

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 22 of 2019

In the matter of:

Application seeking approval of the Commission on the Model Power Purchase Agreement between Uttarakhand Power Corporation Limited and selected bidders for setting of Pine Needle based power plants.

In the matter of:

Uttarakhand Power Corporation Ltd. ... Petitioner

AND

In the matter of:

Uttarakhand Renewable Energy Development Agency (UREDA) ... Respondent

CORAM

Shri D.P. Gairola Member (Law)

Shri M.K. Jain Member (Technical)

Date of Order: August 01, 2019

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 Model Power Purchase Agreement (PPA) to be executed by it with the selected bidders for procurement of power from selected bidders' Pine Leaves based power plants.

1. Background

1.1 The Petitioner has filed the Petition 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, seeking approval of the Commission on the Model Power Purchase Agreement for purchase of energy generated from the Pine Leaves based power plant to be developed by selected bidders.

1.2 The Government of Uttarakhand (GoU) vide notification no. 918/I/2018/03/06(05)/07/

2004 dated 07.08.2018 has notified the “Policy for Power Generation from Pirul (Pine Leaves) and Other Biomass-2018” (hereinafter referred to as “Pine Leaves and Biomass Policy, 2018”). As per the policy, GoUK/UREDA shall invite proposals from time to time for selection of Pine Leaves based project through tariff based competitive bidding process.

- 1.3 UREDA had conducted a competitive bidding process based on a fixed levelised tariff for selection of the developers in the State of Uttarakhand for the development of Pine Leaves based power projects. Through the tariff based competitive bidding, 20 nos. of bidders have been selected for the development of such projects. Further, these 20 nos. of selected bidders are required to execute a PPA with UPCL in accordance with the terms and conditions of RE Regulations, 2018.

Accordingly, UPCL has prepared a Model PPA to be signed with the selected bidders and has requested the Commission to approve the Model PPA and allow UPCL to sign the PPA with selected bidders.

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, it 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 UREDA has conducted a tariff based competitive bidding for selection of successful bidders for development of Pine Leaves based power plants in the State of Uttarakhand under Pine Leaves and Biomass Policy, 2018. UPCL also submitted that UREDA vide letter no. 463/UREDA/Pine RfP/2018-19 dated 10.06.2019 has provided a list of 20 nos. of selected developers alongwith the rate discovered in the bidding for setting up Pine Leaves based power plants in the State of Uttarakhand with the request to sign the PPA with the developers at the earliest.

3. Respondent’s reply and Petitioner’s rejoinder

- 3.1 The Commission had forwarded the copy of the Petition to UREDA as it was the nodal agency in the State, for its comments, if any, in the matter. UREDA vide its letter dated 15.07.2019 submitted its reply to the Commission which was forwarded to UPCL for their counter reply. UPCL vide its letter dated 24.07.2017 submitted its rejoinder. The

Commission has dealt with the reply and rejoinder of the parties in the subsequent paragraphs.

- 3.2 UREDA vide its reply dated 15.07.2019 submitted that in the first phase of bidding, maximum numbers of Pine Leaves based power project developers amongst total selected 20 developers have applied as Proprietary firms. Hence, the specific words mentioned in the PPA, i.e. registered under the Company's Act, should be left blank and shall be, accordingly, filled during the signing of PPA as per their actual status.

The Petitioner vide its rejoinder dated 24.07.2017 agreed with the view of UREDA in the matter and, accordingly, agreed to make necessary changes in accordance with the status of the generator.

- 3.3 UREDA submitted that the Pine Leaves based power projects are of small capacity, i.e. upto 250 kW and are being developed by small entities like Van Panchayat, individuals etc. located at remote hilly areas of Uttarakhand. At present 20 such developers are selected and hundreds of small developers could be selected in future according to the provision of said Policy. Further, the Government of Uttarakhand is providing all possible support to facilitate the Pine Leaves based power projects in the State. Therefore, the PPA should be signed at district level by Executive Engineer of UPCL to facilitate these small entities.

The Petitioner submitted that UPCL is also planning to sign the PPA at Division Level to expedite the commissioning of the plants.

- 3.4 UREDA submitted that Pine Leave based power projects developers should be provided with guarantee for timely payment of their bill in the form of letter of credit.

The Petitioner submitted that being a renowned and Government undertaking company, UPCL pays the energy bills in time and, therefore, there is no need for payment security mechanism through LC. However, if the LC is required by the generator, all the expenses towards opening/closing of LC shall be to the account of generator.

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 Government of Uttarakhand vide notification dated 07.08.2018 notified the Pine Leaves and Biomass Policy,2018 wherein clause 14(1) specifies as follows:

"The tariff of electricity shall not be more than the tariff notified by the Commission as amended from time to time. The electricity generated by the biomass based power plants, will be purchased by UPCL in pursuance of this a PPA will be signed by the power plant developers with UPCL as per terms and conditions contained therein."

4.1.5 Further, Regulations 7(2) & 7(3) of UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2018 (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."

Provided that where a grid interactive roof top and small Solar PV plant, is installed in the Premises, by a third party who intends to sell net energy (i.e. after adjustment of entire consumption of owner of the premise) to the distribution licensee, a tripartite agreement will have to be entered into amongst the third Party, the Eligible Consumer and such Distribution Licensee.

(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, 2014 as amended from time to time within one month of the date of signing the PPA."

(Emphasis added)

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

4.2 Consistency of the PPA with the Regulations

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

"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 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, 2018. 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, 2018.

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

4.3.1 The Model PPA is to be executed between UPCL and the selected developers for supply of power to UPCL from the Pine Leaves based power projects having capacity ranging from 25 kW to 125 kW situated in the State of Uttarakhand.

4.3.2 The Commission observed that certain clauses in the Model PPA submitted by UPCL are inconsistent with the provisions of the Act/Regulations. Such observations have been discussed in the subsequent sub-paragraphs. UPCL is directed to take note of the same

and incorporate necessary corrections while executing the PPAs with the project developers.

- a) As discussed in above paragraph 3.1 of this Order, most of the selected project developers amongst the total selected 20 developers had applied as Proprietary firms. Therefore, the specific words mentioned in the PPA, i.e. registered under the Company's Act is required to be left black and shall be, accordingly, filled during the signing of PPA as per the actual status of the selected developer.

Further, the Commission has observed that the Petitioner has used the terminology 'generating company' at many places in the Model PPA. The same is required to be changed in accordance with the above discussion.

- b) Clause 1.1 of the Model PPA provides the definition of 'Bill meter' as follows:

"'Bill Meter' means Import and Export Meter on the basis of which energy bills shall be raised by the Pine Leaves & other Biomass Based Power Plants/UPCL.

Regarding Meter to be used for energy accounting, Central Electricity Authority vide its CEA (Installation and Operation of Meters) Regulations, 2006 as amended from time to time 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 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 Pine Leaves & other Biomass Based Plants/UPCL"

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

- c) The Model PPA does not define 'Due Date'. Accordingly, following clause shall be inserted after Clause 1.3:

"1.3(a) "Due date" shall mean the thirtieth (30th) day after a Monthly Bill or a

Supplementary Bill is faxed/mailed/handed over to the Buyer and confirmed telephonically by the Buyer and by which date such Monthly Bill or Supplementary Bill is payable by Buyer."

d) Clause 1.4 of the Model PPA provides definition for "Export Meter" as follows:

"'Export Meter' means Bill Meter installed at interconnection point for measurement of Active Energy, Maximum demand and Power factor for Energy exported to the Pine Leaves & other Biomass Based Power Plant's from nearest LT/HT line connected to UPCL 33/11 kV ..., Uttarakhand."

Since as per the definition of "Main Meter" read with Clause 2.2, billing of 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 Main Meter installed at the interconnection point for measurement of Active Energy, Maximum demand and Power Factor for energy exported from the Pine Leaves & other Biomass Power Plant to nearest LT/HT line connected to UPCL 33/11 kV Substation..., Uttarakhand."

e) Clause 1.7 of the Model 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 Pine Leave & other Biomass Based Power Plant's to nearest feasible LT/HT line connected to UPCL 33/11 kV..., Uttarakhand"

Since as per the definition of "Main Meter" read with Clause 2.2, billing of 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 Biomass Generating Station from nearest LT/HT line connected to UPCL 33/11 kV Substation..., Uttarakhand."

f) The Petitioner has referred Annexure-IX in Clause 2.1 of the Model PPA. However, the same is not enclosed with the Model PPA. The Petitioner is directed to ensure that

all the annexure are properly filled and enclosed while executing PPA with the selected bidders.

g) Clause 8.3 of the Model PPA provides as follows:

“The cost of laying the transmission line upto the nearest feasible LT/HT line connected to 33/11 kV ..., Uttarakhand owned, maintained and operated by UPCL/STU, the required bay, terminal equipments and associated synchronization equipments, etc. shall be borne as per clause 41 of UERC regulation 2018 by the owner.”

With regard to connectivity, Regulation 41 of RE Regulations, 2018 specifies as follows:

“41. Evacuation of Power

(1) Distribution Licensees shall provide connectivity to the RE Based Generating Stations having capacity upto 25 MW at its nearest distribution sub-station preferably within a range of 10 kilometers from the location of such generating station. They may further mutually agree to provide connectivity at appropriate voltage level subject to technical feasibility and technical standards for construction of electrical lines and connectivity with the grid as may be specified by CEA.

(2) XXX

(3) In case RE based Generating Stations exercise the option to construct the evacuation system including the line upto the nearest substation of Transmission/Distribution Licensee, the required bay, terminal equipments, associated synchronization equipments and above pooling switching station, if any, etc. the cost of such evacuation system shall be borne by such generating stations:

Provided that such Generating Stations may also get the work of construction of the power evacuation system carried out by State transmission/distribution licensee;

Provided further that the land for extending the bay shall be provided by the owner of the transmission or distribution sub-station, as the case may be, free of cost.”

It is to be noted that though RE based generators have an option to construct the evacuation system including the line upto the nearest sub-station of the distribution licensee, it is responsibility of the distribution licensee to provide the connectivity to the RE Based Generating Stations having capacity upto 25 MW at its

nearest distribution sub-station as per aforesaid regulation.

Further, it is pertinent to mention that if the generator opts to construct the evacuation infrastructure, at its own cost, it shall be allowed a normative tariff of 5 paise/kWh over and above the tariff determined through tariff based competitive bidding for the respective successful bidder in accordance with the Regulation 15(1)(c) of RE Regulations, 2018.

The Commission has observed that most of the selected bidders are small developers like Van Panchayat, Individuals, having projects with capacity of 25 kW and it would be inappropriate to put the financial burden of the connectivity arrangement on such small developers

Accordingly, based on the above discussion, the Petitioner is advised to amend Clause 8.3 of the Model PPA, if required, considering the financial viability of both the connectivity arrangements after providing an option to the developers in accordance with the RE Regulations, 2018.

h) Clause 25.1 of the Model 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 extentor 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;"

4.3.3 With regard to payment, UREDA has requested that the developers should be provided with guarantee for timely payment of their bill in the form of letter of credit. In reply, UPCL agreed for payment security mechanism through Letter of Credit with a condition that developers shall be required to bear all the expenses towards opening and closing of Letter of Credit.

In the matter, it is pertinent to mention that the selected bidders for development of Pine Leaves based power projects are small entities like Van Panchayat, individuals having capacity 25 kW only. Therefore, it would be appropriate for UPCL to honour the payments timely so that these individuals/Van Panchayat can meet their obligations in a time bound manner. Further, Letter of Credit will provide security to the developers regarding timely payment of monthly generation. Accordingly, the Commission is of the view that it would be prudent to open a Letter of Credit which would be exercised by the developers only in case of default in the payments by the Petitioner beyond due date. Furthermore, as far as bank charges for opening or closing the Letter of Credit is concerned, it is to be noted that these charges are allowed as pass through expenses during the determination of ARR of the Petitioner. Besides, UPCL is not charging such charges from the large generators. Hence, it would be unfair to load these charges on the small developers. Therefore, the Commission does not find it prudent to allow such charges to be recovered from these developers.

4.3.4 UPCL is directed to amend the Model PPA in accordance with the observations of the Commission in this Order and sign the PPA with the developers after incorporating the same and submit the same to the Commission within one week of signing of the PPA.

5. Ordered accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)