

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 45 of 2023

In the matter of:

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

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

In the matter of:

M/s Arunachal Pradesh Power Corporation Pvt. Ltd.

... Respondent

CORAM

Shri D.P. Gairola

Member (Law)-Chairman (I/c)

Date of Order: January 15, 2024

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 Arunachal Pradesh Power Corporation Pvt. Ltd. (hereinafter referred to as "M/s APPCPL" 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 01.12.2023 seeking approval of the

Commission on the Draft Energy Banking Agreement to be executed with M/s APPCPL for Advance and Return banking.

- 1.2 UPCL submitted that as per the demand and availability projection for the upcoming months in the State, it will have an overall deficit of around 800 to 900 MW. UPCL submitted that to mitigate the deficit, it has given consent to the State based gas generators for the supply of 321 MW (Maximum) for a period of December, 2023 to July, 2024, however, inspite of the above arrangement, UPCL is expected to have a shortfall of approx. 300 to 600 MW RTC power in coming winter season i.e. from November, 2023 to March, 2024.
- 1.3 UPCL submitted that it is putting its sincere effort to secure power on reasonable rates and, accordingly, explored the option of reverse banking. i.e. UPCL will take power in advance in the month of November, 2023 to March, 2024 and return the same with some premium between July 2024 to September 2024 wherein UPCL always remain in power surplus position.
- 1.4 UPCL submitted that considering availability from different source and for better utilization of power, the banking may be taken by UPCL as advance banking during the period from 21.11.2023 to 29.02.2023 and the intake power may be returned during the period from June, 2024 to September, 2024.
- 1.5 UPCL submitted that it floated a tender for the advance and return banking of power wherein the month wise quantum & mode of power was proposed to be banked as summarized in the Table below:

Advance Energy Banking to be taken by UPCL first on "Firm RTC Basis"					
Details	Quantum of RTC Power (MW)	21-Nov-23 to 30-Nov-23	Dec-23	Jan-24	Feb-24
Tentative deficit power	No. of Days	10	31	31	29
	Total Deficit of Power met through advance banking to be taken by UPCL (MW)	200	200	200	200
	Total Energy Deficit met through return banking (MU)	48	148.8	148.8	139.2

The Petitioner further submitted that the expected surplus power to be scheduled as return banking during the period for June, 2024 to September, 2024 as summarized in the

Table below:

Details	Quantum of RTC Power (MW)	Jun-24	Jul-24	Aug-24	Sep-24
Tentative surplus power	No of Days	10	31	31	30
	Total expected Surplus Power (MW)	174.2	174.2	174.2	172.8
	Total Energy Surplus (MU)	125.4	129.58	129.58	124.48
NOTE: Expected rate of return is considered 105% of the banked energy.					

The Petitioner further submitted that in case of less availability of the power from the firm sources as considered in the projections, which have to be returned back from June, 2024 to September, 2024, same will be managed in most economical manner through procurement from Tender/Power Exchanges keeping in view the past trends that rates could be low at that period of time.

- 1.6 The Petitioner submitted that in the aforesaid tender, only 01 no. bidder namely M/s Arunachal Pradesh Power Corporation Pvt. Ltd. had participated for providing power from 02 nos. sources (M/s BYPL & M/s CESC), and after various rounds of negotiations, quantum of power, mode, percentage return, trading margin etc. is as summarized in the table below:

Supply of Power by APPCPL to UPCL (Advance Banking) and Supply of Power by UPCL to APPCPL (Return Banking)

Total Quantum offered in bid for banking by UPCL(MW)	Name of participated Bidder	Source/ Utility	Details of offers submitted by bidder/utility							
			Forward Banking Period to UPCL	Quantum for banking to UPCL	Time slot	Return Power Banking month	Time slot (Hrs)	Return Percentage (%)	Trading Margin (Paise /KWH)	Effective Return Premium Percentage (%)
200 MW	APPCPL	BYPL	21-11-23 to 30-11-23	100	00:00-24:00	21-06-24 to 30-09-24	00:00-24:00	104.00	3.70	104.68
	APPCPL	CESC		60	00:00-24:00	21-06-24 to 30-09-24	00:00-24:00	104.00	3.70	104.68
200 MW	APPCPL	BYPL	01-12-23 to 31-12-23	100	00:00-24:00	21-06-24 to 30-09-24	00:00-24:00	104.00	3.70	104.68
	APPCPL	CESC		60	00:00-24:00	21-06-24 to 30-09-24	00:00-24:00	104.00	3.70	104.68
200 MW	APPCPL	BYPL	01-01-24 to 31-01-24	50	00:00-24:00	21-06-24 to 30-09-24	00:00-24:00	104.00	3.70	104.68
	APPCPL	CESC		60	00:00-24:00	21-06-24 to 30-09-24	00:00-24:00	104.00	3.70	104.68
200 MW	APPCPL	BYPL	01-02-24 to 29-02-24	100	00:00-24:00	21-06-24 to 30-09-24	00:00-24:00	104.00	3.70	104.68
	APPCPL	CESC		60	00:00-24:00	21-06-24 to 30-09-24	00:00-24:00	104.00	3.70	104.68

The Petitioner further submitted that the actual and final quantum of power to be banked with M/s APPCPL will be known after the month of February 2024, and, accordingly, UPCL will be required to return energy (in MU) to M/s APPCPL based on the return percentage & margin as quoted by M/s APPCPL during the period from June, 2024 to September, 2024.

