

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition for approval of the 'Date of Commercial Operation' (COD) of the damaged/non-functional 8 Small Hydro Power Plants (SHPs) on the date when the SHPs would start operating after renovation & modernisation works.

In the matter of:

Uttarakhand Renewable Energy Development Agency ... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd. ... Respondent 1

UJVN Ltd. ... Respondent 2

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Shri Subhash Kumar **Chairman**

Shri K.P. Singh **Member**

Date of Hearing: April 19, 2016

Date of Order: September 5, 2016

This Order relates to the Petition filed by Uttarakhand Renewable Energy Development Agency (hereinafter referred to as "UREDA" or "the Petitioner") seeking approval of the 'Date of Commercial Operation' (COD) of the damaged/non-functional 8 Small Hydro Power Plants (SHPs) as the date when these SHPs would start operating after renovation & modernisation works.

1. Background

1.1 UREDA filed the petition under provisions of Regulation 9, 10, and 54 of the UERC (Conduct of Business) Regulations, 2014 and Regulation 6(1), Regulation 12(2), Regulation 14(7) and Regulation 50 of UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2013 for seeking approval of the Commission of the 'Date of Commercial Operation' (COD) of the damaged/non-functional 8 Small Hydro Power Plants (SHPs) as the date when these SHPs would start operating after renovation & modernisation works.

1.2 UREDA submitted that Govt. of Uttarakhand had vide its letter no. 1311/I/2012-03/17/2012 dated 07/11/2012 directed UJVN Ltd. to transfer 32 small hydro power projects having capacity upto 3 MW to UREDA. UJVN Ltd. had transferred following 21 SHPs of cumulative capacity of 17.2 MW only to UREDA:

Hydro Power Projects Under Operation (Grid Connected)							
S. No.	Name of Project	District	Potential (in KW)	Year of Commissioning	Date of transfer of project from UJVN Ltd. to UREDA	PPA Signed with UPCL	Tariif in ₹/Kwh
1	Chharandeo	Pithoragarh	2x200	Dec, 2000	15-04-13	Yes	3.07
2	Garaun	Pithoragarh	2x150	Jan, 2002	30-04-13	Yes	3.07
3	Harsil	Uttarakashi	2x100	1973	01-05-13	Yes	3.07
4	Taleshwar	Pithoragarh	2x300	Dec, 2000	13-05-13	Yes	3.07
5	Barar	Pithoragarh	2x375	April, 1997	20-05-13	Yes	3.07
6	Badrinath-II	Chamoli	2x625	Oct, 2004	25-10-13	Yes	3.07
7	Tharali	Chamoli	1x400	1988	09-10-13	Yes	3.07
	Sub Total		3900				
Projects under Renovation							
8	Pandukeshwar	Chamoli	3x250	May, 1975	23.11.13	No	
9	Relagad	Pithoragarh	2x1500	Feb, 2004	15.10.13	Yes	3.07
10	Kotabag	Nainital	2x100	Nov, 1989	31.03.13	Yes	3.07
	Sub Total		3950				
Project completely damaged: No Scope for renovation							
11	Balighat	Bageshwar	1x50+1x30	1950	04.05.13		
12	Sonprayag	Rudraprayag	2x250	Dec, 2002	07.01.14	Yes	3.07
13	Suringad	Pithoragarh	2x400	Nov, 1986	11.05.13	Yes	3.07
	Sub Total		1350				
Projects which were damaged/non-functional at the time of transfer and further damaged in Calamity Disaster occurred in June 2013							
14	Sapteshwar	Champawat	2x150	Sep, 1994	10.04.13	Yes	3.07
15	Kulagad	Pithoragarh	2x600	Feb, 2004	15.10.13	Yes	3.07
16	Gauri	Champawat	2x100	Transfer from UPSEB on 1999	29.05.13	Yes	3.07
17	Kanchoti	Pithoragarh	2x1000	Aug, 1993	22.10.13	Yes	3.07
18	Chirkila	Pithoragarh	1x1000+1x500	May, 1997	26.10.13	Yes	3.07
19	Chamoli Extention	Chamoli	4x200	1986	18.10.14	No	-
20	Tapowan	Chamoli	2x400	May, 2006	17.10.14	No	-
21	Jummagad	Chamoli	2x600	May, 2008	17.10.14	No	-
	Sub Total		8000				
	Grand Total		17200.00				

1.3 UREDA submitted that the SHPs mentioned as above from S.N. 1 to 7 were working and the PPA for these SHPs has been signed between UPCL and UREDA at a tariff of ₹ 3.07 per unit, whereas, SHPs mentioned at S.N. 8, 9 and 10 namely Pandukeshwar, Ralagad and Kotabag are under renovation and modernisation stage and that the GoU has sanctioned fund for these projects.

