

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No. 01 of 2016**

**In the matter of:**

Application seeking approval of Hon'ble Uttarakhand Electricity Regulatory Commission on the Draft Power Purchase Agreement between Uttarakhand Power Corporation Limited and Selected bidders for setting of Grid Connected Solar PV Power Projects.

**In the matter of:**

Uttarakhand Power Corporation Ltd. ...Petitioner

AND

**In the matter of:**

Uttarakhand Renewable Energy Development Agency ...Respondent

**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 22, 2016**

The Order relates to the Petition filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "the Petitioner" or "the Licensee" or "UPCL") seeking approval of the draft Power Purchase Agreement to be executed with 23 Grid-Connected Solar PV Power Project developers selected through bidding process by Uttarakhand Renewable Energy Development Agency (hereinafter referred to as "the Respondent" or "State Agency") for implementation of total 181.40 MW Grid-Connected Solar PV based Power Projects in the State of Uttarakhand.

## 1. Background

1.1 The Petitioner filed a Petition dated 21.12.2015 seeking approval of the draft PPA to be executed with 23 Solar PV based project developers. The Petitioner, vide its Petition submitted that Government of Uttarakhand had notified the “Solar Energy Policy of Uttarakhand-2013” on 27.06.2013 and in accordance with the said policy, proposals were to be invited by GoU/UREDA from time to time for selection of Solar Power Project through tariff based competitive bidding process.

1.2 UPCL submitted that as per UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2013, (hereinafter referred to as “RE Regulations, 2013”) it was obligated to fulfill the Solar RPO. The year wise expected quantum of Solar RPO as submitted by the licensee is given hereunder:-

<b>Financial Year</b>	<b>Predicted Quantum of Solar RPO Deficit by UPCL (MW)</b>
2016-17	81
2017-18	171

1.3 The licensee submitted that UREDA had provided the list of 23 selected bidders to UPCL alongwith the tariff rates quoted by the project developers.

1.4 UPCL also referred to Regulation 2(3) of UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2013 which stipulates that distribution licensee shall invite bids from generators/developers for procurement of power from these generators/developers in respect of Solar PV and Solar Thermal power projects and the licensee shall enter into a PPA with the generators/developers bidding tariff lower than the generic tariff specified in the RE Regulations, 2013.

1.5 The Petitioner submitted that it is desirous of purchasing the entire energy on the terms and conditions as agreed between both the parties as per the terms and condition laid down in the draft Power Purchase Agreement as submitted with the Petition.

1.6 A copy of the Petition was forwarded to UREDA being the nodal agency/representative of Solar PV based project developers so that, it may be able to raise issues/observations, if any, on the draft PPA before the Commission. The Commission held a hearing on 08.01.2016 wherein, UPCL & UREDA were heard in the matter. Accordingly, the Commission vide Order dated 08.01.2016 admitted the Petition.

1.7 UREDA vide its reply dated 06.01.2016 submitted its comments on the draft PPA which are given below and the Commission's views on the same have been discussed at subsequent paragraphs of this Order.

1.7.1 UREDA submitted that year "2015" should be replaced by "2016" at first line of preamble of the draft PPA .

1.7.2 In respect of Para 7 of the preamble of the draft PPA providing for purchase of power by the project developers UREDA submitted that it should be read as:

*"WHEREAS the Solar Photovoltaic Power Plant, agrees to purchase power for it's auxiliaries from UPCL in a situation when the Solar Photovoltaic Power Plant, is not in a position to generate electricity to meet the requirement of its own use or for start up the plant and UPCL agrees to supply such power to plant as per Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 as amended from time to time."*

1.7.3 In respect of Para under Clause 1 providing for definitions under draft PPA, UREDA submitted that it should be read as:

*"Other than those defined below, the words/expressions used in this agreement, unless repugnant to the context, shall have the meaning assigned to them in the Electricity Act, 2003, Uttarakhand State Grid Code, as amended from time to time, Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 as amended from time to time, and the rules framed there under."*

1.7.4 In respect of text under Clause 2.1 of the draft PPA providing for reference letter of UREDA intimating details of selected bidders to UPCL, UREDA submitted that it should be read as:

*"UPCL shall accept and purchase entire/surplus ..... MW of power made available to UPCL system from Solar Photovoltaic Power Plant @ Rs. .... /Kwh intimated vide letter no. .... /UREDA/03(1)-334-2 /Solar Energy Policy (170 MW)/ 2015-16 dated ..... Dec 2015 after the bidding process conducted by UREDA."*

1.7.5 In respect of text under Clause 2.1 of the draft PPA providing for rate of sale of power, UREDA submitted that it should be read as:

*"This rate of sale of Power shall be applicable only if the Solar Photovoltaic Power Plant commissions their plants on or before 30-10-2016. However if the plant is commissioned after 30-*

10-2016, the rate of sale of power would be as determined by the UERC for the year of commissioning if such rates are lower than the tariff agreed to in the PPA otherwise tariff agreed in this PPA shall continue.

