

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Difficulties expressed by Uttarakhand Power Corporation Limited and the developers of renewable energy based generating stations in interpreting, understanding and implementing certain provisions 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.

Coram

Shri V.J. Talwar, Chairman

Shri Anand Kumar, Member

Date of Order: 28th October, 2010

ORDER

(Power to Remove Difficulties)

Whereas, section 61 (a) of the Electricity Act 2003, requires the State Commission to be guided by the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees in framing their own regulations for tariff determination.

And whereas, to make UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008, consistent with the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009, the Commission has, after due consultative process, framed 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, 2010", (herein after referred to as RE Regulations 2010), which were subsequently notified in the official gazette of Uttarakhand on 14th August 2010.

And whereas the Uttarakhand Power Corporation Limited i.e. the sole Distribution Licensee in the State of Uttarakhand, through letter dated 21.09.2010, has expressed some difficulties in interpreting, understanding and implementing certain provisions of above Regulations as detailed below:

Contents of UPCL Letter No. 1053/MD/UPCL/UERC Dated 21.09.2010

1. UERC regulation 2010, clause no. 16(b) states *"In case, the generator opts to construct the evacuation infrastructure from point of inter-connection to the nearest sub-station of transmission or distribution licensee to which the generating station is connected, it shall be allowed a normative levelised tariff of 5 paise/unit over and above the generic tariff determined at the point of inter-connection.....". Some developers, whose small hydro projects are already commissioned and have constructed their evacuation line itself from generating station to UPCL sub-station long before coming into effect of this regulation, have also demanded 5 paise/unit over and above their tariff. This clause is part of chapter 4 of regulation 2010 and chapter 4&5 are applicable w.e.f. 01.07.2010. It is requested to clarify whether above clause will be applicable to old projects or not.*
2. As per earlier UERC regulation 2008, interconnection point was UPCL substation. UERC regulation 2010 states that interconnection point shall be generating station side. In this way it is clear that UPCL has to bear the line losses. **You are requested to clarify that if the losses exceed the permissible limit, losses beyond permissible limit will be borne by generation company or not.**
3. PPA was signed on dated 05.02.2003 between M/s Himalaya Hydro Private Limited and UPCL for Motighat Project (3MW) and supplementary PPA for 5 MW capacity on

07.12.2009 and point of interconnection was Madkote Substation. Now developer has requested that the existing 33 kV line of UPCL may be used by him as per UERC regulation 2010. **Kindly advise whether Clause 38(1) of UERC regulation 2010 are applicable to them.** Because of highly terrain the evacuation arrangement is not as per CEA norms (voltage regulation, losses etc.) and we have to follow the practically possible solutions. It is requested that direction on the matter may kindly be given.

And whereas developers of Generating Stations based on renewable energy sources, through letters/representations, have intimated non-compliance of the provisions of RE Regulations 2010 by UPCL as detailed below:

Contents of letter No. CHPPL/Debal/100/2010 dated 27.09.2010 from Chamoli Hydro Power Private Limited

Accordingly we have been billing the energy generated from our Debal SHP. But UPCL is denying the Rs. 0.05/- to be given for constructing the transmission lines up to the nearest substation under the pretext that it is applicable only for new projects to be commissioned. We are enclosing here with the copy of the UPCL's letter for your reference. We pray the hon'ble Commission to direct UPCL to honor the transmission line charges as given in your above referred tariff order given under 16(b) of chapter 4 which is applicable for all SHPs.

Contents of letter dated 08.09.2010 from Regency Aqua-electro and Motelresorts Limited

We enclose herewith a letter from Chief General Manager (Commercial), UPCL regarding interpretation of clause 16(1)(b) of UERC (Tariff & other Terms for supply of Electricity from Renewable Energy Sources and Non-Fossil fuel based Cogenerating Station) Regulation, 2010 dated 06.07.2010, disallowing Rs. 0.05 per kWh against the construction of evacuating infrastructure from point of interconnection of evacuation to the nearest substation of Transmission/Distribution at Hanuman Chatti for our 4.95 MW Hanuman Ganga Small Hydro Power Project in District Uttarkashi.

Kindly clarify the above clause to Chief General Manager (Commercial) with a copy to us, so that we may get full payment against our bills for generation for the month of July & August, 2010.

Contents of letter No. SHEP:VKG:3092:001:2010 dated 09.09.2010 from Super Hydro Electric Private Limited

We wish to inform you that in absence of a valid Power Purchase Agreement, we will not be in a position to draw any fund from IREDA for the development of the project.

Further we also need to have clarity on Power Evacuation System/voltage Level, without which it will be difficult to start the construction activities. We anticipated UPCL/PTCUL to "Confirm" our "Power Off Take/Flow Path" to safe guard from Grid Outages.

We hope you will understand our position and instruct UPCL to sign the PPA at the earliest and also to clarify the Power Evacuation Status.

Contents of letter No. BGHPL/SK/UPCL/1886 from Birahi Ganga Hydro Power Limited

.....our project is under final stages of completion and we have to start testing very soon. But for doing so we require more funds which bank will release only after submission of signed copy of PPA to them.

We have been requesting to you from a long time for doing the same but it has not been signed till now.

Contents of letter dated 24.09.2010 from Gunsola Hydro Power Generation Pvt Ltd.

And whereas, Gunsola Hydro Power Generation has raised the issue of deemed generation due to frequent tripping lines connecting the Generating station with the sub-station of distribution licensee.

And whereas, meeting was organized by the Commission with the Managing Director, UPCL and their Officers on 13.10.2010 to understand the difficulties experienced by them in interpreting and implementing the provisions of RE Regulation 2010. The issues were deliberated upon and response/views of Uttaranchal Power Corporation Limited were taken and has been considered by the Commission while issuing the following order.

And whereas, Regulations 46 of the above regulations i.e. "Power to Remove Difficulties" provides as below:

"If any difficulty arises in giving effect to these regulations, the Commission may, of its own motion or otherwise, by an order and after giving a reasonable opportunity to those likely to be affected by such order, make such provisions, not inconsistent with these regulations, as may appear to be necessary for removing the difficulty."

Now, therefore, Uttarakhand Electricity Regulatory Commission in order to clarify certain issues and to remove certain difficulties, so as to facilitate development of renewable energy sources in State, in terms of above provision of the Regulation, hereby makes the following order, namely:-

1. Short title and commencement:-

- i. This order may be called 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, 2010, Removal of Difficulty (First) Order, 2010.
- ii. It shall come into force on the date of coming into effect of RE Regulations.

2. **Requirement of signing of PPAs in terms of provisions of RE Regulations 2010:-**

With regard to signing of received PPAs/fresh PPAs with the existing and upcoming developers in terms of provisions of RE Regulations 2010, the following provisions of above Regulations

a. 3rd proviso to Regulation 2 (1) of RE Regulations, 2010:

*“Provided further that in all the cases, where legally valid PPAs have been entered into with the distribution licensee or where financial closure of the project has taken place prior to coming into force of these Regulations on the basis of previous Regulations/Orders of the Commission, such generators shall have the option to be covered under these Regulations, in which case these Regulations shall be applicable to them and the generators would be required to convey such option within one month of the notification of these Regulations. **The PPAs of such generators would need to be amended to make them in line with these Regulations (as amended from time to time), failing which the provisions of these Regulations shall be deemed to have been incorporated in their PPAs and will have overriding effect over any of the previous provisions.**”*

b. Regulation 7(2) of RE Regulations, 2010:

“The distribution licensee on an offer made by the said RE based Generating Stations and Co-generating Stations shall enter into a power purchase agreement in conformity with these Regulations and relevant provisions of other Regulations and the Act. The distribution licensee shall sign the PPA within two months of offer made by the generating company, failing which the generating company may approach the Commission for suitable remedy.”

From the above provisions of RE Regulations, 2010, it is clear that Distribution Licensee cannot refuse to enter into a revised PPA/new PPA with existing/upcoming renewable energy based generators provided that the PPA is in conformity with any agreement, Regulations or Government Policy. In any case, for the existing RE based generators, in case it opts to be covered under these Regulations, the provisions of these Regulations would be deemed to have been incorporated in their existing PPAs, whether a revised PPA has been signed or not.

3. **Additional Tariff in case the developer opts/constructs the dedicated transmission line for evacuation of power generated from his generating station**

As stated above, in framing tariff regulations, the Commission has to be guided by the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees. Accordingly, while framing RE Regulations 2010, the Commission further considered the same benchmark capital cost upto the interconnection point for the FY 2009-10, as considered by the CERC for the purposes of determination of generic tariffs. The generic tariffs determined by the Commission, accordingly, do not take the capital cost of dedicated transmission line into account. Accordingly, to compensate the developers for the costs incurred by it in constructing the dedicated transmission line, the Commission has separately determined a tariff of 5 paise per unit for a normative line length of 10 kms.

As regard clarification sought by UPCL that whether these additional tariffs would apply to old projects or not it is to clarify that these tariffs shall apply to old projects also as the capital cost considered by the Commission for determination of generic tariff is only upto the interconnection point which is located at the Generating Station sub-station itself.

- a. Accordingly, in all such cases, where the dedicated line has been constructed by the developer, whether old & existing or new, the distribution licensee will have to pay the additional tariff of 5 paise/unit to the developer provided ownership of such lines remains with the developers. However the first option shall be given to Uttaranchal Power Corporation Limited for either buying the existing evacuation line of the Generator at the depreciated cost indicated in the latest accounts of the developer, so as to protect its own commercial interest or pay additional 5 paise as per regulations.

As regards other doubts raised during the meeting dated 13.10.2010 by UPCL with respect evacuation infrastructure, following is clarified that:

- a. The basic responsibility of providing connectivity to the generators lies with the licensees only, i.e. distribution licensee and/or the transmission licensees. However, under the RE Regulation 2010, so as to facilitate the process and to ensure that no generating capacity is unduly blocked up due to commercial constraints on the part of licensees, an option has been provided to generators that they can opt to construct the dedicated line upto the nearest sub-station of the licensee, for purposes of evacuation of power, at their own cost. However, such a provision is only optional, accordingly, UPCL(Distribution Licensee) cannot force an existing developer (generator) or an upcoming developer (generator) to purchase a dedicated line constructed by UPCL(Distribution Licensee) in case the developer decides to forego the 5 paise/unit additional tariff decided by the Commission for the purpose.
- b. Since the generic tariffs have now been determined at the interconnection point located at the sub-station of the Generating Station itself, UPCL may choose to purchase any such dedicated line

constructed by the existing Developer (Generator). It is further clarified that since the generic tariffs have determined at the point of interconnection, it would not harm the commercial interest of the generator in any manner.

4. Accelerated Depreciation and applicability of Net Generic Tariffs

In line with the CERC regulations the Commission has also quantified the benefit of accelerated depreciation on levelized basis under the RE Regulations 2010. For the purpose, the Commission has considered depreciation of 80% in the first year and each year thereafter on written down value (WDV) principle. Considering the fact that such benefit of accelerated depreciation may not be available to all the RE based generating stations it was provided under Regulations 25 (c) of above Regulations that:

“It shall be assumed that the generating company shall avail the benefit of accelerated depreciation and the onus of establishing, to the satisfaction of distribution licensee, that it is not entitled for this benefit shall be that of such generating company. The auditor’s certificate in this regard shall be considered sufficient for this purpose.”

It is accordingly clarified that a developer would be entitled to claim gross tariffs only in case it is able to prove to the satisfaction of the distribution licensee through an auditor’s certificate that it is not entitled to such a benefit under any incentive scheme of Government of India or under the provisions of section 32 Income Tax Act, 1962.

It is further clarified that in case such a benefit is available to the developer and he is unable to avail it for whatsoever reasons, it shall not be entitled to claim gross tariffs and would be entitled to net tariffs only, i.e. Gross tariff minus accelerated depreciation.

5. Interconnection Point and Losses

Under the new regulations, interconnection point has been shifted from the licensee's nearest sub-station with which the generating station is connected, to sub-station of the Generating station as is the practice with Central Sector and State Sector Generating Stations. UPCL has sought clarification regarding treatment of losses in the dedicated lines and management of voltage at the distribution end in case of long lines. In this connection it is to clarify that as per the general practice losses are borne by the beneficiaries only (whether a consumer or a licensee) and not by the generators as the same are not considered while deciding the tariffs for generating stations. Accordingly, losses in the dedicated line would have to be borne by the, distribution licensee only in case power is supplied to it by RE based generating station.

As regard issue of higher losses in the dedicated line due to utilization of under sized conductor/cable by the developer, it is provided that Licensee shall specify the standards for construction of dedicated line, including the conductor (size & type) to be utilized for evacuation of particular quantum of power at particular voltage level on his website. Further, the standards, as may be specified by the Distribution Licensee in consonance with CEA's Technical Standards for connectivity to the Grid Regulations 2007, shall be made part of the PPA between the Generator and the licensee.

As regard management of voltage profile at the distribution/load end in case of long lines it is to be clarified that in terms of provisions of Distribution Code Regulations it is the responsibility of the distribution licensee and it may need to install necessary series capacitors on radial lines and/or shunt capacitors at the load end for the purpose.

6. Deemed Generation

With regard to issue of 'deemed generation' raised by the RE developers following is clarified:

- a. that the Commission has worked out the Generic Tariffs considering low Capacity Utilization Factors which is as low as 45% in case of small hydro generating stations.
- b. that all RE based generating stations have been kept out of the ambit of Merit Order Dispatch and Scheduling.
- c. that on RE based generating station principles of ABT are not applied.
- d. that all RE based generating station have been allowed to retain additional earning in case of generation above CUF as incentive.

Keeping in view the above concessions/relaxations allowed to RE based generating stations, the provisions of deemed generation has not been considered as necessary under the RE Regulations, 2010 in case of day to day tripping and outage of lines. However, in order to avoid bottling up of much needed generation due to inadequacy of the transmission and distribution system, the Commission is of the view that penal provisions are necessary so as to avoid such situations. This matter is under examination and the Commission shall take a final view on the same after discussions with UPCL and Developers.

(Anand Kumar)
Member

(V.J. Talwar)
Chairman