

Before

# UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 11 of 2020

**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 Bhilangana Hydro Power 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 Bhilangana Hydro Power Ltd. ... Respondent

CORAM

**Shri D.P. Gairola**      **Member (Law)**

**Shri M.K. Jain**      **Member (Technical)**

**Date of Order: July 29, 2020**

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 Bhilangana Hydro Power Ltd (hereinafter referred to as "M/s BHPL").

## **1. Background and Petitioner's Submissions**

- 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 01.06.2020 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 BHPL.

12. The Petitioner submitted that it had fulfilled its RPO upto FY 2019-20, and the expected unmet RPO for FY 2020-21 was (-) 171.46 MUs & (-) 61.45 MUs of non-solar & solar respectively. The Petitioner further submitted that UPCL plans to meet the solar deficit of 61.45 MUs by purchasing REC.
13. The Petitioner submitted that considering the requirements of Non-Solar RE power as discussed above, it had floated a tender no. 06/CE(COMM)/UPCL-06/2020-21 (Non-Solar) in the month of January 2020 for procurement of Non-Solar RE Power through DEEP portal as per the following requirement:

Month	Quantum floated (In MW)	Delivery Point
Apr-20	25	Uttarakhand State Periphery
May-20	25	
June-20	25	
July-20	25	
Aug-20	25	
Sep-20	25	
Oct-20	25	
Nov-20	20	
Dec-20	10	
Jan-21	10	
Feb-21	10	
Mar-21	10	

14. The Petitioner submitted that Part 1 (Technical) of the tender was opened on 24-02-2020 and Part 2nd (Initial Price Opening alongwith conducting e-Reverse Auction) was opened on 25-02-2020. The Petitioner submitted that after Initial Price Opening (IPO) and conducting e-Reverse Auction at DEEP Portal, M/s BHPL has been selected as the successful bidder for supply of power on the rate and quantum as summarized below:

## M/s Bhilangana Hydro Power 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	8		
Feb-20	8		
Mar-20	10		

15. UPCL issued LoI dated 16.03.2020 to M/s BHPL at the rate and quantum as detailed in the above Table. UPCL thereafter submitted the draft PPA for approval of the Commission.
16. UPCL submitted that it intends 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 BHPL.
17. Meanwhile M/s BHPL vide its submission dated 26.06.2020 submitted its comments on the draft PPA submitted by UPCL for procuring non-solar RE energy on short term basis.
18. UPCL in response to the comments filed by M/s BHPL, submitted its rejoinder on the same vide its letter dated 15.07.2020.
19. The Petitioner's submission, M/s BHPL's reply and the Commission's views on the same is discussed in the subsequent paras.

## 2. Commission's Views & Decisions

### 21. Legal Requirement for approval of PPA

- 21.1. A PPA is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.
- 21.2. 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.

213. 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)*

214. 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.*

*...”*

215. In accordance with the RE Regulations, 2018 licensee is required to comply with the renewable purchase obligation as provided in the Regulations.

216. 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

Licenseses 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.

21.7. 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 18.04.2020 has specified the ceiling rate for procurement of non-solar power in respect of UPCL's RPO compliances as Rs. 4.75 per unit.

21.8. Since the rate of short-term non-solar RE as being procured from M/s BHPL 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.

21.9. M/s BHPL submitted that it is a Company incorporated under the Indian Companies Act, 1956 and has set up a 24 MW hydro-electric power project (Bhilangana-III or B-III) on River Bhilangana near Village, Ghuttu, Tehsil Ghansali, District Tehri Garhwal, Uttarakhand. M/s BHPL further submitted that they have been supplying the entire hydroelectric power generated from its project to UPCL w.e.f. 03.04.2015, under Power Purchase Agreements dated 11.04.2015, 01.10.2015, 16.03.2016, 19.08.2017, 23.08.2018, 23.08.2018 and 07.05.2019. The said power purchase agreements were executed between Tata Power Trading Co. Ltd., (hereinafter referred to as "TPTCL"), a trading licensee and UPCL for supply of entire generation from M/s BHPL's project.

21.10. M/s BHPL submitted that from the bare perusal of the above cited PPA's it can be seen

that the entire power generated by the project has been sold to UPCL w.e.f. 03.04.2015, on primarily consistent terms and conditions, however, in the present petition, UPCL has proposed to change the terms of the draft power purchase agreement for FY 2020-21, without any change in the regulatory framework for procurement of power from renewable energy sources on short term basis in the State. M/s BHPL, accordingly, requested the Commission that the current draft power purchase agreement for FY 2020-21 may be approved on the same terms and conditions, as in the past.

In response to the same, UPCL submitted that in the past it had purchased Non-Solar power from M/s TPTCL (source: M/s BHPL) through tendering process in which the quantum of energy to be supplied by M/s BHPL was fixed. UPCL submitted that during the period from FY 2015-16 to FY 2018-19, UPCL remained deficit in meeting Non-Solar RPO because the backlog of its Non-Solar RPO deficit was carried forwarded year on year basis by the Commission on the request of UPCL, and the clause regarding excess energy, i.e. over and above contracted quantum from the plant was incorporated in the PPA to achieve its Non-Solar RPO. UPCL submitted that in the past the said deficit of Non-Solar RPO persisted even after purchasing of excess energy from the plant of M/s BHPL via M/s TPTCL. UPCL submitted that it proactively (in the month of January 2020) floated the tender to fulfil Non-Solar RPO of FY 2020-21, however, due to COVID-19 pandemic, the demand of the state has reduced drastically. In this period, the availability from hydro plants has remained as usual, therefore, to cater the reduced demand only non-hydro plants could be shutdown. This has changed the availability mix of UPCL in favour of energy from hydro plants and, therefore, the Non-Solar RPO requirement in million units are expected to reduce at the end of FY 2020-21. UPCL submitted that in FY 2020-21, the expected energy from hydro plant may be around 50-60% of total consumption, therefore, RPO requirement may have to be calculated only on around 40-50% of total consumption while earlier RPO requirement had been calculated on around 50% of total consumption, and even, this projection may vary at the end of FY 2020-21 in view of the COVID-19 scenario. UPCL submitted that, accordingly, UPCL is not in requirement of excess energy from the plant of M/s BHPL this year.

- 21.11. M/s BHPL further submitted that, it has considered Ghansali as the deemed delivery point and included the transmission charges for the 220 kV Ghuttu-Ghansali line in its bid

in line with the past practice. M/s BHPL submitted that this is without prejudice to the rights and claims of BHPL in the appeals pending before the Hon'ble Appellate Tribunal for Electricity in the matter of Appeal no. 221 of 2019. M/s BHPL, accordingly requested before the Commission to approve the present draft power purchase agreements on the same terms and conditions as existed for the sale of power generated from the project in FY 2018-19 and FY 2019-20.

In response to the same, UPCL submitted that subject to condition of delivering power at delivery point, i.e. Uttarakhand State Periphery, the Commission's order dated 28.06.2018 has defined Ghansali as State Periphery point until or unless same is changed by the Commission itself.

In this regard, the Commission observed the submission of both UPCL and M/s BHPL and is of the view that in line with the Commission's Order dated 28.06.2018 and 10.04.2019 the deemed delivery point shall be Ghansali. The relevant portion of the Commission's Order dated 28.06.2018 and 10.04.2019 is reproduced hereinafter:

**Order dated 28.06.2018:**

*"2.1.11 Further, the short term tender was floated by UPCL for supply of RE power at the State periphery and the generator from which power will be sourced by M/s TPTCL is located in the State of Uttarakhand at a dedicated 220 kV Bhilangana-III to Ghansali line, therefore, all the charges and losses till Ghansali will have to be borne by M/s TPTCL in accordance with the Open Access Regulations as well as RE Regulations, 2013. A 220 kV sub-station was proposed at Ghansali by PTCUL, however, due to its inefficiency the commissioning of the sub-station has got delayed and work on the same has not yet been started. Had the sub-station been erected, the power from M/s TPTCL would have been received at 220 kV substation at Ghansali and input energy would have been metered therein as the same would have been the delivery point as per the PPA. However, the trader cannot be penalized by asking it to bear the losses till 220 Chamba S/s, where the 220 kV line from Bhilangana-III is interconnected. UPCL's submission in this regard is also in contradiction to the bid document. Hence, as proposed by M/s TPTCL and agreed upon by PTCUL, the Commission directs M/s TPTCL, PTCUL and UPCL to sit jointly and work out the methodology for computation of line losses considering the deemed delivery point at Ghansali and submit the report within 2 weeks of the date of Order."*

**Order dated 10.04.2019:**

*“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.”*

As can be seen from above, the issue of delivery point has already been concluded in past by the Commission, and has since attained finality, and accordingly, there is no reason for any amendment with respect to the same.

- 21.12. M/s BHPL in its comments has referred to findings of the Commission in the similar type of matters in various past Orders, and based on the same submitted that certain clause of the draft PPA filed by UPCL are contrary to the observation/directions of the Commission in earlier Orders. The said clauses of the draft PPA, alongwith UPCL’s reply and Commission’s view on the same are discussed in the following paras of the Order.
- 21.13. M/s BHPL in its comments submitted that the clause No. 5 regarding “Open Access” and clause No. 6 regarding “Scheduling Procedure” in the draft PPA submitted by UPCL are contrary to the findings of the Commission in its Order dated 10.04.2019.

UPCL in this regard submitted that the aforesaid Clause No.5, Open Access, and Clause No.6, Scheduling Procedure are standard clauses of tender document which nowhere contradicts any prevailing law or regulations.

The Commission analysed the submission of both UPCL and M/s BHPL and is of the view that the issue of availing open access by M/s BHPL is immaterial in the instant case as M/s BHPL, the RE generator 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. Further, UERC Deviation Settlement Mechanism (DSM) Regulations, 2017 exempts the RE generators selling power within or outside the State from deviation charges and, accordingly, no deviation charges, whatsoever, are applicable on such RE generators. In this regard attention is drawn to Commission's Order dated 10.04.2019 wherein the Commission has already dealt with the similar issues in the past. The relevant portion of the Order dated 10.04.2019 is reproduced hereunder:

*"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."*

The above quoted paras are self-explanatory, and accordingly, UPCL is directed to amend the Clause No.5, Open Access, and Clause No.6, Scheduling Procedure, of the draft PPA in line with the findings of the Commission in its Order dated 10.04.2019.

21.14. M/s BHPL in its comments submitted that the Petitioner has removed the following provision for sale of Excess Energy to UPCL in the draft PPA:

*"Any energy in excess of the quantum stipulated in Clause 1 above shall be supplied*

to UPCL on the same terms and conditions.”

M/s BHPL submitted that this clause was present in all the previous power purchase agreements and has also found approval of the Commission in the Order dated 10.04.2019, however in the present draft PPA UPCL has removed the same. M/s BHPL, accordingly, requested that the same clause be retained for FY 2020-21 as well. M/s BHPL submitted that small hydro power plants are must run plants under Regulation 7.5(12) of UERC (State Grid Code) Regulations, 2016 and 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, and, therefore, removal of this clause will lead to water spillage and backing down of generation which will not be in anyone’s interest.

In response to the same, UPCL submitted that in previous years, UPCL was not able to meet its RPO compliances and was in requirement of additional Non-solar energy to meet its RPO but under prevailing scenario of COVID-19 the circumstances have changed and due to less demand in FY 2020-21, UPCL’s RPO requirement are expected to reduce, and, accordingly, UPCL doesn’t require excess Non-solar power over and above the contracted capacity.

The Commission analyzed the comments of both UPCL and M/s BHPL in this regard and 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 from M/s BHPL which is a small hydro power plant, 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. It is to be noted here that generation from hydro power plants is dependent on water flows and sudden increase in water flows can increase the generation which cannot be anticipated in advance, and the proposal of UPCL to omit the clause for purchase of excess energy supplied, which was present in the PPA executed for past years, will lead to water spillage and backing down of generation which will not be in anyone’s interest. UPCL, as mentioned in the current Petition, has floated the tender for purchasing Non-Solar RE power considering the Non-Solar RPO deficit of 171.46 Mus in FY 2020-21, however, as can be seen from annexure R-4 of M/s BHPL’s reply, the quoted RE power by M/s BHPL

from its Bhilangana-III HEP is only 154.49 MUs. As discussed above, UPCL in this regard has submitted that, under the prevailing scenario of COVID-19 the circumstances have changed and due to less demand in FY 2020-21, UPCL's RPO target are expected to reduce thus denying the requirement of excess Non-Solar energy over and above the contracted capacity. In this regard, it is understood that considering the various measures and policies of the Government regarding COVID-19, the load and power requirement cannot be accurately ascertained at this juncture and the situations can turn either way based on the policies of the Government in coming period in view of COVID-19 crisis. The Commission at this stage does not find any merit in restricting the generation from the SHP of M/s BHPL as being a hydro plant, the restrictions will lead to water spillage and backing down of generation which will not be in anyone's interest. Moreover, impact of COVID-19 crisis are uncertain and it cannot be predicted that how things are going to turn around in future based on the policies and guidelines issued by the Government from time to time. Accordingly, UPCL is required to incorporate the clause for procuring the excess energy, over and above the quantum of energy contracted through this PPA, in line with the PPA's executed in earlier years. This will also aid UPCL to meet its RPO compliances both solar as well as non-solar, from any additional generation, under the existing scheme provided in the RE Regulations and any excess generation by M/s BHPL can be used to offset the solar RPO in accordance with the Regulations. Besides additional energy can be banked by UPCL in line with the banking agreements to be utilized in the winter months.

- 21.15. M/s BHPL further submitted that in line with the directions of the Commission in its order dated 28.06.2018 and the terms and conditions of the tender documents, BHPL has considered the State Periphery as the delivery point and placed its bid accordingly, once this bid has been accepted, the terms of the contract cannot be altered. Furthermore, the parties are in any event bound by the directions of the Commission, therefore, the following lines proposed by UPCL in Clause 8, Billing, of the draft power purchase agreement, may be deleted:

*"However, if definition of Uttarakhand State Periphery is changed at any point of time during the currency of this contract by Hon'ble UERC, same shall be binding on both the parties i.e. UPCL and M/s BHPL"*

In response to the same, UPCL submitted that the clause of the proposed draft PPA are as per regulations, standard guidelines of bidding of short-term power purchase and nothing is contrary to prevailing laws/rules and regulations. UPCL submitted that M/s BHPL is trying to interpret the provisions as per its own convenience only. The clause 8, Billing, is appropriate and there is nothing wrong in that. UPCL also submitted that the submission of M/s BHPL is contradictory in itself because when directions of the Commission are binding on both party, then there is no logic in seeking deletion of the said lines from the clause by M/s BHPL.

The Commission, in this regard is of the view that addition of the lines *“however, if definition of Uttarakhand State Periphery is changed at any point of time during the currency of this contract by Hon’ble UERC, same shall be binding on both the parties i.e. UPCL and M/s BHPL”* in Clause 8 of the draft PPA is merely a clarification and does not alter the position as such. Moreover, even if these lines are not made part of the draft PPA, then also the situation would remain unaltered. Accordingly, the Commission is of the view that including these lines specifically in only one particular clause has no rationale. Hence, the same may be deleted. The Commission would like to point out that the Commission, at any point of time, considering any issue or circumstances, can issue Orders to revise/ amend any one or more conditions of the PPA and the same shall be binding on the parties equally. This is a settled principle based on the Orders of Hon’ble APTEL/Hon’ble Supreme Court.

- 21.16. M/s BHPL further submitted that following lines of the clause 12 of the draft power purchase agreement are contradictory and should be removed:

*“Any dispute raised by the UPCL on the energy bills shall not be treated as outstanding and there shall be no financial cost/impact of same on UPCL whatsoever.”*

M/s BHPL submitted that UPCL is attempting to escape the consequential impact of a disputed energy bill, and also usurping the powers of the Commission. In terms of the draft PPA all such disputes are subject to the jurisdiction of the Commission, and UPCL is attempting to ouster the jurisdiction of the Commission to direct payment of late payment surcharge for a disputed invoice which is impermissible. M/s BHPL further submitted that, in terms of Regulation 23 of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating

Stations) Regulations, 2018 a late payment surcharge @1.25% per month shall be payable on delayed bills. M/s BHPL submitted that the proposed clause is in contravention of the aforesaid regulation issued by UERC.

In response to the same, UPCL submitted that the aforesaid clause of the proposed draft PPA are as per regulations, standard guidelines of bidding of short-term power purchase and nothing is contrary to prevailing laws/rules and regulations. M/s BHPL is trying to interpret the provisions as per its own convenience only. UPCL submitted that Clause 12, Late Payment Surcharge has been there in the earlier PPAs as reproduced below:

*“LATE PAYMENT SURCHARGE*

*A surcharge of 1.25% (One Point Two Five Percent) per month shall be applied on all payments, outstanding after 60 days (Sixty days) for the period of non-payment beyond the due date. This surcharge would be calculated on a day-to-day basis for each day of the delay. Any disputes raised by the Discom on the energy bills shall not be treated as outstanding.”*

UPCL submitted that there is as such no difference in the present clause and clause incorporated in earlier year PPA's. The line added in the last is merely an elaboration of the previous clause, and as such does not change anything. UPCL submitted that there is no question of usurping powers of the Commission as alleged by M/s BHPL, as UPCL has no authority for the same and it is also very clear that final PPA will be signed by UPCL & M/s BHPL as per draft approved by the Commission only.

The Commission analyzed the submission of both UPCL and M/s BHPL. The Commission observed that the lines of Clause 12 proposed to be deleted by M/s BHPL from the draft PPA were part and parcel of the Clause 12 of the tender document as reproduced below:

**Clause 12 of the tender document:**

*“12.0 Late Payment Surcharge*

*A surcharge of 1.25% (One Point Two Five Percent) per month shall be applied on all payments, outstanding after 60 days for the period of non-payment beyond the due date. This surcharge would be calculated on a day-to-day basis for each day of the delay. **Any disputes raised by the Discom on the energy bills shall not be treated as outstanding.** The RfP shall provide the maximum*

*period within which the Selected Bidder(s) must commence supplies after the PPA becomes effective, subject to the obligations of UPCL being met.”*

The said clause has been inserted in the draft PPA at Clause 12 as follows:

**Clause 12 of the draft PPA**

*“12.0 Late Payment Surcharge*

*A surcharge of 1.25% (One Point Two Five Percent) per month shall be applied on all payments, outstanding after 60 days (Sixty days) for the period of non-payment beyond the due date. This surcharge would be calculated on a day-to-day basis for each day of the delay. **Any disputes raised by the UPCL on the energy bills shall not be treated as outstanding and there shall be no financial cost/impact of same on UPCL whatsoever.**”*

In this regard it is to be noted that on one hand M/s BHPL in their reply at para 20 is submitting that “once the bid has been accepted, the terms of the contract cannot be altered”, and now at para 21 of the aforesaid reply, M/s BHPL is proposing removal of a clause which was there in the tender document. In this regard, the Commission is of the view that the said clause was there in the current tender document, as well as PPA’s signed between the parties in the earlier years, and, therefore, inclusion of the same cannot be denied in the proposed draft PPA. However, UPCL is directed to align the language of the said clause in line with the terminology used in clause 12 of the tender document as stated above.

- 21.17. The other provisions of the draft PPA has been examined which are in accordance with the Regulations. However, UPCL and M/s BHPL 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.

3. Ordered accordingly.

(M.K. Jain)  
Member (Technical)

(D.P. Gairola)  
Member (Law)