

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL No. 177 OF 2017**

**Dated: 21.02.2025**

**Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member**

**IN THE MATTER OF:**

Uttar Bharat Hydro Power Private Limited,  
A-2/452, Sector VIII,  
Rohini, New Delhi – 110 085.

**...Appellant**

**Versus**

1. Uttarakhand Electricity Regulatory Commission,  
Through its Secretary,  
Vidyut Niyamak Bhawan, Near ISBT, Majra,  
Dehradun – 248171, Uttarakhand.

2. Uttarakhand Power Corporation Limited,  
Through its Managing Director,  
Urja Bhawan, VCB Ghabbar Singh Bhawan  
Kanwali Road, Dehradun - 248 001  
Uttarakhand.

**...Respondent(s)**

Counsel for the Appellant(s) : Ms. Shikha Ohri  
Mr. Parinay Deep Shah  
Ms. Ritika Singh  
Mr. Kartik Sharma  
Mr. Samyak Mishra

Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan, Sr. Adv.  
for R-1

Mr. Pradeep Misra for R-2

## **JUDGEMENT**

### **PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. M/s. Uttar Bharat Hydro Power Private Ltd. has filed the instant appeal challenging the Order dated 08.12.2016 passed by the Uttarakhand Electricity Regulatory Commission (in short "UERC" or "State Commission") in Petition No. 41 of 2016, whereby the State Commission has partly disallowed the claim of the Appellant for deemed generation with respect to 12.6 MW small hydropower project of the Appellant in Kapkote, District Bageshwar, Uttarakhand.

#### **Description of parties**

2. The Appellant is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003 (in short "Act"), and has set up two small hydropower projects in Kapkote, District Bageshwar, Uttarakhand:

- a. 10.5 MW Sarju III project commissioned on 11.07.2014
- b. 12.6 MW Sarju II project completed on 01.08.2015

3. The Respondent No. 1, Uttarakhand Electricity Regulatory Commission is the regulatory commission for the State of Uttarakhand inter-alia the appropriate commission to resolve the dispute between the contesting parties herein.

4. Respondent No. 2, Uttarakhand Power Corporation Limited (in short “UKPCL”) is a company incorporated under the provisions of the Companies Act, 1956., vested with the function of distributing and retail supply of electricity under the provisions of the Act in the State of Uttarakhand.

### **Factual Matrix of the Case**

5. The State Commission had 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, 2013 (in short “RE Regulations”) on 15.04.2013 under Section 61(h), Section 86(1)(e) read with Section 181(zp) of the Act.

6. The Appellant and Respondent No. 2 entered into a Power Purchase Agreement (in short “PPA”) dated 16.12.2002 whereunder the Appellant had agreed to set up a small hydropower project (Sarju II Project) and generate and supply electricity to the Respondent No. 2 on the terms and conditions contained in the PPA.

7. By a Supplemental Agreement dated 26.02.2015 some of the terms and conditions of the PPA dated 16.12.2002 have been modified. The PPA dated 16.12.2002 as amended by the Supplemental Agreement dated 26.2.2015 (hereinafter collectively referred to as “PPA”) governs the contract between the Appellant and the Respondent No. 2 where under the Appellant had agreed to set up the generating station and agreed to generate and supply electricity to the

Respondent No. 2. The Appellant has opted for Project Specific Tariff for the Sarju II project.

8. Under the PPA and its Supplemental Agreement, Respondent No. 2 was obligated to ensure interconnection and facilitate the delivery of electricity generated by the Appellant's small hydro project at the designated interconnection point, the 33 KV Substation at Kapkote, District Bageshwar, Uttarakhand. The Appellant was responsible for constructing the transmission line from its generation facility to the substation, while Respondent No. 2 was required to provide necessary approvals, technical assistance, and interconnection facilitation at the substation. Payment for the electricity was to be made per the tariff and terms specified in the PPA.

9. Further, Respondent No. 2 was tasked with planning and executing necessary augmentation work for power evacuation beyond the 33 kV Kapkote station, including facilitating evacuation from the Appellant's small hydro projects. The Appellant completed the Sarju-II project by August 2015 as submitted by the Appellant. However, ambiguities arose regarding the interconnection point specified in the initial Power Purchase Agreement (PPA) dated 16.12.2002. These issues were addressed in a Supplemental Agreement dated 26.02.2015, amending Clause 2.2.43 of the initial PPA.

10. Due to the lack of clarity on the interconnection point, the Appellant could not construct a dedicated transmission line (in short "DTL") from Sarju-II. Furthermore, the project capacity was enhanced from 3 MW to 15 MW, necessitating a revised interconnection plan. The Supplementary PPA clarified in

February 2015 that the transmission line would connect to the 33 kV Kapkote substation.

11. Respondent No. 2 subsequently built a new 33 kV substation at Karmi and established a 33 kV transmission line between Karmi and Kapkote. The Appellant approached the State Commission, requesting grid connectivity for the Sarju-II project through a Loop-In Loop-Out (LILO) connection at the newly constructed transmission line.

12. The State Commission, through its orders dated 02.07.2015 and 11.09.2015, addressed the grid connectivity and power evacuation issues for the Appellant's 12.6 MW project in Kapkote, Uttarakhand. Vide order dated 02.07.2015 allowed an interim Loop-In-Loop-Out (LILLO) connection from the 33 KV Kapkote-Karmi transmission line to prevent bottling of power generation and directed Respondent No. 2 to submit a detailed account of actions taken from 2008 to 2015 concerning the construction of the evacuation line to the Kapkote substation and Respondent No. 1 to provide data on existing and upcoming generation capacity in the Kapkote region and a comprehensive evacuation plan by 20.07.2015.

13. Respondent No. 2 reported a current evacuation capacity of 12.6 MW at the Kapkote substation, expected to increase to 15.5 MW by upgrading the conductor, with plans for additional infrastructure to support future projects like Sarju I (7.5 MW) and Sarju II (12.6 MW).

14. Vide order dated 11.09.2015, State Commission directed Respondent No. 2, UPCL to submit an action plan for evacuation of power from existing and proposed generators in the Kapkote region, complete ongoing infrastructure works, and report quarterly progress and directed the Appellant to construct the 33 KV line from its generating stations to the Kapkote substation within 12 months, warning that the interim LILO arrangement would lapse thereafter and also clarified that deemed generation benefits would not be available for interruptions caused by tripping on the interim LILO connection. However, if power evacuation failures occurred due to inadequate capacity downstream, the Appellant would be entitled to deemed generation benefits as the fault lay with Respondent No. 2.

15. The Appellant therefore applied for interconnection to the Kapkote–Karmi transmission line on 23.06.2015 and, following the State Commission’s 02.07.2015 order, informed Respondent No. 2 on 11.07.2015 that the project was ready for commissioning. However, in a letter dated 24.07.2015, Respondent No. 2 raised concerns about granting interconnection, citing evacuation constraints due to the limited capacity of the existing line (12.6 MW, upgradeable to 15.5 MW) and the need for a new parallel line (Panther conductor) for Sarju II's evacuation.

16. The Appellant's Sarju II generating station was ready for commissioning on 01.08.2015. Both the Original Equipment Manufacturer (Kirloskar Brothers Limited) and the Independent Engineer from SBI inspected the site and machinery between 01.08.2015 and 03.08.2015, confirming the project's readiness. In compliance with the 02.07.2015 order, the Appellant completed constructing its transmission line and switchyard protection systems by 01.08.2015. The Lender's Engineer further certified the completion of the LILO transmission line on

16.08.2015. Despite these efforts, Respondent No. 2's reluctance to provide interconnection delayed the commissioning of the project.

17. The Appellant requested the Chief Electrical Inspector to inspect and approve its system on 10.08.2015. The Electrical Inspector advised against inspection since the interconnection to the Kapkote–Karmi line was not ready. The inspection was deferred because transformer parameters and other equipment values required for charging could not be verified without interconnection readiness. Prolonged idle transformers risk oil value deterioration, necessitating re-filtration, which would complicate compliance. The absence of interconnection readiness by Respondent No. 2 made the inspection impractical in August 2015. The Appellant claimed that it fulfilled all its obligations and attributed the delay in project implementation solely to Respondent No. 2's failure to provide interconnection. Despite Orders from the State Commission dated 02.07.2015, and 11.09.2015, Respondent No. 2 failed to grant interconnection permissions.

18. By January 2016, the Appellant anticipated that Respondent No. 2 would soon provide interconnection for the project. Based on this expectation, the Appellant requested an inspection by the Electrical Inspector, which was conducted on 19.02.2016. Following the provision of interconnectivity on 25.02.2016, the Electrical Inspector issued the required certification on 02.03.2016.

19. The Original Equipment Manufacturer installed metering panels and protection systems in the switchyard by August 2015, as confirmed on 05.08.2016. The Appellant purchased and provided meters to Respondent No. 2's Distribution

Division in Bageshwar on 15.06.2015, along with the requisite fees, and issued a reminder on 29.07.2015 for their testing. Respondent No. 2's Test Division sent the meters to a Dehradun laboratory, where they were tested and ready for installation by August 2015. However, due to the unavailability of interconnectivity, the meters were not installed. The meters remain under the custody of Respondent No. 2, who bears the responsibility for their installation at the Appellant's switchyard.

20. Further, on 03.03.2016, Respondent No. 2's Distribution Division requested its Test Division to install meters, but the installation was not completed. On 29.03.2016, Respondent No. 2 stated that the meters required retesting as over six months had passed since their initial testing.

21. Thereafter, the Appellant, via a letter dated 03.08.2015, sought compensation for the deemed generation of 12.6 MW from 01.08.2015. Respondent No. 2, in its response on 13.10.2015, denied the claim but did not contest the Appellant's readiness or raise issues related to interruptions or faults in the 33 kV Kapkote–Karmi line, and on 28.05.2016, Respondent No. 2 granted connectivity for Sarju-II but limited the capacity to 4.2 MW (per Minutes of Meeting dated 25.02.2016). Additionally, Respondent No. 2 reduced the capacity for the Appellant's Sarju-III project to 3.5 MW. The Appellant challenged these restrictions in a letter dated 29.02.2016, and the State Commission has repeatedly deemed such restrictions illegal.

22. Consequently, in compliance with the State Commission's Order dated 11.09.2015, the Appellant initiated survey work for a DTL from Sarju II to the



Kapkote substation, completing 5 km of the line. This included 3 km of shared LILO connectivity and an additional 2 km towards the Kapkote substation. However, finalizing the route and related equipment required the exact location of the gantry and space allocation for infrastructure such as breakers, isolators, CTs, and control panels at the substation. Despite repeated communications, Respondent No. 2 failed to provide this information in a timely manner. The delay in receiving the gantry location forced the Appellant to modify the estimated route for the completed 5 km segment.

23. Prematurely constructing the line without knowing the gantry's precise location would have risked the need for costly rework and left the infrastructure vulnerable to theft and redundancy in case Respondent No. 2 failed to allocate space at the substation. Frustrated by Respondent No. 2's inaction and non-compliance with the State Commission's orders, the Appellant filed Petition No. 41 of 2016 before the State Commission, seeking deemed generation benefits and directions to Respondent No. 2 to implement the orders.

24. Respondent No. 2 provided critical information regarding the route for interconnection on 24.08.16 after the Appellant had already filed Petition No. 41 of 2016. This delay caused the Appellant to finalize the route and begin construction of the remaining portion, with completion expected by March 2017.

25. Respondent No. 2 failed to evacuate power at full capacity from the Sarju-III project and did not pay the deemed generation claim as per the applicable regulations. The Appellant filed a petition on 16.03.2016, seeking deemed generation compensation for Sarju-III. The State Commission, in its Order dated

08.06.2016, upheld the Appellant's claim, stating that the Respondent's failure to augment and strengthen the power evacuation system caused a loss of generation and revenue for small hydropower projects. The Appellant highlighted that power evacuation for both Sarju-II and Sarju-III projects relies on the Kapkote substation and the Kapkote–Bageshwar line. Respondent No. 2 filed Petition No. 36 of 2016, seeking relaxation of Renewable Energy Regulations concerning deemed generation claims for Sarju-II and Sarju-III.

26. The State Commission vide Order dated 08.12.2016 dismissed the Petition Nos. 36 of 2016 and partly disallowed the claim of the Appellant for deemed generation concerning the 12.6 MW hydropower project- Sarju II in Petition No. 41 of 2016.

27. Aggrieved by the Order dated 08.12.2016 in Petition No. 41 of 2016, the Appellant has preferred the present Appeal.

### **Submissions of the Appellant**

28. The Appellant submitted that in their appeal they have claimed entitlement to deemed generation tariff for two distinct periods:

- (i) from 01.08.2015 to 28.05.2016, which predates the project's commercial operation date (COD), and
- (ii) from 28.05.2016, onwards, until the completion of the Appellant's DTL.

29. The Appellant submitted that Respondent No. 2 is obligated under Renewable Energy (RE) Regulations to compensate for deemed generation tariff due to the failure to ensure adequate evacuation facilities during these periods.

*“ 47. Deemed Generation*

*(1) After the COD of the Project, loss of generation at the Station on account of reasons attributed to the following, or any one of the following, which results in Water Spillage, shall count towards Deemed Generation:*

- Non availability of evacuation system beyond the Interconnection Point; and*
- Receipt of backing down instructions from the SLDC”*

30. Regarding the period before the Commercial Operation Date (COD), the Appellant contended that their project was ready for commissioning as of 01.08.2015, but delays attributable to Respondent No. 2, UPCL including its failure to permit interconnection despite specific State Commission directions prevented the project's commissioning. The State Commission, however, denied the claim for the deemed generation tariff for this period, reasoning that such a claim could not arise before COD.

31. While the broader legal question of UPCL's liability for deemed generation tariff during delays caused by it before COD remains unresolved, the Appellant has chosen not to pursue this matter further. This is due to the recognition of the delay (from 01.08.2015 to 28.05.2016) as uncontrollable during tariff

determination. Accordingly, the tariff for the Appellant's project was finalized by the Order dated 21.08.2018:

*“3.3.20.....Furthermore, the contention of the UPCL that the Petitioner applied for Electrical Inspector clearance only in February, 2016 instead of applying for the same in July 2015 itself does not hold good, since the Kapkote-Karmi line got energised only on 18.11.2015, therefore, it does not make much difference even if the Petitioner would have got the clearance from Electrical Inspector prior to that period since the commissioning of the project was not possible without energization of Kapkote-Karmi line. Further, the Petitioner was continuously writing to UPCL for grant of inter-connectivity since June 2015 and UPCL did not respond to any of the letters of the Petitioner, rather vide its letter dated 24.07.2015 UPCL informed the Petitioner that for Sarju II SHP the evacuation was proposed on new parallel line (panther conductor) between Kapkote to Bageshwar which was to be constructed. Moreover, even after the Commission's Order dated 02.07.2015 and 11.09.2015 to grant inter-connectivity to the Petitioner's Sarju II SHP, UPCL did not take any steps in this regard and neither informed the Petitioner nor the Commission that Kapkote-Karmi line was yet to be energised and allowing LILO connectivity would not be possible. Hence, the reason for delay in getting the project commissioned beyond August, 2015 has been established as not attributable to the Petitioner and, accordingly, the Commission has treated this delay as uncontrollable.”*

32. The Kapkote to Bageshwar Transmission Line was commissioned by UPCL in 2020. Consequently, issues related to project completion raised in the Impugned Order may no longer be relevant. While the Appellant had initially claimed deemed generation from August 2015 to the project's COD on 28.05.2016, this period has already been accounted for in tariff determination. Hence, the Appellant does not press this issue but requests that the underlying question of law remains open for consideration.

33. The Appellant further argued for the entitlement to deemed generation post-COD (28.05.2016), and asserted that non-generation at full capacity was due to UPCL's inability to evacuate power, consistent with the RE Regulations and a judgment dated 12.02.2024, in Appeal No. 145 of 2020 regarding the Sarju III Hydro Power Project.

34. However, the State Commission, via the Impugned Order, disallowed deemed generation claims for the period from 28.05.2016 to 05.10.2017, requiring completion of the DTL for such claims. The Commission further limited eligibility for claims post-February 2017, contingent upon completion of the dedicated 33 kV line from Sarju II to Kapkote.

35. The Appellant contended that Regulation 47 of the RE Regulations does not mandate a DTL for deemed generation claims. Notably, the Sarju II project was commissioned on 28.05.2016, while the Kapkote-Bageshwar line was completed only in January 2020.

36. Further, Respondent No. 2, UPCL failed to upgrade its network beyond the Kapkote substation to accommodate the full evacuation capacity of Sarju-II, commissioned on 28.05.2016. Sarju-II was initially connected to the Kapkote-Karmi line, with a dedicated line completed in February 2017. However, UPCL only upgraded an old Raccoon conductor line between Kapkote and Bageshwar to a Dog conductor in May 2016, which provided a limited capacity of 15 MW, insufficient for the combined generation of 29 MW from Sarju-III (10.5 MW), Sarju-II (12.6 MW), and PPL (5.5 MW).

37. The Appellant further argued that the Respondent State Commission's above-referred findings (para 35 to 37), are inconsistent with its findings mentioned below which recognized Sarju-II's entitlement to deemed generation benefits from its COD (28.05.2016). The relevant extract from the order dated 08.12.2016 is as follows:

*“(ix) Thus, from the above deemed generation is applicable only after CoD of the project and since the Sarju-II did not attain CoD, therefore, the claim of M/s UBHP with regard to deemed generation from 01.08.2015 till commissioning of the project is not justified. However, deemed generation for Sarju-II is applicable from CoD of the project subject to submission of such claim by the Petitioner in accordance with the provisions of the RE Regulations, 2013 to the Respondent. Provided that any loss of generation due to tripping of 33 kV Kapkote-Karmi line shall not counted as valid event for claim of deemed generation till evacuation of Sarju-II is being conducted through a interim LILO connectivity with the aforesaid line.”*

38. The Impugned Order's restriction on deemed generation claims for the Sarju-II project until the completion of the dedicated 33 kV line contradicts Regulation 47 of the RE Regulations. Regulation 47 permits deemed generation claims post-COD for losses due to unavailability of evacuation systems beyond the interconnection point—conditions that are met in this case.

39. The State Commission's linkage between the DTL's construction and the qualifications under Regulation 47 lacks basis, as UPCL itself acknowledged deemed generation is payable post-COD. UPCL argued during the appeal that the DTL was non-operational and that the State Commission's order dated 11.09.2015, allowed the Appellant to utilize the LILO line but excluded deemed generation claims for issues like tripping or interruptions on the Kapkote-Karmi line. The Appellant submitted that such restrictions cannot extend to denying claims arising from inadequate evacuation capacity beyond the interconnection point at Kapkote Substation.

40. The Appellant further clarified that the Appellant is not challenging the State Commission's Order dated 11.09.2015 and does not seek deemed generation claims for interruptions on the Kapkote-Karmi LILO line. Restrictions on such claims for the Kapkote-Karmi line cannot be extended to UPCL's evacuation system beyond the Kapkote Substation, such as the Kapkote-Bageshwar line.

41. The Appellant emphasized that under the PPA, UPCL was obligated to evacuate power from the Kapkote Substation but failed to do so. Due to UPCL's inability to provide bays for direct connection, the Appellant was granted interim

connectivity through a LILO connection via the Kapkote-Karmi line per the State Commission's order dated 02.07.2015.

42. The Sarju-II plant and the associated transmission line were ready on 01.08.2015, yet connectivity was granted only on 28.02.2016 with a restricted capacity of 4.2 MW. Despite the project's full capacity of 12.6 MW, UPCL further reduced the allowable injection to 3.5 MW during the relevant period.

43. The Appellant further continued to argue that the Appellant filed Petition No. 41 of 2016 before the State Commission seeking deemed generation claims for Sarju II and Sarju III, citing capacity restrictions and delayed commissioning. Simultaneously, UPCL, through Petition No. 36 of 2016, sought to restrict such claims, citing evacuation constraints pending the completion of the 33 kV line between Bageshwar and Kapkote with panther conductors. In the Impugned Order, the State Commission partially allowed deemed generation claims, limiting eligibility to the period after February 2017, contingent on the completion of the DTL. The Appellant, in this Appeal, seeks deemed generation from 01.08.2015, but acknowledges that delays beyond August 2015 were deemed uncontrollable by the State Commission (Order dated 21.08.2018). Consequently, the Appellant is not pursuing claims for the period from 01.08.2015 to 28.05.2016 (COD).

44. The project achieved COD on 28.05.2016, and was connected to the Kapkote substation via the Kapkote-Karmi Line through LILO. However, it could not inject its full capacity into the system due to inadequate evacuation capacity on the old Kapkote-Bageshwar Line.



45. Full evacuation was enabled only upon completion of a new panther conductor line on 20.01.2020. UPCL seeks to narrowly interpret "non-availability" under Regulation 47 of the RE Regulations, limiting it to interruptions in the evacuation system rather than its non-existence. This interpretation contradicts the purpose of Regulation 47 and allows UPCL to benefit from its own lack of performance. Consistent with this Tribunal's judgment dated 12.02.2024 (Appeal No. 145 of 2020), the regulation aims to encourage distribution licensees to ensure proper evacuation systems for small hydroelectric projects (HEPs). The relevant paragraph is as follows:

*“40. As is evident, the deemed generation clause was specially added in RE Regulation 2013 so as to protect Small Hydro Generating Plants & Solar PV & Solar Thermal Projects when their power could not be evacuated. In case the deemed generation under Regulation 47 applies only when existing system is out would lead to a irrational situation that when no evacuation system is constructed and entire evacuation from a small Hydro Project is restricted (even after its commissioning ) then deemed generation would not be applicable, while on the other hand, if part evacuation is permitted, say X MW and then any loss from this X MW due to voltage fluctuation or otherwise trippings/grid failure shall be permitted to be claimed under deemed generation. By this interpretation of Regulation 47, there would be no incentive (or rather disincentive) or urgency on the part of the distribution licensee to facilitate evacuation of power from small hydro projects, as their liability of deemed generation would arise only when commissioned system is not available for evacuation. This may lead to a situation, which is not in the interest of*

*only Small hydro projects, but overall grid performance, consumers as well in meeting of Renewable Power Obligation of Distribution Licensee. In fact, PPA was amended to include deemed generation clause as per RE Regulation 2013. Regarding reliance on Objects and Reasons of RE Regulations 2013, it is a settled law that the primary rule of construction is a literal interpretation of the Statute/Regulation. The intention of the legislature (Regulation making authority) must be found in the words used in the Legislation (Regulation) itself. (Unique Butyle Tube Industries P. Ltd. v. U. P. Financial Corporation: (2003) 2 SCC 455). The need for interpretation arises only when the words used in the statute (Regulation) are, on their own terms, ambivalent. (ITC Ltd VS CCE: (2004) 7 SCC 591).”*

46. The Appellant further contended that the State Commission cannot override or alter its own regulations through an order or judgment. By imposing an additional requirement under Regulation 47 of the RE Regulations, the Impugned Order effectively rewrites the regulation, which is impermissible under established legal principles.

### **Submissions of the Respondent No. 1**

47. The State Commission submitted that under Regulation 47 of the RE Regulations, 2013, deemed generation is permissible only after achieving the COD of the project and upon demonstrating generation loss due to either:

- a) Non-availability of the evacuation system beyond the interconnection point, or
- b) Backing-down instructions from the SLDC.

48. Accordingly, the State Commission allowed deemed generation for Sarju-II Small Hydro Project (SHP) from its COD (28.05.2016), subject to submission of claims per the regulations. As for the Appellant's claim that Sarju-II SHP was ready for commissioning on 01.08.2015, the State Commission observed contributory faults from both parties:

**UPCL's Role:** Exhibited a lackadaisical approach in providing an effective evacuation system.

**UBHP's Obligations and Failures:**

(a) PPA Obligations: Under the Power Purchase Agreement (PPA) dated 16.12.2002 and Supplementary PPA dated 26.02.2015, Appellant was obligated to construct, operate, and maintain a 33 kV power evacuation line from its project to the Kapkote substation. Instead, the Appellant delayed this obligation and later requested interim LILO connectivity on the Kapkote-Karmi line. To prevent bottling up generation, the State Commission, in its order dated 02.07.2015, allowed LILO as a temporary arrangement. (b) Tripping of Interim LILO Line: In its 11.09.2015 order, the State Commission clarified that deemed generation claims arising from tripping on the LILO line would not be justified, as LILO connectivity was only an interim solution. These findings led to the Commission's decision to limit Appellant's deemed generation entitlement to the period following COD, provided claims

adhered to regulatory requirements and excluded losses due to LILO tripping.

49. Further, the Commission argued that as per Article 4.1.2 of the PPA, the Sarju-II project can only be declared ready for synchronization upon meeting the following conditions:

1. Installation in accordance with technical specifications and prudent utility practices.
2. Compliance with Indian Standard Codes, the Indian Electricity Act/Rules, and other synchronization requirements.
3. Approval from the Chief Electrical Inspector (CEI) for energization.

50. Appellant's claim that its project was ready for commissioning on 01.08.2015, based on a certification by an SBI engineer (letter dated 16.08.2015), is unjustified. The Commission ruled that only the CEI is authorized to certify readiness for energization. The CEI inspected the site on 19.02.2016 and issued the required certificate on 02.03.2016. Additionally, meter installations were completed only on 08.05.2016, per UPCL's letter dated 30.06.2016. Thus, the project was not ready for commissioning as of 01.08.2015.

51. Further, it is well-established in law that project commissioning cannot occur before obtaining the CEI's certificate. Reliance is placed on the following:

- a.) Gujarat Urja Vikas Nigam Ltd. v. Acme Solar Technologies (Gujarat) (P) Ltd., (2017) 11 SCC 801 (Paras 6-8).

b.) BRPL v. DERC & Ors., Appeal No. 36 of 2008 (Paras 63-68).

52. Additionally, under Article 2.2.60 of the PPA, the Scheduled Commercial Operation Date (SCOD) is defined as 15 days after the Scheduled Synchronization Date of the last unit, with the latter being contingent on the terms of the Implementation Agreement. However, the Implementation Agreement was not placed on record, raising further ambiguity regarding the Appellant's compliance with its contractual obligations. The Commission rightly observed that the Appellant's claims lacked sufficient justification and compliance with legal and contractual prerequisites.

53. Appellant's claim of completing a 5 km transmission line from its Sarju-II project to the 33 kV Kapkote substation is misleading. The completed 5 km includes 3 km of a common line up to the LILO point, leaving approximately 10 km of the DTL pending for connectivity to the Kapkote substation. This contradicts its obligation as per Para 29(2)(i) of the Impugned Order.

54. Despite the Commission's directions issued on 11.09.2015 (Para 29(I)(ii) of the Impugned Order), the Appellant has only completed 2 km of the line, as verified by the District Magistrate, Bageshwar. Its claim of completing 5 km is thus baseless. The Appellant deposited the requisite fees for the testing and installation of meters on 15.06.2015, and the meters were tested at Dehradun.

55. However, the installation was stalled due to the absence of interconnectivity and delayed approval from the Electrical Inspector (mandatory for safety compliance). The meters had to be retested after more than six months due to

procedural delays. The fee for the electrical safety inspection was deposited only on 12.02.2016, leading to further delay. The Commission attributed the delay in meter installation solely to the Appellant's failure to secure the No Objection Certificate (NOC) and Certificate for Energization from the Electrical Inspector in a timely manner.

56. The Commission continued to argue that the Commission has rightly determined that deemed generation under Regulation 47 of the RE Regulations, 2013 is applicable only after the project achieves Commercial Operation Date (COD). As Sarju-II had not attained COD by 01.08.2015, the Appellant's claim for deemed generation from that date until commissioning is unjustified.

57. Deemed generation for Sarju-II is applicable from the project's COD, subject to the Appellant submitting its claim in accordance with the RE Regulations. However, losses due to the tripping of the 33 kV Kapkote-Karmi line are not valid for deemed generation claims while Sarju-II's evacuation continues via the interim LILO connectivity. This decision ensures compliance with regulatory provisions and emphasizes that deemed generation cannot be claimed for events before COD or during interim evacuation arrangements.

58. The reliance by the Appellant on the judgment dated 12.02.2024 in Appeal No. 145 of 2020 is misplaced because the circumstances in that case differ significantly from the present matter. The Sarju-III SHP of the Appellant was commissioned on 11.07.2014 (as per para 2 of the judgment dated 12.02.2024). The claim in that case pertained to deemed generation for FY 2016-17 and FY 2017-18, which were post-commissioning periods whereas in the present case,

the Appellant's current claim is for deemed generation from 01.08.2015, the date it alleges readiness of the Sarju-II SHP. This claim concerns a period before achieving interconnectivity or commissioning, unlike the situation in the 12.02.2024 judgment.

### **Analysis and Conclusion**

59. The Appellant submitted that it had initially claimed deemed generation from August 2015 to 28.05.2016, however, submitted that this period has already been accounted for in tariff determination, hence, the Appellant is not claiming deemed generation for this period.

60. It is important to note that the Appellant claimed COD as 28.05.2016.

61. Thus, the issue before us remains for the period from 28.05.2016 till the DTL was made operational.

62. The core issue for determination in this appeal is as follows:

***Whether the Appellant entitled to deemed generation (deemed generation entitlement) before the commercial operation date (COD) of its power project, and whether any generating plant deemed to have achieved COD even before the construction of the dedicated transmission line?***

63. The Appellant contends that the issue in hand is covered by the judgment dated 12.02.2024 rendered by this Tribunal in Appeal No. 145 of 2020, it is, therefore, important to examine the said judgment vis-à-vis the Impugned Order.

64. As per the observations made in the Impugned Order for denying the deemed generation benefit to the Appellant as disputed herein, the State Commission has allowed deemed generation benefit only after the achievement of COD, the para 30(iii) of the Impugned Order is reproduced hereunder:

“With regard to disallowance of deemed generation claim for Sarju-II project, the Commission has observed that in case of Sarju-II project the generator itself was in default of not honoring the clauses of the PPA wherein **it was the responsibility of the generator to construct a dedicated 33 kV line from Sarju-II project to 33 kV Kapkote S/s and it was in the interest of M/s UBHP that the dedicated line is constructed within the 12 months from the date of the Commission’s Order dated 11.09.2015.** However, M/s UBHP itself showed a callous approach in constructing the 33 kV dedicated line and tried to seek extension for construction of the same on the pretext of non-confirmation of gantry location at 33 kV S/s Kapkote. **This fact is itself complete for the Commission for drawing the conclusion that deemed generation claim of M/s UBHP for its Sarju-II project is not justified for its LILO connectivity on 33 kV Kapkote-Karmi line till it completes the construction of dedicated 33 kV line from its Sarju-II project to 33 kV Kapkote S/s as per agreed PPA and supplementary PPA between M/s UBHP & UPCL.”**



65. It is, therefore, clear that the State Commission after examination the Regulation 47, has denied the deemed generation due to non-completion of the entire project including the DTL as against the Appellant's claim that Sarju-II SHP was ready for commissioning on 01.08.2015.

66. It is important to note here that the Appellant limited its claim from 28.05.2016 till the completion of the dedicated transmission line.

67. The Respondent Commission contended that the Appellant's reliance on the judgment dated 12.02.2024 in Appeal No. 145 of 2020 is misplaced because the circumstances in that case differ significantly from the present matter. The claim, in that case, pertained to deemed generation for FY 2016-17 and FY 2017-18, which were post-commissioning periods, as the project was commissioned on 11.07.2014 (as per para 2 of the judgment dated 12.02.2024), whereas in the present case, the Appellant's current claim is for deemed generation from 01.08.2015, the date it alleges readiness of the Sarju-II SHP, this claim concerns a period before achieving interconnectivity or commissioning, unlike the situation in the 12.02.2024 judgment.

68. We agree with the contentions of the State Commission, the referred judgment dated 12.02.2024 rendered by this Tribunal dealt with the issue therein having different facts i.e. non-availability of capacity in the evacuation corridor and not the non-completion of the DTL.

69. Further, the connectivity through LILO on the Karmi-Kapkote Transmission was an interim arrangement and it has provided relief to the Appellant for evacuating its power even without complying requirement of the PPA i.e. its failure to complete the dedicated transmission line.

70. The State Commission vide order dated 02.07.2015 allowed an interim Loop-In-Loop-Out (LILO) connection from the 33 KV Kapkote-Karmi transmission line to prevent bottling of power generation, to provide relief to the generator, in contradiction to the provision of the PPA.

71. In fact, the State Commission vide order dated 11.09.2015, directed the Appellant to construct the 33 KV line from its generating stations to the Kapkote substation within 12 months, warning that the interim LILO arrangement would lapse thereafter and also clarified that deemed generation benefits would not be available for interruptions caused by tripping on the interim LILO connection.

72. The Respondent Commission submitted that the Appellant's claim of completing a 5 km transmission line from its Sarju-II project to the 33 kV Kapkote substation is misleading, as the completed 5 km includes 3 km of a common line up to the LILO point, leaving approximately 10 km of the DTL pending for connectivity to the Kapkote substation. Despite the Commission's directions issued on 11.09.2015 (Para 29(I)(ii) of the Impugned Order), the Appellant has only completed 2 km of the line, as verified by the District Magistrate, Bageshwar. Its claim of completing 5 km is thus baseless.

73. It is also observed by the State Commission in the Impugned Order that *“the rationale submitted by M/s UBHP for its inability to complete its work of construction of line upto 33 kV Kapkote S/s does not appear to be satisfactory as only the last stretch of 0.5 km will actually be affected due to non confirmation of the exact location of gantry at 33 kV Kapkote S/s.”*

74. Therefore, the reliance on the above-referred judgment dated 12.02.2024 by the Appellant is misconceived.

75. The Appellant also argued that Regulation 47 of the RE Regulations does not mandate a DTL for deemed generation claims and submitted that the Sarju II project was commissioned on 28.05.2016, while the Kapkote-Bageshwar line was completed only in January 2020.

76. Regulation 47 is again reproduced hereunder for clarity:

*“ 47. Deemed Generation*

*(1) After the COD of the Project, loss of generation at the Station on account of reasons attributed to the following, or any one of the following, which results in Water Spillage, shall count towards Deemed Generation:*

*Non availability of evacuation system beyond the Interconnection Point; and*

*Receipt of backing down instructions from the SLDC”*

77. It can be seen from above that the deemed generation benefit can be claimed only after the COD of the project, i.e. COD can be declared only once the project is completed in its entirety and not when part project is completed.

78. This Tribunal vide its judgment dated 01.09.2020 titled ***Jindal India Thermal Power Limited vs. CERC, 2020 SCC OnLine APTEL 69***, has held that any generating station that includes a dedicated transmission line built for evacuating power from generating stations to the nearest pooling station is not complete as per schedule mainly because of delay in completion of dedicated transmission lines, the relevant extract is quoted as under:

*“10.27 To further firm up our views in the matter, we have perused the judgments relied upon by the parties and also the impugned orders passed by the Central Commission. What thus transpires is that the generating stations of the Appellants which also include dedicated transmission lines from generating stations to nearest pooling station of the second Respondent were not completed as per schedule mainly because of delay in completion of dedicated transmission lines. Pending completion of the dedicated transmission lines of the Appellants, to enable evacuation of generated power, an interim LILO arrangement was provided by .....the second Respondent/PGCIL. This is not in dispute that the power was scheduled through these LILO arrangements by the Appellant generators to the beneficiary discoms of Orissa & Bihar but the fact remains that the generating stations of the Appellants were not commissioned in their entirety because of non-*

*completion of dedicated transmission lines which were integral part of the generating stations. The Sharing Regulations, 2010 are crystal clear that the sharing mechanism as per Annexure I of the Regulation shall be effective only after commercial operation of the generator and till then it shall be responsibility of the generator to pay the transmission charges. Further, as per Section 2(30) of the Electricity Act, the term generating stations are defined as under:—*

*(30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any substation;"*

**10.28** *Additionally Section 2(16) is defined as under:—*

*"(16) "dedicated transmission lines" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;"*

*10.29 Having regard to the provision of the Regulations notified by the Central Commission and various provisions contained in the Electricity Act, 2003, we are of the view that the Central Commission has analysed the various factors associated with the disputes raised in respective petitions and passed the impugned order rendering cogent reasoning and sufficient rationale. The Central Commission while passing the impugned order has made elucidated observations under Para 60 to 66 which leaves no further scope for any ambiguity or perversity. It is relevant to note that though power has flown through interim LILO arrangement but this has enabled sole benefit to the Appellant generators who have recovered their generation tariff even without completing the dedicated transmission lines. We are, therefore, inclined to accept the contentions of the Respondent Discoms that without completion of all assets of the generators as well as the second Respondent, they should not be burdened with transmission charges under POC mechanism which in turn will affect the end consumers.*

***10.30 In view of the above, we are of the considered opinion that pending COD of their entire generating stations (generating units & dedicated transmission lines), the Appellant generators are liable to bear the transmission charges for the completed assets of the second Respondent***

***till the commissioning of their dedicated transmission lines.***

*Hence, the appeals are liable to be dismissed.”*

79. It is, therefore, important to note that COD can be declared for any generating station once all the assets including the dedicated transmission line (if any) are commissioned and made operational.

80. We find the decision of the State Commission just and reasonable, and without any infirmity in denying the relief sought by the Appellant from a date before the completion of the DTL.

81. The contention of the Appellant that Regulation 47 does not specify any condition regarding DTL is misplaced, the COD can be achieved only once the DTL is also completed which is an integral part of the generating station.

82. Therefore, the answer to the question of whether *the Appellant is entitled to deemed generation (deemed generation entitlement) before the commercial operation date (COD) of its power project, and whether any generating plant deemed to have achieved COD even before the construction of the dedicated transmission line?)* is in negative.

83. We, thus, found no infirmity in the Impugned Order passed by the State Commission.

**ORDER**

For the foregoing reasons as stated above, we are of the considered view that Appeal No. 177 of 2017 is devoid of merit and is dismissed. The Impugned Order dated 08.12.2016 passed by the Uttarakhand Electricity Regulatory Commission in Petition No. 41 of 2016 is upheld.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 21<sup>st</sup> DAY OF FEBRUARY, 2025.**

**(Virender Bhat)  
Judicial Member**

**(Sandesh Kumar Sharma)  
Technical Member**

**REPORTABLE / ~~NON-REPORTABLE~~**

pr/mkj/kks