

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 1 of 2015

In the matter of:

Petitions seeking approval of the Power Purchase Agreements executed by Uttarakhand Power Corporation Ltd with 3 nos. small hydro generators.

In the matter of:

Uttarakhand Power Corporation Ltd.

...Petitioner

AND

M/s Regency Yamuna Energy Ltd.

M/s Regency Aquaelectro & Motelresorts Ltd.

M/s Himalaya Hydro Pvt. Ltd

...Respondents

CORAM

Shri Subhash Kumar Chairman

Shri C.S. Sharma Member

Shri K.P. Singh Member

Date of Hearing: January 09, 2015

Date of Order: February 10, 2015

The Order relates to the Petitions filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "the Petitioner" or "the Licensee" or "UPCL") seeking approval of the PPAs executed with M/s Regency Yamuna Energy Ltd. (hereinafter referred to as "R-1" or "RYEL"), M/s Regency Aquaelectro & Motelresorts Ltd. (hereinafter referred to as "R-2" or "RAML") and M/s Himalaya Hydro Pvt. Ltd. (hereinafter referred to as "R-3" or "HHPL").

1. Background

1.1 The Petitioner had filed a Petition dated 30.06.2014 seeking approval of draft PPA dated 31.01.2003 executed with the Respondent R-1. A copy of the aforesaid Petition was forwarded to M/s RYEL for submission of comments on the same, if any. The

Commission also held a hearing on 15.07.2014 for admissibility of the Petition. UPCL vide its letter dated 15.07.2014 submitted that certain clauses of the aforesaid PPA needed reconsideration by them and requested the Commission to allow it to withdraw the aforesaid Petition with permission to file it afresh. During the hearing Respondent had also referred to some minor defects in the draft PPA and submitted that UPCL had agreed to correct the same before signing it with the Respondent. Considering the submissions made by both Petitioner and Respondent R-1 the Commission vide Order dated 15.07.2014 allowed withdrawal of the Petition by UPCL as requested by the licensee.

- 1.2 UPCL vide the instant Petition dated 10.11.2014 again requested approval of the draft PPA dated 31.01.2003 executed with M/s RYEL (Respondent R-1). A copy of the same was forwarded to M/s RYEL for submission of comments, if any, on the same. M/s RYEL vide its reply dated 14.11.2014 submitted few comments on the Petition and also submitted a fresh draft PPA also. The Commission vide its letter dated 20.11.2014 directed M/s RYEL for submission of comments on the Petition instead of submission of a separate draft PPA.
- 1.3 Meanwhile, UPCL submitted two (2) more Petitions dated 03.12.2014 & 16.12.2014 for approval of draft PPAs executed with M/s Regency Aquaelectro & Motelresorts Ltd. and M/s Himalaya Hydro Pvt. Ltd. and these Petitions were forwarded to respective generators for submission of their comments by 06.01.2015.
- 1.4 M/s RYEL vide its reply dated 08.01.2015 submitted that since it has already submitted its comments alongwith the draft PPA vide the above referred letter dated 14.11.2014, hence, the same may be taken on record by the Commission. Respondent R-1 further requested the Commission for issuing directions to UPCL for signing of supplementary PPA in accordance with the RE Regulations, 2013. Other two respondents namely R-2 & R-3 did not submit any comment on the above referred Petitions submitted by UPCL.
- 1.5 The Commission held a hearing on 09.01.2015 for admissibility of all the three Petitions submitted by UPCL. During the hearing, all the Respondents expressed their consent on the respective Draft PPAs submitted by UPCL. Accordingly, the 3 Petitions filed in the matter were admitted vide the Commission's Order dated 09.01.2015. The Commission vide the aforesaid order further directed that since the subject matter of the 3 Petitions are similar, hence, the same should be clubbed. During the hearing Respondent R-1 again submitted that Supplementary Agreement was yet to be signed for its Badyar SHP which

has to be in accordance with RE Regulations, 2013. In this regard, the Commission vide the aforesaid order directed Respondent R-1 to make a written submission in the matter within one week of the date of the Order.

- 1.6 M/s RYEL filed its written submission under affidavit dated 09.01.2015. Respondent R-1 in its written submission mentioned that it had opted for generic tariff specified under RE Regulations, 2013. M/s RYEL submitted it had asked UPCL for signing of supplementary PPA or fresh PPA and payment of energy bills in accordance with RE Regulations, 2013, however, UPCL has neither signed the supplementary PPA nor has remitted the energy bills as per the aforesaid regulations and has delayed the same causing hardship to it.

2. Commission's Views & Decisions

2.1 Legal Requirement for approval of PPA

2.1.1 A power purchase agreement (PPA) is a contract between two parties, one who generates electricity for the purpose of selling it (the seller) and one who is looking to purchase electricity (the buyer). The PPA defines all of the commercial terms for the sale of electricity between the two parties, including, penalties for under delivery, payment terms, and conditions for termination of Agreement etc., and are to be complied in accordance with the prevalent rules & regulations.

2.1.2 Section 86(1)(b) of the Electricity Act, 2003 stipulates a function of the State Commission that 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 licence, 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 Petition 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 a distribution licensee is required to seek approval of the PPAs entered or proposed to be entered by it from the Commission.

2.1.7 Moreover, the Commission observes that earlier Petition filed by UPCL for approval of PPA with Respondent R-1 was returned back to UPCL on their request for modification of some of the conditions in the PPA. However, UPCL again submitted the original PPA dated 31.01.2003 without incorporating any changes in the same. UPCL also did not submit any justification for such an action which has caused an

undue delay in the proceedings and timely disposal of the matter. UPCL is hereby, cautioned to refrain from such an unwarranted act, failing which appropriate action may be initiated u/s 142 of Electricity Act, 2003 against its officers who are found responsible for such action/inactions.

2.2 Consistency of the PPA with the Regulations

2.2.1 Proviso 3 and 4 of Regulation 2(1) of RE Regulations, 2010 specifies as under:

*“Provided further that in all the cases, where legally valid PPAs have been entered into with the distribution licensee or where financial closure of the project has taken place prior to coming into force of these Regulations on the basis of previous Regulations/Orders of the Commission, such generators shall have the option to be covered under these Regulations, in which case these Regulations shall be applicable to them and the generators would be required to convey such option within one month of the notification of these Regulations. **The PPAs of such generators would need to be amended to make them in line with these Regulations (as amended from time to time), failing which the provisions of these Regulations shall be deemed to have been incorporated in their PPAs and will have overriding effect over any of the previous provisions.** Provided further that generators who have entered into long term PPAs with State Distribution Licensee and who have not opted to be covered under these Regulations, shall also be governed by these Regulations except the provisions of Chapter 4 and 5 of these Regulations.”*

(Emphasis added)

Similarly, Regulation 2(1) of RE Regulations, 2013 specifies as under:

“These regulations shall apply in all cases where supply of electricity is being made from Renewable Energy Sources and Non-fossil Fuel Based Co-generating Stations, commissioned after coming in effect of these Regulations, to the distribution licensees or local rural grids within the State of Uttarakhand.”

Further, Regulation 6(7) of RE Regulations, 2013 specifies as under:

“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, from the reading of the above provisions of the RE Regulations, 2010 as well as RE Regulations, 2013, it is clear that all the existing PPAs of UPCL with the generators were required to be amended so as to make them consistent with the

prevalent Regulations. However, UPCL did not ensure compliance of the same. Thus, the Petitions filed by UPCL for approval of the PPAs is also examined in light of the provisions stipulated under RE Regulations, 2013.

