

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 23 of 2014

In the matter of:

Petition seeking amendment in the PPA dated 30.11.2010 executed between M/s Birahi Ganga Hydro Power Ltd. and UPCL in accordance with the provisions of UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy sources) Regulations, 2010, Removal of difficulty (First) Order 2010 and CERC (Terms and Conditions of Tariff) Regulations, 2014.

In the matter of:

M/s Birahi Ganga Hydro Power Ltd. ...Petitioner

AND

Uttarakhand Power Corporation Ltd. ...Respondent

AND

Petition No. 21 of 2014

In the matter of:

Application seeking approval of the 11 Power Purchase Agreements entered into between UPCL & 11 nos. RE generators.

In the matter of:

Uttarakhand Power Corporation Ltd. ...Petitioner

AND

1. M/s Metro Frozen Fruits & Vegetables Pvt. Ltd
2. M/s Birahi Ganga Hydro Power Ltd.
3. M/s Gunsola Hydro Power Generation (Pvt.) Ltd.
4. M/s Chamoli Hydro Power Pvt. Ltd.
5. M/s Swasti Power Ltd.
6. M/s Rai Bhadur Narain Singh Sugar Mills Ltd.
7. M/s Rishiganga Power Corporation Ltd.
8. M/s RV Akash Ganga Infrastructure Ltd.

9. M/s Uttam Sugar Mills Ltd.
10. M/s Lakshmi Sugar Mills Co. Ltd.
11. M/s Jay Ace Technologies Ltd.

... Respondents

CORAM

Shri C.S. Sharma Member

Shri K.P. Singh Member

Date of Hearing: October 13, 2014

Date of Order: November 07, 2014

The Order relates to the Petition filed by M/s Birahi Ganga Hydro Power Ltd. (hereinafter referred to as "M/s. BHPL") seeking amendment in PPA dated 30.11.2010 executed with UPCL for sale of power from 7.2 MW Birahiganga SHP and also relates to 11 Petitions submitted by UPCL seeking approval of the PPA executed by it with the above referred Respondents.

1. Background

1.1 M/s Birahiganga Hydro Power Ltd. filed a Petition dated 14.07.2014 before the Commission seeking amendment in the PPA dated 30.11.2010 executed with UPCL for sale of power from its 7.2 MW Birahiganga SHP. M/s Birahi Ganga Hydro Power Ltd. vide its aforesaid Petition sought the following relief:

- a. Amendment in the PPA dated 30.11.2010 signed between UPCL & M/s Birahi Ganga Hydro Power Ltd incorporating provision of Regulation 44 of CERC (Terms & Conditions of Tariff) Regulations, 2014 and approval of PPA by the Commission in conformity with all the regulations of RE Regulations, 2010.
- b. Issuance of directions to both UPCL & M/s Birahi Ganga Hydro Power Ltd. to sign the PPA after incorporating the amendments in accordance with the Regulations.

1.2 M/s Birahi Ganga Hydro Power Ltd submitted that earlier since commissioning of its SHP, UPCL was making payment of energy bills within 72 hours of the submission of the same. However, UPCL has stopped making payment within the said period w.e.f. June 2014 on the ground that payment of bills would be cleared in accordance with the

provision of the PPA. M/s Birahi Ganga Hydro Power Ltd submitted that on account of late payment by UPCL they were facing difficulties in meeting their financial obligations. M/s. BHPL vide its Petition also submitted as under:

- 1.2.1 Clause 5.4 of the PPA was against Regulation 23 of RE Regulations, 2010 as Regulation 23 specified that 1% rebate would be allowed if payment is made within 1 month of the presentation of bills. In contrary to the same Clause 5.4 provided that UPCL shall be allowed a rebate of 2% if payment is made within 30 days of the receipt of the bill. Accordingly, the said clause of the PPA required amendment to make it in conformity with the provisions of the RE Regulations, 2010.
- 1.2.2 Regulation 44 of CERC Tariff Regulations specifies that a rebate of 2% would be allowed if payment of bills are made within a period of 2 days of presentation of bills and where the payments are made on or after 2 days and within a period of 30 days of presentation of bills, a rebate of 1% would be allowed.
- 1.2.3 The Commission vide its Order dated February 14, 2012 had held as under:

“The Commission is of the view that rebates and surcharges are commercial arrangements agreed upon between the two parties while entering into any type of agreement including PPAs subject to conditions provided therein. If the seller of goods (in this case a Generator) wants to offer higher rebate to buyer (UPCL in this case) it is always open for the seller (Generator) to do so. However, since here the Generator is aggrieved by the condition of rebate for timely payment in the PPA and is itself contesting the provision incorporated in the agreement/contract, the Commission directs both the parties to be guided by the provisions of the Regulation in this regard and settle amongst themselves this issue of rebate and make necessary changes in the PPA accordingly.”

M/s. BHPL submitted that the above referred order of the Commission was not being complied with by UPCL in true spirit and UPCL continued to deviate from the provisions of the RE Regulations, 2010.

- 1.2.4 The Petition was filed under Regulation 23 of RE Regulations, 2010 and Regulation 2 of UERC (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.

- 1.3 The copy of the aforesaid Petition was sent to UPCL for submission of its response/comments on the same. UPCL vide its reply dated 05.08.2014 submitted its preliminary objection that the Petition filed by M/s BHPL was not in accordance with UERC (Conduct of Business) Regulations, 2004. With regard to the submissions made by M/s BHPL, UPCL made the following submissions:
- 1.3.1 UPCL had never assured that the payments of the bills shall be made before the prescribed time in the PPA. Accordingly, M/s BHPL cannot claim for earlier payment of bills against the provision of PPA. UPCL was making all the payments within one month of receipt of bills in accordance with the terms and conditions of the PPA.
- 1.3.2 The reference made to the Order dated February 14, 2012 was irrelevant as the generator had itself executed the PPA with UPCL on September 30, 2010 wherein a rebate of 2% was offered to UPCL for making payment within 30 days of the receipt of the bill.
- 1.4 M/s BHPL vide its reply/rejoinder dated 12.08.2014 resolved the deficiencies pointed out by UPCL. M/s BHPL again referred to the relevant provisions of rebate for payment as stipulated in Regulations issued by CERC & UERC. M/s BHPL submitted that UPCL is making payment beyond the timeline of 2 days after deducting rebate of 2% which is against the provisions of the regulations. M/s. BHPL also requested the Commission to direct UPCL to remit payment within 48 hours of the submission of the bill either through RTGS or through Letter of credit for availing 2% cash rebate and no payment shall be made through cash.
- 1.5 A hearing was conducted on 12.08.2014 in the matter. The Commission while appreciating the issues raised by M/s BHPL vide its Order dated 12.08.2014 directed that:
- “1. UPCL shall file a Petition by August 29, 2014 seeking approval of PPA subsisting with Petitioner as also all the similar Power Purchase Agreements under which it is availing power from IPPs including RE generators and which are yet to be approved by the Commission.*
- 2. The present petition filed by the Petitioner be clubbed with the above mentioned petition to be filed by UPCL. “*

- 1.6 In compliance to the above Order UPCL submitted 11 nos. Petitions dated 18.09.2014 for approval of PPAs executed with the above mentioned 11 Respondents nos. 1 to 11. Since the matter under the 11 Petitions were similar and in accordance with the direction of the Commission issued vide its Order dated 12.08.2014, the 11 Petitions were clubbed together as Petition no. 21 of 2014 and is being dealt in this Order alongwith the Petition filed by M/s. BHPL. The Commission decided to hold a hearing in the matter on 13.10.2014.
- 1.7 UPCL vide its letter dated 29.09.2014 informed the Commission that apart from 11 nos. PPAs, Petition for approval of 5 nos. PPAs were being prepared by it and the same would be submitted by 30.10.2014. However, the Commission vide letter dated 07.10.2014 allowed it time for submission of the Petition by 27.10.2014. However, till date UPCL has failed to submit the said PPAs for approval of the Commission.
- 1.8 A hearing was also held on 13.10.2014 wherein, total 13 respondent were present as per enclosed Annexure-I. List of respondents who made written submission on UPCL's Petitions is also enclosed as per Annexure-II. By and large all the respondents have raised the issue of "Rebate & Payment" as put forth by M/s BHPL. In addition M/s Lakshmi Sugar Mills also requested the Commission for allowing banking of power during non-operational period of the mill.
- 1.9 M/s Himalaya Hydro vide its written submission dated 30.09.2014 requested the Commission to consider the PPA signed with UPCL in respect of its Motighat SHP (3MW) as the same had not been submitted by UPCL during the current proceeding for approval.
- 1.10 The Commission vide its Order dated 13.10.2014 directed UPCL as follows:
- "(a) UPCL to ensure compliance of the UERC (Conduct of Business) Regulations, 2004 and Regulation 7 (3) of RE Regulations, 2013 which read together require the distribution licensee to seek approval of the draft Power Purchase Agreements that it proposes to enter into.*
- (b) UPCL to submit the balance PPAs which have yet not been approved latest by 27.10.2014.*
- (c) Respondent no. 1 in Petition no. 21 of 2014 raised the issue of evacuation problems encountered by it and also referred to the directions issued by the Commission to UPCL's field officers during the visit on 13.08.2014. In this regard, the Commission directs Respondent no. 1 to submit the status of the evacuation system subsequent to the visit of the Commission within a*

week from the date of order. The Commission also directs UPCL to submit its written submission on the issue within 15 days of the date of order.

(d) UPCL and the respondents are given one final opportunity to make further additional submissions, if any, in the matter latest by 21.10.2014.”

2. Commission’s Views & Decisions

2.1 Legal Requirement for approval of PPA

2.1.1 A PPA is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.

2.1.2 Section 86(1)(b) of the Electricity Act, 2003 stipulates that one of the function of the Commission is to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

2.1.3 Further, the Distribution and Retail Supply Licence issued by the Commission lays down certain conditions of license, which amongst others also has the following:

“5.1 The Licensee shall be entitled to:

(a) ...

(b) Purchase, import or otherwise acquire electricity from any generating company or any other person under Power Purchase Agreements or procurement process approved by the Commission;

...”

(Emphasis added)

2.1.4 Regulation 51 of UERC (Conduct of Business) Regulations, 2004 specifies as under:

“(1) The licensee shall file with the Commission in complete form copies of all Power Purchase Agreements already entered into by the licensee.

(2) The Commission shall be entitled to direct that the licensee shall establish to the satisfaction of the Commission that the purchase of power by the licensee is under a transparent power purchase procurement process and is economical and the power is necessary for the licensee to meet its service obligation.

(3) The licensee shall apply to the Commission to approve the draft Power Purchase agreement that the Licensee proposes to enter into..."

2.1.5 Further, Regulations 7(2) & 7(3) of both the UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy sources) Regulations, 2010 & 2013 (RE Regulations, 2010 & RE Regulations, 2013) specifies that:

"(2) The distribution licensee on an offer made by the said RE based Generating Stations and Co-generating Stations shall enter into a power purchase agreement in conformity with these Regulations and relevant provisions of other Regulations and the Act. The distribution licensee shall sign the PPA within two months of offer made by the generating company, failing which the generating company may approach the Commission for suitable remedy.

(3) The distribution licensee shall make an application for approval of power purchase agreement entered into with the generating station in such form and manner as specified in these regulations and Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 as amended from time to time."

(Emphasis added)

2.1.6 Accordingly, in accordance with the requirement of the Act and Regulations referred above, UPCL as a distribution licensee was required to seek approval of the PPAs entered or proposed to be entered by it from the Commission. However, it only came up for approval of the PPAs in the present case after absence of approval was pointed out to them by the Commission. UPCL is directed to ensure strict compliance of relevant regulations in this regard in future to avoid punitive action under the provisions of the Electricity Act, 2003.

2.2 Consistency of the PPA with the Regulations

2.2.1 M/s. BHPL had filed its Petition under Regulation 23 of RE Regulations, 2010 and Regulation 2 of UERC (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. However, RE Regulations, 2010 has been repealed in entirety after coming into effect of RE

Regulations, 2013 except for Regulation 3 of Chapter 1 and Chapter 4 and 5 of RE Regulations, 2010. In this regard, Regulation 6(7) of RE Regulations, 2013 is reproduced hereunder:

“Except as provided in the Second Proviso to sub-Regulation (1) of Regulation 2 above, all Power Purchase Agreements signed by the generating stations existing on the date of notification of these regulations shall be amended in accordance with these regulations, if inconsistent with these Regulations and such amended PPAs shall be valid for entire life of the RE Based Generating Stations and Co-generating Stations.”

2.2.2 Accordingly, all the PPAs entered into by UPCL are required to be amended in accordance with RE Regulations, 2013 except for tariffs, if they are inconsistent with the provisions of RE Regulations, 2013. Thus, the Petition filed by M/s. BHPL is also examined in light of the provisions stipulated under RE Regulations, 2013. Reference made by M/s. BHPL to the CERC Regulations, 2009 and 2013 are not relevant as they are not only applicable for conventional and large generating stations and not RE based generating stations. Also that the Commission is not bound by the CERC Regulations and is to be guided by its own Regulations for dealing with matters relating to the Regulations. Section 61 of the Electricity Act, 2003 lays down that the Commission shall specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees. However, once the Regulations have been specified by the Commission, the Commission has to proceed in accordance with the principles specified in the Regulations.

2.2.3 One point may be made that the PPAs have already been executed before RE Regulations, 2013 were notified. In this regard, Hon'ble Supreme Court in its Judgment dated 15.03.2010 in Civil Appeal No. 3902 of 200 with Civil Appeal Nos. 4354/06, 4355/06, 2875/07, 7437/05, 7438/05, 2073/07, 1471/07, 2166/07, Civil Appeal No.2412 /2010 (D 9870/07) and Civil Appeal No. 2413/2010 arising out of S.L.P. (C) No. 22080/05 had decided as under:

“59. Summary of Our Findings:

(i) In the hierarchy of regulatory powers and functions under the 2003 Act, Section 178, which deals with making of regulations by the Central Commission, under the authority of subordinate legislation, is wider than Section 79(1) of the 2003 Act, which 83 enumerates the regulatory functions of the Central Commission, in specified areas, to be discharged by Orders (decisions).

(ii) A regulation under Section 178, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations."

(Emphasis added)

2.2.4 Similar to the powers of the Central Commission under Section 178 to make Regulations, the State Commission has been vested with powers to make Regulations under Section 181 of the Electricity Act, 2003. Hence, in accordance with the ratio laid down by the Hon'ble apex Court, a Regulation framed under Section 181 would override the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations. Accordingly, in accordance with Regulation 6(7) of RE Regulations, 2013 reproduced above, all the PPAs entered into by UPCL are required to be amended in accordance with RE Regulations, 2013.

2.2.5 Further, the issue regarding rebate raised by M/s. BHPL in its Petition is dealt along with its PPA. However, M/s. BHPL had also requested the Commission to direct UPCL to remit payment within 48 hours of the submission of the bill either through RTGS or through Letter of credit for availing 2% cash rebate and no payment shall be made through cheque. In this regard, it is clarified that the Regulations do not contain any provision of making payment through RTGS, and hence, such direction cannot be issued to UPCL. Further, the option of making payment through L/c or cheque lies with the distribution licensee and accordingly, the Commission is not inclined to interfere with the same. However, the rebate admissible shall be in accordance with the provisions of the Regulations depending on the mode and time in which payment is made by UPCL.

2.2.6 Accordingly, PPAs executed between UPCL & the above mentioned Respondents-1 to 11 are examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003 & RE Regulations, 2013.

2.3 Commission's Analysis of the PPAs and Order on the same

2.3.1 Details of PPAs executed by UPCL with the Respondents and submitted before the Commission for approval are as follows:

S. No.	Respondent's Name	Project Name	Capacity (MW)	Date of PPA
1	M/s Gunsola Hydro Power Ltd.	Agunda Thati (SHP)	3	09.09.2002
2	M/s Chamoli Hydro Power	Debal (SHP)	5	05.02.2003 & 10.11.2006
3	M/s Swasti Power	Bhilangana (SHP)	22.5	03.07.2009 & 10.01.2013
4	M/s Birahi Ganga	Birahi Ganga (SHP)	7.2	30.11.2010
5	M/s Rishi Ganga	Rishi Ganga (SHP)	13.2	21.01.2011
6	M/s RBNS	RBNS (Co-generation)	19.1 MW tied up under PPA out of 30 MW capacity of project	16.09.2005
7	M/s Metro Frozen	Metro Frozen (Solar Rooftop)	1	21.08.2010
8	M/s Jay Ace Tech.	Jay Ace Tech (Solar PV)	2	21.08.2010
9	M/s RV Akash Ganga	RV Akash Ganga	2	21.08.2010 & 24.05.2011
10	M/s Lakshmi Sugar Mills	Lakshmi Sugar Mills (Co-generation)	20	12.10.2011
11	M/s Uttam Sugar Mills	Uttam Sugar Mills (Co-generation)	13	19.03.2012

2.3.2 The PPAs submitted by UPCL have been examined in light of the relevant rules & regulations. The Commission observed that certain clauses in the PPAs submitted by UPCL are inconsistent with the provisions of Act/Regulation. Such observations have been discussed in the subsequent Paras. UPCL is required to take note of the same and incorporate necessary corrections in respective PPAs.

