

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION
Misc. Application No. 30 of 2023
&
Misc. Application No. 31 of 2023

In the matter of:

1. Petition under Section 86(1) (e) and 86(1) (f) claiming deemed generation in respect of 12.6 MW Sarju II Small Hydro Power Project of Uttar Bharat Hydro Power Private Limited.
2. Petition under Section 86(1) (e) and 86(1) (f) claiming deemed generation in respect of 10.5 MW Sarju III Small Hydro Power Project of Uttar Bharat Hydro Power Private Limited.

In the matter of:

M/s Uttar Bharat Hydro Power (P) Ltd.

... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd. (UPCL)

... Respondent

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

Date of Hearing: October 06, 2023

Date of Order: October 16, 2023

ORDER

The Order relates to the Petitions filed by M/s Uttar Bharat Hydro Power (P) Ltd. (M/s UBHPPL) claiming deemed generation with regard to 12.6 MW Sarju- II and 10.5 MW Sarju-III Small Hydro Power Project of the Petitioner under Section 86(1)(e) & 86(1)(f) of the Electricity Act, 2003 (hereinafter referred to as “the Act”). Since the issues in the Petitions are of similar nature, the Commission has decided to club the Petitions and issue a single Order.

1. Background

- 1.1. The Petitioner is a generating company within the meaning of Section 2(28) of the Act, and has set up two small hydropower projects, i.e., 10.5 MW Sarju III (project commissioned on 10.07.2014) and 12.6 MW Sarju II (project commissioned on 28.05.2016).
- 1.2. The Petitioner had entered into a Power Purchase Agreement dated 16.12.2002 with the Respondent i.e., UPCL, where under the Petitioner agreed to set up a small hydro power project (Sarju III Project) and generate and supply electricity to the Respondent on the terms and conditions contained in the PPA. The Agreement was superseded by Power Purchase Agreement (PPA) dated 13.10.2011. The Commission vide Order dated 14.10.2015 approved the PPA with certain amendments, including inclusion of provision of deemed generation. A Supplementary Agreement to the PPA dated 13.10.2011 was signed between the Petitioner and the Respondent on 24.02.2016.
- 1.3. Similarly, the Petitioner had entered into a Power Purchase Agreement dated 16.12.2002 with the Respondent, where under the Petitioner agreed to set up a small hydro power project (Sarju II Project) and generate and supply electricity to the Respondent on the terms and conditions contained in the PPA. The Commission vide Order dated 14.01.2017 approved the PPA and supplementary PPA with certain amendments, including inclusion of provision of deemed generation. A Supplementary Agreement to the PPA was executed between the Petitioner and the Respondent on 26.02.2015. Further, UPCL granted connectivity to Sarju II project for restricted capacity of 4.2 MW.

2. Petitioner's Submission

- 2.1. M/s UBHPPL vide its aforesaid Petitions in the matter stated that it has been regularly raising invoices towards deemed generation to the Respondent in accordance with the provisions of RE Regulations, however, the Respondent licensee has been continuously failing in making payments for such deemed generation claims.
- 2.2. The Petitioner in its instant Petitions submitted that it has raised deemed generation claims for the year 2016-17 to 2022-23 for Sarju-II and for the year 2018-19 to 2022-23 for Sarju-III on account of the following reasons:
 - i Deemed generation in respect of voltage fluctuation.
 - ii Deemed generation in respect of Grid Failure/Outages.

iii Deemed generation in respect of capacity restriction.

2.3. The Petitioner has sought the following reliefs:

- i Allow the present Petitions;
- ii Direct the Respondent to make payments for deemed generation to the Petitioner for insufficient evacuation capacity/capacity restriction, grid failures, voltage fluctuations, as per the claim of the Petitioner, along with delayed payment surcharge/interest @ 15% p.a.;
- iii Award cost of proceedings;
- iv Pass any further order, as this Hon'ble Commission may deem just and proper.

2.4. The Commission vide its letter dated 04.10.2023 sought comments from the Respondent i.e. UPCL on the admissibility of the aforesaid Petitions and fixed a hearing in the matter on 05.09.2023. The date of hearing was re-scheduled once on the request of the Petitioner and once on the request of the Respondent and was finally held on 06.10.2023.

2.5. The Respondent submitted its reply on the admissibility of the aforesaid Petitions vide letters dated 13.09.2023 & 14.09.2023. Thereafter, the Petitioner submitted its rejoinder dated 30.09.2023 to the reply made by the Respondent:

3. Respondent's Submission

3.1. That the Regulations prescribe for annual settlement of deemed generation claims, therefore these claims cannot be raised now.

3.2. That the Petitioner's Plant is connected with 33/11 kV S/s Kapkote by an independent feeder which is operated and maintained by the Petitioner himself. However, Petitioner in its data has not provided even a single instance that shows an outage of the said feeder. Further, there is no tripping at the generator end, which clearly shows that the data provided by the Petitioner is not authentic.

3.3. That the Petitioner has again raised deemed generation claim on account of restriction in capacity which was denied by the Commission in its earlier Order dated 11.03.2020 regarding deemed generation claims raised by the Petitioner with respect to Sarju-III SHP.

3.4. That the Petitioner was required to construct dedicated evacuation line with respect to Sarju-II SHP under the supervision of the Respondent, however, the Petitioner has not

yet deposited the supervision charges. The deemed generation claims of the Petitioner should not be considered until it deposits the said supervision charges.

- 3.5. That the Petitioner has claimed deemed generation for full capacity, whereas, it has been observed that the Petitioner could never run its Plant to its full capacity.
- 3.6. That the claim for voltage fluctuation is not in accordance with the provisions of the Regulations.
- 3.7. That re-conciliation has never been carried out and re-conciliation for so many years is now not practically possible. Reconciliation should have been done at the field level and that too at the earliest when the memory and records of the events were fresh. The Petitioner is using delay as a tactic to make this whole exercise ineffective.
- 3.8. That the Petitioner has filed an appeal before Hon'ble APTEL against the UERC Order dated 11.03.2020 in which the Commission has given its findings on various issues, some of which are challenged by the Petitioner. So, the Petition should not be entertained.

4. Commission's Views & Decisions

- 4.1. The Commission vide its Order dated 11.03.2020 directed the Respondent to frame a detailed procedure for monthly reconciliation of deemed generation together with the Petitioner, which UPCL has not complied till date. The Commission reiterates the said directives as under:

“.....

The Commission directs the Respondent No. 1 to frame a detailed procedure for monthly reconciliation of deemed generation bills together with the Petitioner and submit the same to the Commission within one month of this order.”

- 4.2. The Commission vide its previous Orders dated 08.12.2016 & 11.03.2020 with respect to the deemed generation claims made by the Petitioner with respect to Sarju-II and Sarju-III respectively had directed the Petitioner and the Respondent to jointly sit together for monthly reconciliation of the deemed generation claims in accordance with the provisions of the relevant UERC, RE Regulations. The Commission, even during the current proceedings, has found that there is no practice prevailing for monthly reconciliation of generation loss, on account of outage hours of line/ evacuation system and loss of generation due to voltage variation beyond permissible limits, through a joint sitting of UPCL with RE generators in the State. Such inaction on the part of UPCL is

gross violation of the Orders/directions of the Commission in this regard. Moreover, the Commission also feels that in the absence of the detailed procedure for monthly reconciliation framed by UPCL with the concurrence of the Petitioner, such joint sittings would become infructuous and meaningless.

Based on the above, the Commission is of the opinion that due to the aforesaid reasons and lackadaisical approach of UPCL, the issue of deemed generation claims are not nibbed in the bud and these claims become dispute leading to unnecessary adjudication Petitions (including voluminous documents) piling up in the Commission. Taking strong exception to such misdemeanor on the part of UPCL, the Commission warns UPCL to put its act together and strictly comply with the directions of the Commission in the matter otherwise the Commission would not hesitate in taking appropriate punitive action against UPCL under the Act.

4.3. In light of the above the Commission hereby directs that:

- a) The Respondent should frame a detailed procedure for monthly reconciliation of deemed generation bills in concurrence with the Petitioner and submit the same to the Commission, within one month for the date of issue of this order, for its approval failing which the Respondent and the Petitioner shall render themselves liable for action under Section 142 of the Electricity Act, 2003.
- b) Thereafter, both the Petitioner and the Respondent shall jointly sit together for monthly reconciliation of the deemed generation claims as per the approved procedure and settle the amount so arrived within two months from the date of approval of procedure by the Commission.

4.4. Subsequently, if required, Petitioner and/or the Respondent may agitate the issues remaining unresolved before the Commission.

The Petition is disposed off accordingly.

(M.K. Jain)
Member (Technical)

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