

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 03 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)
Shri M.K. Jain	Member (Technical)

Date of Order: March 03, 2023

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 30.12.2022 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 The Petitioner submitted that during FY 2022-23 the overall demand & availability scenario of Uttarakhand has been changed substantially. Moreover, the State based gas power plant, i.e. M/s Sravanthi Energy Pvt. Ltd. (M/s SEPL) and M/s Gama Infraprop Pvt. Ltd. (M/s GIPL), were stranded due to non-availability of gas at reasonable rates which created substantial difference in demand and availability of power in the State and further the chances of getting the gas in near future is also very low.
- 1.3 The Petitioner submitted that the State's demand has increased substantially after post COVID crises scenario (in the range of 8% to 15%) which increased the overall deficit of power in the State. The Petitioner also submitted that due to the international crises, coal and gas prices increased, hence, the consent for procurement of gas to the intra-state gas generators M/s SEPL and M/s GIPL was also not issued and therefore in the absence of 321 MW of gas power and due to the increase in demand there is no availability of substantial surplus power in the months of May 2022 to September 2022 due to which no forward banking of power was done during these months and the chances of utilizing the surplus power of monsoon season in the winter months when UPCL is in deficit conditions gets zero.
- 1.4 The Petitioner submitted that in ongoing power crisis UPCL was widely exposed to the exchange purchase to supply 24x7 power to the consumers of the State which caused excessive financial burden on UPCL and the APPC of UPCL reached to Rs. 4.78/kWh.
- 1.5 The Petitioner submitted that in view of the tight situation of power availability and to secure power on economical rates UPCL had floated a tender for Advance Banking of Power. Details of the same are as follows:

Banking on "Firm Basis"
(Month-wise Banking on RTC Basis):

Advance Energy Banking to be taken by UPCL first on "Firm RTC Basis"			
Month	Duration	Quantum of Power (MQ)	Energy (MU)
November, 2022	21.11.2022 to 30.11.2022	100	24
December, 2022	01.12.2022 to 31.12.2022	150	111.6
January, 2023	01.01.2023 to 31.01.2023	250	186
February, 2023	01.02.2023 to 15.02.2023	200	72
Total			393.6

Return of Banking on Firm Basis

Return Energy Banking to be given by UPCL on "Firm RTC Basis"			
Month	Duration	Quantum of Power (MQ)	Energy (MU)
June, 2023	21.06.2023 to 30.06.2023	50	12
July, 2023	01.07.2023 to 31.07.2023	175	130.20
August, 2023	01.08.2023 to 31.08.2023	210	156.24
September, 2023	01.09.2023 to 15.09.2023	175	126
Total			412.44

- 1.6 The Petitioner submitted that the actual and final quantum of power to be banked with M/s APPCPL will be known after the month of February 2023 and accordingly, UPCL will required to return energy to M/s APPCPL based on return percentage and margin as quoted by M/s APPCPL during the period from June 2023 to September 2023.
- 1.7 The Petitioner submitted that UPCL vide its letter dated 15.11.2022 had apprised the Commission about the power situation and the detailed list of offers received against the above-mentioned tender and further requested the Commission to accord in-principle approval for procurement and the Commission vide letter dated 16.11.2022 had accorded the in-principle approval for procurement of said power.
- 1.8 The Petitioner submitted that the Commission in its various orders has laid down that banking of power would be the most cost-effective arrangement. Accordingly, UPCL in prevailing circumstances has planned to take the power from November, 2022 to February, 2023 and return it from June 2023 to September 2023 when UPCL remains in surplus position. The Petitioner also submitted that if the said arrangement is not considered, the Petitioner will have to either procure power from the power exchange or to go for a short term power procurement which may be an expensive proposition and may consequently burden the consumers.

2. Respondent's reply and Petitioner's rejoinder

- 2.1 The copy of the Petition was forwarded to M/s APPCPL for comment. In the matter, M/s APPTCL submitted its comments vide letter dated 18.01.2023 which were forwarded to UPCL for rejoinder. UPCL submitted its rejoinder vide letter dated 24.01.2023. Reply and rejoinder has been discussed in the subsequent paragraphs of this Order.
- 2.2 The Respondent submitted M/s APPCPL was declared as one of the successful bidders in the said tender document under 'Firm Basis' Arrangement. M/s APPCPL had participated on

behalf of BYPL and PSPCL under 'Firm Basis' Arrangement. Authorization of the respective Discom/Utility were duly submitted to the Petitioner as a part of the bidding document at the time of participation.

