

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 66 of 2016

In the matter of:

Application seeking approval of the Power Purchase Agreement between Uttarakhand Power Corporation Ltd. and M/s Khutani Power Company Private Limited.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

In the matter of:

M/s Khutani Power Company (P) Ltd.

... Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing : December 09, 2016

Date of Order: January 16, 2017

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 Draft PPA to be executed by it with M/s Khutani Power Company (P) Ltd. (hereinafter referred to as "the Respondent") for procurement of power from 21 MW Small Hydro Power Plant of the Respondent situated in Distt- Pithoragarh, Uttarakhand.

1. Petitioner's Submissions

- 1.1. UPCL had filed a Petition dated 08.11.2016 seeking approval of the Commission on the draft Power Purchase Agreement for purchase of energy generated from the Respondent's small hydro power plant under Section 86(1)(b) of the Electricity Act, 2003 and clauses 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.

- 1.2. 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 Power Purchase Agreement entered into with the Generating Company.
- 1.3. The Petitioner further submitted that the Respondent was desirous to sell entire energy scheduled to be generated from its project and the applicant company is desirous of purchasing entire energy on the terms and conditions as agreed between the parties as per the terms and conditions laid down in the draft PPA.
- 1.4. The copy of the Petition was forwarded to the Respondent for comments. The Respondent vide its reply dated 28.11.2016 submitted its comments on the same.
- 1.5. The Petition was heard on 09.12.2016 and the Petition was admitted.

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 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.
- 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, 2013 (RE Regulations, 2013) specifies as under:

“(2) The distribution licensee on an offer made by the said RE based Generating Stations and Co-generating Stations shall enter into a power purchase agreement in conformity with these Regulations and relevant provisions of other Regulations and the Act. The distribution licensee shall sign the PPA within two months of offer made by the generating company, failing which the generating company may approach the Commission for suitable remedy.

(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)

2.1.5. 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.

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

2.2.1. The draft PPA is to be entered into between UPCL and the Respondent for supply of power from the Small Hydro Power Plant having capacity of 21 MW situated at village Batgari/Bhanmati, Block/Tehsil Ganai Gangoli district Pithoragarh in the State of Uttarakhand.

2.2.2. The draft PPA submitted by UPCL has been examined in light of the relevant Rules & Regulations and responses made by the Respondent. 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 sub-Paras. 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) The Respondent vide its letter dated 28.11.2016 submitted that the name M/s Khutani Power Company (KPC) should be replaced with M/s Khutani Power Company Private Limited (KPCPL), wherever occurring. The Commission is of

the view that the Name of the company and its abbreviations/acronyms should be kept as submitted by the Respondent. Accordingly, the Petitioner is required to make necessary modifications at all places in the PPA

b) Para 2 and Para 4 of the draft PPA provides as follows:

*“WHEREAS, the Generating Company is engaged in the business of Power generation from its **Plant Khutani situated at Gangolihat, Pithoragarh in the state of Uttarakhand**, more particular description in Annexure-I attached hereto and made a part hereof”*

“WHEREAS the Generating Company has undertaken to implemented the power project by installing plant and equipment having installed capacity of 21 MW (plus 10% overlad) situated at Gangolihat, Pithoragarh in state of Uttarakhand (hereinafter referred to as the plant)”

The Respondent vide its submission has stated that plant’s address is Khutani Hydro Project at village Batgari/Bhanmati, Block/Tehsil Ganai Gangoli district Pithoragarh, Uttarakhand.

Accordingly, the Petitioner is directed to make necessary modifications mentioning correct address of the generating plant in Para 2 and Para 4 and all other places, if any, in the PPA.

c) The Commission has observed that in Clause-1 i.e. “Definitions” of the draft PPA, Clause 1.4 is missing. The Respondent has also raised the same issue. Accordingly, the Petitioner is required to make necessary corrections regarding serial number of clauses.

d) Point (i) of clause 5.3 provides as follows:

“(i) For payment of bills through the letter of credit on presentation, a rebate of 2% shall be allowed.”

The Respondent vide its submission dated 28.11.2016 submitted that the terms and conditions for letter of credit are to be mutually agreed by both the parties. In this regard, the Commission is of the view that provisions specified in the above referred Clause 5.3(i) of the draft PPA is in accordance with the Regulations, however, inclusion/exclusion of any term/condition which are not

inconsistent with the Act/Regulations may be incorporated with mutual consents of the parties.

- e) It appears that in Clause 5.7 of the draft PPA, the Petitioner has inadvertently referred to Para 5.7 instead of Para 5.6. The same issue has also been raised by the Respondent. Accordingly, "Para 5.7" shall be replaced with "Para 5.6" in the first line of Clause 5.7.
- f) With reference to Clause 13 of the draft PPA, the Respondent submitted that the address of the generating company should be mentioned under the name of the generating company. Accordingly, address of the generating company, i.e. Corporate Office: Plot No. 49, 4th Floor, Sector-44, Gurgaon, Haryana-122002 shall be added after the name of the generating company.
- g) In the Draft PPA, Point 1 "The Generating Company" and Point 2 "Generating Equipment" of Annexure-I have been left blank. Further, the Respondent vide its submission dated 28.11.2016 has submitted as follows:

Topic - 1. "The Generating Company"

- 1. Name: Khutani Power Company Private Limited.
- 2. Plant: Khutani Small Hydro Electric Project (21MW)
- 3. Location : Village - Batgari/Bhanmati,
Post Office : Batgari
District : Pithoragarh
- 4. Chief Executive /Director: Mr. Santosh Thakur
- 5. Contact Person : Mr. R.C. Sharma
Contact Details: +91-9953425385
- 6. Mailing Address: Plot No. 49, Sector- 44, Gurgaon, Haryana-122001
Tel: 0124-264500/2645115, Fax: 0124-2645120

Topic - 2 "Generating Equipments"

- 1. Turbo Generators Sets: Vertical Axis Francis Synchronous Type with Vertical, Shaft.
- 2. Generating Voltage: 11KV
- 3. Speed: 428.57 RPM
- 4. Type of Governor: Digital Governer

5. Transformer : 11/132KV, Delta/Star Onam Cooling
6. First Synchronisation with 132 KV Line (Initial Date)
7. Transmission Line : 132 KV Line Connecting 132 KV Grid Sub-Station at PTCUL (STU), Bageshwar.

The Commission has noted the submission made by the Respondent. However, Respondent has not mentioned any scheduled date of commissioning of its generating units and the scheduled date of commissioning of the plant. Accordingly, the Petitioner is required to mention the above details in Annexure-I as submitted by the Respondent alongwith the scheduled date of commissioning as also required under Annexure-I of the PPA.

- h) Clause 22(d) of the Draft PPA states that if the said 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. Here it is pertinent to mention that the Commission has powers to either adjudicate the dispute itself or refer the dispute to Arbitration. Therefore, for more clarity on the procedures to be followed while resolving the dispute the Petitioner is directed to substitute clause 22(d) of the draft PPA as under:

“If the said 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.”

2.2.3. Other Issues

With reference to the Clause 8.2 of the draft PPA, the Respondent vide its submission dated 28.11.2016 has requested the Commission to give appropriate directions to PTCUL and UPCL to co-ordinate the status of creation of Infrastructure facilities for timely evacuation of power from the Generation Station. Accordingly, both UPCL and PTCUL are directed to submit the status of evacuation of power from the project and

commissioning status of 132 kV, Grid Sub-station at Bageshwar within 15 days from the issue of the Order. Further, with regard to the connectivity, PTCUL is required to allow connectivity to the project for testing and commissioning activities including evacuation of power as per the scheduled timeframe.

3. Copy of the Order be also issued to MD, PTCUL for compliance of the directions pertaining to PTCUL.
4. Ordered Accordingly.

(Subhash Kumar)
Chairman