

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 06 of 2017

In the matter of:

Petition seeking approval of the Commission on the Power Purchase Agreement proposed to be executed between Uttarakhand Power Corporation Ltd. and M/s K. Ramachandra Rao Transmission & Projects Pvt. Limited.

In the matter of:

Uttarakhand Power Corporation Ltd.

...Petitioner

AND

M/s K. Ramachandra Rao Transmission & Projects Pvt. Limited

...Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: January 24, 2017

Date of Order: March 10, 2017

The Order relates to the Petition filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "the Petitioner" or "the Licensee" or "UPCL") seeking approval of the PPA proposed to be executed with M/s K. Ramachandra Rao Transmission & Projects Pvt. Limited (hereinafter referred to as "Respondent") for procurement of power from its 22.5 MW Bernigad Small Hydro Plant situated in Uttarkashi in the State of Uttarakhand.

1. Background

- 1.1 The Petitioner had filed a Petition dated 11.01.2017 seeking approval of the draft PPA to be executed with the Respondent for purchase of energy to be generated from the Respondent's 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 UPCL vide the instant Petition also submitted that M/s K. Ramachandra Rao Transmission & Projects Pvt. Ltd. has signed a Supplementary Implementation Agreement dated 22.08.2014 in continuation to the original Implementation Agreement dated 15.12.2010 with the Govt. of Uttarakhand for increasing the capacity of Bernigad SHP from 6.5 MW to 22.8 MW.
- 1.4 The Petitioner further submitted that the Respondent is desirous of selling the entire energy scheduled to be generated from its project and the applicant company is desirous of purchasing the entire energy on the terms and conditions as agreed between the parties as per the terms and condition laid down in the original Implementation Agreement dated 15.12.2010 and Supplementary Implementation Agreement dated 22.08.2014.
- 1.5 The copy of the Petition was forwarded to the Respondent for its comments. No comments have been received from the Respondent.
- 1.6 The hearing in the matter was held on 24.01.2017 and the Petition was admitted vide Order dated 24.01.2017.

2. Commission's Views & Decisions

2.1 Legal Requirement for approval of PPA

- 2.1.1 A power purchase agreement (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 functions of the State 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 the licence, 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(3) of Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 specifies as follows:

“The licensee shall apply to the Commission to approve the draft Power Purchase agreement that the Licensee proposes to enter into. 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.”

2.1.5 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 (hereinafter referred to as “RE Regulations, 2013”) specifies that:

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

(3) The distribution licensee shall make an Petition for approval of power purchase agreement entered into with the generating station in such form and manner as specified in these regulations and Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 as amended from time to time.”

(Emphasis added)

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

2.2 Consistency of the PPA with the Regulations

2.2.1 The PPA to be entered into between UPCL and the Respondent is for supply of power from the Small Hydro Power Plant of 22.8 MW capacity situated in district Uttarkashi 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 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 PPA while executing the PPA with the project developer.

(a) Para 1 of the draft PPA provides the day on which PPA is brought into effect. The place for dates has been left blank and year specified is 2016. The above mentioned Para needs to be corrected and completed when the final PPA is being signed.

(b) 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 Bernigad situated at Uttarkashi in the state of Uttarakhand, more particularly described in Annexure I attached hereto and made a part hereof,”

The above mentioned Annexure which is also referred to at other places in the PPA needs to be completed while the final PPA is being signed.

(c) Clause 1.5 of the aforesaid PPA provides the definition of ‘Export Meter’ as follows:

*“‘Export Meter’ means Bill Meter installed at the interconnection point installed at the Generating end for measurement of Active Energy, Maximum demand and Power Factor for energy exported to the Generating Company from **Khodri Power Station of UJVN Ltd.**”*

The reference made in the definition of export meter to the generating company from Khodri Power Station of UJVN Ltd. is incorrect since export of power needs to be measured at interconnection point of the Respondent’s generating station, hence, the definition is required to be read as:

“'Export Meter' means Bill Meter installed at the interconnection point installed at the Generating end for measurement of Active Energy, Maximum demand and Power Factor for energy exported from the Generating Station to UPCL”

(d) Clause 1.14 of the aforesaid PPA provides the definition of State Grid Code, as follows:

“State Grid Code (SGC)' means the Uttarakhand Electricity Regulatory Commission (State Grid Code) Regulations, 2007 specified under clause(h) of subsection(1) of section 86 of the Act by Uttarakhand Electricity Regulatory Commission.”

The above mentioned clause needs to be corrected as the State Grid Code, Regulations, 2007 has been repealed by the State Grid Code, Regulations, 2016 and be replaced as follows:

“State Grid Code (SGC)' means the Uttarakhand Electricity Regulatory Commission (State Grid Code) Regulations, 2016 as amended from time to time specified under clause(h) of sub-section(1) of Section 86 of the Act by Uttarakhand Electricity Regulatory Commission.”

(e) Clause 2.1 of the aforesaid PPA states as follows:

*“UPCL shall accept and purchase **22.8 MW (plus 10% overloading) of power** made available to UPCL system from Generating Company at the levelised rate specified by Uttarakhand Electricity Regulatory Commission as provided in 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. below:-*

i) Small Hydro with capacity upto 25 MW

...”

Clause 2.1 of the PPA stipulates sale of power at the levelised rate specified by the Commission as provided in the RE Regulations, 2013. However, from the text of the clause it is not clear as to whether the generator had exercised its option of applicability of tariff, i.e. “generic” or “project specific”. Hence, clause 2.1 of the PPA is required to be amended after providing the applicability of tariff distinctly based on the option exercised by the generator.

- (f) 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. Accordingly, "Para 5.7" shall be replaced with "Para 5.6" in the first line of the Clause 5.7.
- (g) Clause 8.1, 8.2 & 8.3 of the draft PPA provides for interconnection facility at Khodri Power Station of UJVN Ltd. at Uttarakashi. In this regard, it is hereby clarified that the address of the Khodri Power Station mentioned in the above clauses is incorrect and is required to be corrected at all places of the draft PPA.
- (h) With regard to interconnection facility for evacuation of power from the Respondent generator, PTCUL was asked to submit the Technical Feasibility Report including Power System Studies for evacuation of power from Bernigard SHP. PTCUL vide its letter dated 27.02.2017 submitted that a meeting was held with the Petitioner and the Respondent to discuss the issues related to connectivity of the Respondent's project and it was decided that the generator will apply for connectivity as per procedure of PTCUL. However, as informed by PTCUL, the generator still has not applied for the same. PTCUL further submitted that the studies/Interconnection Studies can be carried out in accordance with the detailed procedure for connectivity to IaSTS only when the generator applies for the connectivity and the required Technical Feasibility Report will be issued to the generator within 15 days accordingly.

The Commission appreciates submissions made by PTCUL that the feasibility study for evacuation of power from the Respondent's SHP can only be carried out if the generator submits requisite applications in this regard. Since the generator is yet to apply for the same accordingly, the Commission directs the Respondent to apply for connectivity in accordance with the State Grid Code Regulations and due procedures of the STU. Further, based on the feasibility study, PTCUL is required to allow connectivity to the project for testing, commissioning and for timely evacuation of power from the Respondent's SHP.

- (i) Further, representative of the Respondent also informed that the point of evacuation of power is yet to be firmed up by way of execution of connectivity agreement with the State Transmission Utility, i.e. PTCUL. In this regard, the Commission is of the view that for commissioning of any power project

completion of evacuation infrastructure before or simultaneous with the completion of project is essential. The Commission has observed number of disputes between the generators and transmission/distribution licensee in the State due to delay in completion of evacuation infrastructure. So as to avoid such disputes in the present case also, **the Respondent is, hereby directed to coordinate with UJVN Ltd. and STU (i.e. PTCUL) to conduct feasibility study including Power System Studies for connectivity at Khodri Power Station or at any suitable location in the State Grid and execute a connection agreement in accordance with the State Grid Code.**

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 and the Electricity Act, 2003. 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”.

(j) 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;”*

(k) Clause 39 of the draft PPA talks about Annexures I to VIII. All the Annexures mentioned in the clause needs to be completed while signing the final PPA.

2.2.3 UPCL is directed to take note of the above observations/corrections/modifications pointed-out in the PPA and carry out the same in the PPA and submit the amended/supplementary PPA to the Commission within 15 days of the date of the Order.

2.2.4 Ordered accordingly.

**(Subhash Kumar)
Chairman**