

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 Mittal Processors (P) Ltd. (MPPL), M/s PTC India Ltd., M/s Tata Power Trading Company Ltd. (TPTCL), M/s Sembcorp Gayatri Power Ltd. (SGPL) and M/s GMR Energy Trading Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd. ... Petitioner

AND

In the matter of:

M/s Mittal Processors (P) Ltd.

M/s PTC India Ltd.

M/s Tata Power Trading Company Ltd.

M/s Sembcorp Gayatri Power Ltd.

M/s GMR Energy Trading Ltd. ... Respondents

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: October 23, 2018

Date of Order: October 31, 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 Mittal Processors (P) Ltd. (MPPL), M/s PTC India Ltd., M/s Tata Power Trading Company Ltd. (TPTCL), M/s Sembcorp Gayatri Power Ltd. (SGPL) and M/s GMR Energy Trading Ltd.

1. Background & Submissions

- 1.1 The Petitioner submitted five separate Petitions dated 20.09.2018 seeking approval of draft PPAs to be executed for short term power purchases with M/s Mittal Processors (P) Ltd.

(MPPL), M/s PTC India Ltd., M/s Tata Power Trading Company Ltd. (TPTCL), M/s Sembcorp Gayatri Power Ltd. (SGPL) and M/s GMR Energy Trading 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 the Commission in the Tariff Order 21.03.2018 had allowed the power purchase cost for FY 2018-19 from various sources including gas based power plant of M/s SEPL, M/s GIPL and M/s BIPL. However, M/s BIPL having a capacity of 107 MW has not been able to generate power from its gas plant till date and has further requested to extend the scheduled delivery date upto March 2019.
- 1.3 The Petitioner submitted that with regard to the other 02 Gas based Generators, i.e. M/s SEPL and M/s GIPL, UPCL issued instructions to both gas generators to shutdown their plants on account of increased gas prices which had caused the ECR to go up from Rs. 4.75 per unit to Rs. 5.57 per unit and the offers submitted by both the gas generators for procurement of gas on increased rate were not financially viable for UPCL and would have increased cost burden on consumers.
- 1.4 The Petitioner submitted that for compensating the deficit of around 300 MW due to shutdown of gas based power plants of M/s SEPL and M/s GIPL and for fulfilling the power requirement of the State, UPCL floated a short term tender for procurement of 300 MW for 11 months through DEEP Portal on 12-07-2018.
- 1.5 The comparative statement showing rates and quantum quoted by the firms, in respect of the above mentioned Initial Price Opening (IPO) opened on 20.07.2018 and subsequent to conducting of e-Reverse Auction on 21-07-2018 on DEEP Portal, was also submitted by the Petitioner. The licensee submitted that after evaluation, LoI were issued to M/s MPPL, M/s PTC India Ltd., M/s TPTCL, M/s SGPL and M/s GMR Energy Trading Ltd for supply of power on the following rates and quantum:

Month	Company	Quantum (MW)	Rate at delivery Point (Rs./kWh)
Aug-18	M/s SGPL	245	4.38
	M/s MPPL	55	4.38
Sep-18	M/s SGPL	245	4.38
	M/s MPPL	55	4.38
Oct-18	M/s GMRETL	97	4.14

Nov-18	M/s PTC	100	4.14
	M/s TPTCL	25	3.87
	M/s TPTCL	58	3.90
	M/s GMRETL	97	3.87
Dec-18	M/s PTC	100	4.14
	M/s TPTCL	25	3.87
	M/s TPTCL	58	3.90
	M/s GMRETL	97	3.87
Jan-19	M/s PTC	100	4.14
	M/s TPTCL	25	4.11
	M/s TPTCL	58	3.90
	M/s GMRETL	97	3.89
Feb-19	M/s PTC	100	4.14
	M/s TPTCL	25	4.13
	M/s TPTCL	58	3.97
	M/s GMRETL	97	3.96
Mar-19	M/s PTC	100	4.14
	M/s PTC	20	4.23
	M/s TPTCL	25	4.15
	M/s TPTCL	58	3.97
	M/s GMRETL	97	3.96
Apr-19	M/s PTC	150	4.31
	M/s GMRETL	97	4.28
May-19	M/s PTC	203	4.15
	M/s GMRETL	97	4.15
Jun-19	M/s PTC	270	4.15
	M/s GMRETL	30	4.15

1.6 The Petitioner had earlier sought in-principle approval of the Commission for procurement of the above said short term power vide letter no. 2455/UPCL/Com/Misc/MD dated 25.07.2018 and the Commission vide its letter dated 07.08.2018 accorded in-principle approval for procurement of above said short term power and advised UPCL as follows:

"...the Commission advises UPCL to explore the possibility of negotiating the ECR with the State based gas generators so that a certain percentage of its requirement also be scheduled through them in such a manner that these gas generators are run at a minimum required capacity at an acceptable thermal efficiency, which in turn will enable UPCL to meet its demand and further would hedge it from any issues that may arise due to congestion in transmission network or exchange prices going very high ...

Further, UPCL is also advised to incorporate necessary/appropriate conditions in the contract proposed to be entered with the bidders to safeguard itself from fluctuation in rate in the power exchange during the period the bidders/traders are unable to supply power to them due to congestion or for any reason thereof "

1.7 The Commission held a hearing in the matter on 23.10.2018.

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 the "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 shutdown of gas plant of SEPL & M/s GIPL on account of increased gas prices and lower generation from hydro power sources, the Commission vide its letter dated 07.08.2018 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 power requirement. 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. 3.87/unit to Rs. 4.38/unit, as proposed by UPCL appear 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 Mittal Processors (P) Ltd., M/s PTC India Ltd., M/s Tata Power Trading Company Ltd., M/s Sembcorp Gayatri Power Ltd. and M/s GMR Energy Trading 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. in its comments submitted that the draft PPA submitted before the Commission for approval by UPCL is not in line with the terms & conditions as stated in the Clause No. 10(ii) of tender specification no. 04/CE(COMM)/UPCL-04/18-19 issued by UPCL in so far that UPCL had included the phrase "excluding the day of receipt of bill" in the first line of said clause, which originally reads as follows.

"10. PAYMENT TERM AND PAYMENT SECURITY TO BE MADE AVAILABLE BY THE PROCURER

...

- ii. *Uttarakhand Power Corporation Limited will make the payment to Selected Bidder within 7 working days from the date of receipt of the energy bills in the office of Superintending Engineer (Commercial) UPCL...*

UPCL is directed to make necessary amendments to this regard in all the 5 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. Further, UPCL is also directed to submit the month wise power procured from the above mentioned traders and in case, energy does not get scheduled from these traders, UPCL is required to submit the alternate source from which power was procured to meet the deficit alongwith the cost thereof, within one week of the end of each month.

3. Ordered accordingly.

(Subhash Kumar)
Chairman