

**BEFORE  
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW**

Present:

1. Shri Vijoy Kumar, Chairman
2. Shri Arun Sarkar, Member

IN THE MATTER OF:

UPPCL's circular rescinding Load Factor Rebate.

AND

IN THE MATTER OF:

M/s Paliwal Alloys Pvt. Ltd, A-11, UPSIDC, Industrial Area, Ramghat Road,  
Aligarh.

**Petitioner**

and

1. The Chairman & Managing Director, U.P. Power Corporation Limited, Shakti Bhawan, 14 Ashok Marg, Lucknow.

**Respondent**

2. The Chief General Manager (Commercial) U.P. Power Corporation Limited, Shakti Bhawan, 14 Ashok Marg, Lucknow.

**Respondent**

3. The Executive Engineer, Electricity Urban Distribution Rfural Division II, UP Power Corporation Limited, Laldiggi, Aligarh

**Respondent**

## Order

### Paliwal Alloys (P) Ltd. Vs. UPPCL

1. M/s Paliwal Alloys (P) Ltd., Aligarh filed a petition on 14<sup>th</sup> October 2003 challenging the UPPCL circular, regarding load factor rebate issued vide its letter No. 521HC/Tariff dated 11<sup>th</sup> September, 2003, under the provisions of UP Electricity Reforms Act, 1999 in conjunction with the provisions of UP Electricity Supply Code 2002 however, the petition did not mention the specific clause or section under which it was filed. Therefore, the petitioner was requested vide letter No. 2785 dated 30<sup>th</sup> October 2003 to quote the relevant provisions of the Reforms Act and the Supply Code under which the petition has been filed to ascertain the maintainability of the petition.
2. Meanwhile, the petitioner filed a writ petition (No. 5430(MB) of 2003) on the above matter before the Hon'ble High Court on 24<sup>th</sup> October, 2003, which was disposed of by the Hon'ble High Court in following manner:

*“As the Commission has become functional, we, therefore, for balancing the equities between the parties, direct that the petitioner may approach the Commission by moving an application for expeditious disposal of the reference or the application for interim relief and if such an application is moved, the Commission shall consider and decide the application for interim relief forthwith, preferably within a period of two weeks from the date a certified copy of this order is produced before it. In the meantime, till the disposal of the application for interim relief or till the disposal of the statutory reference, whichever is earlier. The petitioner's electricity connection would not be disconnected for non-payment of the dues in question.*

*With the aforesaid observations, the petition is disposed of finally.”*

3. The petitioner sent a copy of the order through a registered mail dated 8<sup>th</sup> November 2003, which was received in the Commission on 12<sup>th</sup> November 2003. Complying the directive of the Hon'ble High Court, the Commission listed the case on 25<sup>th</sup> November 2003. However, at the hearing on the above date, neither of the parties was present to place their case. The Commission again listed the case for 8<sup>th</sup> December, 2003 on which the respondents argued their case and also submitted relevant papers. Although, there was an adjournment application from the counsel of the petitioner but the same has not been taken in cognizance as the signature on the application is strikingly different from the signature of the counsel on the Vakalatnama of the petition. Further, since the Hon'ble High Court had set a timeframe of two weeks for the disposal of the matter, the Commission has proceeded to decide the matter on merit.

4. It is the case of the petitioner that the impugned UPPCL circular No. 521HC/Tariff dated 11<sup>th</sup> September, 2003, which specifies that the load factor rebate shall be available to the consumers only if they restrict their actual demand to contracted demand, amends and is contrary to the tariff orders declared under section 24 of the Electricity Reforms Act, 1999 (for short Act) and therefore, is not sustainable in law. To further corroborate his contention, the petitioner has cited the case of M/s Lohia Machines Limited Vs. State of UP, wherein the division bench of Hon'ble High Court has laid down that no amendment can be made in the tariff order issued by the Commission under the provisions of section 24 of the UP Electricity Reforms Act, 1999 and therefore, any circular issued by the licensee, to the effect of amending the tariff order, has no meaning in the eyes of the law. On the basis of the above, it is the contention of the petitioner that the impugned circular dated 11/9/2003 is liable to be set aside as the same is in contravention of the provisions of tariff order dated 1/9/2001 as well as 22/10/2002.
5. The respondents, at the time of hearing, argued that the circular dated 11/9/2003 has been issued on the basis of the letter of the chairman UPERC (Letter No. UPERC/211/chairman/2003 dated August 28, 2003) addressed to CMD, UP Power Corporation Limited, which reads as under:

*“It has come to the notice of the Commission that some field officers are misinterpreting the tariff schedule and not complying with the tariff order issued by the Commission with regard to load factor rebate applicable to HV-2 consumers, Some consumers using power in excess of contracted load are being given the benefit of rebate on the amount exceeding the contracted load to which they are not entitled. The purpose of this rebate is to improve the load factor in relation to the contracted demand provided load is restricted to the level of contracted demand. In the event that the maximum demand of a consumer exceeds his contracted demand in any month the tariff order has specified a penalty clause providing for the levy of an additional charge for such excess demand. The tariff order clearly states that this additional charge shall be without prejudice to the licensee’s right to take such other appropriate action, as may be deemed necessary to restrain the consumer from exceeding his contracted demand. This is important from the viewpoint of system planning. If consumers exceed contracted demand at will with no deterrent action from the licensee it will become very difficult for the licensee to implement system planning. Therefore, if a consumer has drawn more than the contracted load he should be penalized for this and not encouraged to repeat it.”*
6. After considering the submissions and arguments placed by the parties, it is clear that the only controversy involved in the petition is whether UP Power Corporation Limited can issue a circular contrary to the relevant

provisions of the tariff ordered declared under section 24 of the Act as well as the rate schedule notified by the licensee under the same section.

7. The actual demand recorded in any consumer's meter, billed under HV-2 rate schedule, in the context of load factor rebate is relevant and regulated by clause 8 and clause 9 of the HV-2 rate schedule. Relevant sections of these clauses from applicable rate schedule dated 1/9/2001 is reproduced below:

**“Clause 8(a)**

*Load Factor Rebate – For all consumption in excess of the defined kVAh per kVA (of contracted demand) a rebate is provided on the energy charges for such excess consumption, as given in the tables below. This rebate will be allowed on monthly basis and to the consumers not having any dues towards the UPPCL*

1. *For Consumers getting Unrestricted Power Supply*

<i>Description</i>	<i>Rebate on Energy charges</i>
<i>For all consumption over 360 kVAh per kVA up to 432 kVAh per kVA per month</i>	<i>10% on the consumption over 360 kVAh/kVA</i>
<i>For all consumption over 432 kVAh per kVA up to 576 kVAh per kVA per month</i>	<i>15% on the consumption over 432 kVAh/kVA</i>
<i>For all consumption in excess 576 kVAh per kVA per month</i>	<i>20% on the consumption over 576 kVAh/kVA</i>

2. *For Consumers getting Restricted Power Supply*

<i>Description</i>	<i>Rebate on Energy charges</i>
<i>For all consumption over 300 kVAh per kVA up to 360 kVAh per kVA per month</i>	<i>10% on the consumption over 300 kVAh/kVA</i>
<i>For all consumption over 360 kVAh per kVA up to 480 kVAh per kVA per month</i>	<i>15% on the consumption over 360 kVAh/kVA</i>
<i>For all consumption in excess 480 kVAh per kVA per month</i>	<i>20% on the consumption over 480 kVAh/kVA</i>

**Clause 9(a)**

*For Excess Demand- If the maximum demand of the consumer in any month exceeds the contracted demand such excess demand shall be charged at an additional rate of Rs.200/- per kVA per month over the normal rate. This additional charge shall be without prejudice to the UPPCL's right to take such other appropriate action as may be deemed necessary to restrain the consumer from exceeding his contracted demand.”*

The relevant section of HV-2 rate schedule in the tariff order dated 22/10/2002 is identical to the one mentioned above with a slight change in the percentage of rebate, which has no bearing on the merit of the case, and therefore, is not being reproduced here.

8. It is undisputed that the excess drawl of power over and above the contracted demand in any month by a consumer not only strains the power system of the licensee but it also distorts the quality characteristic of the power system. It may even cause disruption in continuity of supply to other consumers. Rampant over-drawls of power above contracted demand by consumers can create a situation wherein the entire system planning of the licensee is likely to go haywire and will eventually go on to affect the grid stability. It is with this consideration that clause 9(a) of the HV-2 rate schedule empowers UPPCL to take appropriate action as may be deemed necessary to restrain the consumer from exceeding his contracted demand at will.
9. The tariff orders dated 1/9/2001 and 22/10/2002, as ordered in accordance with section 24 of the act and which comply with all the requirements of the Act and UP Electricity Regulatory Commission (Conduct of Business) regulations 2000, thus gives discretion to UPPCL to take appropriate action to dispirit and discourage consumers from drawing excess power than what has been contracted by them. The only requirement, for use of such a discretion by UPPCL, is that the action of UPPCL ought to be just, fair and reasonable
10. However, before putting the circular on the test of being just, fair and reasonable, it would be prudent to have a look at the circular, the relevant portion of which is reproduced below, and deliberate certain other associated issues

*उक्त विषय पर सूचित करना है कि कतिपय मामलों में क्षेत्रीय अधिकारियों द्वारा उपभोक्ताओं के बिलों में लोड फैक्टर रिबेट ऐसी अवस्था में अनुमन्य किया गया है जबकि उनकी वास्तविक माँग अनुबन्धित भार से अधिक रही है। नियमानुसार उपभोक्ता अनुबन्धित विद्युत भार से अधिक विद्युत भार प्रणाली से लिए जाने के लिए अधिकृत नहीं है और ऐसी अवस्था में उनसे इस अधिक भार के लिए दण्ड स्वरूप **एक्सेस डिमाण्ड चार्ज** आरोपित किए जाने का प्राविधान निहित है। अतः इस प्रकार की परिस्थिति में उपभोक्ता के बिलों में **लोड फैक्टर रिबेट** अनुमन्य किया जाना उपयुक्त नहीं है।*

Unless the above restriction is imposed through the discretionary power conferred upon UPPCL, under the ambit of UPPCL's right to take such other appropriate action as may be deemed necessary to restrain the consumer from exceeding his contracted demand, the consumers are likely to exceed contracted demand at will in order to garner the load factor rebate. In such a situation, the consumer drawing power in excess of contracted demand indulges in breach of contract on the one hand and

also claims "Load Factor Rebate" on the other. Such a benefit cannot be countenanced either in law or in equity. The additional charge for excess power drawn over and above the contracted demand, as provided in clause 9(a) of the HV-2 rate schedule of respective years, is not a sufficient deterrent to stop this practice and the consumer cannot be permitted to be benefited by way of load factor rebate if he indulges in a drawl beyond his contracted demand.

11. It is also pertinent to mention here that Uttar Pradesh Electricity Supply Code 2002, under its clause 4.66.1(d), empowers the licensee to disconnect the supply of any consumer if the consumer is using the energy in a manner so as to endanger the service lines, equipment, electric supply mains and other works of the licensee. Therefore, in order to keep the system operation in a stable manner, the licensee can resort to even disconnection whereas, in the present case, the consumer is being denied from merely load factor rebate, through the impugned circular, even when he is endangering the licensee's system by drawing in excess of his contracted demand. It is abundantly clear from the above that the consumer does not have an entitlement of load factor rebate, when he is exceeding his contracted demand, as he is not only indulging in breach of contract but he is also endangering the licensee's system.
12. Therefore, we are of the opinion that UP Power Corporation Limited has exercised its power, while issuing the circular specifying that load factor rebate shall not be available to the consumers having actual demand more than the contracted demand in any month, under the ambit of tariff orders and clause 9(a) of HV-2 rate schedules. Further, this circular has been issued in a non-discriminatory manner for all consumers on whom load factor rebate is applicable and is based on technical considerations of the system. Therefore, UPPCL has used its discretion, as provided in clause 9(a) of the respective tariff orders in a just, fair and reasonable manner. It also requires mention here that the findings of LML case is not applicable in the present matter as the circular dated 11/9/2003 has been issued under the discretionary power conferred upon UPPCL under the tariff orders, as discussed above, and hence is in accordance with rather than in contravention of the tariff order, as was the case in LML matter.
13. The petition is, accordingly, dismissed.

(Arun Sarkar)  
Member

(Vijoy Kumar)  
Chairman

Dated: 15<sup>th</sup> December, 2003