

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 01 of 2019

In the matter of:

Application seeking approval of the Commission on the Draft Power Purchase Agreement between Uttarakhand Power Corporation Ltd. and M/s A B Renewable Energy Pvt. Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

In the matter of:

M/s A. B. Renewable energy Pvt. Ltd.

... Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Order: January 15, 2019

This order relates to the Petition filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Petitioner" or "Licensee") seeking approval for transfer of Power Purchase Agreement (PPA) dated 29.03.2016 and supplementary PPA dated 15.12.2016 entered into with M/s Vishal Techno Commerce Ltd. to M/s A. B. Renewable Energy Pvt. Ltd. in accordance with the Clause 25 of the said PPA.

1. Background and Petitioner's Submissions

- 1.1 UPCL has filed the Petition seeking approval of the Commission for transfer of PPA dated 29.03.2016 and Supplementary PPA dated 15.12.2016 executed with M/s Vishal Techno Commerce Ltd. to its 100% subsidiary company M/s A. B. Renewable Energy Pvt. Ltd. (hereinafter referred to as "Respondent")

- 1.2 The Petitioner submitted that M/s Vishal Techno Commerce Ltd. had executed a PPA with UPCL on 29.03.2016 for sale of power from its Grid connected Solar PV Power Project located at Roorkee having capacity of 5 MW.
- 1.3 The Petitioner also submitted that the Commission vide its Order dated 29.07.2016 had approved the said PPA with certain modifications and in compliance to the said Order, UPCL and M/s Vishal Techno Commerce Ltd. executed a Supplementary PPA dated 15.12.2016. Further, vide the same Supplementary PPA dated 15.12.2016, the Original PPA dated 29.03.2016 and Supplementary PPA was assigned to the Respondent.
- 1.4 The Petitioner submitted that the Respondent being a subsidiary company of M/s Vishal Techno Commerce Ltd. requested UPCL to transfer the PPA dated 29.03.2016 and Supplementary PPA dated 15.12.2016 executed with M/s Vishal Techno Commerce Ltd. to M/s A. B. Renewable Energy Pvt. Ltd. The Petitioner further submitted that UREDA vide its letter dated 07.12.2016 has already issued NoC for transferring the PPA dated 29.03.2016 to the subsidiary of M/s Vishal Techno Commerce Ltd., i.e. M/s A.B. Renewable Energy Pvt. Ltd.

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 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)

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, 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 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 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)

2.2 Commission’s Analysis of the PPA and Order on the same

2.2.1 The Commission vide its Order dated 29.07.2016 had approved the PPAs with certain modifications for 23 nos. of solar PV Plant developers (cumulative capacity of 181.40 MW) one of which was M/s Vishal Techno Commerce Ltd. Subsequently, the Commission vide its Order dated 31.03.2016 extended the time limit for commissioning of the aforesaid projects to 31.10.2016 from 31.03.2016. Thereafter, vide Order dated 20.09.2016 the said timeline was further extended to 31.03.2017. Accordingly, as per aforesaid Order, the rate proposed in PPA was applicable only if the proposed solar PV plants got commissioned on or before 31.03.2017. However, in case of commissioning of the solar PV plants after 31.03.2017, the rate of sale of power would be lower of the rate as proposed in PPA or as determined by the Commission for the solar PV plants for the year of commissioning.

2.2.2 In the present Petition, the Petitioner submitted that M/s A. B. Renewable Energy Pvt.

Ltd. being a subsidiary company of M/s Vishal Techno Commerce Ltd. requested UPCL to transfer the PPA and Supplementary PPA signed with M/s Vishal Techno Commerce Ltd. with full rights therein in the name of M/s A. B. Renewable Energy Pvt. Ltd.

2.2.3 In the matter, the Commission sought comments from the Respondent. However, the Commission has not received any objections /comments from the Respondent in this regard till the date of Order. Accordingly, the Draft PPA and submissions of the Petitioner have been examined by the Commission in light of the relevant rules & regulations.

2.2.4 With regard to transfer of PPA, clause 25 i.e. "Assignment" of PPA provides as follows:

"The Agreement may not be assigned by either UPCL or the Solar Photovoltaic Power Plant without the consent in writing of the other party, except that either party may assign its rights under this Agreement, or transfer such rights by operation of law, to any corporation with which or into which such party shall merge or consolidate or to which such party shall transfer all or substantially all of its assets; provided that such assignee or transferee shall expressly assume, in writing, delivered to the other party to this Agreement, all the obligations of the assigning or transferring party under this Agreement."

(Emphasis added)

The Commission observes that clause 25 of the PPA dated 29.03.2016 allows the transfer of the PPA and Supplementary PPA thereof signed with M/s Vishal Techno Commerce Ltd. to its 100% subsidiary company, i.e. M/s A. B. Renewable Energy Pvt. Ltd.

2.2.5 The draft PPA, to be transferred to the Respondent, submitted by UPCL has been examined in light of the relevant rules & regulations. The Commission observed that certain clauses in the draft PPA submitted by UPCL are inconsistent with the provisions of the Act/Regulations. Such observations have been discussed in the subsequent Para. UPCL is required to take note of the same and incorporate necessary corrections in the draft PPA while executing the PPA with the project developers.

a) Clause 1.1 of the PPA provides the definition of 'Bill meter' as follows:

“‘Bill Meter’ means Import and Export Meter as per CEA norms on the basis of which energy billing shall be raised by the Generation Company/UPCL.

With regard to Meter to be used for energy accounting, the terminology used should be Main meter and not the Bill meter as per the CEA (Installation and Operation of Meters) Regulations, 2006 which 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 as per CEA norms on the basis of which energy accounting and billing of electricity shall be done by the Generating Company/UPCL”

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

b) Clause 2.1 of the Draft PPA provides as follows:

“UPCL shall accept and purchase entire/surplus 5 MW of power made available to UPCL system from Solar Photovoltaic Power Plant @ 5.790 intimated vide letter no. 1968/UREDA/03/(1)-334-2/Solar Energy Policy (170 MW)/2015-16 dated 01.12.2015 (Annexure-X) after the bidding process conducted by UREDA. Above rate of sale of Power shall be applicable only if the Solar Photovoltaic Power Plant commissions its plant on or before 31-03-2016. However, if the plant is commissioned after 31-03-2016, the rate of sale of power would be as determined by UERC for the year of commissioning if such rates are lower than the tariff agreed to in the PPA otherwise tariff agreed in this PPA shall continue.”

The Commission observed that the in compliance to the Commission’s Orders dated 29.07.2016 and 20.09.2016, UPCL executed a supplementary PPA dated 15.12.2016 giving effect of the time extension upto 31.03.2017 for commissioning of the solar PV projects under scheme. However, it has been observed that in clause

2.1 of the draft PPA, the time limit for completion of the project has been kept 31.03.2016 instead of 31.03.2017. Further, the Petitioner has also submitted that the said Solar PV plant has already been commissioned on 31.03.2017. Accordingly, based on the above discussions, the said clause be replaced as follows:

“UPCL shall accept and purchase entire/surplus 5 MW of power made available to UPCL system from Solar Photovoltaic Power Plant @ 5.790 intimated vide letter no. 1968/UREDA/03/(1)-334-2/Solar Energy Policy (170 MW)/2015-16 dated 01.12.2015 (Annexure-X) after the bidding process conducted by UREDA read with Commission’s Order dated 20.09.2016.”

2.2.6 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 duly signed PPA to the Commission within 15 days of the date of the Order.

3. Ordered Accordingly.

(Subhash Kumar)
Chairman