

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 19 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 Limited and UJVN Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd. ... Petitioner

AND

In the matter of:

UJVN Ltd. ... Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: May 02, 2017

Date of Order: May 29, 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 UJVN Ltd. (hereinafter referred to as "Respondent" or "Generator") for procurement of power from Respondent's SHP of 1500 kW capacity situated at Bironkhaal, Dhumakot, District Pauri Garhwal in the State of Uttarakhand.

1. Petitioner's Submissions

1.1. UPCL had filed a Petition seeking approval of the Commission on the draft Power Purchase Agreement for purchase of energy generated from the Respondent's SHP 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 was desirous to sell entire energy scheduled to be generated from its projects 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 Respondent vide its letter dated 27.04.2017 submitted comments on the Petition filed by UPCL. The hearing on admissibility of the Petition was held on 02.05.2017 and the Petition was admitted.
- 1.5. The submissions made by the parties 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 Respondent’s Small Hydro Power Plant of 1500 kW capacity situated at Bironkhaal, Dhumakot, District Pauri Garhwal 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 developer.

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 2017. The above mentioned Para needs to be corrected and completed while 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 Dunao SHP situated at Bironkhaal, Dhumakot, District Pauri Garhwal 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.

- c) Clause 1.4 of the PPA provides 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 “33/11 kV S/s Syunsi, Pauri of UPCL”.

Since as per the definition of “Bill Meter” billing of net energy export shall be carried out by the generator based on readings from export/import meters, therefore the definition of export meter is required to be corrected and shall be read as follows:

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

- d) 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.”

- e) Clause 8.6 of the draft 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.”

UJVN Ltd. has submitted that the said provision should be modified by substituting the words “specific approval” by “prior intimation” and removal of the words “final approval” from the said clause. The Respondent has also proposed that the above stated Para should be read as:

“Any work to be done by the generating company shall be taken up with prior intimation to UPCL on the basis of approved drawings and other specifications and in compliance with the safety requirements as per the SGC. On the completion of work the Generating company shall immediately notify UPCL by telephone and confirm in writing before charging the line. The generating company shall obtain all statutory clearances/approvals required for this purpose.”

In this regard, the Commission vide its Order dated 14.10.2015 in Petition No. 13 of 2015 had taken a view in the matter that the distribution licensee has to maintain smooth and safe functioning of its system. Further, Licence condition stipulates that Licensee shall take all reasonable steps to ensure that all Consumers connected to the Licensee's Distribution System receive a safe, economical and reliable Supply of electricity. In addition licensee has to ensure compliance of CEA regulation on technical standards for construction of electric lines/plants and connectivity with the grid and State Grid Code alongwith the Distribution Code as approved by the Commission from time to time and operate the Licensee's Distribution System in accordance with the Distribution System Operating Standards. In view of the above, no one can be allowed to connect/modify/work which has implications on safe and secure operation of the licensee's system including charging of the line without prior approval from the licensee. **However, in order to avoid delay in completion of interconnection**

facility works by the generator and to ensure timely approval by the licensee in this regard, a provision be incorporated that such approval shall not be unreasonably withheld and an approval or otherwise shall be conveyed to the generator within 30 days.

f) Clause 12(1) of the PPA regarding synchronization provides that:

“The Generating Company shall give UPCL at least sixty (60) days advance written notice of the date on which it intends to synchronize a unit of the plant with the grid system, to the Nodal Officer of UPCL (Executive Engineer, Electricity Distribution Division, Kotdwar, Distt. Kotdwar) with the copy to the higher officials of UPCL, PTCUL and UERC. The authorized representative of the Generating Company and the Nodal Officer of UPCL and PTCUL shall inspect the unit which the Generating Company intends to synchronize to the Grid System within Seven days after being notified in writing by the Generating Company about the readiness of the unit for the synchronization with the grid.”

The Respondent submitted that the time limit of minimum sixty (60) days in Clause 12.1 is not in consonance with Clause 13 of the PPA wherein time limit of thirty (30) days has been mentioned. The Commission observed that the Clause 13 of the PPA stipulates intimation of commencement of power supply one month in advance. In this regard, the Commission is of the view that the prior intimation of commencement of supply from SHP is the essence of both Clauses 12.1 and 13 of the PPA. However, no. of days mentioned in two Clauses of the PPA should be consistent. **Accordingly, both the Petitioner as well as the Respondent is directed to mutually decide themselves upon the number of days to be mentioned in the above mentioned two Clauses of the PPA and to maintain consistency in all places of the PPA before signing of the same.**

g) 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.”

UJVN Ltd. has submitted that the said provision should be modified by inclusion of words *“in case the acceptance/approval from UPCL is not received within 15 days time, it shall be deemed as approved”* at the end of Clause 15.

In this regard, the Commission vide its Order dated 14.10.2015 in Petition no. 13 of 2015 had taken a view in the similar issue that any material changes in equipment, operational settings etc. having implications on safe and secure operation of the licensee’s system should not be done without prior consent from the licensee. As discussed at “Para e” above in this order, to avoid delay in completion of interconnection facility works by the generators and to ensure timely approval by the licensee in this regard, a suitable time frame can be incorporated in the PPA with mutual consent of the parties involved.

h) Clause 21 of the draft PPA talks about communication and states as follows:

“In order to have effective co-ordination between UPCL and the generating company, a designated official shall be kept on duty round the clock by the Generating company and UPCL in their respective premises, with information to each other about the name, location, and telephone number etc., of the official. Without prejudice to discharge of their rightful duties by others, this duty official shall take necessary action on receiving information about developments from the other party. The Generating company shall provide reliable and effective communication through wireless/hotline etc., between the Generating company & the interconnecting substation of UPCL and between the Generating company and the SLDC. The Generating company shall make provision for an RTU for remote monitoring of voltage, current and other related electrical parameters, as may be required by the UPCL and also for AMR facility.”

The Respondent submitted that provision of RTU may not be practically possible in case of Remote Location of SHP. In this regard, Regulation 6 of the RE Regulations, 2013 specifies as under:

“6. Obligations and Duties of the Generating Station

(1).....

(2) The RE Based Generating Stations and Co-generating Stations shall:

(a) Submit the technical details concerning the generation and/or transmission as may be specified by the Authority/Commission for carrying out studies relating to cost and efficiency.

(b) Submit the information in respect to generation, demand met, capacity availability, capacity utilization factor, auxiliary consumption, specific heat rate and specific oil consumption or on any other parameters etc. as may be directed by the Commission.

(c) Shall Establish a communication and data transfer system with State Load Dispatch Centre and Co-ordinate with State Load Dispatch Centre and the Regional Load Dispatch Center in respect to;

(i) Scheduling

(ii) Exchange of data of quantity of electricity transmitted through the grid.

(iii) Real time grid operation and dispatch of electricity in accordance with IEGC and State Grid Code."

(emphasis added)

The Commission observed that provision of communication and data transfer systems with State Load Dispatch Centre have been provided in the existing RE Regulations, 2013. Accordingly, the Commission is of the view that installation of RTU/AMR facility at power plants is required not only for effective monitoring of electrical parameters of plants but also necessitated for scheduling of generation by SLDC as and when required. Further, RTU/AMR facility at power plant shall be of immense use for fetching remote data for the cities such as Dehradun covered under SCADA/DMS system to be implemented by UPCL. Further, CEA vide its letter dated 08.05.2017 in the matter of "Renewable Energy Sources (RES) generation data communication system" informed the decision of Ministry of Power, Govt. of India. Relevant extract of the aforesaid letter of CEA is as follows:

" 2) The National level Registry to be maintained by Central Electricity Authority (CEA), where generation capacity data of all kind of Generators (Conventional, Non-conventional, Non-captive, Captive, ISGS or InSGS) will be available. The State level Registry shall be maintained at the respective SLDC's also generation capacity data of all kind of Generators (Conventional, Non-conventional, Non-captive, Captive) in the respective States will be available. The State level data should further be communicated to CEA and NLDC for maintaining record at National level on real time basis. "

The CEA vide its above mentioned letter stated the requirement of data communication system on real time basis. Relevant extract of the letter is as follows:

“In this regard it is observed that the data communication system for Discom embedded Renewable Energy generators, (Solar, Wind Roof-Top Solar etc) is not available in a number of cases, because of which real time generation data is not available. The availability of data communication system is very vital considering Grid security aspects.”

Apparently, installation of data communication system at renewable energy plants has been emphasized by CEA and Ministry of Power also. Hence, objection on installation of such facilities by generators and the licensee agreeing to modify the said clause is not appropriate. Hence, the contention of UJVN Ltd. is not accepted and UPCL is directed to retain such clause in the PPA which is in accordance with the provisions of the Regulations in this regard.

i) 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:

““25.1 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 and toxic dangerous chemical contamination;”*
- j) Clause 39 of the draft PPA talks about Annexures I to VIII.

All Annexure 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.

- k) Annexure-I, explanation of Point 3.1 the last line of the draft PPA states that:

“Material changes or additions to the Generating company’s generating and interconnection facilities reflected in the single-line diagram relay list, and trip scheme shall be approved by UPCL.”

The Respondent has requested that the word approved shall be replaced by intimated and proposed the Para to be replaced as stated,

“Material changes or additions to the Generating company’s generating and interconnection facilities reflected in the single-line diagram relay list, and trip scheme shall be intimated to UPCL.”

Since this is also subject matter of safe and secure operation of the licensee’s system, the Commission does not accept the proposal of UJVN Ltd., as discussed at “Para e” above. However, in order to avoid delay in completion of interconnection facility works by the generators and to ensure timely approval by the licensee in this regard, a suitable time frame can be incorporated in the PPA with mutual consent of the parties involved.

- l) Annexure-I, explanation of Point 3.4 of the draft PPA states that,

“UPCL shall review and approve the design drawings and Bill of Material for the Generating company’s electrical equipment, required to interconnect with UPCL's system. The type of electrical equipment, the type of protective relaying equipment and the settings affecting the reliability and safety of operation of UPCL and the Generating company’s interconnected

system shall be approved by UPCL. UPCL at its option may request review of operation of the control, synchronizing, and protection schemes”

The Respondent has requested that the Para from Annexure I be deleted.

This is again a subject matter of safe and secure operation of the licensee’s system and hence, the Commission does not accept the proposal of UJVN Ltd. As discussed at “Para e” above, in order to avoid delay in completion of interconnection facility works by the generators and to ensure timely approval by the licensee in this regard, a suitable time frame can be incorporated in the PPA with mutual consent of the parties involved.

3. Ordered Accordingly.

(Subhash Kumar)
Chairman