2.3.2.1 PPA dated 09.09.2002 executed with M/s Gunsola Hydro Power Generation (Pvt.) Ltd.

- a. The registered office of the Corporation, i.e. UPCL has been mentioned as Sachivalaya Uttaranchal, Dehradun in the PPA which should be replaced by the correct address of the Licensee.
- b. Date of Implementation Agreement at Clause 2.2.40 of the aforesaid PPA has

been mentioned as 7.5.1997. The said date is incorrect which should be replaced by the correct date i.e. 20.04.2004.

- c. Clause 2.2.43 of the aforesaid PPA provides for definition of Interconnection Point. The said definition is incorrect and should be replaced with the definition of inter-connection point specified in Regulation 3 of RE Regulations, 2010.
- d. Clause 6.2 of the aforesaid PPA provides for Tariff for Net Saleable Energy in which rate of sale of power to the Company is mentioned as 2.50 Rs./unit. This should be amended in light of the option exercised by the generator in accordance with RE Regulations, 2010.
- e. Clause 6.1 dealing with payment for excess drawl made by the generator needs to be modified in accordance with Regulation 45 of RE Regulations, 2013.
- f. Clause 6.4 of the aforesaid PPA provides for Deemed Generation. The said Clause needs to be consistent in accordance with the provisions specified in Regulation 47 of RE Regulations, 2013.
- g. In Clause 7.2 of the aforesaid PPA, accuracy class for Active Energy measurement is mentioned as 0.5 whereas it is mentioned as 0.2 in Clause 7.10 of the said PPA. The accuracy class should be consistent with the Central Electricity Authority (Installation and Operation of meters) Regulations, 2006.
- h. Clause 8.2 and 8.3 of the PPA stipulates about the provisions relating to rebate and surcharges payable to or by UPCL. The same has to be consistent with the provisions of the RE Regulations, 2010.
- i. Clause 10.1 of the aforesaid PPA states the duration of the Agreement as 30 years. The same should be of 35 years in accordance with the RE Regulations, 2013. UPCL is required to rectify the same.
- j. Clause 15.20 of the aforesaid PPA states about wheeling charges for captive use/or sale of power outside the State which is inconsistent with the Regulation 38 of RE Regulations, 2013. UPCL is required to take note of the

above provision of the regulation while amending the PPA.

2.3.2.2 PPA dated 05.02.2003 executed with M/s Chamoli Hydro Power Pvt. Ltd

- a. Clause 2.1.11 of the aforesaid PPA provides for reference to be made from Electricity Act, 1910 or Electricity (Supply) Act, 1948 for words/expression not mentioned in the PPA. However, the above referred Acts have been repealed and replaced by Electricity Act, 2003. Accordingly, the said provision of the PPA needs to be reviewed in this regard.
- b. Date of Implementation Agreement at Clause 2.2.40 of the aforesaid PPA has been mentioned as 7.5.1997. The said date is incorrect which should be replaced by the correct dates i.e. 28.04.2004 and 09.03.2006.
- c. Clause 2.2.43 of the aforesaid PPA provides for definition of Interconnection Point. The said definition is incorrect. It should be corrected in accordance with the Clause (c) of Para 2.3.2.1 of this Order.
- d. Clause 6.2 of the aforesaid PPA provides for Tariff for Net Saleable Energy in which rate of sale of power to the Company is mentioned as 2.50 Rs./unit. This should be amended in light of the option exercised by the generator in accordance with RE Regulations, 2010.
- e. Clause 6.1 dealing with payment for excess drawl made by the generator needs to be modified in accordance with Regulation 45 of RE Regulations, 2013.
- f. Clause 6.4 of the aforesaid PPA provides for Deemed Generation. The said Clause needs to be consistent in accordance with the provisions specified in Regulation 47 of RE Regulations, 2013.
- g. In Clause 7.2 of the aforesaid PPA, accuracy class for Active Energy measurement is mentioned as 0.5 which should be 0.2. The accuracy class should be consistent with the Central Electricity Authority (Installation and Operation of meters) Regulations, 2006.
- h. Clause 8.2 and 8.3 of the PPA stipulates about the provisions relating to rebate and surcharges payable to or by UPCL. The same has to be consistent

with the provisions of the Regulations.

- i. Clause 10.1 of the aforesaid PPA states the duration of the Agreement as 30 years. The same should be of 35 years in accordance with the RE Regulations, 2013. UPCL is required to rectify the same.
- j. Clause 15.20 of the aforesaid PPA states about wheeling charges for captive use/ or sale of power outside the State which is inconsistent with the Regulation 38 of RE Regulations, 2013. UPCL is required to take note of the above provision of the regulation while amending the PPA.
- k. Provision of deemed generation in accordance with Regulation 47 of RE Regulations, 2013 should also be incorporated in the PPA.

2.3.2.3 PPA dated 10.01.2013 & 03.07.2009 executed with M/s Swasti Power Ltd.

- a. Clause 1.15 of the aforesaid PPA provides for definition of Interconnection Point. The said definition is incorrect. It should be corrected in accordance with the Clause (c) of Para 2.3.2.1 of this Order.
- b. Clause 2.2 of the aforesaid PPA provides for rate applicable for supply of electricity by UPCL to the generating company. The same should be in accordance with the RE Regulations, 2013 as referred in Clause (e) of Para 2.3.2.1 of this Order.
- c. Clause 5.1 of the aforesaid PPA states for monthly bills for electricity raised by UPCL. The same should be in accordance with the RE Regulations, 2013 as referred in Clause (e) of Para 2.3.2.1 of this Order.
- d. Clause 5.4 of the aforesaid PPA states for making payment after rebate @ 2% within 30 days against the monthly bills for electricity raised by generator. The clause relating to rebate is inconsistent with the provision of the regulation and needs to be corrected in accordance with RE Regulations, 2010.
- e. Clauses 14.9 & 14.10 of the aforesaid PPA provides for reading/MRI report of the bill meter. These Clauses also provides limit of variation in reading of Main & Check Meters upto 1%. The variation in reading should not be more

than 0.4%. Further, all the metering arrangements should be in accordance with CEA (Installation and Operation of Meters) Regulations, 2006.

- f. Moreover, the PPA should also incorporate provisions of surcharge as specified in RE Regulations, 2010.
- g. Provision of deemed generation in accordance with Regulation 47 of RE Regulations, 2013 should also be incorporated in the PPA.

2.3.2.4 PPA dated 30.11.2010 executed with M/s Birahi Ganga Hydro Power Ltd.

- a. Clauses 2.2, 5.1 & point no. 5 of Annexure-II of the aforesaid PPA stipulates raising of monthly bills by UPCL for sale of power to Generating company. The said Clauses are not consistent with the Regulation 45 of RE Regulations, 2013. UPCL is required to make necessary corrections in the PPA in accordance with Clause (e) of Para 2.3.2.1 of this Order.
- b. Clause 5.4 of the aforesaid PPA states for making payment after rebate @ 2% within 30 days against the monthly bills for electricity raised by generator. This clause is against the provision of the regulation and needs to be consistent in accordance with RE Regulations, 2010.
- c. Clauses 14.9 & 14.10 of the aforesaid PPA state for reading/MRI report of the bill meter. These Clauses also provides limit of variation in reading of Main & Check Meters upto 1%. The variation in reading should not be more than 0.4%. Further, all the metering arrangements should be in accordance with CEA (Installation and Operation of Meters) Regulations, 2006.
- d. Provision of deemed generation in accordance with Regulation 47 of RE Regulations, 2013 should also be incorporated in the PPA.

2.3.2.5 PPA dated 21.01.2011 executed with M/s Rishi Ganga Power Corporation Ltd.

- a. Clauses 2.2, 5.1 & point no. 5 of Annexure-II of the aforesaid PPA stipulates raising of monthly bills by UPCL for sale of power to Generating company. The said Clauses are not consistent with the Regulation 45 of RE Regulations, 2013. UPCL is required to make necessary corrections in the PPA in accordance with Clause (e) of Para 2.3.2.1 of this Order.

- b. Clause 5.4 of the aforesaid PPA states for making payment after rebate @ 2% within 30 days against the monthly bills for electricity raised by generator. This clause is against the provision of the regulation and needs to be consistent in accordance with RE Regulations, 2010.
- c. Clauses 14.9 & 14.10 of the aforesaid PPA state for reading/MRI report of the bill meter. These Clauses also provides limit of variation in reading of Main & Check Meters upto 1%. The variation in reading should not be more than 0.4%. Further, all the metering arrangements should be in accordance with CEA (Installation and Operation of Meters) Regulations, 2006.
- d. Provision of deemed generation in accordance with Regulation 47 of RE Regulations, 2013 should also be incorporated in the PPA.

