

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 35 of 2017

In the matter of:

Application seeking approval of the Commission on the Draft Power Purchase Agreement executed between Uttarakhand Power Corporation Limited and Uttarakhand Renewable Energy Development Agency.

In the matter of:

Uttarakhand Power Corporation Ltd. ... Petitioner

AND

In the matter of:

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

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: August 9, 2017

Date of Order: Nov 3, 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 Power Purchase Agreement to be executed by it with Uttarakhand Renewable Energy Development Agency (hereinafter referred to as "UREDA" or "Respondent") for procurement of power from Small Hydro Power Plants being developed by UREDA.

1. Background

1.1. The Petitioner filed the Petition seeking approval of the Commission on the Draft Power Purchase Agreement (PPA) for purchase of energy generated from the Respondent's Small Hydro Power Plants 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.

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, the Petitioner is required to get the approval of the Commission on the Power Purchase Agreement entered into with the Generating Company.
- 2.2. UPCL submitted that UREDA, is engaged in the business of promotion of Renewable Energy programs in the State and it is desirous of selling the entire energy scheduled to be generated from its projects namely, Kedarnath-2 having capacity of 200 kW and Gangotri-2 having capacity of 150 kW situated at Kedarnath & Gangotri respectively and the Petitioner is desirous of purchasing the entire energy on the terms and conditions as agreed between the parties.

3. Respondent's submission

- 3.1. UREDA vide letter dated 28.07.2017 submitted that UREDA has identified and prepared pre-feasibility report of 78 sites (proposed cumulative capacity of 32.83 MW) for development of Mini Hydro Projects (MHPs) out of which DSI and DPR of 23 sites (proposed cumulative capacity of 15.20 MW) have been prepared. Considering the significant number of PPAs, UREDA requested the Commission to allow the signing of the PPAs between district level officers of UREDA and UPCL so as to avoid the delay in signing the PPAs.

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 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)

4.1.4. Further, Regulations 7(2) & 7(3) of UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2013 (RE Regulations, 2013) specifies that:

"(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)

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

4.2. Consistency of the PPA with the Regulations

4.2.1. Regulation 6(7) of RE Regulations, 2013 specifies as under:

"Except as provided in the Second Proviso to sub-Regulation (1) of Regulation 2 above, 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 Model/draft 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, 2013. 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, 2013.

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

4.3.1. The draft PPA is to be entered into between UPCL and the Respondent for Small Hydro Power Plants situated at Kedarnath and Gangotri having a capacity of 200 kW and 150 kW respectively for supply of power to UPCL.

4.3.2. The Petition was heard on 09.08.2017 and during the hearing, the Respondent reiterated its submission and requested the Commission to allow execution of these PPAs at district level in order to expedite the process of commissioning of the Projects. However, the Petitioner disagreed with the request made by the Respondent. Therefore, the Commission conducted a meeting on 24.08.2017 with the Petitioner and the Respondent to discuss and resolve the issues in the process of execution of such PPAs. During the meeting, UREDA submitted that it is planning to develop 120 SHPs having capacity upto 2 MW each and at present it has identified and prepared pre-feasibility report of 78 sites for development of SHPs and out of these, DPR for 32 sites have been prepared and would request UPCL for signing of several PPAs in the matter. Therefore, UREDA has requested the Commission to approve a "**Model PPA**" in this context to which UPCL also agreed during the meeting. Subsequently, vide letter dated 25.09.2016, the Petitioner requested the Commission to consider this Draft PPA submitted vide the current Petition for approval as "**Model PPA**" alongwith a request to relax the condition of seeking prior approval of the Commission on every such agreement for procurement of power from such projects to be developed by UREDA.

4.3.3. Further, during the meeting, UREDA has also requested the Commission to consider the execution of such PPAs of UREDA at district level, i.e. between the Executive Engineer of UPCL of the concerned project location and District level officer of UREDA. In the matter, UPCL submitted that such arrangement would complicate the collection of technical data as well as other financial processes such as billing and payment at corporate level. In this

regard, the Commission directed the Petitioner and the Respondent to mutually agree upon the timeframe within which such PPAs should be signed after fulfilling the prerequisite technical requirement. In compliance to the direction of the Commission, the Petitioner vide letter dated 12.09.2017 submitted the timeline for execution of PPAs submitted as follows:

