

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition seeking amendment in tariff of 5 MW Debal Small Hydro Project in light of clarification given by MNRE on Capital Subsidy and Change in Tax Rates under Section 62 and 86 of the Electricity Act 2003 read with the relevant regulations and guidelines of the Commission.

And

In the matter of:

M/s Chamoli Hydro Power Private Limited.

.....Petitioner

Coram

Shri Jag Mohan Lal Chairman

Date of Order: 22th September, 2011

ORDER

M/s Chamoli Hydro Power Pvt. Limited, i.e. the owner of 5 MW Debal Hydro Generating Station)(hereinafter referred to as the Petitioner), had filed a petition seeking amendment of tariff for its 5 MW Debal Small Hydro Project, under section 62(4) read with Section 86 of the Electricity Act 2003 and Regulation 49 of UERC (Tariff & other terms for supply of Electricity for Non-Conventional and Renewable Energy Sources) Regulation 2008. The Petitioner had submitted that it had opted for tariffs as specified by the Commission under

UERC (Tariff & other terms for supply of Electricity for Non-Conventional and Renewable Energy Sources) Regulations 2008, however, since the Commission, while fixing the tariff in the above regulation had considered a total Capital Subsidy of Rs. 6.354 Crore whereas it received a subsidy of Rs. 3.75 Crore only as per the entitlement of the MNRE Scheme issued in the FY 2003-04, and had thus, requested the Commission to revise the generic tariff.

- (2) The Commission after hearing the Petitioner and Uttarakhand Power Corporation Ltd (UPCL) in the matter, issued an Order dated 27.10.2010 in exercise of powers available to it under the Electricity Act 2003 & UERC (Tariff & other terms for supply of Electricity for Non-Conventional and Renewable Energy Sources) Regulation 2008, redetermined the tariff of the Petitioner considering the subsidy availed by it in line with MNRE scheme issued in FY 2003-04 and allowed the differential tariff so worked out to be charged from the beneficiary.
- (3) In the above mentioned Order, the Commission also mentioned that the Petitioner had approached the Commission in 2007 seeking fixation of its provisional tariff and final tariff of its hydro station for the period 01.09.2007 to 31.03.2008 and the Commission issued the Orders in the matter on 05.06.2007 and 28.03.2008 respectively in accordance with the Commission's Order dated 10.11.05 for SHPs with capacity 1-25 MW read with original regulations viz. Uttaranchal Electricity Regulatory Commission (Terms & Conditions for Determination of Hydro Generation Tariff) Regulations, 2004. Since the Petitioner did not receive any subsidy no such adjustments were made in the tariffs. Further, in the said Order, the Commission had held that since the Petitioner has received the subsidy of Rs. 3.75 Crore necessary corrections would have to be made in the tariffs charged during the period 01.09.2007 to 31.03.2008 and had accordingly, directed the Petitioner and UPCL to submit their response in the matter within 15 days of the date of this Order.
- (4) In response, the Petitioner submitted that the tariff for the period 01.09.2007 to 31.03.2008 was based on the tariff Regulations 2005, and since, it had not received

any capital subsidy in that year, the same could not be adjusted in the capital cost. Further, the Petitioner also submitted that it received subsidy from MNRE during 2009-10. The Petitioner also submitted that it was required to demonstrate 80% generation continuously for three months to be eligible for subsidy from MNRE and this was possible only during the monsoon season which is usually from June to October. However, since the project got commissioned on 1st September 2007, the Petitioner had only two months of season in hand and hence, could not have demonstrated 80% generation for continuous three months during FY 2007-08. Further, the Petitioner also mentioned that it could not achieve 80% generation for continuous three months till October 2009 due to frequent grid failures in UPCL's system. The Petitioner substantiated the instances of grid failures by submitting details of grid failures/trippings in UPCL's system.

- (5) UPCL submitted that the Petitioner never achieved the efficiency level of 80% and above except in the month of September, 2008 and August to October, 2009. On the basis of data furnished by the Petitioner of grid failures/trippings UPCL submitted that the Petitioner was always in a position to generate 80% except during the month of February, 2009 and May, 2009 and June, 2009 and hence, it could not achieve the 80% generation for continuous three months due to its own reasons.
- (6) The Commission decided to conduct a hearing in the matter on 19.09.2011 wherein it heard both the Petitioner and UPCL and where both the parties reiterated their stand submitted earlier.
- (7) UPCL, during the hearing as well as in its written submission filed before the Commission during the proceedings, submitted that irrespective of the grid failures/trippings in its system, the Petitioner could have achieved 80% efficiency during FY 2007-08. It is to be understood that generation in case of a hydro project depends on both machine availability and water availability. The Petitioner's contention that it could generate 80% for continuous three months only during the monsoon season is well accepted and it is also a well established fact that

benefit of monsoon season in the State of Uttarakhand can be availed till the month of October and since, the Petitioner project was commissioned on September, 2007, it was not in a position to demonstrate 80% generation for continuous 3 months. UPCL in its submission has worked out the monthly efficiency of the Petitioner on the assumption that water availability would be optimum throughout the year. From the statement showing possible efficiency and actual efficiency of the Petitioner's project submitted by UPCL, it can be clearly seen that actual efficiency achieved by the Petitioner in the month of November, during FY 2007-08 to FY 2009-10 has been substantially lower than 80%, and even during FY 2009-10 when the Petitioner successfully demonstrated 80% generation to be eligible for MNRE capital subsidy.

- (8) The Commission had determined the final tariff for the period 01.09.2007 to 31.03.2008 for the Petitioner Company vide its Order dated 28.03.2008 in accordance with the Commission's Order dated 10.11.05 for SHPs with capacity 1-25 MW read with original regulations viz. Uttaranchal Electricity Regulatory Commission (Terms & Conditions for Determination of Hydro Generation Tariff) Regulations, 2004.
- (9) In this regard, it would be relevant to refer to the provisions of subsidy contained in the above referred Order and Regulations of the Commission. Clause 21 of Commission's Order dated 10.11.05 for SHPs with capacity 1-25 MW stipulates as under;

"21. A combined reading of above stipulations leaves no doubt that capital grants or subsidies received against fixed assets have to be deducted from the actual cost of such assets, as has been proposed in the Approach Paper..."

Further, Regulation 3(33) of UERC (Terms & Conditions for Determination of Hydro Generation Tariff) Regulations, 2004 inserted vide UERC (Terms & Conditions for Determination of Hydro Generation Tariff) (First Amendment) Regulations, 2006 specifies as under:

"33. Historical cost of the asset means the original cost of creation of the asset excluding that portion of the cost thereof, if any, that has been met directly or

indirectly by any other person or authority or through grants, gifts, subsidies, etc."

Hence, a combined reading of the above stipulations leaves no doubt that capital grants or subsidies actually received against fixed assets have to be deducted from the actual cost of such assets and therefore, since, the Petitioner did not receive any capital subsidy during FY 2007-08, the same was not adjusted in the tariff by the Commission while determining the tariffs for the period 01.09.2007 to 31.03.2008. Had the Petitioner received subsidy during FY 2007-08 itself, subsequent to the date of the Commission's Order, wherein the final tariffs was determined, the same would have been a fit case for adjustment in tariffs. But subsidy was actually received in December, 2009 and hence, could not be adjusted with retrospective effect as the Commission's Order dated 10.11.2005 and the Regulations nowhere provided for retrospective adjustment of subsidy in tariffs.

- (10) Thus, from the above, the Commission decides that no adjustment of subsidy received during December 2009 is required in the tariffs determined for the period 01.09.2007 to 31.03.2008. The matter is disposed off accordingly.

(J.M. Lal)
Chairman