

BEFORE UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Dispute between M/s Bhilangana Hydro Power Limited (Bhilangana-III) and Uttarakhand Power Corporation Ltd., regarding obligation to make payment of additional transmission charges for augmentation work.

AND

In the matter of:

M/s Bhilangana Hydro Power Limited

Petitioner

VERSUS

Uttarakhand Power Corporation Ltd

Respondent

Coram

Shri Jag Mohan Lal Chairman

Date of Order: 3rd August 2012

ORDER

This Petition has been filed under Sections 86(1)(e), 86(1)(f) and 86(1)(k) of the Electricity Act, 2003 wherein the petitioner namely M/s Bhilangana Hydro Power limited (BHPL) is contesting the wrongful imposition of liability by the Respondent namely Uttarakhand Power Corporation Ltd (UPCL) for payment of transmission charges pertaining to the 220 kV transmission network beyond the delivery point (other than those paid by UPCL to PTCUL annually as per UERC Tariff Order).

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 Petitioner the Project was commissioned on 20.12.2011. According to the Petitioner, after prolonged discussions it agreed to sell power to the Respondent for FY 2011-12 at a discounted rate of one paisa minus the Average Pooled Power Purchase Cost (APPC) for the financial year 2010-11.

3. On 26.12.2011, Power Purchase Agreement (PPA) was signed between the Petitioner and the Respondent. Under this PPA, UPCL agreed to purchase power from the Petitioner for the period from 18.11.2011 to 29.02.2012.

4. Under the clause 2(e) of the PPA, all the transmission charges beyond the delivery point i.e. the HT Bus of Bhilangana III hydro project were to be paid by UPCL. The relevant clauses of PPA state as under :

"2 General Terms and Conditions

c. Delivery point

For sale of energy, the Delivery Point shall be HT bus of Bhilangana-III HEP i.e. Interconnection with PTCUL.

.....

e. Transmission and Distribution Charges & Losses

i. All charges/losses or any other open access charges up to the Delivery point shall be payable by BHPL.

ii. All transmission charges, transmission losses, operating charges and other open access charges including SLDC charges beyond the Delivery Point shall be to the account of UPCL and UPCL agrees and undertakes to settle such account directly with PTCUL and/or such intermediaries."

5. The Petitioner has submitted that when the period of supply of power i.e. upto 29.02.2012 under the above PPA was about to complete, on 25.02.2012 it further offered to sell power to UPCL for the month of March & April 2012 on the same terms and conditions agreed in the existing PPA. The Petitioner has further submitted that at this instance, the Respondent insisted for execution of a supplementary agreement to the existing PPA. On 27.02.2012 supplementary agreement was signed and by this

agreement clause 2(e)(ii) of the existing PPA was deleted and replaced with the conditions as follows:

"All the open access charges, operating charges and other applicable charges (if any) and transmission charges, pertaining to 220 kV transmission network beyond the delivery point (other than payable by UPCL to PTCUL annually as per UERC tariff) shall be borne by M/s BHPL subject to the final decision of Hon'ble UERC in this context."

6. In response to the Petitioner's offer letter dated 25.02.2012 for sale of power for the months of March and April 2012, the Respondent issued a Letter of Intent (LOI) on 29.02.2012 accepting to purchase power for the said months from the Petitioner. However, the conditions on payment of transmission charges, open access charges etc. were changed in this LOI offered by UPCL in comparison to earlier LOI dated 18.11.2011 and corresponding PPA existing in this regard. The revised conditions included by UPCL read as *"The transmission charges, open access charges etc of dedicated transmission network, if any, shall not be borne by UPCL as UPCL is already paying Annual Transmission Charges to PTCUL as per tariff determined by Hon'ble UERC."*