- 1.4 UREDA further submitted that the SHPs mentioned at S.No. 11, 12 and 13 namely, Balighat, Sonprayag and Suringad are completely damaged. These SHPs could not be rehabilitated as there was no scope for renovation and modernisation work. UREDA further submitted that UJVN Ltd. was also extending its hydro project is located on upstream of Suringad project, so there was no scope for carrying out renovation and modernisation work in Suringad SHP. However, as per UJVNL, Suringad SHP Unit-2 was in running condition and Unit -1 R&M works were in progress at the time of handover to UREDA.
- 1.5 UREDA also submitted that SHPs mentioned at S.No. 14 to 21 were not working at the time of transfer of these projects from UJVN Ltd. to UREDA. These projects were further damaged during the calamity occurred in the State of Uttarakhand in June, 2013. However, as per UJVNL, Sapteshwar SHP was operational at the time of handing over to UREDA whereas Kulagad SHP, Kanchoti SHP and Chirkila SHP were not in operation after flood of June, 2013. UREDA has prepared the Detailed Project Report (DPR) of all these 8 SHPs. UREDA submitted that as per the approval provided by Executive Committee, UREDA it is in the process of inviting tender for “Renovation, Modernisation, Operation and Maintenance and Transfer” of these 8 SHPs. Accordingly, these 8 SHPs will be allotted to those developers for a period of 30 years (including 2 years of construction period) who will charge minimum price in ₹/kWh from UREDA on per unit sale of electricity to UPCL.
- 1.6 UREDA also submitted that it was not viable to renovate and modernise the SHPs on their approved tariffs as the cost of renovation and modernisation of these SHPs are very high. The details of SHPs proposed for renovation and modernization are given below:

S. No	Name of Project	Potential (in KW)	Tariff in ₹/ kWh as per PPA signed with UPCL	UERC order dated 01.12.06 & 19.05.09		As per DPR for reconstruction, modernization & Up gradation		
				Capital cost (₹ Cr./MW) on COD	Tariff in ₹/ kWh	Proposed Capacity (in kW)	Estimated Cost (in ₹ Crore)	Capital cost (₹ Cr./ MW) on COD
1	Sapteshwar	300	3.07	-	3.07	300	0.21	0.70
2	Kulagad	1200	3.07	3.35	1.8	1200	8.45	7.04
3	Gauri	200	3.07	-	3.07	200	3.41	17.05
4	Kanchoti	2000	3.07	2.78	1.7	2000	19.2	9.60
5	Chirkila	1500	3.07	3.75	1.9	1500	6.92	4.61
6	Chamoli Extention	800	-			3000	23.59	7.86
7	Tapowan	800	-			2500	19.92	7.97
8	Jummagad	1200	-	-	2.8	1200	6.8	5.67
	Total	8000				11900	88.5	

- 1.7 The Petitioner submitted that the renovation and modernisation cost of these above said 8 SHPs are more and are nearly equal to the cost of installation of new SHPs. The renovation and

modernisation work does not require any environment clearance as the necessary clearances have already been obtained for these projects. The Petitioner requested that the COD of these projects should be the date when these SHPs will start operating after renovation, modernisation works. This will allow these projects to avail the tariff as per their present actual cost and will be governed by the UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2013.

1.8 UREDA also submitted that from these projects around 41.70 MUs shall be available to UPCL that would help in compliance of non-Solar RPO.

1.9 The Commission held a hearing on 19.04.2016 in the matter and vide its Order dated 19.04.2016 directed that:

“(a) The Petitioner is required to furnish the copies of the DPRs of the damaged/non-functional SHPs to UPCL within 3 days from the date of this Order and UPCL is directed to submit its comments in the matter within 15 days of receipt of the DPR.

(b) UJVN Ltd. be also made a party in the matter. UJVN Ltd. is required to submit the status of the damaged/non-functional SHPs as on the date of transfer to UREDA within 15 days of this Order.”

1.10 UJVN Ltd. vide its reply dated 06.05.2016 submitted the status of SHPs transferred to UREDA. From this information submitted by UJVNL, it has been observed that date of commissioning of some of SHP's mentioned by UREDA is in deviation from the actual COD. Accordingly, the date of COD as informed by UJVNL & status of the project on the date of hand over to UREDA are as follows:

S. No.	Name of Project	District	Potential (in KW)	Year of Commissioning	Status of the Project on the date of Hand Over
1	Chharandeo	Pithoragarh	2x200	Dec, 2000	Scheme was in operation
2	Garaon	Pithoragarh	2x150	Jan, 2002	Scheme was in operation
3	Harsil	Uttarakashi	2x100	1973	Project was under operation
4	Taleshwar	Pithoragarh	2x300	Dec, 2000	Scheme was in operation
5	Barar	Pithoragarh	2x375	April, 1997	Scheme was in operation
6	Badrinath-II	Chamoli	2x625	Oct, 2004	Project was under operation
7	Tharali	Chamoli	1x400	1988	Project was under operation
	Sub Total		3900		
8	Pandukeshwar	Chamoli	3x250	May, 1975	Project was under Severely damaged condition in Uttarakhand Flood June, 2013
9	Relagad	Pithoragarh	2x1500	Feb, 2004	Scheme was not in operation after flood of June, 2013
10	Kotabag	Nainital	2x100	Nov, 1989	Scheme was in operation
	Sub Total		3950		
11	Balighat	Bageshwar	50	1950	Scheme was in operation
12	Sonprayag	Rudraprayag	500	Dec, 2002	Project was under Severely damaged condition in Uttarakhand Flood June, 2013
13	Suringad	Pithoragarh	800	Nov, 1986	Scheme was in operation
	Sub Total		1350		
14	Sapteshwar	Champawat	2x150	Sep, 1994	Scheme was in operation
15	Kulagad	Pithoragarh	2x600	Feb, 2004	Scheme was not in operation after flood of June, 2013
16	Gauri	Champawat	2x100	Transfer from UPSEB on 1999	Scheme was in operation
17	Kanchoti	Pithoragarh	2x1000	Aug, 1993	Scheme was not in operation after flood of June, 2013
18	Chirkila	Pithoragarh	1x1000+500	May, 1997	Scheme was not in operation after flood of June, 2013
19	Chamoli Extention	Chamoli	4x200	1986	Project was under Severely damaged condition
20	Tapowan	Chamoli	2x400	May, 2006	Project was under Severely damaged condition
21	Jummagad	Chamoli	2x600	May, 2008	Project was under Severely damaged condition
	Sub Total		8000		
	Grand Total		17200.00		

1.11 UPCL vide its reply dated 06.06.2016 primarily contended on the grounds and maintainability of the petition. UPCL submitted that the Petitioner has not disclosed as to how and under which provision of the law it can seek approval of the Date of Commercial Operation of the plant which has already been commissioned in the past.

1.12 UPCL also submitted that the provisions of RE Regulations, 2013 do not apply to the Petitioner and hence, the question of seeking gross tariff under the said regulation does not arise. UPCL submitted that some of the plants which are subject matter of the present petition have not even completed its useful life till date.

1.13 UPCL submitted that SHPs were given to the Petitioner on “as is, where is” basis hence it does not appear that the Petitioner has obtained ownership of the said project. Further, indicative cost of Renovation as projected by the Petitioner was unbelievably high (e.g. Gauri SHP per MW capital cost has been shown as ₹ 17.05 Crore). UPCL submitted that if the project is not financially viable it cannot be permitted to be continued, therefore the petition for Renovation and Modernization is required to give complete scope, justification, cost benefit analysis, estimated life extension etc.

2. Commission’s Views

2.1 The current Petition has been filed by UREDA for seeking approval of the Commission of the ‘Date of Commercial Operation’ (COD) of the damaged/non-functional 8 Small Hydro Power Plants (SHPs) as the date when these SHPs would start operating after renovation & modernisation works under the UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2013 (hereinafter referred to as “RE Regulations, 2013”). The objective of doing so is to seek tariff under the RE Regulations, 2013 in respect of the old plants.

2.2 In this regard, it would be relevant to discuss about the applicability of RE Regulations, 2013. Regulation 2(1) of RE Regulations, 2013 specifies as under:

“These regulations shall apply in all cases where supply of electricity is being made from Renewable Energy Sources and Non-fossil Fuel Based Co-generating Stations, commissioned after coming in effect of these Regulations, to the distribution licensees or local rural grids within the State of Uttarakhand.”

Furthermore, IInd Proviso to the Regulation 2(1) of RE Regulations, 2013 specifies as under:

“Provided further that Regulations in Chapter 4 & 5, shall not be applicable for generating stations commissioned prior to coming into effect of these Regulations and their present tariffs shall continue to be applicable...”

Thus, from the above reading of the relevant provisions of the Regulations, it is clear that the tariffs specified under the Regulations would only be applicable to the generating stations commissioned after notification of RE Regulations, 2013. Moreover, Regulations 4(2) specifies the sources and technologies that shall qualify to be covered under the RE Regulations, 2013 and the same is reproduced hereunder:

“(2) At present, generation from following sources and technologies shall qualify to be covered

under these Regulations:

(a) Small hydro project– Generating Stations being developed in accordance with the prevalent policies of the State Government in this regard and using new plant and machinery with capacity lower than or equal to 25 MW, at single location...”

- 2.3 However, from the submissions made by UREDA, it has been observed that the 8 SHPs had already been commissioned in the past well before the notification of RE Regulations, 2013 and hence, they can in no way be covered under RE Regulations, 2013 and be allowed tariffs specified in RE Regulations, 2013. The Commission noted that the provisions related to renovation of the SHPs have not been specified in the UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy sources) Regulations, 2013. Furthermore, treating these projects as new projects and allowing higher tariffs as per the Regulations would set a wrong precedence.
- 2.4 The Petitioner in its Petition has placed reliance on Regulation 50 of RE Regulations, 2013. Regulation 50 specifies the power to relax by the Commission. The power has been conferred on the Commission to relax the rigor of the Regulations in appropriate cases. In case any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulations can be relaxed. A similar view has also been held by Hon'ble ATE in its Judgment dated January 19, 2009 in Appeal No. 11 of 2008. As already discussed above, since the Regulations do not apply in the instant case there is no question of relaxing the Regulations.
- 2.5 The SHPs having capacity upto 3 MW were transferred to UREDA from UJVN Ltd. based on GoU's directions for operation & maintenance of the projects. UREDA has now proposed that the above mentioned 8 SHPs shall be allotted to the project developer who will charge minimum price for per unit sale of electricity which is not in accordance with the decision of the State Government wherein ownership and operation & maintenance of SHPs was vested by the State Government on UREDA (a State Agency). Therefore, UREDA's proposal to allocate such SHPs to other project developer appears to be unreasonable and also inconsistent with the Government's decision in the matter and hence the same cannot be accepted by the Commission. Moreover, UREDA at the time of transfer was aware of the status of the projects and it could have approached the Government for release of funds necessary for revival of these non-functional projects. Infact, the Commission has noted that three no. SHPs namely, Pandukeshwar (0.75 MW), Relagad (3 MW), Kotabag (0.2 MW) are already undergoing renovation and for the said plants UREDA has never in the past approached the Commission

with such proposal. Admittedly, UREDA might be utilising its own fund or the funds granted by State/Central Government for renovation and other related expenditures of the above mentioned SHPs.

- 2.6 The Commission has vide its UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) (Second Amendment), Regulations, 2014 specified the provisions for additional capitalisation which has been incurred on account of damages caused by natural calamity. UREDA can seek funds from the State Government and carry out the work on its own and subsequently approach the Commission for appropriate adjustment in tariffs. It would also be relevant to mention that the State Government is levying Green Energy Cess under the Uttarakhand Green Energy Cess Act, 2014 and one of the objective of the Act is to promote generation of energy through renewable energy. Hence, UREDA may approach the State Government for funds to carry out the works essential to revive the projects.
- 2.7 Accordingly, UREDA's Petition is rejected as not maintainable.
- 2.8 Ordered Accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman