

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 37 of 2017

In the matter of:

Application seeking approval of the Commission on the Draft Power Purchase Agreement to be executed between Uttarakhand Power Corporation Limited and M/s Avani Bio Energy Pvt. Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

In the matter of:

M/s Avani Bio Energy Pvt. Ltd

... Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: September 15, 2017

Date of Order: November 1, 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 the Draft Power Purchase Agreement to be executed by it with M/s Avani Bio Energy Pvt. Ltd. (hereinafter referred to as "Respondent") for procurement of power from the Biomass Gasifier based Power Plants.

1. Background

1.1. The Petitioner has filed the Petition seeking approval of the Commission on the Draft Power Purchase Agreement for purchase of energy generated from the Respondent's Biomass Gasifier power plants under Section 86(1)(b) of the Electricity Act, 2003, Regulation 74(1) and clause 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.

2. Petitioner's submission

- 2.1. 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 prior approval of the Commission on the Draft Power Purchase Agreement proposed to be entered into with the Generating Company.
- 2.2. UPCL submitted that M/s Avani Bio Energy Pvt. Ltd., is engaged in the business of power generation through its Biomass Gasifier Power Plants which are as follows:

Sl. No	Name of Plant & Capacity	Plant Location
1	Seli (10 kW)	Vill- Seli, P.O- Chankana, Berinag
2	Dangigaon (10 kW)	Vill- Dangigaon, P.O- Poranthal, Berinag
3	Bhatijar (10 kW)	Vill- Bhatijar, P.O- Chodmanya, Berinag

- 2.3. The Petitioner submitted that the Respondent is desirous of selling the entire energy scheduled to be generated from its above mentioned projects and the Petitioner is desirous of purchasing the entire energy on the terms and conditions as agreed between the parties.

3. Respondent's submission

- 3.1. The Petition was heard on 15.09.2017 and during the hearing, the Respondent submitted that it is planning to develop 60 (approx.) more such Biomass Gasifier based power plants and it would approach the Petitioner to sign PPAs for selling entire energy scheduled to be generated from such plants. Considering the upcoming number of such plants, the Respondent requested the Commission to consider the current draft PPA as Model PPA and approve the same.

4. Commission's Views & Decisions

4.1. Legal Requirement for approval of PPA

- 4.1.1. A PPA is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.
- 4.1.2. 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.

4.1.3. 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; ...”

(Emphasis added)

4.1.4. Further, Regulations 7(2) & 7(3) of UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2013 (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 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)

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

4.2. Consistency of the PPA with the Regulations

4.2.1. Regulation 6(7) of RE Regulations, 2013 specifies as under:

“Except as provided in the Second Proviso to sub-Regulation (1) of Regulation 2 above, all Power Purchase Agreements signed by the generating stations existing on the date of notification of these regulations shall be amended in accordance with these regulations, if inconsistent with these Regulations and such amended PPAs shall be valid for entire life of the RE Based Generating Stations and Co-generating Stations.”

4.2.2. Hence, all the Model/draft PPAs to be entered into by UPCL are required to be amended in accordance with RE Regulations if they are inconsistent with the provisions of RE Regulations, 2013. Accordingly, PPAs proposed to be executed between UPCL and the generators are examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003 & RE Regulations, 2013.

4.3. Commission's Analysis of the Draft PPA and Order on the same

4.3.1. The draft PPA is to be entered into between UPCL and the Respondent for the Respondent's Biomass Gasifier Power Plants situated at Village Seli, Dangigaon and Bhatijar having capacity of 10 kW each for supply of power to UPCL.

4.3.2. As mention under Para 3.1, the Petition was heard on 15.09.2017 and during the hearing, the Respondent requested the Commission to approve the current draft PPA as Model PPA. The Respondent is planning to develop 60 (approx.) such power Projects and the Petitioner would be required to submit Petitions for the approval of PPAs of similar nature. Further, since the activities involved in regulatory approval process such as preparation & filing of the Petition before the Commission, hearing proceedings, submission of reply & rejoinder etc. may take two to three months for the approval of PPA, therefore, to expedite the execution of PPAs & commissioning of such projects, the Commission is of the view that the current draft PPA, submitted vide this Petition, be examined in light of the relevant rules & regulations and thereafter be approved as "Model PPA" subject to modifications as discussed below.

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 directed to take note of the same and incorporate necessary corrections in the draft PPA while executing the PPAs with the project developers.

- a) In the draft PPA the blank spaces for dates need to be filled up and year specified as 2016 needs to corrected and completed while signing the final PPA.
- b) Clause 1.1 of the Draft PPA provides the definition of 'Bill meter' as follows:

"Bill Meter' means Import and Export Meter on the basis of which energy billing shall be raised by the Generation Company/UPCL.

Regarding Meter to be used for energy accounting, Central Electricity Authority vide its

CEA (Installation and Operation of Meters) Regulations, 2006 has provided the definition of Main Meter as follows:

“Main Meter’ means a meter, which would primarily be used for accounting and billing of electricity”

Accordingly, Main/Bill Meter is to be used for accounting as well as billing of electricity by the Generator Company/UPCL. Accordingly, the clause 1.1 shall be read as follows:

“Main Meter’ means Import and Export Meter on the basis of which energy accounting and billing of electricity shall be done by the Generating Company/UPCL”

Further, based on the above modification in the draft PPA, UPCL is required to replace word ‘Bill Meter’ with ‘Main Meter’ in all the clauses of the draft PPA.

- c) As per Regulation 6(5) of RE Regulations, 2013 (Obligation and Duties of the Generating Station), the RE based generation stations and Co-generation stations shall ensure the compliance of the IEGC, the State Grid Code and the Distribution Code as amended from time to time. Further, the Commission has specified UERC (Distribution Code) Regulations, 2007 which covers all technical aspects relating to connections to and the operation and use of the Distribution System including the operation of the electrical lines and electrical plants and apparatus connected to the Distribution System. Hence, both the parties are required to fulfill all the requirements/compliances mentioned under UERC (Distribution Code) Regulations, 2007 alongwith the requirement/compliance of UERC (State Grid Code) Regulation, 2016. Accordingly, the following sub-clause shall be inserted after Clause 1.3:

“1.3(a) ‘Distribution Code’ means the Uttarakhand Electricity Regulatory Commission (Distribution Code) Regulations, 2007 as amended from time to time.”

The Petitioner is also required to insert ‘Distribution Code’ in all the clauses of the draft PPA where compliance of State Grid Code has been mentioned.

- d) Clause 1.4 of the Draft PPA provides definition for “Export Meter” as follows:

“‘Export Meter’ means Bill Meter installed at interconnection point for measurement of Active, Maximum demand and Power factor for Energy exported to the Generating Company’s Biomass Gasifier Power Plant from UPCL 33 kV Sub-Station (as per Annexure-A), Uttarakhand.”

Since as per the definition of “Main Meter” read with Clause 2.2, 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"

- e) Clause 1.7 of the Draft PPA provides for "Import Meter" as follows:

"'Import Meter' means Bill Meter installed at interconnection point for Measurement of Active energy, Maximum demand and Power factor for Energy imported from the Generating Company's Biomass Gasifier Power plant through 33 kV Grid Sub-Station (as per Annexure-A), to UPCL"

Since as per the definition of "Main Meter" read with Clause 2.2, billing of net energy export shall be carried out by the generator based on readings from export/import meters, therefore the definition of import meter is required to be corrected and shall be read as follows:

"'Import Meter' means Bill Meter installed at the interconnection point for measurement of Active Energy, Maximum demand and Power Factor for energy imported by the Generating Station from UPCL"

Further, since the Plant is having capacity of 10 kW only and connecting it with 33 kV Grid Sub-Station is not financially and technically viable, hence, UPCL is required to review the interconnection point and, accordingly, carry out necessary modifications in all the clauses of the draft PPA where "33 kV Grid Sub-Station has been used for interconnection/ connectivity.

- f) Clause 2.2 of the Draft PPA provides as follows:

"Energy Accounting for supply of electricity by UPCL to the Generating Company shall be as per RE Regulation 44 of the Uttarakhand Electricity Regulatory Commission as provided in the Uttarakhand Electricity Regulatory Commission (Tariff and other terms for supply of electricity from Renewable energy Source and non-fossil fuel based co-generating stations) Regulations, 2013."

Here, it is to be noted that the Regulation 44 of RE Regulations, 2013 deals with the energy accounting of energy sent out by the generators whereas Regulation 45 of RE Regulations, 2013 provides for the situation where generator may require the electricity from the distribution licensee to meet the requirement for start up the plant. Accordingly, Clause 2.2 shall be read as:

“Energy accounting for supply of electricity by the Generating Company to UPCL shall be as per Regulation 44 and supply of electricity by UPCL to the Generating Company shall be as per Regulation 45 of Uttarakhand Electricity Regulatory Commission (Tariff and other terms for supply of electricity from Renewable energy Source and non-fossil fuel based co-generating stations) Regulations, 2013.”

g) Clause 25.1 of the PPA provides for “Force Majeure” as follows:

“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, floods, invasion, insurrection, rebellion, mutiny, tidal wave, civil unrest, epidemics, explosion, the order of an 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 reasonable 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 extensor prevented, and such party shall not be liable for any damage, sanction or loss for not performing such obligations.”

The same shall be read 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;”*

h) Clause 5 in Annexure II provides as follows:

“Energy accounting for supply of electricity by UPCL to the Generating Company shall be as per Regulation 45 of the 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.”

Here it is pertinent to mention that Regulation 44 of RE Regulations, 2013 deals with “Energy Accounting and Billing” whereas Regulation 45 of RE Regulations, 2013 deals with “Purchase of Electricity by the Generating station/Start up Power”. Accordingly, Regulation 45 shall be replaced with Regulation 44 in the aforesaid Clause in Annexure II.

4.3.3. Further, during the hearing, the parties also requested the Commission for relaxing the condition

of prior approval of the agreement to be entered for procurement of power from the above referred Biomass Gasifier based power plants. In this regard, the Commission is of the view that this draft PPA approved by the Commission shall be treated as Model PPA. Prior approval of each and every PPA for such plants shall defeat the purpose of approving a Model PPA which is to accelerate the process of execution of such projects. Hence, by approving the Model PPAs, prior approval of PPAs shall not be required for such plants only. However, the Petitioner is required to submit copy of signed PPA's for such plants within 1 week after signing of PPAs.

5. Ordered accordingly.

(Subhash Kumar)
Chairman