

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 03 of 2016

In the matter of:

Petition under Section 62 & Section 86(1)(a) of the Electricity Act, 2003, read with the UERC (Terms & Conditions for Determination of Tariff) Regulations, 2011 and UERC (Terms & Conditions for Determination of Multi Year Tariff) Regulations, 2015 for determination of tariff for FY 2015- 16 & for the control period from FY 2016-17 till FY 2018-19 for supply of power to UPCL from 214 MW Gas based Kashipur Combined Cycle Power Plant of Gama Infraprop Pvt. Ltd. At Mahukhedaganj, Kashipur, Dist. Udham Singh Nagar.

In the matter of:

M/s Gamma Infraprop (P) Ltd.

... Petitioner

AND

Uttarakhand Power Corporation Ltd.

... Respondent No. 1

Power Transmission Corporation of Uttarakhand Ltd.

... Respondent No. 2

CORAM

Shri Subhash Kumar Chairman

Shri C.S. Sharma Member

Shri K.P. Singh Member

Date of Hearing: January 08, 2016

Date of Order: January 19, 2016

The Commission vide its Order dated 08.01.2016 while admitting petition for determination of tariff of M/s GIPL's gas based power plant rejected the Respondent No. 1's request for a fresh hearing for grant of provisional tariff and allowed the Respondent No. 1 to furnish their written submission on or before 12.01.2016 in the matter of provisional tariff. The Petitioner was also directed to submit the following by 12.01.2016:

- a. Basis of arriving at a station heat rate of 1925 Kcal/kWh and;
 - b. Basis of allocating the station assets amongst 107 MW proposed for sale of power to UPCL and balance 107 MW.
2. The Petitioner vide its reply dated January 11, 2016 submitted the replies to the queries raised by the Commission in the Order dated January 08, 2016.
 3. Respondent No. 1 vide its reply dated January 12, 2016 has submitted its comments. The comments of the Respondent and the Commission's views on the same are dealt hereunder:
 - a. UPCL again reiterated the submission made during the hearing the draft PPA submitted by it was not based on mutual consensus and that the PPA was sent to the Commission as a draft agreement without consent of both the parties as there was no precedence of the terms and conditions to be incorporated in the PPA with a stranded gas based power station and genuine difficulty was being faced by it in drafting the terms and conditions, accordingly, guidance of the Commission with regard to relevant terms and conditions was required so that the same may be incorporated in the PPA. UPCL also submitted that it believes that once the basic methodology in the matter is laid down by the Commission for executing an agreement other terms regarding the quantity of power and the price of electricity to be purchased could be finalized by the Petitioner. Considering the fact that there were fundamental differences between the parties regarding the terms and conditions of the draft PPA, accordingly, it had sought for postponement of the hearing in the matter for some other date so that the factual and legal problems encountered in the matter could be sorted out based on discussions amongst the two parties so as to eliminate any possible differences in future and that it would take some time. UPCL also submitted that considering the question of determining the interim tariff would only arise when a PPA is entered into by both the parties upon mutually agreed terms and conditions and hence, it would be proper that some more time is granted to it for filing its written submission in the matter.

In this regard, the Commission vide its Order dated 08.01.2016 while admitting the Petition, had held that UPCL had submitted the draft PPA before the Commission for approval on 14.12.2015 and subsequently the notice for hearing was issued to both

the parties on 15.12.2015. Based on the draft PPA submitted by UPCL, the generator executed an e-Bid RLNG Supply Agreement with GAIL (e-RSA) on 21.12.2015 which has huge adverse financial implications on the generator in the event of its failure to off-take gas as committed. UPCL's approach in the matter was also not appreciated by the Commission as they should have carried out the due diligence before submission of PPA as the GoI Scheme for utilization of stranded gas based generation capacity was in public domain since March, 2015 and the tariff under the scheme was also more or less determined through the reverse bidding process. Mere filing of the tariff petition by the generator did not change the principles of the scheme. Infact, UPCL should have realized that its action had a huge implication on the generator as its plant was ready for commissioning.

The Commission had also observed the differences and the issues in the draft PPA filed before it by both the parties and had accordingly, directed them to jointly discuss and resolve the disagreements in the drafts of PPA submitted by each of them within 10 days of the date of the order and resubmit the mutually agreed PPA before the Commission on or before 20.01.2016. This was agreed to by the Respondent during hearing. The Petitioner vide its submission dated 18.01.2016 has also informed that after discussions with UPCL, the mutually agreed PPA would be filed before the Commission by 20.01.2016. However, if both the parties require some more time in finalizing the draft of the PPA they can do so by approaching the Commission.

Further, UPCL's contention that the question of determining the interim tariff would only arise when a PPA is entered into by both the parties upon mutually agreed terms and conditions is unfound and uncalled for. Interim/provisional tariff is allowed to the generator to facilitate adhoc recovery of its charges pending determination of its tariff. UPCL had filed the application seeking approval of the PPA wherein UPCL itself had contended that it was desirous of purchasing power upto 50 MW on the terms and conditions stipulated in the draft PPA and the validity of the agreement was for FY 2015-16 and FY 2016-17. Further, vide its affidavit dated 19.12.2015, UPCL informed the Commission that based on the offer made by the generator it has agreed to purchase 104 MW or less as per its actual shortfall or non-availability from other generator and that it agrees with the generator's offer to sign the PPA for 25 years and

accordingly, it requested the Commission to take into consideration these facts and allow the same to be incorporated in the PPA. Based on this, the generator went ahead and entered into an agreement with GAIL as discussed above.

The communication dated 12.01.2016 is signed by MD of the Company. His contention that quantity of power to be purchased is yet to be finalised is in stark contradiction to the earlier filing on affidavit. The Commission takes no cognizance of this misrepresentation. UPCL on one hand in its Petition has itself submitted that it is facing deficit and hence, is desirous of entering into a PPA with the generator and on the other hand is delaying the same. However, from the submission made by the Petitioner on 18.01.2016, it is evident that UPCL has agreed to purchase 104 MW power for a duration of 25 years at a tariff approved by the Commission and has also issued the LoI and Annexure-1 of PSDF Support Agreement as directed by the Commission in its Order dated 08.01.2016. Hence, the contention raised by UPCL now holds no ground.

- b. UPCL submitted that other than the Petitioner, there are two more generators who intend to sign PPA with it equivalent to their 50% project capacity. However, from the power requirement of UPCL, it would not be possible for it to purchase 50% of the plant capacity from all the generators as the other two generators are requesting it to not make any discrimination between them and the Petitioner.

In this regard, the Commission is of the view that UPCL has to review its power purchase requirement and has to ensure that the same is carried out in a transparent manner. Moreover, bonafide of such offers also need to be checked specially of availability of fuel and preparedness of these generators having regard to the status of e-bid RLNG agreement with GAIL and PSDF support agreement as per GoI Scheme. However, while entering into a PPA due regard has also to be given to the fact that the Petitioner has gone ahead with the commissioning of its plant as has been discussed in the preceding Paras consequent to the filing of the PPA by UPCL before the Commission. Further, in this regard, it would be relevant to refer to the third Proviso to Regulation 73(1) of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015 wherein the following has been specified:

“Provided that the power procurement plan submitted by the Distribution Licensee may

include long-term, medium-term and short-term power procurement sources of power, in accordance with these Regulations. However, the distribution licensee should as far as possible, not plan for short-term purchases except for conditions specified in Regulations 75 and should endeavor to meet its requirement from long term and medium term power procurement and make a plan accordingly."

However, perusal of the power requirement projected by UPCL for FY 2016-17 reveals that it would be having a shortage of about 3617 MUs (including the banked power of FY 2015-16 which it has to return back in FY 2016-17) which UPCL has proposed to meet either through load shedding or overdrawals from UI, purchase from IEX and through other short term tenders. Considering the substantial amount of deficit that it has in FY 2016-17, the planning done by UPCL to meet it seems inadequate and in most likelihood UPCL would be running from pillar to post to meet its shortfall. Hence, UPCL is advised to review its power purchase requirement in accordance with the requirements of the Act and the Regulations.

- c. UPCL has also submitted that the necessary evacuation system was to be constructed by the generator which has not been done and hence, there seems no immediate necessity for fixing interim tariff in the matter. UPCL has requested the Commission to hold a hearing in the matter of determination of provisional tariff and grant it seven days time for filing its written submission in the matter.

The Commission has dealt with the issue of evacuation in the subsequent Para. UPCL's request for a hearing before determining the interim tariff was already rejected by the Commission in its Order dated 08.01.2016 for reasons recorded therein and therefore, the Commission is not considering the same again as nothing new has been submitted by UPCL in this regard. Accordingly, the Commission through this Order is fixing the provisional tariff for the Petitioner. UPCL is directed to submit its comments on the merits of the Tariff Petition within 1 month before the Commission.

4. The Commission had vide its letter dated 06.01.2016 and also during the hearing held on 08.01.2016 asked Respondent No. 2 for submission of its comments specific to evacuation of power from the Petitioner's upcoming Gas based generating station. Respondent No. 2 vide its letter dated 06.01.2016 requested the Commission for clarification regarding the recovery of the executed cost and the operation/maintenance charges of the augmented 220 kV bay at

Mahuakheraganj S/s to be used for testing and commissioning as well as for Medium Term Open Access of 12 months for the proposed PPA (104 MW) with the State Discom (UPCL) from the Petitioner company.

5. In this regard, the Commission is of the view that if any clarification is required by Respondent No. 2, it may do so by filing a separate Petition in the matter. The query to Respondent No. 2 was specific as to the current status of the above referred evacuation system with regard to the loading and other technical parameters including the design parameters. In this regard, Respondent no. 2 vide its letter dated 12.01.2016 has informed that at present the capacity is available in the 220 kV S/s Mahuakheraganj and the power may be evacuated through the 220 kV spare bay till M/s Beta Infratech Pvt. Ltd. starts evacuation of power. In this regard, the Commission is of the view that generation of power should not be bottled up if the capacity exists in the Sub-station/bay/line. Further, it is the duty of the STU to facilitate evacuation of power. Hence, the Commission in this regard directs Respondent No. 2 to allow evacuation of power from the above mentioned generating station at the earliest till the time there is availability of transmission capacity in the spare 220 kV bay at 220 kV S/s Mahuakheraganj in accordance with the UERC (State Grid Code) Regulations, 2007.
6. In the matter of fixation of provisional tariff, the Commission had sought the basis of arriving at a station heat rate of 1925 Kcal/kWh and the allocation of the station assets amongst 107 MW proposed for sale of power to UPCL and balance 107 MW. In this regard, the Petitioner vide its reply dated 11.01.2016 has submitted that in the PSDF Support Agreement, the normative GHR has been considered as 2001 kCal/kWh for the purpose of allocation of gas and grant of PSDF support. Further, the EPC contractor has made an assessment of achievable Heat Rate of 1832.30 kCal/kWh at site conditions and, accordingly, the Petitioner has considered the GSHR as 1924 kCal/kWh in accordance with the Regulations. In this regard, the Commission has observed that the EPC Contractor has guaranteed the achievable Design Heat Rate of 1832.30 kCal/kWh for one Gas Turbine Generator at 100% load and Steam turbine generator at 50% load. The Commission is of the view that with the commissioning of the second Gas Turbine Generator, the Design Heat Rate may reduce. Moreover the Station Heat Rate would be governed by relevant provision in the regulations. For the present as the plant or station is only being partially commissioned for the purpose of determination of the provisional tariff, the Commission has considered the Station Heat Rate

on the basis of certificate of the EPC contractor. This dispensation will apply only till commissioning of Second gas turbine whereby full loading of steam turbine will be achieved. The Petitioner is directed to furnish full details as required by the regulations so that the normative Station Heat Rate could be determined. The cost of gas, the exchange rate and GCV has been taken as mentioned in the e-bid RLNG Supply Agreement dated 21.12.2015 entered into by the Petitioner with GAIL.

7. Further, with regard to the basis of allocation of the station assets, the Petitioner has submitted that the assets may be allocated on the basis of 2:1 between unit 1 and unit 2. The Commission is at present, not carrying out any prudence check of the submission made by the Petitioner in this regard and has allocated the assets on the basis of 1:1 between unit 1 and unit 2. Final view in this regard as also on allowable IDC would be taken while determining final tariff for the Petitioner. Further, in accordance with the Scheme for utilization of Gas based power generation capacity, the Commission has not considered the RoE while calculating the capacity charges during the period of the Scheme.
8. Accordingly, the capacity charges and variable charges of the Petitioner plant respectively works out to Rs. 1.59 per unit and Rs. 4.88 per unit for the first year, the total of which works out to Rs. 6.47 per unit. However, in accordance with the PSDF Support Agreement entered into by the Petitioner with GoI on September 24, 2015, the capped unit price, i.e. the maximum price payable by the distribution licensee is Rs. 4.70 per unit and the minimum PSDF support to the generator is Rs. 1.42 per unit, making the total recovery equivalent to Rs. 6.12 per unit, which is lower than the provisional tariff determined by the Commission. Hence, the Commission decides to allow a provisional tariff of Rs. 4.70 /Unit (exclusive of the PSDF support) to be recovered by the Petitioner from UPCL till determination of final tariff by the Commission. The variable charges of Rs. 4.88/unit as worked out above are based on indicative price of US \$ 8.17/mmbtu and exchange rate of Rs. 64/unit for a US \$. Both these are liable to change during currency of agreement with fuel supplier, i.e. M/s Gail.

However, there is some ambiguity in the PSDF Support Agreement entered into by the Petitioner with GoI. Para 2.8.2 of the same stipulates that the PSDF Support amount shall stand revised to cover any fluctuation whether upward or downward in the price of gas or the exchange rate in accordance with the formulae specified and from the formulae also the same is evident. However, from the reading of Para 2.8.3 and 2.8.4, it is inferred that the

minimum PSDF Support amount is Rs. 1.42 per unit. The Commission is of the view that any benefit passed on to the generator on account of lowering in the overall cost of gas needs to be passed on to the distribution licensee. However, keeping in view the ambiguity in the Agreement, the Commission is not taking any view on the same and will review it on actual basis and suitable adjustment/mechanism would be provided by the Commission while issuing the final tariff order. Accordingly, the Petitioner is directed to submit the copy of the fortnightly bills raised by GAIL and also the details of PSDF support amount received by it during the month by 7th of the ensuing month. However, till determination of final tariff by the Commission, UPCL shall continue to pay the generator a provisional tariff of Rs. 4.70 per unit (exclusive of PSDF Support) or for the period after March, 2016 the capped price decided by GoI in accordance with the GoI (PSDF) Scheme. Payment of infirm power supplied to UPCL by the generator shall be in accordance with the MYT Regulations, 2015.

9. Accordingly, it is ordered that:

- a. UPCL is directed to treat the Petitioner's generating station as a must-dispatch station and dispatch the Gross energy equivalent to 107 MW from the date of commissioning of the project.
- b. UPCL is directed to pay a provisional tariff of Rs. 4.70 per unit (exclusive of the PSDF support) to the generator for energy supplied to it or for the period after March, 2016 the capped price decided by GoI in accordance with the GoI (PSDF) Scheme.
- c. UPCL is also directed to submit its comments, if any, on the merits of the Tariff Petition within one month from the date of the Order.
- d. PTCUL is directed to provide evacuation of power from the Petitioner's generating station at the earliest on or before January 20, 2016 earliest till the time there is availability of transmission capacity in the spare bay of 220 kV bay at 220 kV S/s Mahuakheraganj.
- e. The Petitioner is directed to furnish full details as required by the regulations, consequent to the commissioning of the Second gas turbine, so that the normative Station Heat Rate could be determined.
- f. The Petitioner is also directed to furnish the details of the total capital cost including IDC consequent to the commissioning of the Second gas turbine.

- g. The Petitioner is directed to submit the copy of the fortnightly bills raised by GAIL and also the details of PSDF support amount received by it during the month by 7th of the ensuing month.
- h. The Petitioner is directed to furnish any further information/clarifications as deemed necessary by the Commission during the processing of the Petition and provides such information and clarifications to the satisfaction of the Commission within the time frame as may be stipulated by the Commission failing which the Commission would proceed to dispose of the matter as it deems fit based on the information available with it.

10. Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member

(Subhash Kumar)
Chairman