

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Petition filed under Section 62 and 86(1)(a) of the Electricity Act , 2003, read with the relevant provisions of the Uttarakhand Electricity Regulatory Commission (Terms & Conditions for determination of Multi-Year Tariff) Regulations, 2015 and Chapter VII of UERC (Conduct of Business) Regulations, 2014, for determination of Tariff for supply of power from 96 MW Jorethang Loop Hydro-Electric project of the Petitioner to Uttarakhand Power Corporation Ltd.

**In the matter of:**

M/s Dans Energy Pvt. Ltd.

.... Petitioner

And

**In the matter of:**

Uttarakhand Power Corporation Ltd.

...Respondent

**CORAM**

**Shri Subhash Kumar    Chairman**

**Shri K.P. Singh        Member**

**Date of Hearing: 09.08.2016**

**Date of Order: 09.08.2016**

The Order relates to the Petition dated 07.07.2016 filed by M/s Dans Energy Pvt. Ltd. (hereinafter referred to as "Petitioner") seeking determination of tariff for 96 MW Hydro Power Project under Section 62 and 86 of the Electricity Act, 2003 read with relevant provisions of the Uttarakhand Electricity Regulatory Commission (Terms & Conditions for determination of Multi-Year Tariff) Regulations, 2015 read with Chapter VII of UERC (Conduct of Business) Regulations, 2014.

**1. Background and Submissions**

1.1 A Petition was filed under Section 62 and Section 86(1)(a) of the Electricity Act, 2003 read with relevant provisions of the Uttarakhand Electricity Regulatory Commission (Terms &

Conditions for determination of Multi-Year Tariff) Regulations, 2015 and Chapter VII of UERC (Conduct of Business) Regulations, 2014 by the Petitioner seeking determination of tariff for sale of energy generated by the 96 MW Jorethang Loop Hydro-Electric project (“the Project/Plant”) owned by M/s Dans Energy Private Limited (“the Petitioner”) to Uttarakhand Power Corporation Limited (“UPCL”).

- 1.2 The Petitioner owns and operates a 2x48 MW run-of-river with pondage hydro-electric power project located on Rangit river, a major tributary of Teesta River, in South Sikkim, (hereinafter referred to as the “Project”). The Project has been operationalized since 30.09.2015. The units of the Project achieved Commercial Operation Date (COD) on 25.09.2015 & 30.09.2015 for Unit 1 & 2 respectively. The plant is CTU connected and power generated by the Project will be transmitted over a distance of approximately 10 km through a dedicated 220 kV line connecting to the Power grid Corporation of India Limited (PGCIL) 220/400 kV Grid sub-station located at New Melli.
- 1.3 The Petitioner submitted that the 96 MW Jorethang Loop Hydro Electric Project (JLHEP) was developed by M/s DANS Energy Private Ltd (DEPL) as per the Implementation Agreement signed with Government of Sikkim dated 05.12.2005 and the Petitioner has to give 12% free power (15% from 16th year onwards) to the Govt. of Sikkim (GoS) or cash equivalent at the discretion of GoS.
- 1.4 The Petitioner made an offer for the supply of power from the Petitioner’s plant at Sikkim, vide letter dated 29.04.2016 to Uttarakhand Power Corporation Limited (UPCL). UPCL, being desirous of procuring long term power from the Petitioner, filed a Petition before the Commission seeking approval of the Draft PPA, proposed to be signed with the Petitioner for purchase of power.
- 1.5 The Commission vide its Order dated 21.06.2016 on UPCL’s Petition for approval of Draft PPA held as under:

*“It is ordered that the Petition be admitted. However, the approval of PPA would be taken up subsequently after the tariff for the Respondent’s generating station is determined by the Commission under Section 62 of the Act. Accordingly, the Respondent is directed to file its Tariff Petition and Business Plan Petition in accordance with the UERC (Terms and Conditions of Determination of Multi Year Tariff) Regulations, 2015 within 30 days.”*

- 1.6 The present Petition was filed by the Petitioner for determination of MYT tariff for the following periods:
- (a) For the remaining period of FY2016-17;
  - (b) For the period FY2017-18 to FY2018-19;
- 1.7 The Petitioner through its Petition requested the Commission for the following reliefs:
- (a) Determine the Annual Fixed Charge and cost-plus tariff for the balance period of FY2016-17 and the control period from FY 2017-18 to FY 2018-19 payable by the Respondent for sale of electricity from the Petitioner's Project;
  - (b) Determine provisional tariff for supply of power by the Petitioner to Uttarakhand Power Corporation Limited pending disposal of the present petition;
  - (c) Allow the recovery of a single-part energy charge (Rs/KWh) in view of the Petitioner seeking tariff for only a fraction of the FY 2016-17;
  - (d) Clarify that the payment of Energy Charge shall be linked to the scheduled energy as per injection schedule approved by the Regional Load Dispatch Centre.
- 1.8 On analyzing the Petition, the Commission sent a deficiency letter dated 13.07.2016 to the Petitioner requiring it to submit the replies to the deficiencies pointed in the Petition including the submission of the tariff Petition based on the actual capital cost of the project in accordance with the Regulations so that the Petition may be placed before the Commission for admission. The Petitioner submitted its reply before the Commission vide its letter dated 14.07.2016. However, on perusal of the reply submitted by the Petitioner, the Commission observed that the deficiency indicated to the Petitioner vide the earlier letter still persisted and, accordingly, the Commission sent another letter dated 26.07.2016 pointing out the deficiencies and again directed the Petitioner to submit certain additional information required for determination of Tariff in accordance with the Electricity Act, 2003 read with the relevant Regulations. The relevant extract of the Commission's letter dated 26.07.2016 indicating the deficiencies are reproduced hereunder:
- “
- 1. *As per the Commission's letter dated 13.07.2016, you were required to submit the tariff*

*calculations based on the Audited Actual Capital Cost incurred on the project in accordance with UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015 (MYT Regulations, 2015). In reply you have provided tariff calculations based on the assumed capital cost of Rs. 1008 Crore against the actual expenditure of Rs. 1507.52 Crore without assigning any notable reason for assuming the lower cost. However, Regulation 21 (3) of MYT Regulations, 2015 specifies as under:*

*“(3) The Capital Cost of a new project, i.e. projects achieving Commercial Operation on or after notification of this Regulation shall include the following:*

- a) The expenditure incurred or projected to be incurred up to the date of commercial operation of the project;*
- b) Interest during construction and financing charges, on the actual amount of loan.*
- c) Interest during construction and incidental expenditure during construction as computed in accordance with Regulation 21(9) & 21(10) of these Regulations;*
- d) Capitalised Initial spares subject to the ceiling rates specified in Regulation 21(11) of these Regulations;*
- e) Expenditure on account of additional capitalization and de-capitalisation determined in accordance with Regulation 22 of these regulations;*
- f) Adjustment of revenue due to sale of infirm power in excess of fuel cost prior to the CoD as specified under Regulation 45 of these regulations; and*
- g) Adjustment of any revenue earned by the generating company, transmission licensee and distribution licensee by using the assets before CoD.”*

*In view of the above, you are required to submit the duly filled in formats and calculations therein based on the Audited Actual Capital Cost incurred on the project. Formats are also required to be submitted in a workable MS-Excel soft form having due linkages & formulae.*

*...”*

1.9 The Petitioner vide its Petition and despite getting two opportunities to submit the replies to the Commission on the deficiencies pointed out did not submit the actual capital cost of the project and chose to ignore the requirements of the Act and Regulations without any legitimate justification for not submitting the same.

1.10 The hearing in the matter was held on 09.08.2016 wherein both the Petitioner and the Respondent were heard.

## 2. Commission's Views and Decision

### 2.1 Status of the Petition

2.1.1 Before going into the merits of the Petition, the Commission first examines whether the Petition filed by the Petitioner fulfils the criterion of the Act and the Regulations specified there under for maintainability and admission.

2.1.2 Section 61 of the Electricity Act, 2003 which deals with specifying the Tariff Regulations clearly specify the principles on which Tariff Regulations are to be based which amongst others include the factors which would encourage competition, efficiency, economic use of the resources, good performance and optimum investments and safeguarding of consumers interest and **at the same time recovery of cost of electricity in a reasonable manner and the principles regarding efficiency in performance, National Electricity Policy and Tariff Policy.**

*Emphasis Added*

2.1.3 Sub-section 2 of Section 62 of the Electricity Act 2003 further provides that the appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff. From the perusal of the provisions of the Electricity Act, 2003, it is evidently clear that the tariff for a generating company supplying power to the distribution licensee in the State shall be determined by the respective State Commissions as per the provisions of the Act and relevant Tariff Regulations specified by the Commission in compliance with the National Electricity Policy and Tariff Policy and the generator will have to provide all the details specified by the Commission in the Regulations.

The relevant extracts from the Electricity Act are reproduced hereunder:

*“61. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

...

*(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*

(c) *the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*

(d) *safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;*

...

(f) *multi year tariff principles;*

...

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

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

...

(2) *The Appropriate Commission may require a licensee or a generating **company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.***

...

(5) *The Commission may require a licensee or a generating company to comply with such procedure as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover..."*

2.1.4 The Commission has specified the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015 based on the cost-plus assumption. In this regard, Regulation 21(3) of UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015 specifies as under:

*"(3) The Capital Cost of a new project, i.e. projects achieving Commercial Operation on or after notification of this Regulation shall include the following:*

*a) The expenditure incurred or projected to be incurred up to the date of commercial operation of the project;*

*b) Interest during construction and financing charges, on the actual amount of loan.*

*c) Interest during construction and incidental expenditure during construction as computed in accordance with Regulation 21(9) & 21(10) of these Regulations;*

*d) Capitalised Initial spares subject to the ceiling rates specified in Regulation 21(11) of these Regulations;*

*e) Expenditure on account of additional capitalization and de-capitalisation determined in*

*accordance with Regulation 22 of these regulations;*

*f) Adjustment of revenue due to sale of infirm power in excess of fuel cost prior to the CoD as specified under Regulation 45 of these regulations; and*

*g) Adjustment of any revenue earned by the generating company, transmission licensee and distribution licensee by using the assets before CoD”*

*(Emphasis added)*

2.1.5 However, it has been observed that the proposal made by the Petitioner is contradictory to the provisions of the Electricity Act, 2003 and the Regulations specified there under. Moreover, the Petitioner despite being directed twice by the Commission as has been stated in **Point No. 1.8 and 1.9 above** failed to submit the Petition based on the actual capital cost of the project in accordance with the Act, the Regulations and the repeated directions of the Commission.

2.1.6 Further, the Petitioner in its reply has submitted that although the actual capital cost incurred on the project was Rs. 1507.52 Crore, however, for tariff determination purpose, the capital cost is restricted to Rs. 1008 Crore, i.e. the hard cost of the project excluding IDC and pre-operative expenses since the project had faced delays in commissioning because of various factors, hence, it was pertinent that the assumed cost for the project should compare with the benchmark cost for similar projects, and also should provide for appropriate discount for the cost overruns due to delays in the Government approvals, land allotment and delay in release of funds from the lenders. The Petitioner further submitted that the reasons for assuming the capital cost of Rs. 1008 Crore as against the audited cost of Rs. 1507.52 Crore was that the same was comparable to the Benchmark cost laid down by MNRE for the similar project of Rs. 977.28 Crore and that the Commission may not consider the cost overruns due to delays. Therefore, the Petitioner decided to restrict its capital cost to Rs. 1008 Crore.

2.1.7 On careful consideration, the Commission is unable to accept the reasons given by the Petitioner for not submitting the details repeatedly sought by the Commission. The data and information as sought by the Commission vide its letters dated 13.07.2016 and 26.07.2016 were not submitted without any reasonable justification. Moreover, the submissions made by the Petitioner were found to be legally baseless and against the spirit of the Act and the Regulations and can in no way be accepted. Therefore, in light

of the facts and the circumstances of the Petition and the replies submitted, the proposal can be valid only where a generator quotes the tariff under the competitive bidding process under Section 63 of the Electricity Act, 2003 where he is at complete liberty to decide the tariff it wants to bid. However, in cases where tariff determination is being carried out under the Regulations U/s 62 of the Act, the tariff has to be based on the actual capital cost in accordance with the Regulations as discussed above. Moreover, the Petitioner itself in its replies has submitted that there was cost overruns in the project. Hence, it has claimed only the hard cost. Even if this hypothesis of the Petitioner is considered, it is all the more essential for the Petitioner to file its Petition based on the actual capital cost & the Commission would carry out the prudence check of all the cost overruns. The Petitioner is nowhere empowered to usurp the function of the Commission in approval of capital cost.

2.1.8 The Instant Petition is hereby dismissed as rejected. However, the Petitioner is given the liberty to resubmit the Petition on the basis of actual capital cost in accordance with the Regulations.

2.1.9 Ordered accordingly.

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

**(Subhash Kumar)**  
Chairman