

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 40, 41 & 42 of 2018

In the matter of:

Application seeking approval of the Commission on the Draft Power Purchase Agreement for short term power purchase between Uttarakhand Power Corp. Ltd. and M/s Tata Power Trading Company Ltd. (TPTCL), M/s NTPC Vidyut Vyapar Nigam Ltd. (NTPC VVN Ltd.) and M/s PTC India Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd. ... Petitioner

AND

In the matter of:

M/s Tata Power Trading Company Ltd.

M/s PTC India Ltd.

M/s NTPC Vidyut Vyapar Nigam Ltd. ... Respondents

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: July 31, 2018

Date of Order: August 28, 2018

This Order relates to the Petition filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Petitioner") seeking approval of the draft PPAs to be executed for short term power purchases with M/s Tata Power Trading Company Ltd. (TPTCL), M/s NTPC Vidyut Vyapar Nigam Ltd. (NTPC VVN Ltd.) and M/s PTC India Ltd.

1. Background & Submissions

- 1.1 The Petitioner submitted three separate Petitions dated 07.07.2018 seeking approval of draft PPAs to be executed for short term purchases with M/s TPTCL, M/s PTC India Ltd. and M/s NTPC VVN Ltd. under Section 86(1)(b) of the Electricity Act, 2003 and in accordance with Regulation 74(1) of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015 and Regulation 39(1) of UERC (Conduct of Business) Regulations,

2014.

- 1.2 The Petitioner submitted that for the best utilization of the surplus power, UPCL floated a tender in the month of April 2018 for the advance banking of power and after evaluation LoAs were issued to 03 nos. bidder for banking of surplus power.
- 1.3 The Petitioner submitted that subsequent to issue of LoAs for advance banking of surplus power, it came to its notice that Northern Region Power Committee, MoP, GoI vide letter no. NRPC/OPR/103/02/2018/5644-69 dated 17-05-2018 (Annexure-2), has revised the Un-allocated share of Uttarakhand Power Corporation Ltd. from 16% percent overall to 0% for the period from July to September 2018. The Petitioner further submitted that the Central Sector Hydro generating stations generate power at peak capacity during monsoon months (July to Sept), therefore, in order to calculate availability of power from these plants their PLFs have been considered as 90% for current monsoon season. Accordingly, on account of above revised share of unallocated quota, UPCL will have approximately 175 MW deficit in coming 3 months, i.e. July, August and September 2018.
- 1.4 The Petitioner submitted that for compensating the deficit due to revision in unallocated share of UPCL by NRPC and for fulfilling the power requirement for advance banking, UPCL had floated a short term tender of 175 MW through DEEP Portal for the quantum of power proposed to be purchased as tabulated below:

Month	Quantum (MW)	Delivery Point
July-18	175	Uttarakhand State Periphery
Aug-18	175	
Sep-18	175	

- 1.5 The comparative statement showing rates and quantum quoted by the firms in respect of the above mentioned tender opened on 12.06.2018 was also submitted by the Petitioner. The licensee submitted that after evaluation of the tender M/s PTC India Ltd., M/s TPTCL, and M/s NTPC VVN Ltd. have been selected as the successful bidder and, accordingly, LoAs were issued to them for supply of power on the following rates and quantum:

Month	Company	Quantum (MW)	Rate at delivery Point (Rs./kWh)
July-18	M/s TPTCL	93	3.64
	M/s PTC	82	3.65
Aug-18	M/s TPTCL	78	3.80
	M/s PTC	97	3.82
Sep-18	M/s TPTCL	53	3.88
	M/s NTPC VVN	122	3.90

1.6 The Petitioner earlier sought in-principle approval of the Commission for procurement of above said short term power vide letter no. 2455/UPCL/Com/Misc/MD dated 19-06-2018 and the Commission vide its letter dated 26-06-2018 accorded in-principle approval for procurement of above said short term power as reproduced below:

“...the Commission has granted in-principle approval for procurement of power through Short Term Tender process as requested by you subject to the condition that in case unallocated share of power from CGS is reallocated to you at any stage, then the power scheduled from the 03 nos. companies, i.e. M/s Tata Power Trading Company Ltd., M/s NTPC Vidyut Vyapar Nigam Ltd. and M/s PTC India Ltd. to whom the LoI no. 2471, 2472 and 2473 respectively have been issued by UPCL shall be modified to schedule power only to the extent of deficit faced.”

1.7 The Petitioner further submitted that although it was pursuing the matter with Ministry of Power, Government of India for reallocation of 175 MW to UPCL/GoUK, yet the LoI were issued to the successful bidder for supplying power as per the period mentioned therein. Further as per the condition for supply of power given in the tender document, both the parties, procurer i.e. UPCL and seller i.e. the successful bidder, cannot deviate more than 15% and therefore, UPCL is bound to take power upto minimum of 85% of the contracted capacity.

1.8 The Commission held a hearing in the matter on 31.07.2018.

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 Regulation 39 of UERC (Conduct of Business) Regulations, 2014 specifies as under:

“(1) *The distribution licensee shall file with the Commission in complete form copies of all Power Purchase Agreements already entered into by it.*

(2) *The distribution licensee to establish to the satisfaction of the Commission that the purchase of power by it is under a transparent power purchase procurement process and is economical and the power is necessary to meet its service obligation.*

(3) *The Distribution licensee shall apply to the Commission for approval of the draft Power Purchase agreement that it proposes to enter into with the suppliers. 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 Ministry of Power vide its notification dated 30.03.2016 issued “Guidelines for short-term (i.e. for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process”. Clause 4.1 of these guidelines provides that:

*“The Procurer(s) shall procure short term power **as per the plan approved by Appropriate Commission or appropriate body** as may have been constituted for the purpose by the Appropriate Commission. In such case the Distribution Licensees will intimate about the initiation of the procurement process to the Appropriate Commission. ”*

In addition, Regulation 72 & 73 of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015 also provide for preparation of power procurement plan and approval of the same by the Commission.

2.1.6 Clause 11.4 of the Ministry of Power, GoI guidelines provides that:

“If the quantum of power procured and tariff determined are within the blanket approval granted

by the Appropriate Commission in Annual Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the Appropriate Commission."

The Commission takes cognizance of the fact that while approving the power purchase for FY 2018-19 in its Tariff Order dated 21.03.2018 for UPCL, it had estimated energy availability from firm sources as 14426.32 MU against the projected energy requirement of 14123.57 MU for FY 2018-19 thus leaving an overall surplus of 302.75 MU. However, as per month wise requirement and energy availability the monthly deficit during winter months was estimated at 614.81 MU and monthly surplus during summer and monsoon months was estimated at 917.56 MU and considering this situation the Commission in the Tariff Order directed the Petitioner to bank the surplus energy and withdraw the same during the period of deficit. The relevant extract of the Tariff Order dated 21.03.2018 is reproduced hereunder:

"...

*However, as per the Commission's projection as against the energy requirement of 14123.57 MU during FY 2018-19, the total estimated energy available from firm sources is 14426.32 MU leaving an overall surplus of 302.75 MU. However, as per month wise requirement and energy availability the monthly deficit during winter months works out to 614.81 MU and monthly surplus during summer and monsoon month works out to 917.56 MU. **The Commission directs the Petitioner to bank the surplus energy during the month of May 2018 to September 2018 and withdraw the same in the month of October 2018 to March 2019. The balance 302.75 MU of power can be banked for the next financial year FY 2019-20.**"*

In view of the above, since the energy projections for FY 2018-19 depicted an overall power surplus scenario, therefore, the Commission did not approve any short term rate for purchase of power in the Tariff Order for FY 2018-19. However, considering the unforeseen power deficit scenario due to sudden revision of unallocated share of UPCL by NRPC, GoI, the Commission vide its letter dated 26.06.2018 had given in-principle approval to UPCL for procurement of power through Short Term Tender as discussed above.

2.1.7 The Commission has analyzed the power situation as submitted by UPCL and is of the view that it would be reasonable to approve the short term power purchase as proposed by UPCL so as to enable it to meet its advance banking requirement which will supplement UPCL's requirement in winter months. Further, considering the average rate

of power procured by UPCL during FY 2017-18 from IEX at an average rate of Rs. 4.91/unit, the rates for procurement of short term power, ranging from Rs. 3.64/unit to Rs. 3.90/unit, as proposed by UPCL appears to be reasonable. Accordingly, the Commission in light of Regulation 75(2) & 75(4) of MYT Regulations, 2015 considers and adopts the PPA's for procurement of short term power from M/s TPTCL, M/s PTC India Ltd. and M/s NTPC VVN Ltd. for the quantum and rates proposed by UPCL.

2.1.8 The draft PPAs have been examined which are in accordance with the Regulations. However, compliance of the guidelines issued by the MoP including the one mentioned in Para 2.1.5 above is mandatory for all short-term procurements of power by the Petitioner in future.

2.1.9 Further, M/s PTC India Ltd. and M/s TPTCL in its comments submitted that UPCL, in the draft PPA submitted before the Commission for approval, had inadvertently failed to mention regarding "payment of liquidated damages for failure to supply the instructed capacity" in line with the clause 8 of the tender document floated by UPCL for procurement of short term power, which state as follows:

"8.0 payment of liquidated damages for failure to supply the instructed capacity:

- *Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access on monthly basis.*
- *In case deviation from Procurer side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Procurer shall pay compensation at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15%. In case the power is scheduled beyond the permissible limits of deviation, the open access charges will be reimbursed to the seller for the quantum of power deviated beyond the permissible limit of deviation.*
- *In case deviation from Seller side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Seller shall pay compensation to Procurer at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% in the energy supplied and pay for the open access charges to the extent not availed by the Procurer."*

UPCL is directed to make necessary amendments to this regard in all the 3 draft PPA's.

2.1.10 UPCL is directed to make the necessary changes in the draft PPA's and submit the final

signed PPA's within 2 weeks of the date of Order.

2.1.11 UPCL is further directed to pursue the matter of reallocation of power so that its share of the unallocated power is reallocated to it as soon as possible to enable it to mitigate the deficit scenario during winter months and submit on regular basis monthly status of its unallocated share before the Commission within 7 days after end of the each month.

3. Ordered accordingly.

(Subhash Kumar)
Chairman