

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal no. 45 of 2013

Dated: 4th February, 2014

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

In the matter of:

**Uttarakhand Power Corporation Ltd.Appellant(s)
Urja Bhawan Kanwali Road
Dehradun – 248 001**

Versus

- 1. M/s. R.V. Akash Ganga Infrastructure Ltd.Respondent(s)
209, First Floor, A-6, D.D.A. Local
Shopping Complex, Paschim Vihar
New Delhi – 110 063**
- 2. Uttarakhand Electricity Regulatory Commission
1st Floor of Institution of Engineers (India)
New ISBT, Majra
Dehradun – 248 006, Uttarakhand**

Counsel for the Appellant (s): Mr. Pradeep Misra
Mr. Daleep Kumar Dhayani
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Counsel for the Respondents (s): Mr. Buddy A. Ranganadhan
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Mr. Vineet Kumar
Mr. C.K. Rai
Ms. Richa Bharadwaja

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This appeal has been filed by Uttarakhand Power Corporation Ltd. against the order dated 14.2.2012 passed by Uttarakhand Electricity Regulatory Commission (“State Commission”) holding that it was the responsibility of the appellant to construct the transmission system for evacuation of power generated by the respondent no.1 and giving certain directions regarding purchasing of the transmission line constructed by the respondent no.1 for evacuation of their power to the appellant or payment of additional charges 5 paise per unit as per the option of the respondent no.1.

2. The appellant is a distribution licensee. M/s. R.V. Akash Ganga Infrastructure Ltd., a developer of solar generating station of 2000 KW capacity in the State of Uttarakhand is the respondent no.1. The State Commission is the respondent no.2.

3. The brief facts of the case are as under:
 - 3.1 The State Commission framed Tariff Regulations for Renewable Energy Sources of 2010 which came into force on 6.7.2010. Under these regulations, it was obligatory for the appellant to purchase certain percentage of electricity from renewable sources of energy. These regulations defined the point of interconnection between the generator and the licensee beyond which the transmission infrastructure has to be established, operated and maintained by the licensee. However, the regulation gave choice to the generator to establish, operate and maintain the transmission system for evacuation of its power to licensee's sub-station. According to these Regulations, the renewable energy generator which establishes, operates and maintains the transmission line for evacuation of its power to the sub-station of the licensee has to be paid additional 5 paise per unit over and above the generation tariff determined by the State Commission.

- 3.2 The appellant entered into an agreement dated 21.8.2010 for purchase of power from the solar power plant of the respondent no.1 in order to meet its renewable purchase obligation.
- 3.3 Certain difficulties were faced by the appellant relating to implementation of the above Regulations as to whether the provisions for additional 5 paise/unit over and above the tariff would be payable to the plants/generating stations which were commissioned before the enforcement of the said regulations and have constructed the dedicated transmission line on their own as the regulations were prospective in nature. Hence, the appellant referred the matter to the State Commission. The generating plants also referred certain issues regarding execution of agreement by the appellant.

3.4 The State Commission considered these aspects and passed the order dated 28.10.2010, namely Uttrakhand 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, hereinafter referred to as Removal of Difficulty Order 2010.

3.5 On 31.8.2011 the respondent no.1 represented to the appellant that the PPA executed by them with the appellant on 31.8.2010 be amended as per the provisions of Removal of Difficulty Order, 2010 and the original Regulations so as not to create any dispute in future. The appellant did not agree to amend the PPA.

3.6 Thereafter, the respondent no.1 filed a petition before the State Commission under the Renewable Energy Regulations, 2010 praying for amendment of the PPA dated 21.8.2010.

3.7 The State Commission passed the impugned order dated 14.2.2012 interpreting its Regulations and holding that the appellant was under obligation to construct the transmission line from the generating station of the respondent no.1 to its sub-station which was constructed by the respondent no.1. The State Commission also held that as the appellant at the time of execution of the agreement had not given an option to the respondent no.1 to get the said dedicated transmission line constructed by them, they would now give the choice to the respondent no.1 and as per the choice of the respondent no.1 either purchase and take over the said transmission line or pay additional 5 paise per unit to the respondent no. 1.

3.8 The appellant filed a review petition against the said order dated 14.2.2012 before the State Commission which was dismissed by the State Commission vide order dated 06.9.2012.

3.9 Aggrieved by the impugned order dated 14.2.2012, the appellant has filed this Appeal.

4. The appellant has made the following submissions:

4.1 The State Commission has failed to appreciate that under Section 10 of the Electricity Act, 2003 a generating company has to construct a dedicated transmission line as defined under Section 2(16).

