



**Petition No. 1740 of 2021**

**BEFORE  
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW**

**Date of Order: 14.02.2022**

**PRESENT:**

Hon'ble Shri Raj Pratap Singh, Chairman  
Hon'ble Shri Kaushal Kishore Sharma, Member  
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

**IN THE MATTER OF**

Petition under Section 86 (1) (b) and Section 86 (1) (f) of the Electricity Act, 2003 read with Article 6.8 of the Amended and Restated Power Purchase Agreement dated 28.06.2006 executed between Uttar Pradesh Power Corporation Ltd. and Alaknanda Hydro Power Co. Ltd. seeking reliefs due to the occurrence of certain Change in Law events.

Alaknanda Hydro Power Co. Limited,  
Paigah House, 156-159 Sardar Patel Road,  
Secunderabad - 500 003, Telangana

..... **Petitioner**

AND

Uttar Pradesh Power Corporation Limited,  
7<sup>th</sup> Floor, Shakti Bhawan,  
14 Ashok Marg, Lucknow -226 001

..... **Respondent**

The following were present:

1. Shri. Amit Kapoor, Counsel, AHPCL
2. Shri. Janmali M, Advocate, AHPCL
3. Shri. T. Srinivas Reddy, GM, AHPCL
4. Shri. Santosh Reddy, AHPCL
5. Shri. P. V. Prasanna Reddy, AHPCL
6. Shri. Deepak Raizada, CE-PPA, UPPCL
7. Shri. Rama Shankar Awasthi, Consumer Representative

**Order  
(Date of Hearing: 01.02.2022)**

1. The Commission vide Order dated 29.11.2021 directed AHPCL to substantiate that minimum E-Flow of 15% has impact on the design energy vis-à-vis original design energy and has economic impact for the period wherein Change in Law is claimed. The Commission granted three weeks' time to file the aforesaid information with a



copy of it to the Respondent. Thereafter, the Respondent was given time to submit reply on it, if any. The Petitioner submitted its reply on 20.12.2021.

The matter came up for the hearing today.

2. Shri. Deepak Raizada, UPPCL requested for an adjournment in the hearing as their Counsel Shri. Divyanshu Bhatt and his office staff were infected with COVID-19.
3. Shri. R. S. Awasthi, Consumer Representative has filed an impleadment application in the matter. The Commission asked the Petitioner for any objection on impleadment application, to which Shri. Amit Kapoor, Counsel, AHPCL submitted that the Petitioner has no objection.
4. The Commission, though was not impressed upon by impleadment application of Sh. Awasthi at such late stage in the matter, however, keeping in view the transparent process of hearing, directed AHPCL to serve the Petition copy to Shri. R. S. Awasthi, Consumer Representative. The Commission on the request of Shri. R. S. Awasthi, Consumer Representative granted 10 days of time in filing the reply in the matter, if any, which is to be submitted to UPPCL and AHPCL along with a copy to the Commission.
5. Shri. Amit Kapur, Counsel, AHPCL submitted that the instant Petition has been filed inter alia seeking declaration of the following as 'Change in Law events' in terms of Article 6.8 of the PPA read with applicable Regulation of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014 that have impacted the Project:
  - a) Order dated 15.09.2015 passed by the Sub Divisional Magistrate (SDM), Tehri Garhwal directing maintaining Environmental Flows ("E-Flows") of 15% during lean season;
  - b) Order dated 09.08.2017 passed by the Hon'ble National Green Tribunal ("Hon'ble NGT") OA No. 498 of 2015 titled Pushp Saini v. Ministry of Environment, Forest and Climate Change & Ors;
  - c) Order dated 11.06.2018 passed by the Hon'ble High Court of Uttarakhand ("Hon'ble High Court") in WP (PIL) No. 116 of 2015.
6. Shri. Amit Kapur, Counsel, AHPCL further submitted the following:
  - a) The Petitioner is incurring loss in capacity charges and energy charges by maintaining minimum E-Flow of 15% as mandated by the aforesaid Orders.
  - b) The Commission in the Order dated 08.02.2021 in Petition No 1401/2019 and 1628/20 did not consider the 15% E-Flow. Consequently, the Commission in the aforesaid Order approved higher NAPAF for the project, which resulted in loss of capacity charges.
  - c) The Commission vide Order dated 19.07.2018 in Petition No. 1303/2018 permitted AHPCL to recover shortfall in energy charges for FY 2015-16 and FY 2016-17 due to actual generation lower than the Design Energy on account of factors beyond the control of the generator like lower hydrology, as per Regulation 51 of the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2014.



- d) Central Electricity Authority vide letter dated 14.05.2018 considering the E-Flow of minimum 15% revised the Design energy of the Project to 1251.94 MU.
7. The Commission observed that the NAPAF is based on the actual flow of river which has taken place and mandated e-flow may have impact on secondary energy charges. The Petitioner agreed to submit its written justification in this regard.
8. On the direction of the Commission, the Petitioner also agreed to substantiate through any Act, Statute, Law, Supreme Court Order etc. which empowers Sub Divisional Magistrate (SDM) to pass such Orders as Order dated 15.09.2015 directing to maintain "E-Flows" of 15% during lean season.
9. On the request of Shri. Deepak Raizada, UPPCL, the Commission during the next proceedings will hear together on maintainability and merits of the Petition.

List the matter for final hearing on 25<sup>th</sup> February 2022.

**(Vinod Kumar Srivastava)**  
Member

**(Kaushal Kishore Sharma)**  
Member

**(Raj Pratap Singh)**  
Chairman

**Place:** Lucknow

**Dated:** 14.02.2022