

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Application seeking determination of tariff for FY 2015-16 till FY 2018-19 in respect of Chuzachen Hydroelectric Power located on the rivers Rangpo and Rangli in the East district of Sikkim.

In the matter of:

M/s Gati Infrastructure Pvt. Ltd.

... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd.

... Respondent

CORAM

Shri Subhash Kumar Chairman

Shri C.S. Sharma Member

Shri K.P. Singh Member

Date of Hearing: January 8, 2016

Date of Order: January 13, 2016

The Order relates to the Petition dated 04.12.2015 filed by M/s Gati Infrastructure Pvt. Ltd. seeking determination of tariff under Section 62, Section 64(5) and Section 86(1)(a) of the Electricity Act, 2003, read with UERC (Terms and Conditions for Determination of Tariff) Regulations, 2011 and UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015, in short, UERC Tariff Regulations, 2011 and UERC Tariff Regulations, 2015 respectively for FY 2015-16 till FY 2018-19 in respect of its Chuzachen Hydroelectric Power located on the rivers Rangpo and Rangli in the East district of Sikkim for sale of power to Uttarakhand Power Corporation Limited (hereinafter referred to as "Respondent" or "Distribution licensee" or "UPCL") through a long term power sale agreement as mentioned in the Petition by the Petitioner.

1. Background

- 1.1 M/s Gati Infrastructure Pvt. Ltd. (hereinafter referred to as “GIPL” or “Petitioner” or “Applicant”) is a Company incorporated under the Companies Act, 1956. M/s GIPL submitted that it is a “generating company” and has developed, owns and operates a 2x55 MW run of the river Chuzachen Hydroelectric Power project located on the rivers Rangpo and Ranglichu in the East district of Sikkim.
- 1.2 The Petitioner vide its Petition submitted that it is desirous of entering into a power sale agreement with UPCL on long term basis through a trading company. Hence, it is submitting the petition before the Commission for determination of tariff for sale of power to UPCL under Section 62 read with Section 86(1)(a) of the Electricity Act, 2003 (hereinafter referred to as the “Act”) and the relevant provisions of UERC Tariff Regulations, 2011 and UERC Tariff Regulations, 2015 for the period from FY 2015-16 to FY 2018-19.
- 1.3 A copy of the Petition was served on the Respondent for submission of their comments on the same.

2. Submissions of Petitioner & Respondent

- 2.1 The Petitioner submitted that the Petition has been filed under the specific legal provisions of the Act and the Regulations notified under it by the Commission. The specific legal provisions relied upon by the Petitioner are as follows:
 - i. Section 62 of the Electricity Act, 2003.
 - ii. Section 64(5) of the Electricity Act, 2003,
 - iii. Section-86(1)(a) of the Electricity Act, 2003.
 - iv. Regulation 16 and Part V of UERC (Terms and Conditions for determination of tariff) Regulations, 2015 and relevant provisions of UERC (Terms and Conditions for determination of tariff) Regulations, 2011.
- 2.2 The Petitioner in the petition has stated that the Commission is the appropriate Authority to determine the tariff under Section 64(5) of the Act, 2003, and, accordingly, no remedies have been sought from any other forum/Court/ Authority.
- 2.3 The Petitioner in its Petition has sought the following reliefs:
 - a. Admit the accompanying petition,*
 - b. Determine the annual fixed charge and cost plus tariff for the balance period of FY 15-16 and the*

forthcoming control period of FY 16-17 to FY 18-19, for the petitioner's 110 MW Chuzachen Hydro Electric Project;

- c. determine an interim tariff for the supply of power by the petitioner to UPCL pending disposal of the present petition;*
- d. approve the recovery of financial losses to the tune of Rs. 157.45 Crores on account of delay of construction of evacuation transmission system for the plant;*
- e. clarify that the payment of Energy Charge shall be linked to the scheduled energy as per injection schedule approved by the Regional Load Despatch Centre;*
- f. allow additions / alterations / changes / modifications to the Petition at a future date;*
- g. pass such other order(s) as this Hon'ble commission may deem fit and proper in the facts and circumstances of the case;“*

2.4 In response to the Petition dated 04.12.2015, the Respondent vide its letter No. 63/UPCL /Comm./GH-2/D(F) dated 06.01.2016 submitted its comments. The Respondent submitted that the Petitioner has filed a petition without any cause of action and the Petitioner has itself mentioned that it seeks to enter into a PPA with UPCL and there is no basis for future expectations.

