

Before

# UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 16 of 2017

**In the matter of:**

Application seeking approval of the Uttarakhand Electricity Regulatory Commission on the draft Power Purchase Agreement between Uttarakhand Power Corporation Ltd. and M/s Melkhet Power Private Limited.

**In the matter of:**

Uttarakhand Power Corporation Ltd. ... Petitioner

**AND**

**In the matter of:**

M/s Melkhet Power Private Ltd. ... Respondent-1

Power Transmission Corporation of Uttarakhand Ltd. ... Respondent-2

**CORAM**

**Shri Subhash Kumar      Chairman**

**Date of Hearing: March 10, 2017**

**Date of Order: April 12, 2017**

This order relates to the Petition filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Petitioner" or "Licensee") seeking approval of Draft PPA to be executed by it with M/s Melkhet Power Pvt. Ltd. (hereinafter referred to as "Respondent-1" or "generator") for procurement of power from Small Hydro Power Plant of the Respondent no. 1 of 24 MW capacity situated at Chamoli in the State of Uttarakhand.

## **1. Petitioner's Submissions**

- 1.1. UPCL had filed the Petition seeking approval of the Commission on the draft Power Purchase Agreement for purchase of energy generated from the Respondent-1 small hydro power plant under Section 86(1)(b) of the Electricity Act, 2003 and clauses 5.1, 5.2 & 5.4 of the license conditions of the Distribution and Retail Supply license dated 20.06.2003

issued by the Commission.

- 1.2. The Petitioner submitted that as per the provisions of the Electricity Act, 2003 read with provisions of UERC (Conduct of Business) Regulations, 2014 and Distribution and Retail Supply License, the Petitioner is required to get the approval of the Commission on the Power Purchase Agreement entered into with the Generating Company.
- 1.3. The Petitioner further submitted that the Respondent-1 was desirous to sell entire energy scheduled to be generated from its project and the applicant company is desirous of purchasing entire energy on the terms and conditions as agreed between the parties as per the terms and condition laid down in the draft PPA.
- 1.4. The hearing on admissibility of the Petition was held on 10.03.2017 and the Petition was admitted.
- 1.5. The submissions made by Respondent No. 1 & 2 are dealt in subsequent Paras.

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

*“(2) The distribution licensee on an offer made by the said RE based Generating Stations and Co-generating Stations shall enter into a power purchase agreement in conformity with these Regulations and relevant provisions of other Regulations and the Act. The distribution licensee shall sign the PPA within two months of offer made by the generating company, failing which the generating company may approach the Commission for suitable remedy.*

*(3) The distribution licensee shall make an application for approval of power purchase agreement entered into with the generating station in such form and manner as specified in these regulations and Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 as amended from time to time.”*

*(Emphasis added)*

2.1.5. Accordingly, in accordance with the requirement of the Act and Regulations referred above, UPCL as a distribution licensee was required to seek approval of the PPA entered or proposed to be entered by it from the Commission.

## **2.2. Commission’s Analysis of the PPA and Order on the same**

2.2.1. The draft PPA is to be entered into between UPCL and the generator for supply of power from the Small Hydro Power Plant of 24 MW capacity situated at Chamoli in the state of Uttarakhand.

2.2.2. The draft PPA submitted by UPCL has been examined in light of the relevant rules & regulations. The Commission observed that certain clauses in the draft PPA submitted by UPCL 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) Para 1 of the draft PPA provides the day on which PPA is brought into effect. The place for dates have been left blank and year specified is 2016. The above mentioned Para needs to be corrected and completed while the final PPA is being signed.

- b) The Respondent -1 vide its submission dated 25.02.2017 made comments on the draft PPA submitted for approval by UPCL. The Respondent-1 has submitted that in preamble the registered office address should be replaced with "C-73, Surya Nagar, Ghaziabad-201011, Uttar Pradesh". The Petitioner is required to make necessary modifications accordingly.
- c) Para 2 of the draft PPA states the details of the generator which are being referred to Annexure I as follows:

*"WHEREAS, the Generating Company is engaged in the business of Power generation from its Plant Melkhet situated at Chamoli in the state of Uttarakhand, more particularly described in Annexure I attached hereto and made a part hereof,"*

The above mentioned Annexure have also been referred to at other places in the draft PPA and the same needs to be completed at the time of signing of PPA.

- d) The Commission has observed that in Clause-1, i.e. "Definitions" of the draft PPA, Clause 1.4 is missing. Accordingly, the Petitioner is required to make necessary corrections by ensuring that whether any Clause has been omitted or it was due to missing serial number of clauses inadvertently.
- e) UERC (State Grid Code) Regulations, 2007 has been repealed by UERC (State Grid Code) Regulations, 2016. Accordingly, the Clause 1.14, i.e. "State Grid Code" shall be read as:

*"'State Grid Code (SGC)' means Uttarakhand Electricity Regulatory Commission (State Grid Code) Regulations, 2016 specified under clause (h) of sub-section (1) of section 86 of the Act by Uttarakhand Electricity Regulatory Commission."*

- f) Clause 2.1 of the Draft PPA states that the UPCL shall accept and purchase power made available at the levellised rate specified by the Commission as provided in RE Regulations, 2013. In this regard, the Respondent-1 has submitted that "levellised rate" should be replaced with "project specific tariff" as the Respondent is opting for project specific tariff. Accordingly, clause 2.1 of the draft PPA shall be read as:

*"UPCL shall accept and purchase 24 MW (plus 10% overloading) of power made available*

to UPCL system from Generating Company at a project specific tariff as determined by the Commission as per provisions of Uttarakhand Electricity Regulatory Commission (Tariff and other terms for supply of Electricity from Renewable Energy Sources and non-fossil fuel based co-generating stations) Regulations, 2013 as amended from time to time based on sources and technologies as mentioned at point no. (i) below:-

i) Small Hydro with capacity upto 25 MW

ii) Wind

iii) Solar including its integration with combined cycle

iv) Biomass/Biogas

v) Bagasse based cogeneration as per MNRE guidelines

vi) Urban/Municipal waste, or

vii) Any new source of technology which would qualify as 'Renewable Energy' only after approval of Commission based on the Ministry of Non-conventional Energy Source (MNRE) approval in accordance with the terms and conditions of this agreement."

g) Clause 5.2 of the draft PPA provides that:

*"The Monthly Bill in triplicate along with supported documents viz. Joint Meter Readings and the MRI document (Bill & Check Meter) duly signed by Executive Engineer (Distribution), Executive Engineer (Test) UPCL and Executive Engineer (Transmission) of the concerned division within 3 days after the meter reading is taken and where either of the authorised officer of UPCL is not available during these three days signature of one officer of UPCL should suffice with load survey data of previous 35 days raised by the Generating Company shall be delivered to UPCL at office of Chief Engineer (Commercial), V.C.V. Gabar Singh Urja Bhawan Kanwali Road Dehradun on or before the fifth (5th) working day of the following month hereinafter called the **Monthly Bill date**."*

The Respondent-1 submitted that the stipulation of submission of bill by fifth day of the month may be made flexible so as to make it possible to submit the bills even after fifth day of the month, therefore, after the words "fifth working date of the following month" the words "or thereafter" may be included. This may be required to make the submission of the bills possible for the delay occurred due to compelling circumstances.

In this regard, the Commission is of the view that if the Respondent's submission is accepted this will allow the generator to raise the bill according to

his convenience any time indefinitely. The same will lead to uncertainty in receipt of bills to the Petitioner and may consequently lead to creation of dispute in relation to delay in billing & realization of payments. The generator being a commercial entity is not expected to holdup presentation/submission of bills of energy sold to licensee indefinitely. Accordingly, the submission of the Respondent is not allowed to be incorporated in the PPA. Further, it is also hereby clarified that delay in submission of energy bills by the generator due to some unavoidable/force-majeure conditions may be considered by the licensee.

- h) It appears that in the Clause 5.7 of the draft PPA, the Petitioner has inadvertently referred para 5.7 instead of para 5.6. The same issue has also been raised by the Respondent. Accordingly, "para 5.7" shall be replaced with "para 5.6" in the first line of the Clause 5.7.
- i) Clause 8.6 of the PPA, regarding prior approval of UPCL/PTCUL for any work carried out by the generator, provides that:

*"Any work to be done by the Generating Company shall be taken up only with a specific approval and on the basis of approved drawings and specifications from UPCL/PTCUL and in compliance with the safety requirements as per the SGC. On the completion of work, final approval shall be obtained from PTCUL/UPCL before charging the line. The Generating Company would obtain all statutory clearances/approvals required for this purpose."*

Respondent-1 submitted that after words "Any works done by the Generating Company" the words "relating to interconnection facilities" may be included. The Commission noted the submission made by the Respondent-1 and is of the view that the works related to repair & maintenance of the Generating plant and the other works which are not related to interconnection facility or not affecting on safe and smooth operation of transmission/distribution system works can be carried out without prior approval of UPCL/PTCUL. Hence, the aforesaid Clause is required to be modified as under:

*"Any work to be done by the Generating Company relating to interconnection facilities or any other works, change in equipment's setting affecting the safe and reliable operation of transmission/distribution system shall be taken up only with a specific approval and on the*

*basis of approved drawings and specifications from UPCL/PTCUL and in compliance with the safety requirements as per the SGC. On the completion of work, final approval shall be obtained from PTCUL/UPCL before charging the line. The Generating Company would obtain all statutory clearances/approvals required for this purpose”*

- j) Clause 15 of the PPA regarding prior approval of UPCL for addition or change in equipment work carrying out by the generator provides that:

*“UPCL's acceptance or approval for equipment, additions or changes to equipment, and their operational setting etc., would be required. Such acceptance/approval shall not be unreasonably withheld and shall be based on UPCL's existing policies and practices.”*

The Respondent-1 submitted that after the words “UPCL’s acceptance or approval for” the words “interconnection facilities” may be added for the same reasons as above. The Commission noted the submission made by the Respondent-1. Similar to views taken in above para, the Commission is of the view that the works related to repair & maintenance of the Generating plant and the other associated works which are not related to interconnection facility or not having affecting the safe and reliable operation of transmission/distribution system works can be carried out without prior approval of UPCL/PTCUL. Hence, the aforesaid Clause is required to be modified as under:

*“UPCL's acceptance or approval for equipment, additions or changes to equipment , and their operational setting relating to interconnection facilities or any other works, equipment’s setting affecting the safe and reliable operation of transmission/distribution system etc., would be required. Such acceptance/approval shall not be unreasonably withheld and shall be based on UPCL's existing policies and practices.”*

- k) Clause 22(d) of the draft PPA talks about filing a Petition with the Commission as follows:

*“If the said dispute/dissatisfaction remains unresolved, either party can file a petition before UERC, whose decision will be final and binding on both the parties. UERC shall be empowered to determine the exact nature and modalities of the procedure to be adopted in resolving the matter.”*

The Commission has the power to adjudicate the dispute or refer the dispute for arbitration in accordance with the UERC (Conduct of Business)

Regulations, 2014. Therefore the Clause needs to be modified and replaced as follows:

*“If the said dispute/dissatisfaction remains unresolved, either party can file a petition before UERC, whose decision will be final and binding on both the parties. UERC shall be empowered to determine the exact nature and modalities of the procedure to be adopted in resolving the matter or refer the dispute to arbitration”.*

l) Clause 25.1 of the draft PPA talks about force majeure events and states as follows:

*“25.1 If any party hereto is wholly or partially prevented from performing any of its obligations under this agreement by reason of or due to lightning, earthquake, riots, fire, floods, invasion, insurrection, rebellion, mutiny, tidal wave, civil unrest, epidemics, explosion, the order of any court, judge or civil authority, change in State or National law, war, any act of God or a public enemy, or any other similar or dissimilar cause reasonably beyond its exclusive control and not attributable to its neglect, then in any such event, such party shall be excused from whatever performance is prevented by such event, to the extent so prevented, and such party shall not be liable for any damage, sanction or loss for not performing such obligations.”*

The above mentioned clause needs to be corrected and be replaced in accordance with the Sub-clause (o) of Clause (1) of Regulation 3 of RE Regulations, 2013 which specifies as follows:

*““Force Majeure Event” means, with respect to any party, any event or circumstance which is not within the reasonable control of, or due to an act or omission of, that party and which, by the exercise of reasonable care and diligence, that party is not able to prevent, including, without limiting the generality of the foregoing:*

- i. Lightning, storm, earthquakes, flood, natural disaster and action of the natural elements;*
- ii. Acts of public enemy, blockades, insurrections, riots, revolution and sabotage;*
- iii. Unavoidable accident, including but not limited to fire, explosion, radioactive contamination Page 7 of 9 and toxic dangerous chemical contamination;”*

m) Clause 39 of the draft PPA talks about Annexures I to VIII.

All Annexures in the above mentioned clause needs to be completed while signing the final PPA. At the end of the PPA in the verification Clause, the place for date is left blank with 2016 as the year for execution of the agreement. The date in the clause needs to be corrected and duly filled while signing the PPA.



### 3. Other Issues:

The Commission had vide its letter dated 13.02.2017 and vide Order dated 15.03.2017 directed PTCUL to submit the status of evacuation infrastructure in respect of connectivity of Generator's plant. In this regard, PTCUL vide letter dated 21.03.2017 submitted that process for grant of connectivity at 132 kV Sub-station at Bageshwar has been initiated and it has, accordingly, issued Format-3 to M/s Melkhet Hydro Power Project. However, PTCUL has not submitted the status of evacuation infrastructure. **Accordingly, PTCUL is directed to submit status of works pertaining to evacuation of power from the aforesaid generator including interconnection at the proposed 132 kV Bageshwar S/s. PTCUL is, further, directed to submit status of development/construction including physical progress of its 132 kV S/s at Bageshwar within one week from the issue of the Order.**

4. Ordered Accordingly.

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