

**Before**

# **UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No. 05 of 2024**

**In the matter of:**

Petition filed by M/s Gama Infraprop Pvt. Ltd. for sale of power to third party from PPA capacity of 107 MW with UPCL out of 225 MW Gas Based Combined Cycle Power Plant, Kashipur.

**In the matter of:**

M/s Gama Infraprop Pvt. Ltd.

...Petitioner

**AND**

Uttarakhand Power Corporation Ltd.

... Respondent

**CORAM**

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

**Shri M.L. Prasad Member (Technical)**

**Date of Order: February 06, 2024**

This Order relates to the Petition filed by M/s Gama Infraprop Pvt. Ltd. (hereinafter referred to as "Petitioner" or "M/s GIPL") under Section 86 1(f) of Electricity Act 2003, Regulation 59 of Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 and Regulation 103 & 104 of Uttarakhand Electricity Regulatory Commission (MYT) Regulations 2021 for sale of power to third party from PPA capacity of 107 MW with UPCL out of 225 MW Gas Based Combined Cycle Power Plant, Kashipur.

## **1. Background and submissions**

1.1 M/s Gama Infraprop Pvt. Ltd. has developed a 225 MW gas based combined cycle power plant on build own and operate basis at Mahuakheraganj, Kashipur in the Udham Singh Nagar district of Uttarakhand, and a Power Purchase Agreement dated 11.02.2016 between M/s GIPL and Uttarakhand Power Corporation Limited (hereinafter referred to

as “UPCL” or “Respondent”) was signed for 50% capacity, i.e. 107 MW of power from 225 MW Gas Based Combined Cycle Power Plant, Kashipur.

- 1.2 The Petitioner submitted that the Ministry of Power, Government of India issued notification dated 5th September 2023, “Steps to be taken to effectively meet the electricity demand of the Consumers”. The Petitioner submitted that these guidelines were issued looking at the increasing demand and making maximum generation available, and clause (vi) & (vii) of the said notification is reiterated hereunder:

*“(vi) Where the states do not schedule any power under the PPA; that power must be offered in the power exchange so that the needy states are able to avail this to meet their demand.*

*“(vii) States may ensure that all the gas based power plants with whom they have PPAs must be brought in to use, during high demand days and non-solar hours. Gas based units of CPSUs has already been instructed to supply full capacity. States may also like to tie up with such capacities to ensure their availability.”*

- 1.3 The Petitioner submitted that M/s NTPC Vidyut Vyapar Nigam Limited (NVVN) published the invitation for e-Tender on 14th September, for procurement of power from Gas Based Power Plants for identified Crunch Period (30th September 2023 to 30th November 2023). The Petitioner submitted that in case the Petitioner wishes to participate in such e-Tenders for supply of power during identified crunch period by Ministry of Power, GoI, then this participation in scheme shall be from full capacity of M/s GIPL 214 MW, i.e. tied up capacity of 107 MW as well as from untied capacity of 107 MW.
- 1.4 The Petitioner further submitted that it is considering the actual case in which M/s NVVN Ltd. published the e-tender for supply of power in crunch period as mentioned above, wherein the Contract Period in clause 3 of the tender was from 30th Sep 2023 to 30th Nov 2023 which is also an identified crunch period. The Petitioner submitted that the clause 3 of the e-tender also details about the number of operation days, which tentatively envisaged for only 20 days during the identified crunch period and there was a provision of extension of operation by 5 days.
- 1.5 The Petitioner submitted that the tender document also details about the pattern of generation for the day, which was given as full quantum for 6 hours and 50% generation for 18 hours, which comes to 90 MW and 45 MW respectively for 1 Unit. The Petitioner

submitted that considering it bids from both units based on the fact that UPCL is not utilizing the available PPA capacity, it could plan to bid for 180 MW as per the ambient conditions, i.e. 90 MW from each unit, however, as per the pattern of generation required, the schedule of 180 MW for 6 hours and 90 MW for 18 hours from both the units should be made available, of which for 6 hours UPCL/tied up capacity share becomes 90 MW and for 18 hours UPCL/tied up capacity shares becomes 45 MW, similarly for the Petitioner's untied capacity.

- 1.6 The Petitioner further submitted that by the available generation pattern if the Schedule Energy is calculated it works out to 13,50,000 kWh  $((90 \times 1000 \times 6) + (45 \times 1000 \times 18))$  from each unit of 107 MW for a day and considering the schedule energy for both the units and for 20 days of operation the Schedule Energy to be supplied as per e-Tender would work to 54 MU's of which UPCL/tied up Schedule Energy proportion works to 27 MU's.
- 1.7 The Petitioner submitted that as per the tender document the Petitioner had to participate in the bid for "variable charges not linked to gas price" (VCNG), which comprises of all the expenses over and above variable charges linked to gas price.
- 1.8 The Petitioner submitted that if it supplies power from tied up capacity in the crunch period, wherein UPCL is not utilizing the available tied up capacity there can be savings in AFC paid by UPCL to the Petitioner and ultimately it will benefit the consumers of the State of Uttarakhand. The Petitioner also submitted a working in support of its contention as summarized below:

**Illustration as per Scheme of MoP, GoI by M/s NVVN Ltd.**

<b>Total Energy at 90 MW (as per ambient temperature) RTC (C)</b>	<b>2160000</b>
6 Hours operation	90 MW
Schedule Energy @ 90 MW for 6 Hr (A)	540000
18 Hours operation	45 MW
Schedule Energy @ 45 MW for 18 Hr (B)	810000
<b>Schedule Energy per day of 1 Unit as per scheme D=(A + B)</b>	<b>1350000</b>
Percentage of Energy Scheduled compared to RTC Energy (D / C)	63%
AFC for FY 2023-24 (Rs.)	103.48 Crore
AFC for 1 day (Rs.)	2835068.493
AFC at Energy Scheduled at pro rata basis (63%) (Rs.)	1771917.808
Operation days as per M/s NVVN Scheme	20 days
<b>AFC for 20 days operation (Rs.)</b>	<b>35438356.16</b>

- 1.9 The Petitioner submitted that it had earlier proposed to UPCL vide letter dated 15.09.2023 for participating in e-Tender by M/s NVVN Ltd. from PPA capacity of 107 MW, however, the understanding of UPCL vide letter dated 19.09.2023 was for relinquishing the AFC of about Rs. 15 Crore to Rs. 16 Crore for the whole contract period, i.e. the crunch period (30th Sep to 30th Nov 2023) which is almost 2 months and UPCL requested to review the proposal considering the cost of AFC for almost 2 months to participate in the bid by M/s NVVN Ltd. and also requested to resubmit the proposal.
- 1.10 The Petitioner submitted that vide its letter dated 19.09.2023, it had submitted its response to UPCL by again clarifying that in the scheme the operational days are for only 20 days and not 2 months which is total crunch period in which Government of India, Ministry of Power may request the awarded bidders to supply power but the number of days power to be supplied, i.e. 20 days operation is clear in RFS document and also the energy to be scheduled, i.e. 27 MUs is also limited as per the RFS document.
- 1.11 The Petitioner further submitted that it was also clarified to UPCL that since they were going to supply approx. 27 MU's in 20 days as per the tender document so if they were to forego Rs. 16 Crore to supply 27 MU's then it was economically not viable as they will have to bid very high to recover Rs. 16 Crore, which was practically not possible. The Petitioner submitted that the clause no. 20.1 second para of RFS reads as under:
- "The list of shortlisted bidders for consideration of bucket filling shall be arrived at by considering the bids whose Variable charges not linked to gas (VCNG) in Rs./kWh are less than or equal to 125% of the discovered lowest VCNG in Rs./kWh"*
- The Petitioner submitted that the above clause means that the bid has to be maximum of 125% of the lowest discovered rates in bidding and having a burden to recover Rs. 16 Crore from supplying 27 MUs would lead to submitting the bid at a price not less than Rs.5.93/kWh over and above the expenses like STU charges, CTU charges, losses, exchange fees, tender fees etc.; which eventually would lead to bid rejection due to bid price arriving higher than maximum of 125% of the lowest discovered rates in bidding making the scheme unviable. The Petitioner submitted that inspite of giving detailed clarification to UPCL as aforesaid it didn't get any further support to participate in e-tender on behalf of tied-up capacity with UPCL.
- 1.12 The Petitioner under the grounds of relief submitted that if the Petitioner sells energy not

scheduled by the buyer to third party, it will give a gain to UPCL by making savings in Fixed Charges.

1.13 The Petitioner through the aforesaid Petition has sought the following relief from the Commission:

- i. Issue the necessary orders to UPCL for allowing sale of power in IEX/third party/ under Government of India Scheme for energy not scheduled for a particular period.
- ii. Issue the necessary order to UPCL to provide schedule for 3 months in advance for Petitioner's planning of sale of power to third party and gain benefits for the consumers of Uttarakhand.
- iii. Issue the necessary order to UPCL to consider the settlement of Capacity Charges at pro rata basis considering the actual scheduled energy and AFC of a particular day as per tariff determined by the Commission in its tariff orders.
- iv. Issue necessary order to UPCL to allow the sale of power to any third party/Scheme of Government for participation and supply of power to benefit UPCL by making the savings in AFC at Scheduled Energy.
- v. Issue the necessary orders that settlement of this account will be done during true up of that period by the Commission.

1.14 The Commission sought comments on the same from Uttarakhand Power Corporation Limited (hereinafter referred to as "UPCL") in response to which UPCL submitted its comments vide letter dated 19.01.2024. Subsequently, M/s GIPL vide its letter dated 30.01.2024 submitted its rejoinder on the comments filed by UPCL.

1.15 The Commission also held a hearing in the matter on 25.01.2024 to discuss on the merits of the Petition.

1.16 The submission of the Petitioner and the Respondent along-with the Commissions views on the same have been discussed in the subsequent paras of this Order.

## **2. Respondent's submission, Petitioner's reply**

2.1 The Respondent, i.e. UPCL submitted that the Petitioner has no cause of action as the Petitioner does not have vested right either under the PPA or under law to file the present

Petition. The Respondent further submitted that the provisions of law under which the Petition has been filed is not attracted neither Regulation 59 of UERC (Conduct of Business) Regulations, 2014 nor section 86(1)(f) of the Electricity Act, 2003 is applicable.

- 2.2 The Respondent further submitted that the relief as claimed by the Petitioner cannot be granted as it can be seen from the Petition that it is not legally maintainable. Further, the Petition is infructuous as the Petition was filed in December, 2023, whereas the period for which M/s NVVN Ltd. invited bids was for the identified crunch period 30.09.2023 to 30.11.2023.

In response to the same, the Petitioner submitted that it had referred the mentioned scheme as an example of such schemes, otherwise M/s NVVN Ltd. has recently floated scheme to supply power for a period of 72 days in the month of January, 2024. The Petitioner submitted that it wanted to get clarity in the matter from UPCL, and thereafter it can further explore other such schemes as well.

- 2.3 The Respondent further submitted that the Petitioner throughout the Petition has prayed and relied upon the Govt. of India Scheme and stated the benefit of the same shall be offered to the consumers of the State, whereas relief related to sale of power in IEX/Third party sale is included whose modalities are not mentioned in the Petition where the capping of 125% of the discovered lowest VCNG (Variable Charges not linked to gas) or gas linked price is not applicable, which clearly shows that only objective of the Petitioner is to earn huge profits.

In response to the same, the Petitioner submitted that the Petitioner is into business for revenue generation but in the current scenario it tried to explore the market by giving benefit of savings in AFC to UPCL during prolonged backdown by UPCL. The Petitioner further submitted that as the true up of Petitioner's plant is done by the Commission, hence, the profits can be dealt by the Commission as per suitable guidelines/orders/agreements.

- 2.4 The Respondent submitted that the present matter is filed u/s 86(1)(f) of the Electricity Act, 2003 stating that the Petition is within limitation, however, the PPA with M/s GIPL was executed on 11.02.2016 whereby the following is stated at Clause No. 7.2.1 "Inability of Buyer to avail or schedule Contracted Capacity":

*"7.2.1.2: However, in such event the liability of the Buyer to pay capacity charges to the Seller even for Default Electricity will remain unaffected and the Buyer shall be liable to pay the Capacity Charges in terms of Stipulation herein. For the avoidance of the doubt, it is clarified that the Buyer shall be liable to pay Short fall Capacity Charge, if any, to the Seller for the Default Electricity that is sold to third parties."*

*"7.2.1.5: The Buyer shall be liable to inform the Seller at least two (2) days in advance to enable the Seller to sell such Default Electricity to a third party (ies)."*

The Respondent accordingly submitted that the Petitioner is seeking clarifications on the provisions of the PPA regarding third party sale after a delay of approx 8 years, and, hence, the Petition is time barred and, therefore, the Petition is not maintainable and is liable to be rejected.

In response to the same, the Petitioner submitted that it has not sought any clarifications on the PPA clause.

- 2.5 The Respondent submitted that the Petitioner has mentioned the facts for the third-party sale of power in reference to the tender floated by M/s NVVN Ltd. while it has not submitted any modalities regarding any other third-party sale or sale in Power Exchanges in case UPCL is not scheduling power from its Gas based plant. The modalities such as Period of sale, Quantum of sale, prior time notice required for both the parties, i.e. UPCL & the Petitioner to enable themselves to make their arrangements in case of third-party sale by the Petitioner which are necessary to take well informed & opt decision is missing in the Petition. The Respondent submitted that the Petitioner has tried to take benefit by way of blanket submissions and, hence, the relief sought by the Petitioner for any other third-party sale or sale to Power Exchanges is not maintainable in absence of the facts not submitted in the Petition.

In response to the same, the Petitioner submitted that the Petitioner would like to explore sale of power to third party in case UPCL plans to backdown generation and same is requested by way of settlement in AFC up to Scheduled Energy as per calculation explained in the Petition.

- 2.6 The Respondent further submitted that w.r.t. the submissions related to the tender floated by M/s NVVN Ltd., the Petitioner has portrayed the terms and conditions of the tender which are suitable and beneficial to them. The Respondent reiterated the following terms

and conditions & clauses linked to the current Petition as follows:

***“The Qualification criteria of the RfS states the following:***

*“1.3 If the capacity being offered is tied up in PPA, Bidder will inform the PPA beneficiaries for bidding of the power during the crunch period. The Bidder shall also declare that no fixed charges shall be billed to PPA beneficiaries for the total contracted quantum for the Contract period.....”*

*Further the Contract Period, Quantum of Power is defined as follows:*

***“3.0 Contract Period, Quantum of Power (MW) and tariff***

<i>Period</i>	<i>Total Required Quantum (MW)</i>	<i>Minimum Bid Quantity (MW)</i>
<i>30th Sept 23- 30th Nov 23</i>	<i>4000</i>	<i>25</i>

*The Bidder shall offer power up to the quantum indicated in RfS Document on a firm basis and shall not be less than 25 MW. Offer of less than 25 MW will result in non-responsiveness of bid.*

*The operation of gas-based plants is envisaged tentatively for 20 days during the crunch period, extendable by another 5 days based on requirement.*

*The total contracted energy for the 4000 MW capacity shall be 1080 MU. Minimum Guaranteed Offtake during the identified crunch period for 4000 MW capacity as confirmed by NLDC shall be 75% of the total contracted energy (i.e. 810 MU). Typical generation for a day shall be full quantum for 6 hours and technical minimum schedule of 50% for 18 hours.*

*Example: If a selected bidder has contracted capacity of 1000 MW, then minimum offtake would be 25% (202.5 MU) of the total minimum offtake of the scheme. The technical minimum of each bidder for operation of Gas based plants shall be 50% of the contracted quantum. After offtake of 75% of the Minimum Guaranteed Offtake, NLDC may assess if there will be additional requirement beyond Minimum Guaranteed Offtake. Based on this assessment, selected bidders will be asked about their willingness to supply additional energy, maybe for additional days, at the discovered tariff for the generator concerned. Those selected bidders who show willingness may be advised for such additional supply.*

*The expected generation profile for a day shall be as identified by the National Load Dispatch Centre (NLDC) on 3 days ahead basis for supply into the HP-DAM/HP-TAM/Other segment(s) of power exchange or TRAS. This may be subject to revision as*



*per inputs received from NLDC from time to time. The tentative Generation profile shall be as per Annexure IX."*

The Respondent submitted that it is evident from the above that the Bidder has to forego the fixed charges to PPA beneficiaries for the contract period and the contract period is of 2 months (approx) which was conveyed to the Petitioner by UPCL's letter dated 19.09.2023 whereas the Petitioner has presented that the fixed charges shall be foregone as per the energy delivered in this tender which seems irrational as the contract period is of 2 months and operational period is tentatively envisaged for 20 days which can be further extended by another 5 days, therefore, it can be seen that the days/dates for which the Petitioner shall schedule power in this tender is not specific and further, period of 20 days is also not pre-scheduled and, hence, UPCL has only two choices either to forego the PPA capacity for whole 2 months and get the fixed charges reimbursed through this scheme or not to agree to the participation of M/s GIPL in this tender considering the fact that UPCL may schedule power from its PPA capacity to meet the deficit. UPCL submitted that, accordingly, the relief sought by the Petitioner in reference to the consideration of Capacity charges on pro-rata basis in accordance to the scheduled energy is not legitimate and appropriate.

The Petitioner did not submit any response to this contention raised by the Respondent.

- 2.7 The Respondent submitted that w.r.t. relief regarding sale of power in the Govt. of India Scheme (such as tender of power by NVVN Ltd.), UPCL agrees to abide by the provisions of the PPA which are in existence. However, UPCL as of now has an ongoing contract for scheduling of power for a period of December, 2023 to October, 2024 and March, 2025 to August, 2025 whereby the Commission has granted it an in-principle approval vide letter dated 01.09.2023 and directed the following:

*"Notwithstanding the above, as and when prices of power in various products of energy exchange during non-peak hours are lesser vis-à-vis variable charge of gas, UPCL's Power Purchase Committee shall endeavour to replace power during such hours from gas plants to procure from exchange thereby keeping a strict vigil on the controlling the overall power purchase cost on daily/monthly/annual basis considering the marginal cost of power approved by the Commission in its tariff orders from time to time"*

The Respondent submitted that the power purchase of UPCL is dependent on many variables such as demand, supply quantum & price of power in power exchanges, price of fuel, geo-political conditions affecting these variables. Hence, power procurement is a volatile and dynamic subject with power procurement planning to be executed on real time, daily basis, short-term basis apart from Mid-term & long-term planning. Further, with reference to the directions of the Commission to do optimal power procurement by replacing gas power with cheaper power available at exchanges, it is to mention that this shall be possible on day-to-day basis and, thus, the Petitioner's relief sought vide this Petition to provide the schedule in 3 months advance is not possible at UPCL's end for optimal power planning. The Respondent further submitted that the conditions of PPA also provides that two (2) days prior information in advance shall be given to enable the Seller to sell such default Electricity to a third party (ies). The Respondent further submitted that the conditions of the RFP floated by M/s NVVN Ltd. also requires the 3 days prior information for scheduling the power into HP DAM/HP TAM. The Respondent submitted that, accordingly, the relief sought by the Petitioner for 3 months prior information is not legitimate and liable to be rejected.

In response to the same, the Petitioner submitted that UPCL has tied up Gas from December, 2023 to October, 2024 and March, 2025 to August, 2025, however, there is still no planning for November, 2024 to February, 2025. The Petitioner submitted that this Petition is not for specific scheme or pre-defined period, and their request for sale of power to third party is only when UPCL is not utilizing the PPA capacity.

### **3. Commission's Views & Decisions**

#### **3.1 Regulation 59 of the UERC (Conduct of Business) Regulations, 2014 specifies as under:**

*"59 Inherent power of the Commission*

- (1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.*
- (2) Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Central Act or State Act, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing deems it necessary or*

*expedient for dealing with such a matter or class of matters.*

- (3) *Nothing in these Regulations shall, expressly or impliedly bar the Commission to deal with any matter or exercise any power under the Central Act or State Act, for which no Regulations have been framed, and the Commission may deal with such matters or exercise such powers and functions in a manner it thinks fit."*

Similar provisions are also provided in the UERC (Terms & Conditions of Multi Year Tariff) Regulations, 2021 namely, Regulation 103, 104 and 105. Apparently, the Commission has powers to issue such orders as may be necessary for ends of justice and also to deal with any matter or exercise any power under the Central Act or State Act, for which no Regulations have been framed, and the Commission may deal with such matters or exercise such powers and functions in a manner as it thinks fit.

- 3.2 The Commission analysed the submissions made by the Petitioner and the Respondent and the relevant provisions of the PPA executed between UPCL and M/s GIPL for framing its views in the matter.
- 3.3 The Commission in the instant matter is of the view that both the UPCL and M/s GIPL are legally bound by the PPA executed between themselves, as approved by the Commission, and the views/decision of the Commission should be within the ambit of the executed PPA to ensure its sanctity and enforceability in its original sense. None of the parties, i.e. both the Petitioner and the Respondent have not preferred any alteration to the existing PPA through the current Petition, rather the matter before the Commission in the matter is to provide elucidation with respect to certain clauses of the PPA and lay a guideline for settling the issues that may arise in future in this respect.
- 3.4 The Commission is also of the view that the tender document floated by M/s NVVN Ltd. as aforesaid, is of no relevance now and is infructuous as far as the matters related to this Petition is concerned since the period to which it relates had already bygone. Further, the future schemes of similar kind may have different terms and conditions which would be required to be analysed at the appropriate time. The Commission, therefore, is not going into the merits of the calculation or clauses related to existing scheme as aforesaid as the same would not yield any material result owing to uniqueness of each proposal that may come in future. However, the Commission will not refrain from elucidating the principles provided in the PPA entered into between the two parties in case of sale to third party by

the generator.

- 3.5 Also, the Respondent during the hearing advanced its arguments that each scheme has its own set of terms and conditions, and it cannot be expected from UPCL to give a blanket acceptance for all the upcoming scenario without going through the relevant terms and conditions of the individual scheme. The Respondent also argued that it would not be possible for it to provide the schedule 3 months in advance, as demanded by the Petitioner through the aforesaid Petition, as the demand and supply situation and power mix in the State does not allow it liberty for the same and also that the said request of the Petitioner is beyond the scope of the PPA executed between them.
- 3.6 The Commission, accordingly, analysed the clause 7.2.1 “Inability of Buyer to avail or Schedule Contracted Capacity” of the PPA executed between UPCL and M/s GIPL the relevant portion of which is reproduced hereunder:

*“7.2.1.1 If the Buyer does not avail or schedule entire Declared Capacity for any reason whatsoever, provided by the Seller, the Seller shall be entitled to forthwith sell all or such part of the Declared Capacity, which has not been availed or scheduled by the Buyer (“**Default Electricity**”) to any third party on such terms and conditions it may deem fit, in its sole discretion.*

*7.2.1.2 However, in such event, the liability of the Buyer to pay Capacity Charge to the Seller even for Default Electricity will remain unaffected and the Buyer shall be liable to pay the Capacity Charges in terms of the stipulation herein. For the avoidance of doubt, it is clarified that the Buyer shall be liable to pay short fall Capacity Charge to the Seller for the Default Electricity that is sold to third parties.*

*...*

*7.2.1.4 In such a case of sale of Default Electricity to such third party(ies), the net sale realization in excess of Energy Charges and Capacity Charge shall be equally shared by the Seller with the Buyer.*

*7.2.1.5 The Buyer shall be liable to inform the Seller at least two (2) days in advance to enable the Seller to sell such Default Electricity to a third party(ies).*

*7.2.1.6 The Buyer can notify the Seller for re-commencement of supply of such un-availed Contracted Capacity to the Buyer, and on receipt of notice for recommencement of such re-scheduling, subject to the scheduling as per the Grid Code, the Seller shall recommence the supply.”*

3.7 As can be seen from above, in case the buyer, i.e. UPCL does not avail or schedule the entire declared capacity, the seller shall be entitled to sell all or part of such declared capacity not scheduled by the buyer to any third party at its sole discretion. Further, as per the PPA, in case of above arrangement the buyer shall be liable to pay only the shortfall Capacity Charges to the seller for the default electricity that is sold to third parties. Furthermore, the PPA also states that net realization by the seller in excess of Energy Charges and Capacity Charges shall be equally shared between the seller and the buyer.

As can be seen from the above, prima facie the arrangement of sale of power by the seller, i.e. M/s GIPL from unscheduled capacity to third party appears to be an attractive proposition in terms of savings in Fixed Cost, i.e. Capacity Charges to the buyer, i.e. UPCL and also that the excess realization, if any, by the seller over and above the Energy Charges and Capacity Charges shall be shared between the buyer, i.e. UPCL and seller, i.e. M/s GIPL.

3.8 Further, the PPA also states that the buyer, i.e. UPCL shall be liable to inform the seller at least two days in advance to enable the seller to sell the default electricity to the third party(ies).

As can be seen from the above, the PPA clearly states that the buyer shall be liable to inform the seller at least two days in advance to enable the seller to make third party sale, and therefore, the remedy sought by the Petitioner, i.e. M/s GIPL for 3 months advance intimation is not tenable for the reason that the same is beyond the terms agreed between UPCL and M/s GIPL through the PPA executed between themselves.

3.9 Furthermore, during the period wherein UPCL has not scheduled any power from the gas based generators, like during the period November, 2024 to February, 2025, the generator shall be at the liberty to sell power under any scheme of GoI or in power exchanges or to any third party with charges being borne by the parties as per the PPA. Furthermore, the charges shall be shared in proportion to the MW/MWh sold to any third party or exchange in a particular day or time slot.

3.10 Although the overall proposition of sale of power to third party appears to be attractive, however, it should not end up in usurping the power of the buyer to its claim of the

contracted capacity as per their requirement. Moreover, under the PPA if the buyer wishes to avail the supply from the unscheduled contracted capacity at any point of time then the seller is required to recommence such supply, subject to scheduling as per the Grid Code. Moreover, the remedy sought by the Petitioner for advancing direction to UPCL for providing the schedule 3 months in advance is not as per the agreed clauses of the PPA and any relaxation/modification of the same will tantamount to amendment of the respective clause of the PPA, which is beyond the scope of the instant Petition.

The Commission noted during the hearing that the Respondent mentioned that they do not have any objection in any such arrangement taking place, i.e. sale of power to third party(ies), however, they contended that they need to examine the terms and conditions of each such individual scheme as and when the same comes up before proceeding with the same.

3.11 Accordingly, in view of the above discussion, the Commission is of the view that in case the seller wishes to make any third party sale from its contracted capacity then the same should be within the scope of the PPA executed between them and in accordance with the guidelines as laid down below after seeking prior approval of the Commission :

- i. The seller, i.e. M/s GIPL shall be at the liberty to sell power under any scheme of GoI or in power exchanges or to any third party during the period wherein UPCL has not scheduled any power from the gas based generators, like the period November, 2024 to February, 2025.
- ii. The seller, i.e. M/s GIPL is at liberty to make third party sales from its contracted capacity during the period in accordance with clause 7.2.1.5 of the PPA without any restriction at its own discretion in case the buyer informs the seller that it does not require power from the seller.
- iii. The buyer and seller can mutually agree for sale of power for a longer period from the contracted capacity after seeking approval of the Commission on the mutually agreed proposal forwarded to the Commission jointly by both the parties. In case of such a proposal the discom will have to demonstrate that:
  - a. by allowing such an arrangement it is not jeopardising the power availability secured for the State;

- b. by allowing such an arrangement the discom does not end up securing power during the same period from other short-term/alternate sources at higher rates after taking into consideration the the overall benefit from the approved arrangement, i.e. a proper cost benefit analysis should be in place.
- iv. In case of any mutual arrangement agreed between the UPCL and M/s GIPL, the Capacity Charges shall be considered based on proportionate MW/MWh sold only during the days when the energy is being supplied by the seller to the third party as a matter of the reasonableness of the price proposal.
- v. In case the buyer exercises its right under clause 7.2.1.6 of the PPA then in such a case the seller shall be required to prioritize the buyer's requirement instead of third-party sale. It is also clarified that any penalty levied on the seller for non-fulfilment of third-party sale in such a case, shall not be allowed to be pass through.
- vi. In case of third-party sale in any manner, the net sale realization in excess of Energy Charges and Capacity Charges shall be equally shared by the seller with the buyer in terms of clause 7.2.1.4 of the PPA executed between the parties.

4. Ordered accordingly.

**(M.L. Prasad)**  
**Member (Technical)**

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