

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition to review/reconsider the Order dated January 25, 2017 passed by the Commission in the matter of petition filed by M/s GIPL for amendment of Clause No. 9 relating to "Billing and Payment", Clause No. 1.1.32 relating to "Due Date" and Clause No. 9.4 relating to "Payment Security Mechanism" of Power Purchase Agreement for procurement of 107 MW of Power on Long Term Basis between 225 MW Gas based Combined Cycle Power Plant of Gama Infraprop Pvt. Ltd. at Mahuakhedaganj, Kashipur & Uttarakhand Power Corporation Ltd. (UPCL).

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

In the matter of:

M/s Gama Infraprop (P) Ltd.

... Respondent No. 1

M/s Sravanthi Energy Pvt. Ltd.

... Respondent No. 2

M/s Beta Infratech Pvt. Ltd.

... Respondent No. 3

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: March 21, 2017

Date of Order: April 17, 2017

This order relates to the Petition filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Petitioner" or "Licensee") to review/reconsider the Order dated January 25, 2017 passed by the Commission in the matter of petition filed by M/s GIPL for amendment of Clause No. 9 relating to "Billing and Payment", Clause No. 1.1.32 relating to "Due Date" and Clause No. 9.4 relating to "Payment Security Mechanism" of Power Purchase Agreement for procurement of 107 MW of Power on Long Term Basis between 225 MW Gas based Combined Cycle Power Plant of Gama Infraprop Pvt. Ltd. at Mahuakhedaganj, Kashipur & Uttarakhand Power Corporation Ltd. (UPCL).

1. Petitioner's Submissions

- 1.1 UPCL had filed a petition seeking review of the Commission's Order dated 25.01.2017 passed in the matter of petition filed by M/s GIPL for amendment of certain clauses of the Power Purchase Agreement for procurement of power by UPCL from the generating station of the Respondent No. 1.
- 1.2 The Petitioner submitted that as per the PPA, a rebate of 2% of the bill amount is allowable for the payment of bills in full through the letter of credit on presentation and where payments of bills in full 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% of the bill amount is allowable. Moreover, as per the security mechanism, a LC has been opened in the name of the generator. The Petitioner also submitted that rebate clauses are commercial arrangement to be mutually agreed between the parties.
- 1.3 The Petitioner further submitted that the aggregate monthly bills of M/s Gamma and M/s Sravanthi are in the range of approx. Rs. 80-90 Crore, on which a rebate of 2% works out to around Rs. 1.6-1.8 Crore, being availed by UPCL as per the existing provisions of the PPA. Moreover, as per the Order dated 25th January 2017 the direction would also apply on the other gas based generating station also implying that it would further be applicable for M/s Beta Infratech (107 MW) whose PPA is pending for approval with the Commission. Consequently, the monthly bills of all the 3 nos. gas based generators would be approx. Rs. 110-120 Crore and subsequently bi-monthly bill would be approx. Rs. 55-60 Crore which is very huge amount and forgoing rebate would adversely impact the financial health of UPCL. Further, UPCL is required to pay additional Rs. 2.20-2.40 Crore of rebate which otherwise would have not been paid by UPCL and, hence, would further stress the UPCL's exchequer.
- 1.4 Moreover, the generation of bill by M/s GAIL or its payment by the Generator is not relevant in the matter at this stage when the payment of gas by M/s GIPL and the payment of energy by UPCL has formed a cyclic process whereby the payment made by UPCL can be easily utilised by the generator for the payment of next two fortnightly bills of M/s GAIL.
- 1.5 The Commission has disallowed any rebate based on the misconstrued interpretation that the generator is not receiving any interest on working capital for which generator has not

produced any documents or calculations. Further, there is an error apparent on face whereby at one hand it is written that M/s GIPL is allowed to recover fixed cost to meet only the obligation towards debt servicing and operation & maintenance cost only and on the other hand it is interpreted that there will be no recovery of interest on working capital.

- 1.6 The Petitioner submitted that few important facts have not been considered in the matter which otherwise would have affected the thought process in the present matter and hence could have exposed the details in such manner that the very nature of the order may be changed. The facts regarding the derivation of Rs. 4.70/unit as the allowed tariff and the quantum of PSDF support made accessible to the generators by Government of India may prove out to be very useful in determining the kind of recovery the generators under the scheme as a whole are receiving and could be applied to individual generators for ascertaining their actual recoveries.
- 1.7 The Petitioner submitted that despite the provision for suitable liquidity as per the tariff it is undergoing a serious financial crunch and has taken a considerable overdraft from various Banks. Moreover, most of the energy bills raised to the consumers of UPCL have due dates/disconnection dates after 15th of the month and, hence, compulsion of fortnightly payments and that too without a rebate will further stress the situation and seems not reasonable as at one hand UPCL raises funds by overdraft, i.e. by paying the interest on it and on the other hand the genuine rebate is also not forwarded by the generators. Moreover, the advantage of rebate has been passed on to the esteemed consumers of the State and, hence, it is in no way appears to be justified that few generators be benefited at the cost of consumers of the State.

2. Respondents' submission

- 2.1 Respondent No. 1 and Respondent No. 2 submitted that due to operation of the plants at 50% PLF, the working capital available to the project was being utilized to meet the O&M expenses from the start of operation as the project is operational only for 50% capacity with the debt burden of 100% and complete O&M expenses for 100% of the plant.
- 2.2 M/s SEPL submitted that any reduction on account of rebate would have resulted in cash loss wherein the project would not have been able to meet even the O&M expenses to run

the operations of the plant.

- 2.3 M/s GIPL submitted that the GoI has come up with the scheme to start the stranded gas based power plants and augment the generation in the country. The idea was for utilisation of the idle capacity and recover maximum possible revenue and payments of interest to the bank without any return on the capital. There was no commitment under the scheme that complete interest on debt as well as working capital will be recovered. As such they have not been able to recover the full costs of interest through partial operation.
- 2.4 Further, Respondent No. 2 vide its letter dated 07.04.2017 submitted that they are willing to forego interest on working if UPCL does not charge rebate of 2% on account of early payment being made by UPCL. M/s SEPL submitted that with the early payment of bills by UPCL, drawl of working capital would not be required them as allowed under the regulations. M/s SEPL submitted if rebate is exempted by UPCL on timely payment of bills, they would not be charging interest on working capital to UPCL, therefore, both UPCL as well as consumer of the State will have benefit of reduced tariff.
- 2.5 The Petition was heard on 20.03.2017.

3. Commission's views and decision

- 3.1 The Commission before discussing on the issues raised by the Petitioner, shall test whether the ground of review raised by the Petitioner are maintainable under the provisions of Code of Civil Procedure, the Electricity Act, 2003 and Regulation 54 of the UERC (Conduct of Business) Regulations, 2014.
- 3.2 Section 94(1)(f) of the Act empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court would exercise such powers under section 114 and Order XLVII of the Code of Civil Procedure, 1908 (CPC). Under the said provisions, review of the Order is permitted on the following specific grounds only, namely:
- i. Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time of passing of the Order.
 - ii. Mistake or error apparent on the face of the record;
 - iii. If there exist other sufficient reasons.

- 3.3 The Commission has repeatedly held in its previous Orders that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is a new evidence which after exercising due diligence could not be brought up during the time of proceedings or if there is an error apparent on the face of the record.
- 3.4 The Petitioner prima-facie contended issues related to: (a) basis for non-chargeability of rebate to the Respondents and (b) fortnightly payment of fuel bills to be remitted to GAIL. The Commission noted that the ground for the review/reconsideration of the Commission's Order dated 25.01.2017 as submitted by the Petitioner in its petition including submissions made during the hearing in the matter are more of a clarificatory nature which do not pass the test of review as mentioned above. However, based on the submissions received from the parties involved in the matter, the issues involved have been discussed in the following Paras.
- 3.5 The Petitioner had in its petition contended that generation of bill by M/s GAIL or its payment by the Generator is not relevant at this stage when the payment of fuel bills by M/s GIPL and payment of energy bills by UPCL has formed a cyclic process whereby the payment made by UPCL can be utilised by the generator for payment of next two fortnightly bill of M/s GAIL. This contention of the Petitioner does not hold merit for review of the Order dated 25.01.2017 since reasons for allowing fortnightly billing & payment of fuel bills has already been elaborated in the said Order.
- 3.6 The Petitioner, vide its petition had raised the issue of fortnightly payment of bills of GAIL as directed by the Commission vide its order dated 25.01.2017. However, during the hearing, the Petitioner submitted that their primary cause of concern was exemption from rebate to Gas based power generating stations. To this extent, the Petitioner during the hearing also submitted that if rebate clause, in accordance with the original PPA with the Respondents, is reinstated then it doesn't have any issue on payment of fortnightly gas supply bills raised by the Respondents on actual basis which can be managed by the licensee. In this regard, the relevant extract of Para 3.6 of the Order dated 25.01.2017 is as follows:

".....In view of the above referred circumstances, while appreciating the financial hardship being faced by the Petitioner and so as to obviate gap between "billing & payment" of monthly bills of M/s GIPL and fortnightly gas supply bills of M/s GAIL, the Commission, in exercise of its powers

*under Regulation 103 and Regulation 104 of the MYT Regulations, 2015, has decided to allow M/s GIPL billing of actual fortnightly Gas bills to UPCL as are being raised by M/s GAIL. This will in no way cause any financial implication for UPCL as it was paying the entire bill raised by such generators at the end of the month, however, the generator will now have the liberty to raise the fuel bills based on the actual, duly supporting the same with the bills raised by GAIL on every fortnightly basis. The final monthly bill would be raised by the generator after the month is over based on the Joint Meter Reading in accordance with the procedure laid down in the PPA duly adjusting the aforesaid amount already realized from UPCL for the first fortnight of the month. UPCL will ensure to make the payment of all the bills raised by the generator within 3 working days so as to facilitate the generator to meet its payment obligations including the payment towards the fuel charges it has to make to GAIL in 4 working days from the date of invoice as per the e-bid RLNG Sale Agreement between the Petitioner and GAIL. **This will continue during the currency of the GoI Scheme in this regard and subsequently, the payment will be made in accordance with the provisions of the PPA.***

(emphasis added)

Accordingly, the Commission in its above Order had allowed the provision for fortnightly billing & payment of fuel bills till the currency of the GoI Scheme. The Respondent No.1 has, in its submission, requested the Commission for continuity of the fortnightly billing & payment of fuel bills even after the validity of the Scheme. The Commission noted that the Petitioner itself during the hearing had expressed its consent that they do not have any issue in payment of fortnightly gas supply bills raised by the Respondents on actual basis and the same can be managed by the licensee. Further, the Respondents have commissioned their generating stations under the Scheme of GoI with the view to make their plant operational atleast to the extent of 50% of plant capacity and also that the supply of power is allowed at a ceiling price specified under the said Scheme. Therefore, considering the financial hardship faced by the Respondents and also based on the consent given by the Petitioner in this regard, the Commission, hereby, allows continuation of fortnightly billing as allowed in the Order dated 25.01.2017 after the validity of the Scheme also.

Moreover in the ARR and Tariff Order dated 29.03.2017, the Commission while working out the working capital requirement for UPCL, had relaxed the requirement of adjustment of power purchase cost from one month to 15 days in case of the three gas generators in the State to facilitate UPCL in meeting the power purchase payments

to them as the Commission had allowed fortnightly billing to the gas generators in the State. Hence, no financial stress would be caused to UPCL by continuation of the fortnightly billing by the gas based generators and payment by UPCL.

- 3.7 With regard to non-chargeability of rebate to the Respondents, the Petitioner submitted that the provision of rebate has been introduced in the PPAs with the mutual consent of both the parties involved in the respective PPA and that not charging any rebate from the Gas generators till further orders by the Commission will push the Petitioner's company to a serious financial crunch as the Petitioner has taken a considerable overdraft from various Banks. Moreover, most of the due dates of the energy bills raised to consumers of UPCL have due dates/disconnection dates after 15th of the month and hence, compulsion of fortnightly payment without rebate will further stress the financial position of the Petitioner. In this regard, the Commission is of the view that reason for non-chargeability of rebate from gas based generating stations have already been elaborated in its Order dated 25.01.2017. Further, at Para 3.10 of the above referred Order, applicability/validity of non-chargeability of rebate had been specified as follows:

“..

(ii) UPCL shall not charge any rebate from the Gas generators till the currency of the Scheme and till further orders by the Commission in this regard. ...”

- 3.8 The Petitioner submitted that the Commission had disallowed the rebate based on the misconstrued interpretation that the generator was not receiving any interest on working capital for which generator has not produced any documents or calculations. Further, UPCL contended that there was an error apparent on face whereby at one hand it was held that M/s GIPL was allowed to recover fixed cost to meet the obligation towards debt servicing and operation & maintenance cost only and on the other hand it was interpreted that there would be no recovery of interest on working capital. The Petitioner further submitted that the facts regarding the derivation of Rs. 4.70/unit as the allowed tariff and the quantum of PSDF support made accessible to the generators by Government of India may prove out to be very useful in determining the kind of recovery the generators under the scheme as a whole are receiving and could be applied to individual generators for ascertaining their actual recoveries. In this regard, the Commission in its Order dated July 20, 2016 on approval of PPA between UPCL and M/s SEPL has already held as under:

“...Therefore, if the generator gets interest on working capital, it will have to pass on the rebate

to UPCL otherwise no rebate would be allowed to UPCL. The Commission would take a view on the same during tariff determination proceedings of the Respondent."

The above provision has been made since the tariff determination proceedings of both the gas generators commissioned in the State, i.e. M/s GIPL and M/s SEPL are under process and, accordingly, the Commission was of the view that decision on applicability of rebate can be made based on the approved AFC for these generators and the recoveries made by them including the PSDF support during the currency of the Scheme. If the approved AFC (including interest on working capital) and energy charges remains within the ceiling of Rs. 4.70 per unit and the PSDF support, the generators will have to pass on the rebate to UPCL and in case the approved AFC (including interest on working capital) and energy charges for the past period exceed the recoveries made by the generator during the corresponding period then no rebate will be chargeable for that period from the Gas Generator.