S. No	Particulars	Timeframe
1	On Receipt of application of PPA from UREDA	Within 2 days, Commercial wing will seek TFR from Operation wing
2	Technical Feasibility Report (TFR)	Within 20 days, Operation wing will make available TFR to Commercial wing
3	Signing of the PPA subsequent to receipt of TFR by Commercial Wing	Within 08 days, Commercial wing will sign PPA with UREDA

4.3.4. It is to be noted that UREDA is planning to develop 120 such Small Hydro Projects of Capacity upto 2 MW each and for which the Petitioner would be required to submit separate PPA petitions for approval of the Commission. Since regulatory approval process requires preparation & filing of the Petition followed by Admission, hearing proceedings and Orders etc. and the whole process may take two to three months which might delay the commercial operation of the plant. Hence, to expedite the execution of PPAs & start of commercial operation of such projects, the Commission is of the view that the current draft PPA submitted vide this Petition be examined in light of the relevant rules & regulations and thereafter be approved as **“Model PPA”** subject to modifications as discussed below. 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 directed to take note of the same and incorporate necessary corrections in the draft PPA while executing the PPAs with the project developers.

a) Clause 1.1 of the Draft PPA provides the definition of ‘Bill meter’ as follows:

“‘Bill Meter’ means Import and Export Meter 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 Central Electricity Authority vide its

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 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) As per Regulation 6(5) of RE Regulations, 2013 (Obligation and Duties of the Generating Station), the RE based generation stations and Co-generation stations shall ensure the compliance of the IEGC, the State Grid Code and the Distribution Code as amended from time to time. Further, the Commission has specified UERC (Distribution Code) Regulations, 2007 which covers all material technical aspects relating to connections to and the operation and use of the Distribution System including the operation of the electrical lines and electrical plants and apparatus connected to the Distribution System. Hence, both the parties are required to fulfill all the requirements/compliances mentioned under UERC (Distribution Code) Regulations, 2007 alongwith the requirement/compliance of UERC (State Grid Code) Regulation, 2016. Accordingly, the following Clause shall be inserted after Clause 1.3:

“1.3(a) ‘Distribution Code’ means the Uttarakhand Electricity Regulatory Commission (Distribution Code) Regulations, 2007 as amended from time to time.”

The Petitioner is also required to insert ‘Distribution Code’ in all the clauses of the draft PPA where compliance of State Grid Code is required.

- c) Clause 1.4 of the PPA provides definition of “Export Meter” as follows:

“Export Meter’ means Bill Meter installed at the interconnection point installed at the

Generating end for measurement of Active Energy, Maximum demand and Power Factor for energy exported to the Generating Company from "33/11 kV Sub-Station (as per Annexure-A)."

Since as per the definition of "Main Meter" read with clause 2.2 of the draft PPA, billing of net 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 Generating Station to UPCL"

d) Clause 1.7 of the Draft PPA provides for "Import Meter" as follows:

"'Import Meter' means Bill Meter installed at interconnection point installed at the Generating end for Measurement of Active energy, Maximum demand and Power factor for Energy imported."

Since as per the definition of "Main Meter" read with Clause 2.2, billing of net 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 Main Meter installed at the interconnection point for measurement of Active Energy, Maximum demand and Power Factor for energy imported by the Generating Station from UPCL."

e) All Annexure mentioned in the clauses of the draft PPA needs to be completed while signing the final PPA.

4.3.5. Further, as mentioned in Para 4.3.2 above, UPCL has requested the Commission for relaxing the condition of prior approval of every agreement for procurement of power from Small Hydro Projects having capacity upto 2 MW each to be developed by UREDA in the State. In this regard, the Commission is of the view that this draft PPA approved by the Commission shall be treated as "**Model PPA**" and seeking prior approval of each and every PPA (based on Model PPA) for such plants shall defeat the purpose of approving a Model PPA which is to accelerate the process of execution/commercial operation of such

projects. Hence, by approving the Model PPAs, prior approval of PPAs shall not be required for such plants only. However, the Petitioner is required to submit copy of signed PPA's for such plants within one week from signing of PPAs. Further, the Petitioner is also directed to meet all the timelines as per Para 4.3.3 of this Order and all other issues as decided during the meeting held on 07.09.2017 between the Respondent and the Petitioner regarding execution of PPA for such Plants.

5. Ordered accordingly.

(Subhash Kumar)
Chairman