

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 21 of 2022

In the Matter of:

Petition seeking adjustment of tariff for 5 MW Tanga Small Hydro Power Project of M/s Himalaya Hydro Pvt. Ltd., due to additional capital expenditure necessitated due to the catastrophic damage caused to the plant by the unprecedented natural calamity/flood (force majeure event) that occurred on July 2nd, 2018, under Section 61 and 62 of the Electricity Act, 2003 read with Regulation 14(7) 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.

In the matter of:

M/s Himalaya Hydro Pvt. 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 : August 23, 2022

Date of Order: August 25, 2022

1. Heard the Petitioner and the Respondent in the matter.
2. The Petitioner had filed the Petition seeking adjustment of tariff for 5 MW Tanga Small Hydro Power Project due to additional capital expenditure necessitated due to the force majeure event including grant of interim tariff. The Commission vide its letter dated 12.07.2022 sought comments from the Respondent on the Petition filed by the Petitioner, and allowed the

Respondent time till 17.08.2022, i.e. a period of more than one month, to submit its reply in the matter. However, the Respondent did not make any submission before the Commission during the said time frame, rather after the last date of submission of comments, i.e. on 18.08.2022 they submitted a letter before the Commission seeking certain information and also additional time for framing their reply. Similar plea was made by the Respondent during the course of hearing. The Commission is of the opinion that such an approach of the Respondent appears to be an afterthought and if allowed, it will result in unnecessarily delaying the proceedings in the matter. The Respondent was allowed sufficient time to submit its reply in the matter, and it is expected from them that concerns, if any, should have been raised before the Commission well in advance within the allowed time frame.

3. However, the Commission, in the interest of justice and to maintain transparency, in the past also, has always sought responses of the Respondent on all the submissions made by the Petitioner on the information required by the Commission and is again allowing the request of the Respondent with respect to the additional information/documents sought by it from the Petitioner. The Commission does not accept the request of the Respondent with respect to re-scheduling the hearing as the Respondent will be given adequate time and all the liberty to respond to all the submissions made by the Petitioner during the course of the entire tariff proceedings. Moreover, the Petitioner is required to submit reply on the issues/comments raised by the Respondent and additional deficiencies observed by the Commission, which shall be intimated separately from time to time during the proceedings.
4. The Petitioner in the Petition has made a prayer to allow provisional tariff of Rs. 1.71/kWh till determination of final tariff as per Regulations. The Respondent during the course of the hearing submitted that the Regulations does not allow grant of interim tariff. In this regard, Regulation 13(2) of RE Regulations, 2018 provides that till fixation of final tariff the RE based generating station may seek determination of provisional tariff. Similar principle is applicable to the present case also. Further, Section 94(2) of the Electricity Act, 2003 reads as under:

"Powers of Appropriate Commission

...

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

..."

In light of the above, the Commission is of the view that since the determination of

tariff is a time-consuming activity involving prudence analysis of various facts and documents and also analyzing the submissions made by the Petitioner and the Respondent from time to time, therefore, the Petitioner can be allowed provisional tariff till the time final tariffs are determined by the Commission to enable the Petitioner Company to meet its obligations related to loan repayment & other related expenses.

In this regard, the Commission observed that CERC has been allowing provisional tariff in the range of 75% to 90% of the tariffs claimed by the Petitioner's before it. The Commission adopting the similar approach is of the view that the Petitioner may be allowed provisional tariff for additional capitalisation incurred to the extent of 70% of the tariff claimed by it, which works out to Rs. 1.20/kWh (Rs. 1.71/kWh * 70%), which shall however be subject to adjustment based on the determination of final tariff by the Commission. The Petitioner is allowed to raise the bills at this interim tariff from the restoration of generation, i.e. from April, 2021, however, arrears due, if any, shall be paid by the Respondent in three equal instalments.

(M.K. Jain)
Member (Technical)

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