

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Quorum

Shri Desh Deepak Verma, Chairman

Smt. Meenakshi Singh, Member

Shri I. B. Pandey, Member

In the matter of:

Sub: Petition No. 777 of 2011 “Levy of System Loading Charges UPPCL & its subsidiary companies, KESCO and NPCL.”

1. Shri Rama Shankar Awasthi, 301 – Surabhi Deluxe Apartment , 6/7 Dali Bagh, Lucknow .
2. Shri Mahendra Swaroop, President, Cold Storage Association U. P., at Swaroop Cold Storage, Aishbagh, Lucknow.
3. Shri Ganesh Tiwari, President, U. P. Chamber of Steel Industries Association at 122/235, Plot No. 17, Fazalganj, Kanpur.
4. Shri Shiv Shanker Awasthi, President, Amausi Industrial Association, at B – 13 / 1 Industrial Area Nadarganj, Lucknow.
5. Shri Satish Goel, President, Association of Steel Rolling Mill and Furnaces, at A – 10, Industrial Estate, Meerut Road, Muzaffarnagar.

-----Petitioners

Versus

1. Principal Secretary, State of Uttar Pradesh, Department of Energy, Lucknow.
2. Chairman, U. P. Power Corporation Ltd. Shakti Bhawan, 14 Ashok Marg, Lucknow.
3. Managing Director, Paschimanchal Vidyut Vitran Nigam Ltd., Victoria Park, Meerut.
4. Managing Director, Purvanchal Vidyut Vitran Nigam Ltd., Purvanchal Vidyut Bhawan , Vidyut Nagar, DLW, Varanasi.
5. Managing Director, Dakshinanchal Vidyut Vitran Nigam Ltd, Urja Bhawan, 220 KV Sub – station, Agra – Mathura Bye Pass Road, Agra.
6. Managing Director, Madhyanchal Vidyut Vitran Nigam Ltd., 4 – A, Gokhle Marg, Lucknow.
7. Managing Director, Kanpur Electricity Supply Company Ltd.
8. Chief Executive Officer, Noida Power Company Ltd., Commercial Complex, H Block, Sector Alfa – II, Greater NOIDA.

-----Respondents

The present of hearing:

1. Shri Mohd. Gurfan, Chief Engineer, RAU, UPPCL
2. Shri Ramesh Kumar , Chief Engineer, Kesco
3. Shri R. P. Prasad, Superintending Engineer, UPPCL
4. Shri D.C. Verma, Executive Engineer, UPPCL
5. Shri Rama Shankar Awasthi, Petitioner
6. Shri A. K. Arora, Resident Manager, NPCL
7. Shri Amarjeet Singh Rakhra, Advocate, UPPCL

ORDER
(Hearing on 8.7.2014)

The petitioner submitted that U. P. Reforms Act 1999 came into force vide notification dated 14.1.2000. With the enforcement of this Act UPSEB came to an end and the entire liabilities got transferred to the state government owned companies vide U. P. Electricity Reforms Transfer Scheme, 2000 (hereinafter called as "Transfer Scheme, 2000") on dated 14.1.2000. The distribution work of the UPSEB became vested in U. P. Power Corporation Limited. The rights and liabilities of the UPSEB in respect to Kanpur City stands transferred to the Kanpur Electricity Supply Company (KESCO) & Noida Power Company Limited was already a distribution licensee in Greater Noida area before 14.1.2000.

The petitioner states that after enforcement of U.P. Reforms Act 1999 (here in called Reforms Act 1999), the relevant provisions of Act, 1910 and Act, 1948 authorizing the UPSEB to frame tariff and other charges stood repealed & in accordance to the provisions of U.P. Reforms Act 1999 this responsibility was transferred to UPERC.

The petitioner stated that section 24 of U.P. Reforms Act,1999 provides that the licensee shall be entitled to realize from its consumers only such charges as approved by the State Commission i.e. UPERC.

Petitioner stated that subsequent to it, UPPCL vide its office memorandum dated 28.5.2001 prescribed the rate of System Loading Charges in respect to various categories of consumers. It is the contention of the petitioner that this office memorandum is illegal because after the enforcement of U.P. Reforms Act 1999 the distribution licensee has no right to issue any circular.

As per clause 4.54.3 of Supply Code, 2002 the cost of extension and up gradation of the system for meeting demand of new consumers shall be recovered from the new consumers through system loading charges. The relevant section of the Code is reproduced below:

“The consumer shall pay the cost of service line etc. and system loading charges. These charges shall be either on the basis of the schedule of standard charges approved by the Commission or actual cost of works as given in the estimate prepared by the Licensee.” Whereas clause 4.6 of Supply Code 2002 provides that in all cases the applicant shall bear the cost of the extension of service line from the distribution mains to the point of supply.

Section 43 of the Act 2003 envisages the universal obligation of the distribution licensee to supply electricity on request of the consumer, whereas 42 (1) of the Electricity Act 2003 direct, the distribution licensee to develop and maintain efficient coordinated and economical distribution system in his area of supply.

Proviso to section 43 of the Act 2003 authorizes the distribution licensee to recover the reasonable expenses incurred on such works from the consumers based on the approved “schedule of charges” in accordance with the regulation framed under section 46 of the Act, 2003.

On 12th August 2003 the distribution work of UPPCL was transferred in favour of newly created distribution companies:

1. Dakshinanchal Vidyut Vitran Nigam Ltd.
2. Madhyanchal Vidyut Vitran Nigam Ltd.
3. Purvanchal Vidyut Vitran Nigam Ltd.
4. Paschimanchal Vidyut Vitran Nigam Ltd.

Apart from above, NPCL & KESCO continued to work as distribution licensee in their respective areas. Subsequent to above transfer scheme UPPCL has nothing to do with the distribution business.

Still after the enforcement of transfer scheme, UPPCL issued office memorandum dated 1.1.2005 which prescribed the rate of system loading charges in respect to various categories of consumers to be levied by distribution companies.

It is pertinent to mention here that as per clause 4.5 and 4.54.3 of Supply Code 2002, the approval of UPERC was mandatory and no OM could have been issued regarding levy of charges without the permission of UPERC, accordingly, neither the distribution companies nor UPPCL had any authority to prescribe charges including system loading charges.

In this context, petitioner sought information from UPPCL regarding approval of office memorandum from UPERC and total amount of system loading charges collected from the consumers by each distribution licensee every year, UPPCL has preferred not to provide any information regarding approval of OM related to levy of system loading charges by the Commission.

PVVNL DVVNL & MVVNL, in response to RTI has communicated that they have not issued any OM regarding levy of system loading charges and are charging as per the OM of UPPCL and the amount collected under this head is shown in the balance sheet as reserve & surplus.

The Petitioner submitted that UPERC approved schedule of standards charges including system loading charges through Cost Data Book on 7th September 2007 which was made effective from 1st October 2007. It is for the first time that UPERC has approved schedule of charges including system loading charges.

Petitioner reiterated that prior to the approval of Cost Data Book no OM related to levy of System Loading Charges was approved by the Commission.

The petitioner submitted that both the office memorandums were never approved by the Commission and hence these charges are illegally collected from the consumers.

These charges are clearly illegal and arbitrary without the approval of the Commission. Thus, the system loading charges collected from 14.1.2000 to 30.9.2007 from the

consumers should be refunded to them along with interest. Accordingly, it is the contention of the petitioner that an enquiry be constituted against UPPCL & licensees for enforcement of illegal OM and illegal relegation of system loading charges.

The Commission in its order dated 7.5.2012 directed :-

“ Accordingly Commission grants 8 week time to the respondent to make its submission and further directed to provide a copy of the same to the petitioner.

The next date of hearing shall be intimated separately. “

Shri A. S. Rakhra appearing on behalf of the state discom requested for two months time to file the reply.

The Commission observes that NPCL has submitted the reply.

The Commission grants two months time to the State Discom from the date of issue of this order.

The next date of hearing shall be intimated separately.

The Commission in its order dated 16.4.2014 directed:

“The Commission grants two months time to the State Discom from the date of issue of this order.

The next date of hearing shall be intimated separately.”

During the hearing the petitioner submitted that the circular regarding the System Loading charges dated 28.5.2001 and 1.1.2005 have been issued by UPPCL and not by the licensees.

He further submitted that as per Hon'ble Supreme Court in its judgments in the following cases:

1. UP Avas Vikas Vs UPPCL

2. Maa Vindhavasni Vs UPPCL
3. Sruti Paper Mills Vs UPPCL

Did not recognize UPPCL as the Distribution Licensee. So, the circulars issued by UPPCL are illegal and they cannot charge system loading charges as per the said circulars. The Commission has only approved system loading charges in September 2007.

The petitioner also submitted it is not clear under what provision of Electricity Act 1910, reforms Act 1999 and Electricity Act 2003 system loading charges are charged by the Commission.

Shri Amarjeet Singh Rakhra, counsel for the respondents submitted that Electricity Regulatory Commission is a Statute Court and should accept the limitation, whereby it is specified that no matter can be challenged after three year of the order, until unless there is some specific act regarding the limitation. As there is no specific act so the period specified in the limitation Act should be taken into account.

The respondent further submitted that the licensees are not bound to take express approval of the Commission on every matter. The Supply Act of 2002 has the provision of charging the System Loading Charges which was approved by the Commission post facto. It may be a procedural lacunae and procedural irregularity but it is not illegal. All procedures are handmade of justice and supply code and cost data book are procedures. The procedural irregularity can be cured, but illegality can not be. In 2007 the system loading charges are legitimized by the Commission. Had the Commission not approved the system loading charges in 2007, the system loading charges imposed earlier would have been illegal.

Shri A. S. Rakhra submitted that the Commission had post facto approved the Supply Act of 2002 which had the provision of charging the System Loading Charges. The Commission never directed anything contrary in this regard to

UPPCL. UPERC as a regulator never objected the levy of system loading charges. Thus the Commission had given the deemed approval for levying system loading charges.

The Commission finds that the circulars regarding the System Loading charges dated 28.5.2001 and 1.1.2005 issued by UPPCL were neither stayed nor rejected by the Commission and even Commission had post facto approved the Supply Act of 2002 which had the provision of charging the System Loading Charges and had issued Cost Data Book on 7th September 2007 having provision authorizing Discoms to charge System Loading Charges from the consumers.

This clearly indicates that the System Loading Charges realized by the DISCOMS from 14.1.2000 to 30.9.2007 by means of circulars dated 28.5.2001 and 1.1.2005 issued by UPPCL are not illegal and had deemed post facto approval of the Commission.

The petition is finally disposed off.

(I. B. Pandey)

Member

(Meenakshi Singh)

Member

(Desh Deepak Verma)

Chairman

Dated: 11.12.2014