

Before

## UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 22 of 2015

**In the matter of:**

Petition seeking the approval of the Commission for advance banking of power by the UPCL from Haryana Power Purchase Centre/Northern Region Utility, through a trader.

**In the matter of:**

Uttarakhand Power Corporation Ltd.

... Petitioner

**CORAM**

**Shri Subhash Kumar    Chairman**

**Shri C.S. Sharma        Member**

**Shri K.P. Singh         Member**

**Date of Hearing: September 24, 2015**

**Date of Order: October 09, 2015**

This Order relates to the Petition dated 15.09.2015 filed by UPCL (hereinafter referred to as "Petitioner" or "Licensee") seeking approval of the Commission for advance banking of power by the UPCL from 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 there would be a shortage of 200 MW and above RTC power during the period from October, 2015 to March, 2016. Referring to the past trend, UPCL submitted that the power from other regions e.g. WR, ER could not be scheduled due to corridor constraints and UPCL would have to resort to impose load shedding of the consumers in the State.
- 1.2. The Licensee submitted that in order to ensure consistent electricity supply to its consumers it has entered into a Banking Agreement dated 10.09.2015 for 200 MW RTC power (864 MU

approximately) from HPPC/Northern Region Utility (Supplier), through M/s MPL for supply of power from October, 2015 to March, 2016.

- 1.3. 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 July- September, 2016. This returnable power works out to 907 MUs.
- 1.4. UPCL further submitted that as per the previous year trends, the generation of the state owned generating company and IPPs are at its lowest level from October to March (approximately 271 MU per month) and highest level from July to September (approximately 585 MU per month) which makes UPCL surplus in power during monsoon months.
- 1.5. The Licensee submitted that after the detailed consideration of various offers received, the Banking Agreement has been done with M/s Manikaran Power Ltd. for advance banking of 200 MW RTC power from MPL for the period October, 2015 - March, 2016 which would be returned back from the month of July to September 2016 by the Petitioner. The reasons for entering into the agreement with M/s MPL as submitted by the Petitioner are as follows:
  - (a) The offer period exactly matched with the requirement of UPCL and also the period of return of power.
  - (b) The trading margin offered by M/s MPL was the lowest when compared to that of other.
- 1.6. UPCL while referring to Regulation 80(2) & 80(3)(e) 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 said Banking Agreement.
- 1.7. UPCL further submitted that in the event, the banking arrangement was not approved, it would be forced to procure power from the power exchange/short term power procurement which may be a needlessly expensive proposition and would consequently also burden the consumers unduly.
- 1.8. During the hearing held on 24.09.2015 the Commission enquired from UPCL as to whether the offers for banking of power have been solicited from firms or open tendering procedure was followed for the above mentioned procurement of power. UPCL informed that offers from trading firms are invariably received throughout the year and UPCL accepts the offer based on the terms and conditions best suited to its requirement. UPCL also submitted that the average

prices for procurement of power from IEX for the current month added with other charges works out to higher than the ceiling of Rs. 3.88/kWh specified at Uttarakhand Periphery in the Tariff Order for FY 2015-16. The Petitioner further submitted that procurement of power through power exchanges are an expensive proposition. Moreover, this may not be a consistent measure 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 Sub Regulation 80(3) of the MYT regulations, 2011 stipulates that:

*"80(3)Where there has been a shortfall or failure in the supply of electricity from any approved source of supply during the financial year, the Distribution Licensee may enter into a short-term arrangement or agreement for procurement of power without the prior approval of the Commission, where the tariff for power procured under such arrangement or agreement is determined in accordance with:*

*(a) A transparent process of bidding in accordance with competitive bidding guidelines issued by the Central Government*

*...*

*(e)Procurement by way of 'banking' transactions;*

*...*

*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)**

2.5 The above mentioned provisions of the Act, Regulations & License conditions require the licensee to seek approval of the Commission in respect of the power procurement including

Banking Arrangement. UPCL has entered into Banking Agreement dated 10.09.2015 for procurement of 200 MW RTC power from October, 2015 to March, 2016. In accordance with the said agreement 105% of the power received is to be returned from July to September, 2016. Further, trading margin of 3.90 Paisa/Unit is also payable to the trader as per the agreement.

