

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 36 of 2017

In the matter of:

Application seeking approval of the Commission on the bulk Power Purchase Agreement to be executed between Uttarakhand Power Corporation Limited and M/s UJVN Limited.

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: August 28, 2017

Date of Order: November 22, 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 bulk PPA to be executed by it with M/s UJVN Limited (hereinafter referred to as "Respondent" or "Generator") for procurement of power from the Respondent's Large and Small hydro Projects having total capacity of 1294.30 MW situated within the State of Uttarakhand.

1. Petitioner's Submissions

- 1.1. UPCL had filed the Petition seeking approval of the Commission on the bulk Power Purchase Agreement for purchase of energy generated from the Respondent's Large and Small Hydro Projects 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 submitted that as per agreement dated 21.11.1972 between Governor of Himachal Pradesh and Governor of Uttar Pradesh, it was agreed to share power with Himachal Pradesh from the Yamuna Hydel Scheme. Further, UPCL had signed a Bulk Power Purchase Agreement (PPA) with UJVN Ltd. on 24.07.2012 for a period of five year, i.e. from 01.08.2012 to 31.07.2017 for their Large as well as Small Hydro Projects and the PPA for the same has expired on 31.07.2017. Hence, in the absence of any agreement for sale beyond 31.07.2017, the Respondent and the Petitioner has mutually decided to sign a Bulk Power Supply Agreement for a time of 5 years starting from 01.08.2017 and upto 31.07.2022 for the following Large and Small hydro Plants of the Respondent as submitted by UJVN Limited vide letter dated 25.08.2017:

Name of Plant	Capacity (MW)
Large Hydro Power Plants	
Maneri Bhali-II (Dharasu)	304
Chibro	240
Khodri	120
Dhakrani	33.75
Dhalipur	51
Kulhal	30
Chilla	144
Ranganga (Kalagarh)	198
Khatima (Lohiahead)	41.40
Tiloth (MB-I)	90
Sub-Total	1252.15
Small Hydro Power Plants	
Mohammadpur	9.30
Pathri	20.40
Galogi	3
Kanchauti	2
Kulagad	1.2
Pilangad	2.25
Urgam	3
Tapowan	0.80
Tilwada	0.20
Sub-Total	42.15
Grand Total	1294.30

- 1.4. The Petitioner submitted that the UJVN Ltd. is willing to sell the energy generated from the above referred projects, excluding the share of Himachal Pradesh, to UPCL and UPCL is desirous of purchasing the entire such energy from the above mentioned Plants on terms and conditions mentioned as agreed between both the parties.
- 1.5. The hearing on admissibility of the Petition was held on 28.08.2017 and the Petition was admitted. The submissions made by 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 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)

- 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) and Regulation 74(1) of UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015 (UERC Tariff Regulations, 2015) specify as under:

Regulations 7(2) and 7(3) of RE Regulations, 2013

"(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)

Regulation 74(1) of UERC Tariff Regulations, 2015

"74. Approval of power purchase agreement/arrangement

(1) Every agreement or arrangement for power procurement by a Distribution Licensee from a Generating Company or Licensee or from other source of supply entered into after the date of effectiveness of these Regulations shall come into effect only with the prior approval of the Commission:

Provided that the prior approval of the Commission shall be required in respect of any agreement or arrangement for power procurement by the Distribution Licensee from a Generating Company or Licensee or from any other source of supply on a standby basis."

2.1.5. Accordingly, in accordance with the requirement of the Act and Regulations referred above, UPCL as a distribution licensee is 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 PPA is to be entered into between UPCL and the generator for supply of power from the generator's Large and Small Hydro Projects with total capacity of 1294.30 MW situated within the State of Uttarakhand.

2.2.2. The Respondent has submitted its comments, vide its letter dated 25.08.2017, on the Clauses of the draft PPA submitted by UPCL which are dealt in the subsequent Paras.

2.2.3. The PPA submitted by UPCL and the submissions of the Respondents have 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 draft PPA while executing the final PPA with the project developer.

- a) Para 1 of the draft PPA provides the day on which PPA is brought into effect. In the draft PPA, the blank spaces for dates need to be filled up and completed while the final PPA is being signed.
- b) Para 2 of the draft PPA includes the list of Respondent's Plants as per Annexure 1 as follows:

*"Whereas UJVNL owns and operates a number of Large/Medium/Small Hydro Electric Generating Stations with effect from 9th of November, 2001, situated within the State of Uttarakhand, as listed out in **Annexure-1** of this Agreement, and hereinafter referred to as the "Projects".*

The Respondent vide its reply has submitted a revised list of Large and Small Hydro Plants, as mentioned in the Table under Para 1.4 above, to be considered for Bulk PPA. The Petitioner is directed to update the above mentioned Annexure in line with the list of plants provided by the Respondent.

- c) 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.

In this regard, 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, 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"

- d) Clause 1.3 of the draft PPA defines 'Date of Commercial Operation' which is in accordance with the RE Regulations 2013 which governs only Small Hydro Power Plants having capacity upto 25 MW. However, the Bulk PPA is to be entered into

for supply of power from Small Hydro Power Plants as well as Large Hydro Power Plants. UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015 (UERC Tariff Regulations, 2015) governs Large Hydro Power Plants have capacity more than 25 MW. Accordingly, definition of 'Date of Commercial Operation' should be in accordance with the UERC Tariff Regulations, 2015 and UERC RE Regulations, 2013. Accordingly, Clause 1.3 shall be read as under:

"Date of commercial operation or Commissioning (COD)'-in relation to a generating unit shall mean the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run after notice to the beneficiaries, if any, and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station and the expression 'commissioning' shall be construed accordingly..

*However, in case of **Small hydro plants**, the date of commissioning shall, however, not be linked to achieving maximum continuous rating, but the generator will have to demonstrate the same within three years of commissioning."*

- e) 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.

f) Clause 1.12 of the Draft PPA provides as follows:

“1.12 “Inter-connection Point” shall mean interface point of Renewable energy generating facility with the transmission system or distribution system which shall be line isolator on outgoing feeder on HV side of generator transformer.”

Interconnection point for supply of electricity is specified in Regulation 3(46) of the UERC (MYT) Regulations, 2015 and Regulation 3(v) of the UERC (RE) Regulations, 2013. Accordingly, Clause 1.12 as mentioned in the Draft PPA needs to be modified in accordance with the definitions provided in the aforesaid Regulations. The same shall be read as follows:

“1.12 “Inter-connection Point” shall mean interface point of SHPs with the transmission system or distribution system which shall be line isolator on outgoing feeder on HV side of generator transformer whereas for Large Hydro power plants, point where the power from the power station switchyard bus of the Seller is injected into the interstate/intrastate transmission system as the case may be (including the dedicated transmission line connecting the power station with the intra State transmission system shall be the Inter-connection point”.

g) Clause 4.3 of the PPA refers to the Billing Procedure and Payments. The Clause in the draft PPA is as under:

“4.3 The Monthly Bill(s) along with supported documents viz. Joint Meter Readings and the MRI document (Bill & Check Meter) duly signed by authorised representative of UPCL/PTCUL. Joint meter reading of the meters shall be taken by representatives of UJVN Ltd. and PTCUL/UPCL at 24:00 Hrs on the last day of each month along with MRI of meters. In case party is not available for joint meter readings at the specified time, the meter reading taken by UJVN Ltd. authorized representative along with MRI report shall be taken into account for preparation of monthly bill(s)/ supplementary bill(s) with load survey data of previous 35 days raised by the UJVNL shall be delivered to UPCL by fax/mail or post 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 in its reply has proposed a modification in Clause 4.3 of the draft PPA. The Respondent has submitted that the liability of providing load survey data of previous 35 days to UPCL by UJVNL as proposed in draft PPA is not

justified. The Respondent submitted that it would be appropriate for UPCL to get load survey data from its representative for verification at their end.

The Commission is of the view that since UJVN Ltd. (Respondent/generator) raises monthly generation bills to UPCL (Petitioner) for its plants based on the joint meter reading carried out through MRI, therefore, the Generator might as well enclose the relevant MRI reports/documents including load survey data of the past period alongwith the bills. Hence, under these circumstances the request of the Respondent is not acceptable and clause 4.3 of the draft PPA does not require any modification.

- h) Clause 10 of the Draft PPA refers to the duration of the PPA. The Clause in the draft PPA is as under:

“The term of PPA will be upto 31st July 2022 as mutually agreed starting from 1st August 2017.”

The Respondent in its submission dated 25.08.2017 proposed to consider the term duration of PPA for 10 years instead of 5 years as mentioned in the draft PPA submitted by UPCL for approval. The Commission during the hearing advised both the parties to sign a long term PPA for the life of the projects. However, the Respondent vide its letter dated 05.09.2017 submitted that the management has decided to opt for 5 years term duration for the PPA. In this regard, the Commission informed the Respondent that the Commission vide its Order dated 06.11.2015 and 30.07.2015 has already held that the current MYT Regulations are for long term procurement of power, i.e. for life of the project and cannot be applied to medium/short term procurement of power as envisaged in the current Petition. The Commission in the above referred Orders has also held that any medium/short term procurement of power shall be done by the distribution licensee only through competitive bidding under Section 63 of the Electricity Act, 2003. Subsequently, the Respondent vide its letter dated 27.09.2017 requested the Commission to consider the tenure of the PPA for the life of the respective project as the management has decided to opt for a long term PPA for life of the projects. Accordingly, the clause 10 of the Draft PPA shall be read as follows:

“The term of PPA shall be for the life of the respective hydro power plant.”

i) Clause 14.1 of the Draft PPA, regarding force majeure provides that:

“14.1 “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 due diligence, that party is not able to prevent, including, without limiting the generality of the foregoing:

(i) Acts of God like lightning, landslide, and storm, action of the elements, earthquakes, flood, drought and natural disaster or exceptionally adverse weather condition;

(ii) Any act of public enemy, wars (declared or undeclared), blockades, embargo, insurrections, riots, revolution, sabotage, terrorist or military action, vandalism and civil disturbance;

(iii) Unavoidable accident, fire, explosion, radioactive contamination and toxic dangerous chemical contamination.”

The Respondent in its reply has proposed a modification in aforesaid clause of the draft PPA. The Respondent submitted that the following para should be inserted as part (iv) of Clause 14.1 of the draft PPA:

“(iv) Any shutdown or interruption of the grid, which is required or directed by the State or Central Government or by the Commission or the State Load Despatch Centre; and any shut down or interruption, which is required to avoid serious and immediate risks of a significant plant or equipment failure.”

Regulation 3(35) of UERC Tariff Regulations, 2015 also specifies the above stated situation where any shutdown or interruption of the grid, which is required or directed by the State or Central Government or by the Commission or the SLDC as a Force Majeure Event. Accordingly, the proposal of the Respondent is acceptable and hence, the same shall be inserted as point (iv) in Clause 14.1 of the Draft PPA.

j) Clause 18 of the Draft PPA, regarding Amendments, provides as follows:

“Any waiver, alteration, amendment or modification of this Agreement or any part hereof shall not be valid unless it is in writing, signed by both the parties and approved by UERC.”

The Respondent in its reply has proposed a modification in Clause 18 of the draft PPA. The Respondent has submitted that the following should be inserted in Clause 18 of the draft PPA:

“However, the Terms and Conditions of the PPA shall be revisited by both the parties after 5 years of coming in to force of this agreement and required changes, if any, as mutually agreed by both the parties shall be conveyed to the Hon’ble UERC accordingly.”

The Respondent, as mentioned in Para 2.2.3(d) above, has requested the Commission to consider the said PPA for the life of the respective project. Accordingly, if any alternation, amendment or modification is required in the PPA, the Parties shall approach the Commission in the manner as specified in UERC (Conduct of Business) Regulations, 2014. Accordingly, the proposal of Respondent is not accepted and therefore, no modification is required in the aforesaid Clause of PPA.

k) After Clause 30 of the PPA provides for deemed verification in presence of witness. The place for dates have been left blank and year specified is 2017. The above mentioned Para needs to be completed while the final PPA is being signed between the Petitioner and the Respondent in the presence of the witnesses.

2.2.4. 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.

3. Ordered Accordingly.

(Subhash Kumar)
Chairman