

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Petition No. 63SM of 2023

Quorum

1. Shri Raj Pratap Singh, Chairman
2. Shri Vinod Kumar Srivastava, Member (Law)
3. Shri Sanjay Kumar Singh, Member

IN THE MATTER OF:

Non-compliance of Commission's UPERC (Consumer Grievance Redressal Forum) Regulations, 2022

Respondent:

The Chairman, Uttar Pradesh Power Corporation Ltd. 7th Floor, Shakti Bhawan, 14, Ashok Marg, Lucknow- 226001.

Present in the hearing

1. Shri M. Devaraj, Chairman, UPPCL
2. Shri D. C. Verma, SE (RAU), UPPCL

ORDER

(Date of Hearing- 11.05.2023)

1. The Commission has promulgated UPERC (Consumer Grievance Redressal Forum) Regulations, 2022 which were notified on 21.07.2022 and was published in the official gazette on 03.09.2022. The Regulation 3.1 of the aforesaid Regulations is reproduced below:

"3.1 Distribution Licensee may, establish and make operational forum at different levels in accordance with the Electricity (Rights of Consumers) Rules 2020 read with these Regulations within 60 (Sixty) days from the date of notification of these regulations. ---"

2. Regulation 3.1 explicitly states that CGRFs shall be established within 60 days from the date of notification of UPERC CGRF Regulations. However, even after 6 months, there was hardly any progress and with old CGRFs winding down and new CGRFs not coming, the consumers were left in lurch with their disputes. Hence, the Commission was constrained to initiate Suo - Moto Proceedings in the matter.

3. The Commission in its order dated 31.03.2023 directed Chairman, UPPCL to be present during the next hearing and to submit the timelines in which CGRFs at different







- will be made fully functional across the State. The Commission directed that a unique code shall be allotted to each CGRFs along with the details of Chairman and Member.
4. A written submission dated 10.05.2023 was furnished before the Commission vide which it was submitted that UPPCL/ Discoms have taken all necessary measures to adhere to the Commission's directives. As per details provided in Clause 3.2 of the regulations, following was submitted regarding company/Zone level forum: -
- Members nominated by the licensees have been selected, with the exception of a few zones, where eligible prosumers are not available.
 - Necessary forms and details to the Hon'ble Commission for approval of independent members.
 - Upon approval for independent members, the formation of CGRF will be completed.
5. It was also submitted that the Discoms are facing difficulties in appointing independent members and eligible prosumers for the CGRF in compliance with the Regulations. According to the Regulations, the eligibility of independent members for Company/Zone/Circle level CGRF is that they "*shall be a person who is or has been a civil servant but not below the rank of ADM*". Meeting this criterion, defined in the Regulations, is proving to be a challenge for Discoms. Additionally, eligible prosumers are not available in certain Zone/Circle/Division/Sub-Division areas. Accordingly, a request has been made to the Commission relax this provision and permit the appointment of any class-I officer or equivalent officer as independent member. Further, if eligible prosumers are not available at any level, then other consumers may be allowed to be appointed. During the hearing Chairman, UPPCL apprised the Commission regarding above constraints.
6. The Commission observes that progress has been made in ensuring that members of CGRFs at Company and Zonal levels are appointed. The appointment of CGRFs at these levels will at least ensure that the mechanism becomes functional and aggrieved consumers can approach the CGRFs, at these levels, until CGRFs at lower levels are established and made functional.
7. The Commission observes that in regard to the appointment of Members at Circle and other levels, difficulty is being faced by Discoms particularly for nomination of independent Member and prosumer. As per the Regulation, for appointment of prosumers as member of CGRF, the eligibility criteria is based on the contracted load which varies for each level. At sub-division level the minimum contracted load of more than 2 KW, at division level the minimum contracted load of more than 5 KW and at circle level the minimum contracted load of more than 10 KW is provided in the

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Regulations. As a result, the licensees are finding it difficult to identify prosumers to meet this criterion.

8. The Commission, under its power to remove difficulty provided in Regulation 9 of the UPERC (Consumer Grievance Redressal Forum) Regulations, 2022, allows that applications for appointment as Members of CGRF at levels other than Company and zone level can be sought from prosumers irrespective of load. Further, Discoms shall make constructive efforts to encourage prosumers to apply and become a member of CGRF so that it becomes operational.
9. As far as the criterion of “civil servant but not below the rank of ADM” is concerned the benchmark should be lowest pay scale of ADMs and civil servant. Also, Hon’ble Supreme Court at various instances (State of Gujarat Vs Raman Lal Keshav Lal, (1980) 4 SCC 653: 1981 SCC (L&S) 34: AIR 1981 SC 53: 1980 Lab IC 1167: (1980) 3 SLR 407) has clarified that the true test for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the person holding a post under it. The relevant para of the Order of Hon’ble Supreme Court is provided below:

“The true test for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the person holding a post under it. The existence of such relationship is dependent upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages and remuneration. The relationship of master and servant may be established by the presence of all or some of the factors referred to above in conjunction with other circumstances.”
10. In view of the above, considering the observations of the Hon’ble Supreme Court and the benchmark limit as provided in para 8 above, the licensee may identify the officers fulfilling both the aspects.
11. As per Regulations 3.6 of UPERC (Consumer Grievance Redressal Forum) Regulations, 2022 Minimum of three members shall constitute the quorum. However, no proceeding will take place in absence of Chairman of the forum and the nominated member of the Commission. Therefore, although licensees are unable to identify prosumers as members of the CGRF, the CGRFs may be made functional as long as the quorum is there, as per the provisions of Regulation.

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12. While parting with the Order, the Commission takes note of the efforts that have been made to make CGRFs operational at company and zone level. The Commission also takes cognizance of the commitment of Chairman UPPCL that CGRFs at circle level will also be made functional by the end of May. However, as the CGRFs are being made operational at company and zone level and gradually at circle level, it is directed as below:

- a. Where the CGRFs at circle level are operational and CGRFs at sub-division and division level have not been established yet, the complaints received at sub-division and division level CGRFs shall be forwarded to circle level CGRFs till the time the entire system of CGRFs becomes operational.
- b. Where the CGRFs at circle level are not operational and CGRFs at sub-division and division level have not been established yet, the complaints received at sub-division, division and circle level CGRFs shall be forwarded to zone level CGRFs till the time the entire system of CGRFs becomes operational.

13. The Commission also directs, till forums are established at sub-division, division and circle level, the function of these forums shall be taken up by forum where the complaints are being forwarded as per (a) or (b) above. Accordingly, nature of complaints that can be made at sub-division, division and circle level as provided in Regulation 3.12 of UPERC (Consumer Grievance Redressal Forum) Regulations, 2022 shall be registered by respective CGRF where the complaint is being forwarded.


(Sanjay Kumar Singh)
Member


(Vinod Kumar Srivastava)
Member


(Raj Pratap Singh)
Chairman

Place: Lucknow

Dated: 25.05.2023

