

# UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 45 of 2018

**In the Matter of:**

**Dispute between M/s Bhilangana Hydro Power Limited and Power Transmission Corporation of Uttarakhand Limited, regarding Late Payment Surcharge against payment of transmission charges for the alleged dedicated transmission network.**

AND

**In the matter of:**

M/s Bhilangana Hydro Power Limited.

.....Petitioner

AND

**In the matter of:**

Power Transmission Corporation of Uttarakhand Ltd. (PTCUL)

.....Respondent

**Coram**

**Shri Subhash Kumar Chairman**

**Date of Hearing: 02 November, 2018**

**Date of Order: 22 November, 2018**

The present Petition is filed by M/s Bhilangana Hydro Power Ltd (hereinafter referred to as 'the Petitioner') under Section 86(1)(e) and Section 86(1)(f) of the Electricity Act, 2003 (hereinafter referred to as the 'Act') against Power Transmission Corporation of Uttarakhand Ltd. (hereinafter referred to as 'the Respondent' or 'PTCUL').

## **Facts of the Case**

2. Bhilangana Hydro Power Limited is a company incorporated under the Indian Companies Act, 1956 and has set up a 24 MW hydro electric power project (Bhilangana-III) on River Bhilangana near Village- Ghuttu, Tehsil Ghansali, District Tehri Garhwal, Uttarakhand. The project was allocated under the competitive bidding process by Government of Uttarakhand in 2003.

3. The Petitioner signed an implementation agreement dated 25.01.2007 with GoU and thereafter, in compliance of clause 8.1(l) of implementation agreement, executed a Memorandum of Understanding with PTCUL on 25.01.2007 for evacuation of power. Under the MoU, STU, i.e. PTCUL was required to make arrangement for evacuation of power from the inter connection point, i.e. switch yard of Bhilangana-III project.
4. The Petitioner signed Transmission Service Agreement with PTCUL on 25.10.2008 wherein scheduled commercial operation date (COD) of the project was proposed as 31.03.2009. The schedule date of commissioning was revised from time to time by the Petitioner.
5. The Petitioner is challenging the illegal and arbitrary demand for Late Payment Surcharge raised by the Respondent Licensee towards recovery of transmission charges for use of dedicated 220 kV D/C Ghuttu-Ghansali line.

### **Submission of the Petitioner**

6. The Petitioner stated that the Respondent licensee has wrongly computed LPS (i) by applying compound interest instead of simple interest @ 1.25% per month and (ii) by not considering the start date for LPS as 30 days after the Order dated 29.11.2014 passed by the Hon'ble Appellate Tribunal for Electricity in Appeals No. 128 and 129 of 2013.
7. According to the Petitioner the arbitrary claim for LPS is for the Transmission charges for the period from 04.11.2011 to 11.11.2011 (through supplementary invoices) and for the period from 12.11.2011 to 30.06.2018 (through monthly invoices). The Petitioner submitted that though it has already paid the Transmission charges against all the monthly invoices for the period from November 2011 till June 2018, the Respondent licensee is wrongly claiming LPS by abusing its dominant position.
8. The Petitioner contended that it is a settled position in law that no tariff can be claimed by a Licensee unless approved by the Commission under Section 62 of the Electricity Act, 2003, and as the Annual Transmission Charges for the line in question were determined by the Commission only in its Order dated 06.05.2013, therefore, all the invoices raised by the Respondent licensee for the Transmission charges w.e.f. 04.11.2011 till 06.05.2013 are null and void.
9. According to the Petitioner the wrongful and arbitrary LPS levied by the Respondent licensee is against the explicit directive of the Commission contained in the Order dated 11.12.2012 and letter dated 14.05.2015. The Commission in the said Order had categorically held that the bills raised by the Respondent licensee w.e.f. 04.11.2011 for the alleged dedicated transmission system are not backed by proper authority and deserve to be struck down. Accordingly, the

claim for LPS w.e.f. 04.11.2011 onwards on the basis of an invoice dated 04.08.2012 and the subsequent invoices raised thereafter is contrary to the clear directive of the Commission in the Order dated 11.12.2012.

10. Further the Petitioner contended that the Commission by its interim Order dated 11.12.2012 directed the Petitioner to provide an undertaking that it shall clear the backlog within 30 days from the fixation of transmission charges. The matter was decided by the Commission only by the Orders dated 29.04.2013 & 06.05.2013 and the said Orders were challenged by both the Petitioner and the Respondent licensee before the Hon'ble APTEL which by Order dated 29.11.2014 decided the issues against the parties. Accordingly, in the instant case, the Petitioner at the maximum can be made liable for LPS only after a period of 30 days after the judgement passed by Hon'ble APTEL, i.e. 29.11.2014.
11. The Petitioner averred that the Commission in its Order dated 29.04.2013 clearly held that the transmission charges for 220 kV D/C Ghuttu-Ghansali line to be determined by the Commission shall be provisional and Respondent licensee ought to approach CERC for determination of transmission charges under PoC mechanism. However, the Respondent licensee has failed to do so, therefore, all claims for LPS for transmission charges determined on provisional basis are void.
12. According to the Petitioner, the Respondent licensee is also wrongfully and arbitrarily claiming LPS computed by applying compound interest @ 1.25% per month on the outstanding dues. This is in clear contravention of the direction of the Commission contained in the letter dated 14.05.2015 wherein, the Commission clarified as follows:

*"...  
with regard to methodology for computation of late payment surcharge it is clarified that a simple interest @ of 1.25% per month should be levied for the purpose of calculating late payment surcharge on the outstanding dues"*
13. The Petitioner further contended that it started supplying power to UPCL through Tata Power Trading Company Ltd. (TPTCL) from 03.04.2015 onwards, consequently in compliance of the Commission's Order dated 03.08.2012 no Transmission Charges or LPS are payable by the Petitioner for sale of electricity to the Distribution Licensee, i.e. UPCL.
14. In view of the facts mentioned above the Petitioner has prayed for the following reliefs:
  - i. Set aside and quash the demand for wrongly computed LPS in the monthly invoices dated 05.06.2018 and 04.07.2018 and the supplementary invoices dated 05.06.2018 and 02.07.2018 and hold the same as illegal and no effect can be given thereto;

- ii. Direct the Respondent not to claim LPS for the period, when the Petitioner was supplying power to UPCL (through Tata Power Trading Company Ltd.).
- iii. Direct the Respondent to claim LPS, if any only after the expiry of 30 days from the order passed by the Hon'ble Appellate Tribunal for Electricity on 29.11.2014 in Appeal No. 128 and 129 and 163/2013.
- iv. Direct the Respondent licensee to claim interest, if any, at simple interest @1.25% per month.
- v. Pass such other and further orders, as the Commission may deem fit and proper in the facts and circumstances of the present case.

### **Submission of the Respondent**

15. The Respondent submitted that the Petitioner is trying to misinterpret the implication of Commission's Order dated 11.12.2012. The Respondent contended that although the Commission in the said Order had held that all the invoices raised by the Respondent w.e.f. 04.11.2011 were not backed by proper authority but at the same time the Commission also took cognizance of the fact that non-payment of cost towards servicing of the investment of the dedicated transmission line, i.e. 220 kV D/C Ghuttu-Ghansali line is creating financial hardship to the Respondent licensee, i.e. PTCUL and that the transmission charges need to be paid by the Petitioner w.e.f. 04.11.2012 onwards as they are the sole user of the said assets.
16. The Respondent further averred that Commission vide its Order dated 11.12.2012 never restricted the Respondent from raising provisional bills or assess the liability of transmission charges payable by the Petitioner on monthly basis.
17. According to the Respondent, the Commission in its Order dated 11.12.2012 issued ad-interim directions that till the view on the extent of transmission charges payable by the Petitioner for using the said double circuit line is taken by the Commission, the Petitioner would submit an undertaking that it shall clear the backlog of payment within 30 days of receipt of the Order of the Commission to be issued at a later date. The word "backlog", according to the Respondent shows the intent of the Commission that LPS was also required to be paid by the Petitioner along with the Principal from 04.11.2011 onwards, i.e. the date of energisation of the said dedicated double circuit line. However, the Petitioner did not comply with the said Order of the Commission and is, therefore, liable to pay LPS w.e.f. 04.11.2011.
18. According to the Respondent the transmission charges for the network being solely used by the Petitioner, i.e. 220 kV double circuit Ghuttu-Ghansal line were raised as per the transmission charges claimed by it in the Petition filed before the Commission for determination of

transmission charges vide letter dated 30.04.2012. The invoices raised were for the period w.e.f. 12.11.2011 onwards which were later revised to 04.11.2011 onwards as the line was energised on the said date and the Petitioner was liable to pay the transmission charges from the date when the evacuation system was ready as per clause 5.1 of article 5 of the Transmission Service Agreement dated 25.10.2008, hence, the LPS was also payable from 04.11.2011 onwards.

19. The Respondent submitted that the invoices were raised only to fix the liability of the Petitioner for payment of Transmission Charges of the said dedicated network well in advance because if the bills were not raised, the Petitioner could have easily evaded the payment on some pretext or the other.
20. The Respondent further stated that claim of LPS is as per the Regulation 33 of UERC (Intra-State Open Access) Regulations, 2010 and UERC (Intra-State Open Access) Regulations, 2015. The Regulations clearly provide that the late payment surcharge @ 1.25% per month shall be levied in case the payment of any bill for the charges payable under the Regulations is delayed by an open access customer beyond the due date. The Respondent further contended that the claim of the Petitioner that PTCUL is wrongly applying compound interest instead of simple interest @ 1.25% per month on the outstanding dues to calculate the LPS is denied. The clarification provided in the letter dated 14.05.2015 of the Commission make its amply clear that LPS is to be computed on the "outstanding dues", i.e. all the unpaid dues (inclusive of LPS) payable up to the previous month at a simple interest of 1.25% per month. The Petitioner, according to the Respondent has overlooked the word "Outstanding" and is assuming that the Respondent is applying compound interest instead of simple interest @ 1.25% per month for calculating LPS against the aforesaid clarification issued by the Commission.
21. The Respondent contended that the Petitioner in accordance to Open access and RE Regulations is liable to pay Transmission Charges and LPS during the period when it was supplying power to UPCL through the trader, i.e. TPTCL.
22. The Respondent further submitted that the Petitioner never made efforts to amicably resolve the issue of LPS in line with article 9 of TSA and, therefore, the Petitioner has not exhausted the channel of dispute resolution mechanism as provided in clause No. 5.5.5 read with article 9 of TSA. According to the Respondent, this act of the Petitioner is neither justified nor as per the provision of the TSA.

### **Commission's view**

23. The Commission heard the Petitioner and Respondent. Based on their contentions, following issues arise for consideration:

- (i) Whether all invoices and consequential claim of LPS by the Respondent licensee for the period prior to the determination of Transmission Charges by the Commission vide its Orders dated 29.04.2013 and 06.05.2013 are legal and just.
- (ii) Whether the Interpretation of the word 'outstanding dues' for calculating LPS @ 1.25 % per month simple interest has been correctly done by the Respondent.
- (iii) Whether Petitioner is liable to pay Transmission Charges while supplying power to UPCL through a trader, i.e. TPTCL.
- (iv) Whether the claim of the Petitioner that the LPS, if any, is applicable only after the expiry of 30 days from the order passed by the Hon'ble Appellate Tribunal for Electricity on 29.11.2014 in Appeal No. 128 and 129 and 163/2013 is justified.

24. The Commission would like to clarify the 1<sup>st</sup> issue in the light of the provisions of the Act.

Section 62 of the Electricity Act, 2003 stipulates as under:

*"Section 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:*

*...*

*(b) transmission of electricity ;*

*(c) wheeling of electricity ;*

*(d) retail sale of electricity :"*

From the perusal of Section 62 of the Act, it is unambiguous that the power to determine the tariff of the licensee/generating companies in any financial year lies with the Commission. Therefore, any bill raised at a tariff other than that determined by the Commission is illegal and ought to be struck down. The Commission had in its Order dated 11.12.2012 had taken a very categorical view in this regard and had stated:

*"11. Based on the above, the Commission holds that the bills raised for transmission charges, for the transmission system from Bhilangana-III SHP to 220 kV S/s Chamba, by Respondents are not backed by proper authority. Consequently, their subsequent coercive actions of issue of notice for disconnection, placing embargo on scheduling of power etc. are not valid and deserve to be struck down ...*

*12... The Petitioner shall furnish an undertaking to the Respondent that on determination of transmission charges, as aforesaid, by the Commission backlog of payment shall be cleared within 30 days of receipt of Order of the Commission to be issued by the Commission at a later date..."*

In the instant case, the Commission, for the first time, determined the transmission charges of the dedicated 220 kV D/C Ghuttu-Ghansali line for FY 11-12, FY 12-13 and for the first control period (FY 2013-14 to FY 2015-16) in its Order dated 06.05.2013. However, PTCUL without waiting for any approved interim/provisional/final tariff by the Commission arbitrarily raised invoices on the Petitioner which were illegal & lacked authority. The Commission has also held the same in its Order dated 11.12.2012. The submission of the Respondent that the Commission did not restrict it from raising any provisional bill is also baseless as the Commission in its Order dated 11.12.2012 had held that the bills raised were not backed by authority and, accordingly, restrained the Respondent from taking any coercive action on account of non-payment by the Petitioner. The Commission, accordingly, had also directed the generator to submit an undertaking in this regard that the entire backlog would be cleared within 30 days from the determination of transmission charges. Here in the instant matter, the Respondent company has construed the backlog as inclusive of LPS also, whereas the Commission is of the view, that LPS becomes due only when the legitimate bills remain unpaid. Any bills for transmission charges raised not based on approved tariff will not be legal. Hence, in line of the Commission's Order dated 11.12.2012, PTCUL was legally allowed to raise bills consequent to 06.05.2013.

Therefore, all the invoices and consequential claims of LPS raised before 06.05.2013 by the Respondent licensee, i.e. PTCUL against the transmission charges of the dedicated line being solely used by the Petitioner, are arbitrary and illegal and deserve to be struck down.

25. With regard to the 2<sup>nd</sup> issue, it is to state that the Commission on the clarification sought by the Respondent had vide its letter dated 14.05.2015 clarified that:

*“ With regard to methodology for computation of late payment surcharge it is clarified that a simple interest @ 1.25% per month should be levied for the purpose of calculating late payment surcharge on the outstanding dues.”*

Considering LPS in the outstanding principal amount and then again charging LPS@ 1.25% would tantamount to calculating it as compound interest and not otherwise. The Respondent licensee in this regard has taken refuge of the term outstanding dues whilst ignoring the term simple interest. The Respondent should have construed the intent of the letter dated 14.05.2015 harmoniously and not in isolation to its advantage, so as to remove any inconsistency.

Hence, from the clarification as above, it is amply clear that LPS for each month should be computed by levying a simple interest @ 1.25% per month on the outstanding principal amount (excluding LPS) outstanding at the end of the previous month.

26. With regard to the 3<sup>rd</sup> issue, the Commission would like to clarify that during the period when the Petitioner, a generator located in the State, is supplying power to the distribution licensee, i.e. UPCL through a trader, i.e. TPTCL, it is liable to pay all the charges including transmission charges and losses along with late payment surcharge, if any, to the Respondent licensee for use of its intra-state transmission system and the dedicated line i.e. 220 kV D/C Ghuttu-Ghansali line in accordance with the Open Access Regulations, 2015 as well as the (then prevalent) RE Regulations.
27. With regard to 4<sup>th</sup> issue above, the contention of the Petitioner that the LPS, if any, is applicable only after the expiry of 30 days from the order passed by the Hon'ble Appellate Tribunal for Electricity on 29.11.2014 is without any rationale and cannot be accepted. The Commission in its Order dated 11.12.2012 had very categorically directed the Petitioner to furnish an undertaking to the Respondent licensee that on determination of transmission charges for the dedicated transmission network of Bhilangana-III SHP by the Commission, backlog of payment shall be cleared by the Petitioner within 30 days of receipt of Order of the Commission determining such charges. The Commission determined the Annual Transmission charges approved for the said dedicated network of Bhilangana-III SHP for FY 2011-12, FY 2012-13 & the 1<sup>st</sup> Control Period from FY 2013-14 to FY 2015-16 vide its Tariff Order dated 06.05.2013 and directed the Petitioner to pay the applicable Annual Transmission Charges within 30 days of issue of this Order in accordance with the Commission's direction in its Order dated 11.12.2012. Notwithstanding explicit directions of the Commission in this regard, the Petitioner did not pay the said Annual Transmission Charges within the stipulated time of 30 days and chose to file an Appeal against the said Tariff Order dated 06.05.2013 along with the order of the Commission dated 29.04.2013 before Hon'ble APTEL on which no stay was allowed by the Hon'ble Tribunal. Later on the said orders of the Commission were upheld by the Hon'ble APTEL vide Order dated 29.11.2014 and subsequently by Hon'ble Supreme Court vide its order dated 10.05.2018. Moreover, the Hon'ble Supreme Court in its interim order dated 12.10.2015 had very categorically decided as below:

*"In the circumstances, we are of the opinion that the Orders of the respondent no.3 dated 29.4.2013 and 6.5.2013 be stayed until further orders without prejudice to the rights of the respondents. The appellant-applicant will continue to pay the transmission charges at the rate for which it was paying during the pendency of the appeals."*

Based on the above, the Commission is of the view that the Petitioner is liable to pay Late Payment Surcharge (LPS), if any, on the back log amount remaining un-paid upon expiry of 30 days from the date of issue of Tariff Order i.e. 06.05.2013, the backlog be construed in line with the views

of the Commission expressed in its Order dated 11.12.2012. Further, with regard to payment of Transmission Charges including LPS for the period subsequent to Order dated 06.05.2013, the Commission is of the view that both the Petitioner and the Respondent should sit together and amicably resolve the issue expeditiously in adherence with the terms and conditions laid down in Transmission Service Agreement (TSA) entered between the parties and clarification given by the Commission, as above, in this Order.

Ordered accordingly.

(Subhash Kumar)  
Chairman