

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

Present:

1. Shri Vijoy Kumar, Chairman
2. Shri P.N. Pathak, Member
3. Shri R.D. Gupta, Member

IN THE MATTER OF:

Constitution of the Committee under section 128 of Electricity Act, 2003 to study the specifications and contracting systems adopted by the State Government owned Distribution Companies for procurement of material/equipments as well as to examine the procedure adopted for ensuring adherence to the standards of quality, safety, continuity and reliability of service by licensees and advise improvement

**ORDER**

The State Advisory Committee, a statutory body under section 87 of Electricity Act, 2003, which has been mandated to advise the Commission, in pursuance of section 88, on

- (i) major questions of policy;
- (ii) matters relating to quality, continuity and extent of service provided by the licensees;
- (iii) compliance by licensees with the conditions and requirements of their license;
- (iv) protection of consumer interest; and
- (v) electricity supply and overall standards of performance by utilities

in its 6<sup>th</sup> meeting held on 29<sup>th</sup> August, 2007 raised the issue of quality control of equipment and stressed that owing to poor quality material /equipment there are

frequent breakdown and unnecessary expenditure on maintenance/replacement, the cost on all of which is then passed through to retail consumers through the annual revenue requirement. Figures were quoted and substantiated through report that on all India basis the transformer damage rate is 2% as compared to a very high figure of 30% in the state of Uttar Pradesh. The Committee also called the attention to the contracting system of UPPCL wherein contractors often sub-contract the work to petty contractors, potentially effecting quality of work adversely. The committee members urged the commission that since it has a mandate to protect consumer interest, it should call for regular reporting of quality and contracting procedures, the Committee also suggested that in order to ensure quality control the first step would be to examine the specifications for various equipments and to see whether the equipment so ordered conform to specified standard and are likely to deliver establish norms of performance standard and safety.

In view of above advise/suggestion of the Advisory Committee and also various news paper reports flashing poor upkeep/maintenance of equipments adversely affecting the reliability and quality of supply as well as almost regular safety hazards, the Commission cautiously but carefully examined its own role to enter into the domain of equipment quality control within the four walls of the Electricity Act, 2003. But before discussing the relevant provision of 2003, it would be proper to touch upon the directive issued by the Commission in respect of transformer failure rate and the response of the licensee in this respect. Leave aside the rate of transformer failure; the licensees have not even bothered to submit information regarding this despite categorical directive of the Commission in this respect. Para 3.21 of tariff order 2004-05 is noteworthy in this respect and is being reproduced:

*“The Commission had also asked the details regarding transformer failure rate in response to which UPPCL has submitted details for transmission wing stating that details for distribution would be submitted separately. However, the Commission has not received any report regarding distribution transformer failure rate. The commission is aware that transformer failure rate carries a real significance for distribution sector due to its alarmingly higher failure rates on a regular basis. **Further, it is in the notice of the Commission that the information is readily available at various levels of***

***licensees. Non-submission of this report is tantamount to concealing the information, which cannot be accepted.”***

The Commission again directed through its tariff order 2004-05 the licensees to submit distribution transformer rate on quarterly basis. In response to the same, the licensees submitted information for first three quarter of 2005-06 and the range of transformer failure rate was shown as hovering between 3% to 6%. However, the Minutes of Meeting, issued by the Managing Director, UPPCL, held on 26<sup>th</sup> June, 2007 chaired by Hon'ble Energy Minister, Uttar Pradesh, as placed before the Commission by one of the members of State Advisory Committee, exhibit a completely different picture. The relevant portion of the minutes is reproduced below:

*“ऊर्जा क्षेत्रों एवं डिस्कॉम में क्षतिग्रस्तता अत्यधिक है तथा प्रदेश में परिवर्तकों की क्षतिग्रस्तता 30 प्रतिशत है तथा देश की औसत क्षतिग्रस्तता 2 प्रतिशत से कहीं अधिक है। ..... इस मद में कारपोरेशन को लगभग रू0 120 करोड़ का व्यय वहन करना पड रहा है।”*

Accordingly, it is abundantly clear that either the licensees are not willing to submit the information regarding equipment quality control despite categorical directive of the Commission or the information submitted by them in this regard is merely an attempt to mislead the Commission. This is a serious matter and in fact touches the periphery of estoppel. The trite saying of Lord Keynon, that a man shall not be permitted to “blow hot and cold” with reference to the same transaction or insist, at different times, on the truth of each of two conflicting assertions according to the promptings of his interest, is available for reference in law. Such a situation is unacceptable to the Commission and it cannot remain a mute spectator to such grossly contradicting claims of the licensee with respect to an activity, which is at the nucleus of quality, continuity and reliability of service by licensees.

Having stated the factual position and the recommendation of State Advisory Committee, the Commission examined its role to enter into the domain of equipment quality control which directly affects the quality, continuity and reliability of service by licensees, within the framework of Electricity Act, 2003. Although there is no express power given to the Commission for examining the quality control of the equipments

under section 86 of the Electricity Act, 2003 however, section 86(1)(i) mandates the Commission to specify or enforce standards with respect to quality, continuity and reliability of service by licensee. The Commission has also been envisaged as custodian of the conditions of license and Act as well as a proactive watchdog of consumer interest and performance standard achieved by utilities in various sections of Electricity Act, 2003 by way of express provisions (sections 19, 24, 50, 57, 128, 129, 142, 146) and also on the basis of advise rendered by the State Advisory Committee in pursuance of section 88 of Electricity Act, 2003. These powers conferred by the Act on the Commission for enforcing continuity and reliability of supply; monitoring of license conditions; and protection of consumer interest have to be seen along with necessary implications to make these powers effective. Hon'ble Supreme Court, in its various judgments chiefly in **ITO Cannanore Vs. M.K. Mohammad Kunhi** has held that express grant of statutory power must be seen as carrying by necessary implication the authority to use all reasonable means to make such grant effective. Accordingly, if it is an admitted position of UPPCL that transformer failure rate is as high as 30% and the upkeep of equipments is making the consumers bleed then the Commission is constrained to investigate the issue of equipment quality control, in face of conflicting reporting, as it forms the core of quality and reliability of supply.

Having established the jurisdiction of the Commission to look into the issue of equipment quality control as it directly affects the quality continuity and reliability of supply, the Commission would also like to reproduce the first and foremost responsibility that has been cast upon the distribution licensee by way of section 42(1) of Electricity Act, 2003:

*"It shall be the duty; of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provision contained in this Act."*

If the up-keep of licensees equipments is in such a condition viz distribution transformers failure rate of 30% against an average of 2% nation wide (as per their own report) then the only possible inference is that the licensees in the State are violating the legislative intent at will, which most certainly requires the Commission to intervene otherwise the Commission would be lacking in discharge of its own responsibility. In view of aforesaid situation, the Commission decides to invoke section 128 of Electricity Act, 2003 thereby

constituting an Investigating Authority to investigate the issue of quality control of the licensee under the terms of reference given to it, as discussed in the later part of this order, and report to the Commission. The relevant portion of section 128(1) is reproduced for reference:

*“The Appropriate commission may, on being satisfied that a licensee has failed to comply with any of the conditions of license or a generating company or a licensee has failed to comply with any of the provisions of this Act or the rules or regulations made thereunder, at any time, by order in writing, direct any person (hereafter in this section referred to as “Investigating Authority”) specified in the order to investigate the affairs of any generating company or licensee and to report to that Commission on any investigation made by such Investigating Authority”*

Accordingly, after being satisfied that by poor upkeep/maintenance/procurement of electrical equipments, the State Government owned licensees have failed in complying the provisions of Electricity Act, 2003, the Commission, in pursuance of section 128 read with section 86(1)(i) of Electricity Act, 2003 and on the strong advise of State Advisory Committee in its 6<sup>th</sup> meeting, constitutes a committee of five members with an objective to study the specifications and contracting systems adopted by the State Government owned distribution companies for procurement of material/equipments as well as to examine the procedure adopted for ensuring adherence to the standards of quality, safety, continuity and reliability of service and advise improvement .

The five members of the Committee are:

<b>SL. No.</b>	<b>Name and Department</b>	<b>Designation</b>
1.	Dr. S. C. Srivastava Dean of R&D & Professor Electrical Engineering Department, IIT, Kanpur	Chairman
2.	Shri Arun Director (Distribution) UP Power Corporation Limited, Lucknow	Vice Chairman
3.	Shri A. K. Srivastava Director (Distribution) UP Electricity Regulatory Commission, Lucknow	Member (Rep. UPERC)

4.	Shri Vijai Pal Singh Director (Electrical Safety) Government of U.P., Lucknow	Member (Rep. Electrical Safety)
5.	Shri Awadesh Kumar Verma President, UP Vidyut Upbhokta Parishad Lucknow	Member (Rep. Consumer)

The Committee would undertake the following tasks:

- i. Examine the existing standards of quality and safety.
- ii. Examine the specifications and contracting systems for transformers and other major equipments and the procedure followed by the licensees in ensuring the same.
- iii. Suggest improvements in equipment specifications, contracting systems and procedures.
- iv. Suggest a system for regular monitoring of quality of equipment by the licensees.
- v. Study the adherence to prescribed safety measures in the execution of work and suggest improvements.

The committee will submit its report to the Commission within 2 months from the date of its constitution.

(R. D. Gupta)  
Member

(Vijoy Kumar)  
Chairman

Dated : 1<sup>st</sup> October,2007  
Place : Lucknow