- 2.3 The Respondent submitted that UPCL has submitted variable returnable quantum during each month of the returnable period from 21.06.2023 to 30.09.2023. However, the returnable energy has to be uniformly distributed during each month of the returnable period at agreed return percentage of 104%. UPCL vide its rejoinder dated 24.01.2023 submitted that M/s APPCPL proposed quantum of return is not as per the return quantum provided in the tender document and hence, will be difficult to accept as the quantum of return is managed according to the availability with UPCL. The Respondent vide its counter reply submitted that BSES Yamuna Power Limited (BYPL) has already accounted its summer planning to the return schedule of uniform 50 MW quantum during the return period. It would be difficult for BYPL if return schedule is not adhered by UPCL.
- 2.4 The Respondent submitted that supply of power to UPCL will be done by BYPL (banking to UPCL) and supply of return power by UPCL shall be done to BYPL through the Respondent. UPCL agreed to make necessary correction in the EBA.
- 2.5 The Respondent submitted that the registered office address provided in the draft PPA is wrong and requested to correct it. The Petitioner agreed to the same.
- 2.6 The Respondent submitted that the words "trader/utility/bidder" as mentioned in sub-clause (2) and (3) of Clause 8 of draft PPA should be replaced by "UPCL". The Petitioner agreed to the same.
- 2.7 With regard to termination clause, the Respondent submitted that despite termination of EBA, UPCL shall ensure return of already banked power as per terms and conditions and scheduled provided herein. UPCL agreed to the same.

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 vide its Tariff Order dated 31.03.2022 directed the Petitioner to bank the

surplus energy during the month of May, 2022 to September, 2022 and withdraw the same in the month of October, 2022 to March, 2023. The relevant extract of the said Tariff Order is as follows:

“The Commission directs the Petitioner to bank the surplus energy available during the months of May 2022 to September 2022 and withdraw the same in the months of October 2022 to March 2023.”

Due to international coal crises and higher gas prices, the consent for procurement of gas to the intra-state gas generators was also not issued. In ongoing power crises, to secure the power on economical rates UPCL had floated a tender for Advance banking of power.

Accordingly, in accordance with the requirement of the Act, Regulations and Order referred above, 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 15.11.2022 had apprised the Commission about the power situation and the detailed list of offers received against the tender and further requested the Commission to accord the in-principle approval for procurement and the Commission vide letter dated 16.11.2022 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 116.40 MUs on firm basis from the months of November, 2022 to February, 2023 which will be returned @ 104% during the months of June, 2023 to September, 2023 on the terms and conditions as described in 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 of the same. 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 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 while the final EBA is being signed.

- b) With regard to registered office address of the Respondent, the Respondent requested the Commission to replace *"203, 2nd Floor, Tower D, Global Business Park, Sector 26, Gurgaon"* with *"A-Sector, Legi Complex, Naharlagun-791110 (Andhra Pradesh)"*. The Petitioner is directed to make necessary changes in the Draft EBA to replace the registered office address with the address provided by the Respondent.
- c) With regard to the address provided for trading division of the Respondent, the Respondent submitted that the address provided in the Draft EBA is incorrect and requested to replace the same with *"Unit No. 407 & 408, National Small Industries Corporation Bhawan, Okhla Industrial Estate, Phase-III, New Delhi-110020"*. UPCL is directed to replace the trading division address provided in the third para of the Draft EBA with the address provided by the Respondent.
- d) The Commission observed that M/s APPCPL is the trader who will arrange the energy from BYPL. However, from the heading of the table under fourth para of the draft EBA, it appears that M/s APPCPL is the generator to whom the banked energy will be returned. Accordingly, the heading of the first table i.e. *"Supply of Power by APPCPL to UPCL (Banking to UPCL) and Supply of Power by UPCL to M/s APPCPL through BYPL (Banking to APPCPL)"* shall be replaced with *"Supply of Power by APPCPL to UPCL (Banking to UPCL) and Supply of return Power by UPCL to BYPL through M/s APPCPL (Banking through APPCPL)"*.
- e) With regard to energy to be returned by UPCL to BYPL through the Respondent, the Respondent submitted that the quantum of return has to be uniformly distributed during each month of returnable period in accordance with the LoI issued by BYPL and as submitted by M/s APPCPL in its bid submission towards UPCL banking tender. In the matter, UPCL has calculated the return volume on pro-rata basis of the quantum return mentioned in tender document.

The Commission analysed the tender document of UPCL, and the bid document submitted by M/s APPCPL. The Commission observed that the return quantum provided in the tender document is as follows:

Return of Banking on Firm Basis

Return Energy Banking to be given by UPCL on “Firm RTC Basis”			
Month	Duration	Quantum of Power (MW)	Energy in MU
June, 2023	21.06.2023 to 30.06.2023	50	12
July, 2023	01.07.2023 to 31.07.2023	175	130.20
August, 2023	01.08.2023 to 31.08.2023	210	156.24
September, 2023	01.09.2023 to 30.09.2023	175	126
Total			412.44

The Commission also observed that the Petitioner has calculated the return volume on pro-rata basis of quantum to be returned as mentioned in the bid document. