

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Adjudication of dispute under Section 86(1)(f) between Uttar Bharat Hydro Power (P) Ltd. and Uttarakhand Power Corporation Ltd. in respect of 10.5 MW Sarju III Small Hydro Power Project.

In the matter of:

M/s Uttar Bharat Hydro Power (P) 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: April 19, 2016

Date of Order: June 8, 2016

The Order relates to the Petition dated 16.03.2016 filed by M/s Uttar Bharat Hydro Power (P) Ltd. for adjudication of dispute between Uttar Bharat Hydro Power (P) Ltd, a generating company and Uttarakhand Power Corporation Ltd., a distribution licensee with regard to 10.5 MW Small Hydro Power Project of the Petitioner under Section 86(1)(f) of the Electricity Act, 2003 (hereinafter referred to as "the Act").

1. Background

1.1 M/s Uttar Bharat Hydro Power (P) Ltd. (hereinafter referred to as "the Petitioner") is a Company incorporated under the Companies Act, 1956. The Petitioner has submitted that it is a generating company within the meaning of Section 2(28) of the Act and it has set up two small hydro power projects, i.e. 10.5 MW Sarju III (project commissioned on 11.07.2014) and 12.6 MW Sarju II (project completed on 01.08.2015) and the Petitioner also intended to establish 7.5 MW

2 Petitioner's Submissions

- 2.1 The Petitioner submitted that it had entered into a Power Purchase Agreement dated 16.12.2002 with Uttarakhand Power Corporation Ltd. (hereinafter referred to as "the Respondent") wherein the Petitioner had agreed to set up a small hydro power project (Sarju III Project) and generate & supply electricity to the Respondent on the terms and conditions contained in the PPA which was superseded by the Power Purchase Agreement dated 13.10.2011 approved by the Commission vide Order dated 14.10.2015 with certain amendments to ensure consistency with the relevant Regulations. The Petitioner further submitted that the Commission, inter-alia, specified the provision for deemed generation in its UERC (Tariff and other terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generation Stations) Regulations, 2013 (hereinafter referred to as "the RE Regulations, 2013").
- 2.2 The Petitioner had set up the power plant of 10.5 MW (Sarju III) in accordance with the provisions of the PPA which was commissioned w.e.f. 10.07.2014. As per the PPA, the Petitioner was to construct the transmission line from the generating company to the interconnection point which in the present case was 33 kV Kapkote sub-station and the Respondent was to grant approval as well as technical assistance in addition to facilitation of interconnection at the sub-station. The Petitioner further submitted that the responsibility of evacuation of power beyond the Kapkote sub-station was that of the Respondent. The Respondent was required to plan and execute necessary augmentation work for ensuring evacuation of the upcoming generators, including evacuation from the Petitioner's small hydro power project. The Petitioner submitted that it was ready and able to deliver the entire electricity generated from the project with regard to the installed capacity of 10.5 MW at all times from the CoD. However, on account of downstream constraints faced by the Respondent in its system, the Respondent restricted the evacuation of power from the project to 7 MW. The Petitioner submitted that the restriction was solely due to inability of the Respondent to evacuate the power beyond 33 kV Kapkote Sub-station.
- 2.3 That even against the above 7 MW, the Respondent has not been taking delivery of the full quantum and has been restricting the generation at a much lower capacity. Further, there has been a loss of generation due to high/low voltage, trippings and grid interruptions without any fault in the lines of the Petitioner. The Petitioner had informed the Respondent many times

regarding loss of generation as well as the financial problems faced by it.

- 2.4 The Petitioner further submitted that there was no default on part of the Petitioner or any force majeure condition preventing the generation from the power plant of the Petitioner. The only reason was the inability of UPCL to evacuate power from the said sub-station. Accordingly, the Petitioner is entitled to deemed generation on the quantum of electricity that can be generated from the power plant as per the water availability in accordance with the Regulations. The Petitioner had, accordingly, raised the invoices for Deemed Generation claim for the loss of generation. However, the Respondent denied to make any payment on the basis that the restriction in generation was due to the improvements being carried out in the evacuation system and, infact, the Respondent had vide Minutes of Meeting dated 25.02.2016, restricted the capacity for evacuation to 3.5 MW.
- 2.5 The Petitioner submitted that the Commission had initiated the proceedings with regard to the grid connectivity of the 12.6 MW power project of the Petitioner, i.e. Sarju II and by the Order dated 02.07.2015, the Commission sought information from the Respondent on the evacuation capacity. Thereafter, in the suo-motu proceedings initiated, by the Order dated 11.9.2015, the Commission had inter-alia held that the Respondent had not planned the execution of necessary works for evacuation of power from the generating stations and as a result of which the renewable power had bottled up. The Commission further observed that the Respondent was issuing instructions to restrict the generation in violation of the Act and the Regulations and directed the Respondent to submit a comprehensive Action plan for evacuation of power and to ensure timely completion of ongoing works.
- 2.6 The Petitioner submitted that it was unable to generate power for full capacity of Sarju III solely because of the inability of the Respondent to evacuate power from the Kapkote sub-station. The Respondent had not planned in coordinated and efficient manner the measures to be taken for evacuation of the power. In addition to the above, the Petitioner submitted that it was entitled to claim deemed generation for the unavailed capacity from COD of the Sarju III Project. The RE Regulations clearly provide for Deemed Generation for small hydro projects for loss of generation on account of non-availability of evacuation system beyond the inter-connection point and receipt of backing down instructions from the SLDC as well as variations in voltage etc. Further, the Petitioner is facing financial problems to service the interest and finance charges and other fixed commitments including employee cost, O&M expenses etc.

- 2.7 The Petitioner has prayed before the Commission to pass an order directing the Respondent to pay tariff on deemed generation for Sarju III project from the CoD alongwith the delayed payment surcharge/interest.

The hearing for admissibility of the Petition was held on 19.04.2016 and on the request of the Respondent, the Commission allowed one week's time to the Respondent for submission of its comments on the maintainability of the Petition. The Commission also directed the Petitioner to submit the rejoinder on Respondent's submission, if any, within 10 days of receipt of the same.

3 Submissions of the Respondent

- 3.1 UPCL, vide its letter dated 28.04.2016, submitted that the PPA between UPCL and the Petitioner was initially executed on 16.12.2002 for the capacity of 2 MW and thereafter vide implementation agreement dated 03.06.2011 the capacity of Sarju III was enhanced to 10.5 MW and consequently a revised PPA dated 13.10.2011 for 10.5 MW was executed. Similarly, the capacity of other upcoming unit namely Sarju II was also enhanced from 3 MW to 12.6 MW for which the Supplementary PPA was executed on 26.02.2015.
- 3.2 The Respondent further submitted that prior to signing of the PPA on 13.10.2011, the Respondent was not aware of any enhancement of the capacity of the Petitioner, therefore, the question of upgrading and planning the evacuation system didn't arise. Further, the Petitioner was aware about the constraints of existing evacuation network. In addition, the Respondent submitted that it had approved the conversion of Raccoon conductor to Dog conductor in June 2014 for enhancement of evacuation system.
- 3.3 The Respondent submitted that the Petitioner had misrepresented the Minutes of Meeting dated 22.05.2014 as an order for restricting the Petitioner to generate only certain quantum of power whereas, it is clear from the minute of meeting that the same was an agreement between both the parties and the basis of the agreement was the actual existing position of the distribution network. Further, the Petitioner had run its plant to the maximum possible capacity within its own limitations and whenever it was possible to generate more power they have done so without any restriction which is evident from the record that they have reached the generating capacity of more than 9 MW in certain months, which only shows that the quantum of power generated was only dependent upon their own constraints and they were in no way affected by the available evacuation system which was sufficient to cater to their requirement and if it was

possible for them to generate to the full capacity of the plant even then it would have been possible to evacuate the full generation.

- 3.4 The Respondent has submitted that the Petitioner has filed the Petition u/s 86(1)(f) of the Act, however, the said provision is not attracted as there is no dispute which requires adjudication by the Commission and the Petitioner has not complied with the provision of the RE Regulation, 2013 relating to Deemed Generation. The Petitioner has not reconciled on monthly basis the loss of generation which is mandatorily required for claiming deemed generation. The Petitioner has not filed any authentic document in support of his claim.
- 3.5 The Respondent further submitted that the Petitioner wants his non-achieving of the rated capacity be treated as deemed generation due to constraint in the evacuation system which is not legally permissible. The provision of deemed generation assumes the existence of proper evacuation system and permits deemed generation only when due to fault of the licensee, the evacuation system is not available for hours more than those which are permissible. The purpose is to maintain an efficient evacuation system and also avoid loss of useful generation. But in the present situation the system was always available but due to the enhancement in the capacity of the Petitioner the existing system became insufficient and the Respondent has all along been making efforts to strengthen its evacuation system as per the requirement.
- 3.6 The Respondent further submitted that the Petitioner was aware of the constraints in the existing evacuation system and also the difficulty being faced in conductor replacement and laying down of panther line. Moreover, the Petitioner had all along accepted this position which is also evident from the agreement reached on 22.05.2014. However, the Petitioner for the first time on 23.06.2015 mentioned that it should be permitted to evacuate 10.5 MW of power or else it should be allowed deemed generation. UPCL submitted that the Petitioner knew the existing situation and was also aware that unless the conductor replacement of the existing line is done it would not be possible to evacuate 10.5 MW of power yet writing that letter shows the ulterior motive of the Petitioner to create false and frivolous dispute.
- 3.7 On Respondent's submissions the Petitioner submitted its counter reply dated 14.05.2016 and the same has been discussed at appropriate places in subsequent Paras under the Commission's views & decision.

4 Commission's Views & Decisions

- 4.1 The Commission observed that the first PPA with the generator was executed by UPCL in

December, 2002 for the capacity of 2 MW of Sarju-III SHP. The same had been revised to 10.5 MW vide the PPA dated 13.10.2011 and the project was commissioned on 10.07.2014. In accordance with the Clause 7.1 & 8.3 of the PPA read with regulation 38(2) of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010, the Petitioner had taken up construction of the transmission line from interconnection point to the Respondent's 33 kV Kapkote Sub-Station.

- 4.2 Regulation 38(1) of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010 specifies as under:

"Transmission Licensees and Distribution Licensees shall endeavor to provide connectivity to the RE Based Generating Stations and Co-generating Stations at nearest possible sub-station preferably within a range of 10 kilometers from the location of such generating station. They may further mutually agree to provide connectivity at appropriate voltage level subject to technical feasibility and technical standards for construction of electrical lines and connectivity with the grid as may be specified by CEA."

Similar provisions have also been provided in the UERC RE Regulations, 2013. Accordingly, the Respondent, being a distribution licensee, is responsible for evacuation of power beyond Kapkote sub-station.

- 4.3 Not only for Sarju-III SHP, licensee had also executed PPAs for purchase of power in respect of other SHPs namely Sarju-II, Sarju-I and Loharkhet way back in the year 2002. Having executed PPAs with the upcoming generators, simultaneous creation of adequate evacuation infrastructure including upgradation/augmentation of existing evacuations system became imperative with the commissioning of such generating stations and the same was the duty of the distribution licensee.
- 4.4 Subsequent to revision of project capacity from 2 MW to 10.5 MW a PPA for revised capacity had also been executed in the year 2011. Thereafter, prior to commissioning of the SHP, the Petitioner & the Respondent in a meeting held on 22.05.2014 decided to limit the generation of the SHP less than or upto 7 MW due to evacuation restrictions, i.e. 15 km transmission line from Kapkote Sub-Station to Bageshwar Sub-Station having part of which made of ACSR DOG and remaining line was of ACSR RACOON. The minute of meeting also stated that restriction in generation capacity would be continued till completion of the augmentation of the aforesaid

evacuation system.

- 4.5 The Respondent has stated that it was not aware of any enhancement of capacity of the Petitioner, therefore, the question of upgrading and planning the evacuation system from Kapkote to Bageshwar did not arise and the Respondent in June, 2014 had decided for conversion of Raccoon conductor to Dog conductor. In this regard, the Commission noted that the revised PPA for enhanced 10.5 MW capacity of SHP was executed on 13.10.2011 and the Respondent came to the decision of strengthening of its system to the tune of upcoming generation capacity by conversion of Raccoon conductor to Dog conductor in June, 2014, i.e. nearly 2 year and 8 months after the execution of PPA. Further, letters sent to the Respondent by the Petitioner during the year 2008 to 2009 corroborate the factual position that licensee was informed about enhancement in capacity of the upcoming SHPs. Hence, the Respondent had ample of time to achieve system augmentation before commissioning of the Petitioner's SHP.
- 4.6 Notwithstanding the above, Respondent (UPCL) started one of the augmentation work, i.e. replacement of Raccoon conductor by Dog conductor between UPCL's 33 kV S/s Kapkote and 33 kV S/s Bageshwar only after Commission's Order dated 11.09.2015 directing the Respondent to ensure timely completion of augmentation works namely replacement of Raccoon conductor by Dog conductor and construction of additional Panther conductor circuit between the aforesaid substation. However, both the works have not been completed so far by the Respondent.
- 4.7 The Commission also noted that UPCL had persistently maintained their stance that there was power flow restriction in its distribution system for evacuation of power, however, UPCL in its reply itself has submitted that it was able to evacuate more than 9 MW of power generated from the Petitioner's SHP in certain months. Further, casting blame on the Petitioner during the hearing and also in its reply, Respondent (UPCL) has made a frivolous statement that non-achievement of rated capacity of SHP might be on account of the technical issues at the generator's end. This is a blatant contradictory statement by the Respondent when the Respondent itself agrees about the inadequacy of their evacuation system and decides to augment & strengthen it to enable flow of power from the SHPs in the area. On this issue, the Petitioner vide its rejoinder dated 14.05.2016 has submitted that it had run the SHP upto 9 MW to demonstrate to the Respondent that there was no fault in its generating station, however, the same could not be run for continuous period due to problems in Respondent's evacuation system.

- 4.8 The Petitioner vide its rejoinder stated that it had been informing the Respondent regarding the increased capacity of the SHP and the Respondent had acknowledged the same vide its letter dated 19.03.2011 seeking feasibility report on energy evacuation. The Commission also noted that the Respondent has failed to make any concrete submissions regarding substantial steps taken by it for ensuring evacuation of power as directed by the Commission vide its earlier Order dated 11.09.2015 in the matter.
- 4.9 The Minutes of meetings agreed upon by the parties cannot prevail upon the provisions of the PPA and also cannot override the existing provisions on deemed generation under the Regulations. In this regard, the Petitioner has also submitted that the right of claiming deemed generation had not been relinquished by it, however, due to the evacuation constraint it had restricted the generation capacity of its generating station upto 7 MW and even less on account of low voltages and frequent trippings. Further, the Petitioner also referred to certain relevant decision of the higher courts, wherein, it was decided that the waiver of any right by a person must be an intentional act with knowledge and that there can be no waiver unless the same has been abandoned by the person having full knowledge of it. The Petitioner submitted that it had not waived or abandoned the right of deemed generation of its aforesaid generating station and the same has been claimed by it by issuing letters and raising invoices for the same.
- 4.10 As discussed above, it is apparent that the Respondent is bestowed with the responsibility of evacuation of power in accordance with the provisions of the Regulations under the Electricity Act, 2003 which had been agreed upon by the licensee vide the PPA dated 13.10.2011 for the revised capacity of the SHP of 10.5 MW and the Respondent had to ensure evacuation of power generated from the aforesaid SHP. However, despite the categorical directions by the Commission it has not been able to augment & strengthen the existing distribution system for evacuation of power till date causing not only loss of generation and corresponding revenue loss of the SHPs but also aggravating the problem of power shortage in the State. The Licensee should have worked more proactively instead it has squarely failed to fulfill its duty to supply power to the consumers in the State besides reducing shortfall in its renewable purchase obligations (RPO) in accordance with the Regulations by purchasing the said RE power.
- 4.11 From the status of RPO submitted by UPCL, it is evident that it is facing a substantial shortfall of about 700 MUs of non-solar RPO. Moreover, for FY 2016-17 the Commission has estimated an energy shortage of about 2700 MUs for UPCL. Hence, under these circumstances, the

Commission is of the view that bottling up the generation of SHPs in the State like Sarju-III, which not only provide much needed generation for supplying to consumers but also contribute in fulfillment of the non-solar RPOs of UPCL, is a gross wastage of natural resources which in no way can be tolerated. The Commission had recognized the bottlenecks in the distribution system of UPCL for evacuation of power from RE sources including SHPs and had accordingly, amended its RE Regulations, 2010 to include the provision of deemed generation. It is pertinent to reproduce relevant views of the Commission expressed in the Statement of Object & Reason (SOR) dated August 14, 2012 issued alongwith UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) (First Amendment) Regulations, 2012 and the same reads as:

“In the State of Uttarakhand, the small hydro projects are located at remote and hilly terrains, where bottlenecks related to inadequacy of the transmission and distribution system exists leading to frequent trippings, breakdowns of lines, voltage fluctuations occur leading to loss of generation. In comparison, other renewable sources are set up in plain areas close to the sub-station of UPCL where such problem may not be as persistent and as acute as that encountered for the SHP’s...”

Further, the Commission had also held as under:

“It is the duty of UPCL to ensure that it gets maximum generation so as to meet its Renewable Purchase Obligation (RPO) specified by the Commission failing which it may be required to buy the Renewable Energy Certificates to meet the shortfall in complying with its RPO. Hence, the Commission feels it necessary to include loss of generation due to voltage fluctuation as deemed generation. However, keeping in view the existing system of UPCL, the Commission is of the view that it would be feasible to give UPCL reasonable time to upgrade/strengthen the system and also to install the capacitor banks at its sub-stations. The same was also agreed to by the officers of UPCL in the meeting with the Commission. Accordingly, the Commission has decided to enable the provision with regard to deemed generation on account of voltage fluctuations w.e.f. 01.04.2013.”

Based on the above, adequate time was allowed to UPCL to upgrade/strengthen its existing distribution system and also to install the capacitor banks at its sub-stations. Infact, it is appalling to note that even after stipulation of deemed generation provisions in the regulation, the Respondent has shown complete apathy towards compliance of the law of the land and has failed to develop prompt internal systems to identify the deficiencies in the existing evacuation system for the upcoming RE sources including SHPs in the State and rectify the same well in advance to avert invoking of deemed generation claims by the developers of these sources of

generation in accordance with the RE Regulations. However, the conduct of UPCL again reveals its lackadaisical approach in dealing with this imminent problem of evacuation of RE generation including SHPs. **UPCL is directed to submit the status of the capacitor banks installed by it at its sub-stations within 1 month of the Order.**

4.12 Having discussed as above, the Commission is of the view that the claim of deemed generation is admissible to the Petitioner in accordance with the provisions of the RE Regulations. The Commission directs:

- a) Both the Petitioner and the Respondent to jointly sit together for monthly reconciliation of the deemed generation claimed by the Petitioner and settle the amount so arrived at within two months time in accordance with the provisions of the Regulations.
- b) UPCL to submit fortnightly progress report of the same before the Commission jointly signed by both the parties failing which the Respondent will render himself liable for action under Section 142 of the Electricity Act, 2003.
- c) UPCL to review the requirement of capacitor banks at its substations and submit a status report on the capacitor banks within 1 month of the Order.
- d) The Petitioner granted leave to agitate the issues remaining disputed after two months.

4.13 Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman