

Before

# UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 02 of 2016

**In the matter of:**

Application seeking approval of UERC on the Draft Power Purchase Agreement between UPCL & Gama Infraprop (P) Ltd.

**In the matter of:**

Uttarakhand Power Corporation Ltd.

...Petitioner

AND

M/s Gama Infraprop (P) Ltd.

...Respondent No. 1

Power Transmission Corporation of Uttarakhand Ltd.

...Respondent No. 2

CORAM

**Shri Subhash Kumar      Chairman**

**Shri K.P. Singh          Member**

**Date of Hearing: January 08, 2016**

**Date of Order: February 08, 2016**

The Order relates to the Petition filed by Uttarakhand Power Corporation Ltd., distribution licensee (hereinafter referred to as "UPCL" or "Petitioner") seeking approval of draft PPA for purchase of power from Gas based power plant to be commissioned at Mahukedarganj, Kashipur, Dist. Udham Singh Nagar owned by M/s Gama Infraprop (P) Ltd. (hereinafter referred to as "M/s GIPL" or "Respondent No. 1").

## **1. Background**

1.1 The Petitioner filed a Petition dated 11.12.2015 seeking approval of draft PPA to be executed with M/s GIPL. The Petition has been filed u/s 86(1)(b) of the Electricity Act, 2003, license conditions issued to UPCL, Regulation 39(3) of UERC( Conduct of Business) Regulations, 2014.

The Petitioner submitted that it is facing continued power shortage throughout the year and have to depend on short term power purchase by undertaking power purchase through short term tenders and banking arrangement with other utilities. UPCL also submitted that it has to purchase power through IEX on day ahead basis where the rates are volatile and power availability is not firm. UPCL also submitted that the demand forecast depicted shortfall in availability of power for the ensuing financial year even after considering the upcoming Solar power plants commencing generation within a year and M/s Greenko's Budhil HEP (70 MW) generation.

1.2 UPCL referred to regulation 55A of Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015, (MYT Regulations, 2015) and submitted that the Ministry of Power, Government of India, has also introduced the subsidy regime under the auction scheme for partial allocation of gas thereby providing support to the stranded gas based power projects, vide its Office Memorandum No. 4 / 2/ 2015 - T.H.01 dated 27.03.2015, wherein the scheme is applicable only for FY 2015-16 and FY 2016-17.

1.3 Further, UPCL submitted that Government of Uttarakhand vide Order no. 456 (2) / 1 / 2015-04 (03)/160/2010 dated 28-04-2015 had issued direction for purchase of power from gas based projects located at Kashipur, Dist- Udham Singh Nagar vide which UPCL was directed as follows:

*“4. उपरोक्त क्रय की जाने वाली गैस आधारित विद्युत से जो भी अतिरिक्त व्यय भार आयेगा उसे वाणिज्यिक तथा औद्योगिक उपभोक्ताओं पर अधिरोपित कि या जायेगा।”*

1.4 UPCL submitted that M/s Gama Infraprop (P) Ltd. desires to sell 107 MW power scheduled to be generated from its project and it is desirous of purchasing upto 50 MW as per the actual power deficit on the terms and conditions stipulated in draft PPA. The duration of the PPA was also mentioned till FY 2016-17 as per Scheme dated 27.03.2015 of MoP. Copy of the said petition was forwarded to M/s GIPL for submission of its comments on the same. The Commission also decided to hold a hearing for admission of the petition on 08.01.2016.

1.5 Subsequently, UPCL vide its submission dated 18.12.2015 requested the Commission for revision in the provisions related to the capacity mentioned in petition from 50 MW to 104 MW and also for revision of the duration of the PPA to 25 years. M/s GIPL vide its letter dated 26.12.2015 also submitted its comments regarding capacity and duration of PPA.

1.6 UPCL vide its letter dated 06.01.2016 requested the Commission for adjournment of the hearing on the ground that they need further time to re-examine certain Clauses of draft PPA. However, the Commission vide letter dated 07.01.2016 rejected UPCL's request for adjournment of hearing.

1.7 The hearing was conducted on the scheduled date, i.e. 08.01.2016. During the hearing both the parties informed the Commission that they had some issues to be resolved and to be incorporated in the draft PPA. The Commission vide its Order dated 08.01.2016 while admitting the petition directed both the parties as follows:

*"Both the Petitioner and the Respondent are directed to jointly discuss and resolve the disagreements in 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."*

1.8 In compliance with the above Order, UPCL vide its letter dated 20.01.2016 submitted the revised draft PPA.

## **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 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 Further, Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015, provides as:-

*“1. Short Title, extent and Commencement*

*(4) 55A shall be applicable for the years 2015-16 and 2016-17 unless extended further by the Commission.*

**55A. Tariff Determination of Gas based generating stations:**

*The tariff of gas based generating stations covered under the “Scheme for Utilization of Gas based power generation capacity” issued by the Government of India, Ministry of Power vide Office Memorandum No. 4/2/2015-Th.1 dated 27.3.2015 can be determined in due consideration of the provisions of that scheme in deviation of the relevant regulations.”*

2.1.6 In view of the above and in accordance with the requirement of the Act and Regulations referred above, UPCL as a distribution licensee is required to seek approval of the Commission of the PPAs entered or proposed to be entered into by it. Accordingly, draft PPA between UPCL & M/s GIPL is being examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003, MYT Regulations, 2015 and also in light of Schemes/guidelines issued by MoP in this regard.

## **2.2 Consistency of the PPA with the Regulations**

2.2.1 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 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 the date mentioned in first line of the draft PPA has been left blank, hence, it should be duly specified at the time of signing the PPA.
- b. Moreover, Recital C of the PPA stipulates as under:

*“The Seller is desirous of selling the energy equivalent to the Contracted Capacity (as hereinafter defined) generated from the Project on a round the clock basis, and the Buyer is desirous of purchasing the aforesaid energy generated from the Project on a round the clock basis from the Seller to meet the projected increase in the requirement of power in the coming years.”*

The Commission is of the opinion that since the PPA proposed to be entered into by UPCL is for a contracted capacity of 104 MW, hence, there is no relevance for linking the same to meet the projected increase in the requirement of power in the coming years. Hence, the same needs to be omitted and the modified Recital C should read as under:

*“The Seller is desirous of selling the energy equivalent to the Contracted Capacity (as hereinafter defined) generated from the Project on a round the clock basis, and the Buyer is desirous of purchasing the aforesaid energy generated from the Project on a round the clock basis from the Seller.”*

- c. Clause 1.1.5 of the draft PPA provides definition of “Auxiliary Consumption” as follows:

*““Auxiliary Power Consumption” or “APC” means in relation to a power plant, the quantum of energy consumed by the auxiliary equipment of the generating station and the transformer losses within the generating station, expressed as percent of the gross energy generated at generator terminals of all the Units of the generating station during the relevant period.”*

However, Regulation 3(1)(8) of MYT Regulations, 2015 specifies the definition of “auxiliary consumption” as follows:

*“(8) “Auxiliary Energy Consumption” in relation to a period, in case of generating*

*station means the quantum of energy consumed by auxiliary equipment of the generating station, such as the equipment used being used for the purpose of operating plant and machinery including switchyard of the generating station and transformation losses within the generating stations and shall be expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of the generating station;*

*Provided that the colony consumption and other facilities of a Generating Station and the power consumed for construction works at the Generating Station shall not be included as part of the Auxiliary Energy Consumption for the purpose of these Regulations."*

The above mentioned definition excludes colony consumption and other facilities of a Generating Station and the power consumed for construction works at the Generating Station from "auxiliary consumption". Accordingly, the definition as provided in MYT Regulation be incorporated in the PPA replacing the existing definition in the draft.

- d. Clause 1.1.24 of the draft PPA provides definition of "Contracted Capacity" as follows:

*"**Contracted Capacity**" means in relation to the Project 104 MW of power at ex-bus bar of the Project at site reference conditions and in accordance with the limits of grid & ambient conditions, subject to availability of Fuel and as per the terms of this Agreement."*

The above mentioned 104 MW capacity is at ex-bus bar of the Project implying thereby that the same is the net saleable capacity after adjusting the auxiliary consumption. The auxiliary consumption for a combined cycle Generating stations has been specified as 2.5% in the MYT Regulations, 2015, hence, the gross capacity of the project works out to 107 MW and, accordingly, the contracted capacity of the project needs to be clearly spelt as 107 MW against 104 MW of power at ex-bus bar. Hence, the definition needs to be modified as under:

*"**Contracted Capacity**" means in relation to the Project capacity of 107 MW at site reference conditions and in accordance with the limits of grid & ambient conditions, subject to availability of Fuel and as per the terms of this Agreement."*

- e. Clause 1.1.26 of the draft PPA provides definition of "Declared Capacity" as follows:  
*"**Declared Capacity**" In relation to a generating station means, the part or full of the Contracted Capacity declared by the generating station as available in relation to any time*

*block of the day or whole of the day duly taking into account the availability of fuel or water (expressed in MW at the Delivery Point) for delivery of power at the Delivery Point."*

However, Regulation 3(1)(22) of MYT Regulations, 2015 specifies the definition of "Declared Capacity" as follows:

*"(22) "Declared Capacity" or "DC" in relation to a generating station means, the capability to deliver ex-bus electricity in MW declared by such generating station in relation to any time-block of the day or whole of the day, duly taking into account the availability of fuel or water, and subject to further qualification in the relevant Regulation;"*

The above mentioned definition as stipulated in the MYT Regulations be incorporated in the PPA replacing the existing definition in the draft.

f. Clause 1.1.28 of the draft PPA provides definition of "Delivery Point" as follows:

*"Delivery Point" means the metering point of Power Station bus bar as delivery point, which shall be ex-bus of the Power Station;"*

The term delivery point occurring in the definition has no relevance and needs to be removed. Hence, the modified definition should be read as:

*"Delivery Point" means the metering point of Power Station bus bar, which shall be ex-bus of the Power Station;"*

g. "Error!Reference source not found;" appearing at Clause nos. 1.1.44, 1.1.45, 1.1.51, 1.1.64 & at other clauses of the draft PPA need to be corrected.

h. Clause 1.1.59 of the draft PPA provides definition of "Normative Availability" or "Target Availability" or "Normative Annual Plant Availability Factor (NAPAF)" as follows:

*"Normative Availability" or "Target Availability" Or Normative Annual Plant Availability Factor (NAPAF) shall mean seventy percent (70%) Availability of aggregate Contracted Capacity at the Delivery Point on Contract Year basis."*

However, Regulation 3(1)(54) read with Regulation 47 of MYT Regulations, 2015 provides that:

***"(1) Normative Annual Plant Availability Factor (NAPAF):***

*(a) For all thermal generating stations: 85%;"*

Since the Regulations does not specify the NAPAF of 70% for Gas based

power plant, hence, the above mentioned Clause of the draft PPA appears to be inconsistent with the Regulations. However, the generator in its Tariff Petition has requested the Commission to fix the relaxed NAPAF of 70% during the currency of the Scheme of GoI. The Commission's decision in the matter is pending and the Commission would take appropriate view in the matter while disposing off the Tariff Petition. Hence, the definition of NAPAF should be read as:

*““Normative Availability” or “Target Availability” Or Normative Annual Plant Availability Factor (NAPAF) shall mean the Normative Annual Plant Availability Factor specified or approved by the Commission from time to time.”*

- i. Clause 1.1.82 of the draft PPA provides the definition of “Tariff” as follows:

*““Tariff” means the tariff as determined by UERC as per UERC regulation for tariff determination as in force from time to time. During the period the Scheme of GoI as referred in clause 18.17 is applicable the tariff shall be the Capped Unit Price;”*

The said definition should be replaced by the following:

*““Tariff” means the tariff as determined by UERC in accordance with the Regulation for determination of tariff as in force from time to time. However, during the period of applicability of the Scheme of GoI as referred in clause 18.17, the tariff shall be the Capped Unit Price;”*

- j. Clause 1.1.86 of the draft PPA provides definition of “Transmission Charges” as follows:

*““Transmission Charges” means the charges paid by the Seller to the STU or any other agency for the transfer of power from the Delivery Point to the Buyers' periphery and the same will be reimbursed by the Buyer on submission of monthly bill. The Rebate under clause 9.2.1 will not be applicable for such payments;”*

In this regard, the Commission is of the view that since the generator is selling its power to UPCL, hence, the applicable transmission charges to be paid by the generator and then getting the same reimbursed from UPCL would have no relevance. Besides the generator is not an open access customer and is selling the power to the State Discom, i.e. UPCL. Moreover, PTCUL, the transmission licensee, is recovering the transmission charges from UPCL for its associated system and network. Hence, the definition of “transmission charges” has no relevance in the PPA and should be deleted since the same will be directly borne by UPCL as is being done for other generating stations selling power to UPCL in the State. Hence,



the definition can be omitted.

- k. Clause 5.1(i) of the draft PPA provides for “Seller’s Obligation” as follows:

*“ensuring that Contracted Capacity is made available and delivered at the Delivery Point to meet the Buyer's scheduling and dispatch requirements throughout the Term of this Agreement, subject to availability of Fuel as per specifications provided in Schedule C hereof;”*

The Commission observes that “Schedule C” mentioned in the above Clause specifies technical limit, whereas, “Schedule B” of the draft PPA provides for details of fuel. Hence, the aforementioned “Schedule C” appears to be incorrect and needs to be replaced by “Schedule B” in Clause 5.1(i) of the PPA.

- l. Clause 6.2.1.1 of the draft PPA provides for “Extensions of time for delivery” as follows:

*“In the event that the Seller is not able to perform its obligations by the Scheduled Delivery Date due to:*

*(i) Force Majeure Events as specified in Clause **Error! Reference source not found.** of his Agreement, or*

*(ii) Unavailability of Fuel as per the quantity and quality provided in Schedule C; then the Scheduled Delivery Date shall be deferred, for a reasonable period not exceeding twelve (12) months on ‘day for day’ basis, to permit the Seller or the Buyer through the use of due diligence, to overcome the effects of the Force Majeure Events as specified in Clause **Error! Reference source not found.** of this Agreement affecting the Seller or the Buyer. Further, such deferred Scheduled Delivery Date will be treated as “**Revised Scheduled Delivery Date**”.”*

The Commission observes that “Schedule C” mentioned in the above Clause specifies technical limit, whereas, “Schedule B” of the draft PPA provides for details of fuel. Hence, the aforementioned “Schedule C” appears to be incorrect and needs to be replaced by “Schedule B” in the sub-Clause 6.2.1.1(ii) of the PPA. Further, the texts appearing after sub-Clause 6.2.1.1(ii) should be replaced by the following:

*“then the Scheduled Delivery Date shall be deferred, for a reasonable period not exceeding twelve (12) months, on ‘day for day’ basis, to permit the Seller or the Buyer through the use of due diligence, to overcome the effects of the above Events as affecting the Seller or the Buyer. Further, such deferred Scheduled Delivery Date will be treated as “**Revised Scheduled Delivery Date**”.”*

m. Clause 7.1.2 of the draft PPA provides for “Scheduling of Power” as follows:

*“The quantum of supply of power shall be up to the Contracted Capacity based on the grid & site ambient conditions, round the clock power on schedule basis subject to availability of Fuel as per specifications provided in Schedule C hereof;”*

The Commission observes that “Schedule C” mentioned in the above Clause specifies technical limit, whereas, “Schedule B” of the draft PPA provides for details of fuel. Hence, the aforementioned “Schedule C” appears to be incorrect and needs to be replaced by “Schedule B” in the Sub-Clause 7.1.2 of the PPA.

n. Clause 7.1.4 of the draft PPA provides for “Scheduling of Power” as follows:

*“During the Term of the Agreement when the Scheme is not applicable, the scheduling of power shall be as per the Grid Code. If the gas supply agreement during this period also provides for “take or pay” clause the provisions as stipulated in clause 7.1.3 regarding revision of daily schedule will apply;”*

The above mentioned Clause needs to be corrected and should be replaced as following:

*“During the Term of the Agreement when the Scheme is not applicable, the scheduling of power shall be as per the Grid Code. However, if the gas supply agreement during this period also provides for “take or pay” clause the provisions as stipulated in clause 7.1.3 regarding revision of daily schedule will apply;”*

o. Clause 7.1.5 of the draft PPA provides for “Scheduling of Power” as follows:

*“In case the Seller has arranged the Fuel on the basis of “take or pay” basis and during the Term of this Agreement Seller is not able to make available the Contracted Capacity or part thereof from the Power Station, except due to a Force Majeure Event or due to Buyer Event of Default, the information of the same will be provided by the Seller in 3 days in advance to the Buyer and the Buyer has to confirm the same within 5 hours that whether they need such Capacity or not. In case the power is required the seller can make available such Capacity from an alternative generation source to meet its obligation under this agreement. In the event no such Capacity is approved by the Buyer no obligation whatsoever would be there on either parties.”*

The above mentioned Clause does not specify the tariff at which alternate arrangement of power would be made by the Seller in the eventuality of its failure to deliver power under the agreement. Accordingly, above mentioned Clause needs to be corrected and should be replaced as follows:

*“In case the Seller has arranged the Fuel on the basis of “take or pay” basis and during the Term of this Agreement Seller is not able to make available the Contracted Capacity or part thereof from the Power Station, except due to a Force Majeure Event or due to Buyer Event of Default, the information of the same will be provided by the Seller in 3 days in advance to the Buyer and the Buyer has to confirm the same within 5 hours that whether they need such Capacity or not. In case the power is required the seller can make available such Capacity from an alternative generation source to meet its obligation under this agreement at the tariff approved by the Commission. In the event no such Capacity is confirmed by the Buyer within the above timeframe no obligation whatsoever would be there on either party.”*

- p. Clause 7.1.6 of the draft PPA provides for “Scheduling of Power” as follows:

*“The Seller will ensure that the Buyer is made available power in proportion to the Contracted Capacity from the available generation of the Power Station with effect from the Schedule Delivery Date or the Revised Scheduled Delivery Date or from the Delivery Date., as the case may be.”*

The above mentioned Clause needs to be corrected and should be replaced as following:

*“The Seller will ensure that the Buyer is made available power in proportion to the Contracted Capacity based on the availability of the Power Station with effect from the Scheduled Delivery Date or the Revised Scheduled Delivery Date or from the Delivery Date, as the case may be.”*

- q. Clause 7.1.8 of the draft PPA provides definition of “Scheduling of Power” as follows:

*“Minimum off take would be as per NAPAF of the Contracted Capacity and any power supply over and above the NAPAF upto the Contracted Capacity will be on the Tariff as determined by Hon’ble UERC;”*

In this regard, Regulation 49(2) of the MYT Regulations, 2015 specifies the mechanism of recovery of capacity charge (inclusive of incentive) for thermal generating station. Moreover, Regulation 49(4) of the MYT Regulations, 2015 specifies as under:

*“(4) Incentive to a generating station or unit thereof shall be payable at a flat rate of 50 paise/kWh for ex-bus scheduled energy corresponding to scheduled generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor (NAPAF) as specified in Regulation 47(2).”*

Since incentive for generation over and above the energy corresponding to Normative Annual Plant Load Factor (NAPLF) and Plant Availability has already been specified in the Regulations, hence, the Commission is of the opinion that the Clause in the PPA has no relevance and can be omitted.

- r. Clause 7.2.1.2 of the draft PPA provides for “Inability of Buyer to avail or Schedule contracted Capacity” as follows:

*“However, in such event, the liability of the Buyer to pay Capacity Charge to the Seller even for Default Electricity will remain unaffected and the Buyer shall be liable to pay the Capacity Charges in terms of the stipulation herein. For the avoidance of doubt, it is clarified that the Buyer shall be liable to pay short fall Capacity Charge to the Seller for the Default Electricity that is sold to third parties.”*

The above mentioned Clause needs to be corrected and should be replaced as following:

*“However, in such event, the liability of the Buyer to pay Capacity Charge to the Seller even for Default Electricity will remain unaffected and the Buyer shall be liable to pay the Capacity Charges in terms of the stipulation herein. For the avoidance of doubt, it is clarified that the Buyer shall be liable to pay short fall Capacity Charge, if any, to the Seller for the Default Electricity that is sold to third parties.”*

- s. Clause 7.2.1.3 of the draft PPA provides for “Inability of Buyer to avail or Schedule contracted Capacity” as follows:

*“Additionally, if the Seller is required to make any payment to the Fuel supplier for not purchasing the minimum guaranteed quantity of Fuel on account of “take or pay” obligations or otherwise (if any); or with respect to transportation charges levied by the transporter; and the Buyer has not scheduled energy corresponding to Contracted Capacity during that Contract Year, then Seller will raise an invoice on the Buyer for an amount equal to the payments made to the Fuel supplier under the fuel supply agreement and/or payments made with respect to transportation of Fuel, in that Contract Year, along with documentary proof for payment of such penalty, and the Buyer shall be required to make payment of such amount as part of the Energy Charge, in addition to the Capacity Charge.”*

The above mentioned Clause needs to be corrected and should be replaced as following:

*“Additionally, if the Seller is required to make any payment to the Fuel supplier for not purchasing the minimum guaranteed quantity of Fuel on account of “take or pay” obligations*

*or otherwise (if any); or with respect to transportation charges levied by the transporter; and the Buyer has not scheduled energy corresponding to Contracted Capacity during that Contract Year, then the Seller will raise an invoice on the Buyer for an amount equal to the payments made to the Fuel supplier under the fuel supply agreement and/or payments made with respect to transportation of Fuel, in that Contract Year, along with documentary proof for payment of such penalty, and the Buyer shall be required to make payment of such shortfall in the Energy Charge, incurred by the Seller after adjusting the energy charges already realised from the Buyer and also through sale to third party, if any."*

The purpose of this Clause is to enable the Seller recovery of shortfall, if any, of energy charge from UPCL during sale of generation by the seller to third party in case of inability of buyer to avail of schedule contracted capacity.

- t. Clause 7.2.1.4 of the draft PPA provides for "Inability of Buyer to avail or Schedule contracted Capacity" as follows:

*"In such a case of sale of Default Electricity to such third party(ies), the net sale realization in excess of Energy Charges and Capacity Charge shall be equally shared by the Seller with the Buyer."*

Since, in Clause 7.2.1.3 referred above, it has been ensured that the seller recovers the shortfall in the fuel charges payable to the Fuel supplier through energy charges from UPCL after adjustment of the charges realised by it from UPCL and also from sale made to third party. Hence, there will in no case net realisation in excess of energy charges. However, there may be cases where net realisation after adjustment of energy charges as referred to in Clause 7.2.1.3 above, may exceed the capacity charges (inclusive of incentive) approved by the Commission. In such case, the same needs to be shared with the Buyer. Hence, the said Clause needs to be read as under:

*"In such a case of sale of Default Electricity to such third party(ies), the net sale realization after adjustment of energy charges as referred to in Clause 7.2.1.3 above, may exceed the capacity charges (inclusive of incentive) approved by the Commission, then the excess realisation shall be equally shared by the Seller with the Buyer."*

- u. Sub-Clause 8.1.2 of the draft PPA provides for "Metering" as follows:

*"In addition, the Seller shall also allow and facilitate STU in installation of one set of required main and standby special energy meters for accurate recording of energy supplied by Seller. For these STU meters, the Seller shall provide the required connection from EHV current*

*transformers/ bushing CTs/ voltage transformers/ CVTs / EMVTs on EHV side of all generator-transformers, station transformers and outgoing lines, of meter accuracy of 0.2 class or better. The Seller may install any further Meters for its own comfort at its own cost."*

The above mentioned Clause needs to be corrected and should be replaced as following:

*"In addition, the Seller shall also allow and facilitate STU in installation of one set of required main and check special energy meters in conformity with the specification and standards for interface meters provided in Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time for accurate recording of energy supplied by Seller. For these STU meters, the Seller shall provide the required connection from EHV current transformers/ bushing CTs/ voltage transformers/ CVTs / EMVTs on EHV side of all generator-transformers, station transformers and outgoing lines, of meter accuracy of 0.2 class or better. The Seller may install any further Meters for its own comfort at its own cost."*

v. Clause 8.2 of the draft PPA provides for "Energy Accounting" as follows:

*8.2.1 Regional Energy Accounts issued by RPC / RLDC, Energy Accounts issued by SLDC and the data provided by the RLDC / SLDC and output of the Main Meters and Check Meters shall form the basis for billing. These Regional Energy Accounts shall be subject to subsequent corrections by the issuing agency. The REA shall be binding on the Parties for the purpose of energy accounting.*

*8.2.2 All scheduling, RLDC, SLDC charges, as applicable shall be to the account of the Buyer.*

Since, the Seller is selling power within the State using intra-State transmission network its scheduling of power would not be subject to RLDC/REA and hence, the reference made to them needs to be removed. Accordingly, the said Clause needs to be modified as under:

"

*8.2.1 Energy Accounts issued by SLDC and the data provided by the SLDC and output of the Main Meters and Check Meters shall form the basis for billing.*

*8.2.2 All scheduling, SLDC charges, as applicable shall be to the account of the Buyer."*

w. Clause 9.1.2 of the draft PPA provides for "Billing and Payment" as follows:

*"The quantum of Contracted Capacity sold to the Buyer out of the Contracted Capacity available for sale as per implemented schedule shall be the energy as indicated in the REA issued by RPC, Energy Accounts issued by SLDC and will be the basis for Capacity Charge*

*and Energy Charges.”*

The above mentioned Clause needs to be corrected for reasons already discussed above and should be replaced as following:

*“The quantum of Contracted Capacity sold to the Buyer out of the Contracted Capacity available for sale as per implemented schedule shall be the energy in accordance with the Joint Meter Readings or Energy Accounts issued by SLDC and will be the basis for Capacity Charge and Energy Charges.”*

- x. Clause 9.1.3 of the draft PPA provides for “Billing and Payment” as follows:

*“The Seller shall raise a provisional bill (“Provisional Bill”) on the 1st Business Day of every month for the Scheduled Energy supplied to the Buyer in the previous month and shall send either through hand delivery or through fax or email and confirmation copy sent through courier to the Buyer. The Provisional Bill shall be based on implemented schedule of RLDC which shall be downloaded from RLDC website for the energy delivered at the Delivery Point. The Capacity Charge shall be calculated based on cumulative average Declared Capacity till the end of the relevant period based on the formula given in Schedule A.”*

The above mentioned Clause needs to be corrected and should be replaced as following:

*“The Seller shall raise a provisional bill (“Provisional Bill”) on the 1st Business Day of every month based on the actual bills of fuel cost raised by GAIL or the fuel supplier on the Seller for the first 15 days of the month prorated for remaining days of the same month for the Scheduled Energy supplied to the Buyer in the previous month and shall send the same either through hand delivery or through fax or email and confirmation copy sent through courier to the Buyer. The Provisional Bill shall be in accordance with the Meter Readings and shall be accompanied by the copy of the MRI dump. The Capacity Charge shall be calculated based on cumulative average Declared Capacity till the end of the relevant period based on the formula provided in MYT Regulations, 2015 read with Schedule A.*

- y. Sub-Clause 9.1.5 of the draft PPA provides for “Billing and Payment” as follows:

*“The Monthly Bill or a credit note, as the case may be, shall be raised/ issued by the Seller on the basis of REA issued by RPC or any other competent authority. The REA issued by RPC shall be binding on the Parties for billing and payment/ adjustment of payment purposes, as the case may be.”*

The above mentioned Clause needs to be corrected and should be replaced as following:

*“The Monthly Bill or a credit note, as the case may be, shall be raised/ issued by the Seller on the basis of Joint Meter Readings or Energy Accounts issued by SLDC and the final bills raised by GAIL or the fuel supplier on the Seller and the same shall be binding on the Parties for billing and payment/ adjustment of payment purposes, as the case may be.”*

- z. Sub-Clause 9.1.6 of the draft PPA provides for “Billing and Payment” as follows:

*“The Seller shall issue to Buyer a signed Monthly Bill for the immediately preceding Month or a credit note, as the case may be, on receipt of the REA issued by the RPC. The Buyer shall make payment against such bills within Due Date or the Seller shall make adjustment of the credit note immediately in the next ensuing bill. In case the Due Date of payment is a bank holiday, the next Business Day shall be treated as the Due Date.”*

The above mentioned Clause needs to be corrected and should be replaced as following:

*“The Seller shall issue to Buyer a signed Monthly Bill for the immediately preceding Month or a credit note, as the case may be, on the basis of Joint Meter Readings or Energy Accounts issued by SLDC and the bills raised by GAIL or the fuel supplier. The Buyer shall make payment against such bills within Due Date or the Seller shall make adjustment of the credit note immediately in the next ensuing bill. In case the Due Date of payment is a bank holiday, the next Business Day shall be treated as the Due Date.”*

- aa. Clause 9.8 providing “Transmission Charges” should be renamed as “Transmission Charges & SLDC Charges”.

- bb. Clause 9.8.1 of the draft PPA provides for “Transmission Charges” as follows:

*“Any charges, including the transmission charges and transmission losses for sale of the Contracted Capacity beyond the Delivery Point shall be to the account of the Buyer, and shall be borne by the Buyer.”*

The above mentioned Clause needs to be corrected and should be replaced as following:

*“Any charges, including the transmission charges, transmission losses and SLDC charges for sale of the Contracted Capacity shall be to the account of the Buyer, and shall be borne by the Buyer in accordance with the MYT Regulations, 2015 and tariff orders applicable from time to time.”*

- cc. Clause 9.8.2 of the draft PPA provides for “Transmission Charges” as follows:

*“After introduction of Point of Connection Tariff for sharing of ISTS charges by CERC; if any charges and losses related to Transmission imposed on the Power*



*Station; the same shall be borne by the Buyer in proportion to its share in the Power Station."*

The above mentioned Clause needs to be corrected and should be replaced as following:

*"After introduction of Point of Connection Tariff for sharing of intra state transmission charges including losses is introduced in the State by UERC, the same shall be borne by the Buyer and the Seller as per applicable State PoC rate of injection/drawal charges and losses as approved by UERC from time to time."*

dd. Clause 12.1.(ii) and 12.1.(iii) of the draft PPA provides for "But change in law does not include" & "such change in law could be but not restricted to any of the following cases where it:" provides as follows:

*"(ii) But Change in Law shall not include:*

*(a) Any change in any withholding tax on income or dividends distributed to the shareholders of the Seller; or*

*(b) Change in respect of UI Charges or frequency intervals by an Appropriate Commission.*

*(iii) Such Change in Law could be but not restricted to any of the following cases where it:*

*(a) Results in any change in respect of Tax except those specified in Clause 12.1(ii),*

*(b) Affects Seller's or Buyer's obligations under this agreement,*

*(c) Materially affects the operation of the Project"*

The above mentioned Clause needs to be removed since Clause 12.1(i)(a)(b)(c)(d)(e) covers change in law in accordance with the UERC (MYT) Regulations, 2015.

ee. Clause 12.4.1 of the draft PPA provides for "notification of change in law" provides as follows:

*"12.4.1 The Party that is affected by a Change in Law in accordance with Clause **Error! Reference source not found.** and wishes to claim a Change in Law under this clause, it shall give notice to the other Party of such Change in Law as soon as reasonably practicable, after becoming aware of the same or when it should reasonably have known of the Change in Law."*

The above mentioned Clause which deals with claim of impact from change in law should be replaced as following:

*“12.4.1 The party that is affected by change in law in accordance with Clause 12.2.1 and 12.2.2 and wishes to claim compensation/impact/implications caused due to change in law under this clause, it shall give notice to the other party of such change in law as soon as reasonably practicable, after becoming aware of the same or when it should reasonable have known of the change in law.”*

ff. Sub-Clause 17.3.2 of the draft PPA provides for “Dispute Resolution” which provides as follows:

*If the Dispute arises out of or in connection with this Agreement if of the nature not covered in Clause **Error! Reference source not found.** or Dispute is of such nature not adjudicated by Appropriate Commission then such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and Rules of the Indian Council of Arbitration and in accordance with the process specified in this Clause.*

The above mentioned Clause which deals with “Dispute Resolution” should be replaced as under:

*“If the Dispute arises out of or in connection with this Agreement if of the nature not covered in Clause **Error! Reference source not found.** or Dispute is of such nature not adjudicated by Appropriate Commission then such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and Rules of the Indian Council of Arbitration and in accordance with the process specified in this Clause subject to relevant provision of the Electricity Act, 2003 and any other law applicable as amended from time to time. “*

gg. Schedule A: Tariff Details and Monthly Billing Formula appended to the Draft PPA should be replaced as under:

*“SCHEDULE A: TARIFF DETAILS AND MONTHLY BILLING FORMULA1*

***A. General***

*The method of determination of Tariff payments comprising of Capacity Charge and Energy Charge for any Contract Year during the Term of Agreement shall be as determined by UERC in accordance with MYT Regulations, 2015 as amended from time to time.*

*For the period the “Scheme for Utilization of Gas based power generation capacity”*

*issued by the Government of India, Ministry of Power (MoP) introduced vide Office Memorandum No. 4/2/2015-Th.1 dated 27.3.2015 is applicable, the Tariff shall be as approved by UERC subject to the capped unit price keeping in view the provisions of the Scheme.*

***B. Deviation from the schedule***

*Variation between Scheduled Energy and actual energy at the Delivery Point shall be accounted for on the basis specified by UERC from time to time.*

***C. Transmission/Wheeling Charges and Scheduling Charges***

- The payment of transmission/wheeling charges shall be settled between the STU and the Buyer.*
- The payment of scheduling charges to the respective nodal agency, i.e. SLDC shall be the responsibility of the Buyer. "*

2.2.2 The generator vide its letter dated 30.01.2016 had submitted that the PPA was a mandatory requirement for the release of gas as per the PSDF Agreement and that they have to submit the PPA for release of gas, i.e. e-Bid RLNG. Accordingly, it had requested the Commission to approve the mutually agreed draft PPA submitted by UPCL on or before 10.02.2016. Accordingly, both the generator and UPCL is directed to incorporate the changes discussed above in the draft PPA and sign the PPA within three days of the date of the Order so as to facilitate the generator to submit the same to GoI within the stipulated time. UPCL is also directed to submit the copy of the signed PPA before the Commission within a week of the date of the Order.

2.2.3 With this, Petition no. 02 of 2016 stands disposed.

2.2.4 Ordered accordingly.

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

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