

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 61 of 2024

In the matter of:

Petition seeking approval of the Commission for Advance & Return Energy Banking to M/s Uttar Pradesh Power Corporation Limited under an Energy Banking Agreement with the Uttarakhand Power Corporation Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

In the matter of:

M/s Uttar Pradesh Power Corporation Limited

... Respondent

CORAM

Shri M.L. Prasad

Chairman

Shri Anurag Sharma

Member (Law)

Date of Order: January 06, 2025

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 Energy Banking Agreement (hereinafter referred to as "EBA") with M/s Uttar Pradesh Power Corporation Limited (hereinafter referred to as "M/s UPPCL" or "Respondent") for advance and return energy banking.

1. Petitioner's Submissions

- 1.1 The Licensee under Section 63 and 86(1)(b) of the Electricity Act, 2003 and in accordance with Regulation 81(1) and 82 of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021, filed a Petition dated 23.11.2024 seeking approval of the Commission

for advance banking (receipt) of appx. 64.40 MU to UPCL from M/s UPPCL (during peak hours arrangement) in the month of January, 2025 to 15th February, 2025 which shall be returned back by UPCL to UPPCL with zero premium percentage between 01.07.2025 to 31.08.2025, under an Energy Banking Agreement to be executed with M/s UPPCL.

- 1.2 UPCL submitted that the proposal for banking of power between UPCL and M/s UPPCL was sent to the office of Principal Secretary (Power), Government of Uttarakhand vide letter No. SPATC/UPCL-Banking of Power/352 dated 02.09.2024 by Chairman, M/s UPPCL. UPCL submitted that after deliberations on power scenario in the State of Uttarakhand with UPCL's Consultant (M/s Mercados Energy Markets India Pvt. Ltd.) and the concerned officers of UPCL, it has been examined that the proposed banking transaction by M/s UPPCL was not viable according to the current requirement of Uttarakhand State, as UPCL has already arranged banking power on RTC basis from December, 2024 to March, 2025 after in-principle approval vide Commission's letter dated 31.07.2024, however, UPCL could import power in some slots during peak hours where UPCL is in the power deficit stage and can return the power from July, 2025 to August, 2025.
- 1.3 UPCL submitted that a modified proposal was communicated to M/s UPPCL vide letter no. 4956/UPCL/Banking/MD dated 30.09.2024 as per availability and requirement of UPCL. UPCL submitted that it had projected the demand and availability scenario in the State for FY 2024-25 in which the deficit in peak hours from 01.01.2025 to 15.02.2025 came to be around 300 MW to 400 MW without banking. UPCL further submitted that the tender for purchase of medium-term power was invited in which the energy rates were on a much higher side even after negotiation of energy rates and quantum of power, and the same was scrapped after approval of the competent authority.
- 1.4 UPCL further submitted that M/s UPPCL vide emails dated 09.10.2024 and 04.10.2024 proposed revised offer for banking arrangement, and in reply to the same and keeping in view all the power procured/allocated, UPCL re-revised the offer and the same was proposed vide email dated 09.10.2024 to M/s UPPCL, and in response to the same, M/s UPPCL vide email dated 10.10.2024 proposed the revised proposal for banking arrangement between M/s UPPCL and UPCL.

- 1.5 UPCL submitted that their consultant after deliberations on power scenario of the State of Uttarakhand, proposed that the banking transaction by M/s UPPCL is viable according to the present condition of Uttarakhand State. UPCL submitted that as per previous trend, UPCL can export power during the period from July, 2025 to August, 2025 (Rainy season) after arranging of power through various mode.
- 1.6 UPCL submitted that considering the necessity of power requirement in the State in the peak hours it seems that the offer of energy banking arrangement of M/s UPPCL may be considered as per terms and conditions of banking agreement to be executed between UPCL & M/s UPPCL. UPCL submitted that provisional consent (after approval of competent authority) for energy banking arrangement was issued by UPCL and after in-principle approval of the Commission, LoI has been issued to M/s UPPCL vide letter no. 5496/UPCL/CE(Comm)/Banking/SE dated 28.10.2024 as per the quantum and the period as summarized in the table below:

From UPPCL to UPCL			From UPCL to UPPCL		
Hours	01-31 Jan'2025	01-15 Feb'2025	Hours	01-31 Jul'2025	01-31 Aug'2025
06:00-10:00	200	200	00:00-04:00	150	196.25
18:00-21:00	200	200	22:00-24:00	150	196.25
No of Days	31	15	No of Days	31	31
No of Hours	7	7	No of Hours	6	6
Monthly MU's	43.4	21	Monthly MU's	27.9	36.5
Total MU's	64.4		Total Return MU's	64.4	

- 1.7 UPCL submitted that, accordingly, Chief Engineer, Power Purchase Agreement Directorate, UPPCL vide letter No. SPATC-515/UPCL-Banking of Power/LoI/ 432 dated 11.11.2024 has informed that M/s UPPCL is pleased to enter into Power Banking Agreement with UPCL.
- 1.8 The Petitioner submitted that Regulation 81(1) of Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021, in short, UERC Tariff Regulations, 2021 lays down that the power purchase/ banking/trading agreement as approved by the Commission shall be considered to determine the power purchase cost of the distribution licensee and Regulation 82 of Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021, lays down that any power purchased by distribution licensee over and above the requirement of power approved by the Commission or variation in the mix of power

purchased in any year shall be considered by the Commission if it is for reasons beyond the reasonable control of the Distribution Licensee, and the resultant financial loss or gain shall be adjusted in next years' tariff.

- 1.9 UPCL further submitted that the past Tariff Order lays down that any variation during any quarter of a financial year in excess of 5 percent of the quantum or cost of power procurement for such quarter, as approved by the Commission in the power procurement plan of the distribution licensee, shall be done only with the prior approval of the Commission. Accordingly, in compliance with the above provisions, the Petitioner is filing the present Petition for approval of the Commission.
- 1.10 The Petitioner submitted that in view of the facts and circumstances mentioned above, the Commission may like to approve the draft Energy Banking Agreement alongwith the banked power mentioned therein.
- 1.11 A copy of the Petition was forwarded to M/s UPPCL for comments. In the matter, M/s UPPCL vide its submission dated 19.12.2024 submitted that they have issued LoI dt. 11.11.2024 to UPCL for energy banking between M/s UPPCL and UPCL.

2. Commission's Views & Decisions

2.1 Legal Requirement for approval of PPA

- 2.1.1 A power banking agreement is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.
- 2.1.2 Regulation 81(1) of the UERC Tariff Regulations, 2021 provides that power purchase/banking/trading agreements as approved by the Commission shall be considered to determine the power purchase cost of the distribution licensee. Further, 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.

....”

2.1.5 The Commission in its tariff Orders has been directing UPCL to bank the surplus energy and withdraw the same during the peak period as it is the most cost-effective arrangement. The proposal for banking of power was received by the Principal Secretary (Power), Government of Uttarakhand vide letter dated 02.09.2024 from the Chairman, UPPCL. After deliberation, UPCL came to an understanding that as per the projected demand and availability scenario of the State for FY 2024-25, the deficit in peak hours from 01.01.2025 to 15.02.2025 comes to be around 300 MW to 400 MW without banking, and accordingly, UPCL proposed a revised offer to M/s UPPCL keeping in view the deficit scenario after considering the power procured/allocated.

In response, M/s UPPCL revised its proposal vide email dated 10.10.2024, which after due deliberation, seemed viable to UPCL. Accordingly, UPCL, considering the necessity of power requirement in the State during peak hours accorded provisional consent to M/s UPPCL and after seeking in principle approval from the Commission for the aforesaid arrangement issued a Letter of Intent to M/s UPPCL vide letter dated 28.10.2024 as per the quantum and duration as summarized in the Table below:

From UPPCL to UPCL			From UPCL to UPPCL		
Hours	01-31 Jan'2025	01-15 Feb'2025	Hours	01-31 Jul'2025	01-31 Aug'2025
06:00-10:00	200	200	00:00-04:00	150	196.25
18:00-21:00	200	200	22:00-24:00	150	196.25
No of Days	31	15	No of Days	31	31
No of Hours	7	7	No of Hours	6	6
Monthly MU's	43.4	21	Monthly MU's	27.9	36.5
Total MU's	64.4		Total Return MU's	64.4	

- 2.1.6 The Petitioner, through the current Petition has approached the Commission for seeking approval on the draft energy banking agreement to be executed by it with M/s UPPCL for the same.

Accordingly, in accordance with the requirement of the Act, Regulations and Orders passed by the Commission, UPCL is required to seek approval of the draft EBA proposed to be entered by it, from the Commission. In the matter, UPCL vide its letter dated 19.10.2024 had apprised the Commission about the power situation and its proposal to enter into an EBA with M/s UPPCL and further requested the Commission to accord the in-principle approval for advance banking of power with M/s UPPCL, and the Commission vide letter dated 24.10.2024 had accorded the in-principle approval for the Banking of Power.

2.2 Commission's Analysis of the EBA and Order on the same

- 2.2.1 The Draft Energy Banking Agreements is to be entered into between UPCL and M/s UPPCL for supply of 64.40 MUs of power (during peak hours) from 01.01.2025 to 15.02.2025, which shall be returned with zero percent premium during the months of 01.07.2025 to 31.08.2025 on the prescribed terms and conditions.
- 2.2.2 The draft EBA submitted by UPCL has been examined in light of the relevant rules &

regulations. The Commission observed that the Respondent has not raised any objections on the proposed draft energy banking agreement to be executed with the Petitioner.

- 2.2.3 The Commission observed Clause 11. “Force majeure and technical constraints/ Transmission constraints” does not include the requirement of giving notice of the force majeure event in writing by one party to the other. Moreover, the force majeure clause is not mentioned in detail in the proposed EBA. The Commission, accordingly, directs UPCL to modify the said clause, as given below, before signing the EBA.

“Force Majeure and technical constraints/transmission constraints:

The parties shall ensure due compliance of the terms of the Agreement. However, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to the following reasons:

- a) Any restriction imposed by RLDC/SLDC due to transmission/grid constraints.*
- b) Acts of God like lightning, landslide, storm, action of the elements, earthquakes, flood, drought and natural disaster or exceptionally adverse weather conditions;*
- c) Any act of public enemy, wars (declared or undeclared), blockades, embargo, insurrections, riots, revolution, sabotage, terrorist or military action, vandalism and civil disturbance;*
- d) Unavoidable accident, fire, explosion, radioactive contamination and toxic dangerous chemical contamination;*
- e) 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;*

Any party claiming the benefit of this clause shall satisfy the other party of the existence of such an event by documentary proof from competent authority and give written notice within 24 hours from the time of occurrence of such event to the other party. Supply/acceptance of delivery of energy shall be resumed as soon as practicable by the parties concerned after such eventuality has come to an end or has ceased to exist. However, these events shall not prevent any party in fulfilling the obligations of making payment.”

- 2.2.4 The Commission observed that Para 1 of the draft EBA provides the day on which EBA is brought into effect. The place for dates has been left blank. The above-mentioned Para needs to be corrected and completed before signing the final EBA.

2.2.5 The other provisions of the draft EBA have been examined which are in accordance with the Regulations.

2.2.6 Ordered accordingly.

(Anurag Sharma)
Member (Law)

(M.L. Prasad)
Chairman