

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi

Appeal No. 214 of 2006

Dated this 06th day of June, 2007

Coram : Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member

IN THE MATTER OF:

- 1. M/s. Shree Dhanvarsha Steels (Pvt.) Ltd.**
Industrial Area,
Jasodharpur, Kotdwar,
District Pauri Garhwal

 - 2. M/s. Poddar Alloys (Pvt.) Ltd.**
Industrial Area, Jasodharpur,
Kotdwar,
District Pauri Garhwal
- ... Appellants

Versus

- 1. Uttaranchal Electricity Regulatory Commission**
80, Vasunt Vihar, Phase-I,
Dehradun

 - 2. Uttaranchal Power Corporation Ltd.**
Urja Bhawan, Kanwali Road,
Dehradun
- ... Respondents

Counsel for the Appellant : Mr. M. L. Lahoty, Advocate
Mr. Paban. K. Sharma and
Ms. Poonam Lahoty, Advocates

Counsel for Respondent No.1 : Mr. Manmohan, Sr.
Advocate for M/s. Prabjot
Singh Bhullar and
Mr. Shashwat Kumar,
Advocates for UERC

Counsel for Respondent No.2 : Mr. M. G. Ramachandran,
Advocate
Ms. Taruna Singh Baghel,
Advocate, Mr. Anand
K. Ganesan, Advocate for
UPCL

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

Introduction :

This appeal is directed against the tariff order, passed by the Uttaranchal Electricity Regulatory Commission (UERC/ Commission for short), the respondent No.1 dated 12.07.2006 for the period from 01.04.2006 – 31.03.2007, to the extent it relates to the rate schedule-7 (RT-7) applicable to steel units fixing energy charge at the rate of Rs.2.35 per kVAh and demand charge at the rate of Rs.350 per kVA of the monthly billable demand for steel units. The appellants are two private limited companies with their factories situated at Jasodarpur within the State of Uttaranchal, now Uttarakhand. The challenge to the rates applied to the steel industries is basically on two grounds:

- (i) In fixing of tariff for the steel units the UERC has discriminated between the steel units and the other HT industries in as much as the rates applicable to the HT industries are much lower namely Rs.125 per kVA as demand charge and Rs.1.90 per unit as energy charge,
- (ii) The UERC was wrong in unrealistically projecting a heavy increase in demand for electricity by steel units on account of anticipated migration from neighbouring states and increasing tariff for steel units on that ground.

Facts:

2. It will be proper to give a brief resume of the facts immediately preceding the tariff order in question. On 08.09.2003, the UERC declared its first tariff order for 2003-04 wherein tariff for all steel units and all HT industries having a contract load above 100 BHP/75 KW/88 kVA was fixed at the rate of Rs.125/- per kVA (demand charge) and Rs.1.90 per kVAh energy charge. This tariff was continued in the next year 2004-05. The respondent No.2, Uttaranchal Power Company Limited, applied for amendment in the prevailing tariff fixed by the order dated 08.09.2003 so far as it related to the consumers of Power Intensive Industrial Units (PIU) (only steel units). The respondent No.2 pleaded with the UERC that an abnormal demand in the electricity was expected and that the steel units were heavy consumers of electricity and that unless tariff for the steel units was increased it would not be possible to meet the consequent

steep rise in the power purchase cost. The respondent No.2 submitted that a large number of steel units were trying to establish their units in Uttaranchal on account of which it was projected that the contracted demand of electricity which was 59.7 MVA at the end of financial year 2003-04 was expected to go up to 310 MVA. The UERC accepted the projected increase in the demand for power by the steel units and observed that this additional power would be available at an additional cost. The UERC therefore ordered, on 24.08.2004, that tentatively on provisional basis, till the other inputs were available, effective from 01.09.2004 to 31.03.2005 tariff for energy charge for PIUs would be amended from 1.90 per unit to 2.50 per unit, the demand charge from Rs.125 per kVA to Rs.350 per kVA and MCG from 3.50 to 6.50 per kVA. This rate was repeated in the tariff order dated 25.04.2005 for the year 2005-06. The appellant preferred an appeal against the tariff order dated 25.05.2005, being Appeal No. 125 of 2005 before this Tribunal. On 04.10.2005, UERC, finalised the tariff rates for steel units prescribing Rs.350 per kVA as demand charge and Rs.2.35 per kVAh as energy charge. The appellant again filed an appeal No.177 of 2005 before this Tribunal challenging the increase in the tariff on the ground that increase in demand was not as projected and the same was being met from the available sources of supply to the state and no extra cost was required to be incurred by the Uttaranchal Power Corporation Ltd., respondent No.2 (UPCL) and therefore, the revision in the tariff was an error. The two appeals, No. 125 and 177 of 2005, were disposed of vide

a judgment dated 02.06.2006. The judgment held that concern of the Commission regarding rise in tariff for all consumers on account of anticipated higher demand by PIUs caused by influx of new units from neighbouring states was not unjustified, but that the revised tariff for PIUs should be based on average pooled cost of power purchase and not the marginal cost. The judgment also held that PIUs could be treated as a separate category. The Tribunal directed as under :

- “a) the commission while carrying out the truing up exercise during the next tariff revision shall re-determine the tariff for PIUs on the basis of pooled average cost of power purchased from all sources for all categories of consumers for the period covered by the orders dated April 25, 2005 and October 4, 2005;*
- b) The effect/benefit of the truing up exercise shall be given to the appellants in the next tariff revision*
- c) While re-determining the tariff the commission shall ensure that no tariff shock is caused to any other category of consumers in consonance with the spirit of the Electricity Act, 2003 and the Tariff Policy.”*

3. For the year 2006-07, the UERC passed the tariff order on 12.07.2006 which is under challenge in this appeal. The UERC again fixed tariff at the same rates namely Rs.350 per kVA as demand charges and Rs.2.35 per kVAh as energy charge. The impugned order inter alia noted the response of the state

government specifically recommending that the tariff of steel units may be kept at par with industrial tariff so that there was no discrimination between them and heavy industrial consumers. The UERC, considered the question of tariff for steel units along with the tariff for the HT industries in Para 4.1.1.7.2 of the tariff order. The same is reproduced below :

“4.1.1.7.2. HT Industry

The Petitioner has envisaged an incremental load of 50 MW in FY-06 and 110 MW in FY-07 on account of three large Industrial estates likely to come up in Pant Nagar, haridwar and Selaqui. Accordingly, for the year 2006-07, the Petitioner has forecast a demand of 980.26 MUs for this category, which comprises of consumption of 326.75 MUs for steel units and 653.51 MUs for General HT industry.

In the wake of influx of industries for availing various concessions existing in the State, the industrial demand is highly unpredictable and for want of any better option, the Commission has accepted the Petitioner’s projection of consumption of industrial consumers, except steel units, for 2006-07. For Steel units the Petitioner has projected requirement of only 326.75 MUs when the actual consumption up to January 2006 is already reported to be 363.56 MUs. The Commission has estimated the requirement of existing steel units based on their contracted load and the

load factor for the group. Accordingly, their consumption for 2006-07 works out to 560.46 MUs.

In its petition dated 31.05.2004, filed before the Commission, the Petitioner had submitted that on account of low industrial tariff prevailing in the State, large number of Steel furnaces were migrating from adjoining States. It had been stated in that petition that as many as 81 such units had already applied for power connections and their total additional requirement had been projected at 350 MVA. The Petitioner has now requested that the tariffs for Steel units should be brought at par with that for HT Industries. The Hon'ble Appellate Tribunal of Electricity has also directed re-determination of tariff for these units in accordance with direction contained in their Order dated 02.06.2006. Bringing down the tariff for Steel units as proposed by the Petitioner recreates the conditions prevailing prior to Commission's above Order dated 24.08.2004. Therefore, for estimating correct requirement of Steel Industry, the Commission is using the projections made by the Petitioner in its petition dated 31.05.2004. Some of these original applicants have since been given power connections and after adjusting their requirement this projected sales figure works out to 1887.43 MUs, which is being allowed. Thus, the total projected sale to steel units, including new ones, works out to 2447.89 MUs for the year 2006-07 against the Petitioner's projection of only 326.75 MUs. For reasons not

disclosed in this Petition, the Petitioner has under projected the requirement of Steel units and the same has been corrected using the Petitioner's own earlier projections."

4. Thus the respondent No.2 projected the demand of steel units including the new ones to 2447.89 MUs for the year 2006-07, although the respondent No.2 in its ARR had projected only a demand of 326.75 MUs. The UERC should have resolved the load demand projection made by the licensee by seeking clarification where needed. The UERC projected the power purchase requirements in the year 2006-07 at 8284.68 MUs. The UERC considered the total availability of power supply to the State from firm sources and observed that even after projections, entire energy available from firm sources, the state would have substantially unmet requirements every month ranging from 99.20 MUs to 261.81 MUs, the total shortage being of 2230.36 MUs. The UERC estimated the power purchase cost for the respondent No.2 at Rs.1626.66 Crores.

5. Accordingly the UERC fixed the tariff separately for the HT industries (other than steel units) and for steel units as mentioned earlier.

Contentions of the parties and decision:

6. The above summary of the Impugned Order shows that the UERC, was led into passing the Impugned Order by two factors

namely the projected demand and availability of power. The appellant contends that the projected demand of power by steel units was totally erroneous.

7. The appellant also challenges the order on the ground that it discriminated against the PIUs (steel units) and the HT industries which the respondent No.2 should not have done keeping in view the policy of the state government in this regard. The UERC maintains that the steel units could not have been discriminated against but justifies prescribing two different rates for HT industries and steel units on the ground that the load factor for HT industries and steel units were so different that the effective rates for tariff would be same despite the aforesaid apparent difference in the rates applicable to the two groups.

8. Therefore, the two issues that have to be gone into by this Tribunal are: (1) whether the projected increase in demand for power by the steel units was correct and (2) whether effective tariff for HT industries and steel units were equal.

Issue No.1

9. According to the observations of the UERC, as reproduced above, on account of reduction in tariff as a result of the directions given by this Tribunal in its earlier judgment dated 02 June, 2006 a large number of steel units would migrate to the state and will raise demand for electricity. The UERC found that the projection made by respondent No.2 was incorrect.

Admittedly, this abnormal increase in demand or migration of steel units has actually not happened. By the time the appeal came to be heard figures for the consumption up to December 2006 were available and as per these figures the total consumption of the steel units consisting of arc furnace, induction furnace, rolling/re-rolling mills, mini steel plants added up to 320 MUs. This being the consumption for nine months the projected demand for twelve months would come to only 472 MUs. One major reason for absence of migration of steel units to Uttaranchal / Uttarakhand was the policy declared by the state government to discourage induction furnaces, rolling / re-rolling mills and ferro alloy units coming into the state. A letter from the Secretary of State of Uttaranchal to the respondent No.2 dated 19th June, 2006 has been placed on the record. As per this letter the respondent No.2 has been advised not to give any new connections to any induction furnace rolling/ re-rolling mills and Ferro alloys units so as to give effect to the policy of the State government to discourage these units coming into the state. On behalf of the UERC it is submitted that under section 43(1) of The Electricity Act 2003 distribution licensees are under obligation to provide electricity to all applicants within one month of the receipt of the application requiring supply. It is pleaded on behalf of the UERC that the respondent No.2 could not have complied with the request of the state government as non compliance with Section 43(1) of The Electricity Act 2003 attracted punishment under 43(3) of the Act. Be that as it may, the fact remains that the state government had pursued a policy

of discouraging steel units coming into the state. Further the UERC did not take into consideration the fact that even if a new steel unit intending to establish itself in Uttarakhand made a demand for a new connection the actual consumption would not immediately start. The actual consumption of electricity would start only after a unit established itself which could take about a couple of years. The UERC did not actually calculate the demand for power that would come into existence in the year 2006-07. It merely opined that on account of reduction of tariff for steel units the situation as it existed prior to the order of 24.08.2004 will be recreated and therefore the earlier projection of demand would have to be adopted. At the cost of repetition the following lines from the Impugned Order are reproduced below to understand the theory applied by UERC in projection of the demand of the steel units.

“Bringing down the tariff for Steel units as proposed by the Petitioner recreates the conditions prevailing prior to Commission’s above Order dated 24.08.2004. Therefore, for estimating correct requirement of Steel Industry, the Commission is using the projections made by the Petitioner in its petition dated 31.05.2004. Some of these original applicants have since been given power connections and after adjusting their requirement this projected sales figure works out to 1887.43 MUs, which is being allowed. Thus, the total projected sale to steel units, including new ones, works

*out to 2447.89 MUs for the year 2006-07 against the
Petitioner's projection of only 326.75 MUs."*

10. Thus the Commission has been lead more by apprehension than by any cogent analysis of data to meet the demand vis-à-vis the available sources of supply.

11. There is no denying the fact that if the demand projected by respondent No.2 had been taken into account the demand for electricity by the steel units would have been within the power available to the state in the period in question. The projection based on erroneous assumption of demand for PIUs, which was corrected subsequently by the licensee, should not have been considered by the UERC as basis for tariff formulation. The erroneous projection has increased the anticipated power purchase cost of the respondent No.2 which has affected the tariff for all consumers across the board. The projected demand itself being wrong the hike in tariff on that account has also to be held to be wrong.

Issue No.2 :

12. The second question is whether there is discrimination between the steel units and HT industries. The UERC, does not dispute the existence of the policy of the State Govt. to treat HT and PIU consumers at par. Nor does it claim that it does not have to give effect to the policy. The UERC in a press note

(Annexure A6 to the appeal), declared that average tariff for PIUs and that of HT industries had been brought at par. The UERC has taken the stand that effective tariff for HT industries and of the steel units is the same. In the reply to the appeal the UERC contends that the effective tariff for General HT Industries has been worked out on the basis of their group load factor of 25% as submitted by UPCL and for steel units on their group load factor of 70% as derived in order dated 24.04.2004 based on data submitted by UPCL. The learned Sr. counsel for the UERC, Mr.Manmohan, submitted his calculations for showing how the effective tariff for two classes namely of the HT industries and steel units were the same. The same is reproduced below :

Effective Tariffs for General HT Industry and Steel Industry in Tariff Order dated 12.07.06

	Demand Charge	Load Factor	Units/month	Effective Rate of Demand Charge
	(Rs. kVA/months)	(%)	(kVAh/month)	(Rs./kVAh)
General HT	125	25%	180	= 125 / 180 = 0.69
Steel Units	350	70%	504	= 350 / 504 = 0.69

	Effective Rate for			Power Factor	Effective Rate
	Demand Charge	Energy Charge	Total		
	(Rs./kVAh)	(Rs./kVAh)	(Rs./kVAh)		(Rs./kWh)
General HT	0.69	1.90	2.59	0.90	= 2.59 / 0.90 = 2.87
Steel Units	0.69	2.35	3.04	0.95	= 3.04 / 0.95 = 3.20

(* General HT tariff is also 3.20 but is charged 10% lower due to refund through tariff)

13. The appellant refutes the very claim of the load factor being 25% and 70% for the General HT industries and steel units

respectively. The Commission claims that the load factors for these two groups have been calculated from the data supplied by the respondent No.2. The learned counsel appearing for respondent No.2 denies that any such data was given by respondent No.2 to the respondent No.1 from which the load factor could be calculated as 25% and 70% respectively for the two groups as alleged by the UERC. The respondent No.2 contends that data regarding consumption of each individual unit was conveyed to UERC but that such data did not lead to this kind of conclusion.

14. The written submission of the appellant on the other hand says that from the data supplied by respondent No.2 as per CS3, CS4 statement for March 2006, the load factor for other HTs worked out to 32% and for PIUs to 55%. Further, the appellant says that CS3 and CS4 statements of UPCL for December 2006 shows that the load factor for other HT industries was 34% and of PIUs 51%. The CS3 and CS4 statements have also been filed by the appellant for cross verification. No mistake in this calculation has been pointed out by the UERC or by the respondent No.2. We are unable to say that the UERC has correctly calculated the load factors of HT industries and steel units. Nor is it correct to say that with correct load factors taken into account the effective tariff for HT industries and steel units have been equated by the impugned order. In fact, even going by the method of calculation of effective rate adopted by the UERC during the hearing, the rates proposed by the licensee (average of

the two rates i.e. one below load factor of 50% & the other above 50%) the effective tariff for the HT with load factor of 34% and steel units with load factor is also found to be of 55% within a difference of 10%.

15. The Commission has also ignored the fact that the cost to serve the general HT industries and PIUs which are being fed by the same 11 kV/33kV system being the same and the power factor and load factor for steel units assumed to be higher, there was no need to prescribe altogether different rates for the steel units.

16. We, therefore, consider the tariff as proposed by the licensee to be more reasonable than what has been fixed by the impugned tariff order.

17. The theory that load factor for steel industries is 70% and that of HT industries 25% or the plea that tariff has been so fixed keeping such load factor into consideration is entirely after thought. The same is clear on a bare perusal of the impugned tariff order. The licensee had made a proposal of a tariff design which took into account the load factor. It proposed, for steel units, fixed charges at Rs.200/- kVA and energy charges at Rs.1.90, kVAh & Rs.2.40/kVAh for load factors upto 50% and above 50% respectively. Similarly it proposed the same rates for the PIU industries for the corresponding load factors. The UERC, however, totally ignored the load factor and fixed the tariff for

steel industries uniformly at flat rate of Rs.300/-kVA as fixed charges and Rs.2.35 kVAh for energy charges regardless of load factor. For HT industries also the load factor was totally ignored and tariff fixed was Rs.125/-kVA as fixed charges and Rs.1.90 kVAh as energy charges. The then existing tariff rates had classified the HT units and steel units on the basis of load factors. HT units were charged on the basis of their load factor being below 50% and above 50%. The steel units were classified into three sub classes viz with load factor below 33%, upto 50% and above 50%. The tariff for the HT & PIUs could be equated on the basis of the respective load factors as has been done by the licensee in its proposal. All units with load factor above 50%, whether HT or PIUs should pay a higher tariff and those below 50% or below 33% should pay a comparatively lower tariff. UERC claims to have effectively equated the tariff for HT and PIUs by taking the load factor into consideration. But the irony is that while fixing the tariff the CERC has totally ignored the load factor and has prescribed the same rates for all units irrespective of the load factor. Here we may add that we are not able to verify the distribution of number of PIUs falling in each category of the load factor. Same is the case with the general HT industries.

18. The claim of having equated the tariff on the basis of load factor appears to be a mere deception. The further contention that the average load factors for HT and steel units were 25% and 70% respectively is an after thought to suit the calculation

offered by the UERC at the hearing. The sole purpose of doing so is to defeat the earlier direction of this court to re-fix the tariff which would have reduced the rates for the steel units. In fact the new rates now are substantially higher than the ones which were ordered to be reduced. For steel units upto 33% the earlier rates for energy charge was 1.90/kVAh where as they would now pay @ 2.35/kVAh and those upto load factor of 50% who were charged @ 2.20/kVAh would now pay @ 2.35/kVAh.

19. No one complained of any difficulty in dealing with staggered rates. The same method could be followed to extract a higher tariff from those having higher load factor. There was no need to work out an average load factor as there were no such necessity or demand. The declared intention of the UERC being to equate the tariffs for HT and PIUs, it could have accepted the proposal of the respondent No.2. The approach adopted has led to make PIUs with assumed 70% load factor to pay substantially higher tariff than that proposed by the licensee itself. On the other hand the tariff for the general HT industries has been effectively and patently reduced at the cost of the PIUs.

20. In view of the above, we consider it prudent to remit the matter to UERC to recompute the tariff for the steel units keeping in view our observations as above. We direct accordingly. On re-determination of tariff of steel units, the excess amount recovered should be adjusted in the bills for the following six months. Needless to mention, that in the process of re-determination, the

Commission should take the actual increase in demand for power by the steel industries rather than the hypothetical total power purchase cost and provide the consequent relief in the tariff in the truing up exercise in the ensuing tariff period.

21. Before parting we must comment that the Commission inspite of the judgment of this Tribunal of 02.06.2006 (supra) insisted to continue with the same high tariff for the steel units and for doing so it not only adopted an erroneous projection of demand but has also attempted to explain away the high tariff in the name of effective tariff. We deprecate this rigidity of the UERC in not seeing reason and in not complying with judicial discipline.

Pronounced in open court on this 06th July, 2007.

(Mrs. Justice Manju Goel)
Judicial Member

(Mr. A. A. Khan)
Technical Member

The End