

## **UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION LUCKNOW**

**In the matter of :** Notice dated 12.5.2007 U/s130 of Electricity Act2003.

AND

**In the matter of :**

1. Managing Director, U.P.Power Corporation Limited, Shakti Bhawan,
2. 14 Ashok Marg, Lucknow
3. Managing Director, Madhyanchal Vidyut Vitran Nigam Limited, 4 Gokhaley Marg, Lucknow.
4. Managing Director, Purvanchal Vidyut Vitran Nigam Limited, Bhikharipur, Vidyut Nagar, 132 KV Sub-station, Varanasi.
5. Managing Director, Dakshinanchal Vidyut Vitran Nigam Limited, Vidyut Bhawan, Gailana Road, Agra.
6. Managing Director, Paschimanchal Vidyut Vitran Nigam Limited, Victoria Park, Meerut-250001
7. Managing Director, Kanpur Electric Supply Company Limited, KESA House, 14/71, Civil Lines, Kanpur.
8. Chief Executive, Noida Power Company Limited, Commercial Complex, H-Poket, Alpha-II Sector, Grater Noida-261306.
9. M/s Jalan Concast Unit 2, Rolling Mill, Nakha Jungle, Railway Crossing, Gorakhpur(service Connection No.71053)
10. M/s Jalan Concast, Furnace Unit, Nakha Jungle, Railway Crossing, Gorakhpur(service Connection No.21001)
11. Cold Storage Associaton, Uttar Pradesh, Water Works Road, Aishbag, Lucknow-226004.
12. M/sJai Jagdambe Malleable Pvt.Ltd., IndustrialArea, Bijauli, DisttJhansi

### **Order**

A notice under section 130 of EA-2003 was published in Times of India and Dainik Jagran on 12.5.2007 wherein the Licensee and persons likely to be affected / affected were directed to send their suggestions and objections on the above matter in writing by 11th June 2007 to enable the Commission to issue directions u/s 129 of Electricity Act, 2003 as may be necessary for securing the compliance of section 56 of Electricity Act, 2003. Following licensees and complainants responded to the above notice.

#### **Licensees**

1. Managing Director, Kanpur Electric Supply Company Limited
2. Managing Director, Dakshinanchal Vidyut Vitran Nigam Limited

#### **Complainants**

1. Cold Storage Associaton, Uttar Pradesh, Water Works Road, Aishbag, Lucknow-226004.
2. M/s Jalan Concast Unit 2, Rolling Mill, Nakha Jungle, Railway Crossing, Gorakhpur(service Connection No.71053)

3. M/s Jalan Concast, Furnace Unit, Nakha Jungle, Railway Crossing, Gorakhpur (service Connection No. 21001)
4. M/s Jai Jagdambe Malleable Pvt. Ltd., Industrial Area, Bijauli, Distt. Jhansi

Therefore Commission vide its registered notice dated 15.6.2007 fixed date of hearing in the matter on 27.6.2007.

The deliberations during the said hearing could not be concluded because the representatives of Madhyanchal / Dakshinanchal / Pashchimanchal could not make it convenient to attend the hearing. Commission therefore pronounced during the said hearing that the next date of hearing will be on 2.7.2007 and issued notice vide letter number UPERC/Secy./ANG/2007-147 dated 27-06-2007 by registered post and fax.

During the hearing in the matter on 2.7.07, the learned counsel of UPPCL informed the Commission that a writ pet no. 4182(M/B)2007 has been moved in Hon'ble High Court and the a division bench of Hon'ble High Court has vide order dt. 29.6.07 directed the UPERC to decide the objections raised by the licensee (by speaking and reasoned order) within a period of 15 days and till such time not to pass any final order U/s 129 of the Act.

The Commission passed Order dated 13.7.2007 in compliance of the directions of the Hon'ble High Court dated 29.06.2007 in the matter of objections raised by UPPCL and now it is proceeding to deal its notice published by it on 12.5.2007 under section 130 of EA 2003.

The complaints and suggestions received against the said notice are summarized as below:-

### **Licensees**

1. MD, KESCO prayed that the provision of section 56(2) of the Act may not be enforced in the cases where the outstanding arrears are lying in inoperative account subsequent permanent disconnection, issue of recovery certificate and recovery stayed by the courts / BIFRs.
2. MD, DVVNL, Agra informed the Commission that the provision of section 56(2) of the Act is being complied and the bills of electricity have printed instructions to the consumers for rectification of the same by the concerned division or redressal of their grievance by Consumers Grievance Redressal Forum.

### **Complainants**

1. The complaint of M/s Cold Storage Association, Uttar Pradesh, Water Works Road, Aishbag, Lucknow-226004 indicates that they are collecting data regarding those points which have been mentioned in the notice and they shall submit therefore it is irrelevant.
2. The complainants M/s Jalan Concast Unit 2, Rolling Mill, Nakha Jungle, Railway Crossing, Gorakhpur (service Connection No. 71053) and M/s Jalan Concast, Furnace Unit, Nakha Jungle, Railway Crossing, Gorakhpur (service Connection No. 21001) prayed as follows:-

- a) The respondents (MD, PuVVNL, Varanasi and EE, UDD-III, Gorakhpur) are creating demand by violating the provision of section 56 of Electricity Act, 2003 and clause 6.15 of U.P. Electricity Supply Code 2005.
- b) The respondents are creating demand after expiry of seven years tenure while there is statutory bar for creation of demand beyond two years.
- a) The Commission through their notice dated 12-05-2007 directed the licensees not to disconnect the supply of the consumer if the demand has been created in violation of statutory provision 56 of Electricity Act, 2003.
- b) On 17-05-2007 the licensees has informed the petitioners that they were unable to accept the verdict of the Commission since their name did not appear in the notice.
3. The complaint M/sJai Jagdambe Malleable Pvt .Ltd., Industrial Area, Bijauli, Distt Jhansi prayed that :-
- a) The Bill of Minimum Consumption Guarantee charges dated 13-02-2007 prepared against the petitioner for the tenure 02/98 to 12-09-98 for additional load of 2000 KVA may be quashed.
- b) DVVNL, Agra may be directed to follow the statutory provisions of section 56(1) and 56(2) of EA, 2003 as well as provision of clause 6.15 of Electricity Supply Code 2005.

During discussion on 02-07-2007 following submissions were made by the complainants at S.No.2 & 3 and the licensee

Submission of the complainants:-

- (i) Tariff Order of UPERC for FY 2000-01 was issued on 27-07-2000 and applied for the period from 09-08-2000 to 15-09-2001.
- (ii) As per the above tariff order the rate of charge was as follows:-

Demand Charge Plus Energy Charge	Rs. 130 per KVA / Month 390 Paise/KWh
For consumers getting power supply in restricted hours	15% surcharge on demand and energy charges
For consumers getting power supply on independent feeders emanating from 200/220/132 Kv	15% surcharge on demand and energy charges and have the assured supply of 500 hours in a month. In case of shortfall in the guaranteed hours of the supply, a rebate at the rate of 1% per ten hours or part thereof shall be admissible on the total amount as computed under rate of charge.

- In case where demand is recorded in KW, the demand charge shall be computed assuming the power factor as 0.85.
  - For connection in rural area getting power supply as per rural schedule a rebate of 10% on the amount of demand charge and energy charge shall be given.
  - In respect of supply during peak hours / restricted hours, the consumer shall have to take permission from UPPCL with intimation to the Commission.
- (iii) UPPCL issued circular dated 08-09-2000 and 15-12-2000 as clarification of Tariff Order wherein option was given to the consumers of HV-2 category on independent feeder, contrary to the Tariff Order, to inform the Power Corporation whether 500 hours assured supply was or was not required.
- (iv) Hon'ble High Court in "LML Ltd. Vs. State of U.P. and Others 2001(2) AWC 1472" dated 25-04-2001 made UPPCL's Circular dated 08-09-2000 and 15-12-2000 as void. The reason, on the basis of which the said notification was struck down, was that the licensee had no power to amend the rates of tariffs approved by the Regulatory Commission.
- (v) On 31-08-2001 UPPCL withdrew its circulars dated 08-09-2000 and 15-12-2000 and advised the billing division to raise the demand of 15% Independent feeder surcharge on concerned consumers.
- (vi) The demand so made was challenged by petitioners M/s Saini Alloys Pvt. Ltd., M/s Kajaria Chemicals Ltd., M/s Modipon Fibers Compnay, M/s Jagannath Steels Pvt. Ltd., M/s Swaroop Castings Pvt. Ltd, M/s ITI Ltd., Mankapur, M/s Sandeela Metal Wires Pvt. Ltd., M/s Diamond Cements, M/s Badri Kedar Papers Pvt. Ltd., M/s Samtel Colouer Ltd. and M/s Ram Ganga Cement Pvt. Ltd., in UPERC.
- (vii) On 12-09-2002 and 14-10-2002 the petitions were dismissed by UPERC.
- (viii) There was no restraint on the licensees to raise the demand from 25-04-2001 i.e. the date of order of Hon'le High Court or from 31-08-2001 (i.e. the date of withdrawal of circulars dated 08-09-2000 and 15-12-2000) till 04-10-2002.
- (ix) On 09-10-2006 Hon'ble High Court dismissed FA 96 of 02 in which the petitioners challenged the orders dated 12-09-2002 and 04-10-2002 of UPERC.
- (x) On 26-04-2007 licensees issued demand pertaining to the period from 09-08-2000 to 15-09-2001.
- (xi) As per clause 6.15 of Supply Code 2005 effective from 18-02-2005 the demand for the above period if not already made, should have been raised latest by 18-02-2007.

