

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 06 of 2022

In the matter of:

Application seeking prior approval of Hon'ble Uttarakhand Electricity Regulatory Commission on the Power Purchase Agreement to be executed between UPCL & UJVN Ltd for Vyasi HEP (120 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: February 03, 2022

This Order relates to the Petition dated 07.01.2022 filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Petitioner" or "Licensee") seeking approval of the Power Purchase Agreement (PPA) to be executed by it with M/s UJVN Limited (hereinafter referred to as "Respondent" or "Generator" or "UJVNL") for procurement of power from the Respondent's Vyasi Hydro Electric Plant (hereinafter referred to as "Vyasi HEP" or "project") having capacity of 120 MW situated within the State of Uttarakhand.

1. Petitioner's Submissions

- 1.1. UPCL has filed the Petition seeking approval of the Commission on the draft PPA for procurement of energy generated from the Respondent's Vyasi HEP under Section 86(1)(b) of the Electricity Act, 2003 and clauses 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 as per the provisions of the Electricity Act, 2003 read with

provisions of UERC (Conduct of Business) Regulations, 2014 and Distribution and Retail Supply License, the Petitioner is required to get the approval of the Commission on the Power Purchase Agreement entered into with the Generating Company.

- 1.3. The Petitioner submitted that the Respondent vide its letter dated 26.07.2021 had forwarded its proposal to sign a PPA for supply of electricity from Vyasi HEP to UPCL. The Petitioner submitted that the capital cost of the project would be determined by the Commission in accordance with the provisions of UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021. The Petitioner also submitted that in order to have an idea of tariff of the Vyasi HEP, a tentative levelled tariff of the project for useful life has been calculated considering the capital cost of Rs. 1777.30 Crore which is approximately Rs. 9.18/kWh ex-bus. The Petitioner also submitted that the power from the said project would also help UPCL to meet out its HPO in future in view of directions issued vide MoP notification no. 23/03/2016-R&R dated 29.01.2021.
- 1.4. 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 letter dated 18.01.2022, on the Clauses of the draft PPA which was forwarded to UPCL for counter reply. UPCL submitted its rejoinder on 01.02.2022. Comments of the Respondent and rejoinder of the Petitioner has been dealt 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 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. Further, Regulation 74(1) of UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021 specify as under:

“74. Approval of power purchase agreement/arrangement

(1) Every agreement or arrangement for power procurement by a Distribution Licensee from a Generating Company or Licensee or from other source of supply entered into after the date of effectiveness of these Regulations shall come into effect only with the prior approval of the Commission:

Provided that the prior approval of the Commission shall be required in respect of any agreement or arrangement for power procurement by the Distribution Licensee from a Generating Company or Licensee or from any other source of supply on a standby basis.

Provided further that the prior approval of the Commission shall also be required for any change to an existing arrangement or agreement for power procurement, whether or not such existing arrangement or agreement was approved by the Commission”

2.1.5. The Commission asked UPCL to submit the need/requirement of power w.r.t. PPA proposed to be entered with UJVNL, in response to which UPCL submitted its energy requirement and energy availability projections for FY 2022-23 to FY 2024-25. UPCL also submitted that the said plant is developed with the equity provided by GoUK and UJVNL is a state-owned entity. Further, the generation from Vyasi HEP will help UPCL to meet its HPO as and when applied in future in line with the notification of MoP, GoI.

2.1.6. UPCL has projected availability from Vyasi HEP equivalent to 396 MUs in its Business Plan and Tariff Petition filed before the Commission for the fourth Control Period FY 2022-23 to FY 2024-25. Despite considering this availability UPCL has projected procurement from short term sources to meet the deficit.

- 2.1.7. The Commission in view of the above power deficit scenario faced by the discom, is of the view that the approval of proposed draft PPA with UJVNL holds merit as the same would enable discom to procure power through firm sources and thus reducing its dependency on short term power procurement to bare minimum which is uncertain as have been experienced in the past months where the rate of power at IEX went up to as high as Rs. 20 per unit.
- 2.1.8. In view of the above and in accordance with the requirement of the Act and Regulations referred above, UPCL as a distribution licensee is required to seek approval of the Commission of the PPAs entered or proposed to be entered into by it. Accordingly, the draft PPA between UPCL and UJVNL is being examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003, MYT Regulations, 2021 and also in light of the Schemes/guidelines issued by MoP in this regard.

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

- 2.2.1. The PPA is to be entered into between UPCL and the generator for supply of power from the generator's Vyasi HEP having capacity of 120 MW situated within the State of Uttarakhand.
- 2.2.2. The PPA submitted by UPCL and the submissions of the Respondents 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 need to be filled up and completed while the final PPA is being signed.
- b) Para 3 of the draft PPA provides for the intention of UJVNL to supply entire 120 MW power to UPCL as follows:

"AND WHEREAS, UJVN LTD. desires to sell entire 120 MW (2x60) power scheduled to be generated in UJVN Ltd.'s Vyasi HEP facility".

In the said para, the Petitioner is required to incorporate the provision of free electricity to home state as royalty, if any. Accordingly, the said Para shall be read as

“AND WHEREAS, UJVN LTD. desires to sell entire 120 MW (2x60) (excluding royalty power to State, if any) power scheduled to be generated in UJVN Ltd.’s Vyasi HEP facility.

c) Clause 1.1 of the Draft PPA provides the definition of ‘Main Meter’ in accordance with the definition specified by Central Electricity Authority vide its CEA (Installation and Operation of Meters) Regulations, 2006. However, in the rest of the PPA, ‘Bill Meter’ term has been used instead of ‘Main Meter’. Accordingly, the Petitioner is directed to replace ‘Bill Meter’ with ‘Main Meter’ in the PPA at relevant places.

d) Clause 1.12 of the Draft PPA provides as follows:

“1.12 “Inter-connection Point” means the point where the power from the power station switchyard bus of the Seller is injected into the intrastate transmission system.”

Interconnection point for supply of electricity is specified in Regulation 3(45) of the UERC (MYT) Regulations, 2021. Accordingly, Clause 1.12 as mentioned in the Draft PPA needs to be modified in accordance with the definition provided in the aforesaid Regulation. The same shall be read as follows:

“1.12 “Inter-connection Point” means the point where the power from the power station switchyard bus of the Seller is injected into the intrastate transmission system (including the dedicated transmission line connecting the power station with the intra State transmission system)”.

e) The draft PPA does not define ‘Due Date’. Accordingly, following clause shall be inserted after Clause 1.22:

““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.”

f) Clause 2 of PPA deals with power purchase, sale, allotment of power and tariff. In the matter, the Respondent submitted that the Vyasi project is connected to

intra state network of PTCUL. Thus, the transmission charges would be included in the ARR of PTCUL. However, in case any transmission charges arises in future the same should be borne by UPCL. In the matter, it is pertinent to mention that the transmission charges are payable in accordance with the provision of prevalent regulations and, therefore, does not require any change in Clause 2.

- g) Clause no. 3 has been repeated twice in the draft PPA with heading “Interconnection and Parallel Operation” and page no. 3 of the draft PPA and “Supply Schedule” at page no. 4 of draft PPA. Accordingly, the Petitioner is directed to renumber the clauses.
- h) Clause 4.4 of the draft PPA refers to the Billing Procedure and Payments. The Clause in the draft PPA is as under:

“4.4 The accounting of the net energy import by the UJVN Ltd. for its project consumption and for colonies will be based on the JMR statement signed jointly by the respective division of the UPCL/PTCUL/UJVN Ltd. And shall be billed as per the temporary supply as per the terms of the Regulations.”

The Respondent in its reply has proposed a modification in Clause 4.4 of the draft PPA. The Respondent has submitted that if UJVNL opts for supply of housing colony from UPCL distribution Network then the departmental consumers may be billed as per respective supply schedule approved by the Commission. Accordingly, following amendment is proposed by UJVNL in Clause 4.4:

“4.4 The accounting of the energy consumed by the UJVNL for its project consumption and for colonies will be based on the JMR statement signed jointly by the respective division of the UPCL/PTCUL/UJVNL and shall be netted off with the Energy Export by the Project. In case of supply to the colonies is given by UPCL through its distribution Network, then distribution licensee will generate bills to these consumers as per the applicable Tariff Schedule of Distribution Licensee.”

In the matter, UPCL vide its rejoinder dated 01.02.2022 submitted that clause 4.4 of the draft PPA pertains to the scenario regarding net energy imported by UJVNL, which implies that in any billing month when the import of energy is in excess to export of energy by UJVNL in such case the regulation mandates

such consumption to be accounted for and billed considering the same as temporary supply.

With regard to purchase of electricity by the generating station/start up power, Regulation 55 of MYT Regulations, 2021 specifies that any person who operates a generating station may purchase electricity from distribution licensee in case a plant is not in a position to generate electricity to meet its own requirement or for start-up and where the power is sold to state distribution licensee, the electricity procured by the generating company to meet its own requirement will be adjusted from the electricity sold to the distribution licensee. The relevant extract of Regulation 55 of MYT Regulations, 2021 is as follows:

“55. Purchase of Electricity by the Generating station/Start Up Power:

(1) XXX

(2) In case of electricity generated from the plant is sold to the State Distribution Licensee, the electricity (in kWh) procured by the Generating Station from the State Distribution Licensee to meet its requirement of startup power, will be adjusted from the electricity sold to the Distribution Licensee. The Distribution Licensee shall make the payment for net energy sold to it by the Generating Company, i.e. difference of the total energy supplied by the Generating Company to the Distribution Licensee and energy supplied by the Distribution Licensee to the Generating Company.

(3) In case of electricity generated from the plant is sold to third party other than State Distribution Licensee, then such purchase of electricity by the generating company from the State distribution licensee, shall be charged as per the tariff determined by the Commission for temporary supply under appropriate “Rate Schedule of Tariff” for Industrial Consumers considering maximum demand during the month as the contracted demand for that month. The Fixed/Demand charges for that month shall be payable for the number of days during which such supply is drawn. Such Generating Company shall, however, be exempted from payment of monthly minimum charges or monthly minimum consumption guarantee charges or any other charges.”

Further, with regard to supply of electricity by the generating companies to the housing colonies of its operating staff, The Electricity (Removal of Difficulty) Fourth Order, 2005, specifies as follows:

“2. Supply of electricity by the generating companies to the housing colonies of its operating staff- The supply of electricity by a generating company to the housing colonies of, or township housing, the operating staff of its generating station will be deemed to be an integral part of its activity of generating electricity and the generating company shall not be required to obtain licence under this Act for such supply of electricity.”

It is explicitly clear from the above order that the supply of electricity by the generating company to the housing colonies where its operating staff resides, i.e. colony in the vicinity of the generating station will be deemed to be an integral part of its activity of generating electricity. Accordingly, the comment of the Respondent to allow supply of colonies situated within the premises of generating plant through the network of UPCL is not tenable and the billing in case of excess of import over export shall be billed as per the temporary supply as per the terms of the prevailing regulations. Accordingly, the proposal of Respondent is not accepted and, therefore, no modification is required in the aforesaid Clause of PPA. However, it is to be remembered that UJVN Ltd. cannot supply electricity to its employees residing out of the vicinity of its generating station and there electricity will be supplied by UPCL only.

- i) Clause 5.10 of the Draft PPA refers to mechanism on non-payment by UPCL of electricity dues within 60 days. The Clause in the draft PPA is as under:

“5.10 If UPCL fails to pay a Monthly Bill(s) or Supplementary Bill or part thereof within 60 (sixty) day, then, UJVN Ltd. may draw upon the Letter of Credit with prior intimation of at least 7 days to UPCL, and accordingly the bank shall pay without any reference or instructions from UPCL, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i. A copy of the Monthly Bill(s) or Supplementary Bill which has remained unpaid to UJVN Ltd. and;*
- ii. A certificate from the UJVN Ltd. to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond 60 (sixty) days.”*

The Respondent in its submission dated 18.01.2022 proposed to allow draw

the Letter of Credit without any prior intimation to UPCL as it does not seem reasonable to intimate even after laps of 60 days of bill receipt. Therefore, the clause may be amended as follows:

“5.10 If UPCL fails to pay a Monthly Bill(s) or Supplementary Bill or part thereof within 60 (sixty) day, then, UJVN Ltd. may draw upon the Letter of Credit and accordingly the bank shall pay without any reference or instructions from UPCL, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i. xxx*
- ii. xxx”*

In the matter, UPCL vide its rejoinder dated 01.02.2022 clarified that UPCL by incorporating a provision of 7 days prior notice proposes to have a knowledge of the possible default and in order to be in a position to evade such a scenario, wanted UJVNL to atleast notify it a week before the expiry of 60 days so that the default may be avoided.

The Commission observes that as per from the Clause 5.10 of the draft PPA intimation for drawl of Letter of Credit needs to be given after expiry of 60 days. However, as mentioned in above paragraph, the intent of UPCL is to have a prior knowledge of the possible default before expiry of 60 days. Accordingly, the Commission is of the view that the aforesaid clause shall be replaced with the following clause:

“5.10 UPCL shall pay a Monthly Bill(s) or Supplementary Bill or part thereof within 60 days from the date of receipt of said bills issued by UJVN Ltd.

UJVN Ltd. shall notify UPCL atleast 7 days before the expiry of 60 days for payment of the bills, however, if UPCL fails to pay the bill even after expiry of 60 days, then UJVN Ltd. may draw upon the Letter of Credit and accordingly the bank shall pay without any reference or instructions from UPCL, an amount equal to such Monthly Bill(s) or Supplementary Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i. xxx*
- ii. xxx”*

j) With regard to Annexure-I and Annexure-II, the Respondent submitted that there

is no reference of Annexure-I in the PPA, therefore, same may be deleted and Annexure-II may be renamed as Annexure-I. In the matter, UPCL submitted that Annexure-I requires certain information which has been made part of the draft PPA as per Clause 29.

In the matter the Commission observed that Annexure-I contain the details of the generating Company's generation facilities and Annexure-II comprises the detail of interconnection facilities provided by the generating company. Accordingly, the proposal of the Respondent is not tenable.

k) After Clause 31 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.

2.2.3. 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.

2.2.4. With this, Petition no. 6 of 2022 stands disposed.

3. Ordered Accordingly.

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

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