

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 34 of 2018

In the matter of:

Application seeking approval of the Power Purchase Agreement between Uttarakhand Power Corporation Ltd. and M/s Aglar Power Ltd. for Rayat SHP.

Petition No. 35 of 2018

In the matter of:

Application seeking approval of the Power Purchase Agreement between Uttarakhand Power Corporation Ltd. and M/s Aglar Power Ltd. for Lagrasu SHP.

In the matter of:

Uttarakhand Power Corporation Limited

...Petitioner

AND

In the matter of:

M/s Aglar Power Ltd. for Rayat SHP and Lagrasu SHP

.....Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: July 17, 2018

Date of Order: October 26, 2018

This Order relates to the Petitions filed by Uttarakhand Power Corporation Limited (hereinafter referred to as "UPCL" or "Petitioner" or "Licensee") seeking approval of PPA executed by it with M/s Aglar Power Ltd. (hereinafter referred to as "M/s APL" or "Respondent") for sale of power from its Rayat SHP and Lagrasu SHP having capacity of 3 MW each situated in District Tehri in the State of Uttarakhand.

1. Background

1.1 The Commission earlier vide its Order dated 23.01.2018, in the matter of approval of PPA executed between UPCL and M/s Himalaya Hydro (P) Ltd., directed UPCL to submit the PPAs which it has entered into and not yet approved by the Commission, for the approval of the Commission. The relevant extract of the said Order is as follows:

“5. The Commission once again directs UPCL to submit the remaining PPAs which it has entered into and have not yet been approved by the Commission within 15 days of the date of this Order failing which appropriate action will be initiated against the respondent.”

1.2 Accordingly, the Petitioner vide letter dated 30.05.2018 filed the Petitions seeking approval of the Commission on Power Purchase Agreements (PPAs) executed for purchase of energy generated from the Respondent's Rayat and Lagrasu SHPs under Section 86(1)(b) of the Electricity Act, 2003, Regulation 39(1) of UERC (Conduct of Business) Regulations, 2014 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.

1.3 Since, the subject matter of both the PPAs are similar in nature, the said PPAs are dealt with this single Order.

2. Petitioner's Submissions

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 approval of the Commission on the PPAs entered into with the Respondent.

2.2 UPCL submitted that M/s APL is engaged in the business of power generation and is desirous to sell entire energy scheduled to be generated from its yet to be commissioned Rayat SHP and Lagrasu SHP having capacity of 3 MW each 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 M/s APL submitted that it was allotted two SHPs namely Rayat and Lagrasu (3 MW each) in the year 2003 for construction on river Aglar, a tributary of River Yamuna district Tehri. Implementation Agreement (IA) and PPAs were executed with the concerned departments.

The Respondent submitted that during the year 2010, 2011 and 2012 due to landslides, heavy rains and floods, the project work suffered heavy losses due to which repeatedly works were carried out. Till June, 2013 almost 80% of the construction work of the Project including purchase of Electro-mechanical Machinery and equipment was completed. However, due to cloud burst in June/July, 2013 the entire power house inundated in flood water and Weir Intake and power channel were damaged beyond repairs at many places in both the proposed SHPs.

3.2 M/s APL also submitted that there was substantial increase in water inflow in the river and after the study it was observed that there was a potential to harness additional power generation of 3 MW and 1 MW apart from originally envisaged power generation of 3 MW for the proposed SHPs, i.e. Rayat and Lagrasu respectively. The Respondent submitted that revised DPRs for Rayat SHP (6 MW) and Lagrasu SHP (4 MW) has been prepared and submitted to GoUK and the same have been approved. The Respondent further submitted that the supplementary IAs are pending for execution vis-a-vis execution of revised Supplementary PPAs for a total capacity of 6 MW and 4 MW for Rayat SHP and Lagrasu SHP respectively.

3.3 The Respondent submitted that the Tariff rate for which it had entered into PPA for respective plants in year 2003 is null and void since the project was under construction and has not achieved commissioning till date.

4. Commission's Views & Decisions

4.1 Legal Requirement for approval of PPA

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

412 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.

413 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)

414 As per Regulation 39(1) of the UERC (Conduct of Business) Regulations, 2014 the distribution licensee is required to file with the Commission in complete form copies of all the Power Purchase Agreements already entered into by it. The relevant portion of the Regulation is reproduced hereunder:

“39. Regulation of Distribution Licensee’s Purchase of Power

- (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.**
- (4) Nothing contained herein shall affect the obligations of distribution licensee under the existing contract and arrangement for purchase, import or acquisition of electricity from generating companies, electricity trader and from other persons with whom the licensee has agreements or arrangements of power purchase or procurement of energy in accordance with the terms and conditions of such agreement and arrangement consented to or approved by the Commission.*
- (5) The provisions of sub-regulations (2) and (3) above or any action taken therein shall not,*

in any manner, prejudice the exercise of functions and powers of the Commission under any of the other provisions of the applicable law, the Regulations and Orders issued from time to time.

415 Moreover, since the Petitioner's plant has not been commissioned and RE Regulations, 2018 have been notified by the Commission, the Petitioner's SHPs would be governed by the provisions covered under these Regulations. 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, 2018 and as amended from time to time (hereinafter referred to as "RE Regulations, 2018") specifies that:

"(2) The distribution licensee on an offer made by the said RE based Generating Stations and Co-generating Stations may enter into a power purchase agreement in conformity with these Regulations and relevant provisions of other Regulations and the Act. However, if the distribution licensee intends to purchase power from such generator it shall sign the PPA within two months of offer made by the generating company. Otherwise, if the distribution licensee is not willing to purchase power from such generator it shall intimate the same to the generating company within one month of offer made by it...

(3) The distribution licensee shall make an application for approval of power purchase agreement entered into with the generating company in such form and manner as specified in these regulations and UERC (Conduct of Business) Regulations, 2004 as amended from time to time within one month of the date of signing the PPA."

(Emphasis added)

416 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 entered or proposed to be entered by it from the Commission.

4.2 Consistency of the PPA with the Regulations

421 Regulation 6(7) of RE Regulations, 2018 specifies as under:

"All Power Purchase Agreements (PPAs) 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."

422 Hence, all the PPAs entered or to be entered into by UPCL are required to be amended in

accordance with the RE Regulations if they are inconsistent with the provisions of RE Regulations, 2018. Accordingly, PPAs executed between UPCL and the generators are examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003 & RE Regulations, 2018.

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

431 Both the PPAs were executed between UPCL and M/s APL on 30.12.2002 for supply of power from the Rayat and Lagrasu SHPs having capacity of 3 MW each situated in district Tehri in the State of Uttarakhand.

432 As mentioned earlier, the present petitions for approval of PPAs have been filed in accordance with the direction issued by the Commission vide its Order dated 23.01.2018 in the matter of approval of PPA executed between UPCL and M/s Himalaya Hydro Pvt. Ltd. for supply of power from its Tanga SHP.

433 The Petition was heard on 17.07.2018 and during the hearing, the Respondent submitted that there was a substantial increase in water inflow in the river and after the study it was observed that there was a potential to harness additional power generation of 3 MW and 1 MW respectively apart from originally envisaged power generation of 3 MW for both the proposed SHPs, i.e. Rayat and Lagrasu. The Respondent submitted that the revised DPRs for Rayat SHP and Lagrasu SHP for 6 MW and 4 MW respectively had been made and submitted to GoUK which has been approved. The Respondent further submitted that the supplementary IA is pending for execution vis-a-vis execution of revised Supplementary PPA is pending for a total capacity of 6 MW and 4 MW.

434 Further, the Commission has examined these PPAs and submissions of the Respondent in light of the relevant rules & regulations. The Commission observed that certain clauses in the PPAs 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 PPAs accordingly. Further, the provisions of both PPAs are similar, hence, the Commission's decision shall be equally applicable for both the PPAs.

a) Clause 2.2.13 of the PPAs provides definition of Commercial Operation Date as follows:

“Commercial Operation Date (COD) of Unit/Project means the date(s) on which the unit(s) of the project achieves the Commercial Operation.

The above mentioned clause needs to be corrected and be replaced in accordance with the Regulation 3(1)(n) of RE Regulations, 2018 as follows:

““Date of commercial operation or Commissioning (CoD)” Date of commercial operation or Commissioning (CoD)” in relation to a unit means the date declared by the generator on achieving maximum continuous rating through a successful trial run and in relation to the generating station, the date of commercial operation means the date of commercial operation of the last unit or block of generating station and expression ‘commissioning’ shall be construed accordingly.

Provided that in case of Small Hydro Plants the date of commissioning shall not be linked to achieving maximum continuous rating, nevertheless the generator will have to demonstrate the same within three years of commissioning.”

b) Clause 2.2.17 (A) shall be added after Clause 2.2.17 in the PPAs as follows:

“2.2.17(A) ‘Commission’ means the Uttarakhand Electricity Regulatory Commission.”

c) Clause 2.2.18 of the original PPA provides definition of “Control Centre” as follows:

““Control Centre” means the Corporation’s State Load Despatch Centre located at Rishikesh, or such other centre designated by the Corporation from time to time (but not more than one at a time) wherefrom dispatch instructions to the Station/Company shall be issued by the Corporation.”

The above mentioned definition is not in accordance with the provisions of the Electricity Act, 2003. Further, location of the Load Despatch Centre also needs to be corrected. Accordingly, the above mentioned clause shall be modified as follows:

““Control Centre” means the State Load Despatch Centre located at Dehradun, or Sub-State Load Despatch Centre located at Kashipur and Rishikesh incorporated wherefrom dispatch instructions to the Station/Company shall be issued.”

d) Clause 2.2.36 of the PPAs provides definition of Government as follows:

“Government/Govt. means the Government of Uttaranchal.”

The same needs to be corrected and should be replaced as follows:

“Government/Govt. means the Government of Uttarakhand.”

- e) Clause 2.2.40 of the PPAs defines Implementation Agreement as follows:

Rayat SHP

“Implementation Agreement means this Agreement dated 7-5-1997 entered into between the company and the Government for Implementation of Rayat Small Hydroelectric Project read with the subsequent amendments, if any, thereto.”

Lagrasu SHP

“Implementation Agreement means this Agreement dated 7-5-1997 entered into between the company and the Government for Implementation of Lagrasu Small Hydroelectric Project read with the subsequent amendments, if any, thereto.”

The same needs to be corrected and should be replaced as follows:

Rayat SHP

“Implementation Agreement means the Agreement dated 28th April, 2004 entered into between the company and the Government of Uttarakhand for Implementation of Rayat Small Hydroelectric Project read with the subsequent amendments, if any, thereto.”

Lagrasu SHP

“Implementation Agreement means the Agreement dated 28th April, 2004 entered into between the company and the Government of Uttarakhand for Implementation of Rayat Small Hydroelectric Project read with the subsequent amendments, if any, thereto.”

- f) Clause 2.2.41 of the PPAs provides definition of Installed Capacity as follows:

““Installed Capacity” means summation of the name plate kilowatt capacity(ies) of Generating Unit(s) of the Project.”

The above mentioned clause needs to be corrected and be replaced in accordance with Regulation 3(1)(aa) of RE Regulations, 2018 as follows:

“Installed Capacity” or “IC” means the summation of the name plate capacities of the units in the generating station or the capacity of the generating station (reckoned at the generator terminals).”

- g) Clause 2.2.43 of the PPAs provides definition of Interconnection Point as follows:

““Interconnection Point” means the physical touch point where the Project Lines (s) and the allied equipment forming a part of the Interconnection Facilities are connected to the 33 KV Bus Bars on the 33 kV sub-station of the Corporation at Mussoorie, District Tehri Garhwal,

Uttaranchal.”

The same needs to be corrected and should be replaced as follows in accordance with the applicable regulations:

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

h) Clause 2.2.47 of the PPAs provides definition of Net Saleable Energy as follows:

““Net Saleable Energy” means the Electrical Energy in kWh delivered by the Company at the Interconnection Point, less the Government Supply.”

The above mentioned clause needs to be corrected and be replaced in accordance with the Regulation 3(1)(ww) of RE Regulations, 2018 as follows:

““Saleable Energy” means the quantum of energy available for sale (ex-bus) after allowing for free energy, if any, to the home State”

i) Clause 2.2.69 of the PPAs provides definition of Net Installed Capacity as follows:

““Net Installed Capacity” means the installed capacity of the project less the Summation of the capacities matching to the Govt. royalty, auxiliary consumption, transformation losses incurred in delivery of power upto the interconnection point. The auxiliary consumption, transformation losses and transmission losses shall be considered as 2% of the installed capacity.”

Since auxiliary consumption including the transmission losses of 1% has been specified in the Regulations for SHPs, hence, the provision of 2% auxiliary consumption as mentioned above is not consistent with the Regulations. Accordingly, Clause 2.2.69 shall be read as:

““Net Installed Capacity” means the installed capacity of the project less the Govt. royalty and auxiliary consumption incurred in delivery of power upto the interconnection point.”

j) Article 3 of the PPAs, i.e. Construction Stage and Time limit for executing the project is not relevant as the same shall be governed in accordance with the Implementation Agreement dated April 28, 2004 signed by the generator with the Government of Uttarakhand as the project was allotted to the generator by the State Government and not UPCL and any cancellation of allotment or levy of penalty or liquidated damages will accordingly be done by the State Government. Besides, the PPA specifies the

commissioning schedule as 48 months, however, the IA allows the Company to achieve COD within 54 months from the effective date. Moreover, as per the IA, UJVNL was responsible for monitoring and supervision of the construction works, etc. and UPCL had no role in the same. Accordingly, the same may either be modified in accordance with the IA or the same may be done away with.

k) Para 2 of Clause 6.1 of the PPAs states as follows:

“During such periods, as may occur from time to time, as the Project is partly or totally unable to operate, the Company may draw energy required for startup and maintenance of the Project for the Corporation’s System, which shall be metered at the Interconnection Point and adjusted against the Net Saleable Energy in corresponding month’s bill. In case the quantum of such drawals by the Company during a month exceeds the Net Saleable Energy for that month, the excess drawals shall be paid for by the Company at the same rate as applicable for Net Saleable Energy as per section 6.2.”

The same needs to be corrected and should be replaced as follows:

“Energy accounting for supply of electricity by UPCL to the Generating Company shall be as per Regulation 47 of the 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, 2018 as amended from time to time.”

l) Clause 6.2 of the PPAs provides as follows:

“Tariff for Net Saleable Energy

The Corporation shall pay for the Net Saleable Energy delivered by the Company to the Corporation at the Interconnection Point at a fixed rate of Rs. 2.50 (Rupee two paise fifty only) per Killowatt hour. This rate is firm and fixed and shall not be changed due to any reason whatsoever.”

The tariff of a RE project is to be applicable based on the date of commercial operation of the Unit/Project and Regulation 10(2) of RE Regulations, 2018 as amended from time to time, provides an option to the generator to opt for generic tariff, as determined by the Commission based on norms specified in the regulations, or file a petition before the Commission for determination of “Project Specific Tariff”, and since, the Respondent has sought generic tariff, accordingly, Clause 6.2 needs to be corrected and should be replaced as follows:

“The tariff for Net Saleable energy shall be at the levelised rate determined in accordance with the 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, 2018 as amended from time to time.”

m) Clause 6.4 of the PPAs provides definition of Deemed Generation as follows:

“After the COD of the project, loss of generation at the station on account of reasons attributed to the following or any one of the following, which result in Water Spillage, shall count towards Deemed Generation:-

- a) Corporation Grid System failure;*
- b) Non Availability of evacuation system beyond the Interconnection Point; and*
- c) Receipt of backing down instructions from the Control Centre.*

Provided that the following shall not count towards Deemed Generation:-

- i) The loss of generation at the station due to the interruption/outages attributed to the aforesaid factor(s) lasting for a period of less than 20 minutes at a time;*
- ii) The loss of generation at the Station on account of aforesaid factor(s) but attributed to the Force Majeure event(s);*
- iii) The loss of generation at the Station due to the interruption/outages attributed to the aforesaid factor(s) during the period in which the total duration of such outages/interruptions, other than those excluded under (i) & (ii) above, is within the annual limit of 400 hours in a year/and*
- iv) The loss of generation at the Station that would have taken place otherwise also even in the absence of the aforesaid factor(s).*

The period of outage/interruption on account of such factor (s) shall be reconciled on monthly basis and the loss of generation at the Station counting towards Deemed Generation after accounting for the events (i) to (iv) above, shall be computed on following considerations:

- i) If such period falls within the first twelve months after the COD of the Project, the generation, envisaged for the month in which such period falls, based on inflows relating to 75 % dependable year, as per the hydrological data contained in the Approved DPR; and*
- ii) If such period falls subsequent to the first twelve months after the COD of the project, the generating actually achieved including the deemed generation, if any in the corresponding month of the previous year for the one envisaged in that month based on inflows relating to*

75% dependable year as per the hydrological data contained in the Approved DPR, whichever is less.

The Corporation shall pay for the saleable deemed Generation, worked out on the basis of the deemed generation on above lines, at a fixed rate of Rs. 2.50 (Rupees two paise fifty only) per unit on monthly basis.

The same needs to be corrected and should be replaced as follows:

“Deemed Generation:

After the CoD of the project, deemed generation shall be admissible to the Company in accordance with the 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, 2018 as amended from time to time.”

n) Clause 7.18 is required to be added to the PPAs as follows:

“The complete metering system consisting of Meters, Current Transformers & Potential Transformers shall conform to the 0.2S accuracy class, individually and collectively, and shall comply with the technical standards, accuracy and calibration requirements of the CEA (Installation and Operation of Meters) Regulations, 2010 and amendment thereof.”

o) Clause 8.2 of PPAs talks about rebate as follows:

“If the payment of bill is made on or before the due date of payment, the corporation shall be entitled for a rebate @ 1.5% of the gross amount of the bill. However, in case of part payment (s) made by the Corporation within the due date of payment, the rebate @ 1.5% of the amount (s) paid by the corporation shall be allowed by the company.”

The above mentioned clause needs to be corrected and be replaced in accordance with the Regulation 22 of RE Regulations, 2018 as follows:

“

(1) For payment of bills through the letter of credit on presentation or if payment made within 5 working days, a rebate of 2% shall be allowed.

(2) Where payments are made by a mode other than through the letter of credit but within a period of one month of presentation of bills by the generating company, a rebate of 1% shall be allowed.”

p) Clause 8.3 of the PPAs talks about late payment surcharge as follows:

“In the case the un-disputed amount of bill is not paid within the Due date of Payment, the unpaid and undisputed amount shall bear penalty at a rate of 1.5% per month. For this purpose the month shall be considered to be comprising of thirty days. The penalty shall be payable for each day of delay in making such payment beyond the Due date of Payment.

In case the corporation does not make payment of un-disputed bill, within three months from the receipt of the bill, the Company shall be at liberty to invoke the provisions of Government Guarantee after giving a notice of at least 15 days to the corporation.”

The above mentioned clause needs to be corrected and be replaced as follows:

“For default in payment beyond 60 days from the billing, a surcharge at the rate of 1.25% per month or part thereof shall be levied on the billed amount.”

q) Clause 10.1 of the PPAs talks about Terms of Agreement and states as follows:

“The Agreement shall become effective upon execution and delivery by the Parties hereto and unless earlier terminated pursuant to provisions of the Agreement shall have a term from the date hereof until thirty (30) years after the Synchronisation Date of the first unit of the project.”

The above mentioned clause needs to be corrected and be replaced as follows:

“This agreement shall be valid till the expiry of 35 years from the date of commercial operation of the project.

The agreement may be renewed or extended for such period as may be mutually agreed between the Generating Company and UPCL on expiry of initial term described as above.

UPCL reserves the first right of purchase after the expiry of initial term of PPA.”

r) Clause 12.2 of the PPAs talks about force majeure events and states as follows:

“Subject to Section 12.6, Force Majeure shall mean any event or circumstances or combination of events and circumstances that wholly or partly prevents or unavoidably delays any party in the performance of its obligation under the Agreement, but only if and to the extent that such events and circumstances are not within the reasonable control directly or indirectly, of the affected party and could not have been avoided even if the affected party had taken reasonable care. Such events may include acts of the governments/GOI either in its sovereign or its contractual capacity, war, civil war, quarantine restrictions, freight embargoes, radioactivity and earthquakes to the extent they, or their consequences satisfy the above requirements.”

The above mentioned clause needs to be corrected and be replaced in accordance

with the Clause (s) of sub-Regulation (1) of Regulation 3 of UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2018 which specifies as follows:

“Force Majeure Event” 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, storm, action of the elements, earthquakes, flood, drought and natural disaster or exceptionally adverse weather conditions;*
 - 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;*
 - 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.”*
- s) Clause 13.2 and sub-clause 13.2.1 of the PPAs speaks about arbitration as follows:

“13.2 Arbitration

- a) Except as otherwise provided in the Agreement, all disputes arising out of or relating to the Agreement shall be referred to arbitration if the dispute is not resolved during the period as per Section 13.1.*
- b) The Arbitration shall be conducted in accordance with “The Arbitration and Conciliation 1966” or amendments thereof.*
- c) The arbitration shall be conducted at Dehradun India. The laws of India shall govern the validity, interpretation, provisions contained in the Agreement.*
- d) The language to be used in the arbitration shall be the English Language.*
- e) Judgment upon the award rendered in such arbitration and/or for any interim relief or direction or otherwise, during the pendency of arbitration proceedings and upto the date of making of the award in such arbitration, may be entered in any court of competent jurisdiction, at Dehradun having jurisdiction in respect of any application made for the*

filing of the arbitration agreement.

13.2.1 *The Agreement shall be subject to the jurisdiction of High Court of Uttarakhand at Nainital."*

The above clauses need to be deleted as they are in contradiction to the provision of the Electricity Act 2003 and UERC (Conduct of Business) Regulation, 2014 and should be replaced by the following:

"If the 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. However, if the Commission feels appropriate to refer the dispute to be resolved by Arbitration, the procedure specified in the Indian Electricity Act, 2003 read with the Indian Arbitration and Conciliation Act, 1996 and UERC (Conduct of Business) Regulations 2014 as amended from time to time shall be followed to the extent applicable."

t) Clause 15.1 of the PPAs relating to Amendment states as follows:

"The Agreement can be amended only with the written consent of both the parties."

The above clause needs to be amended and shall be replaced by the following:

"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."

u) Clause 15.17 of the PPAs relating to Indemnity states as follows:

"The Company shall be fully responsible for any damage or loss arising out of the construction, operation or maintenance of the project to any property or persons and also undertake to indemnify the corporation on such account."

The above clause needs to be amended and shall be replaced by the following:

"The Generating Company shall indemnify, defend, and render harm free, UPCL, its members, directors, officers, employees and agents, and their respective heirs, successors, legal representatives and assignees, from and against any and all liabilities, damages, costs, expenses (including attorney fees), losses, claims, demands, action, causes of action, suits and proceedings of every kind, including those for damage to property of any person or entity (including the Generating Company) and/or for injury to or death of any person (including the Generating Company's employees and agents), which directly or indirectly result from or arising out of or in connection with negligence or willful misconduct of the Generating Company."

UPCL shall indemnify and render the Generating Company, its directors, officers, employees and agents, and their respective heirs, successors, legal representatives and assignees harmless from and against any and all liabilities, damages, costs, expenses (including outside attorneys fees), losses, claims, demands, actions, causes of action, suits and proceedings of every kind, including those for damage to the property of any person or entity (including UPCL) and/or injury to or death of any person (including UPCL's employees and agents), which directly or indirectly result from or arise out of or in connection with negligence or willful misconduct by UPCL."

5. As discussed earlier in the order, the Respondent has submitted that there was substantial increase in water inflow in the river and there is a potential to harness additional 3 MW and 1 MW power generation from Rayat SHP and Lagrasu SHP respectively. Also the GoUK has approved the revised DPRs based on such enhanced capacity for both the plants and now, as submitted by the Respondent, the supplementary Implementation Agreements are pending for execution with the department of Energy, GoUK which will be followed by execution of Supplementary PPAs with UPCL for these projects. In this regard, the Commission is of the view that as the execution of supplementary implementation agreements with Department of Energy, GoUK and execution of supplementary PPAs between the Petitioner and the Respondent are yet to done, therefore, both the Petitioner and the Respondent are directed to submit the agreed Supplementary PPA and executed Implementation Agreement respectively within 15 days of signing of such agreements.
6. Notwithstanding the above, the Commission directs both the Petitioner and the Respondent (having 2 projects namely Rayat SHP and Lagrasu SHP) to incorporate the changes discussed above in the respective PPAs pertaining to each aforesaid plant and submit a copy of the signed PPAs before the Commission within 15 days of the date of the Order.

Ordered Accordingly.

(Subhash Kumar)
Chairman