

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition seeking adjustment of tariff of Vanala Small Hydro Project (15 MW) unit of M/s Him Urja Pvt. Ltd. as per Section 61 and 62 of the Electricity Act, 2003 read with Regulation 16(3) & 25 of UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010, as amended from time to time and Regulation 3 & 4 (4) of the UERC (Terms & Conditions for Truing Up of Tariff) Regulations, 2008.

In the matter of:

M/s Him Urja Pvt. Ltd.

... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd.

... Respondent

CORAM

Shri Subhash Kumar Chairman

Shri K.P. Singh Member

Date of Hearing: June 21, 2016

Date of Order: July 8, 2016

The Order relates to the Petition filed by M/s Him Urja Pvt. Ltd. (hereinafter referred to as "M/s HUPL" or "Generator" or "Petitioner") seeking adjustment of tariff of Vanala Small Hydro Project (15 MW) as per Section 61 and 62 of the Electricity Act, 2003 read with Regulation 16(3) & 25 of UERC (Tariff and Other Terms for supply of Electricity from RE Sources and Non-fossil fuel based Co-generating Station) Regulations, 2010, as amended from time to time and Regulation 3 & 4 (4) of the UERC (T&C for truing up of Tariff) Regulations, 2008.

1. Background & Submissions

1.1 The Petitioner had established a 15 MW Vanala SHP on river Nandakini, Distt. Chamoli, Uttarakhand, in December, 2009. A PPA dated 21.12.2012 was entered into with

Uttarakhand Power Corporation, (hereinafter referred to as "UPCL" or "Licensee" or "Respondent") for sale of power generated from the above mentioned SHP.

- 1.2 On Generator's earlier Petition, the Commission vide its Order dated 14.04.2014 specified project specific tariff of Rs. 4.00 per unit in accordance with UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010.
- 1.3 The Petitioner submitted that the above mentioned Order dated 14.04.2014 was the subject matter of appeal before the Hon'ble Appellate Tribunal for Electricity in Appeal No. 178 of 2014. Among other issues the Petitioner had contested that the capital subsidy which has not actually been received should not be deducted while determining total cost of the project.
- 1.4 The Petitioner submitted that the Hon'ble Appellate Tribunal for Electricity dismissed the appeal on various grounds. However, the Hon'ble Tribunal permitted the Petitioner to approach the UERC for adjustment of the amount of capital subsidy in terms of the Regulation 16(3) of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010.
- 1.5 The generator submitted that it had applied for capital subsidy under this scheme of MNRE on 16.03.2010. However, condition for eligibility to avail subsidy is to have certification from AHEC regarding operation of SHP at 80% of the installed capacity for a period of 90 days. The Petitioner submitted that the generation equivalent to 80% of the capacity of the plant can only be obtained during the months of July, August and September. However, due to drastic change in silt profile of the river the Petitioner was not able to run the plant during monsoon months.
- 1.6 M/s HUPL submitted that monthly generation at 80% installed capacity is equivalent to 8.9 MU per month. However, the project could not achieve generation of 8.9 MU in any of the month since commissioning of the project.
- 1.7 The Petitioner submitted that in the circumstances mentioned above, the Petitioner is entitled to a revised capital cost in the trueing up exercise based on the fact that no amount of capital subsidy has been received by the Petitioner for its project. The said capital cost and tariff is required to be adjusted together with carrying cost in terms of the Regulations

of the Commission.

1.8 The Petitioner also submitted that the tariff determination for the project life is done by determination of annual tariff and thereafter discounting it over the life of the project in accordance with the Regulation 15 (6) & (7). The discounting factor is taken as average cost of capital. In this process it is assumed that the value attributable to particular year is received in the same year. If the value is not received in the same year the overall tariff determined shall reduce due to discount factor applied to next year and so on. Further, the Petitioner submitted that to maintain equity the treatment of discounting that is being applied to determination of tariff should also be applied in the process of payment.

1.9 The Petitioner vide its petition sought following reliefs:

- (a) *Determination and true up the revised capital cost and tariff of Vanala Hydro Power Project of Him Urja (P) Ltd without deducting capital subsidy which has not been received applicable from the date of commissioning of the project.*
- (b) *Allow the Carrying Cost on the amount which had become due and payable in previous year at discounting factor adopted for determination of tariff may be allowed.*
- (c) *Pass any other or further orders required in the interest of justice, equity and fairness.*

1.10 A copy of the Petition was forwarded to the Respondent for submission of comments by 16.06.2016. However, the Respondent vide its letter dated 20.06.2016 requested 15 days time for submission of its reply in the matter.

1.11 The Commission held a hearing in the matter on 21.06.2016. During the hearing Respondent requested one week's time to file its written submissions. The Commission vide its Order dated 21.06.2016 allowed the Respondent to file its written submission in one week's time as follows:

"The Commission directs UPCL to file written submission within one week with a copy to the Petitioner and the Petitioner is at liberty to file its rejoinder on the same, if any, within one week of receipt of reply from UPCL."

However, the Respondent has not submitted its comments in the matter.

2. Commission's Views & Decisions

2.1 The relevant regulation 16(3) of UERC (Tariff and Other Terms for Supply of Electricity

from Non-conventional and Renewable Energy Sources) Regulations, 2010 specifies as under:

"The amount of subsidy shall be considered for each renewable source as per the applicable policy of MNRE. If the amount of subsidy is reduced by MNRE, then necessary corrections in tariffs would be carried out by the Commission provided the reduction in subsidy amount is not due to the inefficiency of the generator."

2.2 Since the Petitioner could not qualify the requisite condition of eligibility to avail grant of subsidy from MNRE, the Commission had at Para 3.7.4 of its Order dated 14.04.2014 decided as follows:

"However, as discussed in sub-Para 4 above, the Petitioner has submitted that it has not received any subsidy for the project. The same may be reviewed in accordance with Regulation 16(3) of RE Regulations, 2010 which is reproduced hereunder:

..."

The Commission's above mentioned rationale has also been appreciated and upheld by the Hon'ble APTEL.

2.3 The Commission during the hearing held on 21.06.2016 enquired the Petitioner regarding the likelihood of obtaining the subsidy from MNRE in the future. In response, the Petitioner submitted that it may get the same in this financial year also or in the ensuing financial years, since it has not been denied of its claim for perpetuity by the competent authority.

2.4 Further, reason for not availing the subsidy from MNRE is on account of not meeting the certain predetermined criteria. From the above mentioned submission of the Petitioner, it is apparent that the generator's prospects of obtaining subsidy from MNRE still exists since it has not been denied in perpetuity. Regarding prayer of the Petitioner for revision of capital cost and corresponding redetermination of tariff of its Vanala SHP, the Commission is of the view that considering the capital subsidy from MNRE levelised tariff had already been determined by the Commission for life of the SHP. Redetermination of tariff without considering the subsidy, as requested by the Petitioner, and levying of the same for the period till ascertainment of grant or permanent denial of subsidy to the Petitioner by MNRE may become futile in the event subsidy is granted to the Petitioner which shall further reinstate the tariff since the existing approved tariff is based on the

similar eventuality. Since the tariff of the project has been determined for life of the project in accordance with the Regulations, frequent changes in the same, as envisaged above, may frustrate the intent of uniform levelised tariff for the renewable energy based project. Further, this would also set a precedence allowing other RE generators to approach the Commission to get their tariffs revised each year which would defeat the intent of a generic tariff. Revision in tariff in accordance with the Regulations may be carried out once the subsidy is received or it is established that the developer will no longer be getting any subsidy from MNRE in future. The same is the intent of the Regulations also which says that corrections in tariffs would be carried out by the Commission if MNRE reduces the amount of subsidy.

2.5 Accordingly, the Commission is of the view that redetermination of the tariff without deduction of subsidy from capital cost, as requested by the Petitioner, shall be considered subsequent to ascertainment of refusal of subsidy by the MNRE. Till such time existing levelised tariff as determined by the Commission shall remain applicable. Hence, the Petitioner's prayer in this regard is, hereby, rejected.

2.6 Remaining prayers of the Petitioner are answered accordingly.

2.7 Therefore, the petition is hereby, rejected as discussed above.

Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman