

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Petition seeking interference of UERC on the wrongful & impugned decision by Uttarakhand Power Corporation Ltd. (UPCL) regarding cost sharing of Rajstar/Gangani Sub Station as per MoU signed by UPCL & Regency Gangani Energy Pvt. Ltd. on 23<sup>rd</sup> July, 2009.

**In the matter of:**

M/s Regency Gangani Energy Pvt. Ltd.

... Petitioner

**AND**

**In the matter of:**

Uttarakhand Power Corporation Ltd.

... Respondent

**CORAM**

**Shri C.S. Sharma**

**Member-Chairman**

**Shri K.P. Singh**

**Member**

**Date of Hearing: August 12, 2014**

**Date of Order: September 12, 2014**

This Order relates to the Petition filed by M/s Regency Gangani Energy Pvt. (hereinafter referred to as "Petitioner" or "M/s RGEPL" or "generator") seeking interference of the Commission on the wrongful & impugned decision by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "Respondent" or "UPCL" or "licensee") regarding cost sharing of Rajstar/Gangani Sub Station as per MoU signed by UPCL & Regency Gangani Energy Pvt. Ltd. on 23<sup>rd</sup> July, 2009.

The reliefs sought by the Petitioner are as follows:

- (i) Refund of Rs. 25 Lakh alongwith interest w.e.f. 06.06.2013 till date of payment.
- (ii) Cost incurred by Petitioner for transportation, erection of the equipments be reimbursed along with interest.
- (iii) Supply of 33 kV /440 Volt transformer of capacity between 50 kVA to 100 kVA is urgently needed to be supplied and erected by UPCL at Rajstar/Gangani substation which is most important to avoid any malfunction of the equipments.
- (iv) UPCL to ensure that onward evacuation of power from Rajstar/Gangani substation is strengthened with proper circuit including connectivity of Rajstar/Gangani substation to Barkot and onward connectivity till Purkalgaon to 132/33 kV substation as well as distribution to Purola Sub Division and the existing 33 kV line to Uttarkashi be upgraded to double circuit.
- (v) Proper staff to be placed at Rajstar/Gangani switching station to avoid grid failures.

## **1. Background**

- 1.1. The Petitioner vide its above mentioned Petition dated 03.04.2014 submitted that as per Implementation Agreement signed by M/s Regency Yamuna Energy Limited (M/s RYEL) and M/s Regency Gangani Energy Private Limited evacuation of power was to be provided through the then proposed sub-station at Rajstar/Gangani up to which 33 kV line cost was to be borne by the developer. The generator submitted that while the project development was in progress it was observed that licensee had not taken any steps for substation/switching station to evacuate power from Rajstar/Gangani and as such matter was also taken up through the Coordination Forum meetings.
- 1.2. The generator submitted that though the responsibility of building the sub station/switching station was totally of licensee and project developers were to bring their evacuation line up to Rajstar/Gangani Substation, however, UPCL expressed difficulties in purchasing the suitable land for the area and thus, both the above named generators agreed to facilitate UPCL, by providing land and undertaking civil construction works for the equipments of three bays to be provided by UPCL as a goodwill gesture. M/s RGEPL submitted that transportation and erection of equipments were to be undertaken by UPCL only and list was drawn for the supplies.

- 1.3. The generator also submitted it had signed a MoU with the Respondent on 23.06.2009 alongwith M/s RYEL and as per the MoU, the responsibilities of Switching equipments, protection and control metering device for the incoming bays of the project land of Badyar SHP and Gangani SHP was to be provided by the generators (only two bays) and UPCL was responsible for providing all switching equipments, protection controls related devices for three bays of Hanumanganga SHP line (after Hanumanchati substation), Barkot line and Uttarkashi line including all erection works.
- 1.4. M/s RGEPL submitted that it had purchased the land of 1600 sq. mtr., and provided detailed drawing of the switching station to UPCL for their approval after which the works commenced. It further submitted that civil works were completed to the level before erection of the equipments, in June 2010 but supply of the equipments by UPCL was made from Sept. 2010 to Sept. 2012.
- 1.5. M/s RGEPL submitted that Gangani SHP was ready to generate power in the month of May 2013 after completion of the Rajstar/Gangani switching station of UPCL, however, connectivity agreement was denied by UPCL and pressure tactics were enforced on it to pay to UPCL, the cost of the equipments supplied by UPCL for the three bays, the cost of which, as per MoU, was supposed to be borne by UPCL only. The Petitioner submitted that mental torture was created by delay tactics while the company had given in writing notice for evacuation of power and, all the requests & communications made by M/s RGEPL were ignored by UPCL. It further submitted that Affidavit earlier submitted for making part payment under protest was also rejected by UPCL. M/s RGEPL submitted that in a coarse tactics developer was forced to give Affidavit on 06.06.2013 to obtain the connectivity agreement same day 06.06.2013.
- 1.6. The Petitioner submitted that after the connectivity necessary steps were taken for metering cubical to be sealed by UPCL on 09.06.2013, synchronization of the grid was provided on 12.06.2013.
- 1.7. M/s RGEPL submitted that it had decided to evacuate power under open access from 12.06.2013 onwards. However, the Gangani SHP suffered massive unprecedented floods on 16<sup>th</sup> & 17<sup>th</sup> June, 2013 damaging the various components of the Gangani SHP with estimated loss of more than Rs. 8.00 Crore.

- 1.8. The generator submitted that under the circumstances the company also decided to opt for long term RE based generation tariff as per the RE Regulations, 2013 and Petition of the same was filed with UPCL on 11.12.2013.
- 1.9. The Commission forwarded a copy of the Petition to UPCL for submission of its response and also fixed a hearing on 05.05.2014. UPCL vide its reply dated 03.05.2014 & also during the course of the hearing submitted that it had not been impleaded as a respondent in the Petitioner. UPCL also pointed out towards the deficiencies in the Petition filed by M/s RGEPL and questioned the maintainability of the same.
- 1.10. The Commission vide its Order dated 06.05.2014 clarified that since the matter related to dispute between the generator and UPCL and, hence, directed that UPCL be made a Respondent in the matter. The Petitioner was also directed to cure the defects pointed out by UPCL in the Petition within 1 week from the date of order & submit the same to the Commission.
- 1.11. The Petitioner vide its letter dated 13.05.2014 submitted its reply to the deficiency raised by UPCL, however, the Commission observed certain deficiencies in the same and the Petitioner vide letter dated 28.05.2014 was directed to rectify the same.
- 1.12. The Petitioner vide its reply dated 08.07.2014 referred to Regulations 49, 51 of UERC(Conduct of Business) Regulations, 2004 and Sec 18(1), 18(2), 30 of the Electricity Act, 2003 and also Sec 72, 73 of the Indian Contract Act, 1872 as Provision of law under which the Petitioner was filed by it. The Petitioner again requested the Commission for allowing it the refund of Rs 25 Lakh alongwith the interest and also cost of the Petitioner amounting to Rs 50,000.00 from UPCL. The Petition still contained certain deficiencies.
- 1.13. The Commission held another hearing on 15.07.2014 on admissibility of the Petition and vide Order dated 15.07.2014 intimated the deficiencies in the reply of the Petitioner and allowed it a final opportunity to file a fresh Petition by 22.07.2014 with an advance copy to the Respondent. UPCL was also directed to file response on the same latest by 31.07.2014. The Commission also decided to post the matter to be heard on 12.08.2014.
- 1.14. M/s RGEPL submitted fresh Petition dated 21.07.2014 wherein, Section 86(1)(f) of the Electricity Act, 2003 and Section 72, 73 of the Indian Contract Act, 1872 were relied

upon as the legal provision under which the Petitioner was filed. In addition to its earlier submissions, M/s RGEPL vide its Petitioner submitted that it was coerced to enter into an agreement with respondent and was made to pay Rs 25 lakh to the respondent, which was contrary to law and MOU (Para 2 & 3) signed by the Petitioner and the respondent. The Petitioner submitted that the Respondent coerced the Petitioner and forced upon the Petitioner to pay the amount as a "pre condition" for entering into connectivity agreement. This amount had nothing to do with the connectivity agreement and UPCL delayed commissioning of Gangani SHP resulting in heavy losses. M/s RGEPL submitted that the above mentioned amount was not due as the agreed scope of work of MOU clearly stated the responsibility of UPCL to bear such cost of the Rajstar switching station. The Petitioner submitted that while the project was being developed, the Respondent failed to establish the Rajstar Grid station which was also observed by the UERC in the review meeting and UPCL confirmed the supply of materials for switching station in the 4th Co-ordination forum meeting dated 23.06.2010, but the same was not implemented. M/s RGEPL submitted that agreement dated 06.06.2013 was in violation of the Implementation Agreement.

- 1.15. UPCL vide its letter dated 11.08.2014 submitted its response, wherein, UPCL submitted that the filing of the reply to preliminary objection was not as per the Order dated 15.07.2014. UPCL submitted that the alleged Petition was without any cause of action as there was no dispute as per Electricity Act, 2003, which required adjudication by the Commission. UPCL submitted that Section 72 and Section 73 of the India Contract Act, 1872 also did not apply in the present case further the provision of Section 86(1)(f) of the Electricity Act, 2003 also does not apply. UPCL also submitted that it was wrong to say that Respondent coerced the Petitioner and forced payment of any amount as pre-condition for entering into the connectivity agreement and the allegation of the Petitioner are totally baseless. Respondent submitted that Petitioner is not entitled to any relief & cannot be granted any relief unless the Petitioner first challenges the right to share the cost and then gets it determined from the Commission.
- 1.16. The Respondent vide its reply dated 11.08.2014 also made additional submission wherein, it submitted that Petitioner had requested for the connectivity for evacuation of power from Gangani and Badyar HEP. UPCL submitted that there was a PPA

between Petitioner and Respondent for Badyar HEP way back in 2003 and it was expected that energy generated from Gangani HEP would also be sold to the Respondent and in consideration of the same, the MoU was signed on 23.06.2009 for the evacuation facility for the generating Station. UPCL also referred to regulation 8(3) of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010 and submitted that M/s Regency Gangani had a PPA with NVVN Ltd. and the Petitioner had submitted Petition for medium term open access which was apparent from letter dated 04.05.2013, 06.05.2013 of the Petitioner and further letter dated 15.05.2013 of Chief Engineer, PTCUL which clearly showed that from the very beginning they wanted to evacuate power outside the State after availing open access facility for the same.

UPCL also submitted that the aforesaid regulation 8(3) of the Open Access Regulations clearly lays down that the complete charges for providing connectivity were required to be borne by such proposed Generating Company. UPCL submitted that in light of the Open Access Regulation, 2010 and the generator's Petition seeking Open Access it was responsibility of Petitioner to pay for the cost of the facilities required for providing connectivity. UPCL submitted that the Petitioner has wrongly represented that the money was deposited under coercion. Respondent submitted that the amount was deposited by the Petitioner without any protest and according to his sweet will. The Respondent submitted that the amount was deposited by the Petitioner by way of cheque on 06.06.2013 and the connectivity agreement 06.06.2013 itself was executed on 06.06.2013 even when the cheque amount was not realized by the corporation. Further, from 06.06.2013 till filing of the Petition before the Commission on 03.04.2014 regarding the matter, the Petitioner never ever asserted about any coercion having been exercised by the Respondent nor the Petitioner ever demanded back the said amount from the Respondent which clearly showed that the Petitioner had not only agreed but was also aware that it was the liability of the Petitioner to pay for the facilities required for giving connection as per the Open Access Regulation. UPCL also submitted that the ground of coercion raised in the Petition was an afterthought for the purpose of evading the lawful charges and an effort to obtain unlawful gains.

The Respondent submitted that the ground upon which the relief is sought is based on coercion. UPCL submitted that the Petitioner on the said ground even if

admitted for the sake of an argument, is only entitled to avoid the document procured by exercising coercion and get such document declared as void. UPCL submitted that the remedy for declaring the document void lies with the competent civil court. UPCL also submitted that it was mutually agreed that since the said switching sub-station will evacuate power from the Badyar SHP that will supply power to UPCL and Gangani which intends to supply power outside the State through Open Access, therefore, the cost of the equipments required to be supplied by UPCL as per MoU is to be shared equally between the developer of the Gangani and UPCL. UPCL submitted that in pursuant to this understating a lump sum amount of Rs. 25 Lakh had been deposited by the developer. The Respondent submitted that the Petitioner itself submits the above agreed terms on the affidavit dated 06.06.2013.

The Respondent submitted that section 72 of the Indian Contract Act as quoted by the Petitioner does not hold good in the present case as neither the money deposited by the Petitioner was under coercion nor by mistake. UPCL further submitted that section 73 of the Indian Contract Act as quoted by the Petitioner does not hold good as no breach of contract is on part of UPCL and any deviation from the MoU is solely on the basis of mutual consent more so in the light of prevailing Regulation.

- 1.17. UPCL submitted that no loss or damage has incurred to the Petitioner because the required connectivity as requested by the Petitioner was granted and Gangani generating station was synchronized on 12.06.2013. UPCL submitted that it is indeed very surprising that when all work has been completed to the satisfaction of generating Co., raising such matters reflects the opportunistic behavior of Generating Co.
- 1.18. During the course of hearing held on 12.08.2014 UPCL raised objections to the maintainability of the Petition. The Commission vide Order dated 12.08.2014 directed UPCL to provide a copy of its response to the Petitioner by 13.08.2014 and the Petitioner was directed to submit response on the same by 20.08.2014. The Commission also directed the Petitioner for submission of copies of correspondences exchanged with UPCL seeking refund of the amount of Rs 25.00 Lakh by 20.08.2014.
- 1.19. The Petitioner vide its reply dated 20.08.2014 submitted a copy of letter dated 15.07.2014 seeking refund of Rs 25.00 Lakh from UPCL. The Petitioner vide its above reply dated

20.08.2014 also submitted a copy of its response dated 14.08.2014 wherein, it submitted that even if the claim of UPCL was to be stabilized, in any circumstances, it could have been easily settled any time later as evacuation of power is only through UPCL grid and energy remains banked in their system before any payment is made. The Petitioner submitted that to exploit the situation of small renewable energy developer, dictating the terms for providing connectivity at the time of commissioning is indeed a coercive action by UPCL.