Note: Hon'ble UERC is requested to fix the tariff as quoted by the successful bidder till 30-10-2016 as there is provision under the RfP for which the commissioning of the projects are to be achieved by 30-10-2016."

## 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 with 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 the 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 39 of UERC (Conduct of Business) Regulations, 2014 specifies as under:

*"(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”*

*(Emphasis added)*

2.1.5 Regulation 2(3) of the RE Regulations, 2013 specifies as under:

*“The generic tariff specified for Solar PV and Solar Thermal power projects under these Regulations shall be the maximum tariff and the distribution licensee shall invite bids from generators/developers for procurement of power from these generators/developers. The distribution licensee shall enter into a PPA with the generators/developers bidding lower tariff.”*

Hence, the above provision allows purchase of solar power by the licensee based on competitive bidding which shall be lower than the generic tariff specified in the RE Regulations, 2013.

2.1.6 Further, Regulations 7(2) & 7(3) of the UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy sources) Regulations, 2013 specifies as under:

*“(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)*

2.1.7 In view of the above, in accordance with the requirement of the Act and Regulations referred above, UPCL as a distribution licensee is required to seek approval of the PPAs

entered or proposed to be entered by it from the Commission. Accordingly, draft PPA to be executed between UPCL and 23 successful bidders selected by UREDA is being examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003 & RE Regulations, 2013.

## 2.2 Commission's Analysis of the Draft PPA and Order on the same

2.2.1 Details of 23 successful bidders selected for implementation of 181.40 MW grid-connected Solar PV based Power Projects for sale of power to the licensee are as follows:

S. No.	Name of Developer	Project Capacity	Rate
1	M/s Rays Power Infra Pvt. Ltd., Jaipur	10 MW	Rs. 5.57/kWh
2	M/s ACME Solar Holdings Pvt. Ltd., Gurgaon	12.5 MW	Rs. 5.58/kWh
3	M/s Rays Power Infra Pvt. Ltd., Jaipur	10 MW	Rs. 5.58/kWh
4	M/s Impex India, Kolkata	2.4 MW	Rs. 5.60/kWh
5	M/s ACME Solar Holdings Pvt. Ltd., Gurgaon	12.5 MW	Rs. 5.63/kWh
6	M/s Punj Llyod Infrastructure Ltd.,Gurgaon	10 MW	Rs. 5.64/kWh
7	M/s AR Solar Power, Dehradun	1 MW	Rs. 5.67/kWh
8	M/s Hydro Power Engineers, Dehradun	1 MW	Rs. 5.67/kWh
9	M/s AR Solar Power, Dehradun	1 MW	Rs. 5.69/kWh
10	M/s Emami Power Ltd., Kolkata	20 MW	Rs. 5.74/kWh
11	M/s JLTM Energy India Pvt. Ltd., Varanasi, UP	5 MW	Rs. 5.75/kWh
12	M/s ACME Solar Holdings Pvt. Ltd., Gurgaon	12.5 MW	Rs. 5.78/kWh
13	M/s ACME Solar Holdings Pvt. Ltd., Gurgaon	12.5 MW	Rs. 5.78/kWh
14	M/s Vishal Techno Commerce Ltd., Mumbai	5 MW	Rs. 5.79/kWh
15	M/s Omkar Power Tech. India Pvt. Ltd., Dehradun	10 MW	Rs. 5.82/kWh
16	M/s Punj Llyod Infrastructure Ltd.,Gurgaon	10 MW	Rs. 5.84/kWh
17	M/s Omkar Power Tech. India Pvt. Ltd., Dehradun	10 MW	Rs. 5.91/kWh
18	M/s Profigate Infra Gasoline, Roorkee	5 MW	Rs. 5.93/kWh
19	M/s Omkar Power Tech. India Pvt. Ltd., Dehradun	10 MW	Rs. 5.95/kWh
20	M/s Makin Developers Pvt. Ltd., Ballupur, Dehradun	1 MW	Rs. 5.97/kWh
21	M/s Profigate Infra Gasoline, Roorkee	5 MW	Rs. 5.98/kWh
22	M/s RP Infrapower Pvt. Ltd., Dehradun	5 MW	Rs. 5.99/kWh
23	M/s Punj Llyod Infrastructure Ltd.,Gurgaon	10 MW	Rs. 5.99/kWh

2.2.2 The draft PPA submitted by UPCL has been examined in light of the relevant rules & regulations. The Commission observed that certain clauses in the draft PPA submitted by UPCL and UREDA's response on the same are inconsistent with the provisions of the Act/Regulations. 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 draft PPA while executing the PPA with the project developers.

