

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 41 of 2021

In the matter of:

Petition under section 79 of the Electricity Act, 2003, read with Article 13 (“Change in Law”) of the Power Purchase Agreement (“PPA”) dated 19.03.2012 executed between M/s Uttam Sugar Mills Limited and UPCL.

In the matter of:

M/s Uttam Sugar Mills Ltd. ... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd. ... Respondent

CORAM

Shri D.P. Gairola	Member (Law) - Chairman(I/c)
Shri M.K. Jain	Member (Technical)

Date of Hearing: November 30, 2021

Date of Order: December 14, 2021

The Order relates to the Petition dated 01.10.2021 filed by M/s Uttam Sugar Mills Ltd. (hereinafter referred to as “Petitioner”) requesting to quash the unnecessary demand of tariff under RTS-9 by Uttarakhand Power Corporation Ltd. (hereinafter referred to as “UPCL” or “Respondent”) instead of RTS-5 and issue necessary directions to UPCL to refund the excess amount paid under protest by the Petitioner against the demand and pay penalty as fine to the Petitioner for loss of work and reputation of the Petitioner.

1. Background

1.1 The Petitioner, i.e. M/s Uttam Sugar Mills Limited, is a company registered under the Company’s Act, 1956 as amended from time to time, and is engaged in the business of

power generation from Bagasse Based Cogeneration Plant having installed capacity of 23 MW situated at Libberheri, Tehsil Roorkee, District-Haridwar, Uttarakhand. It has executed a Power Purchase Agreement (PPA) on 19.03.2012 for supply of surplus electricity of 13 MW (10% overloading) to UPCL from its Bagasse Based Cogeneration Plant after its own use.

- 1.2 The Commission approved the aforesaid PPA vide its Order dated 07.11.2014 in Petition no. 21 of 2014 subject to certain modifications in the provisions of PPA submitted by UPCL for approval before the Commission.

2. Petitioner's submission

- 2.1 The Petitioner submitted that it has entered into a PPA with UPCL on 19.03.2012 which is effective with retrospective effect from 01.11.2021. Clause 2.2 of the PPA states that the rate applicable for supply of electricity by UPCL to generating company shall be as per the tariff determination by the Commission under appropriate 'Rate Schedule of Tariff' for the consumer category determined on the basis of the total load requirement of the plant and billing done in the manner as specified by the Commission in the Regulations.
- 2.2 The Petitioner submitted that UPCL breached the terms of PPA and raised unnecessary bills to the tune of 25% tariff in addition to existing tariff schedule u/s RTS-5 (HT Industry) as specified by the Commission vide its Order 26.04.2021, which are vague and no clause has been mentioned in the agreement about the charging of unnecessary tariff is factually wrong and misleading, to dupe the Petitioner.
- 2.3 The Petitioner submitted that as it is a co-generator exporting 13 MW of surplus power to UPCL and connected with 132 kV S/s Mangalore. During off-season the Petitioner imports power from UPCL to cater to its maintenance requirements.
- 2.4 The Petitioner submitted that the Respondent has illegally and wrongly ignored the terms & conditions of PPA and wrongfully levied tariffs to the tune of 25% on the monthly bills upon the Petitioner and the said action of the Respondent is against 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, 2010 (hereinafter referred to as "RE Regulations, 2010") and the

Respondent is liable to be penalized and the unnecessary demand by the Respondent of the tariff is liable to be quashed. The Petitioner also submitted that as per Annexure-II of PPA, under no circumstances, the saleable energy would be net-off of energy supply by generating company to UPCL and energy used by generating company in case of breakdown or any other emergency conditions and the condition of charging tariff do not arise.

- 2.5 The Petitioner submitted that UPCL is demanding additional 25% over and above electricity tariff specified under RTS-5. UPCL was asked for the reasons for the same. In reply, UPLC vide its letter no. 3477/EDD (R) Roorkee dated 04.08.2021 stated that the electricity tariff rate has been worked out in accordance with the Regulation 47(1) of 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, 2018 (hereinafter referred to as "RE Regulations, 2018").
- 2.6 The Petitioner submitted that it had sent letters to UPCL in this regard stating that RTS-9 will be imposed to those consumers where the use of power supply is temporary in nature, and applicable to temporary supply of light, fan and power loads for all purpose including illuminations, /public address /ceremony and festival/ functions/ shops, where the use of such temporary connection not exceeding three months. Hence, this category RTS-9 does not applicable on the Petitioner. Further, Regulation 47(1) of RE Regulations, 2018 does not provide any directive for power purchase, by a generating company from its distribution licensee to levy 25 % extra under RTS-9 provision, because these extra charges provision will be applied only when generating company sold its entire generated power to any third party other than Distribution Licensee. Since the Petitioner is selling its entire surplus power to UPCL only, hence, the said regulation does not apply on the Petitioner.
- 2.7 The Petitioner submitted that electricity bill of Rs. 43.56 Lakh has been deposited, however, the new illegal additions in the bills in addition of the aforesaid amount will remain under protest till the amicable settlement by UPCL.
- 2.8 The Petitioner submitted that despite requesting the Respondent to correct the monthly bills of June & July 2021, additions have been imposed upon the amount under dispute and the Respondent has harmed the reputation and working of the Petitioner. The

Respondent have also stated that penalty will be imposed if the amount under dispute is not paid in time.

2.9 The Petitioner submitted that it had always been working to fulfil the conditions of the PPA and has never left any stone unturned towards the betterment of both the parties and the contract. However, the Respondent was not willing to work on the agreement/terms of the contract and violated the terms of the contract which shows that there was a pre-planned conspiracy to make money from the Petitioner.

2.10 The Petitioner submitted that it is in the interest of justice that the Commission directs the Respondent to withdraw its unnecessary demand of tariff and additional amount thereto with immediate effect and pay penalty for damaging the reputation and work loss to the Petitioner.

3. Respondent's reply

3.1 The Commission in order to provide transparency forwarded the copy of the Petition to the Respondent for comments. In the matter, UPCL vide letter dated 29.10.2021 submitted its reply in the matter which has been dealt in the subsequent paragraphs of this Order.

3.2 UPCL submitted that the Petition is based upon total misconception and wrong understanding of the provisions of the tariff regulations, therefore, the Petition being against the provisions of the regulations cannot be entertained.

3.3 UPCL submitted that the Petitioner is misconstruing the proviso to Regulation 47 of RE Regulation, 2018 and wrongly considering that the proviso of applicability of tariff for temporary supply under appropriate rate schedule of tariff for industrial consumer is applicable only when the electricity is sold to the third party other than the distribution licensee. The Petitioner submitted that first proviso to Regulation 47(1) of RE Regulations, 2018 clearly provides that net energy in case of electricity generated from the plant shall be billed by the distribution licensee in accordance with the second proviso, therefore the second proviso which clearly provides for billing as per temporary supply schedule applicable to electricity sold by the plant to the third party is by virtue of first proviso is applicable in case the energy supplied by the distribution licensee is more than the energy injected by the generating company.

3.4 UPCL submitted that the Petitioner seems to be confused regarding tariff order issued by the Commission providing for tariff for temporary supply of power and the billing of a generator which is a distinctive matter and is not a temporary supply for fan and power load where the use of such temporary connection does not exceed three months. In the matter, it is by regulation provided that whenever the generator draws excess power from the grid of UPCL for its own use due to any reasons, i.e. for off season or start-up it shall be billed as per the provisions of tariff applicable for temporary supply and by this very fact does not makes such supply a temporary supply in nature.

4. Commission's Analysis and view

4.1 The Commission conducted a hearing on the Petition on 30.11.2021. After hearing both the parties, the Commission vide Order dated 30.11.2021 admitted the Petition and reserved the judgement. After examining the relevant material available on records, issues raised by the Petitioner in the Petition, reply of the Respondent and the analysis of the Commission are dealt in the subsequent paragraphs of this Order.

4.2 M/s Uttam Sugar Mills Ltd. is engaged in the business of electricity power generation from bagasse based cogeneration plant situated at Libberheri, Roorkee, Uttarakhand having capacity of 23 MW out of which PPA for supply of electricity to UPCL has been executed for 13 MW (10% overloading) on 19.03.2012. The said PPA was applicable retrospectively from 01.11.2011.

4.3 The bagasse based cogeneration plant of the Petitioner supplies 13 MW of surplus power to UPCL and during off-season, the Petitioner imports power to cater its maintenance requirements. The electricity rate for export and import of electricity to/from grid is applicable as per clause 2 of the PPA. The relevant extract of the clause 2 of the PPA specifies as follows:

"2.1 UPCL shall accept and purchase surplus 13 MW (10% overloading) power made available to UPCL system from Generating Company at the levellised rate (as opted by generating Company for such plant in Annexure I of 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, 2010 as amended from time to time based on sources and technologies as mentioned at point no. (v) below:-

(i) Small Hydro with capacity upto 25 MW.

(ii) Wind

(iii) Solar including its integration with combined cycle

(iv) Biomass/Biogas

(v) Bagasse based cogeneration as per MNRE guidelines.

(vi) Urban/Municipal waste, or

(vii) Any new source of technology which would qualify as 'Renewable Energy' only after approval of Commission based on the Ministry of Non-conventional Energy Sources (MNRE) approval in accordance with the terms and conditions of this agreement.

2.2 The rate applicable for supply of electricity by UPCL to the Generating Company shall be as per the tariff determined by the Commission under appropriate 'Rate Schedule of Tariff for the consumer category determined on the basis of the total load requirement of the plant and billing done in the manner as specified by the Commission in the Regulations.

..."

Accordingly, UPCL is liable to pay for the power made available from the Petitioner's bagasse based cogeneration plant to it at the levelized rate specified by the Commission in Annexure-I of RE Regulations, 2010. Further, if the generating company imports electricity from UPCL, the rate shall be as per the tariff determined by the Commission under appropriate 'Rate Schedule of Tariff for the consumer category determined on the basis of the total load requirement of the plant and the billing shall be done in accordance with the provisions of Regulations.

4.4 With regard to payment to UPCL for electricity, the Petitioner submitted that UPCL demands for additional 25% over and above electricity tariff specified under RTS-5 is unjustified. Further, Regulation 47(1) of RE Regulations, 2018 does not provide any directive for power purchase, by a generating company from its distribution licensee to levy 25 % extra under RTS-9 provision, because these extra charges provision will be applied only when generating company sold its entire generated power to any third party other than Distribution Licensee. The Petitioner also submitted that as per Annexure-II of PPA, the saleable energy would not be net-off of energy supply by Generating Company to UPCL and energy used by Generating company in case of breakdown or any other emergency conditions and the condition of charging tariff do not arise.

With regard to the above submissions of the Petitioner regarding non-applicability of Regulation 47 of RE Regulations, 2018, it would be relevant to examine Regulation 47 of RE Regulations, 2018 which specifies as follows:

“47. Purchase of Electricity by the Generating station including Start up Power

- (1) *Any person, who establishes, maintains and operates a generating station and normally does not need power from the licensee round the year, may purchase electricity from a generating company or a distribution licensee in case his plant is not in a position to generate electricity to meet the requirement of his own use or for start-up and consequently power is required to be drawn from distribution licensee:*

Provided that in case electricity generated from the plant is being exclusively sold to the State Distribution Licensee, the electricity (in kWh) procured by the Generating Station from the State Distribution Licensee to meet its requirement of his own use or for startup power, will be adjusted from the electricity sold to the Distribution Licensee on month to month basis. The Distribution Licensee shall make the payment for net energy sold to it by the Generating Company, i.e. difference of the total energy injected into the grid and energy drawn from the grid by the Generating Company. In case the energy supplied by the distribution licensee is more than the energy injected by the generating company, the net energy (in kWh) thereof shall be billed by the distribution licensee in accordance with 2nd proviso below;

Provided further that in case electricity generated from the plant is sold to third party other than the Distribution Licensee, then such purchase of electricity by the generating company from the distribution licensee, shall be charged as per the tariff determined by the Commission for temporary supply under appropriate “Rate Schedule of tariff” for Industrial Consumers considering maximum demand during the month as the contracted demand for that month. The Fixed/Demand charges for that month shall be payable for the number of days during which such supply is drawn. Such Generating Company shall, however, be exempted from payment of monthly minimum charges or monthly minimum consumption guarantee charges or any other charges.”

(Emphasis added)

It is explicitly clear from the first proviso of above regulation that if a generating plant supplies electricity exclusively to State Distribution Licensee, UPCL in present case, and the electricity imported by the generating plant from the State Distribution

Licensee to meet its requirement for maintenance or start up power, will be adjusted from the electricity sold to distribution licensee by such generating plant on monthly basis. However, Annexure-II of the PPA provides that under no circumstances the saleable energy would be net-off of energy supply by the generating station to UPCL and energy used by Generating company in case of breakdown or any other emergency conditions and the condition of charging tariff do not arise.

With regard to contradiction between the provisions of PPA and regulations, Regulation 6(7) of RE Regulations, 2018 specifies as follows:

“(7) All Power Purchase Agreements (PPAs) signed by the generating stations existing on the date of notification of these regulations shall be amended in accordance with these regulations, if inconsistent with these Regulations, and such amended PPAs shall be valid for entire life of the RE Based Generating Stations and Co-generating Stations.”

It is evident from the above-mentioned regulation that all the existing PPA needs to be amended in accordance with the provisions of RE Regulations, 2018. Further, whenever the provisions of PPA and regulations are in contrary, provisions specified in regulations shall prevail. Accordingly, billing will be done in accordance with the provisions of RE Regulations, 2018.

As far as submission of the Petitioner of non-applicability of Regulation 47 of RE Regulations, 2018 is concerned, it is worth mentioning that first proviso of aforesaid regulation specifies that in case electricity generated from the plant is being exclusively sold to the State Distribution Licensee, i.e. UPCL, the payment towards the electricity procured by the generating plant for maintenance or start up power shall be made in accordance with the second proviso of abovementioned regulation which states that the generating company shall be charged as per the tariff determined by the Commission for temporary supply under appropriate rate schedule of tariff for the industrial consumers considering maximum demand during the month as the contracted demand for that month.

In the present case, the Petitioner supplies 13 MW electricity to UPCL and during off-season, imports power from UPCL for light & fan, maintenance work etc. requirements. Accordingly, during the off season when the energy supplied by UPCL is more than the energy injected by the Petitioner’s plant, the net energy (in kWh) thereof

shall be billed by UPCL as per the tariff determined by the Commission for temporary supply under appropriate "Rate Schedule of tariff" for Industrial Consumers considering maximum demand during the month as the contracted demand for that month. Accordingly, the Respondent is acting correctly by billing the Petitioner under Temporary Rate of charge in accordance with the RE Regulations, 2018.

- 4.5 During the hearing, the Petitioner submitted that RTS-9 will not be applicable to it as RTS-9 is imposed to those consumers where the use of power supply is temporary in nature, and applied to temporary supply of light, fan and power loads for all purpose including illuminations, /public address /ceremony and festival/ functions/ shops, where the use of such temporary connection not exceeding three months.

In the matter, it is important to mention that the Commission vide its Tariff Orders specify electricity rates to be recovered from consumers by distribution licensee, whereas, the Petitioner is a generating company which procures power from UPCL only in case of shortage of power from its own power plant to meet its requirements and does not need power from UPCL round the year. The requirement of power from UPCL by the Petitioner is temporary in nature and it cannot be treated as a consumer of UPCL round the year. Accordingly, the Petitioner will be billed under RTS-9 (temporary category) only for payment towards the said net electricity procured by it from UPCL in accordance with the provision of RE Regulations, 2018.

- 4.6 Ordered accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)- Chairman (I/c)