

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 44 of 2021

In the matter of:

Application seeking approval on the Power Supply Agreements signed between UPCL and M/s Solar Energy Corporation of India (SECI).

In the matter of:

Uttarakhand Power Corporation Ltd. ...Petitioner

AND

M/s Solar Energy Corporation of India. ...Respondent

CORAM

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

Shri M.K. Jain Member (Technical)

Date of Order: February 23, 2022

This Order relates to the Petition filed by Uttarakhand Power Corporation Ltd., a distribution licensee (hereinafter referred to as "UPCL" or "Petitioner") seeking approval of Power Supply Agreements (PSA) for purchase of power from Solar Energy Corporation of India (hereinafter referred to as "M/s SECI" or "the Respondent").

1. Background

- 1.1 The Petitioner filed Petition on 29.11.2021 seeking approval of PSAs executed with M/s SECI. The Petition has been filed under Section 86(1)(b) of the Electricity Act, 2003, license conditions issued to UPCL, Regulation 74(1) of MYT Regulations, 2021, Regulation 39(3) of UERC (Conduct of Business) Regulations, 2014.
- 1.2 The Petitioner submitted that for FY 2021-22 the Solar and Non-Solar RPO has been fixed at 10.5% by the Commission. The Petitioner submitted that considering the total solar installed capacity in the State till date and assuming the further addition in the capacity till 31.03.2022 it is expected that the solar RPO will remain in deficit against the set target.

The Petitioner further submitted that the non-solar availability is also expected to remain neck to neck with regard to non-solar RPO requirement.

- 1.3 The Petitioner further submitted that the RPO targets for FY 2022-23 has been fixed at 11% for solar and non-solar categories and considering the focus on increasing solar power generation in the country it is expected that the solar RPO targets will further increase in the upcoming years and for fulfilling the same UPCL will require additional solar energy. The Petitioner further submitted that, with the increase in consumption the non-solar RPO requirement is also expected to increase over time.
- 1.4 The Petitioner submitted that M/s SECI had submitted various proposals to UPCL regarding purchase of solar RE power, and the Petitioner after evaluation of all the proposals and considering the requirement of UPCL in the upcoming years for achieving the increasing Solar RPO targets has considered the following proposals of M/s SECI:
 - (i) 100 MW Quantum @ Rs. 2.37/unit under Solar Tranche-IX with waiver of full transmission charges for life of the project.
 - (ii) 100 MW Quantum @ Rs. 2.90/unit (3% Y-o-Y escalation upto 15th year) under Solar RTC power (to be developed by Renew Solar Power Pvt. Ltd.) and waiver of full transmission charges for life of the project.
- 1.5 The Petitioner submitted that both the above proposals are with waiver of full transmission charges for the life of the project, and there will also be no impact of BCD (Basic Custom Duty), to be paid on import of solar panels/modules/wafers for the plants, on the quoted rate. The Petitioner further submitted that considering the reasonable rates of power and that too without any transmission charges for the life and increasing RPO targets the above proposals for PSAs have been considered by the Petitioner.
- 1.6 The Petitioner submitted that UPCL vide its letter dated 30.09.2021 has apprised and sought approval of the Commission for signing Power Supply Agreements with M/s SECI on the above proposals, and the Commission vide letter dated 07.10.2021 had provided its in-principle approval for signing Power Supply Agreements with M/s SECI for purchase of Solar power.
- 1.7 The Petitioner submitted that it had on 12.10.2021 signed Power Supply Agreements for

the following proposals:

- (i) 100 MW Quantum @ Rs. 2.37/unit under Solar Tranche-IX with waiver of full transmission charges for life of the project.
- (ii) 100 MW Quantum @ Rs. 2.90/unit (3% Y-o-Y escalation upto 15th year) under Solar RTC power (to be developed by Renew Solar Power Pvt. Ltd.) and waiver of full transmission charges for life of the project.

- 1.8 The Petitioner submitted that UPCL 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 respective Power Supply Agreements.
- 1.9 The Petitioner, accordingly, requested the Commission to grant approval on the PSAs executed between M/s SECI and UPCL for sale/purchase of electricity as discussed in preceding paras.
- 1.10 The Commission admitted the Petition and forwarded a copy of the Petition to the Respondent for submission of its comments on the same.
- 1.11 M/s SECI vide its mail dated 22.12.2021 submitted its comments in the matter, in response to which UPCL vide its letter 25.01.2022 submitted its rejoinder on the same.
- 1.12 The Petitioner's submission, Respondent's submission and Commission's view on the same are dealt with at relevant paras of this Order.

2. Commission's Views & Decisions

2.1 Legal Requirement for approval of PSA

- 2.1.1 A PSA 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”

(Emphasis added)

2.1.5 Further, Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021, provides as:-

“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) The Commission shall review an application for approval of power procurement agreement/arrangement having regard to the approved power procurement plan of the Distribution Licensee and the following factors:

- a) Requirement for power procurement under the approved power procurement plan;*
- b) Adherence to a transparent process of bidding in accordance with guidelines issued by the Central Government;*
- c) Adherence to the terms and conditions for determination of tariff specified under these Regulations where the process specified in (b) above has not been adopted;*
- d) Availability (or expected availability) of capacity in the intra-State transmission system for evacuation and supply of power procured under the agreement/arrangement;*
- e) Need to promote co-generation and generation of electricity from renewable sources of energy."*

2.1.6 The Respondent, M/s SECI in its submission clarified that UPCL in the Petition has mentioned that both the proposals, as discussed in preceding paras, are with waiver of full transmission charges for life of the project, however, in actual the waiver is only for ISTS transmission charges on transmission of electricity generated from solar and wind sources of energy as per the Order notified by MoP, GoI. UPCL in response to the same submitted that the clarification given by the Respondent is in line with the contention of the Petitioner.

2.1.7 The Commission has analyzed the submission made by the Petitioner and the Respondent and is of the view that the aforesaid procurement of 200 MW appears reasonable as not only it would aid in meeting the RPO but also in meeting the power deficit. Moreover, the rate at which the power has been offered to the Petitioner appears to be very competitive as the same is with waiver of ISTS charges for life of the project, and also there is a provision for waiver of Basic Customs Duty (BCD) on the quoted rate. The provision related to waive of BCD is reproduced hereunder:

PSA related to Solar Tranche-IX:

“8.2.6 The following proposal of MNRE to impose BCD on solar cells and modules (without grandfathering of bid out projects) has been agreed

Items	CTH	Upto 31.03.2022	w.e.f. 01.04.2022
Solar Module	8541412	0%	40%
Solar Cell	8541411	0%	25%

As per commitment from SPD, if the agreement between SECI and buying Entity is signed on or before 12.10.2021, the SPD will provide the above waiver on claim of Basic Custom Duty mentioned in this PSA. If there is any further revision/modification to the said BCD notification or any new notification on the BCD matter, resulting in any further increase of BCD, Developers shall remain entitled to exercise rights for any claims under Change in Law of the PSAs, viz. such revision/modifications (any incremental impact over prescribed rates of BCD as above) or any new notification.”

Emphasis added

PSA related to Solar RTC power

“8.2.4 The following proposal of MNRE to impose BCD on solar cells and modules (without grandfathering of bid out projects) has been agreed:

Items	CTH	Upto 31.03.2022	w.e.f. 01.04.2022
Solar Module	8541412	0%	40%
Solar Cell	8541411	0%	25%

As per commitment from RPD, if the agreement between SECI and buying Entity is signed on or before 12.10.2021, the RPD will provide the above waiver on claim of Basic Custom Duty mentioned in this PSA. If there is any further revision/modification to the said BCD notification or any new notification on the BCD matter, resulting in any further increase of BCD, Developers shall remain entitled to exercise rights for any claims under Change in Law of the PSAs, viz. such revision/modifications (any incremental impact over prescribed rates of BCD as above) or any new notification.”

Emphasis added

2.1.8 The Respondent also submitted that it has requested the Petitioner to sign a supplementary PSA to the PSA dated 12.10.2021 in respect of RTC scheme-I to

modify clause 6.3.4(a) of the said PSA regarding rebate wherein the percentage of rebate payable to buying entity has been inadvertently mentioned as 1% instead of 1.5%, for the payments made within a period of five(5) days of the presentation of bill through e-mail. In response to the same, the Petitioner submitted that it has no objection in modifying the clause of increasing the rebate from 1% to 1.5% as the same is in line with the CERC (Terms and Conditions for Tariff Determination from RE Sources) Regulations, 2020. The Petitioner further submitted that the signing of supplementary agreement regarding the above is under process.

2.1.9 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 on the PSA entered or proposed to be entered into by it. Accordingly, the draft PSA between UPCL and M/s SECI 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 Consistency of the PSA with the Regulations

2.1.10 The PSAs submitted by UPCL have been examined in light of the relevant rules & regulations, and as such the Commission has not observed any major inconsistency w.r.t. the same, except the clause of rebate in the PSA related to RTC scheme -I. In this regard, the Petitioner has already informed that the signing of supplementary agreement w.r.t. the same is under process.

2.1.11 UPCL is hereby directed to submit the final signed supplementary PSA before the Commission within 15 days of the date of the Order.

2.3 With this, Petition no. 44 of 2021 stands disposed.

2.4 Ordered accordingly.

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

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