

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition for seeking approval of the Commission on Tender Document for Short Term Power Procurement.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

CORAM

Shri Subhash Kumar Chairman

Shri K.P. Singh Member

Date of Hearing: June 21, 2016

Date of Order: June 21, 2016

The Order relates to the Petition filed by M/s Uttarakhand Power Corporation Ltd. (hereinafter referred to as "Petitioner" or "UPCL") seeking approval of the Commission on the Tender Document for Short Term Power Procurement.

1. Petitioner's submissions

- 1.1 UPCL submitted that presently it is purchasing the deficit power from exchange on day ahead basis to meet out the power requirement of the State. The tender for procurement of power to meet the deficit was issued in accordance with the Guidelines dated 30.03.2016 of Ministry of Power, Government of India for short term procurement of power through tariff based bidding process for purchase of power during July, 2016 to September, 2016.
- 1.2 After evaluation of the tender, M/s Tata Power Trading Corporation Ltd. (TPTCL), M/s PTC India Ltd. and M/s Adani Enterprises Ltd. were selected as the successful bidders for supply of power from WR/ER and UPCL issued LoI to them.

- 1.3 The application for booking of corridor for the month of Jul and Aug-2016 were sent by the bidders to NRLDC on firm basis from WR to NR and the same were rejected by NRLDC due to transmission constraint. Moreover, as per the NRLDC website, the Available Transfer Capability (ATC) for the month of September, 2016 is zero (0) and no respite was expected in transmission constraint at least till Sep-2016.
- 1.4 UPCL also submitted that 200 MW RTC power was already taken from HPPC through M/s MPL during the month of October, 2015 to March, 2016 under the banking arrangement and against this 950 MU banked power approx. 442 MW RTC power shall be returned back to HPPC during the month of July, 2016 to September, 2016 including 105% of banked energy. Further, UPCL was required by GoUK to ensure 24x7 power supply to all the consumers of the State.
- 1.5 UPCL submitted that for complying the aforesaid order of GoUK and return of approx. 950 MU banked power to HPPC, it has to procure the deficit through Short Term Power Purchase to avoid the penalties in case of default in return banking and to meet the growing demand.
- 1.6 UPCL also submitted that E-auctioning of transmission corridor had been introduced recently but due to non-availability of transmission corridor, no bidding was conducted by NRLDC for the month of July and August 2016. UPCL further submitted that the problem of congestion/Non-availability of transmission corridor would remain till September 2016, hence, it has only an option to procure power from the source in Northern Region.
- 1.7 UPCL submitted that Clause No. 8. of the guidelines of Ministry of Power, Government of India dated 30-03-2016 provides as under:-
- “8. Deviation from process defined in the Guidelines”*
- 8.1 Generally, no deviation shall be allowed from the Guidelines. However, if it is essential to have the deviation from these Guidelines, the same could be done with the prior approval of the Appropriate Commission.”*
- 1.8 Accordingly, a fresh tender is required to be floated wherein the source of power would be reserved only for Northern Region, through M/s MSTC India Limited as per the guidelines of Ministry of Power, Government of India dated 30-03-2016. In continuation

of the same UPCL has requested the Commission to allow the deviation and approve the Tender Document having a pre-qualification criteria of source in Northern Region.

2. Commission's views

2.1 Section-86(1)(b) of the Electricity Act, 2003 stipulates the following as one of the functions of the Commission:

“ (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;”

2.2 Regulation 39 of UERC (Conduct of Business) Regulations, 2014 specifies as under:

“(39) Regulation of Distribution licensee's purchase of power

- (1) The distribution licensee shall file with the Commission in complete form copies of all Power Purchase Agreements already entered into by it.*
- (2) The distribution licensee to establish to the satisfaction of the Commission that the purchase of power by it is under a transparent power purchase procurement process and is economical and the power is necessary to meet its service obligation.*
- (3) The Distribution licensee shall apply to the Commission for approval of the draft Power Purchase agreement that it proposes to enter into with the suppliers. The Commission may pass orders:
 - (a) Approving the agreement; or*
 - (b) Approving the agreement with modifications proposed to the terms of the agreement; or*
 - (c) Rejecting the agreement.**
- (4) Nothing contained herein shall affect the obligations of distribution licensee under the existing contract and arrangement for purchase, import or acquisition of electricity from generating companies, electricity trader and from other persons with whom the licensee has agreements or arrangements of power purchase or procurement of energy in accordance with the terms and conditions of such agreement and arrangement consented to or approved by the Commission.*
- (5) The provisions of sub-regulations (2) and (3) above or any action taken therein shall not, in any manner, prejudice the exercise of functions and powers of the Commission under any of the other provisions of the applicable law, the Regulations and Orders issued from time to time.”*

2.3 Further, the Distribution and Retail Supply License issued by the Commission lays down certain conditions of license, which amongst others also has the following:

“5.1 The Licensee shall be entitled to:

(a) ...

(b) Purchase, import or otherwise acquire electricity from any generating company or any other person under Power Purchase Agreements or procurement process approved by the Commission;

...

5.2 The Licensee shall not without the general or special approval of the Commission:

(a) purchase or import or otherwise acquire electricity under this Licence from any Person other than generating companies or any other person as per the purchase agreements or arrangements approved by the Commission...”

2.4 Even the Guidelines dated 30.03.2016 of Ministry of Power, Government of India for short term procurement of power through tariff based bidding process for purchase of power lays down the following:

“4.1. The procurer (s) shall procure short term power as per the plan approved by Appropriate Commission or appropriate body as may have been constituted for the purpose by the Appropriate Commission. In such case the Distribution Licensees will intimate about the initiation of the procurement process to the Appropriate Commission.”

In this regard, the Commission also in its Tariff Order for FY 2016-17 dated 05.04.2016 had directed UPCL as follows:

“...the Petitioner is directed to prepare its power purchase plan for the next three years and initiate the bidding process to meet the deficit, if any. The Petitioner is directed to submit an action plan in this regard within 15 days of the date of Order. The Petitioner is also directed to ensure compliance of the Regulations issued by the Commission from time to time, failing which any consequent liability would be to the account of the Petitioner.”

2.5 Despite the categorical provisions being laid down in the Guidelines of MoP and the Commission's Regulations and Tariff Orders, it is surprising to note that the licensee has not prepared any plan till date. The licensee has projected deficit in meeting the demand without taking into consideration the PPA's entered/proposed to be entered into by it. In the absence of any plan, the efforts to procure power through long term/short term sources may lead to a scenario where UPCL would be in a surplus situation where it

would not be required to resort to additional purchases. This is all the more relevant as the Guidelines of MoP clearly provides that once the LoA is issued by the procurer to the successful bidder, it shall have to procure atleast the minimum quantum of power quoted by the lowest bidder which can have substantial impact in case the entire or a part of power is not required by UPCL.

- 2.6 The Commission recognizes the need of power purchase requirement for the licensee as the licensee has not only to supply power to its consumers but during July-September, 2016 it will also have to return the banked power to Haryana in accordance with the banking arrangements which if not returned will have financial ramifications on UPCL and in turn the consumers.
- 2.7 Accordingly, the Commission approves the deviation sought by UPCL with the direction to UPCL to issue the tender only after proper power purchase plan has been prepared by it and resultant deficit thereof, projected in the plan, is factored in. Also submit a copy of the power purchase plan to the Commission within one week of the issue of the Order, failing which any financial implication would be on UPCL's account and would not be allowed to be passed on to the consumers.
- 2.8 Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman