

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Applications filed by Renewable Energy Generators seeking determination of project specific tariff.

AND

In the matter of:

M/s Birahi Ganga Hydro Power Ltd.

M/s Rishiganga Power Corp. Ltd.

M/s Himalaya Hydro Pvt. Ltd.Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd.Respondent

Coram

Shri Jag Mohan Lal Chairman

Shri C. S. Sharma Member

Shri K. P. Singh Member

Date of Hearing: May 08, 2013

Date of Order: October 04, 2013

This Order relates to the Applications filed by M/s Birahi Ganga Hydro Power Ltd., (hereinafter referred to as Petitioner-1), M/s Rishignaga Power Corporation Ltd. (hereinafter referred to as Petitioner-2) and M/s Himalayan Hydro Pvt. Ltd. (hereinafter referred to as Petitioner-3) seeking determination of project specific tariff of

their SHPs in accordance with the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010 (hereinafter referred to as “RE Regulations, 2010”).

1. Background

1.1.1. Petitioner no. 1 had made an Application before the Commission wherein it was submitted that it had opted for generic tariffs on the provisional basis in accordance with Regulation 11(2) of RE Regulations, 2010 and had also requested the Commission to allow it one time relaxation in switching over from the generic tariff to project specific tariff as Regulation 14(2) specifies determination of project specific tariff within 18 months of the commissioning of the project. Similar Applications were received from Petitioner no. 2 and 3. Since, the issues were similar, the Commission decided to club the three representations.

1.1.2. The copy of the Application filed by Petitioner-1 was sent to Uttarakhand Power Corporation Ltd. (hereinafter, referred to as “UPCL” or “the Respondent”) for its comments in the matter.

1.1.3. The Commission also held a hearing in the matter on 08.05.2013 wherein the three Petitioners and the Respondent were heard.

1.1.4. The submissions of the Petitioners during the hearing as well as in their written submissions and rejoinders, reply of UPCL and Commission’s analysis based on the written submissions & rejoinders filed by the Petitioners and reply made by the Respondent are dealt in subsequent Paras.

2. Petitioners Submissions, UPCL’s reply and Commission’s analysis

2.1. Petitioners Submissions

2.1.1. The Petitioners submitted that the Commission had envisioned and recognised circumstances where generating companies have legitimately incurred capital expenditure in excess of the normative capital cost and,

accordingly, had specified a remedy under Regulation 14 of RE Regulations, 2010 to fix the project specific tariffs. The Petitioners also submitted that the true intent and spirit of Regulation 14 was to allow the generator to recover its real costs as permitted by the Central and State Government laws and regulations, so that the SHP remains viable over its useful life by opting for project specific tariff instead of generic tariff.

- 2.1.2. The Petitioners also opposed the objection raised by UPCL during the hearing as well as in its reply that the Application for project specific tariff should have been submitted 3 months prior to the commissioning of the project as per Regulation 11(2) of RE Regulations, 2010. They submitted that they have filed the Application at the earliest available opportunity given the facts, circumstances and the difficulties encountered by its SHPs and the delay of few months claimed by UPCL was not material in view of the true purpose of Regulations 14 of RE Regulations, 2010.
- 2.1.3. The Petitioners also submitted that the Commission in Regulation 2(2) of its RE Regulations, 2013, has permitted generators not supplying power to UPCL to opt for a project specific tariff and enter into a long term PPA without any preconditions or limitation on the time elapsed since commissioning of the project. The Petitioners also submitted that UPCL did not raise any objections on the same which reflected towards its discriminatory and pre-judicial behaviour.
- 2.1.4. Regarding UPCL's contention during the hearing that no generator had ever been allowed to change their tariff as per the PPA and the tariffs had remained fixed, the Petitioners submitted that Debal SHP, Hanuman Ganga SHP repeatedly changed their tariffs over a period of years, despite having entered into a similar or identical PPA as theirs with UPCL and UPCL never objected to it. The Petitioners also referred to the case of M/s. Swasti Power Engineering Ltd. and M/s. Him Urja Ltd. where UPCL had paid higher generic tariffs without even a valid long term PPA which was against the Regulations. The Petitioners also mentioned that the Commission had constantly taken a holistic view in the interest of the

State, the renewable energy sector and other Stakeholders in its order for M/s. Swasti Power Engineering Ltd. and M/s. Him Urja Ltd.

- 2.1.5. The Petitioners also submitted that UPCL cannot discriminate against them having previously permitted several other generators to alter/switch the tariffs repeatedly several years after commissioning of the projects. They also submitted that UPCL's objections tantamount in obstructing the Commission's effort to develop a healthy and sustainable SHPs sector in the State.
- 2.1.6. The Petitioners also submitted that they had never explicitly opted for generic tariff and UPCL's submission in this regard was incorrect and UPCL should be required to submit the proof for its contrary claim.
- 2.1.7. The Petitioners requested the Commission to condone the delay and admit their Application after taking a holistic view of the fact and circumstances and in furtherance of the true purpose and intent behind Regulation 14 of RE Regulation, 2010 by exercising its powers as provided in Regulation 74-78 of UERC (Conduction of Business) Regulation, 2004.

2.2. UPCL's Submission

- 2.2.1. UPCL in its response submitted that the generator had already opted for generic tariff as per RE Regulations, 2010 in the PPA which should be considered as final option and cannot be allowed to be changed during the validity of the PPA.
- 2.2.2. UPCL also submitted that the Petitioners had nowhere mentioned, if and how, the Commission had waived the mandatory requirement of Regulation 11(2) of RE Regulation, 2010. UPCL also submitted that the tariff for sale of power purchase of RPO and the benefits derived by the generators or other entities is strictly as per the Regulations of the Commission which are framed after due deliberation and public process and, accordingly, no person is entitled to say that the Regulations are not fair or are unjust. UPCL also submitted that if the Petitioners are

aggrieved by any provisions of the Regulations, then the remedy did not lie in the present application.

2.2.3. UPCL also submitted that as per the provision of RE Regulation, 2010 it was for the generators to exercise their options regarding the tariffs and UPCL was not required to give any option to the Petitioners. UPCL also submitted that no petition was filed by the Petitioners within the time frame specified in RE Regulation, 2010 and infact the Petitioners had executed the PPA opting for generic tariff, hence, there was no dispute regarding the exercise of the option by the generator.

2.3. Commission's View

2.3.1. Regulation 11(2) of RE Regulation, 2010 specifies as under:

"The RE Based Generating Stations and Co-generating Stations, except those mentioned under Proviso 1 & 2 to sub- Regulation (1) of Regulation 2, may opt for the generic tariff, as determined based on norms specified in these Regulations for different technologies, or may file a petition before the Commission for determination of "Project Specific Tariff". For this purpose RE Based Generating Stations and Co-generating Stations shall give its option to the distribution licensee at least 3 months in advance of date of commissioning or one month after the date of issuance of these Regulations, whichever is later. The option once exercised shall not be allowed to be changed during the validity period of the PPA."

Emphasis added

2.3.2. Thus, the above reading of Regulation 11(2) makes it clear that:

- a) The generators have to either opt for generic tariff or file a petition for determination of project specific tariff.
- b) The generators are required to give their options to the distribution licensee atleast 3 months in advance of the date of commissioning of their projects or one month after the date of issuance of the Regulations, whichever is later.
- c) The option once exercised shall not be allowed to be changed during the validity period of PPA.

2.3.3. Based on the submissions of the Petitioners, information regarding PPA and CoD of the projects are presented below:

Table A: Information regarding PPA and CoD of the projects

Petitioner	Project	Capacity (MW)	CoD	Date of PPA
Petitioner-1	Birahi Ganga	7.2	02.11.2011	30.11.2010
Petitioner-2	Rishi Ganga	13.2	30.04.2012	21.01.2011
Petitioner-3	Motighat	5	Sep-11	05.02.2003 (for 3 MW) / 07.12.2009 (Supp PPA for 7 MW)

2.3.4. The PPA's executed between the Respondent and Petitioner-1, Petitioner-2 & Petitioner-3 respectively provide for condition on tariff to be charged for power supplied from the above mentioned SHPs are as under:

PPA: Petitioner-1 and Respondent-

2.1 UPCL shall accept and purchase 7.2 MW of power made available to UPCL system from the Generating Company based on Small hydro with capacity up to 25 MW at the levelised rate specified for such plant in Annexure-1: Generic Tariffs of Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2010 as amended from time to time.

PPA: Petitioner-2 and Respondent-

2.1 UPCL shall accept and purchase 13.2 MW of power made available to UPCL system from the Generating Company based on Small hydro with capacity up to 25 MW at the levelised rate specified for such plant in Annexure-1: Generic Tariffs of Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2010 as amended from time to time.

PPA: Petitioner-3 and Respondent-

2.1 UPCL shall accept and purchase 5 MW (Plus 10% overloading) of power made available to UPCL system from the Generating Company based on Small hydro with capacity up to 25 MW at the levelised rate specified for such plant in Schedule-1s of Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008 as amended from time to time.

- 2.3.5. From Table-A above, it is amply clear that Petitioner-1 & Petitioner-2 had signed PPA in respect of their SHPs with the Respondent after notifications of RE Regulations, 2010. PPA entered by Petitioner-3 with the Respondent was during the period when UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008 (RE Regulation, 2008) were applicable. However, the project got commissioned after the date of notification of RE Regulation, 2010 and, therefore, provisions of RE Regulation, 2010 were applicable to it. Accordingly, the Petitioner should have taken all the necessary action in accordance with third proviso of Regulation 2(1) of RE Regulation, 2010 for modification of its PPA with UPCL to make it consistent with RE Regulation, 2010.
- 2.3.6. The contention of the Petitioners that they had not exercised any option is incorrect as they continued to charge the generic tariffs in accordance with the PPA entered into by them with UPCL. Since PPA signed between the parties is based on terms & condition mutually agreed between the two, hence, it cannot be denied that the Petitioners had not given their option to the Respondent. Furthermore, the PPAs of Petitioner 1 & 2 were signed after the date of notification of RE Regulation, 2010 and the PPAs clearly mentioned that the tariffs would be the generic tariffs of RE Regulations, 2010 and hence, it cannot be denied that they did not exercise their options regarding the tariff to be charged for power supply to UPCL. As far as Petitioner no. 3 is concerned although its PPA was signed prior to notification of RE Regulation, 2010, it did not amend its PPA in accordance

with RE Regulation, 2010 and has been continuously raising bills to UPCL at generic tariffs specified in RE Regulation, 2010.

2.3.7. Relying upon its Regulation, the Commission takes cognisance of Regulation 11(2) of RE Regulations, 2010 which clearly provide that tariffs once opted cannot be changed during the validity period of the PPA and as per the Regulation, the validity of the above mentioned PPAs is for the useful life of the small hydro projects. Hence, the present request of the Petitioners for determination of project specific tariff does not pass the test of maintainability w.r.t. the provision of the regulations and the same cannot be accepted and is liable to be rejected.

2.3.8. Further, the Petitioners have placed their reliance on Regulation 14(2) of RE Regulations, 2010. The same is reproduced hereunder:

“Till fixation of final tariffs a RE Based Generating Stations or Co-generating Stations may either accept the generic tariff as provisional tariff or make an application for determination of provisional tariff in advance of the anticipated date of completion of project based on the capital expenditure actually incurred up to the date of making the application or a date prior to making of the application, duly audited and certified by the statutory auditors. The provisional tariff as may be determined by the Commission may be charged from the Commercial Operation Date (CoD) of the respective unit of the generating station.

Provided that the RE Based Generating Stations and Co-generating Stations shall be required to make a fresh application for determination of final tariff based on actual capital expenditure incurred up to the date of commercial operation of the generating station, with duly audited and certified copies of accounts by the statutory auditors within 18 months from the CoD.”

Thus, the above reading of Regulation 14(2) makes it clear that:

- a. Till fixation of final tariffs, a RE generator may either accept the generic tariff as provisional tariff or make an application for determination of provisional tariff in advance of the anticipated date of completion of project.
- b. The RE based generator shall be required to make a fresh application for determination of final tariff within 18 months from the CoD.

Hence, Regulation 14 clearly deals with project specific tariffs and would come in force only when the RE generator has exercised its option for seeking project specific tariffs as required under Regulation 11(2) of the RE Regulations, 2010.

2.3.9. With regard to Petitioners submissions that in RE Regulations, 2013, the existing generators which are not supplying power to distribution licensee (UPCL) in the State have been allowed an option of seeking project specific tariff subject to these generators entering into a long term PPA with the licensee. It would be pertinent to mention that the provisions in Regulation referred to by the Petitioners are new regulation which have only become effective from 01.04.2013 and the tariffs of the Petitioners projects will continue to be governed by earlier RE Regulations, 2010. However, in order to facilitate the benefit of power generated in the State remains available to the State distribution licensee, the Commission has allowed an option to the existing generators selling power to any person other than the distribution licensee in the State, to seek determination of project specific tariff for their stations subject to these generators entering into a long term PPA with the distribution licensee in the State. These generators did not have any PPAs nor have exercised the option of generic tariff. It was in fitness of things that they be also allowed an option for either accepting generic tariff or seek project specific tariff determination. In the absence of any correlation with the issue raised by the petitioners in their application and the above provisions of regulation relied upon by the Petitioner, the Commission does not find any merit in this submission of the Petitioners.

2.3.10. The contention of the Petitioners w.r.t. revision of tariff of Debal SHP, Hanuman Ganga Generating Station, M/s Swasti Power Engineering Pvt. Ltd. and M/s Him Urja Ltd. is discussed in following paras:

a) **Case of Debal and Hanuman Ganga SHP:** The two SHPs had initially applied for fixation of tariff before the Commission in accordance with the then prevailing tariff Regulations. The

Commission had determined their tariffs based on the Commission's Order dated 10.11.2005. Thereafter, UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008 came into existence w.e.f. 01.04.2008 and two generators opted for tariff as specified in RE Regulations, 2008. The Commission on 06.07.2010 had issued RE Regulation, 2010 wherein, it had given the generators commissioned prior to the date of notification of the Regulation option of tariff specified under RE Regulation, 2010 and two generators again opted for the same.

From above, it is apparent that revision of tariffs of the aforesaid SHPs has always been done in accordance with provisions of the applicable regulations and at no instance, regulations prevailing at any point of time have been relaxed or amended in order to give effect to any revision of tariff of these generators. Hence, in view of the facts as described above, contention of the Petitioners with regard to revision of tariff of the aforesaid SHPs does not hold ground.

b) Case of M/s Swasti Power Engineering Pvt. Ltd. (M/s SEPL) and M/s Him Urja Pvt. Ltd.:

The Petitioners have submitted that M/s Swasti Power Engineering Pvt. Ltd. and M/s Him Urja Pvt. Ltd. are being allowed to opt for "project specific tariff" after lapse of time limit as stipulated under RE Regulations, 2010. In this regard, it is hereby clarified that M/s SEPL have not been allowed project specific tariff but has been allowed generic tariff under RE Regulation, 2010 for sale of power to UPCL. The Commission, while recognizing the fact that the aforesaid PPA signed by M/s SEPL with UPCL was not a long term PPA as required under RE Regulations, 2010 had directed UPCL to enter into a PPA with M/s SEPL consistent with the provisions of

the RE Regulations, 2010 for sale of power for the entire useful life of the plant.

M/s Him Urja Pvt. Ltd. had initially filed an application for determination of project specific tariff of its Vanala SHP before the Commission on 26.03.2010 and which remained pending since the generator had preferred an appeal before the Hon'ble Supreme Court on the issue of open access. Till the pendency of the appeal in the Hon'ble Supreme Court, M/s Him Urja Pvt. Ltd. was supplying power to UPCL in accordance with RE Regulation, 2010 and which was in accordance with the directions of the Hon'ble Supreme Court. Subsequently, the petition was withdrawn by M/s Him Urja from the Hon'ble Supreme Court and it again approached the Commission for fixation of project specific tariff for its Vanala SHP. While examining the matter, the Commission found that the generator did not have any long term PPA with UPCL as compulsorily required under RE Regulations, 2010 and therefore, directed UPCL to enter into long term PPA with M/s Him Urja consistent with the provisions of the RE Regulations, 2010 for purchase of power for the entire useful life of the generating plant. The Commission then subsequent to signing of long term PPA between the two parties allowed M/s Him Urja to seek project specific tariff for its Vanala SHP.

- 2.3.11. The Petitioners contention that the true intent and spirit of Regulation 14 of RE Regulation, 2010 was to allow the generator to recover its real fixed cost cannot be denied. The Commission while recognising the fact that the capital cost of SHPs may vary according to site conditions had provided in the regulations an option to the RE generators to either adopt generic tariff or else seek determination of project specific tariff based on the actual capital cost and design PLF in accordance with the provision of RE Regulations, 2010. This was also the intent of Hon'ble ATE in its order

dated 18.09.2009 in Appeal Nos. 50 & 65 of 2008 and IA Nos. 98 & 143 of 2008 wherein Hon'ble ATE held as under:

“The promoters of hydel power in the State of Himachal Pradesh as well as the Himachal Pradesh State Electricity Board shall be entitled to apply to the Commission for fixing project specific capital cost for any project in case the normative capital cost is not suitable to either of them. Similarly, if CUF of 45% for a specific project is contested by either party, it may approach the Commission with the site specific CUF. “

However, in accordance with RE Regulation, 2010 the option was to be exercised within the given time frame. The generator was expected to be aware of its capital cost and its viability on the tariff in force and should have adhered to the timelines specified in the Regulations which was three months in advance of date of commissioning for exercise of the option. The Petitioners have submitted that they have not exercised the option while PPA entered by them with UPCL includes the conditions on generic tariff as per the Regulations. Also the Petitioners continued to raise bills to UPCL at generic tariffs.

2.3.12. Accordingly, it is held that the Applications filed by the Petitioners for determination of project specific tariff is not maintainable in accordance with the provisions of RE Regulations, 2010 and therefore, cannot be considered.

2.3.13. The Applications are hereby disposed off accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member

(Jag Mohan Lal)
Chairman