- 1.20. UPCL vide its letter dated 01.09.2014 submitted that the cause of action was based on coercion and relief of declaration prayed could not be granted by the Commission. Further, the Petition was filed under provisions of section 72 & 73 of Indian Contract Act, 1867 and as per section 86(1)(f) of the Electricity Act, 2003, there was no dispute between the generator and the licensee. It has also submitted about suppression of certain facts about open access. UPCL vide its above mentioned letter also submitted that M/s RGEPL's submission dated 14.08.2014 was not in accordance with the Commission's directions and, hence, its Petition is not maintainable. UPCL submitted that letter dated 15.07.2014 of M/s RGEPL seeking refund from UPCL cannot be considered as a ground of dispute as the Petitioner has filed its main Petition on 03.04.2014.

## **2. Commission's views & decisions**

- 2.1 The Petitioner had filed the Petition under Section 86(1)(f) of the Electricity Act, 2003 and Section 72 & 73 of the Indian Contract Act, 1872.
- 2.2 Section 86(1)(f) of the Act defines one of the function of the Commission and is reproduced hereunder:

*“to adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;”*

Section 72 of the Indian Contract Act, 1872 stipulates that:

*“72. Liability of person to whom money is paid or thing delivered by mistake or under coercion-*

*A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. “*

Section 73 of the Indian Contract Act, 1872 stipulates that:

*“73. Compensation for loss or damage caused by breach of contract-*

*When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*

*Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*

*Compensation for failure to discharge obligation resembling those created by contract.-*

*When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*

*Explanation.-In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused-by the non-performance of the contract must be taken into account.”*

Section 15 of the Indian Contract Act, 1872 defines coercion as:

*“Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.*

Taking cognisance of the Petition filed by the Petitioner, the Commission is of the view that the Petitioner has failed to substantiate in its written submission that the Petitioner had approached UPCL in the past and the licensee had refused to make any such payment or disputed any such claim by the generator. Also it could neither be established that any Coercion was exercised upon the Petitioner by the licensee.

- 2.3 In order to ascertain from the documentary evidence that the Petitioner has raised any such claim before the licensee, the Commission vide its Order dated 12.08.2014 directed the Petitioner to submit the copies of correspondences exchanged with UPCL seeking refund of the amount of Rs 25.00 lakh and in response the Petitioner submitted

a copy of letter dated 15.07.2014 requesting for refund of Rs 25.00 lakh from UPCL and the same is found to be issued by the Petitioner after filing of the Petition before the Commission. The Petitioner's main objective of filing the Petition appears that the Respondent has disputed to get the refund of generator's claim of Rs 25.00 lakh deposited by it due to alleged coercive action upon him by the Respondent. However, Respondent has denied of having any dispute in the matter and has stated that Petitioner has never approached the licensee in the past and only vide the aforesaid letter dated 15.07.2014, the Petitioner for the first time raised this claim before the licensee. The Commission is of the opinion that for adjudication of any issue by the Commission under the provisions of the Electricity Act, 2003, there has to be a dispute between the generator and licensee.

- 2.4 It is apparent that no dispute existed between the generator & licensee which requires adjudication by the Commission under Section 86(1)(f) of the Act. Further, the above mentioned Sections 72 & 73 of the Indian Contract Act, 1872 also does not hold good in the present case as the Petitioner failed to substantiate any coercive act by the licensee. Further, the first correspondence seeking refund of the amount was made by the generator in July, 2014 subsequent to filing of the Petition before the Commission.
- 2.5 Filing of the said Petition by the generator appears to be an inappropriate action taken in haste without making any concerted efforts by way of proper correspondences/meetings with the licensee which could have established alleged dispute between the two parties. Further, with regard to refund/reimbursement of any expenditure incurred, towards creation of a facility namely switching station in this case, based on any cost sharing arrangement agreed between the two parties vide MoU/Connection Agreement between them, should in the first instance be resolved amicably between the parties.
- 2.6 Notwithstanding the above, the Petitioner has approached the Commission for resolution of a commercial dispute without exhausting the amicable dispute resolution mechanism provided in the Connection Agreement. Accordingly, the Petitioner & Respondent are directed to resolve the dispute, if any, amicably in accordance with Clause 9 of the Connection Agreement executed between them. The Respondent shall,

thereafter, submit a compliance report to the above effect within 60 days of issue of this Order.

2.7 Hence, the Petition filed by M/s RGEPL being not maintainable and is hereby dismissed.

2.8 Ordered accordingly.

**(K.P. Singh)**  
Member

**(C.S. Sharma)**  
Member-Chairman