- (xii) The order of Hon'ble High Court is not applicable as we are not the party to the case and the demand raised is because of wrong interpretation of the order of Hon'ble High Court dated 09-10-2006 by licensee.

#### Submission by Licensee

The demand has been raised in compliance of the order of Hon'ble High Court dated 19-10-2006.

#### Conclusion drawn by the Commission

Commission is in no position to issue interpretation / application of the orders of the Hon'ble High Court dated 19-10-2006 and that it cannot adjudicate in the matters relating to billing disputes as per the orders of Appellate Tribunal dated 30-03-2006.

In view of above no directions are being issued under section 129 of the EA, 2003 and notice issued under section 130 of the Act including directions therein prohibiting coercive measure for recovery is withdrawn and petition No. 458/2007, 459/2007 and 442/2007 are hereby dismissed.

However, considering the entire facts and legal position, the Commission feels that it may be helpful to all concerned to issue the following guidelines by way of advisory only.

1. Disconnection notices issued in writing under section 56 (i) of EA-2003 must provide 15 clear days to the person concerned.
2. The charges / penalties levied as per the Court or tariff schedule shall become first due counted from the due date of payment of the bill which will be provided to the consumer not later than 2 billing cycles from the date/month of consumption for that category of consumers as per clause 6.15 of U.P. Electricity Supply Code 2005 (as amended by 3rd Amendment 2006). However, the time of limitation of 2 years as per section 56 (2) will be reckoned from the due date mentioned, as above, in the bill issued by the licensee to the consumer.
3. The orders of Hon,ble High Court in the matter of a particular clause of the tariff schedule shall be complied as per the directions given therein.
4. In case of permanent disconnection, proceedings under U. P. Government Electrical Undertaking (Dues Recovery ) Act 1958, as amended from time to time should invariably be started within 2 years from the date of permanent disconnection.
5. The cases where dues are being recovered as arrears of land revenue will not attract application of section 56(2) of EA-2003 after the issue of Recovery Certificates provided the recovery certificate has not been issued after expiry of the limitation mentioned in section 56(2)

6. In subjudice matters related to alleged wrong application of tariff section-56(2) of EA-2003 will not be applicable for the period during which the matter remained pending with the Court and action will be taken in accordance with the directions given by the Court
7. In cases of assessment under section 126, where assessment is done by Assessing Officer designated by State Government, section-56(2) of EA-2003 will not be applicable.
8. In cases where penalties are imposed under section 135 (1) of the said Act, Section-56(2) of the Act will not be applicable.
9. In cases where civil liabilities have been determined by the Court under section-154(5) of the Act, section 56(2) will not be applicable.
10. Section 56 (2) of the Act applies to the licensee in case where consumers of an area are supposed to intimate the meter readings to the licensee for billing and the bills remain unpaid for more than 2 years reckoned from the expiry of 2 consecutive billing cycles after the month of consumption. In such cases licensee should keep track of such consumers who have not made payment of their dues for two consecutive billing cycles and deliver bills timely to save the bar of limitation.
11. Licensee should device proper mechanism to ascertain the date of delivery of the bill of electricity consumption to the consumer so that it can satisfy the competent Court / Forum about the exact date of delivery of the bill. In appropriate cases, the licensee may consider the desirability of issuing the bill by registered post at the correct address of the addressee in order to avail the presumption of law.

(R. D. Gupta)  
Member

(P.N.Pathak)  
Member

(Vijoy Kumar)  
Chairman

Dated : 17<sup>th</sup> July 2007  
Lucknow