

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Petition seeking approval of the Commission on return of banked power by UPCL to Haryana Power Purchase Centre through a trader.

**In the matter of:**

Uttarakhand Power Corporation Ltd. ... Petitioner  
Victoria Cross Vijeyta Gabar Singh Bhawan,  
Kanwali Road, Dehradun.

**CORAM**

**Shri Subhash Kumar    Chairman**  
**Shri C.S. Sharma        Member**

**Date of Hearing: July 02, 2015**

**Date of Order: July 03, 2015**

This Order relates to the Petition dated 18.06.2015 filed by UPCL (hereinafter referred to as "Petitioner" or "Licensee") seeking approval of the Commission on return of the banked power by UPCL to Haryana Power Purchase Centre (hereinafter referred to as "HPPC") through M/s Manikaran Power Limited (hereinafter referred to as "M/s MPL" or "trader").

**1. Petitioner's Submissions**

- 1.1. UPCL in its Petition submitted that in July-August, 2014 it had estimated a shortage of 200 MW RTC power during the period October, 2014 to March, 2015 and accordingly, a tender was issued for purchase of power with the objective to make up for the power shortage. After finalization of the tender UPCL had applied for the approval of corridor from the various bidders selected. However, applications for grant of corridor were rejected by the RLDC since there was no corridor available from WR-NR and ER-NR for short-term due to the transmission constraints.

- 1.2. The Licensee has submitted that in order to ensure consistent electricity supply to its consumers it had signed LOI dated 26.08.2014 and had entered into a banking arrangement for 200 MW RTC power from HPPC (Supplier), with M/s MPL on 26.11.2014 for supply of power from October, 2014 to March, 2015 under a banking arrangement.
- 1.3. UPCL further submitted that, M/s MPL and HPPC signed a LoI dated 25.08.2014 and subsequent banking agreements dated 05.12.2014 which was a back to back arrangement to the Banking Arrangement between UPCL and M/s MPL for supply of 200 MW of power from HPPC to the Petitioner. The Petitioner submitted that in accordance with Recital II of the Banking Arrangement it is bound to ensure return of 105% of this banked power during the surplus months, i.e. summer/rainy season of the financial year, i.e. between 01.07.2015 – 30.09.2015.
- 1.4. UPCL has further submitted that since the net energy received by it under Banking Agreement was 809.125 MU at distribution licensee periphery for FY 2014-15, hence, it is bound to supply 105% of 809.125 MU which works out to 849.58128 MU of energy to HPPC during July – September, 2015.
- 1.5. The Licensee has submitted that as per the Banking Agreement, in the event the Petitioner is not able to deliver the power to HPPC during July – September, 2015, then penalty will be paid by the Petitioner @ average IEX rate of that particular day +Rs.2.04 /kWh.
- 1.6. UPCL while referring to its power purchase plan submitted that it has estimated a deficit/shortfall of 181 MUs in the months of July 2015, 90 MUs in the month of August 2015 and 147 MUs in the month of September 2015.
- 1.7. The Petitioner has submitted that it had earlier floated a tender for procurement of purchase of 1000 MW RTC power for the months of April to September, 2015, however, the power which was offered from WR was not taken into account as there was no transmission capacity available as per the NLDC website. Also, in terms of the latest report dated 02.06.2015 by Indian Meteorological Department, low monsoon was predicted in July - September 2015 in North West Region, and, hence, it has estimated that the Petitioner will be required to procure more power in July - September 2015. In this context UPCL also submitted that it was impossible to float another tender for procurement of power, as the same was a time consuming process which would not be concluded before July, 2015 by which time the Petitioner is contractually bound to commence supply of power to HPPC. UPCL has informed that the HPPC has vide its letter dated 26.05.2015 communicated to M/s MPL and M/s MPL further has communicated to the Petitioner vide letter

dated 27.05.2015 about the implication on the Petitioner if the banked power is not returned to HPPC. UPCL has submitted that in the event, the Petitioner is unable to return the banked power during July - September, 2015, it will be liable to heavy penalties.

- 1.8. The Licensee has submitted that it has received a proposal dated 12.05.2015 for supply of power upto 400 MW RTC on firm basis from M/s MPL for the period May, 2015 - September, 2015 and M/s MPL is intending to execute a PPA with, a generating company situated in Odisha with a capacity of 1200 MW. UPCL has stated that rates offered by L-1 bidders were Rs. 3.27/kWh, Rs. 3.25/kWh & Rs. 3.29/kWh for the months of July, August & September, 2015 respectively and M/s MPL is offering to supply 400 MW RTC from Odisha [Eastern Region] at competitive rates which are equal to that discovered through the competitive bidding process conducted by the Petitioner on 27th March 2015.
- 1.9. UPCL has submitted that the average rate offered by the Trader, i.e. Rs. 3.27/kWh is also lower than the average rate of Rs. 3.88/ kWh for purchase of deficit power equal to 1700.46 MUs at the total cost of Rs. 659.78 Crore approved by the Commission in the Tariff Order dated 11.04.2015 for FY 2015-16 and would result in the savings for the Petitioner and will thus be in the best interest of the consumers.
- 1.10. The Petitioner has submitted that the power will have to be procured from Eastern Region (ER) or NR region only as presently there is no corridor availability from Western Region (WR) region into (NR) Region. For last 3 years there has been congestion in power flowing from ER and WR into NR region. UPCL has submitted that it has to apply well in advance for securing the corridor so that the power can be scheduled from ER to Haryana thereby reducing the hurdles for securing the corridor.
- 1.11. UPCL while referring to under Regulation 80(2) of the Tariff Regulations, 2011 and Section 62 and 86(1)(b) of the Electricity Act, 2003 has requested the Commission for approval of the power procurement of 200 MW in the months of July 2015, 150 MW in the month of August 2015 and 150 MW in the month of September 2015 from MPL through ER and the supply of 849.58128 MUs to HPPC directly.
- 1.12. UPCL has also referred to the Hon'ble ATE's judgment dated 31.3.2010, in Appeal Nos. 106 and 107 of 2009, BSES Rajdhani Power Limited vs. DERC & Ors., wherein, it has been established that the powers of the State Commission to consider, the approval of the procurement of power through negotiated agreement is not affected by the guidelines issued by the Ministry of Power

regarding competitive bidding process. UPCL has stated that there is no bar to this Commission approving the power procurement of upto 300 MW in the months of July 2015, 200 MW in the month of August 2015 and 200 MW in the month of September 2015 MW from M/s MPL.

- 1.13. UPCL has further submitted that in the event, this arrangement is not approved, the Petitioner will be forced to procure power from the power exchange which may be a needlessly expensive proposition, but will also burden the consumers unduly. UPCL has submitted that given the penalty clause in the Banking Arrangement, the Petitioner cannot take risk of purchasing power on the Power Exchange Platform on a daily basis since there is heavy penalty for every day of default. The cost-data regarding the average prices on IEX for the months of July, August, September, years 2012, 2013 and 2014 works out to a average price of Rs. 3.11/kWh and further on adding various other charges of approximately 25 paise works out to a Landed Price of Rs. 3.37/kWh at Uttarakhand Periphery and there will also be an additional cost to send this power Back to HPPC which will be a very expensive proposition which too may not be consistent as Power Exchange platform mechanism is a daily discovered price.

## **2. Commission's Views & Decision**

- 2.1 Section 86(1)(b) of the Electricity Act, 2003 lays down the following as one of the function of the State Commission:

*“(b) 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;”*

- 2.2 Regulation 39 of UERC (Conduct of Business) Regulations, 2014 specifies as under:

### ***“(39) Regulation of Distribution licensee's purchase of power***

- (1) The distribution licensee shall file with the Commission in complete form copies of all Power Purchase Agreements already entered into by it.*
- (2) The distribution licensee to establish to the satisfaction of the Commission that the purchase of power by it is under a transparent power purchase procurement process and is economical and the power is necessary to meet its service obligation.*
- (3) The Distribution licensee shall apply to the Commission for approval of the draft Power Purchase agreement that it proposes to enter into with the suppliers. The Commission may pass orders:
  - (a) Approving the agreement; or**

*(b) Approving the agreement with modifications proposed to the terms of the agreement; or*

*(c) Rejecting the agreement.*

*(4) Nothing contained herein shall affect the obligations of distribution licensee under the existing contract and arrangement for purchase, import or acquisition of electricity from generating companies, electricity trader and from other persons with whom the licensee has agreements or arrangements of power purchase or procurement of energy in accordance with the terms and conditions of such agreement and arrangement consented to or approved by the Commission.*

*(5) The provisions of sub-regulations (2) and (3) above or any action taken therein shall not, in any manner, prejudice the exercise of functions and powers of the Commission under any of the other provisions of the applicable law, the Regulations and Orders issued from time to time."*

2.3 Further, the Distribution and Retail Supply License 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;*

*...*

*5.2 The Licensee shall not without the general or special approval of the Commission:*

*(a) purchase or import or otherwise acquire electricity under this Licence from any Person other than generating companies or any other person as per the purchase agreements or arrangements approved by the Commission..."*

2.4 The above mentioned provisions of the Act, Regulations & License conditions require the licensee to seek prior approval of the Commission in respect of the power procurement. UPCL had procured power from October, 2014 to March, 2015 under banking arrangement vide agreements dated 26.11.2014 & 05.12.2014, wherein, the power obtained is to be returned from July to September, 2015. 105% of the power received is to be returned in addition to the trading margin payable to the trader as per the agreement. The Commission observes that the licensee had not sought any approval for entering in to this agreement which has cost implications both by way of return of excess power as also the trading margin, and now vide the present Petition dated 18.06.2015, the licensee has requested the Commission for approval

for returning the power in accordance with the above mentioned banking arrangements from July, 2015. Moreover, power procured through above mentioned banking arrangement by licensee has explicit provision of penalty in case of default for return of power by specified time.

2.5 During the hearing held on 02.07.2015 in the matter, the Petitioner accepted the fact that they did not seek any approval of the Commission for power procurement as mentioned above. However, no specific reason could be cited by the Petitioner for its default. The Petitioner, being a commercial entity should be aware of its duties and responsibilities entrusted under the Act and the Regulations, and is expected to act accordingly. The Commission is of the view that UPCL has failed to comply with the explicit provisions of the Act and the Regulations framed under thereunder.

2.6 Infact UPCL has filed the Petition under Regulation 80 of the MYT Regulations, 2011 which specifies as under:

“ ...

(2) *Any variation, during any quarter of a financial year, in the quantum or cost of power procured and any procurement from sources other than that mentioned in the power procurement plan approved by the Commission, in excess of Five (5) percent of the quantum or cost, as the case may be, of power procurement for such quarter, as approved by the Commission in the power procurement plan of the Distribution Licensee, shall be done only with the prior approval of the Commission:*

(3) ...

*Provided that in such cases, the Distribution Licensee shall obtain post facto approval from the Commission within 15 days of such power procurement for which prior approval was not taken.”*

*(Emphasis Added)*

Thus, it is apparent that the licensee has failed to comply with the requirements laid down in the Regulations for seeking approval of the Commission. It procured power from HPPC under the banking arrangement, however, it did not approach the Commission for seeking its approval on the banking arrangement, neither prior to the agreement and nor post-facto. Furthermore, this Petition was also filed few days before the power was scheduled to be returned to HPPC, i.e. from July 01, 2015. The document of NLDC issued on 01/05/2015 forming part of the Petition is sufficient to suggest that the licensee was aware of

the transmission constraints in the Western Corridor. Furthermore, it had received offer from M/s MPL dated 12.05.2015 for supply of power upto 400 MW RTC during May, 2015 to September, 2015. Still the licensee chose to wait till the end and then approached the Commission vide its Petition dated 18.06.2015. All this reflects towards the casual and lackadaisical approach of the licensee in ensuring compliances of the provisions of the Act and the Regulations. **The Commission has taken serious note of the approach of the licensee and directs it to mend its affairs failing which any implications of such misdemeanour on the part of the licensee would be solely to its account and would be considered as unauthorised expenses and would be dealt with in the ARR determination accordingly.**