2.2.3 It is observed that the PPAs have already been executed before the 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 conferred upon the Central Commission under Section 178 to frame Regulations, the State Commission has been vested with powers to frame Regulations under Section 181 of the Electricity Act, 2003. Hence, in accordance with the above directions of the Hon'ble Supreme 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 Accordingly, PPAs executed between UPCL & the generators 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 PPA and Order on the same

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

S. No.	Respondent's Name	Project Name	Capacity (MW)	Date of PPA
1	M/s Regency Yamuna Energy Ltd.	Badyar (SHP)	5	31.01.2003
2	M/s Regency Aquaelectro & Motelresorts Ltd.	Hanuman Ganga (SHP)	5	31.01.2003 & 04.02.2006
3	M/s Himalaya Hydro Pvt. Ltd	Motigad (SHP)	5	05.02.2003 & 07.12.2009

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

2.3.2.1 PPA dated 31.01.2003 executed with M/s Regency Yamuna Energy 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 requires revision in this regard.
- (b) Date of Implementation Agreement at Clause 2.2.40 of the aforesaid PPA has been mentioned as 07.05.1997. The said date is incorrect which should be replaced by the correct date i.e. 28.04.2004.
- (c) Clause 2.2.43 of the aforesaid PPA provides for definition of Interconnection Point. The said definition is inconsistent with the definition given in the RE Regulations, 2013 and the same needs to be corrected in accordance with the regulation 3(v) of RE Regulations, 2013.
- (d) Clause 6.1 dealing with payment for excess drawl made by the generator from UPCL's system for start up and maintenance needs to be modified in accordance with Regulation 45 of RE Regulations, 2013.
- (e) 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. Second proviso of Regulation 1(2) of the RE Regulations, 2013 provides that:

“Provided further that Regulations in Chapter 4 & 5, shall not be applicable for generating stations commissioned prior to coming into effect of these Regulations and their present tariffs shall continue to be applicable.”

Regulation 10(2) of the RE Regulations, 2013 provides that:

“The RE Based Generating Stations and Co-generating Stations, except those mentioned under Proviso 2 to sub- Regulation (1) of Regulation 2, may opt for the generic tariff, as determined based on norms specified in these Regulations for different technologies, or may file a petition before the Commission for determination of “Project Specific Tariff”. For this purpose RE Based Generating Stations and Co-generating Stations shall give its option to the distribution licensee at least 3 months in advance of date of commissioning of the project or commissioning of the 1st unit, in case of multiple units or one month after the date of issuance of these Regulations, whichever is later. This option once exercised shall not be allowed to be changed during the validity period of the PPA.”

Since the project of M/s RYEL has been commissioned after notification of RE Regulations, 2013, the said Clause 6.2 should be amended in accordance with above mentioned provisos of the RE Regulations, 2013 and option exercised by the generator.

- (f) Clause 6.4 of the aforesaid PPA provides for Deemed Generation. The said Clause and the associated definitions and provisions 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 and types of meters to be installed and related procedures 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 Regulations 22 & 23 of the RE Regulations, 2013 and be amended

accordingly.

- (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 and Regulation 46 of RE Regulations, 2013. UPCL is required to amend the PPA in accordance with the stated provision.

2.3.2.2 PPA dated 31.01.2003 and Supplementary PPA dated 04.02.2006 executed with M/s Regency Aquaelectro & Motelresorts Ltd.

- (a) Preamble of the PPA dated 31.01.2003 specifies that 10% of deliverable energy shall be provided free of cost from fifteen year of date of commencement of project. However, Implementation Agreement dated 13.01.2010 at clause 4.2.1 provides for 19% of deliverable energy to be provided in the form of Royalty energy. UPCL is required to take note of the same.
- (b) 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 be amended.
- (c) Date of Implementation Agreement at Clause 2.2.40 of the aforesaid PPA has been mentioned as 07.05.1997. The said date is incorrect which should be replaced by the correct date i.e. 13.01.2010.
- (d) Clause 2.2.43 of the aforesaid PPA provides for definition of Interconnection Point. The said definition is inconsistent with the definition given in the RE Regulations, 2013 and the same be corrected in accordance with the regulation 3(v) of RE Regulations, 2013.
- (e) Clause 6.1 dealing with payment for excess drawl made by the generator from UPCL's system for start up and maintenance be modified in accordance with

Regulation 45 of RE Regulations, 2013.

- (f) 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. Since Regulation 2(1) of RE Regulations, 2010 provides that :

“ (1) These regulations shall apply in all cases where tariffs for supply of electricity from Renewable Energy Sources and Non-fossil Fuel Based Co-generating Stations to the distribution licensees or local rural grids within the State of Uttarakhand are to be determined by the Commission under Section 62 of the Act.

Provided further that Regulations in Chapter 4 & 5 shall not be applicable for generating stations commissioned before 1.1.2002 and their present tariffs shall continue to be applicable till they are decided by the Commission on case to case basis.

Provided further that in respect of generating stations where directions/orders have been issued by a higher court, they shall be governed by such directions/orders. Provided further that in all the cases, where legally valid PPAs have been entered into with the distribution licensee or where financial closure of the project has taken place prior to coming into force of these Regulations on the basis of previous Regulations/Orders of the Commission, such generators shall have the option to be covered under these Regulations, in which case these Regulations shall be applicable to them and the generators would be required to convey such option within one month of the notification of these Regulations. The PPAs of such generators would need to be amended to make them in line with these Regulations (as amended from time to time), failing which the provisions of these Regulations shall be deemed to have been incorporated in their PPAs and will have overriding effect over any of the previous provisions.

Provided further that generators who have entered into long term PPAs with State Distribution Licensee and who have not opted to be covered under these Regulations, shall also be governed by these Regulations except the provisions of Chapter 4 and 5 of these Regulations.”

Accordingly, Clause 6.2 should be amended in light of the option exercised by the generator in accordance with RE Regulations, 2010.

- (g) Clause 6.4 of the aforesaid PPA provides for Deemed Generation. The said Clause and the associated definitions and provisions needs to be consistent in accordance with the provisions specified in Regulation 47 of RE Regulations,

2013.

- (h) 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 and types of meters to be installed and related procedures should be consistent with the Central Electricity Authority (Installation and Operation of meters) Regulations, 2006.
- (i) 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 regulation 22 & 23 of the RE Regulations, 2013.
- (j) 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.
- (k) 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 and Regulation 46 of RE Regulations, 2013. UPCL is required to take note of the above provision of the regulation while amending the PPA.

2.3.2.3 PPA dated 05.02.2003 and Supplementary PPA dated 05.02.2003 executed with M/s Himalaya Hydro 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 requires revision in this regard.
- (b) Date of Implementation Agreement at Clause 2.2.40 of the aforesaid PPA has been mentioned as 07.05.1997. The said date is incorrect which should be replaced by the correct date i.e. 28.04.2004.
- (c) Clause 2.2.43 of the aforesaid PPA provides for definition of Interconnection Point. The said definition is inconsistent with the definition given in the RE Regulations, 2013 and the same be corrected in accordance with the regulation

3(v) of RE Regulations, 2013.

- (d) Clause 6.1 (or 2.2 of Supplementary PPA) dealing with payment for excess drawl made by the generator from UPCL's system for start up and maintenance be modified in accordance with Regulation 45 of RE Regulations, 2013.
- (e) Clause 6.2 of the aforesaid PPA has been substituted by the Supplementary PPA dated 05.02.2003 which provides for Tariff for Net Saleable Energy as the levelised rate specified in RE Regulations, 2008 as amended from time to time. This Clause should be amended in accordance with the provisions of the regulations as stated in the above sub-Para (f) of Para 2.3.2.2.
- (f) Clause 6.4 of the aforesaid PPA provides for Deemed Generation. The said Clause and the associated definitions and provisions 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 and types of meters to be installed and related procedures 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 regulation 22 & 23 of the RE Regulations, 2013 and be amended accordingly.
- (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 and Regulation 46 of RE Regulations, 2013. UPCL is required amend the PPA in accordance with the stated provision.

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 15 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.

2.3.4 The Petitions stands disposed.

2.3.5 Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member

(Subhash Kumar)
Chairman