2.5 The Respondent submitted that there is no ground for reliefs claimed by the Petitioner and their contentions cannot be considered. The Respondent also submitted that the legal provisions under which the present petition has been filed are also not applicable. Further, the Respondent submitted that the Petition is not liable to be admitted and should be rejected.

2.6 A hearing was held on the maintainability of the Petition on 08.01.2016.

2.7 The Petitioner during the hearing reiterated the facts of the petition and contended that it is submitting the Petition for determination of tariff because UPCL had shown the intent of purchasing power from it. The Commission asked the Respondent as to any intent has been expressed by it for purchase of power from the Petitioner's generating station, which the Respondent denied.

3. Commission's Views & Decisions

3.1 Commission's jurisdiction

3.1.1 The Petitioner in its Petition has relied on Section 62 of the Electricity Act, 2003 which gives the Commission powers to determine tariff in accordance with the provisions of the Act for the generating company, the transmission company and the distribution company.

Further, the appropriate State Commissions have territorial jurisdiction within their States. The Petitioner further submitted that even with respect to determination of tariff, as per Section 62(1)(a), only the State Commission can determine the same and there is no other provision in the entire Electricity Act, 2003 for determination of tariff by the Commission. In this regard, the Commission would first analyze relevant provisions of Section 62 of the Act which is reproduced hereunder:

"62. (1) The Appropriate Commission shall determine tariff in accordance with the provisions of this Act for-

(a) Supply of electricity by a generating company to a distribution licensee:

...
"

It has to be examined whether the Petitioner falls within the ambit of Section 62 of the Act, as this Section clearly specifies that the Appropriate Commission shall determine tariff in accordance with the Act. Further, Section 62(1)(a) of the Act clarifies that where tariff for a generating Company is to be determined, the said generating company must be within the territorial jurisdiction of the said Commission. In the instant case, the generating company is situated in Sikkim and does not fall within the territorial jurisdiction of this Commission.

3.1.2 Further, the Petitioner has placed its reliance on Section 64(5) of the Act which states as under:

"Notwithstanding anything contained in Part X, the tariff for any inter- State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor."

The above mentioned section provides that jurisdiction of such Commission will be attracted which has jurisdiction over licensee who intends to distribute electricity & pay for it. Further, the application as referred to in Section 64(5) has to be made by both the parties intending to undertake such supply. In the instant case, only the Petitioner has made the application. They have stated that they intend to supply to the Respondent. Mere intention of the Petitioner cannot confer jurisdiction on this Commission. More so, the Respondent has not accepted validity of intentions expressed by the Petitioner. The request of the Petitioner cannot be sustained vice provisions of Section 64(5).

3.1.3 Further, the Petitioner has relied on Section 86(1)(a) of the Electricity Act, 2003 which provides the following as one of the functions of the Commission:

“(1) The State Commission shall discharge the following functions, namely:-

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;”

The Commission is aware of the above mentioned stipulations of the Act and the same is being performed accordingly, subject to ascertainment of the Commission’s jurisdiction. Further, the function of the Commission to determine tariff of power generation is also restricted to generation or supply within the state. However, from the submissions of the Respondent, i.e. Distribution licensee it is clear that it does not intend to enter into a power purchase agreement with the generator.

3.1.4 On the issue of the functions of the Commission under Section 86(1)(a), the functions can only be performed once the Petitioner establishes the Commission’s jurisdiction under Section 62 of the Act which the Petitioner has failed to do as there is no buyer for the supply of power in the State for which the tariff determination is sought. The functions of the Commission under Section 86 have to be performed in consonance with Section 62 and other relevant provisions of the Act. Moreover, the Commission is required to perform its functions only after satisfying itself that its jurisdiction is attracted.

3.1.5 The analysis hereto above brings out that none of the legal provisions relied upon by the Petitioner apply to the present case.

3.1.6 The Commission holds the petition as not maintainable for want of jurisdiction and hence decides to reject the Petition.

3.1.7 Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member

(Subhash Kumar)
Chairman