

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 26 of 2016

In the matter of:

Application seeking approval of UERC on the Draft Power Purchase Agreement between UPCL & Sravanthi Energy Pvt. Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd. ...Petitioner

AND

M/s Sravanthi Energy Pvt. 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: June 21, 2016

Date of Order: July 20, 2016

This Order relates to the Petition filed by Uttarakhand Power Corporation Ltd., a distribution licensee (hereinafter referred to as "UPCL" or "Petitioner") seeking approval of draft PPA for purchase of power from the Gas based power plant to be commissioned at Village Khaikhera, Kashipur, Dist. Udhamasinghnagar owned by M/s Sravanthi Energy (P) Ltd. (hereinafter referred to as "M/s SEPL" or "Respondent No. 1").

1. Background

1.1 The Petitioner filed a Petition dated 14.06.2016 seeking approval of draft PPA to be executed with M/s SEPL. The Petition has been filed under Section 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 was facing continued power shortage throughout the year and had 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 had to purchase power through IEX on day ahead basis where the rates were volatile and power availability was 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 capacities of Solar power plants commencing generation within a year and generation from M/s Greenko's Budhil HEP (70 MW).

- 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, Distt. 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 किया जायेगा।"
- 1.4 UPCL submitted that M/s Sravanthi Energy (P) Ltd. desires to sell 214 MW power scheduled to be generated from its project and it is desirous of purchasing upto 214 MW as per the actual power deficit on the terms and conditions stipulated in draft PPA. Copy of the said petition was forwarded to M/s SEPL for submission of its comments on the same. The Commission also decided to hold a hearing for admission of the petition on 21.06.2016.
- 1.5 M/s SEPL vide its letter dated 20.06.2016 submitted its comments which are dealt with at appropriate places in the order.
- 1.6 The Commission vide its Order dated 21.06.2016 while admitting the petition directed the parties as follows:

"

- a) *The Petitioner to issue to the Respondent on or before 24.06.2016, the Discom's Letter of Confirmation provided at Annexure-I of the PSDF support Agreement executed by the Respondent with MoP, GoI and also the Letter of Intent (LoI) for purchase of power from SEPL. In Discom Letter of Confirmation, at Para 3(iii), the price for purchase of incremental energy should be Rs. 4.70/kWh or*

as notified by MoP in future.

- b) *The Respondent to file Tariff Petition and Business Plan Petition in accordance to UERC (Terms and Conditions of Determination of Multi Year Tariff) Regulations, 2015 within 30 days of issue of the Order.*
- c) *PTCUL to submit the status of evacuation of power from the project and the capacity available in the 220 kV Kashipur-Mahuakheraganj line within one week. Further, PTCUL with regard to the connectivity, is required to allow connectivity to the project for testing and commissioning activities including evacuation of power till the final decision of the Commission in the matter."*

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, the draft PPA between UPCL & M/s SEPL is being examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003, MYT Regulations, 2015 and also in light of the 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 first page of draft PPA regarding the subject matter of the PPA reads as follows:

“Procurement of 214 MW of power on long term basis from 450 MW (ISO) Gas based Combined Cycle Power Project in Khai Khedra, Kashipur, District Udhamasinghnagar Uttarakhand”.

The Respondent (SEPL) in its comments has submitted that the word “Khai Khedra” should be replaced by “Village Khaikhera” since the plant location has not been mentioned correctly.

The Commission agrees with the Respondent’s comments and directs the Petitioner (UPCL) to make necessary correction so as to specify actual plant location in the PPA.

- b. 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.

- c. Recital A of the PPA stipulates as under:

“The Seller is in the business of generation of power and is in the process of commissioning of its Gas Based Combined Cycle Power Project situated at Khai-Khedra Tehsil Kashipur, District Udhamasinghnagar Uttarakhand(Gama Kashipur CCPP) (“Project”) having rated capacity of 450 MW at ISO conditions”

The Respondent (SEPL) submitted that the word “Khai Khedra” should be replaced by “Village Khaikhera” as plant location has not been written correctly. Further SEPL also pointed out that the word “Gama” should be replaced by “Sravanthi” as plant’s name is Sravanthi.

The Commission agrees with Respondent’s comments and modifies Recital A which shall be read as under:

“The Seller is in the business of generation of power and is in the process of commissioning of its Gas Based Combined Cycle Power Project situated at Village Khaikhera Tehsil Kashipur, District Udhamasinghnagar, Uttarakhand (Sravanthi Kashipur CCPP) (“Project”) having rated capacity of 450 MW at ISO conditions”

- d. 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 214 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.”

- e. 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.

- f. Clause 1.1.6 defines “Availability” or “Plant Availability Factor” as follows:

““Availability” or “Plant Availability Factor” In relation to a generating station for any

period, means the average of the daily Declared Capacities for all the days during the period expressed as a percentage of the Installed Capacity(MW) reduced by the normative Auxiliary Power Consumption that is made available by the Seller at the Delivery Point “;

The Respondent (SEPL) submitted that the above mentioned Clause should be substituted as follows:

“Availability” or “Plant Availability Factor” In relation to a percentage of 50% of the Installed Capacity(MW) reduced by Delivery Point”.

The definition mentioned at Clause 1.1.6 of the draft PPA is in accordance with the Regulations. However, the contracted capacity under this PPA is not the installed capacity of the plant, hence, for this purpose, the Commission is of the view that necessary provision is required to be appended to the above mentioned Clause 1.1.6 and the same shall be read as:

““Availability” or “Plant Availability Factor” In relation to a generating station for any period, means the average of the daily Declared Capacities for all the days during the period expressed as a percentage of the Installed Capacity(MW) reduced by the normative Auxiliary Power Consumption that is made available by the Seller at the Delivery Point;

However, for the limited purposes of this Clause and without prejudice to meaning & interpretation of any other clause of this PPA, the “Availability” or “Plant Availability Factor” in present case be computed based on the Contracted Capacity (MW).”

g. Clause 1.1.18 defines “COD” or “Commercial Operation Date” as follows:

“COD” or “Commercial Operation Date” in case of a generating unit or block of the thermal generating station shall mean the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) in the presence of Nodal Officer of UPCL through a successful trial run after notice to the beneficiaries, if any, and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station;

The Respondent (SEPL) submitted that it should be read as follows:

““COD” or “Commercial Operation Date” shall be as per the UERC regulation.”

The Commission is of the view that the existing definition of “COD” or “Commercial Operation Date” appearing at Clause 1.1.18 of draft PPA is required to be modified in accordance with the Regulations and, accordingly, the same shall be read as follows:

““COD” or “Commercial Operation Date” in case of a generating unit or block of the thermal generating station shall mean the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run after notice to the beneficiaries, if any, and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station;”

However, for the limited purposes of this Clause and without prejudice to meaning & interpretation of any other clause of this PPA, the MCR and the “installed capacity” be considered as “contracted capacity” coming in stages as per Schedule Delivery Date.”

The provision of demonstrating the above capacity after giving notice to the beneficiaries is so kept that the beneficiary may choose to be present during these activities. However, binding the generator to demonstrate the capacity in the presence of nodal officer appointed by the licensee in the matter would lead to delay in commissioning of the project. The licensee may himself depute any officer to be present during the demonstration, however, the same cannot be binding upon the generator to wait indefinitely for the licensee’s personnel.

- h. Clause 1.1.24 of the draft PPA provides definition of “Contracted Capacity” as follows:

““Contracted Capacity” means in relation to the Project 214 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 Respondent (SEPL) submitted that the Saleable capacity is calculated after deducting Auxiliary Power Consumption from Contracted Capacity and hence, this Clause of the PPA should be replaced as below:

““Contracted Capacity” means in relation to the Project 214 MW less Auxiliary Consumption of power at ex-bus bar.....of this Agreement”

In line with the comments of the Respondent (SEPL), it is clearly stated that the above mentioned 214 MW of power is the gross capacity of the project, accordingly, the contracted capacity of the project needs to be clearly spelt as 214 MW against “214 MW of power at ex-bus bar”. Hence, the Commission is of the view that the definition needs to be modified as under:

““Contracted Capacity” means in relation to the Project capacity of 214 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.”

- i. 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.

- j. Clause 1.1.28 of the draft PPA provides the 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 omitted. 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;”

- k. Clause 1.1.48 of the draft PPA states Installed Capacity as follows:
““Installed Capacity” means 2 x 225 MW (ISO)”.

The Respondent (SEPL) submitted that the there are two blocks of 225 MW (ISO) each in its power plant, hence, the said Clause should be replaced as follows:

““Installed Capacity” means two (2) block of 225 MW (ISO) each”.

The Commission observes that the power plant shall have two blocks of 225 MW each capacity. Agreeing with the comments of M/s SEPL the modified definition shall be read as:

““Installed Capacity” means two (2) block of 225 MW (ISO) each””.

- l. Clause 1.1.50 of the draft PPA defines “Interconnection Point” as follows:

“Interconnection Point” means the point at HT Bus in the station switchyard of the seller connected with 220KV substation Khai Khedra, Kashipur of Power Transmission Corporation of Uttarakhand Limited.

The Respondent (SEPL) submitted that for evacuation of power from Sravanthi CCPP Kashipur, it has constructed a dedicated transmission system comprising of a 2.512 km long 220 kV Double circuit transmission line from Power Station to Loop in Loop Out at Kashipur-Mahuakheraganj 220 kV Transmission line, hence, “substation Khai Khedra, Kashipur” should be replaced by “Kashipur-Mahuakheraganj Transmission line”.

In accordance with the MYT Regulations 2015, “Interconnection Point” means the point where the power from the power station switchyard bus of the Seller is injected into the interstate/intrastate transmission system, as the case may be (including the dedicated transmission line connecting the power station with the intrastate transmission system). In view of above, the Commission agrees with the comments of Respondent and the modified definition would be read as follows:

““Interconnection Point” means the point at HT Bus in the station switchyard of the seller with outgoing line from the generator connected with 220 kV “Kashipur-Mahuakheraganj Transmission line” of Power Transmission Corporation of Uttarakhand Limited”.

- m. “Error!Reference source not found;” appearing at Clause nos. 1.1.65 & at other clauses of the draft PPA needs to be corrected.

The Respondent (SEPL) submitted that the said Clause should be deleted.

The Commission is of the view that the said Clause specifies the definition of “Receivables” deletion/omission of the same doesn’t seem appropriate unless the word receivables have not been used elsewhere in the PPA. Both the Petitioner and the Respondent should check whether the word receivables have been used in the PPA and if not used, then the definition can be done away with else, the error in the Clause is required to be corrected.

- n. Clause 1.1.63 defines the meaning of “Power Station” as follows:

“Power Station” means Gas Based Combined Cycle Power Project in Kashipur, in the State of Uttarakhand of 225 MW capacity at ISO conditions. The term “Project” shall also have the same meaning and both the terms are used in the Agreement interchangeably.”

The Respondent (SEPL) submitted that its generating plant shall be having two

(2) Blocks of 225 MW each capacity at ISO conditions, hence, the words “225 MW capacity “ should be replaced by “two (2) Blocks of 225 MW each capacity”.

As discussed above, the Commission agrees with SEPL’s comment and the modified definition shall be read as:

““Power Station” means Gas Based Combined Cycle Power Project in Kashipur, in the State of Uttarakhand having two(2) Blocks of 225 MW each capacity at ISO conditions. The term “Project” shall also have the same meaning and both the terms are used in the Agreement interchangeably”.

o. Clause 1.1.72 of the draft PPA defines “Scheduled Delivery Date” as follows:

“Scheduled Delivery Date” shall mean the scheduled date on which the Seller commences firm supply of the Contracted Capacity to the Buyer i.e. from 15th February, 2016 in accordance with this Agreement.”

The Respondent in its comments submitted to replace the definition by the following:

““Scheduled Delivery Date” shall mean the scheduled date on which the Seller commences firm supply to the Buyer, i.e. 71.5 MW from unit-I from 25th July 2016, 71.5 MW from unit-II from 05th August 2016 and 71 MW from unit-III from 25th August 2016”

The reason forwarded by the Respondent for the same was that it will commission its units one after another in accordance with the definition of CoD specified by the Commission in its UERC (Terms and Conditions for determination of Multi Year Tariff) Regulations, 2015.

The Commission observes that in 3 stages the Generator proposes to reach the contracted capacity namely commissioning of 1st gas turbine of 71.5 MW, then 2nd gas turbine of 71.5 MW and lastly with commissioning of 71 MW steam turbine. Therefore, the modified definition would be read as follows:

“Scheduled Delivery Date” shall mean the scheduled date on which the Seller commences firm supply of 71.5 MW of power from its 1st gas turbine of block 1 by 25th July, 2016, followed by additional 71.5 MW of power from 2nd gas turbine of block 1 by 5th August, 2016 and subsequently further additional 71 MW of power from steam turbine of block 1, i.e. 214 MW of contracted capacity by 25th August, 2016 in accordance with the Agreement.

p. Clause 1.1.83 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 or the actual price of gas whichever is lower;"

The Respondent submitted that the tariff should be determined by UERC as per UERC Regulation for tariff determination as in force from time to time. However, during the period of the Scheme of GoI the tariff shall be the Capped Unit Price. M/s SEPL submitted that the words "or the actual price of gas whichever is lower" appearing in the above mentioned Clause should be deleted.

The Commission observes that the comment of M/s SEPL in this regard is appropriate as the Scheme of GoI clearly states that the receipts of money shall be utilised towards the fuel cost plus O&M expenses as per the guidelines of the concerned regulator and debt servicing after capping the fixed cost. Hence, tariff would not only include the fuel cost but also some portion of the fixed costs. Hence, 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;"

- q. Clause 1.1.87 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 entire 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.

- r. Clause 1.1.89 defines “Block” as follows:

““Block” means 2 Gas Turbines, 2 HRSGs and one STG having gross capacity of 214 MW at site ambient reference and grid conditions;”

The Respondent in its comments proposed to replace the above definition by the following definition without assigning any reason for the same:

““Block” means 2 units of Gas Turbine Generator & 1 unit of Steam Turbine Generator having gross capacity of 214 MW at site ambient reference and grid conditions;

As per MYT Regulations, 2015 the block has been defined as under:

““Block” in relation to a combined cycle thermal generating station includes combustion turbine – generators, associated waste heat recovery boilers, connected steam turbine – generators and auxiliaries;”

The definition of “Block” appearing in draft PPA is in line with the MYT Regulations, 2015. Hence, the Commission is of the view that no modification is required in the said Clause.

- s. Clause 1.1.90 of the draft PPA regarding “Unscheduled Interchange” states as follows:

“Unscheduled Interchange” or “UI” shall have the meaning provided in the CERC (Unscheduled Interchange Charges and Related Matters) Regulations, 2009 as revised from time to time; and

CERC has done away with Unscheduled Interchange Charges and has replaced the same with Deviation Settlement Mechanism. Further, as of now intra-State ABT is not applicable in the State of Uttarakhand. Whenever the Commission decides to implement intra-State ABT, then associated Deviation Settlement Mechanism as approved by the Commission would apply. Therefore Clause 1.1.90 of draft PPA should read as;

“Deviation Settlement” shall have the meaning as approved by UERC in its Regulations from time to time; and”

- t. Clause 1.1.91 of the draft PPA regarding “UI Regulations” states as follows:

“UI Regulations” means the CERC (Unscheduled Interchange Charges and Related Matters) Regulations, 2009 as amended from time to time.”

For reasons spelled in Para (s.) above, Clause 1.1.91 of draft PPA should be read as;

““UI Regulations” shall mean the Deviation Settlement Mechanism and Related Matters Regulations notified and amended by UERC from time to time.”

- u. 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 the technical limit, whereas, “Schedule B” of the draft PPA provides for details of fuel. Hence, the aforementioned reference made to “Schedule C” appears to be incorrect and needs to be replaced by “Schedule B” in Clause 5.1(i) of the PPA.

- v. 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 11 of this 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 11 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 reference made to “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 as the scheduled delivery date is being deferred not only by force majeure events but also by the unavailability of fuel:

“...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”.”

w. 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 reference made to “Schedule C” appears to be incorrect and needs to be replaced by “Schedule B” in the Sub-Clause 7.1.2 of the PPA. The Clause shall be read as:

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

x. 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;”

y. 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.”

- z. 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.”

- aa. 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 (NAPLF) 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.

bb. 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."

cc. 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.

dd. 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.”

ee. Clause 7.2.2.1 of the draft PPA states as below:

“7.2.2.1. The seller has entered into a Gas Transportation Agreement (GTA) with M/s GAIL (India) Limited (GAIL) for the transportation of Gas for the Unit. The Project has been recommended by Central Electricity Authority/ Ministry of Power, Govt. of India for allocation

of domestic gas. In case of shortfall of domestic gas, GAIL shall supply the RLNG / Spot Gases to achieve the Target Availability.”

The Respondent (SEPL) submitted that above mentioned Clause should be substituted as follows:

“The seller has entered of domestic gas. In case of shortfall of domestic gas, GAIL or any other 3rd Party shall supply the RLNG / Spot Gases to achieve the Target Availability”

The Commission observes that during the validity of the Scheme of GoI, M/s GAIL shall be supplying gas corresponding to the PLF specified for these generators. However, after the Scheme the seller may enter into a contract for supply of gas either from GAIL or any other third party. Hence, the comment of M/s SEPL in this regard is acceptable and thus, the Clause above may be substituted as under:

“7.2.2.1. The seller has entered into a Gas Transportation Agreement (GTA) with M/s GAIL (India) Limited (GAIL) for the transportation of Gas for the Unit. The Project has been recommended by Central Electricity Authority/ Ministry of Power, Govt. of India for allocation of domestic gas. In case of shortfall of domestic gas, GAIL or any other 3rd Party shall supply the RLNG / Spot Gases to achieve the Target Availability.”

ff. 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.”

gg. Clause 8.2 of the draft PPA provides for “Energy Accounting” as follows:

“8.2.1 Output of the Main Meters and Check Meters shall form the basis for billing.

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.”

hh. 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.”

ii. 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.

jj. 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.”

kk. 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.”

ll. The Respondent (SEPL) submitted that under the GOI e-Bid RLNG scheme, the

generator is not getting any return on equity for incremental electricity generated so rebate should not be applicable on incremental electricity generated under the e-Bid RLNG Scheme introduced by the Government of India. The generator requested for addition of sub-Clause (c) after sub-Clause (a) & (b) of Clause 9.2.1 as follows:

"(c) However, the aforesaid Clause 9.2.1 (a) and 9.2.1 (b) shall not be applicable for payments made towards the bills raised for incremental electricity generated under the e-Bid RLNG Scheme introduced by the Government of India"

The contention of Respondent No. 1 that it would not be getting any RoE for incremental electricity generated so rebate should not be applicable till the Scheme is applicable is not a correct submission. Rebate is normally offered to enable the buyer to make payment in time enabling the seller to save on the cost of working capital. On the other hand, RoE is the return on equity allowed for the investment made in the project through equity which can either be used for future expansion or for distribution to the shareholders. The GoI e-bid RLNG Scheme clearly states that the receipts of money by the seller shall be utilised towards the fuel cost and O&M expenses as per the guidelines of the concerned regulator and debt servicing after capping the fixed cost. Further, no return on equity (RoE) has been allowed to the generators as per the Scheme. In case the tariff determined by the Commission in accordance with the Regulations for the generator exceeds the capped price, then apparently the generator will not be able to recover its Annual Fixed Cost (including Interest on Working Capital) determined in accordance with the Regulations and if the tariff determined falls short of the capped price then interest on working capital would be allowed to the generator as per the Regulations. Therefore, if the generator gets interest on working capital, it will have to pass on the rebate to UPCL otherwise no rebate would be allowed to UPCL. The Commission would take a view on the same during tariff determination proceedings of the Respondent.

mm. Clause 9.8 providing "Transmission Charges" should be renamed as "Transmission Charges & SLDC Charges".

nn. 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.”

oo. 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 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.”

pp. Clause 12.1.(ii) and 12.1.(iii) of the draft PPA 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) covers change in law in accordance with the UERC (MYT) Regulations, 2015.

qq. Clause 12.4.1 of the draft PPA which provides for “notification of change in law” stipulates as follows:

“12.4.1 The Party that is affected by a Change in Law in accordance with Clause 12.2 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.”

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

“If the Dispute arises out of or in connection with this Agreement if of the nature not covered in Clause 17.2.1 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 17.2.1 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. “

- ss. 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 Accordingly, both UPCL and M/s SEPL are 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.

2.3 Other Issues

2.3.1 The Respondent No. 1 in its comment had submitted that it has signed the Connectivity Agreement with PTCUL (Respondent No. 2) and it has constructed a 2.512 km long 220 kV transmission line to LILO at 220 kV Kashipur Mahuakheraganj Transmission line owned by PTCUL. The generator requested the Commission to direct PTCUL to allow it to feed power into 220 kV Kashipur Mahuakheraganj Transmission line as it would be supplying power to UPCL under a long term PPA.

2.3.2 The Commission vide its Order dated June 21, 2016 directed PTCUL to submit the status of evacuation of power from the project and the capacity available in the 220 kV Kashipur-Mahuakheraganj line within one week of the date of Order. Further, PTCUL with regard to the connectivity, was required to allow connectivity to the project for testing and commissioning activities including evacuation of power till the final decision of the Commission in the matter. PTCUL, vide its reply dated June 28, 2016, submitted that as per the load flow analysis, the total transfer capacity available for the generators through 220/132/33 kV substation at Mahuakheraganj and its associated 220 kV and 132 kV lines under normal case would be 404 MW. PTCUL also submitted that M/s SEPL was granted connectivity through one circuit of 220 kV Kashipur Mahuakheraganj line on temporary basis upto June, 2012 and in accordance with the directions of the Commission

for allowing connectivity to the project for testing and commissioning activities including evacuation of power, M/s SEPL was required to apply afresh for the connectivity to PTCUL.

2.3.3 In this regard, the Commission vide its letter dated June 30, 2016 informed PTCUL in accordance with the UERC (State Grid Code) Regulations, 2007. 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 is of opinion that since the power would be supplied to UPCL, open access would not be applicable and the same shall be under the State Grid Code Regulations. Accordingly, Respondent No. 2 is directed to allow evacuation of power from the above mentioned generating station at the earliest in the Sub-station/bay/line in accordance with the UERC (State Grid Code) Regulations, 2007.

2.4 While parting with this Order it would be appropriate to point out an important aspect of licensee's habitual practice being followed at the time of preparation/submission of its petitions. On analysis of the Draft PPA, the Commission also noted that the discrepancies mentioned as above are by & large similar to that of the discrepancies pointed out on Draft PPA with M/s GIPL vide the Commission's earlier Order dated 08.02.2016. Recurrence of the similar discrepancies shows lackluster approach of the Petitioner on the Commission's ruling/directions leading to delay in regulatory process. The licensee, atleast, can make references of the Regulations/Orders of the Commission at the time of preparation/ submissions of its Petitions in similar matters so as to save precious time of all the concerned. The Petitioner is hereby directed to avoid recurrence of similar discrepancies in all future filing of petitions on which the Commission has already given its views/decisions.

2.5 With this, Petition no. 26 of 2016 stands disposed.

2.6 Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman