

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 17 of 2022

In the matter of:

Application seeking approval of the Draft Power Purchase Agreement between Uttarakhand Power Corporation Limited and UJVN Limited for its Kaliganga-II Small Hydro Power Plant (2X2.25 MW).

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

In the matter of:

UJVN Ltd.

... Respondent

CORAM

Shri D.P. Gairola Member (Law) / Chairman (I/c)

Shri M.K. Jain Member (Technical)

Date of Order: June 22, 2022

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 (PPA) to be executed by it with Uttarakhand Jal Vidyut Nigam Ltd. (hereinafter referred to as "UJVN Ltd." or "Respondent") for procurement of power from Kaliganga-II Small Hydro Power Plant (SHP) of UJVN Ltd. having capacity of 4.50 MW (2x2.25 MW).

1. Petitioner's Submissions

1.1. UPCL has filed the Petition dated 18.05.2022 seeking approval of the Commission on the draft Power Purchase Agreement (PPA) for purchase of energy generated from the Respondent's SHP under Section 86(1)(b) of the Electricity Act, 2003 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.

- 1.2. The Petitioner submitted that UJVN Ltd. is engaged in the business of power generation through its SHP having installed capacity of 4.50 MW (2X2.25 MW) situated in Distt-Rudraprayag in the State of Uttarakhand.
- 1.3. The Petitioner submitted that the Respondent desires to sell entire energy scheduled to be generated from its project and the Petitioner is desirous of purchasing the entire energy on the terms and conditions as agreed between both the parties as per the terms and condition laid down in draft PPA.
- 1.4. 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 PPA entered with the Generating Company.
- 1.5. The copy of the Petition was forwarded to the Respondent for providing an opportunity to it to submit its comments, if any, before the Commission. The Respondent submitted its comments, vide its letters dated 28.05.2022 and 02.06.2022, on the clauses of the draft PPA which were forwarded to UPCL for counter reply. UPCL submitted its rejoinders on 03.06.2022 and 09.06.2022. Comments of the Respondent and rejoinders of the Petitioner have been dealt in the subsequent Paras.

2. Respondent's reply and Petitioner's rejoinder

- 2.1. The Respondent submitted that the name of UREDA should be replaced with UJVN Ltd. in Para 1 of the draft PPA. The Petitioner agreed to the comment of the Respondent.
- 2.2. The Respondent submitted that the name of village should be written as 'Kavltha' instead of 'Kaviltha' in Para 3 of the draft PPA. The Petitioner agreed to the same.
- 2.3. Regarding overloading capacity in Clause 2.1 of the draft PPA, the Respondent submitted that the continuous overload rating of the plant is 15% instead of 10%.

In reply, the Petitioner submitted that in the past while signing PPA with SHPs, UPCL has considered 10% overloading and hence, it would be appropriate that the same should be considered for Kaliganga-II SHP also.

- 2.4. The Respondent submitted that Clause 2.1 (vii) provides for the eligibility criteria for

qualifying as generating station based on renewable energy source. In this regard, the Respondent submitted that the said clause should be replaced with Regulation 4(3) of RE Regulations, 2018. In the matter, the Petitioner agreed with the comments of the Respondent.

2.5. The Respondent submitted that the word 'Solar Photovoltaic Power Plant' should be replaced with 'UJVN Ltd.' in Clause 5.3 (ii) of the draft PPA. The Petitioner agreed to the same.

2.6. With regard to the Clause 5.4 of the draft PPA, the Respondent requested to replace the same with following:

"In case of payment of bill is delayed beyond a period of 60 days from the date of billing, a late payment surcharge at the rate of 1.25% per month or part thereof shall be levied by the generating company."

The Petitioner has not raised any objection and agreed for the replacement of the Clause 5.4 of the draft PPA as mentioned by the Respondent.

2.7. With regard to the sub-clause 3 of Clause 8 'Interconnection facilities' of draft PPA, the Respondent submitted that UJVN Ltd. has constructed 33 kV transmission line from Generating Station to 33/11 kV Sub-station of UPCL at Ukhimath. Therefore, Clause 8.3 of the Draft PPA should be modified to the extent of ownership, maintenance and operation. UPCL should be replaced with UNJN Ltd. The Petitioner agreed to the comment of the Respondent vide its letter dated 09.06.2022.

2.8. With regard to Clause 8.6 of draft PPA, the Respondent requested the Commission to add the following at the end of the said clause to ensure timely approval by the licensee:

"Such approval shall not be unreasonably withheld and an approval or otherwise shall be conveyed to the generator within 30 days."

The Petitioner agreed with the comment of the Respondent.

2.9. With regard to Clause 12.1 of the draft PPA, the Respondent submitted that the advance notice regarding synchronization of unit(s) of the plant with the grid should be 15 days instead of 60 days as mentioned in the draft PPA. The Respondent further submitted that the time limit specified in Clause 12.1 of the draft PPA is not in consonance with Clause 13 of the draft PPA.

In reply, the Petitioner submitted that the time limit of minimum 30 days should be considered as agreed between UJVN Ltd. and UPCL while signing the PPA for Dunao which is also in consonance with the Clause 13 of draft PPA.

- 2.10. With regard to Clause 13 of the draft PPA, the Respondent submitted that 'of UPCL' has been mentioned twice. Therefore, one 'of UPCL' should be deleted. The Petitioner agreed on the same.
- 2.11. With regard to Clause 14 'Metering' in the draft PPA, the Respondent submitted that power of Kaliganga-I SHP is to be pooled at switchyard of Kaliganga-II SHP. Therefore, sub-clause 2 of Clause 14 of the draft PPA needs to be modified to incorporate adjustment towards Kaliganga-I SHP to determine the sale of power from Kaliganga-II SHP. The Petitioner agreed for the said arrangement for JMR.
- 2.12. With regard to Clause 15 'Acceptance and Approval of UPCL' in the draft PPA, the Respondent submitted that a specific time of 30 days to ensure timely information regarding approval or otherwise by the licensee should be added in the said clause. In the matter, the Petitioner agreed with the comment of the Respondent.
- 2.13. The Respondent submitted that the name of UREDA should be replaced with UJVN Ltd. in Clause 19.2 of the draft PPA. The Petitioner agreed to the comment of the Respondent.
- 2.14. The Respondent submitted that 'Managing Director' should be replaced with 'General Manager (Commercial)' in Clause 31 of the draft PPA. The Petitioner agreed to the comment of the Respondent.
- 2.15. The Respondent requested the Commission that Annexure-I to VIII enclosed in the draft PPA should be filled to which the Petitioner agreed.

3. Commission's Views & Decisions

3.1. Legal Requirement for approval of PPA

- 3.1.1. A PPA is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.
- 3.1.2. Section 86(1)(b) of the Electricity Act, 2003 stipulates that one of the functions 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.

- 3.1.3. 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)

- 3.1.4. As per Regulation 39(1) of the UERC (Conduct of Business) Regulations, 2014 the distribution licensee is required to file with the Commission in complete form copies of all the Power Purchase Agreements already entered by it. The relevant portion of the Regulation is reproduced hereunder:

“39. Regulation of Distribution Licensee’s Purchase of Power

- (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.*
- (4) Nothing contained herein shall affect the obligations of distribution licensee under the existing contract and arrangement for purchase, import or acquisition of electricity from generating companies, electricity trader and from other persons with whom the licensee has agreements or arrangements of power purchase or procurement of energy in accordance with the terms and*

conditions of such agreement and arrangement consented to or approved by the Commission.

(5) The provisions of sub-regulations (2) and (3) above or any action taken therein shall not, in any manner, prejudice the exercise of functions and powers of the Commission under any of the other provisions of the applicable law, the Regulations and Orders issued from time to time."

3.1.5. Regulations 7(2) & 7(3) of the UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2018 and as amended from time to time (hereinafter referred to as "RE Regulations, 2018") specifies that:

"7. Sale of Power

(1) xxx

(2) The distribution licensee on an offer made by the said RE based Generating Stations and Cogenerating Stations may enter into a power purchase agreement in conformity with these Regulations and relevant provisions of other Regulations and the Act. However, if the distribution licensee intends to purchase power from such generator it shall sign the PPA within two months of offer made by the generating company. Otherwise, if the distribution licensee is not willing to purchase power from such generator it shall intimate the same to the generating company within one month of offer made by it...

(3) The distribution licensee shall make an application for approval of power purchase agreement entered into with the generating company in such form and manner as specified in these regulations and UERC (Conduct of Business) Regulations, 2014 as amended from time to time within one month of the date of signing the PPA."

(Emphasis added)

3.1.6. 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.

3.2. Consistency of the PPA with the Regulations

3.2.1. Regulation 6(7) of RE Regulations, 2018 specifies as under:

"All Power Purchase Agreements (PPAs) 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."

3.2.2. Hence, all the PPAs entered or to be entered into by UPCL are required to be amended in accordance with the RE Regulations if they are inconsistent with the provisions of RE Regulations, 2018. Accordingly, PPAs executed between UPCL and the generators are examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003 & RE Regulations, 2018.

3.3. Commission's Analysis of the draft PPA and Order on the same

3.3.1. The PPA is to be entered into between UPCL and the Respondent for supply of power from the Respondent's Kaligangaa-II SHP having capacity of 4.50 MW (2x2.25 MW) situated within the State of Uttarakhand.

3.3.2. The PPA submitted by UPCL and the submissions of the Respondent have been examined in light of the relevant rules & regulations. The Commission observed that certain clauses in the 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 final PPA with the project developer.

a) Para 1 of the draft PPA provides the date on which PPA is brought into effect. In the draft PPA, date, month and year needs to be filled up and completed while the final PPA is being signed.

Further, as discussed above in Para 2 of this Order, the name of UREDA shall be replaced by UJVN Ltd. under Para 1 of the draft PPA.

b) As discussed above under Para 2 of this Order, 'Kavilta' shall be replaced with 'Kaviltha' in Para 3 of the draft PPA.

c) Clause 1.15 of the draft PPA provides the definition of 'Distribution Code' as follows:

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

It is pertinent to mention that the Commission has notified the Uttarakhand Electricity Regulatory Commission (Distribution Code) Regulations, 2018 on 31.03.2018 which has replaced Uttarakhand Electricity Regulatory Commission

(Distribution Code) Regulations, 2007 w.e.f. the date of the publication in the official gazette i.e. 21.04.2018. Accordingly, the Clause 1.15 of draft PPA shall be read as follows:

“‘Distribution Code’ means the Uttarakhand Electricity Regulatory Commission (Distribution Code) Regulations, 2018 as amended from time to time.”

- d) The draft PPA does not define ‘Due Date’. Accordingly, following clause shall be inserted after Clause 1.17:

“‘Due date’ shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is faxed/mailed/handed over to the Buyer and confirmed telephonically by the Buyer and by which date such Monthly Bill or Supplementary Bill is payable by Buyer.”

- e) The draft PPA does not define ‘JMR’. Accordingly, following clause shall be inserted after the definition of ‘Due Date’:

“‘JMR’ means Joint Meter Reading Statement jointly signed between the representative of UJVN Ltd and UPCL.”

- f) Clause 2.1 of the draft PPA specifies as follows:

“UPCL shall accept and purchase 2 X 2.25 MW (plus 10% overloading) made available to UPCL system from Generating Company SHP’s at a project specific tariff as determined by the Commission as per provisions of Uttarakhand Electricity Regulatory Commission (Tariff and other terms for supply of Electricity from Renewable Energy Sources and non-fossil fuel based co-generating stations) Regulations, 2018 as amended from time to time based on sources and technologies as mentioned at point no. (i) below:-

- i) Small Hydro with capacity upto 25 MW.*
- ii) Wind*
- iii) Solar including its integration with combined cycle*
- iv) Biomass/Biogas*
- v) Bagasse based cogeneration as per MNRE guidelines.*
- vi) Urban/Municipal waste, or*
- vii) Any new source or technology which would qualify as ‘renewable energy’, only after the approval of Commission based on the Ministry of New and Renewable Energy (MNRE) approval in accordance with the terms and conditions of this Agreement, at the weighted average cost of power allocated to the State from central generating stations or as determined by the Commission for such plant under the approach of*

project specific tariff."

With regard to purchase of power from Kaliganga-II SHP, the Respondent submitted that the continuous overload rating of the plant is 15%. The Respondent also submitted that Clause 2.1(vii) of the draft PPA should be in accordance with provisions of RE Regulations, 2018. In the matter, the Petitioner agreed to the extent that clauses of PPA should be in consonance with the provisions of RE Regulations. However, with regard to the overload capacity, the Petitioner submitted that UPCL in the past while signing PPA with SHPs has considered 10% overload rating.

In the matter of overload capacity, the Commission is of the view that the reasoning submitted by the Petitioner that it has considered the overload rating of 10% for SHP in the past is not tenable because overloading capacity is to be considered based on the technical specification of turbines and generators and other equipment and as per the documents submitted by the Respondent before the Commission regarding the overloading capacity of 15%. Accordingly, Clause 2.1 of the draft PPA shall be read as follows:

*"UPCL shall accept and purchase 2 X 2.25 MW (plus 15% overloading) made available to UPCL system from Generating Company SHP's at a **project specific tariff as determined by the Commission** as per provisions of Uttarakhand Electricity Regulatory Commission (Tariff and other terms for supply of Electricity from Renewable Energy Sources and non-fossil fuel based co-generating stations) Regulations, 2018 as amended from time to time based on sources and technologies as mentioned at point no. (i) below:-*

- i) **Small Hydro with capacity upto 25 MW.***
- ii) Wind*
- iii) Solar including its integration with combined cycle*
- iv) Biomass/Biogas*
- v) Bagasse based cogeneration as per MNRE guidelines.*
- vi) Urban/Municipal waste, or*
- vii) Any new source or technology would qualify as 'Renewable Energy' only after such source/technology approved by MNRE or any competent authorities under the central ministry. Further, the Commission shall determine tariffs separately for each technology after the approval of such scientifically proven technology by competent authority under the central ministry."*

- g) The Commission observed that the Petitioner has mentioned Solar Photovoltaic Power Plant as the generator in the draft PPA. The same shall be replaced by 'UJVN Ltd.' Accordingly, Clause 5.3 (ii) of the draft PPA shall be replaced by the following Para:

"where payments are made by a mode other than through the letter of credit but within a period of one month of presentation of bills by UJVN Ltd., a rebate of 1% shall be allowed."

- h) Clause 5.4 of the draft PPA deals with the late payment surcharge which is as follows:

"For default in payment beyond 60 days from the billing, a surcharge at the rate of 1.25(%) percent per month or part thereof shall be levied on the billed amount."

The Respondent requested the Commission to change the afore-mentioned clause in line with the RE Regulations, 2018. With regard to late payment surcharge, Regulation 23 of RE Regulations, 2018 specifies as follows:

"In case the payment of bills is delayed beyond a period of 60 days from the date of billing, a late payment surcharge at the rate of 1.25% per month or part thereof shall be levied by the generating company."

The Petitioner vide its rejoinder dated 03.05.2022 agreed with the suggestion of the Respondent. Accordingly, Clause 5.4 of the draft PPA shall be replaced with the provisions of Regulation 23 of RE Regulations, 2018.

- i) As discussed under Para 2 of this Order, the Respondent submitted that it has constructed a 33 kV transmission line from Generating Station to 33/11 kV Sub-station of UPCL at Ukhimath. Accordingly, in Para 8.3 of the draft PPA, 'owned, maintained and to be operated by UPCL' should be replaced with 'owned, maintained and to be operated by UJVN Ltd.'. The Petitioner has agreed to the change proposed by the Respondent. Accordingly, the Clause 8.3 shall be read as follows:

"The cost of laying the dedicated transmission line owned, maintained and to be operated by UJVN Ltd. from the Generating Station to the 33/11 KV Sub-Station, Ukhimath, Rudraprayag, Uttarakhand, the required bay, terminal equipments and associated synchronization equipments, etc shall be borne as per clause 41 (3) of UERC regulation 2018 as amended from time to time."

- j) As discussed under Para 2 of this Order, the Respondent proposed addition of the following at the end of Clause 8.6 of the draft PPA to ensure timely approval by the licensee:

“Such approval shall not be unreasonably withheld and an approval or otherwise shall be conveyed to the generator within 30 days.”

While approving the draft PPA for Dunao SHP vide Order dated 29.05.2017 the Commission had directed the parties to ensure timely approval by the licensee. Further, the Petitioner has also agreed to the change suggested by UJVN Ltd. Accordingly, the Clause 8.6 shall be read as follows:

“Any work to be done by the Generating Company relating to interconnection facilities or any other works, change in equipment’s setting affecting the safe and reliable operation of transmission/distribution system shall be taken up only with a specific approval and on the basis of approved drawings and specifications from UPCL and in compliance with the safety requirements as per the SGC. On the completion of work, final approval shall be obtained from UPCL before charging the line. The Generating Company would obtain all stator clearances/approvals required for this purpose. Such approval shall not be unreasonably withheld and an approval or otherwise shall be conveyed to the generator within 30 days.”

- k) With regard to synchronization, Clause 12.1 of draft PPA specifies as follows:

“The Generating Company shall give PTCUL and UPCL at least sixty (60) days advance written notice of the date on which it intends to synchronize a unit of the plant with the grid system, to the Nodal Officer of UPCL (Executive Engineer, Electricity Distribution Division, Rudraprayag) with the copy to the higher officials of UPCL, PTCUL and UERC. The authorized representative of the Generating Company and the Nodal Officer of UPCL and PTCUL shall inspect the unit which the Generating Company intends to synchronize to the Grid System within Seven days after being notified in writing by the Generating Company about the readiness of the unit for the synchronization with the grid.”

In the matter, the Respondent submitted that instead of 60 days advance notice a minimum 15 days advance notice to UPCL and PTCUL should be allowed to the generating station from the date on which it intends to synchronize a unit of the plant with the grid system. In reply, the Petitioner submitted that a minimum 30 days advance notice should be considered as agreed between the parties while signing the PPA of Dunao SHP which is also in

consonance with the Clause 13 of the draft PPA.

The Commission observed that the Commission while approving the PPA for Dunao vide Order dated 29.05.2017 had decided that the number of days mentioned in two Clauses, i.e. 12.1 and 13 of the PPA should be consistent as prior intimation of commencement of supply from SHP is the essence of both said clauses of the PPA. Accordingly, both the Petitioner as well as the Respondent were directed to mutually decide amongst themselves upon the number of days to be mentioned in the above mentioned two clauses of the PPA and to maintain consistency in all places of the PPA before signing of the same. The relevant extract of the Order dated 29.05.2017 is as follows:

“2.2.2 (f) The Respondent submitted that the time limit of minimum sixty (60) days in Clause 12.1 is not in consonance with Clause 13 of the PPA wherein time limit of thirty (30) days has been mentioned. The Commission observed that the Clause 13 of the PPA stipulates intimation of commencement of power supply one month in advance. In this regard, the Commission is of the view that the prior intimation of commencement of supply from SHP is the essence of both Clauses 12.1 and 13 of the PPA. However, no. of days mentioned in two Clauses of the PPA should be consistent. Accordingly, both the Petitioner as well as the Respondent is directed to mutually decide themselves upon the number of days to be mentioned in the above mentioned two Clauses of the PPA and to maintain consistency in all places of the PPA before signing of the same.”

It is explicitly clear from the above Para of the Order dated 29.05.2017 that the number of days mentioned in Clause 12.1 and Clause 13 of the PPA should be consistent as both the clauses deals with the prior intimation of commencement of supply from SHP.

In the present case, the Commission observed that Clause 13 of the draft PPA stipulates intimation of commencement of power supply one month in advance. Accordingly, the Commission is of the view that sixty days advance notice should be replaced with thirty days in Clause 12.1 of the draft PPA to bring uniformity between two clauses of the PPA. Accordingly, Clause 12.1 of

the draft PPA shall be read as follows:

“The Generating Company shall give PTCUL and UPCL at least one month advance written notice of the date on which it intends to synchronize a unit of the plant with the grid system, to the Nodal Officer of UPCL (Executive Engineer, Electricity Distribution Division, Rudraprayag) with the copy to the higher officials of UPCL, PTCUL and UERC. The authorized representative of the Generating Company and the Nodal Officer of UPCL and PTCUL shall inspect the unit which the Generating Company intends to synchronize to the Grid System within Seven days after being notified in writing by the Generating Company about the readiness of the unit for the synchronization with the grid.”

l) As discussed under Para 2 of this Order, ‘of UPCL’ has been mentioned twice in Clause 13 of the draft PPA. Accordingly, the Petitioner is directed to delete one ‘of UPCL’ to remove duplication.

m) Clause 14.2 of the draft PPA specifies as follows:

“The joint meter readings shall be recorded in the format given in Annexure V & VI.”

With regard to sub-clause 2 of Clause 14 ‘metering’ of draft PPA, the Respondent submitted that the power of Kaliganga-I SHP is to be pooled at switchyard of Kaliganga-II SHP. Therefore, necessary modifications need to be done in the draft PPA. The Petitioner has agreed with the comments of UJVN Ltd. Accordingly, clause 14.2 shall be read as follows:

“The joint meter reading shall be recorded in the format given in Annexure V & VI. The JMR would be recorded taking into consideration the pooling of power from Kaliganga-I SHP at the switchyard of Kaliganga-II SHP for determining the sale of power from Kaliganga-II SHP.”

n) As discussed under Para 2 of this Order, the Respondent proposed addition of the following at the end of Clause 15 of the draft PPA to ensure timely approval by the licensee:

“and an approval or otherwise shall be conveyed to the generator within 30 days.”

The Commission observed that while approving the draft PPA for Dunao SHP vide Order dated 29.05.2017 it had directed the parties to incorporate a suitable time frame to ensure timely approval by the licensee. Further, the Petitioner has also agreed to the change suggested by UJVN Ltd. Accordingly, Clause 15 shall be read as follows:

“UPCL's acceptance or approval for equipment, additions or changes to equipment, and their operational setting relating to interconnection facilities or any other works, equipment's setting affecting the safe and reliable operation of transmission/distribution system etc., would be required. Such acceptance/approval shall not be unreasonably withheld and shall be based on UPCL's existing policies and practices and an approval or otherwise shall be conveyed to the generator within thirty (30) days.”

- o) Clause 25(1) of the PPA specifies the conditions for Force Majeure Events and states as follows:

“(1) Force Majeure Event means, with respect to any party, any event or circumstance which is not within the reasonable control of, or due to an act or omission of, that party and which, by the exercise of reasonable care and diligence, that party is not able to prevent, including, without limiting the generality of the foregoing:

- (i) Lightning, storm, earthquakes, flood, natural disaster and action of the natural elements;*
- (ii) Acts of public enemy, blockades, insurrections, riots, revolution and sabotage;*
- (iii) Unavoidable accident, including but not limited to fire, explosion, radioactive contamination and toxic dangerous chemical contamination;*

The above-mentioned clause needs to be corrected and be replaced in accordance with the Clause (s) of sub-Regulation (1) of Regulation 3 of RE Regulations, 2018 which specifies as follows:

“Force Majeure Event” with respect to any party, any event or circumstance which is not within the reasonable control of, or due to an act or omission of, that party and which, by the exercise of reasonable care and due diligence, that party is not able to prevent, including, without limiting the generality of the foregoing:

- i) Acts of God like lightning, landslide, storm, action of the elements, earthquakes, flood, drought and natural disaster or exceptionally adverse weather conditions;*
- ii) Any act of public enemy, wars (declared or undeclared), blockades, embargo, insurrections, riots, revolution, sabotage, terrorist or military action, vandalism and civil disturbance;*
- iii) Unavoidable accident, fire, explosion, radioactive contamination and toxic dangerous chemical contamination;*
- iv) Any shutdown or interruption of the grid, which is required or directed by the State or Central Government or by the Commission or the State Load Despatch Centre; and any shut down or interruption, which is required to avoid serious and immediate risks*

of a significant plant or equipment failure.”

- p) Clause 31 of the PPA deals with the Notices. In the matter, the Respondent submitted that the notice should be addressed to General Manager (Commercial) instead of Managing Director of UJVN Ltd. The Petitioner agreed to the same. Accordingly, UPCL is directed to make necessary modification in Clause 31 before signing the PPA.

Further, After Clause 40 of the PPA, the place for dates have been left blank and year specified is 2022. The above-mentioned Para needs to be completed while the final PPA is being signed between the Petitioner and the Respondent in the presence of the witnesses.

- q) All Annexures mentioned in the clauses of the draft PPA needs to be completed before signing the final PPA.

3.3.3. UPCL is directed to take note of the above observations/corrections/modifications pointed out in the PPA and carry out the same in the PPA and submit the amended/supplementary PPA to the Commission within 15 days of the date of the Order.

4. Ordered Accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law) / Chairman (I/c)