

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 33 of 2023

In the matter of:

Petition under Section 62 and 84 of the Electricity Act, 2003 read with Regulation 50(6) of the Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2018 & 2021 for recovery of under recovered energy charges due to shortfall in energy generation for reasons beyond the control of generating station during the FY 2020-21, FY 2021-22 and FY 2022-23 in respect of Budhil Hydro Power Project (BHEP).

In the matter of:

M/s Greenko Budhil Hydro Power 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 01, 2023

Date of Order : September 01, 2023

This Order relates to the hearing conducted on admissibility of the Petition filed by M/s Greenko Budhil Hydro Power Pvt. Ltd. (hereinafter referred to as "Petitioner" or "M/s GBHPPL") for recovery of under recovered energy charges in accordance with Regulation 50(6) of MYT Regulations, 2018 & 2021 due to shortfall in energy generation for reasons beyond the control of the generating station during FY 2020-21, FY 2021-22 and FY 2022-23 in respect of Budhil Hydro Power Project (hereinafter referred to as "Budhil HEP"). During the hearing, the Petitioner stated that design energy of the Budhil HEP is 283.54 MUs against

which the actual generation of Budhil HEP was 275.97 MUs, 251.48 MUs and 266.99 MUs for FY 2020-21, FY 2021-22 and FY 2022-23 respectively. Accordingly, there was shortfall of generation of 7.57 MUs (283.54 MUs less 275.97 MUs), 32.06 MUs (283.54 MUs less 251.48 MUs), 16.55 MUs (283.54 MUs less 266.99 MUs) for the respective years. Further, the shortfall beyond the control of the Petitioner was 4.61 MUs, 27.26 MUs and 15.54 MUs for FY 2020-21, FY 2021-22 and FY 2022-23 respectively.

The Petitioner submitted that due to shortfall, design energy had to be modified and subsequently, due to modification in Design Energy, the ECR also got revised resulting into under recovery of energy charges of Rs. 1.08 Crore, Rs. 5.03 Crore and Rs. 2.61 Crore for FY 2020-21, FY 2021-22 and FY 2022-23 respectively. The Petitioner requested the Commission to allow recovery of energy charges in accordance with the provision of Regulation 50(6) of MYT Regulations, 2018 and 2021.

Rebutting this, the Respondent refuted all the claims of the Petitioner stating that the Petitioner is not eligible to seek recovery of any kind of energy charges as the same has already been duly adjusted during the true-up of respective year. Further, adjustment against energy Shortfall for FY 2022-23 will be carried out during Tariff determination for FY 2024-25. Further, all the relevant data for finalising the design energy on which AFC has been calculated and the same was already allowed by the Commission. Therefore, there seems to be no valid ground for filing the instant Petition.

The Respondent submitted that no prior information has even been provided to UPCL regarding any shortfall in achieving the targeted generation. The Respondent submitted that the Petition is basically based upon total misconception and wrong understanding of the provisions of the tariff regulations and applicability of the provisions of the PPA, therefore, the Petition being against the provisions of the PPA, therefore, cannot be entertained.

The Petitioner vide its rejoinder dated 08.08.2023 submitted that the Present Petition has been filed under Section 62 and Section 86 of the Electricity Act, 2003 read in conjunction with Regulation 50(6) of MYT Regulations, 2018 and 2021. The Petitioner submitted that in the true-up Orders, the Commission has allowed the true-up of energy charges and AFC based on actual performance, as opposed to normative operations and financial norms. The shortfall in the energy generation against the design energy was not considered. Hence, the present

Petition seeks recovery of charges due to a shortfall in energy generation beyond the control of Petitioner. Further, the recovery of charges due to a shortfall in energy generation was not claimed in the true-up Petition. With regard to prior information regarding shortfall of energy charges, the Petitioner submitted that the Commission was informed in the matter during the proceeding of determination of Tariff for FY 2023-24.

The Commission has gone through Petition and objections raised by the Respondent against the prayers of the Petitioner. The Petitioner has prayed for recovery of shortfall in energy charges due to lesser generation than the design energy for reasons beyond control of the Petitioner whereas the Respondent stated that the same adjustment has already been done by the Commission while approving the ARR for respective years. In the matter, the Commission has gone through the Regulation 50(6) of MYT Regulations, 2018 and 2021 which specifies follows:

“In case actual total energy generated by a Hydro Generating Station during a year is less than the Design Energy for reasons beyond the control of the Generating Company, the following treatment shall be applied on a rolling basis on an application filed by generating company:

- a) *in case the energy shortfall occurs within ten years from the date of commercial operation of a generating station, the ECR for the year following the year of energy shortfall shall be computed based on the formula specified in sub-Regulation (5) above with the modification that the DE for the year shall be considered as equal to the actual energy generated during the year of the shortfall, till the Energy Charge shortfall of the previous year has been made up, after which normal ECR shall be applicable;*

Provided that in case actual generation from a hydro generating station is less than the design energy for a continuous period of 4 years on account of hydrology factor, the generating station shall approach CEA with relevant hydrology data for revision of design energy of the station.

- b) *In case the energy shortfall occurs after ten years from the date of commercial operation of a generating station, the following shall apply:*

Explanation: *Suppose the specified annual Design Energy (DE) for the station is DE MWh, and the actual energy generated during the concerned (first) and the following (second) financial years is A1 and A2 MWh, respectively, A1 being less than DE. Then, the design energy to be considered in the formula in sub-Regulation (5) above for calculating the ECR for*

the third financial year shall be moderated as $(A1 + A2 - DE)$ MWh, subject to a maximum of DE MWh and a minimum of A1 MWh.

- c) *Actual energy generated (e.g. A1, A2) shall be arrived at by multiplying the net metered energy sent out from the station by $100 / (100 - AUX)$.*"

(... Emphasis Added)

The aforesaid regulation specifies that the generating company to file an application filed before the Commission, for recovery of under recovered energy charges due to shortfall in actual generation against the design energy.

Further, having heard the parties in detail, we find merit in the issues raised by the Petitioner in the Petition which needs further adjudication and determination that can only be achieved by proper hearing of parties. Therefore, the Commission has decided to admit the Petition and decides to hear the matter on merits on a further date which shall be separately communicated.

(M.K. Jain)
Member (Technical)

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