- a. The Commission observes that details of project & project developer, applicable tariff, grid connecting sub-station, details of allotment of projects by UREDA etc. in draft PPA and annexure thereof have been left blank. The same is required to be

duly filled at the time of execution of the PPA. Further, as submitted by UREDA year “2015” mentioned at preamble of the draft PPA should be replaced by “2016”.

- b. 5<sup>th</sup> Para of preamble of the draft PPA provides that:

*“WHEREAS the Solar Photovoltaic Power Plant, agrees to purchase power for its auxiliaries from UPCL in a situation when the Solar Photovoltaic Power Plant, is not in a position to generate electricity to meet the requirement of its own use or for start up the plant and UPCL agrees to supply such power to plant as per Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 as amended from time to time and as per Hon’ble UERC order dated 20-03-2015.”*

UREDA has proposed removal of reference of the Commission’s Order dated 20.03.2015 in the above mentioned Clause of PPA. The Commission observes that the Order dated 20.03.2015 has no relevance in this matter as the same pertained to approval of the draft Power Purchase Agreement between Uttarakhand Power Corporation Ltd. and selected 12 bidders for setting of Grid Connected Solar PV Power Projects. All the PPA’s are to be guided by the relevant provisions of the Act and Regulations, the reference to order dated 20.03.2015 being not relevant be removed.

- c. Text under Clause 1 of the draft PPA provides that:

*“Other than those defined below, the words/expressions used in this agreement, unless repugnant to the context, shall have the meaning assigned to them in the Electricity Act, 2003, Uttarakhand State Grid Code, as amended from time to time, Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 as amended from time to time and as per Hon’ble UERC order dated 20-03-2015, and the rules framed there under. The words/expressions listed below shall have the meanings respectively assigned hereunder.”*

UREDA has again proposed for removal of reference of the Commission’s Order dated 20.03.2015 in the above mentioned Clause of PPA. The Commission, as discussed above, directs that as the reference made to the Order dated 20.03.2015 has no relevance, it be removed.

- d. Clause 2.1 of the draft PPA provides that:

*“UPCL shall accept and purchase entire/surplus ..... MW of power made available to UPCL system from Solar Photovoltaic Power Plant @ Rs. ....intimated vide letter no. 2371/UREDA/03(1)-334-1/Solar policy/2012-13 dated 13 Jan 2015 after the bidding process conducted by UREDA. This rate of sale of Power shall be applicable only if the Solar Photovoltaic Power Plant commissions their plants on or before ..... However if the plant is commissioned after ....., the rate of sale of power would be as determined by the UERC for the year of commissioning if such rates are lower than the tariff agreed to in the PPA otherwise tariff agreed in this PPA shall continue.”*

UREDA submitted that reference made to its letters should be corrected. UREDA also submitted that rate of sale of power shall be applicable for those plants which get commissioned on or before 31.10.2016, and if any plant gets commissioned after 31.10.2016 the rate of sale of power shall be as determined by the Commission for the year of commissioning, if such rates are lower than the tariff agreed to in the PPA otherwise tariff agreed in this PPA shall continue.

In this regard, the Commission is of the view that before signing of the PPA necessary corrections of all the references mentioned in the draft PPA should be incorporated including those pointed out by UREDA.

Further, since the UREDA's submission in respect of applicability of tariff is not consistent with the provisions of the regulations, as discussed in subsequent Para 2.3, the same has been rejected by the Commission for reasons recorded therein.

- e. Clause 2.4 of the draft PPA provides for minimum & maximum limits of CUF to be achieved by the projects in a contract year. It has been stipulated that the Solar PV based plant should have minimum CUF of 12% in any given contract year. Provision of penalty & incentive has been incorporated in the said Clause for CUF less than 10% or more than 22% in any contract year respectively. In this regard, UREDA during the finalization of draft document “Request for Proposal for Selection of Developer(s) for Setting of Grid Connected Solar PV Power Projects of 30 MW Aggregate Capacity” vide its letter no. 1351/UREDA/03(1)-334/Solar Policy/2012-13 dated 16.09.2014 requested the Commission for relaxing the provision of CUF of 19% as mentioned in RE Regulations, 2013 and to allow minimum & maximum limits of CUF as 12% & 22% respectively. In this regard, the Commission vide its letter no. UERC/6/TF-208/14-15/2014/1197 dated 22.09.2014 had accepted



UREDA's above proposal in the matter. Hence, the Commission does not find any reason for modification with regard to limits of CUF provided in the draft PPA. However, penalty & incentive should be decided with mutual consent of parties involved in the PPA.

- f. Clause 8.1 of the draft PPA provides that land location should not be changed once the PPA has been signed. In this regard, the Commission is of the opinion that tariff decided through bidding process & being allowed in the PPA by the Commission are subject to the conditions mentioned in Para 2.3.3 of this Order. Hence, it is pertinent that both the parties in the PPA should decide a time frame within which all milestone activities including identification of suitable interconnection point which is also contingent on the location of land be finalised subject to technical as well as financial feasibility for the respective plants.

2.2.3 UPCL is directed to take note of the above observations and carry out the appropriate modification in the draft PPA before executing the same with the above mentioned 23 project developers. UPCL is also required to submit the PPA executed with such developers before the Commission within 15 days of the execution of PPA.

### 2.3 Applicability of the Order

2.3.1 Regulation 11 of the RE Regulations, 2013 provides that:

*"11. Control Period or Review Period*

*(1) The Control Period or Review Period under these Regulations shall be of five years, of which the first year shall be the financial year 2013-14.*

***Provided that the benchmark capital cost for Solar PV, Solar thermal and grid interactive roof top and small solar PV projects may be reviewed annually by the Commission.***

*Provided further that the tariff determined as per these Regulations for the RE projects commissioned during the Control Period, shall continue to be applicable for the entire Tariff Period (Useful life of the plant) as specified under Regulation 3(1)(nn).*

***(Emphasis added)***

In view of the above provision of the regulation, the Commission vide its Order dated 23.07.2015 revised the benchmark capital cost of Solar based projects and the corresponding tariffs for FY 2015-16.

2.3.2 UREDA based on tariff quoted in tender, selected 23 project developers and allotted total 181.40 MW Solar PV based projects as listed in Para 2.2.1 above. It is apparent that the tariff claimed by the project developers for sale of power to UPCL are lower than the generic ceiling tariff determined by the Commission vide the above mentioned Order dated 23.07.2015 in accordance with the RE Regulations, 2013. Further, as submitted by the Petitioner, the Commission has also noted the fact, that being a licensee UPCL is required to comply with Solar-RPO and the solar power being generated in the state is estimated to be much less than that required to meet the RPO prescribed due to inadequate development of such plants in the State. Further, the tariffs determined by the Commission are applicable till the end of FY 2015-16, thereafter, these tariffs are liable to be revised based on the review of the benchmark capital cost of solar based plants as may be decided by the Commission. Moreover, the current proceedings are related to approval of the draft PPA and not for tariff determination for the ensuing year as the same is carried out in accordance with the provisions of the Regulations and review of the same cannot be sought in separate proceedings. UREDA should have approached the Commission and sought the extension of the tariff rather than extending it on its own. Through this act, UREDA has transgressed its duties and responsibilities. UREDA is hereby cautioned to refrain from such act in the future. Hence, without approaching the Commission, UREDA on its own extending the tariff quoted by the bidders and making it applicable upto 31.10.2016 is not accepted by the Commission. However, UREDA may represent the aforesaid matter at the time of proceedings, as may be initiated by the Commission, for revision of benchmark capital cost and corresponding tariffs in respect of solar based plants for FY 2016-17.

2.3.3 In view of the facts and circumstances as discussed above, the Commission decides that the benchmark capital cost and generic ceiling tariffs, as determined vide the above mentioned Order in accordance with the RE Regulations, 2013 shall be applicable to these 23 developers of Solar PV Plants during FY 2015-16 and the tariff quoted by them shall apply provided:-

- (a) They execute their PPA with UPCL by 31.03.2016, and
- (b) They commission their projects on or before 31.03.2016.

If these developers fail to commission their plant on or before 31.03.2016, tariff incorporated in the PPA entered into by UPCL & such project developers shall apply

only if the rate determined by the Commission for the year of commissioning of plant is higher than the PPA tariff rate, if such notified rates are lower than the tariffs agreed in the PPA. Such lower notified rates shall apply. The proceedings for reviewing of the benchmark capital cost for solar plants would be initiated at appropriate time by the Commission. Accordingly, UPCL is directed to provide in Clause 2.1 of the draft PPA that rate of sale of power shall be applicable to such developers who commission their plants on or before 31.03.2016, however, if the plant is commissioned after 31.03.2016, the rate of sale of power would be as determined by the Commission for the year of commissioning, if such rates are lower than the tariffs agreed to in the PPA otherwise tariffs agreed in the PPA shall continue.

3. With this, Petition no. 01 of 2016 stands disposed.
4. Ordered accordingly.

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

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

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