- 1.7 The Petitioner submitted that in order to ensure consistent electricity supply to its consumers, best way to utilize the surplus power is to bank it and utilize it during power deficit period. The Petitioner submitted that after evaluating the proposals it has proposed to enter into an Energy Banking Agreement (EBA) with M/s Arunachal Pradesh Power Corporation Pvt. Ltd.
- 1.8 The Petitioner submitted that the Commission in its various orders has laid down that banking of power will be the most cost-effective arrangement, and accordingly, UPCL will take power in advance in the month of November, 2023 to March, 2024 and return the same with some premium between July, 2024 to September, 2024. The Petitioner further submitted that if the said arrangement is not considered then the Petitioner will have to either procure power from the power exchange or to go for short term power procurement which may be an expensive proposition and may consequently & unnecessarily burden the consumers.
- 1.9 The Petitioner submitted that in view of the facts and circumstances mentioned above, the Commission may approve the draft Energy Banking Agreement and allow Advance & Return banking of energy with M/s Arunachal Pradesh Power Corporation Pvt. Ltd. so that the necessary Energy Banking Agreement in this regard may be signed.

2. Respondent's reply and Petitioner's rejoinder

- 2.1 The copy of the Petition was forwarded to M/s APPCPL for comments. In the matter, M/s APPCPL submitted its comments vide letter dated 22.12.2023. UPCL submitted its rejoinder on the same vide letter dated 30.12.2023. Reply and rejoinder have been discussed in the subsequent paragraphs of this Order.
- 2.2 The Respondent submitted that M/s APPCPL was declared as one of the successful bidders in the aforesaid tender document under 'Firm Basis' arrangement. M/s APPCPL had participated through M/s BYPL and M/s CESC under 'Firm Basis' arrangement. Authorization of the respective Discoms were submitted to the Petitioner as a part of the bidding document at the time of participation.

- 2.3 The Respondent submitted that the Petition (point no. 4 “Facts of the case” sub-clause (ii) & (vi), the timelines should be modified as; for forward supply of power from 21st Nov’23 to 29th Feb’24 and return of banked power during the period from 21st Jun’24 to 30th Sept’24.

In response to the same UPCL submitted that it has already incorporated the given banking schedule in the draft EBA as reproduced in the table given below:

(A) CESC

Mode: "Firm basis"						
Period of supply to UPCL	Quantum of power (MW) to be supplied to UPCL (RTC)	Source/Utility from which power is to be supplied to UPCL	Return Percentage (%)	Trading Margin payable By UPCL on quantum of energy supplied to UPCL (Paise/kWh)	Duration of return Banking from UPCL to utility	Delivery Point
21-11-23 to 30-11-23	60	CESC	104	3.70	21-06-24 to 30-09-24	Northern Region Periphery
01-12-23 to 31-12-23	60	CESC	104	3.70	21-06-24 to 30-09-24	
01-01-24 to 31-01-24	60	CESC	104	3.70	21-06-24 to 30-09-24	
01-02-24 to 29-02-24	60	CESC	104	3.70	21-06-24 to 30-09-24	

(B) BYPL

Mode: "Firm basis"						
Period of supply to UPCL	Quantum of power (MW) to be supplied to UPCL (RTC)	Source/Utility from which power is to be supplied to UPCL	Return Percentage (%)	Trading Margin payable By UPCL on quantum of energy supplied to UPCL (Paise/kWh)	Duration of return Banking from UPCL to utility	Delivery Point
21-11-23 to 30-11-23	100	BYPL	104	3.70	21-06-24 to 30-09-24	Northern Region Periphery
01-12-23 to 31-12-23	100	BYPL	104	3.70	21-06-24 to 30-09-24	
01-01-24 to 31-01-24	50	BYPL	104	3.70	21-06-24 to 30-09-24	
01-02-24 to 29-02-24	100	BYPL	104	3.70	21-06-24 to 30-09-24	

- 2.4 The Respondent further submitted that the Petition contains “Annexure 5 - Energy Banking Agreement (EBA)” (Clause no. 4.1 “Booking of Corridor”). The Respondent proposed that the cost of e-bidding of Booking of corridor shall be borne by the Importing Utility instead of Exporting Utility.

In response to the same UPCL accepted the same and proposed to modify the relevant clause of the EBA accordingly.

- 2.5 The Respondent further submitted that, the Petition contains “Annexure 5 - Energy Banking Agreement (EBA)” (Clause no. 5.0 “Revision of Schedule/cancellation of GNA/TGNA), and M/s CESC requested for elimination of the word GNA.

In response to the same UPCL accepted the same and proposed to modify the relevant clause of the EBA accordingly.

2.6 The Respondent further stated that, the Petition contains “Annexure 5 - Energy Banking Agreement (EBA)” (Clause no. 10.0 “ARBITRATION”), and submitted that the CESC requested for ensuring neutrality in the arbitration process.

In response to the same UPCL submitted that there should be no changes in the clause mentioning the authority of appointment of Arbitrator and MD UPCL or any officer appointed by him shall be the sole arbitrator in the above said agreement.

3. Commission’s Views & Decisions

3.1 Legal Requirement for approval of PPA

3.1.1 A power banking agreement is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.

3.1.2 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.

3.1.3 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)

3.1.4 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.*
-”*

3.1.5 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 Petitioner considering the demand and availability projection for the winter months of FY 2023-24 in the State of Uttarakhand floated a tender for the advance and return banking of power.

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 09.11.2023 had apprised the Commission about the power situation and the details of offers received against the tender and further requested the Commission to accord the in-principle approval for advance banking of power with M/s APPCPL and the Commission vide letter dated 16.11.2023 had accorded the in-principle approval for the Banking of Power.

3.2 Commission's Analysis of the PBA and Order on the same

3.2.1 The Draft Energy Banking Agreements is to be entered into between UPCL and M/s APPCPL for supply of 365 MUs of power on firm basis from the month of November, 2023 to February, 2024 which will be returned @ 104% during the month of June, 2024 to September, 2024 on the terms and conditions as described in the tender document.

3.2.2 The draft EBA submitted by UPCL has been examined in light of the relevant rules &

regulations. The Commission observed that the Respondent has submitted certain observations on the draft energy banking agreement to be executed with the Petitioner. Further, UPCL also submitted its rejoinder on the same. The Respondent's and the Petitioner's comments alongwith the Commission's view on the same have been discussed in the subsequent sub-para hereunder. UPCL is required to take note of the same and incorporate necessary corrections in the draft EBA while executing it with the Respondent.

- a) 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.
- b) The Respondent with respect to the para 4(ii) and para 4(vi) of the Petition, suggested to modify the timelines in order to mention the exact dates of forward and return banking of power, in response to which the Petitioner submitted that the given banking schedule has already been incorporated in the draft EBA and, therefore, no modification in the Petition is required. The Commission took note of the same and is of the view that no modification needs to be carried out with respect to the same as the draft EBA already contains the complete banking schedule.
- c) The Respondent submitted that the first line of second para of the clause 4.1 of the draft EBA, mentions that *"the cost of e-bidding of Booking of corridor shall be borne by exporting utility"* and suggested that the said cost is required to be borne by the importing utility. In response to the same UPCL agreed to the proposed modification and suggested that the modified para of clause 4.1 be read as under:

"The cost of e-bidding of Booking of corridor shall be borne by importing entity/the entity creating the GNA/ TGNA contract if e-bidding is carried out to book corridor for transmission power from source to delivery point i.e. Northern Regional periphery."

Accordingly, the first line of second para of clause 4.1 of the draft EBA shall be read as under:

"The cost of e-bidding of Booking of corridor shall be borne by importing entity/the entity creating the GNA/ TGNA contract if e-bidding is carried out to book corridor for transmitting power from source to delivery point i.e. Northern Regional periphery."

- d) The Respondent submitted that the word GNA be eliminated from the clause 5.0 of the draft EBA, which was accepted by the Petitioner. Accordingly, the modified clause 5.0 shall be read as under:

“Any revision/cancellation of approved TGNA corridor shall be done by mutual consent of both parties. In case revision/ cancellation of approved TGNA, the party seeking revision/cancellation of TGNA it shall bear all TGNA charges as applicable under GNA regulations from the injection point till the point of drawl applicable due to such surrender/cancellation”

- e) The Respondent w.r.t. clause 10.0 of the draft EBA requested modification in the said clause for ensuring neutrality in the arbitration process. In response to the same, UPCL submitted that the said clause should remain unaltered and MD UPCL or any officer appointed by him should be the sole arbitrator in the above said agreement.

The Commission took note of the comments of both the Respondent and the Petitioner in the matter and is of the opinion that no modification needs to be carried out in the clause 10.0 of the draft EBA as the same practice has been followed in past by M/s APPCPL and other entities in the agreements of similar nature without any objection.

- 3.2.3 The other provisions of the draft EBA have been examined which are in accordance with the Regulations. However, UPCL and the Respondent are hereby directed to incorporate the changes proposed by the Commission in the draft EBA and submit the same to the Commission within 15 days of the date of Order.

- 3.2.4 Ordered accordingly.

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