2.6 The Petitioner at Para 4 of its petition dated 15.09.2015 has submitted that:

- i. The Petitioner estimates that it will be suffering from 200 MW and above RTC power shortage from October, 2015 to March, 2016. Energy demand was registering a fresh spurt in Uttarakhand, industries began facing regular power cuts which hampered production and was detrimental to the state economy. As per the past trend, the power from other regions eg. WR, ER could not be scheduled due to corridor constraints (Application refused by NRLDC enclosed as **Annexure-1**) and UPCL had the last resort to impose load shedding of the consumers in the state. In order to ensure consistent Electricity supply to its consumers the Petitioner has entered into a Banking Agreement dated 10-09-2015 (**Annexure-2**) for 200 MW RTC power (864 MU approximately) from HPPC/Northern Region Utility (Supplier), through MPL for supply of power from October, 2015 to March, 2016. As per the Banking Agreement the Petitioner is bound to ensure return of 105% of this banked power (Recital II of the Banking Agreement) during the surplus months i.e. summer/rainy season of the coming financial year i.e. 1.07.2016 –30.09.2016. Since the net energy received by the Petitioner under Banking Agreement works out to be 864.00 MU at distribution licensee periphery for FY 2015-16, the Petitioner is bound to supply 105% of 864.00 MU which works out to 907 MU of energy to HPPC/Northern Region Utility during July – September, 2016.*
- ii. Further it also submitted that as per the previous year trends, the generation of the state owned generating company and IPP's are at its lowest level from October to March (approximately 271 MU per month) and highest level from July to September (approximately 585 MU per month) which makes UPCL in surplus power position.*
- iii. As per the analysis of the Petitioner's requirement, there is deficit/shortfall of 200 MW and above in the months of Oct 2015, 200 MW and above in the month of November 2015, 200 MW and above in the month of December 2015, 200 MW and above in the month of January 2016, 200 MW and above in the month of February 2016 & 200 MW and above in the month of March 2016. Petitioner's projected power purchase plan showing deficit of power is attached as Annexure- 3.*
- iv. That after the detailed consideration of various offers received by the Petitioner, the Banking Agreement was done with M/s Manikaran Power Ltd. for advance banking of 200 MW RTC of*

power from MPL for the period Oct, 2015 – March, 2016 and to be returned back from the month of July to September 2016 by the Petitioner due to the following reasons:

...

v. Therefore, the Hon'ble Commission may approve the advance banking of power for 200 MW in the month of Oct 2015, 200 MW ..... 200 MW in the month of March 2016 and returned back from the month of July to September 2016 from UPCL through M/s MPL directly. This will enable the Petitioner to meet out the shortage of power during Oct 2015-March 2016 and return the banked energy to HPPC/Northern Region Utility during July – September, 2016.

vi...

vii. It is lastly submitted that the Petitioner is opting for the most cost-effective arrangement for advance banking of power from HPPC.

viii ...”

2.7 Form the above, it can be seen that UPCL, in its current petition, has reiterated the similar rationale which it had submitted before the Commission in its earlier petition dated 18.06.2015 in the matter of procurement of power for returning the same under Banking Arrangement. However, it would be relevant to mention that while approving the earlier petition, the Commission not only expressed its displeasure for delay in seeking approval of the Commission but also taken strong exception of poor planning for procurement of power. In this regard, views of the Commission as expressed in the Order dated 03.07.2015 are reproduced hereunder:

*“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.”*

2.8 The Petitioner in various Tariff Orders has been directed to ensure timely planning of power purchase, sufficiently in advance, on long-term, medium-term and short-term including Banking arrangement basis so as to avoid power shortage. Section 42 of Electricity Act, 2003 requires the distribution licensee to – “maintain an efficient, coordinated and **economical** distribution system in his area of supply” (emphasis added). As in distribution of electricity, more than 75% cost is the cost of power, its procurement by every mode including banking

must be economical and transparent. It is observed that Petitioner has so far been entering into Banking arrangement by choice without making sure that most economical offer is being accepted. Hereafter, for all procurement of power be it short term, medium term or Banking, the licensee must test the market to ensure economical purchase. To this end:-

- a) Offers must be invited.
- b) Basis of evaluation, i.e. for supply at State periphery be mentioned.
- c) In Banking both quantum of power to be returned and trading margin being charged should form the basis for arriving at the lowest offer.

In the instant case, the Banking Agreement entered into by licensee has become 'Hobson's choice' as the need for power is established and sufficient time for inviting quotes is unavailable. The Commission taking an overall view is permitting the licensee to continue with the arrangement entered into.

However, UPCL is directed to ensure timely planning of power procurement, sufficiently in advance and procure power after following procedures meeting the requirement mentioned above failing which any implications of costlier purchase of power would be considered as unauthorised expenses and would be dealt with in the ARR determination accordingly. Moreover, UPCL is also directed to seek approval of the Commission well in advance and not wait for the last moment as had been done by it in the instant Petition.

2.9 Ordered Accordingly.

**(K.P. Singh)**  
**Member**

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

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