Electricity Rules, 1956 and the*

*consumer does not dispute the accuracy of the test, the Licensee/consumer, as the case may be, shall replace/rectify the defective meter within 15 days of testing. The consumer shall pay the difference due to the defect in the meter at normal rates, based on percentage error, for a maximum period of not more than 6 months or less depending on period of installation of meter prior to date of test and up to the date on which defective meter is replaced/rectified.”*

Sub regulation 3.1.2 (1) of Supply Code.

*“The meter shall be read once in every billing cycle. The Licensee shall ensure that meter readings are regularly entered in a card/book kept with the meter of each consumer. Each such entry should be made and initialed by the meter reader. **In case of complaints of incorrect billing, entries made in the past in such cards/note books should be considered sufficient evidence for deciding the matter.”***

ii) Provisions of Tariff RTS 7 provide

*“2 (iii) Supply to Steel Units shall be made available at a voltage of 33 kV or above through a dedicated individual feeder only with check meter at substation end. Difference of more than 3% between readings of check meter and consumer meter(s), shall be immediately investigated by the licensee and corrective action shall be taken.”*

*“3 (ii) ToD Meters shall be read by Meter Reading Instrument (MRI) only with complete dump with phasor diagram, Tamper reports, full load survey reports etc. shall be downloaded for the purpose of complete analysis and bills shall be raised as per ToD rate of charge.”*

To take advantage of provisions for revision of firm bill as above, the first prerequisite is installation of a check meter/comparison meter on the same or different CT/PT as the case maybe for checking the meter (inclusive of the CT/PT where applicable) on site. This has not been done in the instant case. Further, while the meter has been tested in Lab and found Ok, there is no allegation of tampering of the meter.

Hence it is observed that the assessment based on EE (Test) letter dated 29.08.2017, raised in the instant case, is in violation of the aforesaid regulations and therefore cannot be sustained. Further, even if assessment is

imagined to be based on R phase current being low, which is not the case, the regulations quoted above would apply, and the assessment would still be in violation of the said regulations.

C) The precedent and case law in respect of indicated decision.

The assessment of 1955135 units on the petitioner in the instant case has been based on excessive line losses reflected in the sending end meter as pointed out by EE (Test) in his letter dated 29.08.2017. The rationale for this has been given as since B phase current was missing as evident in the tamper report hence excessive line losses after subtracting consumption by other consumers on this feeder and average assumed line losses is being billed to petitioner as assessment. As explained above while there are factual and legal errors in such an assessment, the figure of 1955135 units has been arrived at after subtracting the consumption of all the four consumers borne on the feeder in addition to average line losses from the units sent out from the sending end meter. Petitioner has given the reference of case law in the judgment dated 09.09.2015 of Hon'ble APTEL in appeal no 73/2014 and IA nos. 142 and 197 of 2014. It is clear from a reading of this order that Hon'ble APTEL have held that:

*“The petition no. 181 of 2012, filed by the appellant/petitioner, before the State Commission seeking directions to Himanchal Pradesh State Electricity Board Ltd., the R.No.2, herein, to re-do the calculations and overhaul the appellant's accounts by taking into consideration only consumption recorded by the energy meter installed at the appellant's premises and to issue the bills in future on the basis of meter reading recorded by the meter installed at the appellant's premises and also to restrain the Electricity Board from raising the monthly bills on the basis of consumption recorded by meter installed at the grid sub-station and also direct the Board to re-fund excess amount so charged since the date of 2005 is allowed with interest @ 5% p.a. The respondent no. 2 HPSEBL is accordingly ordered. The State commission, Respondent no. 1, is further directed to ensure compliance of this order...”*

The assessment in the instant case based as it is on feeder line losses deduced from substation meter reading after subtracting the consumption of all four

consumers and assumed average line losses cannot be sustained in the light of the above ruling.

14. Assessment of Rs. 93,43,553.00 raised through bill of September 2017 for 1955135 units for the period December 2016 to June 2017 based on the recommendations of EE (Test) letter no 1558 dated 29.08.2017 is set aside. Forum order is set aside. Petition is allowed.
15. As observed and pointed out by the Forum also, it is clear the respondent have dealt with the case in a casual manner as is evidenced in analysis and finding in above paras.
16. Further, on 24.12.2018 the date fixed for arguments, counsel for respondent was present without respondent having sought permission for engagement of counsel or having filed a vakalatnama. On his express verbal request, permission for counsel to adduce arguments was granted, in the interest of justice, and in the face of objections by the petitioner, in a case where petitioner had not engaged counsel, in relaxation of provisions of UERC (Appointment and Functioning of Ombudsman) Regulations, 2004, firm commitment was given by Executive Engineer (Test) and SDO present on that date, that the same will be filed expeditiously, While request for counsel was received in this office on 17.01.2019, vakalatnama is still not available on record till today. The entire case reveals casual and cavalier approach in dealing with a matter involving large sum of revenue which certainly require corrective action. This is brought to the notice of senior management of Licensee.

Dated: 25.01.2019

(Vibha Puri Das)  
Ombudsman