- 2.7 The Commission observes that in the instant matter UPCL is bound to return power to HPPC within the stipulated time failing which it would be liable for huge financial penalty as agreed under the above mentioned Banking Arrangement by the licensee. The Commission has also taken note of the fact that the Petitioner has arranged partial power procurement through competitive bidding carried out by it for 1000 MW RTC power over the period of six months. Apparently, the banked power which was to be returned to HPPC during July to September was not factored in while finalising procurement through said competitive bidding. The Commission also recognises that at this juncture if Power Procurement through competitive bidding is initiated again, the same would further add to the delay and could be punitive to the licensee under the banking agreement with HPPC.
- 2.8 UPCL has stated that the rate offered by M/s MPL is lower than the rates prevailing in power exchange. Referring to the average prices in IEX for the months of July, August & September for the years 2012, 2013 & 2014 UPCL has submitted during these months power was available at an average price of Rs. 3.11/kWh and further on adding various other charges landed price of power procured through exchange works out to Rs. 3.37/kWh. However, the Commission observes the present scenario of power availability and corresponding rate in IEX, wherein, the rates for other Regions excluding the Northern Region (monthly clearing price) for the months of May & June, 2015 were around Rs. 2.50/kWh. The rates in the Northern Region are higher. It is understood that with the removal of congestion in WR-NR corridor with commissioning of 765 kV Gwalior-Jaipur transmission line, congestion from WR would ease to the tune of 2500 MW thereby aligning the NR rates also to those prevailing in other regions.

- 2.9 The Petitioner has submitted that it proposes to enter into an agreement with M/s. MPL at the L-1 rates offered by the bidders for the period July to September, 2015. It is however observed that the said L-1 rates are based on analysis after omitting offers from western region as mentioned in para 1.7 above. After removal of congestion in the WR-NR corridor, the said L-1 rate will no more be valid. In this regard, it would be relevant to refer to the Hon'ble ATE's judgment dated 31.3.2010 relied by the licensee also, in Appeal Nos. 106 and 107 of 2009. The Judgment clearly states that it is always open to the Commission to direct the licensee to carry out power procurement through competitive bidding process in case where the rates under the negotiated agreements are higher. The Commission thus has to examine the prudence of the power purchase cost of the licensee and as dealt above with the removal of congestion in the WR-NR corridor, the rates at which power will be available is likely to go down.
- 2.10 In this regard, during the hearing UPCL has submitted that with the completion of 765 kV Gwalior-Jaipur transmission line, the problem of transmission capacity shall be mitigated. It is understood that the above mentioned transmission line is expected to be completed by the end of July, 2015. The Commission is of the opinion that with the removal of the congestion in WR-NR corridor more surplus power would flow from Western region to the Northern Region, thereby reducing the power purchase prices.
- 2.11 Keeping in view of the eventualities as submitted by licensee and as an exceptional case based on the discussions in the preceding Paras, the Commission is allowing procurement of power from M/s MPL. Accordingly, UPCL may procure power RTC of 300 MW during July, 200 MW in August and 200 MW in September, 2015 as requested by it from M/s MPL at the tariffs offered by it at the delivery point, till the congestion in WR-NR corridor continues.
- 2.12 The Commission observes that the necessity for this emergency purchase from an offer has become unavoidable solely on account of defective planning of procurement. UPCL is directed to ensure that as soon as the congestion in WR-NR corridor is mitigated, power is procured from the cheapest sources including power exchanges failing which the Commission would consider only prudent cost on this account during the trueing up exercise for FY 2015-16.
- 2.13 The Commission also directs that hereinafter all such banking arrangement which have cost implications need necessarily be entered into by licensee after obtaining prior approval of



this Commission. Failure to do so will result in not only disallowance of the costs incurred but may also entail appropriate action for non-adherence to act/regulation.

2.14 Ordered Accordingly.

**(C.S. Sharma)**  
**Member**

**(Subhash Kumar)**  
**Chairman**