7. The Petitioner has submitted that on 02.03.2012 it communicated UPCL about its acceptance to all the terms and conditions of the LOI dated 29.02.2012 except clause (ix) relating to condition on payment of transmission charges, open access charges etc., and requested UPCL to make necessary amendment in this regard and include same condition in the LOI as that in the supplementary agreement discussed above which reads as: *"All the open access charges, operating charges and other applicable charges (if any) and transmission charges, pertaining to 220 kV transmission network beyond the delivery point (other than payable by UPCL to PTCUL annually as per UERC tariff) shall be borne by BHPL subject to the final decision of Hon'ble UERC in this context."*

8. Responding to the above request of the Petitioner, UPCL vide its letter dated 17.03.2012 informed about its stand to the Petitioner and the relevant extract of the same are reproduced below:

"On the subject cited above, please refer to your letter no. Nil dated 02nd Mar-2012 (received in this office on 15.03.2012), vide which it was informed by you that all terms and conditions of LOI issued by UPCL agreed by you except clause no. ix on transmission charges. However, the terms and conditions was mutually agreed prior issuing of LOI and it was also mentioned in LOI to confirm this LOI within 2 days from

the date of issue i.e. 29.02.2012 failing which it is liable to be cancelled and to sign the agreement within 10 days from the date of issue of LOI failing which no payment would be released against the energy bill raised by M/s BHPL. Therefore, it is not possible to change the conditions of the LOI at this juncture and no payment will be released against the bill no. 09/BHPL-III/Energy-invoice/E-I dated 16th Mar-2012 before signing of the agreement in line with the terms and conditions of the letter of intent."

9. According to the Petitioner, UPCL, by being in the dominant position, has been threatening to take coercive measures like cancellation of LOI and withholding of the energy bills raised by it, unless it accepts the illegal and arbitrary condition vide clause no.(ix) of the LOI. Left with no other option, the Petitioner has stated to have filed this petition before the Commission.

10. On 09.04.2012, the Commission issued notice to UPCL to show cause by 24.04.2012 as to why the prayer in the petition may not be allowed. After seeking extension of time for submission of reply which were also allowed by the Commission, UPCL submitted its reply in the matter on 21.06.2012. The Commission forwarded the reply of UPCL to the Petitioner for filing its rejoinder, if any, by 05.07.2012. The Petitioner also sought time extension of one week for filing the rejoinder and finally submitted the same on 12.07.2012.

11. Respondent in its reply has submitted that condition vide clause 2(e) of the PPA dated 26.12.2011 relating to payment of transmission charges by UPCL was wrongly incorporated and it was mutually agreed by both the parties to sign a supplementary agreement to remove this anomaly. The supplementary agreement was signed on 27.02.2012 wherein the Petitioner agreed to pay all the open access charges, operating charges and other applicable charges (if any) and transmission charges, pertaining to 220 kV transmission network beyond the delivery point (other than payable by UPCL to PTCUL annually as per UERC tariff). UPCL has contended that since payment of transmission charges was agreed upon by the Petitioner in the supplementary agreement, therefore, the liability for payment of the transmission charges lies solely on the Petitioner and not on UPCL.

On the above contention of the Respondent, the Commission takes cognisance of the relevant condition included vide supplementary agreement dated 27.02.2012 and is of the view that although supplementary agreement provides for payment of

transmission charges, open access charges etc., by the Petitioner, however, this condition is with a rider that it is “subject to the final decision of the Commission in this context”. Therefore, the contention of the Respondent that the Petitioner has willingly agreed to pay the transmission charges, open access charges etc., appears to be misconceived. The payment may have been made by the Petitioner under protest to avoid any confrontation for continuance of its sale of power to UPCL.

12. The Respondent in its reply has further contended that since it is already paying transmission charges to the State transmission licensee i.e. PTCUL so it is not liable to pay any other transmission charges over and above those determined by the Commission.