2.3.2.6 PPA dated 16.09.2005 executed with M/s Rai Bahadur Narain Singh Sugar Mills Ltd.

- a. Clause 1.6 of the PPA defines “CoD” as date from which supply of energy is commercially commenced by Mill to UPCL. However, sub-Regulation 3(1)(i) of the RE Regulations, 2010 specifies that:

“(l) “Date of commercial operation or Commissioning (CoD)” in relation to a unit means the date declared by the generator on achieving maximum continuous rating through a successful trial run and in relation to the generating station, the date of commercial operation means the date of commercial operation of the last unit or block of generating station and expression “commissioning” shall be construed accordingly. In case of Small Hydro Plants the date of commissioning shall, however, not be linked to achieving maximum continuous rating, but the generator will have to demonstrate the same within three years of commissioning.”

Accordingly, CoD should be considered in view of the above regulation.

- b. Clause 2.1.3 provides that “the rate applicable to any supply of electricity by UPCL to the Mill shall be as per the existing tariff agreement for supply of power executed between the UPCL & Mill. The Payment to UPCL under the agreement shall remain unaffected and shall not be linked to obligation of the parties under this agreement”

However, the aforesaid Clause is not consistent with the provisions of the RE Regulations, 2013. UPCL is required to make necessary corrections in the PPA in accordance with Clause (e) of Para 2.3.2.1 of this Order.

- c. Clause 5.2.0 of the aforesaid PPA stipulates for making payment after rebate @ 2.5% within 30 days against the monthly bills for electricity raised by generator. This clause is inconsistent with the provision of the regulation and needs to be corrected in accordance with RE Regulations, 2010. Further, provision for penalty on late payment of energy bills has not been made and the same should also be incorporated in accordance with RE Regulations, 2010.
- d. Clause 14.0.0 provides for installation of energy meters at the grid sub-station of PTCUL/UPCL at interconnection point. This provision is in contradiction to the definition of point of interconnection as specified in RE Regulations, 2010. UPCL is required to take note of the same while amending the PPA.
- e. Clause 24.0.0 provides for duration of PPA for 10 years, however, in accordance with the RE Regulations, 2010 it should be for life of the project, i.e. 20 years. Accordingly, UPCL is required to make necessary corrections in the aforesaid PPA.
- f. At point no. 5 of Annexure-II of the PPA it has been stated that *“under no circumstances, the saleable energy would be net off of energy supply by Mill to UPCL and energy used by Mill in case of breakdown or any other abnormal reason”*. Such provision of PPA is in contradiction to the Regulation 45 of the RE Regulations, 2013. UPCL is required to take note of the same and make necessary amendment in the PPA.

2.3.2.7 PPA dated 21.08.2010 executed with M/s Metro Frozen Fruits & Vegetables Pvt. Ltd.

- a. Clauses 2.2, 5.1 & point no. 5 of Annexure-II of the aforesaid PPA state for raising of monthly bills by UPCL for sale of power to generating company. The said Clauses are not consistent with the Regulation 45 of RE Regulations, 2013. UPCL is required to make necessary corrections in the PPA in

accordance with Clause (e) of Para 2.3.2.1 of this Order.

- b. Clause 5.4 of the aforesaid PPA states for making payment after availing a rebate @ 2% within 30 days against the monthly bills for electricity raised by generator. This clause is against the provision of the regulation and needs to be corrected in accordance with RE Regulations, 2010.
- c. Clauses 14.9 & 14.10 of the aforesaid PPA provides for reading/MRI report of the bill meter. These Clauses also provides limit of variation in reading of Main & Check Meters upto 1%. The variation in reading should not be more than 0.4%. Further, all the metering arrangements should be in accordance with CEA (Installation and Operation of Meters) Regulations, 2006.
- d. Provision of deemed generation in accordance with Regulation 47 of RE Regulations, 2013 should also be incorporated in the PPA.

2.3.2.8 PPA dated 21.08.2010 executed with M/s Jay Ace Technology Ltd.

- a. Clauses 2.2, 5.1 & point no. 5 of Annexure-II of the aforesaid PPA state for raising of monthly bills by UPCL for sale of power to generating company. The said Clauses are not consistent with the Regulation 45 of RE Regulations, 2013. UPCL is required to make necessary corrections in the PPA in accordance with Clause (e) of Para 2.3.2.1 of this Order.
- b. Clause 5.4 of the aforesaid PPA states for making payment after rebate @ 2% within 30 days against the monthly bills for electricity raised by generator. This clause is against the provision of the regulation and needs to be corrected in accordance with RE Regulations, 2010.
- c. Clauses 14.9 & 14.10 of the aforesaid PPA state for reading/MRI report of the bill meter. These Clauses also provides limit of variation in reading of Main & Check Meters upto 1%. The variation in reading should not be more than 0.4%. Further, all the metering arrangements should be in accordance with CEA (Installation and Operation of Meters) Regulations, 2006.
- d. Provision of deemed generation in accordance with Regulation 47 of RE Regulations, 2013 should also be incorporated in the PPA.

2.3.2.9 PPA dated 21.08.2010 & 24.05.2011 executed with M/s R V Akash Ganga Infrastructure Ltd.

- a. Clauses 2.2, 5.1 & point no. 5 of Annexure-II of the aforesaid PPA state for raising of monthly bills by UPCL for sale of power to generating company. The said Clauses are not consistent with the Regulation 45 of RE Regulations, 2013. UPCL is required to make necessary corrections in the PPA in accordance with Clause (e) of Para 2.3.2.1 of this Order.
- b. Clause 5.4 of the aforesaid PPA states for making payment after rebate @ 2% within 30 days against the monthly bills for electricity raised by generator. This clause is against the provision of the regulation and needs to be corrected in accordance with RE Regulations, 2010.
- c. Clauses 14.9 & 14.10 of the aforesaid PPA state for reading/MRI report of the bill meter. These Clauses also provides limit of variation in reading of Main & Check Meters upto 1%. The variation in reading should not be more than 0.4%. Further, all the metering arrangements should be in accordance with CEA (Installation and Operation of Meters) Regulations, 2006.
- d. Provision of deemed generation in accordance with Regulation 47 of RE Regulations, 2013 should also be incorporated in the PPA.

2.3.2.10 PPA dated 12.10.2011 executed with M/s Lakshmi Sugar Mills Co. Ltd.

- a. Clauses 2.2, 5.1 & point no. 5 of Annexure-II of the aforesaid PPA state for raising of monthly bills by UPCL for sale of power to generating company. The said Clauses are not consistent with the Regulation 45 of RE Regulations, 2013. UPCL is required to make necessary corrections in the PPA in accordance with Clause (e) of Para 2.3.2.1 of this Order.
- b. Clause 5.4 of the aforesaid PPA states for making payment after rebate @ 2% within 30 days against the monthly bills for electricity raised by generator. This clause is against the provision of the regulation and needs to be corrected in accordance with RE Regulations, 2010 as reproduced at Para 2.5.11.

- c. Clauses 14.9 & 14.10 of the aforesaid PPA state for reading/MRI report of the bill meter. These Clauses also provides limit of variation in reading of Main & Check Meters upto 1%. The variation in reading should not be more than 0.4%. Further, all the metering arrangements should be in accordance with CEA (Installation and Operation of Meters) Regulations, 2006.

2.3.2.11 PPA dated 19.03.2012 executed with M/s Uttam Sugar Mills Ltd.

- a. Clauses 2.2, 5.1 & point no. 5 of Annexure-II of the aforesaid PPA states for raising of monthly bills by UPCL for sale of power to generating company. The said Clauses are not consistent with the Regulation 45 of RE Regulations, 2013. UPCL is required to make necessary corrections in the PPA in accordance with Clause (e) of Para 2.3.2.1 of this Order.
- b. Clause 5.4 of the aforesaid PPA states for making payment after rebate @ 2% within 7 working days against the monthly bills for electricity raised by generator. This clause is against the provision of the regulation and needs to be corrected in accordance with RE Regulations, 2010.
- c. Clauses 14.9 & 14.10 of the aforesaid PPA state for reading/MRI report of the bill meter. These Clauses also provides limit of variation in reading of Main & Check Meters upto 1%. The variation in reading should not be more than 0.4%. Further, all the metering arrangements should be in accordance with CEA (Installation and Operation of Meters) Regulations, 2006.

2.3.3 UPCL is directed to take note of the above modifications and carry out the same in the PPA and submit the amended/supplementary PPA to the Commission within 45 days of the date of the Order. UPCL is also directed to submit the remaining PPAs which have not yet been approved by the Commission within 15 days of the date of the Order including the PPA of M/s. Himalaya Hydro (P) Ltd. in accordance with the prevailing Regulations.

2.4 Draft Model PPA

2.4.1 The Commission has observed that the PPA's entered into by UPCL with various generators are in different formats and also have different conditions in them.

Accordingly, the Commission intends to prepare and issue a draft Model PPA shortly in accordance with the Regulations so as to have a common format of the PPA with uniform and consistent conditions. The Draft Model PPA would be notified and comments/suggestions on the same will be sought from the Licensee, project developers & other stakeholders before finalizing the same.

2.4.2 With this, Petition no. 21 of 2014 and 23 of 2014 stands disposed.

2.4.3 Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member