4.2 The State Commission has not considered that the clause 6 of 2010 Regulations provides that the generating station will establish and operate dedicated transmission line and for which as per the Regulations the generating company is entitled for payment of 5 paise/unit over and above the generic tariff determined by the State Commission.

4.3 The State Commission has wrongly interpreted its Regulations on the basis of definition of interconnection

point for the purpose of the obligation on the part of respondent no.1.

4.4 The State Commission has also not considered Regulations 38 and 39 which provide for evacuation of power and maintenance of dedicated transmission line by the generating company.

4.5 The State Commission also failed to consider that any interpretation of the Regulations or Removal of Difficulty Order 2010 cannot be contrary to the express provisions of the Electricity Act, 2003.

5. On the above subject we have heard Learned Counsel for the appellant and the respondents. The respondents have made submissions in support of the findings of the State Commission in the impugned order stating that the State Commission had interpreted the Regulations correctly.

6. In light of the rival contentions of the parties, the following questions would arise for our consideration:
- i) Whether the distribution licensee (appellant) could be fastened with the obligation of construction, operation and maintenance of the transmission line evacuating power from the bus bars of the solar generating station of the respondent no.1 to sub-station of the distribution licensee whereas under Section 10 of the Electricity Act, 2003 it is the obligation of the generating company to construct, operate and maintain the dedicated transmission line?
 - ii) Whether the State Commission was correct in directing the distribution licensee (appellant) to purchase and take over the transmission line constructed by the respondent no.1 from its solar power plant to the sub-station of the distribution licensee or pay additional 5 paise per unit at the option of the respondent no.1 because the appellant did not give opportunity to the respondent no.1 to exercise such option at

the time of entering into the PPA and the appellant misused its monopolistic position to make the respondent no.1 to construct the transmission line?

7. Since the above issues are interwoven we shall be dealing with them together.
8. Let us first examine the Utrakhand 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 Renewable Energy Regulations 2010).
9. These Regulations came into force with effect from 6.7.2010
10. Inter-connection Point is defined as under:

“Inter-connection Point” shall mean interface point of renewable energy generating facility with the transmission system or distribution system, as the case may be:

- (i) in relation to wind energy projects and Solar Photovoltaic Projects, inter-connection point shall be line isolator on outgoing feeder on HV side of the pooling sub-station;*
- (ii) in relation to small hydro power, biomass power and non fossil fuel based cogeneration power projects and Solar Thermal power Projects the, inter-connection point shall be line isolator on outgoing evacuation line from such generating station;”*

11. Thus for Solar Photovoltaic Power Project of the respondent no.1 the interconnection point with the transmission system or distribution system is the line isolator on outgoing feeder on High Voltage side of the pooling sub-station which in this case is the HV bus bars of the power project.

12. Regulation 6 provides that the Renewable Energy based generating stations and co-generation station shall establish, operate and maintain generating station, sub-station and dedicated transmission line.

13. The Regulation 16(1) relating to financial principles for capital cost specify as under:

“16. Financial Principles

(1) Capital Cost

- (a) The norms for the Capital Cost as specified in the subsequent technology specific provisions in Chapter 5 shall be inclusive of all capital works including plant and machinery, civil work, and commissioning, financing, interest during construction and evacuation infrastructure upto point of interconnection (i.e. it does not include cost of dedicated line and associated equipment from point of interconnection up-to the nearest sub-station of transmission or distribution licensee to which generating station is connected).*
- (b) 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.”*

14. It is stipulated in the above Regulation that the capital cost as specified in the Regulation on which the tariff is computed does not include the cost of dedicated line and associated equipment from the point of inter-connection upto the nearest

sub-station of transmission or distribution licensee to which the generating station is connected. In case the generator opts to construct the evacuation infrastructure from the point of inter-connection to the nearest sub-station of the transmission or distribution licensee to which the generating station is connected, it shall be entitled to normative levelised tariff of 5 paise/unit over and above the generic tariff determined by the State Commission at the point of inter-connection. i.e. ex-generating station bus bars.

15. Regulation 38 provide for evacuation of power:

“38. Evacuation of Power

(1) Transmission Licensees and Distribution Licensees shall endeavor to provide connectivity to the RE Based Generating Stations and Co-generating Stations at nearest possible sub-station preferably within a range of 10 kilometers from the location of such generating station. They may further mutually agree to provide connectivity at appropriate voltage level subject to technical feasibility and technical standards for construction of electrical lines and connectivity with the grid as may be specified by CEA.

- (2) *The cost of laying the transmission line up-to the nearest substation of Transmission/Distribution Licensee, the required bay, terminal equipments and associated synchronization equipment etc, shall be borne by the generating station*
.....

39. *Maintenance of Transmission lines and Equipment*

- (1) *The generating station shall be responsible for the maintenance of terminal equipment at the generating end and the dedicated transmission lines owned by such generating stations. However, transmission/distribution licensees, as the case may be, may carry out maintenance of the dedicated transmission line, if so desired by the generating company, on mutually agreed charges not less than 1.5% of cost of line and associated equipment as per norms specified in Regulation 16(1)(b) for 2009-10 with annual escalation @ 5.72% p.a.*
- (2) *The distribution licensee or the transmission licensee or the state transmission utility, as the case may be, shall be responsible for maintenance of the terminal equipment(s) at the sub-station of the concerned licensee.”*

16. Regulation 46 provides that 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 necessary for removing the difficulty.

17. Thereafter the appellant approached the State Commission seeking clarification to the following effect:

- i) According to Regulation 16(b) in case the generator opts to construct the evacuation infrastructure from point to point inter-connection to the nearest sub-station of transmission or distribution licensee, it shall be allowed a normative levelised tariff of 5 paise/kWh over and above the generic tariff determined at the point of interconnection. Some developers whose small hydro projects are already commissioned and have constructed their evacuation line from the generating station to UPCL (appellant) sub-station long before coming into effect of this regulation, have also demanded 5 paise/unit over and above their tariff. The clause 16(b) of the Regulations is applicable from 1.7.2010.

- Therefore, it may be clarified whether clause 16(b) is applicable to old projects or not.
- ii) As per earlier Regulation 2008, interconnection point was UPCL sub-station. The 2010 Regulation states that interconnection point shall be generating station side. In this way UPCL has to bear the line losses. The State Commission may clarify that if losses exceed the permissible limit, losses beyond permissible limit will be borne by the generating company or not.
18. The State Commission passed the order dated 28.10.2010 under clause 46 of the Regulations for removing the difficulties faced by the appellant and some renewable energy generators conveying as under:
- i) From the provision 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 they opt to be covered under these Regulations, the provisions of these Regulations would be deemed to have been incorporated in their existing PPA, whether revised PPA has been signed or not.

- ii) The generic tariff determined by the State Commission does not take the capital cost of dedicated transmission line into account. Accordingly, to compensate the developers for the cost incurred by them in constructing the dedicated transmission line, the State Commission has separately determined an additional normative tariff of 5 paise per unit for the transmission line.

- iii) The above additional tariff of 5 paise/unit would apply to old projects also as the capital cost considered by the State Commission for determining the generic tariff is only upto the interconnection point which is located at the generating station sub-station itself.

- iv) Accordingly, in all such cases where the dedicated line has been constructed by the developer, whether old and existing or new, the distribution licensee would have to pay additional tariff of 5 paise/unit to the developer provided the ownership of such lines remained with the developers. However, first option shall be given to UPCL (appellant) 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 per unit as per regulations.

- v) It has been clarified that the basic responsibility of providing connectivity to the generators lies with the distribution and transmission licensees. However, under the RE Regulations, 2010, an option has been provided to the generators that they can opt to construct the dedicated line upto the nearest sub-station of the licensees.

 - vi) UPCL may choose to purchase any such dedicated line constructed by the existing generator as it would not harm the commercial interests of the generator, as the generic tariff of the generator has been determined at the point of interconnection.
19. In the meantime, the appellant and the respondent no.1 had entered into a PPA on 21.8.2010 for supply of energy from the respondent's solar energy generator. The PPA provided that the respondent no.1 would install, operate and maintain the dedicated transmission line from the generating station to

the sub-station of the appellant at their own cost. This PPA was signed after notification of the Renewable Energy Regulations, 2010.

20. We find that the respondent no.1 approached the appellant on 30.8.2011 i.e. after one year of entering into the PPA, stating that at the time of executing the PPA they were not aware that some of the clauses of the PPA were not as per the Renewable Energy Regulations, 2010. It was contended that neither any option was provided to the respondent no.1 for construction of the dedicated transmission line nor there is any mention of the fact in the agreement that in case the generator constructs the said transmission line, the cost of laying the line would be refunded. Accordingly, the respondent no.1 requested the appellant to amend the PPA in light of the RE Regulations, 2010 and the Removal of Difficulty Order, 2010.

21. As there was no response from the appellant, the respondent no.1 filed a petition on 23.9.2011 before the State Commission praying for amendment of the PPA dated 21.8.2010 in consonance with the Renewable Energy Regulations, 2010.