On the above issue, the Commission is of the view that annual transmission charges which the Respondent pays to State transmission licensee (PTCUL) are based on annual revenue requirement (ARR) of PTCUL determined by the Commission from time to time. Any transmission licensee is liable to recover its ARR from users/beneficiaries of its transmission system who have access to it and these users/beneficiaries can be either distribution licensees of the same area where the transmission system exists or can be open access customers who use this transmission system for transmitting power to the destination of their choice. The Commission would like to point out that in addition to annual charges corresponding to the ARR of the State transmission network of the transmission licensee, there can be instances where transmission line/system has been developed by the said licensee for evacuation of power from Generators also termed as evacuation system, the annual charges corresponding to the annual revenue requirement for such transmission system are also payable to the transmission licensee by users/beneficiaries of the system.

In accordance with the Commission’s Order dated 24.11.2011 on investment approval of transmission schemes under REC-IV proposed to be undertaken by PTCUL, the transmission system used for evacuation of power by M/s BHPL has not been, as of now, included in the overall transmission network of PTCUL and hence, cost of this system cannot be included in the overall ARR of the State transmission network of the transmission licensee which is being recovered from UPCL. However, since this evacuation system has been developed by PTCUL, recovery of its cost by way of annual transmission charges is rightfully justified from users/beneficiaries who take access to

such system/line for transmission of power. In this regard, the Commission would refer to the relevant provisions of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010 wherein recovery of transmission charges of such dedicated/evacuation system under such situation has been stipulated and the same is reproduced below:

"21. Transmission Charges & Wheeling Charges

..... Provided further that where augmentation of transmission system including dedicated transmission system used for open access has been constructed for exclusive use of or being used exclusively by an open access customer, the transmission charges for such dedicated system shall be worked out by transmission licensee for their respective system and got approved by the Commission and shall be borne by such open access customer till such time the surplus capacity is allotted and used for by other persons or purposes."

13. Now to discuss as to which party can be considered as user of the transmission system utilised for evacuation/ transmission of power and who is also required to take access of such system from its owner namely transmission licensee. In the context of the renewable generators, the Commission takes cognisance of the first and second proviso of Regulation 36(1) and third proviso of Regulation 36(2) of UERC (Tariff and Other terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generation Stations) Regulations,2010 which is relevant to the issue and the same is reproduced below:

"36(1)

Provided that no Transmission and Wheeling charges are payable for sale of electricity to the distribution licensee or to local grid within the State.

Provided further that where a generator proposes to supply electricity outside the State, such generator, in addition to transmission/wheeling charges specified above, shall have to bear the full transmission/wheeling charges for the dedicated lines and substation of the transmission/distribution licensee used only for evacuation of such power."

"36(2) In addition to Transmission and Wheeling Charges, the losses in the intra-State Transmission and Distribution System shall be adjusted in kind at the average

transmission and distribution losses as determined by the Commission in the relevant tariff orders of the State licensees for a particular year.

..... Provided further that no losses shall be adjusted in kind for sale of electricity to distribution licensees within the State or to local rural grid."

These provisions of the regulations specify that no transmission and wheeling charges including losses are payable by the renewable generators for sale of electricity to the distribution licensee or to local grid within the State. However, if such generator takes power outside the State then it shall be liable to bear entire transmission/wheeling charges including losses of the system used for such transmission of power. The Commission also takes cognisance of Removal of Difficulty Order dated 28.10.2010 issued under UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generation Stations) Regulations, 2010 [referred as "RE Regulations 2010" in this Order] wherein the interconnection point has been shifted from the licensee's nearest sub-station with which the generating station is connected to the sub-station of the Generating station as is the practice with the Central Sector and State Sector Generating Stations. Also in accordance with regulation 16(1) of the aforesaid regulations, the generic tariffs for renewable generators have been determined at the interconnection point since the capital cost considered for these tariffs does not include cost of dedicated line and associated equipment from point of interconnection upto the nearest sub-station of transmission or distribution licensee to which generating station is connected.