- 3.9 During the hearing, the Commission clarified that provision of rebate would be reinstated in accordance with the PPA and applicable Regulations with effect from 01.04.2017, i.e. after the validity of the GoI Scheme.

However, M/s SEPL has submitted that it intends to forego interest on working capital in case UPCL does not charge rebate on their energy bills. The Commission has evaluated the submission made by M/s SEPL to forego interest on working capital in case UPCL does not charge rebate on their energy bills. The Commission finds it would be in the interest of consumer of the State if M/s SEPL's proposal is accepted in this regard since with the implementation of this arrangement there will be net reduction in generation tariff and consequently, reduction in power purchase cost of UPCL thereby reduction in retail/consumer tariffs . The Commission has evaluated net financial impact on UPCL based on the following illustration:

Comparison of admissible Interest on Working Capital and Rebate of 2% charged by UPCL from M/s SEPL

S. No.	Computation of Interest on WC per annum (FY 2017-18)	Amount
1	Fuel Cost for one month (Rs. Crore) (On the assumption that fuel cost is Rs. 3.50/kWh*)	45.84
2	O&M Expenses for 1 month (Rs. Crore)	5.77
3	Maintenance Spares (30% of O&M) (Rs. Crore)	20.77
4	Receivables for 2 Months (Rs. Crore) (On the assumption that tariff remains Rs. 4.70/kWh*)	122.03
5	Total WC requirement (Rs. Crore)	194.41
6	Interest on Working Capital @ 14.05% (Rs. Crore) (A)	27.31
Computation of Rebate per annum (FY 2017-18)		
1	Total Number of Million Units per Annum (MU)	1,551.00
2	Provisional Tariff applicable (Rs./kWh)	4.70*
3	Total Invoice/ Billing to UPCL for FY 2017-18 (Rs. Crore)	729.00
4	Total Rebate @ 2% (Rs. Crore) (B)	14.60
C.	Net saving in purchase of power (A-B) per annum (Rs. Crore)	12.71

**for illustration purposes only*

From the above illustration, it is clear that there will be net saving in cost of power purchase to the tune of about Rs. 13 Crore per year or Rs. 1 Crore p.m. under the arrangement that UPCL does not charge rebate to M/s SEPL and in turn M/s SEPL foregoes interest on working capital. However, this arrangement will only be applicable to M/s SEPL as other Gas based generators in the State have not given their option to this effect. Keeping in view, the overall benefit to UPCL and consumers of the State, the Commission allows implementation of the above arrangement between UPCL and M/s SEPL. The Commission also advises other Gas based generators to explore the option forwarded by M/s SEPL in the interest of UPCL and consumers of the State.

Accordingly, the direction issued by the Commission vide its Order dated 25.01.2017 regarding non-applicability of provision of rebate till 31.03.2017 and deduction of rebate by UPCL thereafter, shall be limited to only two Gas based generators namely M/s GIPL and M/s Beta Infratech for whom the provision relating to deduction of rebate by UPCL on the energy bills shall be governed in accordance with the original PPA approved by the Commission. However, the Respondents will be at liberty to raise the fortnightly bills to UPCL corresponding to fuel bills raised by M/s GAIL in accordance with the principles laid down in the Commission's Order dated 25.01.2017 .

4. Accordingly, it is hereby decided that:

4.1 All the gas based generators may raise fortnightly Gas Supply Bills on UPCL on actual basis as is being received from GAIL/supplier of gas. The final monthly bill would be raised by the generator after the month is over based on the Joint Meter Reading in accordance with the procedure laid down in the PPA duly adjusting the aforesaid amount already realized from UPCL for the first fortnight of the month.

4.2 UPCL shall not deduct any rebate from bills of M/s SEPL and shall make the payment to the generator within 3 working days from the date of receipt of such bills.

4.3 However, in case of other two Gas generators namely M/s GIPL and M/s Beta Infratech , the provisions of payment of bills and rebate shall be governed by their respective PPAs and the principles regarding timely payment of bills enunciated by the Commission in its Order dated 25.01.2017. Further, in line with the arrangement allowed to M/s SEPL in this order, the other two Gas generators can also approach UPCL, with proper justification, for entering into similar arrangement with respect to non-deductibility of rebate and waiving off interest on working capital in tariffs in the interest of consumers of the State under intimation to the Commission.

4.4 In support of the arrangement discussed above, M/s SEPL and UPCL are required to agree and incorporate the necessary condition in thir respective PPA as follows:

“the licensee agrees not to deduct rebate on generator’s energy bills and the generator in turn shall forego to claim interest on working capital in its ARR/tariffs.”

The above condition shall be incorporated in the PPA by replacing the relevant clause(s) where provision of rebate of 2% has been made for prompt payment of bills by UPCL.

5. Ordered accordingly.

(Subhash Kumar)
Chairman