

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 01 of 2022

In the matter of:

Application seeking prior approval of the Commission on the draft short term Power Purchase Agreements between Uttarakhand Power Corporation Limited and M/s PTC India Ltd., M/s Tata Power Trading Company Ltd. and M/s NTPC Vidyut Vyapar Nigam Ltd.

In the matter of:

Uttarakhand Power Corporation Limited ... Petitioner

AND

In the matter of:

M/s PTC India Ltd.
M/s Tata Power Trading Company Ltd.
M/s NTPC Vidyut Vyapar Nigam Ltd. ... Respondents

CORAM

Shri D.P. Gairola	Member (Law) / Chairman (I/c)
Shri M.K. Jain	Member (Technical)

Date of Order: March 10, 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 Agreements to be executed for short term power purchases with M/s PTC India Ltd. (hereinafter referred to as "M/s PTCIL"), M/s Tata Power Trading Company Ltd. (hereinafter referred to as "TPTCL") and M/s NTPC Vidyut Vyapar Nigam Ltd. (hereinafter referred to as "NVVNL").

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 & Chapter-II of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 filed a Petition dated 27.12.2021 seeking approval of the Commission on the Draft Power Purchase Agreements (PPAs) to be executed by UPCL for procurement of short term power with M/s PTCIL, M/s TPTCL & M/s NVVNL.
- 1.2 The Petitioner submitted that, the Gas based power is being purchased by UPCL from M/s Shrvanthi Energy Private Limited (Contracted Capacity-214 MW) and M/s Gamma Infraprop Private Limited (Contracted Capacity-107 MW). The gas agreement signed by Gas Based Generators with gas supplier was at the rate of \$ 7.84 per MMBTU and was valid upto 30.9.2021, and the ECR against the above-mentioned gas rates has been approx. Rs. 4.25 per unit.
- 1.3 The Petitioner submitted that during the period both the Gas Generators were asked to submit the proposal for procurement of gas for the period from Oct-2021 to Mar-2022, and in reply M/s SEPL vide e-mail dated 20.09.2021 had submitted the proposal of M/s GAIL wherein the rates offered were \$ 15.58 (approx. ECR Rs. 9.05 per unit) plus transmission /transportation cost & taxes, and M/s GIPL vide e-mail dated 20.09.2021 had submitted the proposal of M/s GAIL wherein the rates offered were \$ 15.68/MMBTU (approx. ECR Rs. 9.10 per unit) plus transmission/transportation cost & taxes.
- 1.4 The Petitioner submitted that considering the above offered rates at exorbitantly higher side, UPCL decided not to give consent for procurement of gas and decided to procure power from open market. UPCL further submitted that during the period on account of Coal crisis and other related reasons prevailing in the Country the prices of power in Energy Exchanges were very high, due to which the required quantum in most of the time blocks was not getting cleared in the exchange as the MCP was much higher than the quoted bid prices of UPCL and consequently UPCL was forced to carry out unscheduled rostering. The Petitioner submitted that, considering the acute shortage of power across

the Country and exorbitantly high rates of power in the Exchange, it decided to procure the deficit power through short term purchases and, accordingly, floated the tender on DEEP portal.

- 15 The Petitioner submitted that it floated a short-term tender for procuring 300 MW RTC power through DEEP Portal for the months of Oct-2021, Nov-2021 & Dec-2021, vide Tender Specification no. 12/CE(COMM)/UPCL/12. Details of the same is hereunder:

Month	Period	Timings		Quantum of Power (MW)	Minimum Bid Quantum (MW)	Delivery Point
		From	To			
Oct-2021	01.10.2021 to 31.10.2021	00:00	24:00	300	50	State periphery
Nov-2021	01.11.2021 to 30.11.2021	00:00	24:00	300	50	
Dec-2021	01.12.2021 to 31.12.2021	00:00	24:00	300	50	

- 16 The Petitioner submitted that initial price offer (IPO) was opened on 04.10.2021 and e-Reverse Auction (e-RA) was conducted on 06.10.2021 itself. UPCL submitted M/s Power Finance Corporation Consulting Limited (M/s PFCCCL) provided the results of e-RA after carrying out bucket filling. The Petitioner submitted that after detailed consideration of the various offers received and in light of the prior in-principle approval of the Commission, LoAs were issued to 03 no. bidder namely M/s PTCIL, M/s TPTCL and M/s NVVNL based on tariff and quantum of power.
- 17 The Petitioner submitted that, the Commission in the tariff order for FY 2021-22 had allowed the power purchase rate for meeting the deficit @ Rs. 4.00/unit. The Petitioner further submitted that, UPCL vide letter no. 3824/UPCL/Com dated 08.10.2021 had apprised the Commission about the power situation and the detailed list of offers received against the above-mentioned tender and had requested to accord in-principle approval for procurement, and the Commission vide letter no. UERC/6/TF-533/2021-22/2021/620 dated 12.10.2021 had accorded the in-principle approval for procurement of the above said short term power.
- 18 The Petitioner submitted that in light of the above & in-principle approval accorded by the Commission, applicant company was desirous of purchasing the entire deficit energy on the terms and conditions as agreed between the parties as per the terms and conditions laid down in draft Power Purchase Agreements. In this regard, UPCL also submitted copies of Draft Power Purchase Agreements to be entered respectively with M/s PTCIL,

M/s TPTCL & M/s NVVNL.

1.9 Meanwhile, M/s PTCIL vide its submission dated 12.01.2022, M/s TPTCL vide its submission dated 18.01.2022 and M/s NVVNL vide its submission dated 27.01.2022 have submitted their comments on the respective draft PPAs proposed by UPCL for procurement of power on short term basis.

1.10 The Petitioner's submission, the submission of Respondents, i.e. M/s PTCIL, M/s TPTCL and M/s NVVNL, 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 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.

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.*
- ...”

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 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.

217 Further, 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 takes cognizance of the fact that while approving the cost of power purchase for FY 2021-22 in the tariff Order dated 26.04.2021, the Commission had approved power purchase rate of Rs. 4.00/kWh to meet the deficit power purchase. However, the LOA's were issued to respective bidder by the Petitioner over and above the rates approved by the Commission for deficit power purchase in FY 2021-22, as tabulated below:

Month	Name of Bidder	Quantum of Power (MW)	Rate at Delivery Point (Rs./kWh)	Delivery Point
Oct-2021 (11.10.2021 to 31.10.2021)	M/s TPTCL	75	6.00	Uttarakhand State periphery
Nov-2021	M/s TPTCL	80	5.38	
	M/s NVVNL	50	5.38	
Dec-2021	M/s PTCIL	50	4.90	
	M/s TPTCL	80	4.90	

In this regard, as also submitted by the Petitioner, the Commission had on the request made by UPCL, owing to scenario of coal shortage and looming power crisis across the nation in the month of October, 2021 and high rate of gas prices, accorded in principle approval to UPCL for procurement of power during the aforesaid months at the rates and quantum stated above. Accordingly, the same is being considered and adopted by the Commission.

218 M/s PTCIL submitted that in Page No. 1 of their draft PPA, the heading should be modified to replace the words "PTC INDIA LIMITED (PTCIL)" with "PTC INDIA LIMITED (PTC)". In response to the same, UPCL agreed for the proposed change. The Commission also accepts the proposed change to be carried out in respective PPA.

219 M/s PTCIL further submitted that, in their draft PPA at Page No. 2, point (ii) & (iii), there is a typographical error as mentioned below:

"ii) UPCL had invited tender on DEEP Portal against tender specification no. 11/CE(COMM)/UPCL-11/2021-22 for short term purchase of power on RTC basis for the month of Oct-21.

iii) UPCL has issued the Letter of Intent (LoI) vide letter no. 3832/UPCL/Comm/Tender/SE dated 08-10-2021 to M/s PTC India Limited for purchase of power against tender specification no. 11/CE(COMM)/UPCL-11/2021-22. "

M/s PTCIL submitted that the same should be corrected as follows:

“ii) UPCL had invited tender on DEEP Portal against tender specification no. 12/CE(COMM)/UPCL-12/2021-22 for short term purchase of power on RTC basis for the month of Oct-21 to Dec-21.

iii) UPCL has issued the Letter of Intent (LoI) vide letter no. 3832/UPCL/Comm/Tender/SE dated 08-10-2021 to M/s PTC India Limited for purchase of power against tender specification no. 12/CE(COMM)/UPCL-12/2021-22.”

In response to the same, UPCL agreed to correct the aforesaid typographical error in the original PPA. The Commission also accepts the proposed change to be carried out in respective PPA.

21.10 M/s PTCIL further submitted that clause no. 13 of the draft PPA should be modified and corrected in line with the tender document floated by UPCL as follows:

Original Clause No. 13 of the draft PPA:

“13. Arbitration

where any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the Appropriate Commission. All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996.”

Changes proposed in Clause No. 13 of the draft PPA by M/s PTCIL

All differences or disputes between the parties arising out of or in connection with this matter shall be settled through the statutory provisions under the Electricity Act 2003.

Where any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the Appropriate Commission. All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996.

Notwithstanding any legal dispute, disagreement or difference, the parties hereto, continue to perform the respective obligations under the Power Purchase Agreement.”

In response to the same, UPCL submitted that the modifications/ changes may be added in original PPA after approval of the Commission.

The Commission analyzed the submission of the Petitioner and the Respondent in this regard and is of the view that based on the terms and conditions of the tender document floated by UPCL, the aforesaid response of M/s PTCIL appears to be justified as the same is in line with the terminology mentioned in the tender document. Accordingly, the Commission directs UPCL to carry out the aforesaid modification in all the three draft PPAs to be executed with M/s PTCIL, M/s TPTCL & M/s NVVNL respectively as follows:

*All differences or disputes between the parties arising out of or in connection with this matter shall be settled through the statutory provisions under the Electricity Act 2003, **as amended from time to time.***

*Where any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the Appropriate Commission. All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996, **as amended from time to time.***

Notwithstanding any legal dispute, disagreement or difference, the parties hereto, continue to perform the respective obligations under the Power Purchase Agreement."

- 21.11 M/s PTCIL & M/s NVVNL submitted that the Clause 14 of the draft PPA regarding "Supply of Excess Energy" was not part of the tender document floated by UPCL and may be removed from the draft PPA.

In response to the same, UPCL submitted that this is the general T&C, and it has always remained a part of Power Purchase Agreement in previous years, and PPA has also been signed earlier by UPCL with M/s PTC India Ltd etc. on same T&C. UPCL submitted that since this condition is unbiased and is applicable to both the parties, therefore the same may be allowed.

The Commission analysed the submission of both the Petitioner and the Respondent and is of the view that as the said clause was not part of the tender document floated by UPCL, therefore, the same may also be removed from all the three draft PPAs to be executed with M/s PTCIL, M/s TPTCL & M/s NVVNL respectively to maintain consistency & transparency.

21.12 M/s TPTCL submitted that Clause 9 (iii) of the draft PPA regarding “Billing” should be removed as the same was not specified in the tender document floated by UPCL.

Clause 9 (iii) of the draft PPA reads as follows:

“Tata Power Trading Company Limited shall be responsible for reconciliation of the Regional Energy Account (REAs). Difference, if any, in REA accounts would be got reconciled by TATA POWER TRADING COMPANY LIMITED within 30 Days from the issue of REA, failing which the quantum of power as per REA of the Northern Region would be the basis of for payment of bills.”

In response to the same, UPCL agreed that the said clause was not part of the tender document floated by it and, accordingly, the same would be removed from the original PPA to be executed with M/s TPTCL.

The Commission analyzed the submission of the Petitioner and the Respondent in this regard and is of the view that, since the said clause was not part and parcel of the tender document floated by UPCL, therefore, the same should not form part of the final PPAs to be executed with the bidders. Accordingly, the Commission directs UPCL to remove the said clause from all the three PPAs to be executed with M/s PTCIL, M/s TPTCL, and M/s NVVNL respectively.

21.13 The other provisions of the draft PPAs have been examined which are in accordance with the Regulations. However, UPCL and M/s PTCIL, M/s TPTCL and M/s NVVNL respectively are hereby directed to incorporate the changes proposed as above by the Commission in the draft PPAs before signing the same 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)/Chairman (I/c)