

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition no. 01/2006 filed by M/s Him Urja Pvt. Ltd., a company having its registered office at E 14, East of Kailash, New Delhi in pursuance of Order dated 29.03.2006 issued by Hon'ble Appellate Tribunal for Electricity.

.....Petitioner

Coram

Shri Divakar Dev	Chairman
Shri V.K. Khanna	Member
Shri V.J. Talwar	Member

Date of Order: 9th April 2007

ORDER

This Petition has been filed by M/s Him Urja Pvt. Ltd. (hereinafter referred to as the "Petitioner") on 9th May 2006 in compliance of direction given by Hon'ble Appellate Tribunal for Electricity in their Order dated 29.03.2006.

- (1) The Hon'ble Appellate Tribunal, in their order dated 29.03.2006, observed that:
- "In the circumstances, the appeal is allowed setting aside the tariff order and remanded to the first Respondent Commission for denovo consideration on the basis of the materials already placed and to be placed by the appellant."*

[Para 13]

".....It is the request of the counsel as well as the appellant present before this Appellate Tribunal, to afford sufficient opportunity to the appellant by Regulator to place materials, which it relies upon and which it has placed before this Appellate Tribunal."

[Para 8]

(2) The Petitioner was, therefore, required to place before the Commission the fresh materials that were placed or proposed to be placed before the Hon'ble Tribunal. The following material has now been filed by the Petitioner:

(a) Documents in support of claimed capital cost:

(i) Certificate dated 08.05.2006 issued by SBI showing the capital cost and equity of the Project as on CoD, 31.03.2003 and 31.07.2003.

(ii) Certificate of SBI dated 08.05.2006 showing the interest & financial charges of SBI for the year 2005-06.

(iii) Certificate dated 27.04.2006 issued by the auditors of the Petitioner, certifying audited values of capital cost, equity and expenses for the Project

(b) Compilation of selected judicial, regulatory and policy material.

(c) Engineer's Certificate dated 30.12.2002 of estimated cost of works required due to the flood and Board's Resolution dated 20.11.2002 adopting the same.

(d) Compilation of various documents and materials already placed before the Commission in its original filing (Petition 3 of 2005).

Out of the above only first three are new materials. Nevertheless, the Commission has considered all the above materials alongwith that placed on record earlier.

(3) The Petitioner was also granted a hearing on 19.12.2006, when submissions were made on behalf of the Petitioner by Sh. Amit Kapoor, learned counsel for the Petitioner.

1 Commission's Scrutiny & Analysis

(4) The Petitioner has committed before the Hon'ble Tribunal to sell power to UPCL for at least 20 years. Accordingly, the Commission has determined AFC for the Petitioner's Rajwakti Project for each of the years commencing 2005-06 till 2022-23.

1.1 Capital Cost

- (5) The Petitioner has now produced another certificate from SBI dated 08.05.2006, which certifies Capital Cost of the project till 31.07.2003 as Rs. 20.97 Crore. This certificate also clarifies that while working out the capital cost, the infirm energy generated from 24.05.2002 to 14.11.2002 of Rs. 1.41 Crore was reduced and the Capital Cost has been worked out reducing loss due to flood. Since the capital cost till 31.07.2003 has been scrutinised by a leading financial institution, SBI in this case, the Commission accepts the capital cost of Rs. 20.97 Crore as on 31.07.2003.
- (6) Additional capitalisation of Rs. 0.82 Crore has been claimed by the Petitioner for 2003-04, but the SBI has certified additional capitalisation of Rs. 0.48 Crore only uptill 31.07.2003. The Petitioner has not filed anything to validate the balance expenditure of Rs. 0.34 Crore which was also not a part of the original project cost. Prudence of this claimed expenditure having not been established, the Commission has not accepted the same.

1.2 Return on Equity

The capital cost of Rs. 20.97 Crore has been met with loan amount of Rs. 16.35 crore. The balance amount has come by way of equity, which works out to Rs. 4.62 Crore. Return @ 14% has been allowed by the Commission on this amount of equity.

1.3 Depreciation and Advance Against Depreciation

- (7) The Petitioner has again sought much higher depreciation including AAD (15.41% i.e. 1/7th of loan amount) without even bothering to give any indication of having approached financial institutions for extension of loan tenure to a reasonable period so as to be able to meet debt repayment obligation within the permissible limit of AAD as per Regulations. However, in order to avoid any further controversy on this issue, the Commission is making a one time exception in the present case and is allowing the claimed depreciation and AAD. The balance depreciation after the loan repayments

has been distributed over balance useful life of the assets.

1.4 Interest on loans

- (8) The interest payments and loan repayments to IREDA till takeover by SBI on 31.07.2003 and to SBI till 2005-06 has been shown in the SBI certificates and Petitioner's Balance Sheets. The interest payable on SBI loan for the years 2006-07 onwards has been worked out on the outstanding amount of this loan as on 01.04.2006 after taking into account the repayments to be made during each year.

1.5 Operation & Maintenance Expenses

- (9) For reasons given in the Order dated 17.11.2005, the Commission while relaxing the normative ceiling of 1.5% given in the Regulations accepted the O&M expenses as per the approved DPR of the project, which is 4% (including 1% insurance charges) of the capital cost. No additional material to validate expenses over and above this limit has been filed by Petitioner. The Commission does not see any reason to deviate from the earlier approach and has accordingly restricted the O&M expenses to 4% of the capital cost. These expenses have then been escalated @ 4% annually thereafter as per Regulations.

1.6 AFC for the Years 2005-06 to 2022-23

- (10) Based on the above, the AFC for each of the years commencing 2005-06 till 2022-23 has been worked out and is given in Annexure 3.

2 Tariff Structure and Recovery Mechanism

- (11) The Petitioner has not given any clear option on the two alternatives available for recovery of the AFC, viz. as per the Original Regulations dated 14.05.04 or as per the relaxed Regulations dated 10.11.05 in-spite-of the Commission repeatedly asking for it. Notwithstanding this, the Commission once again grants liberty to the Petitioner to opt for recovery either as per Original

Regulations dated 14.05.04 or as per the Order dated 10.11.05, even at this stage. However, the option once exercised shall not be allowed to be changed in future.

- (12) In case the Petitioner opts for the relaxed Regulations, the tariff for sale upto 45% PLF, i.e. 17.34 MUs, and incentive beyond this level for each year shall be as given in Annexure 3.
- (13) In case, the Petitioner opts for the Original Regulations, the AFC shall be recovered through two part tariff. For 2005-06, the primary energy rate shall be 69.47 p/u (CERC's Order dated 09.05.06 for Uri station) and for subsequent years, it shall be the rate as approved by CERC for those years. Other charges including secondary energy charges and incentive shall be as per the Regulations.
- (14) Design Energy being a critical parameter in recovery of Charges as per Original Regulations, its correct determination is important. Regulations require Design Energy to be calculated at 90% dependability with 95% Installed Capacity. With 4.4 MW installed capacity, 52.50 metres head, 10 cumecs design discharge and flows of DPR, the Design Energy as per Regulations works out to 27.80 MUs. The saleable Design energy after adjusting for auxiliary consumption and transformation losses works out to 27.60 MUs, which is also validated by the actual generation for the previous years (27.32, 25.35 and 27.02 MUs which does not include transmission loss). The Petitioner has not been able to produce any document in support of the claim that royalty waiver for first 15 years was personal to the Petitioner. Accordingly, the Commission has taken 27.60 MUs as Saleable Design Energy for the project upto first 15 years i.e. upto 2017-18 and as 24.84 MUs after this period when royalty of 10% becomes payable to State Government.
- (15) In determining tariffs for the next 20 years, two assumptions that have been made are that the actual expenditure on insurance will be 1% and that the average annual inflation rate over this period will be 4%. In case these assumptions do not come true, Petitioner and UPCL, both will be free to

approach the Commission for review of these tariffs based on the actual values.

3 Other Issues

- (16) It has been argued that the PPA for sale of power @ Rs. 3.00/u had been finalized with UPPCL and the same was recognized by the UP Commission while fixing UPPCL's tariffs. It has also been argued that this PPA was renegotiated and finalized with UPCL after bifurcation of UP and the revised PPA has been approved by the State Government and that the Commission is mistaken in not recognizing this revised PPA already approved by the State Government. However, the facts do not support this line of argument. The PPA between the Petitioner & UPPCL was for sale @ Rs. 3.00/u which was never approved by the UP Commission. In any case, this PPA ceased to be of relevance as both the parties namely the Petitioner and UPCL re-opened and re-negotiated the power purchase terms. Hence, the agreement that is relevant is the revised PPA dated 22.12.2001 between the Petitioner & UPCL.
- (17) It has been argued that this PPA dated 22.12.2001 had been finalized and is therefore a legally valid agreement. It is not disputed that after coming into force of the UP Electricity Reforms Act, 1999, all PPAs were to be negotiated and executed between the generator and the Distribution Company, were required to be approved by the Regulatory Commission. It is also not disputed that no such approval was accorded on the PPA dated 22.12.2001 either by the UP Commission which continued to have jurisdiction till this Commission came into being nor later by this Commission. On the contrary what has been argued is that the PPA dated 22.12.2001 had been approved by the State Government and was therefore a legally valid agreement. This argument suffers from factual as well as legal errors. The Petitioner has not been able to show any provision in Law which empowers the State Government to step in and perform the functions of the Regulatory Commission. This point has been examined and clearly decided by the Hon'ble Supreme Court in WBERC Vs CESC Ltd. (2002) 8 SCC and in Civil Appeal Nos. 8360-8361 of 2003 (Arising

out of Special Leave Petition(Civil) Nos. 10877-10878 of 2003) dated 17.10.2003. Further, the State Government, aware of the legal position, has not accorded its approval to the PPA as claimed by the Petitioner. Copies of State Governments relevant orders are placed at Annexures 1 & 2. Even during the hearing, the Commission had pointed out this position to the Petitioner and given him another opportunity to file documentary evidence to support its claim of State Government's approval on the PPA. The Petitioner has failed to produce any such document.

- (18) For reasons given above, it is established beyond doubt that the Petitioner's claim that PPA dated 22.12.2001 is legally valid as it was approved by the State Government is factually and legally incorrect. Such being the case, there is no reason for the Commission to abide by the provisions of this PPA while determining the generation tariff. On the contrary, the Commission is duty bound to be guided by the provisions of Electricity Act, 2003 and the Regulations framed thereunder. Notwithstanding this, if some rights have accrued to the Petitioner on account of this incomplete PPA, the same is to be gone into and enforced by courts and not by this Commission in tariff determination exercise.
- (19) The case laws quoted by the Petitioner in this connection are not of relevance as the facts of this case are different from those cases. In the present case there is no legally valid PPA executed so far, while the cases quoted by the Petitioner are with respect to PPA's executed and approved as per law.
- (20) It has also been argued that the Petitioner has gone ahead and made investments on the strengths of the original project but the Commission is subsequently changing the same through tariff determination. In this connection, it may be recalled that the need for power purchase rate to be validated by the Regulatory Commission had arisen right in 1999, when UP Reforms Act came into force. The work on Petitioner's project was started sometime in December 1999 when the first loan disbursement took place. It is, therefore, wrong to claim that Regulatory scrutiny and approval is a subsequent development unknown to the Petitioner while taking the

investment decision. All that has happened is that the generating company's Regulatory scrutiny which was earlier being done through examination of the power purchase rate has been replaced by determination of generation tariff after 2003 when the Electricity Act came into force. It is wrong to suggest that there has been any fundamental change in this regard. Further, the values of two basic elements of tariff namely the capital cost and the O&M expenses accepted by the Commission are the same or higher than what the Petitioner's DPR had stipulated. All other values are derived from these. Such being the case any loss or damage to the Petitioner claimed on this account is misplaced and without any basis.

(21) The Petition is disposed off accordingly.

-sd-
V.J. Talwar
Member

-sd-
V.K. Khanna
Member

-sd-
Divakar Dev
Chairman

ANNEXURE - 2

संख्या 1124/सी
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प्रेम्बर,
के.एम. देविराज,
सचिव,
उत्तरांचल शासन।

सेवा में,
अध्यक्ष एवं प्रबन्ध निदेशक,
उत्तरांचल वीयर कारपोरेशन लि०,
फाँलागढ़, देहरादून।

उद्देश्य विभाग देहरादून: दिनांक: दिसम्बर (० , 2001

विषय:- 5 मेगावाट तक की निजी बिद्यूत परियोजनाओं के द्रव्य अनुबन्ध के संबंध में।

सहोदय,
उक्त विषयक कृपया शासन के पत्रांक 1120/सी-3-30/2001 दिनांक 01.12.01 का संदर्भ ग्रहण करें। इस संबंध में मुझे कहने का निदेश हुआ है कि कृपया तत्काल निम्नानुसार कार्यवाही कर कृता कार्यवाही से शासन को भी अवगत कराने का कष्ट करें।

1- पूर्णवर्ति-रतज्य 2000 के समय निजी विकास कार्यों के माध्यम से चिकित्त किये जाने वाली ऐसी योजनाओं, जिनके संबंध में तत्काल 2000 और द्वारा आवंटन का अन्तिम निर्णय लिया जा चुका था, के संबंध में निजी विकास कार्यों को एक निश्चित अधि देकर द्रव्य अनुबन्ध करने के लिये आर्जित किया जाये।

2- संबंधित विकास कार्यों को रफ्ट कर दिया जाये कि यदि ये निर्धारित अधि में द्रव्य अनुबन्ध नहीं करते हैं तो यह मान लिया जायेगा कि वे द्रव्य अनुबन्ध करने के इच्छुक नहीं हैं और तदनुसार उन्हें आवंटित परियोजना का आषटम स्तः निरस्त समझा जायेगा और ऐसी परिस्थिति का विकास कर्ता भी प्रकार से करने हेतु उत्तरांचल शासन स्विक्रि होगा।

3- संबंधित विकास कार्यों को बिद्यूत निधायक आयोग से उक्तावृत्त किये जाने वाले द्रव्य अनुबन्धों को अनुमोदन कराने की सिंधि बाध्यता से भी अवगत कराने हुए यह सूचित किया जाये कि द्रव्य अनुबन्ध निधायक आयोग को अनुमोदन के प्रतिबन्धाधोन ही अन्तिम माना जायेगा।

सचिव,
उत्तरांचल शासन

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8/12

1689 CMD/PPA/193
#12/12/01

Handwritten notes:
This is new
letter to all
the employees
of A. S. S. P.
letter has been
sent to the
MS SPP
re under
execution
13/12

<p>प्रेषक :</p>	<p>750/1/2004-05(03)/04 750/1/2004-05(03)/04</p>
<p>डॉ० एम०सी० जोशी, अपर सचिव (ऊर्जा), उत्तरांचल शासन।</p> <p>सेवा में, संगुक्त प्रबन्ध निदेशक, उत्तरांचल पावर कॉरपोरेशन लि०, देहरादून।</p>	<p>18/10/04</p>
<p>ऊर्जा विभाग :</p>	<p>देहरादून : दिनांक, 18, नवम्बर, 2004</p>
<p>विषय :-</p>	<p><u>"Application seeking approval of Power Purchase Agreement (PPA) entered into with Small Hydro Power Projects Developers in accordance with the provision of section 36(1)(b) of Electricity Act, 2003 & UERC - conduct of Business Regulation, 2002".</u></p>
<p>महोदय,</p> <p>उपरोक्त विषयक अपने पत्रांक 3338/UPCL/UERC/PPA/T-23 दिनांक 30-10-2004 का सन्दर्भ ग्रहण करने का कष्ट करें।</p> <p>उपरोक्त के सन्दर्भ में मुझे यह कहने का निदेश हुआ है कि पी०पी०ए० का प्रकरण उत्तरांचल पावर कॉरपोरेशन लि० व सम्बन्धित उत्पादन कम्पनी के मध्य का विषय है एवं इसका अनुमोदन उत्तरांचल विद्युत नियामक आयोग द्वारा किया जाता है। राज्य सरकार केवल पी०पी०ए० में वर्णित विद्युत भुगतान के लिये गारंटी की जिम्मेदारी तक ही उन मामलों में सीमित है, जहाँ इस प्रकार का निर्णय राज्य सरकार ने लिया है। इस सम्बन्ध में उत्तरांचल पावर कॉरपोरेशन लि० नियमानुसार अग्रोत्तर कार्यवाही करें।</p>	
<p>अतिरिक्त: सचिव, उत्तरांचल विद्युत नियामक आयोग की सूचनाओं के लिए।</p>	<p>भवदीय, /c (डॉ० एम०सी० जोशी) अपर सचिव</p> <p>भाजा से /c (डॉ० एम०सी० जोशी) अपर सचिव</p>

Annexure 3
Annual Fixed Charges

Year	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
In case, Petitioner opts recovery as per Original Regulations dated 14.05.04 with two part tariff																		
Annual Fixed Charges (Rs. Crore)	5.27	4.95	4.76	4.57	3.16	1.96	2.01	2.06	2.12	2.17	2.23	2.29	2.35	2.42	2.49	2.56	2.63	2.71
In case, Petitioner opts recovery as per Order dated 10.11.05																		
Rate of energy (Rs./kWh) upto 17.34 MU	3.04	2.86	2.74	2.63	1.82	1.13	1.16	1.19	1.22	1.25	1.29	1.32	1.36	1.39	1.43	1.47	1.52	1.56
Rate of incentive (Rs./kWh) beyond 17.34 MU	$= 0.1 \times AFC_n / [365 \times 24 \times \text{Installed Capacity in kW} \times (1-PLF_n)]$ <p>where,</p> <p style="text-align: center;">AFC_n = Normative AFC for the relevant year calculated as per Order dated 10.11.2005 on capital cost of Rs. 5.5 crore/MW,</p> <p style="text-align: center;">PLF_n = 45%</p>																	