22. Let us now examine the findings of the State Commission in the impugned order dated 14.2.2012. The findings of the State Commission are summarized as under:
 - i) Regulation 38(2) and 38(3) is irrelevant in this case as these Regulations would be applicable in case the generator decides to construct the evacuation infrastructure beyond the interconnection point upto the sub-station of the licensee in accordance with the option available to it under Regulation 16(1)(b). Further, if the generator takes upon itself to construct the evacuation line, the cost has to be borne by the generator and the normative levelised tariff of 5 paise/unit for

such evacuation infrastructure has been specified over and above the generic tariff determined at the point of interconnection.

- ii) It has been the contention of the generator (R-1) that it was not given any opportunity by UPCL (Appellant) to exercise its option but was made to agree upon constructing its own evacuation infrastructure. UPCL has admitted that no such option was given to the generator by them prior to signing of the PPA. Thus, it appears that UPCL misused its monopolistic position and did not provide the generator the opportunity to exercise its option.
- iii) Now, since the generator has already created its own evacuation infrastructure, the issue of providing option and amending the PPA would not be of any relevance anymore.

- iv) The State Commission's order dated 28.10.2010 provides that UPCL shall have the first right to buy the evacuation line of the generator at the depreciated cost indicated in the latest accounts of the developers, so as to protect its own commercial interest or pay an additional 5 paise as per regulations.

- v) It appears that the licensee caused to incorporate such condition in the PPA which compulsorily required the generator to construct the evacuation system at its own cost.

- vi) Since no opportunity was given to the generator by the licensee prior to signing of the PPA, the State Commission directs UPCL to seek option from the generator now as to whether the generator desires to construct the evacuation line and associated equipments at its own cost or not. Thereafter, based on the option submitted by the generator, the licensee

is directed to take further necessary action in this regard in accordance with the provision of the RE Regulations, 2010.

23. It is very clear from the RE Regulations, 2010 that the evacuation system from the renewable energy generator to the sub-station of the licensee has to be provided by the licensee. However, if the generator opts to construct the evacuation infrastructure then it shall be allowed a normative levelised tariff of 5 paise per unit over and above the generic tariff determined by the State Commission at the point of interconnection. This was also clarified in the Removal of Difficulty Order dated 28.10.2010. The obligation and duties of the generating station in Regulation 6, 38 and 39 provide that the generating station has to construct, operate and maintain the dedicated line but as rightly held by the State Commission in the impugned order, these regulations pertain to those generating stations who opt to construct, operate and maintain the dedicated transmission system.

24. Renewable Energy Regulations 2010 and Removal of Difficulty Order dated 28.10.2010 have not been challenged and, therefore, have attained finality. Now let us examine if the obligation given to the transmission and distribution licensee in the Regulations regarding establishment, operation and maintenance the line from the point of interconnection to the sub-station of the licensee is legal or not.
25. According to Section 10 of the Electricity Act 2003, subject to the provisions of the Act, the duties of the generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of the Act or the rules or regulations made there under. According to the Electricity (Removal of Difficulty) Fifth Order, 2005, the generating company does not require to obtain a licence to establish, operate and

maintain dedicated transmission lines, subject to complying with certain conditions. However, there is no bar on the transmission licensee or distribution licensee to establish, operate and maintain a line connecting the generating station to the sub-station of transmission licensee or distribution licensee and such transmission system to be operated as part of intra-State transmission system or distribution system, if the State Commission in its Regulations has decided the point of inter-connection at the bus bars of the generating station.

26. The State Commission as per Section 86(1) (e) of the Electricity Act, 2003 has to promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and also specify for purchase of electricity for such sources, a percentage of total consumption of electricity in the area of distribution licensee. According to Section 61(h) of the Electricity Act, the State Commission has to specify the

terms and conditions for determination of tariff and in doing so has to be guided by *interalia* the promotion of cogeneration and generation of electricity from renewable sources of electricity. Accordingly, the State Commission has notified Renewable Energy Regulations, 2010 to promote renewable sources of energy and in doing so, has provided suitable measures for connectivity of renewable sources of energy to the system of the transmission and distribution licensee. In these Regulations the State Commission has defined the point of interconnection between the renewable energy generator and the licensee and given the responsibility of constructing, operating and maintaining the transmission system from the point of interconnection to the sub-station of the licensee to the licensee, which is perfectly legal. If in these Regulations, the State Commission has given the obligation for providing the evacuation system for the renewable energy sources to the transmission and distribution licensee, then the State Commission has acted in consonance

with the provisions of the 2003 Act for promotion of the renewable sources of energy.

27. The State Commission has also given an option to the renewable energy generator to establish, operate and maintain the evacuation transmission line from the generating station to the sub-station of the transmission and distribution licensee to enable the generator to plan and execute the evacuation system before the commissioning of the generating station and to ensure that evacuation system is not delayed due to resource constraints or any other constraints experienced by the transmission or distribution licensee. In that case the generator has to be paid additional 5 paise/unit for the cost of transmission infrastructure which was not included in the generic tariff determined by the State Commission at which the generator has to sell electricity to the distribution licensee.

28. We find that the Regulation provides an option to the generator to construct the transmission line interconnecting the generating station to the sub-station of the licensee. The Removal of Difficulty Order 2010, gives option to the distribution licensee UPCL to either purchase and take over the evacuation line constructed by the generator at depreciated cost so as to protect its commercial interest or pay additional 5 paise per unit as per the regulations. Thus, it is open to the appellant to either buy the evacuation transmission system set up by the respondent no.1 or pay additional tariff of 5 paise/unit to the respondent no.1, over and above the generic tariff determined by the State Commission.

29. However, in the present case the State Commission has directed the appellant to seek the option from the respondent no.1 to either sell the line to appellant or receive additional 5 paise/unit in the tariff. The reason given by the State

Commission in coming to this conclusion is that it apprehended that the appellant misused its monopolistic position and did not provide opportunity to the respondent no.1 to exercise its option.

30. We find that nowhere in their petition or pleadings before the State Commission the respondent no.1 had alleged that the appellant had used its monopolistic position or forced the respondent no.1 to take up construction, operation and maintenance of the transmission line from the generating station to the sub-station of the licensee. The respondent no.1 has also not sent any letter in this regard after the signing of the PPA. We find that only after one year of signing the PPA, the respondent no.1 in the letter dated 30.8.2011 has only stated that at the time of execution of the agreement they were not aware that the evacuation system had to be built by the distribution licensee and this was also not brought to their notice by the appellant. We find that the Renewable Energy

Regulations, 2010 had been notified after public notice. Ignorance of the Regulations on the part of the respondent no.1 could not be a reason to contend that the appellant had misused its monopolistic position.

31. The Renewable Energy Regulation 2010 and Removal of Difficulty Order dated 28.10.2010 provide the obligation for establishment, operation and maintenance of the evacuation transmission line from the renewable energy generating station to the licensee's sub-station to the licensee but gives an option to the generator to construct such transmission infrastructure. The respondent no.1 in the PPA entered into with the appellant has agreed to take the responsibility to construct such evacuation line. There is no evidence on record or even the statement of the respondent no.1 before the State Commission that the generator was forced to enter into such agreement. Therefore, at this stage when the respondent no.1 has already constructed the evacuation

infrastructure, there is no reason to give an opportunity to the respondent no.1 to give an option for construction of the evacuation system. The Regulations provide for such an option to the appellant to either purchase the line constructed by the respondent no.1 or pay additional 5 paise/unit keeping in view its commercial interest. The appellant could not be forced to purchase the line constructed by the respondent no.1 in terms of the PPA, in contravention of the Regulations. Thus, the appellant could opt to either purchase and take over the transmission line constructed by the respondent no.1 or pay additional charges for the transmission line to the respondent no.1 as per the Regulations.

32. Summary of our findings:

- i) The State Commission has correctly held that the transmission or distribution licensee have the responsibility to establish, operate and maintain the transmission system from the point of interconnection of**

the renewable energy generator as defined in the Renewable Energy Regulation, 2010 to the sub-station of the respective licensee. However, the renewable energy generator has option to construct, operate and maintain the transmission evacuation system and in case it chooses to do so it is entitled for additional payment of 5 paise per unit as per the Regulations.

- ii) There is no evidence on record that the appellant has used its monopolistic position to force the respondent no.1 to agree to construct, operate and maintain the evacuation system. Thus, the appellant has option to either buy and take over the transmission line constructed by the respondent no.1 or pay additional 5 paise per unit as per the Renewable Energy Regulations, 2010 and Removal of Difficulty Order, 2010. Accordingly, the appellant is directed to either buy the transmission line or pay additional tariff to the respondent no.1 within**

one month of date of communication of this judgment. In case of delay beyond one month in implementation of the judgment of this Tribunal, the respondent no.1 will be entitled to claim interest @ 1% per month on the amount due to the respondent no.1.

33. The Appeal is allowed in part as indicated above with the above directions to the appellant to implement the directions of this Tribunal within one month of communication of this judgment. . No order as to costs.

34. Pronounced in the open court on this 4th of February, 2014.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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