

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the Matter of:

Suo-moto proceeding initiated by the Commission for non-compliance of the Commission's directions issued vide the Commission's Order dated 06.07.2022 & 20.07.2022 pertaining to non-payment of penalty due w.r.t. delay in release of new LT connections.

And

In the Matter of:

Managing Director,
Uttarakhand Power Corporation Ltd.,
Victoria Cross Vijeta Gabar Singh Urja Bhawan,
Kanwali Road, Dehradun.

...Respondent

Coram

Shri D.P. Gairola	Member (Law) /Chairman (I/c)
Shri M.L. Prasad	Member (Technical)

Date of Order: April 10, 2024

ORDER

This Order relates to the 'Suo-moto proceeding initiated by the Commission for non-compliance of the Commission's directions issued vide the Commission's Order dated 06.07.2022 & 20.07.2022 pertaining to non-payment of penalty due w.r.t. delay in release of new LT connections'.

2. The Commission vide its letter dated 28.07.2023 issued a 'Show Cause Notice cum Notice for Hearing under Section 142 read with Section 146, Section 149 and Section 170 of the Electricity Act, 2003' and decided to initiate *suo-moto* proceeding for non-compliance of the Commission's directions issued vide the Commission's Order dated 06.07.2022 & 20.07.2022 pertaining to non-payment of penalty due w.r.t. delay in release of new LT connections.

3. The Commission in its aforesaid Show Cause Notice has highlighted period-wise non-compliance made by the distribution licensee since July, 2009. The same is being reproduced below:-

“

(A) Penalty pending for the period from July 2009 to March 2019

Whereas, earlier the Commission vide its Order dated 10.04.2019 in the matter of 'Payment of Penalty as per sub-section 3 of Section 43 of the Electricity Act, 2003 and sub Regulation 12 of Regulation 5 of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007/sub-Regulation 14 of Regulation 5 of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013, Commission's directions issued vide Order dated 05.07.2016, 09.05.2017 and Commission's directions issued vide Order dated 17.01.2018' had taken a serious view on the lackadaisical approach of the licensee towards timely release of new LT connections and had decided to allow UPCL to deposit the due penalty amount of Rs. 18,82,28,272/- as on March, 2019 on quarterly basis starting from FY 2019-20 to be recovered in 6 years i.e. by end of FY 2024-25. Accordingly, the schedule of recovery of the amount of Rs. 18,82,28,272/- was issued to UPCL.

Whereas, UPCL filed Petition before the Commission for 'Petition to relax/waive or vary the provisions of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 whereby the penalty was imposed in the matter of delay in release of new LT service connections for the period of F.Y. 2008- 09 to F.Y. 2018-19 and upto Aug-2019' and subsequently the Commission in its Order dated 06.07.2022 in the matter of Petition No. 30 of 2020 & Petition No. 20 of 2020 held that the time extensions bestowed to UPCL for LT penalty for the period upto March, 2019 cannot be allowed for perpetuity and accordingly, the stay granted to UPCL vide Order dated 07.01.2020 on operation of Commission's Order dated 10.04.2019 cannot be further extended and accordingly directed that:-

“

- (a) The stay on the operation of the Commission's Order dated 10.04.2019 is vacated and the licensee shall deposit the total penalty in the manner and time schedule as stipulated in the aforesaid Order and any non-compliance in this regard shall be liable for strict action under Act/Regulations.*

(b) UPCL shall not approach the Commission for further time extension/review /relaxation/waiver of LT penalty for the period prior to 31.03.2019.”

Whereas, UPCL has till date not complied with the directions issued in the Commission’s Order dated 06.07.2022 and not deposited the due penalty for the period July, 2009 upto March, 2019 in the manner and time schedule as stipulated in the Commission’s Order dated 10.04.2019.

Whereas, taking a considerate view on account of the unprecedented situation arisen due to Covid-19 pandemic the Commission allowed a period from 01.03.2020 to 31.08.2021 as the period of exemption pertaining to delay in release of new LT connections and categorically directed UPCL to submit periodical reports including penalty for delay in release of connections, if any.

(B) Penalty pending for the period from September 2021 to June 2022

Whereas, the scenario of delay in release of new LT connections continued in the UPCL’s network during the period September, 2021 to June, 2022 and accordingly, the Commission vide its Order dated 20.07.2022 ordered that:-

“

- (1) UPCL shall deposit penalty amount of Rs. 1,66,06,020/- (detailed at Para 6 above) for the period from September, 2021 to June, 2022, before the Commission latest by 30.09.2022.
- (2) LT penalty amount, if any, for the period from July, 2022 onwards shall be deposited by UPCL alongwith the monthly LT Penalty Reports of the respective month.”

(C) Penalty pending for the period from July 2022 to March 2023

Whereas, despite Commission’s categorical directions for deposition of penalty for the period September, 2021 to June, 2022 and for the periods July, 2022 onwards, UPCL continued to default in this regard and has failed to deposit the penalty amount rather has attempted to circumvent the issue by depositing a token penalty of Rs. 5,00,000/- against the LT penalty for the month of July, 2022 and August, 2022 vide its letter dated 06.10.2022.

Whereas, on examination of the monthly division-wise reports for the period July, 2022 to March, 2023, it has been observed that the distribution licensee has not made honest efforts in reducing the delay in release of new LT connections and total 3147 no. of delayed connections with penalty amounting to Rs. 2,11,93,880/- were observed during the aforesaid period.

Whereas, on examination it was observed that the penalty amount computed by the distribution licensee for the period July, 2022 to March, 2023 was computed after considering certain reasoning which do not qualify for exemption in the eyes of Regulations. Moreover, UPCL for FY 2023-24 has till date submitted reports for the months of April, 2023 and May, 2023 without accompanying the due penalty amount for the delay in release of new LT connections.

Whereas, Regulation 3.3.3 (19) of UERC (The Electricity Supply Code) Regulations, 2020 categorically provides that the distribution licensee shall submit to the Commission monthly division-wise report on delay in release of new LT connections and shall deposit penalty along with the said report, accrued on account of the defaults/delays occurred in the connection released, during the period.

Whereas, the aforesaid non-compliances of the distribution licensee portrays its nonchalant approach towards compliance towards the provisions of the Act, Regulations & directions of the Commission issued from time to time.

Whereas, non-compliance of the provisions of the prevailing Regulations and Commission's directions is a punishable offence in accordance with provisions of Section 142 read with Section 146 and Section 149 of the Electricity Act, 2003.

*Therefore, taking cognizance of the lackadaisical and nonchalant approach of the distribution licensee towards compliance of provisions of Regulations and directions in the above-mentioned matter, the Commission has decided to initiate a suo-moto proceeding in the matter and directs you to explain why action under Section 142 read with Section 146 and Section 149 of the Electricity Act, 2003 be not taken against you for non-compliance of the provisions of prevailing Regulations and directions of the Commission from time to time. Further, you are directed to explain why action under the provisions of Section 170 of the Electricity Act, 2003 i.e. Recovery of penalty payable, as it were an arrear of land revenue, be not taken against the UPCL. Reply in this regard is required to be furnished under affidavit before the Commission latest by **30.08.2023**.*

*Further, the Commission has decided to hear the matter on **05.09.2023 at 11:30 AM** in the Commission's office and you are directed to appear personally before the Commission along with Director (Operations) and Chief Engineers of all four Zones on the above stipulated date and time.*

4. In compliance to the Commission's Show Cause Notice dated 28.07.2023, UPCL vide its letter No. 4109 dated 30.08.2023 submitted that:

“

1. *That, Hon'ble Commission vide letter no. UERC/5/Tech/714(3)/2023-24/472 dated 28.07.2023 has issued the Show cause notice under section 142 read with section 146, Section 149 and Section 170 of the Electricity Act-2003 and has directed UPCL to submit the reply to the show-cause notice under affidavit till 30/08/2023.*
2. *That, Hon'ble Commission has issued show cause notice for non compliance of the orders of the Commission dated 06.07.2022 & 20.07.2022 pertaining to non-payment of penalty due w.r.t delay in release of new LT connections as per following:-*
 - a) *On Penalty pending for the period from July-2009 to March- 2019, Hon'ble Commission directed UPCL to deposit the penalty amount from July 2009 to March 2019 of Rs 18.82 Cr. = (Rs 19.93 Cr. - Rs 1.11 Cr. already deposited) in 24 equal quarterly instalments of Rs 78.42 Lacs each spread over six years from FY 2019-20 to FY 2024-25.*
 - b) *On Penalty pending for the period from Sept-2021 to June- 2022, Hon'ble Commission directed UPCL to deposit penalty amount of Rs. 1,66,06,020/- for the said period.*
 - c) *On Penalty pending for the period from July-2022 to March- 2023- Hon'ble Commission directed UPCL to deposit the monthly penalty along with the reports from July-2022 onwards.*
3. *It is to humbly submit before the Commission that UPCL is continuously facing the financial stress. As per the financial statements of FY 2020-21 and FY 2021 -22, the accumulated loss of UPCL is to the tune of Rs 3851.01 Cr. and Rs. 4064.43 Cr. respectively. Moreover, it is in the kind notice of Hon'ble Commission that due to unprecedented rise in power demand in Year 2022-23 post Covid recovery and early onset of summers, the power purchase rates sky rocketed due to demand-supply gap in the open market. State gas based power plants remained in closure due to exorbitant gas prices in domestic and international markets due to Geo-political situation that arose on account of Russia-Ukraine war. UPCL tried its level best to provide uninterrupted power supply to the consumers of the State by procuring power from Energy Exchanges and through Short/Mid Term tenders from DEEP Portal. Thus, the high power purchase cost has created a substantial ACS-ARR gap for the FY 2022-23 and accumulated losses till FY 2022-23 has rose to approx Rs. 5288.07 Cr. that has severely dented financial condition and liquidity position of UPCL making it difficult to pay complete dues of GoU in lieu of ED/Green Energy Cess/Water Cess/ Royalty etc. Moreover, UPCL does not get any kind of subsidy from State Government.*
4. *That, UPCL has deposited a penalty amount totaling to Rs. 2.80 Cr. against the delayed LT connections from FY 2009-10 till date. UPCL from time to time has always tried to clear its dues and penalty levied, to the extent possible as permitted by its financial conditions and has no intention to defy the orders of Hon'ble Commission.*

5. It is to bring to the kind notice of Hon'ble Commission that based on the reports of RAPDRP-A, NSC module, the average time taken in release of LT connections vis-a-vis different types of SOP timelines has been tabulated below for last five financial years starting from FY 2018- 19, FY 2019-20, FY 2020-21, FY 2021-22, FY 2022-23 and for FY 2023-24 till July-2023.

Type of SOP	SOP Timeline in Days	2023-2024 upto July-23		2022-23		2021-22		2020-21		2019-20		2018-19	
		No. of released connections.	Avg. Days	No. of released connections.	Avg. Days	No. of released connections.	Avg. Days	No. of released connections.	Avg. Days	No. of released connections.	Avg. Days	No. of released connections.	Avg. Days
No Extension	15	32725	4	94764	3	83473	4	86464	5	88600	7	162707	17
Extension of bay at 33/11 kV substation	45	-		3	91								
11 kV without independent feeder	60	77	80	208	85	177	72	133	88	131	79	125	82
Extension of Distribution on mains	60	2089	66	5909	60	5273	60	4764	61	4205	59	7587	83
New 11/0.4 kV substation	90	1028	112	2326	97	1954	95	1770	84	2337	81	1882	94
11 kV independent feeder	90	3	14	7	186			4	80	3	74	1	108
33 kV including line	180	3	102	11	96	5	57	5	106	5	149	1	282
New 33/11 kV substation	180	5	198	15	131	59	125	69	91	52	134	102	136
132 kV and above including line						1	172						

From the above, it can be observed that during the last five financial years, the average time taken in release of LT connections where no extension of mains is required has substantially improved from an average of 17 days to 3-4 days. This shows that UPCL has intention for timely release of connections and is making sincere efforts towards it. It can be easily analyzed that, no major constraints exist in releasing connections that do not require extension of mains and are thus released within the SOP timelines. It can be observed that major delay is in release of connections where extension of LT mains, construction of 11 kV or higher lines and construction of 11/0.4 KV and higher

substations are required. The practical constraints and factors exist in these cases such as RoV constraints, land disputes, crop in the field, consumer facility not ready etc. Moreover, the field staff and officers remain occupied with multitude of activities miss on the collection of supporting evidences to substantiate the reasons for delay.

Analyzing the pending connection reports, it has also been observed that, in many divisions, the connections of Jal Sansthan/Jal nigam/Irrigation tube wells have been delayed beyond SOP timelines where construction of 11 KV lines and substations are required that have attributed to huge amount of the penalty to the respective divisions. On discussing the delay of the same, in most of the cases it has come to the notice that delay was attributable to non completion of works at consumer premises. During past, survey was also done by the senior officials of the department in some divisions to find out the reasons for delay and in majority of cases the reason attributable was ROW issue. The same was also submitted to Hon'ble UERC in the petition filed earlier to waive off the penalty for the period of F.Y. 2008-09 to F.Y. 2018-19 and up to Aug-2019.

UPCL's top functionaries are carrying out periodic meetings with field units and have instructed them to come up with a comprehensive work plan to deliver the LT connections within SOP timelines in cases where extension and construction of lines and substations is required. It is envisaged that UPCL shall be able to reduce the number of delayed connections to a considerable extent in due course of time.

In light of above facts, it is again humbly submitted that UPCL shall come up with a comprehensive work plan to deliver all the connections within stipulated timelines.

It is humbly submitted that considering the severe financial condition of UPCL and challenges faced by it to provide un-interrupted power supply to the consumers of the State, the balance penalty due from UPCL may kindly be relaxed and waived off.

In light of above, Hon'ble Commission is humbly requested to sympathetically consider the facts enumerated above and not to take any action under Section 142 read with Section 146, Section 149 and Section 170 of the Electricity Act, 2003."

5. Thereafter, on request of UPCL, the Commission decided to re-schedule the hearing in the matter from 05.09.2023 to 15.09.2023.
6. On the scheduled date of hearing i.e. 15.09.2023, the Petitioner reiterated its earlier submissions vide letter dated 30.08.2023 and pleaded before the Commission to sympathetically consider the facts enumerated above and not to take any action under Section 142 read with Section 146, Section 149 and Section 170 of the Electricity Act, 2003.

Commission's observations, views & directions.

7. On examination of the submissions of UPCL, following has been observed:-

- (1) It is observed that the general tendency of UPCL is to linger on issues and repeatedly seek time extensions/waiver/relaxations and file Petitions/Review Petitions. UPCL frequently goes into the state of hibernation in the matters pertaining to release of new LT connections and awakes from slumber only, when a reminder/show cause notice is served to it. This act of distribution licensee is highly unwarranted and uncalled for in these testing times when stakes are gradually rising high in the Discom Sector.
- (2) The Commission has shown a very considerate view towards the distribution licensee and has given ample opportunities for revalidating the calculated penalty upto March, 2019 w.r.t. delay in release of New LT connections. Infact, the Commission had already taken a very lenient view in its Order dated **10.04.2019** towards the distribution licensee in spite of its continued non-compliance of the provisions of the Act/Regulations pertaining to the Universal Service Obligation. Over and above, the Commission has allowed ample time-extensions in the matter yet the response of UPCL remains the same.
- (3) The Commission is of the view that the time extensions bestowed to UPCL for LT penalty for the period upto March, 2019 cannot be allowed for perpetuity and the justifications put forward by the distribution licensee for its inability to make payment of the due penalty amount portrays that UPCL is trying to circumvent the matter and make frivolous justifications in support of non-payment of the due penalty amount.
- (4) The Commission in its Order dated 06.07.2022 had categorically held that *"...UPCL shall not approach the Commission for further time extension/review/relaxation/waiver of LT penalty for the period prior to **31.03.2019**."* However, despite the Commission's strict direction in the aforesaid Order that no consideration would be done for the LT penalty for the period prior to 31.03.2019 yet UPCL has again resorted to seeking relaxation from the Commission narrating its weak financial position.

- (5) The same goes true for the penalty due for the period September 2021 to June 2022 and thereafter for the penalty due for the period July 2022 to March 2023. In fact, it appears that the distribution licensee has resorted to depict its weak financial position as a guard for pleading before the Commission for exemption of due penalty amount which is laid down in the Electricity Act, 2003 Section 43 (3) "Duty to Supply on request" which provides that:-

"

- (3) *If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."*

Thus, by not depositing the due penalty, the distribution licensee is not only violating the provisions of Section 43 (3) of the Electricity Act, 2003 but also is violating the provisions of UERC Regulations which seconds the provisions of the parent statute i.e. Act.

- (6) The Commission on examination of reports for FY 2022-23 and FY 2023-24 (upto February, 2024) has observed that not only the no. of delayed LT connections have increased but also the amount of LT penalty required to be deposited by the distribution licensee have increased in comparison to previous years. In this regard, it is pertinent to highlight that LT penalty reports have a major financial implication on distribution licensee, yet UPCL is not paying attention on the reports and making incomplete submissions without proper justification for reasons of delay.
- (7) With regard to the LT penalty amount for FY 2022-23, the Commission in its letter dated 10.11.2023 had observed that UPCL sought whole/partial LT penalty exemption for 267 cases with LT penalty amount of **Rs. 43,72,430/-** (*the LT penalty amount of Rs. 43,72,430/- is over and above the LT penalty of Rs. 2,52,88,915/- as submitted by UPCL for FY 2022-23*). Further, the Commission had also observed that only 29 LT penalty cases against the 267 cases amounting to **Rs. 5,25,930/-** qualified for exemption on account of 'consumer demand'. Accordingly, the Commission vide its aforesaid letter directed UPCL to furnish its compliance in the matter.

However, despite giving three-time extensions for furnishing information/justification for LT penalty amount of **Rs. 38,46,500/-** (Rs.

43,72,430 - Rs. 5,25,930), UPCL has practically failed to comply with the directions of the Commission.

Furthermore, it has also been observed that UPCL vide its letter dated 06.10.2022 had deposited a token penalty of Rs. 5,00,000 for FY 2022-23 (July, 2022 & August, 2022).

Thus, the total LT penalty amount to be paid against delay in release of new LT connections for FY 2022-23 now amounts to **Rs. 2,86,35,415/-** (Rs. 2,52,88,915 + Rs. 43,72,430 - Rs. 5,25,930- Rs. 5,00,000).

- (8) On preliminary examination of the reports for FY 2023-24 (upto February, 2024), it has been observed that the submissions were full of anomalies viz. non-submission of LT penalty reports for month of November, 2023, etc.
- (9) As per the provisions of the Electricity Act, 2003, non-payment of dues against penalty shall attract action under the provisions of Section 170 'Recovery of penalty payable under Act' of the Electricity Act, 2003 which provides that *"...Any penalty payable by a person under this Act, if not paid, may be recovered as if it were an arrear of land revenue."*

However, taking a considerate view, the Commission gives one final opportunity to the distribution licensee for depositing the penalty due against delay in release of new LT connections. In light of the above, the Commission directs that: -

- a. **Penalty pending for the period from July 2009 to March 2019-** UPCL shall ensure deposition of outstanding penalty provided in Commission's Order dated 10.04.2019 amounting to **Rs. 15,68,56,900/-** (due as on **01.04.2024**) before the Commission latest by **30.06.2024** and further ensure deposition of future installments as per installment plan provided in aforesaid Order.
- b. **Penalty pending for the period from September 2021 to March 2022 (FY 2021-22)-** UPCL shall deposit Penalty pending for the said period amounting to **Rs. 1,24,95,385/-** before the Commission latest by **30.06.2024**.

- c. **Penalty pending for the period from April 2022 to March 2023 (FY 2022-23)**- UPCL shall deposit Penalty pending for the said period amounting to **Rs. 2,86,35,415/-** before the Commission latest by **30.06.2024**.
- d. **Penalty for the period from April 2023 to February 2024 (FY 2023-24)**- Till date, UPCL has furnished LT penalty reports for FY 2023-24 upto February, 2024 with total penalty amount as **Rs. 3,58,25,685/-** (*amount subject to scrutiny*). UPCL shall deposit the said amount before the Commission latest by **30.06.2024**. Further, UPCL is required to ensure submission of monthly LT penalty reports for March, 2024 along with the requisite amount.
- e. **Penalty for the period from April 2024 and onwards-** UPCL shall ensure **regular & timely submission of monthly LT penalty reports of all divisions before the Commission along with the division-wise requisite penalty amount.**

For any non-compliance in this regard, Director (Operations) and Director/Head of the Commercial wing along with Chief Engineers of respective zones shall personally be held responsible for the same and appropriate action in this regard would be initiated in accordance with the provisions of Act/Rules/Regulations.

- (10) Non-compliance of the aforesaid directions shall attract coercive/penal action against the distribution licensee under the provisions of Section 170 of the Electricity Act, 2003.

Ordered accordingly.

(M.L. Prasad)
Member (Technical)

(D.P. Gairola)
Member (Law)/ Chairman (I/c)