

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION
Petition No. 17 of 2019

In the matter of:

Dispute between M/s Bhilangana Hydro Power Ltd and Power Transmission Corporation of Uttarakhand Limited, relating to 'component A' that is, regarding to transmission charges for the use of intra-State transmission system for transmission of power from Bhilangana-III to Uttarakhand Power Corporation Ltd. through Tata Power Trading Company Ltd.

In the matter of:

M/s Bhilangana Hydro Power Limited (BHPL)Petitioner

AND

In the matter of:

Power Transmission Corporation of Uttarakhand Ltd. (PTCUL)Respondent

CORAM

Shri D.P. Gairola, Member (Law)

Shri M.K. Jain, Member (Technical)

Date of Hearing: November 15, 2019

Date of Order: December 02, 2019

ORDER

The present Petition is filed by M/s Bhilangana Hydro Power Ltd (hereinafter referred to as 'the Petitioner No. 1' or 'M/s BHPL') under Section 86(1)(e) of the Electricity Act, 2003 (hereinafter referred to as the 'Act') against Power Transmission Corporation of Uttarakhand Ltd. (hereinafter referred to as 'Respondent' or 'PTCUL').

1. Facts of the Case

- 1.1 Bhilangana Hydro Power Limited (Petitioner herein) is a Company incorporated under the Indian Companies Act, 1956 and has set up a 24 MW hydro-electric power project (Bhilangana-III or B-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 and was commissioned on 20.12.2011.

- 1.2 For evacuating power from the B-III project, the Petitioner and the Respondent licensee executed a Transmission Services Agreement on 25.10.2008.
- 1.3 The following network is utilized for evacuation of power from the switchyard of the Bhilangana-III generating station of the Petitioner Company:
 - (i) 220kV D/C Ghuttu-Ghansali line
 - (ii) Ghansali-Chamba 220 KV line,
 - (iii) 220 KV sub-station at Ghansali and
 - (iv) one bay of 220 KV sub-station at Chamba
- 1.4 The Commission by its order dated 29.04.2013 held that the 220 kV GIS substation at Ghansali, 220 kV S/C Chamba-Ghansali line and 01 No. bay at 220 kV substation Chamba will be considered as system strengthening works of the distribution licensee and the cost for the same will be included in the overall ARR of the Respondent licensee. The Commission by this order further decided that the entire cost of the single circuit of the 220 kV D/C Bhilangana-III-Ghansali line will be borne by the Petitioner Company.
- 1.5 Accordingly, the Respondent licensee has been raising invoices for transmission charges under, inter alia, two heads:
 - (i) Component A-transmission charges towards the entire intra-State transmission system including the 220 kV GIS substation at Ghansali, 220 kV S/C Chamba - Ghansali line and 01 No. bay at 220 kV substation Chamba; and
 - (ii) Component B- transmission charges towards the single circuit of the 220 kV D/C Bhilangana-III - Ghansali line.
- 1.6 At the time of passing of the order dated 29.04.2013, the Petitioner company was selling power outside the State. Accordingly, the Commission by applying the 2nd proviso to Regulation 38 of the Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 imposed the entire

cost of single circuit of the 220 kV Ghuttu Ghansali line on the Petitioner company provisionally, till the transmission charges for such line are determined by the Hon'ble Central Electricity Regulatory Commission. The relevant portion of 2nd proviso to Regulation 38 is reproduced below:

“Provided further that where a generating company proposes to supply electricity outside the State, such generating company, in addition to transmission/wheeling charges specified above, shall have to bear the transmission/wheeling charges determined by the Commission on case to case basis for the dedicated lines and substation of the transmission/distribution licensee used only for evacuation of such power.”

W.e.f. 03.04.2015, the Petitioner Company has been supplying power from Bhilangana-III project to UPCL through TATA Power Trading Company Ltd. Therefore, according to the Petitioner the 2nd proviso to Regulation 38 of the Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 is inapplicable to such sale of power for the period subsequent to 03.04.2015.

- 1.7 Petitioner filed a Petition (Petition No. 45 of 2018) before the Commission challenging the illegal and arbitrary demand for Late Payment Surcharge (LPS) raised by the Respondent Licensee towards recovery of transmission charges for use of the dedicated 220 KV D/C Ghuttu-Ghansali line (Component B, in the invoices). In the petition, the Petitioner primarily raised the issue of computation of interest (simple or compound) and the start date for levy of late payment surcharge by the Respondent licensee for the use of the dedicated 220 kV D/C Ghuttu-Ghansali line.
- 1.8 One of the issues also raised by the Petitioner in the Petition was against the demand for late payment surcharge raised by the Respondent licensee on the Petitioner for the power supplied to UPCL (through TATA Power Trading Company Ltd.) from 03.04.2015 onwards. The demand for transmission charges and late payment surcharge, for the period of supply of power to UPCL through TATA Power Trading Company Ltd. was raised by the Respondent licensee only against Component B. The transmission charges against 'Component A' has been billed as "NIL" by the Respondent transmission licensee for the period power was supplied to UPCL through TATA Power Trading Company Ltd.

- 1.9 The Commission disposed of Petition No. 45 of 2018 by Order dated 22.11.2018 and held as follows:
- “26. With regard to the 3rd 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.”*
- 1.10 The Petitioner filed a review petition before the Commission against the order dated 22.11.2018, being Misc. Application No. 102 of 2018. However, the Commission by Order dated 24.01.2019 dismissed the review petition.
- 1.11 Subsequent to the aforesaid order dated 22.11.2018 and 24.01.2019, the Respondent licensee in compliance to clause 26 as above, for the first time raised an invoice on 11.03.2019 being Invoice No. 143/CE(C&R)/PTCUL/Invoice for an amount of Rs. 21,66,22,262.84/- (Rs. Twenty One Crore Sixty Six Lakh Twenty Two Thousand Two Hundred Sixty Two and Eighty Four Paise only). This impugned invoice was raised by the Respondent licensee for the first time claiming transmission charges for use of intra-State transmission network by the Petitioner for supply of power to UPCL. In other words, the Respondent licensee claimed transmission charges along with late payment surcharge for the invoices raised for the first time against ‘Component A’ i.e. transmission charges towards the entire intra-State transmission system including the 220 kV GIS substation at Ghansali, 220 kV S/C Chamba -Ghansali line and 01 No. bay at 220 kV substation Chamba.
- 1.12 The cause of action first arose on 11.03.2019 when PTCUL raised arbitrary and illegal invoices being Invoice No. 143/CE(C&R)/PTCUL/Invoice dated 11.03.2019 for the first time claiming transmission charges for the period from 03.04.2015 onwards, for the use of intra-state transmission network by the Petitioner generator situated within the State of Uttarakhand supplying power to the distribution licensee in the State.
- 1.13 The Petitioner in view of the facts mentioned above, prayed for the following relief(s):
- (i) Quash Invoice No. 143/CE(C&R)/PTCUL/Invoice dated 11.03.2019 raised by Power Transmission Corporation of Uttarakhand Ltd.;

- (ii) Clarify that the orders dated 22.11.2018 and 24.01.2019 passed by this Hon'ble Commission in Petition No. 45 of 2018 and Misc. Application No. 102 of 2018 relate to the claim for late payment surcharge for single circuit of the 220 kV Ghuttu-Ghansali line that is, Component B of the invoices raised by Power Transmission Corporation of Uttarakhand Ltd.;
- (iii) Clarify that no transmission charges in relation to Component A is payable for the use of intra-state transmission network for supply of electricity from the generator situated in the State of Uttarakhand to the distribution licensee in the State;

1.14 The Petition was admitted by the Commission on 13.05.2019 as Petition No. 17 of 2019. After several adjournment sought by the Petitioner & the Respondent the 1st hearing was held on 15.07.2019 wherein in the daily Order of the same date the Commission held that:

"Heard the Petitioner and the Respondent in the matter. The Petitioner informed the Commission that it has filed an Appeal before the Hon'ble Appellate Tribunal for Electricity against the Commission's earlier Order dated 22.11.2018 and 24.01.2019 for which hearing before the Hon'ble Appellate is scheduled for 25.07.2019. The Petitioner further informed that since the issues raised in the Appeal before the Tribunal are similar to the issues included in the current Adjudication Petition with similar cause and effect, therefore, the Petitioner pleaded before the Commission to fix any suitable date, as it may deem fit, for hearing the matter before it after the aforesaid date of hearing in the Hon'ble APTEL.

The Commission accepted the plea of the Petitioner and decided to hold the next hearing at a later date."

The Petitioner during the hearing held on 15.07.2019 informed the Commission that BHPL will not press the prayer for quashing of the invoice dated 11.03.2019, before the Hon'ble Appellate Tribunal for Electricity, in DFR No. 1909/2019 and that the Hon'ble Commission may proceed with the Miscellaneous Application No. 15 of 2019.

1.15 Final hearing in the matter was held on 15.11.2019 in which the judgement was kept reserved.

2. Commission's views and decision

2.1 The Commission through its Legal Counsel received the Appeal filed by the Petitioner before Hon'ble APTEL challenging the findings on liability of the Petitioner towards payment of transmission charges and late payment surcharge as rendered in para 26 of the Order dated 22.11.2018 (impugned order) passed by the Commission in Petition No. 45 of 2018 filed by the Petitioner. The para 26 of the impugned order dated 22.11.2018 as states that:

"26. With regard to the 3rd 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 license, 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."

2.2 The Counsel of the Petitioner during the hearing before the Commission on 15.07.2019 informed that it has filed an Appeal before the Hon'ble APTEL against Commission's impugned Order dated 22.11.2018 and its review Order dated 24.01.2019 for which hearing before Hon'ble APTEL is scheduled for 25.07.2019. The Petitioner requested the Commission to fix the hearing on any suitable date after 25.07.2019. The Petitioner further informed the Commission that M/S BHPL will not press the prayer (B) of the main appeal i.e. to quash the Invoice No. 143/CE(C&R)/PTCUL/Invoice dated 11.03.2019 raised by PTCUL, before Hon'ble APTEL and the Commission may proceed with the instant Petition filed before it.

2.3 The Hon'ble APTEL vide in its Order dated 25.07.2019 stated:

"...

Objections to the main appeal, if any, shall be filed within six weeks' time i.e. on or before 06.09.2019 with advance copy to the other side. Thereafter, rejoinder shall be filed within two weeks' time i.e. on or before 23.09.2019 with advance copy to the other side.

Learned counsel for the Appellant submits that prayer (B) in main appeal and also in interim application are not pressed."

[Emphasis Added]

- 2.4 However, the prayer (A), in the Appeal filed before Hon'ble APTEL, to set aside the impugned Order dated 22.11.2018 passed by the Commission and its review Order dated 24.01.2019 still holds before the proceedings in the Hon'ble APTEL. Since, the basis of raising impugned bills by Respondent (PTCUL), is para 26 of the aforesaid Commission's Order and that being challenged by the Petitioner before the Hon'ble APTEL makes the entire matter sub-judice in the higher Appellate Court. Under these circumstances, the Commission feels that, as of now, the adjudication in the instant matter of dispute on bills between the Petitioner and the Respondent is not appropriate and any view in the matter can only be taken after decision of the Hon'ble APTEL.
- 2.5 The Petition is hereby disposed off with a liberty to both the parties to approach the appropriate forum after the decision of the Hon'ble APTEL.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)