

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

M/s Bhilangana Hydro Power Ltd.

Versus

Uttarakhand Renewable Energy Development Agency

.....Respondent

AND

In the matter of:

Representation of M/s Bhilangana Hydro Power Ltd. for REC Accreditation of Bhilangana-III project under Regulation 9 (3) of the UERC (Compliance of Renewable Purchase Obligation) Regulation, 2010

Coram

Shri Jag Mohan Lal

Chairman

Date of Order: June 12, 2012

ORDER

M/s Bhilangana Hydro Power Ltd. (hereinafter referred to as M/s BHPL) has filed representation before the Commission for resolution of issues arising due to delay in accreditation of its hydro project namely Bhilangana-III by Uttarakhand Renewable Energy Development Authority (UREDA), the State Agency in accordance with Regulation 9(3) of UERC (Compliance of Renewable

- Purchase Obligation) Regulations, 2010 (hereinafter referred to as RPO regulations).
2. Bhilangana-III is a 24 MW small hydro project located at village Ghuttu, Tehsil Ghansali, District Tehri Garhwal in the State of Uttarakhand. As submitted by the M/s BHPL, the Project was commissioned on 20.12.2011. Much before the commissioning of the project M/s BHPL, in accordance with RPO regulations, had applied for accreditation with UREDA through online process on 01.03.2011.
 3. M/s BHPL has submitted in its representation that although application was filed on 01.03.2011, the accreditation to the project was granted only on 08.02.2012 with a delay of more than 11 months from the date of filing of application. M/s BHPL further submits that in accordance with the RPO regulations of the Commission, the period provided for disposal of such application is only 30 days. According to the developer, the delay has caused appreciable financial loss to it on account of non-issuance of Renewable Energy Certificates (RECs) equivalent to the units generated by the project since the date of commissioning i.e. 20.12.2011 till 16.02.2012.
 4. M/s BHPL in its representation has further requested the Commission to direct that the project be made eligible for accreditation and issuance of RECs from the date of commissioning of the project/start of generation i.e. 20.12.2011. Further, the developer has also requested that direction may also be issued to Central Agency, NLDC (i.e. the REC issuing authority) for taking on record the revised date of accreditation and for necessary action accordingly so as to ensure that the developer is not put to financial loss on account of the reasons discussed hereinabove.
 5. A copy of the representation was send to UREDA on 28.02.2012 for seeking their comments/response in the matter. On 09.03.2012 UREDA submitted its reply vide which it has submitted copy of correspondences it had with various entities namely UPCL, PTCUL, SLDC etc. and also including the developer. In its reply, UREDA has stated that it disagrees with any indulgence delay on the part of the

State Agency in the matter. Copy of the aforesaid reply was also forwarded to M/s BHPL for submitting their response in the matter.

6. The Commission decided to give opportunity to representatives of both the parties to personally appear before Commission and plead their case on behalf of their organisations. Accordingly, a hearing was held on 01.06.2012 wherein representatives of both the parties presented their arguments in the matter before the Commission.
7. Having taken cognizance of the representation and also the subsequent submissions/replies submitted by both the parties in writing and also during the course of the proceedings, the Commission now examines the provisions of the RPO Regulations relevant in the matter. Regulation 9(3) of the Regulations under which the representation has been filed is reproduced below:

“9.3 A person aggrieved by the decision of the State Agency may approach the Commission for redressal within fifteen days from the date of receipt of communication of such decision and the Commission may pass order, as deemed appropriate.”

Based on the documents submitted in the matter, the Commission finds that accreditation was granted by the State Agency on 08.02.2012. Having aggrieved by this decision of the State Agency, M/s BHPL has filed a representation before the Commission on 23.02.2012. Since, the representation under Regulation 9(3) has been filed by the developer within the stipulated period as provided in the Regulations, the Commission decided to admit the representation and proceedings for resolution of the issue were initiated in the matter.

8. Before taking any view, the Commission now examines the provisions of the Regulations with regard to eligibility conditions and procedure for grant of accreditation to any eligible entity including small hydro/renewable projects. The Commission finds that Regulation 8.1 provides various eligibility conditions which are required to be fulfilled by a generating company engaged in generation of electricity from renewable energy sources. However, the Regulations do not lay down procedures including list of specific documents required to be submitted by

the applicant seeking for accreditation by the State Agency. However, Regulations do specify that procedure for grant of accreditation will be as framed by the State Agency. The Commission would discuss these eligibility conditions required for the purpose of accreditation in the following paragraphs of this Order.

9. A Renewable Energy Project under REC mechanism can be accredited if the project under consideration satisfies the conditions specified in Regulation 8.1 of UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 as hereunder:

- (a) *It has connectivity to the State network;*
- (b) *It does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Commission;*
- (c) *It sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase (excluding transmission charges) of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price; and*
Explanation: For the purpose of these regulations, "Pooled Cost of Purchases" means the weighted average pooled price at which the distribution licensee has purchased the electricity including the cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.
- (d) *It possesses the necessary infrastructure required to carry out energy metering and time-block wise accounting.*

10. Each of the above four conditions necessary for accreditation of the Applicant, M/s BHPL in this case, for availing RECs under the regulations are discussed hereinbelow:

(a) It has connectivity to the State network

Based on the submissions made by the developer, a Transmission Service Agreement (TSA) was entered between M/s BHPL and PTCUL (STU) on

25.10.2008 for evacuation of power from the project. This agreement validates the requirement of connectivity of the generator with the State network and the same was also communicated to UREDA by PTCUL vide its letter dated 27.08.2011. Also, copy of this agreement was submitted along with the application filed by M/s BHPL with UREDA on 01.03.2011. Since, fulfillment of this condition has not been contested by the State Agency either in its written submission or during the course of the hearing, the Commission is of the view that this provision of the Regulation has been complied with by the developer.

(b) It does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Commission.

The Commission takes cognizance of the application for accreditation submitted by M/s BHPL to the State Agency on 01.03.2011. It has been found that alongwith this application the developer had enclosed declarations and the relevant extract of the same is reproduced below:

"I have not entered in to any Power Purchase Agreement (PPA) and shall not enter into PPA to sell electricity generated from the proposed renewable energy generating station at preferential tariff determined by the Appropriate Commission for 24 MW of the capacity for which participation in REC scheme is availed."

Also, UREDA in its submission in the matter has informed that it has received a letter from UPCL on 08.09.2011 confirming that M/s BHPL has not signed any PPA with UPCL for sale of electricity proposed to be generated from the project on preferential tariff. Since, fulfillment of this condition has not been contested by the State Agency either in its written submission or during the course of the hearing, the Commission is of the view that this provision of the Regulation has been complied with by the developer.

(c) It sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase (excluding transmission charges) of such

distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price; and

Explanation: For the purpose of these regulations, “Pooled Cost of Purchases” means the weighted average pooled price at which the distribution licensee has purchased the electricity including the cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.

The Commission takes cognizance of the application for accreditation submitted by M/s BHPL to the State Agency on 01.03.2011. It has been found that alongwith this application the developer had enclosed declarations and the relevant extract of the same is reproduced below:

“I hereby also confirm that the electricity generated from the proposed renewable energy generating station shall be sold either to the distribution licensee at a price not exceeding the pooled cost of power purchase of such distribution licensee or to any other trading licensee or to an open access consumer at a mutually agreed price, or through power exchange.”

M/s BHPL was also issued a Letter of Intent (LoI) by UPCL on 18.11.2011 for purchase of power for the period 18.01.2011 to 29.02.2012. The relevant clause (iii) of the terms and conditions of this LoI is reproduced below:

“(iii) Being a renewable energy source, the tariff would be at APPC for FY 2010-11. M/s BHPL agreed to provide a discount of 1 (one) paise on APPC rate of year 2010-11.”

This clause clearly indicated that M/s BHPL was selling power at a tariff not exceeding APPC rate applicable for the financial year and has been fulfilling the above eligibility condition of the Regulations in this regard. Further, UPCL also issued another LoI on 29.02.2012 to M/s BHPL for purchase of power for the period March & April 2012 on similar terms and conditions at a tariff not

exceeding APPC rates applicable for the respective financial year. Subsequently, M/s BHPL had entered into PPA with UPCL on 26.12.2011 and 29.05.2012 keeping the tariffs, period of sale of power and other terms & conditions provided in the aforesaid LoIs dated 18.11.2011 & 29.02.2012 respectively.

UREDA in its written submission has submitted that since only on 06.02.2012 M/s BHPL had informed that it has entered into PPA with UPCL (for sale of power at a tariff not exceeding APPC rate). Hence, the State Agency has submitted that the date of receiving the complete information should be considered as 06.02.2012 and the period of 30 days for grant of accreditation should be counted from this date. Even during the course of the hearing, UREDA has contended that in the absence of any information with regard to PPA having signed between the developer and beneficiary, the State Agency would not be aware of the terms and conditions including the tariffs at which the power is being sold to the beneficiary. On this contention of UREDA, the Commission wanted to know that whether the State Agency had informed M/s BHPL, at the time of application or thereafter prior to the date of commissioning of the project, about the necessity of submission of PPA document. UREDA admitted that it had informed the developer, prior to the date of commissioning, about the requirement of PPA to be submitted to the Agency. Since, during the course of the hearing UREDA could not produce the documentary evidence in this regard before the Commission, it was allowed three days time to submit the same in support of its claim. In accordance with the above directions, UREDA made a submission dated 02.06.2012 before the Commission. On examination of the same it has been found that the State Agency had informed M/s BHPL vide its letter dated 18.10.2011 about the requirement of submission of PPA it had entered with the beneficiary. The Commission takes note of the fact that this requirement of submission of PPA was informed to the developer after lapse of almost 10 months from the date of application i.e. 01.03.2011.

UREDA during the course of hearing also submitted before the Commission that entering into PPA with the beneficiary is compulsorily required

to be submitted by the applicant seeking for accreditation under REC mechanism. UREDA has also asserted in its written submission and also during the course of hearing that Detailed Procedures approved by CERC for Central Agency (NLDC) under REC mechanism provide for submission of PPA by the applicant. On this contention of the State Agency that PPA is compulsorily required to be entered into by the developer with any beneficiary and submission of the copy of the document to the State Agency is mandatory, the Commission would like to refer to Regulation 8.1 (c) of RPO regulations and condition 3.5(e) of Central Agency's detailed procedure. The relevant extract of these provisions are reproduced below:

Regulations 8.1(c) of RPO regulation

"It sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase (excluding transmission charges) of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price...."

Condition 3.1(e) of Central Agency's Detailed Procedure

"Copy of off-take/Power Purchase Agreement or Undertaking"

From the emphasised portion (ii) of the above provision of the Regulation, it is amply clear that if the developer sells power to any other licensee or to an open access consumer at a mutually agreed price or through power exchange at market determined price then the condition of selling power at a price not exceeding pooled cost of power purchase (APPC) may not compulsorily applicable. Moreover, in case of the developer selling power through power exchange at market determined price, possibility of any such agreement/PPA can be ruled out. Therefore, the Commission is of the view that requirement of having PPA, for the purpose of accreditation, cannot be compulsory condition for eligibility of the applicant seeking for accreditation under REC mechanism. However, where the applicant/renewable energy generator has entered into PPA

with any licensee/trader/open access consumer etc., it should submit the same alongwith its application for accreditation to the State Agency. The views of the Commission are corroborated by the above condition stipulated in the detailed procedure of Central Agency wherein option has been provided to either submit copy of PPA or submit undertaking in this regard according to the alternative modes for sale of power opted by the applicant as per eligibility criteria provided in the Regulations.

(d) It possesses the necessary infrastructure required to carry out energy metering and time-block wise accounting.

Based on the submissions made by the developer, a meeting was held between M/s BHPL and PTCUL on 04.11.2011 and copy of the Minutes of Meeting has been submitted alongwith the representation. On examination of the same, fulfillment regarding infrastructure facility for time block-wise metering and accounting has been demonstrated. Also, copy of the aforesaid minutes of meeting was sent to UREDA by M/s BHPL vide its letter dated 05.11.2011. Existence of necessary infrastructure required to carry out energy metering and time-block wise accounting at the generator has also been endorsed by State Load Despatch Centre (SLDC) of the State and the same was communicated to UREDA by SLDC vide its letter dated 09.11.2011. Since, fulfillment of this condition has not been contested by the State Agency either in its written submission or during the course of the hearing, the Commission is of the view that this provision of the Regulation has been complied with by the developer.

11. After having analysed the four main conditions required for eligibility of the applicant for accreditation under REC mechanism in accordance with the Regulations, the Commission would like to point out that although Regulation 8.1 of RPO Regulations specify these conditions, however, the Regulations do not explicitly specify documentary evidence required in support of fulfillment of these conditions and Regulations also do not provide whether any information/ document is required to be submitted to the State Agency in support

of the fulfillment of these conditions by the developer. Notwithstanding the existence of any such enabling provisions, the Commission while analyzing each of the above conditions in the above paragraphs has found that except for condition provided in Regulation 8.1(c) all the other conditions namely Regulation 8.1 (a), (b) & (d) have been fulfilled prior to the date of commissioning/start of generation i.e. 20.12.2011 and the relevant documentary evidence have been found in the matter. Also the documents in respect of fulfillment of these conditions have been received by the State Agency and accordingly, fulfillment of these conditions by the developer has not been contested by the State Agency in its reply to the representation in the matter. Based on the above, the Commission considers these conditions to have been fulfilled by the applicant.

12. Regulation 8.1(c) specify that "It sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase (excluding transmission charges) of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.....". In respect of this condition, State Agency has submitted before the Commission that PPA (entered between the developer and the beneficiary) in support of the fulfillment of this condition was not submitted prior to the date of commissioning of the project and was only submitted on 06.02.2012 and hence, the State Agency has asserted that the accreditation can be awarded from the aforesaid date only. M/s BHPL in its submission has asserted that since undertaking in this regard was submitted by it alongwith the application on 01.03.2011, it had fulfilled requirement of this condition necessary for accreditation. The Commission does not consider it appropriate to decide as to which party was at fault, it would be futile to consider submission of the developer that the deficiency, in this regard, should have been pointed out by the State Agency at the time of application and the submission of the State Agency that the developer was informed to submit copy of the PPA for fulfillment of

accreditation procedure on 18.10.2011, after lapse of more than ten months after the date of application by the developer.

The Commission would not be averse from expressing its discontentment on the part of M/s BHPL that when the documentary evidence in the form of LoI/PPA, in support of the fulfillment of the condition as provided in Regulation 8.1(c) for sale of power, was available with the developer, then why the developer who otherwise has been prompt in fulfilling the conditions necessary for eligibility for accreditation did not submit copy of the same to the State Agency. The developer should have been aware that since it was selling power to a distribution licensee and was not selling its generation through power exchange at market determined price, the PPA becomes a possible and a relevant document in support of its claim of selling the power.

Conclusively it appears that the above situation was such that both the parties were not absolutely clear about the requisite information/documents required to be submitted alongwith the application. The Commission is of the view that although Regulations were in place when the application was received by the State Agency, however, no statutory "Procedure" as per Regulation 9 of RPO Regulations existed then at the time of application i.e. March 2011, which could have been the guiding procedure for all the stakeholders including the applicant, the State Agency and for other entities of the State power sector. These "Procedure" have recently been laid down in the month of May 2012.

13. Under these circumstances, the Commission is of the view that with the existence of undertaking provided by M/s BHPL along with its application (for accreditation) to the State Agency on 01.03.2011, the condition of selling power to distribution licensee at a price not exceeding pooled cost of power purchase (APPC) for the financial year stands fulfilled. Further, the fulfillment of this eligibility condition can be validated from LoI dated 18.11.2011 (for period from 18th Nov 2011 to 29th Feb 2012) and LoI dated 29.02.2012 (for the period March & April 2012) issued by UPCL/distribution licensee to the developer. The

- Commission also takes cognizance of UPCL letter dated 10.05.2012 informing the Commission that the licensee has been purchasing power from M/s BHPL (Bhilangana-III Project) at APPC rates for the period from 16.12.2011 to 30.04.2012.
14. Based on the above and considering this to be a maiden process under REC mechanism in the State and also in the absence of clear cut guidelines in the form of statutory "Procedures" for application for accreditation in accordance with the RPO Regulations, the Commission allows eligibility of the Project for grant of accreditation under REC Mechanism w.e.f. the date of start of generation/commissioning of the project i.e. 20.12.2011 and accordingly, directs the State Agency (UREDA) for taking necessary action for grant of accreditation from the aforesaid date. The Commission also issues directions to SLDC and NLDC for taking on record the revised date of accreditation and take necessary action to ensure that Renewable Energy Certificates (RECs) are issued from the aforesaid date.
 15. As directions have also been issued to SLDC & NLDC for taking necessary action in the matter, a copy of this Order may also be sent to these entities for necessary compliance.

The representation in the matter is accordingly disposed off.

(Jag Mohan Lal)
Chairman