

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 08 of 2019

In the matter of:

Application seeking prior approval of the Commission on the Draft Power Purchase Agreement between Uttarakhand Power Corporation Limited and M/s Tata Power Trading Company Ltd. for procuring Non-Solar RE Energy on short term basis.

In the matter of:

Uttarakhand Power Corporation Limited

... Petitioner

AND

In the matter of:

M/s Tata Power Trading Company Ltd.

...Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: March 12, 2019

Date of Order: April 10, 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 Draft Power Purchase Agreement for procuring Non-Solar RE Energy on short term basis from M/s Tata Power Trading Company Ltd.

1. Background, Petitioner's Submissions & Respondent's Comments

1.1. The Licensee under Section 86(1)(b) of the Electricity Act, 2003 and in accordance with Regulation 74(1) of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2015, Regulation 39(3) of the UERC (Conduct of Business) Regulations, 2014, Regulation 9 of the UERC (Tariff and Other Terms for Supply of Electricity from

Non-conventional and Renewable Energy Sources) Regulations, 2013 & Chapter-II of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 filed a Petition dated 01.03.2019 seeking approval of the Commission on the Draft Power Purchase Agreement to be executed by UPCL for procurement of Non-Solar Renewable Energy on short term basis with M/s Tata Power Trading Company Ltd.

- 1.2. The Petitioner submitted that it had fulfilled its RPO upto FY 2017-18, and the expected unmet RPO for FY 2018-19, in the month of January, 2019, was (-) 69.51 MUs & 113.76 MUs of non-solar & solar respectively. The Petitioner further submitted that, as per the provisions of RE Regulations, 2018, 15% of the Solar RPO target can be achieved by Non-Solar power and vice-versa, and accordingly, after adjusting the surplus power of Non-Solar in the Solar power deficit of FY 2018-19, UPCL will have a Solar deficit of about 44.25 MUs which UPCL plans to meet by purchasing REC in the month of February and March, 2019.
- 1.3. The Petitioner submitted that it had projected the expected RPO for FY 2019-20, and the same works out as 159.96 MUs and 131.87 MUs for Non-Solar and Solar respectively till FY 2019-20.
- 1.4. The Petitioner submitted that considering the requirements of Non-Solar RE power as discussed above, it had floated a tender no. 07/CE(Comm)/UPCL-07/18-19 for procurement of Non-Solar RE Power in the month of January 2019 through DEEP portal as per the following requirement:

Month	Quantum floated (In MW)	Delivery Point
Apr-19	25	Uttarakhand State Periphery
May-19	25	
June-19	25	
July-19	25	
Aug-19	25	
Sep-19	25	
Oct-19	25	
Nov-19	25	
Dec-19	25	
Jan-20	25	
Feb-20	25	
Mar-20	25	

1.5. The Petitioner submitted that the tender was opened on 31.01.2019, and after Initial Price Opening (IPO) and conducting e-Reverse Auction at DEEP Portal, M/s Tata Power Trading Company Ltd. has been selected as the successful bidder for supply of power on the rate and quantum as summarized below:

M/s Tata Power Trading Company Ltd.

Month	Quantum of power (MW)	Delivery Point	Rate quoted at delivery point (Rs./kWh)
Apr-19	18	Uttarakhand State Periphery	4.74
May-19	25		
June-19	25		
July-19	25		
Aug-19	25		
Sep-19	25		
Oct-19	20		
Nov-19	12		
Dec-19	10		
Jan-20	7		
Feb-20	7		
Mar-20	10		

1.6. UPCL issued LoI dated 14.02.2019 to M/s Tata Power Trading Company Ltd. at the rate and quantum as detailed in the above table. UPCL thereafter submitted the draft PPA for approval of the Commission.

1.7. UPCL submitted that it desires to purchase the energy from the aforesaid bidder on the terms and conditions as agreed between both the parties as per the terms and condition laid down in the draft Power Purchase Agreement. In this regard, UPCL also submitted a copy of the Draft Power Purchase Agreement to be entered with M/s Tata Power Trading Company Ltd.

1.8. Meanwhile, M/s Tata Power Trading Company Ltd. (hereinafter referred to as "M/s TPTCL"), with respect to the draft PPA for procurement of power by UPCL from them, submitted that Clause 9 of the draft PPA regarding "Payment of Liquidated Damages for failure to supply the instructed capacity", was not part of earlier PPAs approved by the Commission and should be deleted from the proposed draft PPA submitted by UPCL. M/s TPTCL submitted that this clause is applicable only in case when the Generator is

supplying power to some other consumer at a high rate instead of supplying contracted power to UPCL which may result in short supply of power to UPCL. M/s TPTCL also submitted that they had offered the quantum of entire generation to UPCL based on the DPR and actual generation of power in previous years and the less generation of electricity unit can be on account of Force Majeure conditions as stipulated in proposed PPA, in line with the Ministry of power guidelines and for this no penalty can be levied on them.

- 1.9. M/s TPTCL submitted that the previous PPA with UPCL (for purchase of Non-Solar Power from M/s BHPL) included the clause that, the methodology of computation of energy sold to UPCL by M/s Tata Power Trading Company Limited through its source M/s Bhilangana-III HEP at Uttarakhand State periphery shall be as per Minutes of Meeting dated 12-07-2018 held between M/s TPTCL, PTCUL and UPCL, and accordingly requested that the same may be incorporated in the proposed draft PPA as well.
- 1.10. The submission made by M/s TPTCL was sent to UPCL for submitting their comments on the same, in response to which UPCL submitted its comment vide letter dated 22.03.2019.
- 1.11. In response to comments of UPCL, M/s TPTCL filed its comments on the same vide its letter dated 26.03.2019 and also filed an addendum to its letter dated 26.03.2019 vide its letter dated 28.03.2019. The response on rejoinder and addendum filed by M/s TPTCL were submitted by UPCL vide their letter dated 03.04.2019.
- 1.12. The Commission also held a hearing in the matter on 12.03.2019. The Petitioner's submission, Respondent's reply and the Commission's views on the same is discussed in the subsequent paras.

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 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)

2.1.4. Regulation 39 of UERC (Conduct of Business) Regulations, 2014 specifies as under:

“(1) The distribution licensee shall file with the Commission in complete form copies of all Power Purchase Agreements already entered into by it.

(2) The distribution licensee to establish to the satisfaction of the Commission that the purchase of power by it is under a transparent power purchase procurement process and is economical and the power is necessary to meet its service obligation.

(3) The Distribution licensee shall apply to the Commission for approval of the draft Power Purchase agreement that it proposes to enter into with the suppliers. The Commission may pass orders:

(a) Approving the agreement; or

(b) Approving the agreement with modifications proposed to the terms of the agreement; or

(c) Rejecting the agreement.

...”

2.1.5. In accordance with the RE Regulations, 2013 licensee is required to comply with the renewable purchase obligation as provided in the Regulations.

2.1.6. The Petitioner in the Petition submitted that as per the provisions of RE Regulations, 2018, 15% of the Solar RPO target can be achieved by Non-Solar power and vice-versa,

and accordingly, after adjusting the surplus power of Non-Solar in the Solar power deficit of FY 2018-19, UPCL will have a Solar deficit of about 44.25 MUs which it plans to meet by purchasing REC in the month of February and March, 2019. In this regard, relevant provisions of Regulation 9 of RE Regulations, 2018 is reproduced hereunder:

“...Provided further that Non-Solar & Solar RPO shall be applicable on total energy purchased/generated of electricity by an obligated entity excluding energy purchased/generated from hydro sources of power;

Provided that on achievement of Solar RPO compliance to the extent of 85% and above, remaining shortfall if any, can be met by excess Non-Solar energy purchased beyond specified Non-Solar RPO for that particular year;...”

Thus, from the above reading of the provisions contained in the Regulations, UPCL is required to first meet its Solar RPO to the extent of atleast 85% and remaining shortfall if any can be met by excess non-solar energy purchased beyond the specified non-solar RPO for that year. Hence, UPCL instead of adjusting the excess non-solar energy with its solar RPO compliances, should first meet the solar RPO compliance atleast to the extent of 85% and thereafter adjust the excess non-solar energy to fulfill its Solar RPO compliances.

- 2.1.7. Ministry of Power vide its notification dated 30.03.2016 issued “Guidelines for short-term (i.e. for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process”. Clause 4.1 of these guidelines provides that:

*“The Procurer(s) shall procure short term power **as per the plan approved by Appropriate Commission or appropriate body** as may have been constituted for the purpose by the Appropriate Commission. In such case the Distribution Licensees will intimate about the initiation of the procurement process to the Appropriate Commission.”*

In addition, Regulation 72 & 73 of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2018 also provides for preparation of power procurement plan and approval of the same by the Commission.

- 2.1.8. Clause 11.4 of the MoP guidelines provides that:

“If the quantum of power procured and tariff determined are within the blanket approval granted by the Appropriate Commission in Annual Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the Appropriate Commission.”

The Commission while approving UPCL’s power purchase in its Tariff Order dated 27.02.2019 has specified the ceiling rate for procurement of non-solar power in respect of UPCL’s RPO compliances as Rs. 4.75 per unit.

- 2.1.9. Since the rate of short-term non-solar RE as being procured from M/s Tata Power Trading Company Ltd. as submitted by the Petitioner, are within the specified limits in terms of per unit cost. Hence, in accordance with the above condition of the MoP guidelines, the same is being considered and adopted by the Commission.
- 2.1.10. M/s TPTCL in its comments submitted that the clause No. 9 regarding “Payment of Liquidated Damages for failure to supply the instructed capacity”, should be deleted from the proposed draft PPA submitted by UPCL as the same was also not part of earlier PPAs approved by the Commission. M/s TPTCL further submitted that the clause regarding payment of liquidated damages is applicable only in the case where the Generator is supplying the power to some other consumer at a higher rate instead of supplying contracted power to UPCL which may result in short supply of power to UPCL, whereas, M/s TPTCL is offering the quantum of entire power generation to UPCL and this quantum is based on DPR of the project as well as the actual generation of power in previous years. Further, the less generation of electricity unit can be on account of Force Majeure conditions as stipulated in proposed PPA, as per the Ministry of power guidelines and for this no penalty can be levied on them.

In this regard, UPCL submitted that the provisions of liquidated damages were part of the tender document (tender specification no. 07/CE (COMM)/UPCL-07/2018-19 (Non-Solar) floated on DEEP portal by UPCL for purchase of Non Solar power. UPCL further submitted that the tender document is in line with the guidelines issued by Ministry of Power, Govt. of India vide letter No. 23/25/2011-R&R(Vol-III) dated 30th Mar-2016 in reference to purchase of Short Term power, and accordingly the

provisions of liquidated damages must be included in the Power Purchase Agreement to be signed between UPCL and M/s TPTCL. UPCL also submitted that the claim of M/s TPTCL that clause of liquidated damages has not been there in earlier PPAs signed by UPCL with it is not tenable and enclosed copies of various PPAs signed with M/s TPTCL wherein the clause of liquidated damages has duly been stated. UPCL further submitted that the contention of M/s TPTCL that it is supplying full quantum of power to UPCL is wrong and misplaced as M/s TPTCL is supplying firm contracted power as per PPA and if M/s TPTCL successfully supplies UPCL contracted power, UPCL is not going to get short supply and also the contractual obligation of UPCL is with M/s TPTCL and not with the source of power.

Further, the Commission in its Order dated 28.08.2018 had noted that M/s TPTCL themselves requested the Commission to make the clause regarding payment of liquidated damages as part of the PPA, the relevant portion of Order dated 28.08.2018 is reproduced hereunder:

“Further, M/s PTC India Ltd. and M/s TPTCL in its comments submitted that UPCL, in the draft PPA submitted before the Commission for approval, had inadvertently failed to mention regarding “payment of liquidated damages for failure to supply the instructed capacity” in line with the clause 8 of the tender document floated by UPCL for procurement of short term power, which state as follows:

“8.0 payment of liquidated damages for failure to supply the instructed capacity:

- *Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access on monthly basis.*
- *In case deviation from Procurer side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Procurer shall pay compensation at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15%. In case the power is scheduled beyond the permissible limits of deviation, the open access charges will be reimbursed to the seller for the quantum of power deviated beyond the permissible limit of deviation.*
- *In case deviation from Seller side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Seller shall pay compensation to Procurer at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15%*

in the energy supplied and pay for the open access charges to the extent not availed by the Procurer."

UPCL is directed to make necessary amendments to this regard in all the 3 draft PPA's."

In this regard, the Commission is of the view that as the said clause regarding payment of liquidated damages was part of the bid document of UPCL and also as per the guidelines issued by MoP with reference to purchase of Short Term power, hence, inclusion of same in the proposed PPA cannot be denied and accordingly the same shall remain to be part of the final PPA to be executed between M/s TPTCL and UPCL. However, the same shall be subject to force majeure conditions as laid down in the guidelines issued by Ministry of Power, Govt. of India vide letter No. 23/25/2011-R&R(Vol-III) dated 30th Mar-2016 in reference to purchase of Short Term power.

- 2.1.11. M/s TPTCL also submitted that earlier PPA with UPCL (for purchase of Non-Solar Power from M/s BHPL) included the clause "the methodology of computation of energy sold to UPCL by M/s Tata Power Trading Company Limited through its source M/s Bhilangana-III HEP at Uttarakhand State periphery shall be as per Minutes of Meeting dated 12.07.2018 held between M/s TPTCL, PTCUL and UPCL and the order dated 28.06.2018 and dated 23.07.2018 of the UERC".

In this regard, UPCL submitted that it does not agree with the contention of M/s TPTCL to follow methodology for calculation of energy at deemed delivery point at Ghansali as approved by the Commission vide Order dated 28.06.2018, without availing open access and scheduling power on day ahead basis. UPCL submitted that M/s TPTCL must be asked to supply power to UPCL after seeking due permission of Open Access as per provisions of UERC (Terms & Conditions of Intra-state Open Access) Regulation, 2015 and its amendment thereof.

UPCL further submitted that presently M/s TPTCL is providing unscheduled power to UPCL, and, it is only at the end of the month when UPCL realizes that M/s TPTCL has supplied UPCL additional power. UPCL further submitted that the Commission must be seized of the fact that scheduling has gained more prominence in view of CERC (DSM and Related Matters) Regulations IVth Amendment enforced

from 01.01.2019 and due to the enforcement of the above Regulations it has become incumbent on UPCL to adhere to the provisions of the said regulations which makes it necessary for UPCL to have power from various sources on the basis of day ahead scheduling. UPCL further submitted that in the month of February 2019, M/s TPTCL has supplied 14.02% additional power to UPCL against which they had raised its objections to M/s TPTCL. UPCL submitted that had M/s TPTCL availed open access and followed day ahead scheduling this kind of situation would not have happened. Further, supplying power after opting for open access is the appropriate and the prescribed methodology, and the trader cannot be permitted to supply unscheduled power, because it shall generate various complications and it would be against the provisions of the applicable Regulations.

UPCL further submitted that they had not contracted for full generation capacity of the Generator source and such kind of commitment cannot be made as the required quantum of power is contracted with L-1 bidder not on the basis of the source (which is not known at the time of bidding) but on the basis of requirement which varies in different months at different times, hence, there is a possibility that the bidder will short-supply against the requirement but there can be no possibility of supply of power over and above the contracted capacity. UPCL also submitted that since the power earlier supplied by M/s TPTCL against the provisions of Regulations was over and above the contracted capacity, hence to ensure proper accounting of power supply by the bidder it is essential to schedule the power on day ahead basis, however, M/s TPTCL is assuming that they would supply all the generated power from M/s BHPL forgetting that UPCL can only accept the contracted power strictly as per the schedule and requirement mentioned in the bidding document and cannot take any power over and above the said contracted capacity, and in case M/s BHPL generates surplus energy, then also it is necessary to schedule the power because otherwise accounting of the surplus energy will not be possible and will create problems for UPCL.

In response to the comments filed by UPCL, M/s TPTCL submitted that it may be noted that Bhilangana III has estimated the bid quantum to be quoted in tender

based on monthly generation of past few years and accordingly submitted the bids. M/s TPTCL further submitted that power generation from run of the river Small Hydro Plant like Bhilangana III is weather/rainfall dependent and hence infirm in nature due to which generation varies depending upon precipitation in the catchment area and is beyond the control of generator. M/s TPTCL further submitted that, excess power generated from Bhilangana III has always been accounted by UPCL against their Non-Solar RPO fulfillment, and, in the past also UPCL has never exceeded Non-Solar RPO compliance on account of excess energy generation from Bhilangana III, and, similarly in the current year UPCL has not been able to obtain full quantum of RE Power to fulfill its RPO obligation. M/s TPTCL further submitted that, UPCL was not able to tie up the full required Non-Solar power as per tender for the period FY 2019-20, and, hence excess power generated may be used by UPCL, in fulfillment of Non-Solar RPO. M/s TPTCL further submitted that, in their case the full capacity and firm contracted capacity are the same, because being run of the river hydro plant, generation is not in control of M/s TPTCL.

M/s TPTCL also submitted that the energy accounting methodology as per UERC Regulations/Order is independent of the nature of sale of RE power to local Distribution Licensee (UPCL), Power Exchanges, Third party Open Access and to any buyer outside Uttarakhand and UPCL's disagreement to follow Ghuttu Ghansali line loss methodology as approved by the Commission, without availing Open Access/Day Ahead Scheduling, is totally misplaced and misleading. M/s TPTCL submitted that according to Clause 46 - "Energy Accounting and Billing" of UERC (Tariff and Other Terms for supply of Electricity from Renewable Energy sources and non-fossil fuel-based Co-gen Stations) Regulations 2018, energy accounting for sale of RE power to Distribution Licensee is based on Joint Meter Reading (JMR) and subsequent billing and payment are also based on JMR data and not on scheduled energy data. M/s TPTCL further submitted that, since power from Bhilangana III (being infirm RE Power) cannot be scheduled, therefore there is no point of scheduling of power under UERC Open Access Regulations and hence there is no need of applying Open Access in the case and this transaction (BHPL-UPCL) has been

successfully carried out for the last 4 years without any technical/commercial dispute and M/s TPTCL / M/s BHPL had therefore neither submitted Open Access application nor scheduled this power.

M/s TPTCL also submitted that UPCL has always accounted JMR data (from Bhilangana III) in fulfilling its Non-Solar RPO and making energy payment against the JMR data, and, Hence, Non-Solar RPO in case of BHPL-UPCL is not accounted against scheduled energy. Further, the line losses methodology for Ghuttu Ghansali 220 KV line has already been finalized vide UERC order dated 28.06.2018.

M/s TPTCL with regard to applicability of DSM mechanism submitted that for any intra state transaction (buyer and seller located in Uttarakhand), UERC Deviation Settlement Mechanism Regulations, 2017 shall be applicable but these regulations are not applicable for Renewable Energy sources i.e. Small Hydro Plant in their case.

Further, M/s TPTCL with regard to applicability of requirement to apply for Open Access submitted that M/s TPTCL / M/s BHPL has been supplying infirm Renewable Power from Bhilangana III, to UPCL for last four years, on the basis of PPA duly approved by the Commission. M/s TPTCL submitted that Bhilangana III being run of the river Small Hydro has been given a status of “must run” under UERC Grid Code as generation is beyond its control, and in last few years, whatever excess supply has been made by Bhilangana III, the same has been duly accounted by UPCL in making the energy payment to M/s TPTCL, as well as fulfilling its Non-Solar RPO. M/s TPTCL further submitted that the generating company defined in UERC (Intra State Open Access) Regulations, 2015 does not mean infirm Renewable Energy sources which is given a must run status, rather, it means all plants which can provide firm injections schedule to the SLDC and accordingly are to be considered for the purpose of filing Open Access application and for DSM settlement based on deviation between actual generation and schedule implemented.

M/s TPTCL further submitted that the clause of imbalance charge referred in the UERC Open Access Regulations clearly states that generator must provide schedule, which can only be provided by thermal and other conventional sources in

the state and not from infirm Renewable energy sources of the state. M/s TPTCL accordingly submitted that that UERC Open Access Regulations, 2015 is not applicable in BHPL-UPCL transaction and accordingly question of submission of open Access application does not arise.

In response, UPCL submitted that the guidelines of MoP referred to by M/s TPTCL nowhere discriminates between purchase of thermal power and/or RE power. UPCL further submitted that it has called the bid for the firm quantum of RE Power (Non-solar) and has accordingly placed the LOI to M/s TPTCL for firm quantum of RE Power (Non-solar), and, therefore the contention of M/s TPTCL that RE power is beyond the control of the Generator, excess generation received by UPCL may be adjusted against fulfillment of their RPO and the plant should be treated as must run stations are not tenable.

UPCL, in response to the comment of M/s TPTCL regarding the applicability of DSM mechanism submitted that UPCL is procuring firm contracted power from M/s TPTCL (irrespective of source of power), and not all the capacity of source. Further, UPCL has placed the LoI for supply of non- solar power to M/s TPTCL and such does not have any privity of contract with M/s BHPL. UPCL further submitted that it needs to plan all its power on day ahead basis (which includes power from all kinds of sources RE and Conventional) and M/s TPTCL has to provide power supply to UPCL to the extent of contracted capacity by providing schedule and as per the provisions of applicable Open Access Regulations, failing which there would be deviations in real time and there are possibilities that UPCL be penalized for such deviations as per CERC DSM IVth amendment Regulations. UPCL also submitted that, with respect to applicability of open access Regulations, M/s TPTCL is wrongly relying on the Regulations which are not applicable in their instant case and in case there is excess generation by source of M/s TPTCL, M/s TPTCL must ensure that energy only to the extent of contracted capacity is made available to UPCL, and the excess power, if any, may either be supplied to other consumer or may be sold in Power Exchange. Further, the provisions of UERC RE Regulations apply for determination of preferential tariff for RE plants in case there is a long term power

purchase agreement between the generator and Discom, however, in case of short term purchase of power only the terms and conditions as provided in the Bid document shall be applicable, and not the selective provisions of RE Regulations as claimed by M/s TPTCL.

- 2.1.12. UPCL's in its submissions contended that it has placed the LoI for supply of non- solar power to M/s TPTCL and it does not have any privity of contract with M/s BHPL. There is no denial that the contract proposed by UPCL is to be entered with M/s TPTCL, however, UPCL cannot take a stand that it is procuring contracted power from M/s TPTCL irrespective of the source of power as the LoI issued by UPCL mentions the source from which power shall be supplied, i.e. from M/s BHPL Ltd. and the same also finds mention in the draft PPA submitted before the Commission. Besides, there is no denial that UPCL is procuring RE power from M/s TPTCL and hence, the same will be governed by RE Regulations as well as other prevalent Regulations. The stand taken by UPCL that RE Regulations does not apply to short term purchase of power is incorrect as the Regulations clearly specifies that the provisions in the Regulations other than those in Chapter 4 and 5 shall apply to other generating stations located in the State of Uttarakhand, which are based on Renewable Sources of Energy including non-fossil fuel based Co-generation and which transmit and/or supply electricity to any person other than the distribution licensee of the State utilizing State Transmission and/or Distribution System.
- 2.1.13. In this regard, the Commission observed that though the bid document floated by UPCL was for purchase of Renewable Energy (Non-Solar) on firm basis, however, it cannot be denied that power scheduled by M/s TPTCL from M/s BHPL, a small hydro power plant which are treated as must run plants under Regulation 7.5(12) of UERC (State Grid Code) Regulations, 2016 for the reason that restriction of generation will lead to spillage of water. Moreover, clause 14 of the draft PPA submitted by UPCL in the matter regarding supply of excess power stipulates that any energy in excess of the quantum stipulated in Clause 1 above shall be supplied to UPCL on the same terms and conditions. However, the stand now being taken by UPCL that the excess power, if any, may either be supplied to other consumer or may be sold in Power

Exchange is against the provision of draft PPA submitted by UPCL and reflects an afterthought on the part of UPCL as similar provision existed in the earlier PPAs. Generation from hydro power plants is dependent on water flows and sudden increase in water flows can increase the generation and the same cannot be anticipated in advance and tied up for sale to third party or at power exchange. The proposal of UPCL will lead to water spillage and backing down of generation which will not be in anyone's interest. Besides UPCL is barely meeting its RPO compliances and any additional generation will aid UPCL to meet its RPO compliances both solar as well as non-solar under the existing scheme provided in the RE Regulations.

- 2.1.14. UERC Deviation Settlement Mechanism (DSM) Regulations, 2017 exempts the RE generators selling power within or outside the State and accordingly no deviation charges, whatsoever, are applicable on such RE generators. However, RE Generator in this case, M/s BHPL is required to submit its Schedule to SLDC for enabling it to prepare the dispatch schedule in accordance with the requirement of the DSM Regulations.
- 2.1.15. The issue of availing open access by M/s TPTCL is immaterial in the instant case as M/s BHPL, the RE generator (source of power) is located within the State and has connectivity agreement with the PTCUL/STU for 220 kV Ghuttu-Ghansali Line for evacuation of power to be delivered to UPCL at State Periphery. Accordingly, as per the bid document and LoI, M/s TPTCL will be required to bear transmission charge of Ghuttu-Ghansali Line and ensure that energy is supplied at the State periphery. The State periphery in the instant case will be the deemed delivery point at Ghansali as approved by the Commission vide Order dated 28.06.2018 and all the charges beyond Ghansali will be borne by UPCL in accordance with the methodology adopted in the previous PPA. Hence, Clause 4(iii) of the draft PPA regarding booking of transmission corridor has no relevance as the generator from where the power is being sourced by the trader is within the State and is connected to a dedicated line and beyond the State periphery it will be UPCL's duty to evacuate power.
- 2.1.16. The other provisions of the draft PPA has been examined which is in accordance with

the Regulations. However, UPCL and the trader are hereby directed to incorporate the changes proposed by the Commission in the draft PPA and submit the same to the Commission within 15 days of the date of order. The Petitioner is also advised not to complicate the issues and also take note of its past practices in such PPA related matters.

2.1.17. Ordered accordingly.

(Subhash Kumar)
Chairman