Based on the above, it is absolutely unambiguous that if the Petitioner sells power to UPCL and evacuation of power beyond inter-connection point is through transmission system of the transmission licensee, then UPCL is deemed user of the transmission system beyond the interconnection point (i.e. sub-station of the Generating station) who has to take access of the system for transmission of power upto the distribution periphery. Accordingly, UPCL shall bear the transmission charges of the said system including charges for the dedicated lines and sub-stations/evacuation system and its losses thereof. However, in case the Petitioner does not sell power to distribution licensee (UPCL) and sells power elsewhere outside the State through open access then it shall be liable to pay transmission/wheeling charges including charges for the dedicated lines and sub-stations of the transmission/distribution licensee used

for evacuation of such power and losses thereof, open access charges, operating charges etc. in accordance with the relevant Regulations.

14. The Respondent in its reply has also contended that it is liable to pay transmission charges only if the Petitioner had executed an agreement with it for 35 years at preferential tariff and since the Petitioner has executed short term agreement with it and that too at APPC rates the liability to pay transmission charges falls squarely on the Petitioner.

The Commission agrees that generic tariffs which are based on financial principles as per chapter 4 & chapter 5 of the RE Regulations 2010 are preferential tariffs and allowed to renewable generators who enter into PPA with the distribution licensee for the entire useful life of the project. Whereas, Regulation 36 is covered under chapter 6 of the said regulations which includes miscellaneous conditions wherein it has been clearly provided that if renewable generator sells electricity to the distribution licensee or to local rural grid within the State then no transmission and wheeling charges are payable by it.

15. Accordingly, the amendment of clause 2(e) (ii) of PPA dated 26.12.2011 vide supplementary agreement dated 27.02.2012 is unjustified and Respondent shall not claim transmission charges from the Petitioner beyond the interconnection point since the aforesaid PPA pertains to sale of power by the Petitioner to the Respondent, distribution licensee of the State, at APPC rates. Also clause ix of the LOI dated 29.02.2012 is erroneous and Respondent is directed to suitably amend the condition with respect to payment of transmission charges beyond the interconnection point of the Generator in its power purchase agreements with the Petitioner for the period starting from 18.11.2011 and upto 30.04.2012 when the Petitioner was selling power to UPCL.

16. After going through the petition the Commission is of the view that the dispute between the Petitioner and the Respondent should not have arisen when RE Regulation 2010 very categorically specify that no transmission and wheeling charges are payable by renewable generators for sale of electricity to the distribution licensee or to local grid within the State. Moreover, the Commission had removed all the doubts experienced by UPCL and Renewable Generators/developers in interpreting, understanding and

implementing certain provisions of the aforesaid regulations by issuing Removal of Difficulty Order dated 28.10.2010.

Fully aware of these provisions, UPCL had initially signed PPA with the Petitioner on 26.12.2011 and agreed to bear all the transmission charges, transmission losses, operating charges and other Open Access including SLDC charges beyond the Delivery Point and agreed to settle such accounts directly with PTCUL/SLDC. However, the Commission feels that UPCL, in order to unnecessarily entangle the case forced the Petitioner to sign an amended PPA dated 27.02.2012 wherein the Petitioner was made to agree to bear all the aforesaid charges which UPCL had earlier agreed to bear. The Commission has taken strong exception on the condition included in the supplementary PPA i.e. *"subject to the final decision of the Hon'ble UERC in this context"* when apparent provisions regarding payment of transmission charges already existed in the RE regulations. The Commission considers that UPCL has deliberately overlooked the relevant provisions of the RE regulations and feels that such unwarranted act of UPCL has not only wasted precious time of the Commission but has also lead to the harassment of the Petitioner. It amounts to deliberate non-compliance of the Commission's regulations. Taking a lenient view, the Commission warns UPCL that if in future it tries to complicate the matter and intentionally misinterpret the otherwise unambiguous regulations to its advantage, the Commission shall be forced to take appropriate action against it in accordance with the provisions of the law.

17. A copy of this Order may also be sent to PTCUL for necessary compliance.

The Petition is accordingly disposed off.

(Jag Mohan Lal)
Chairman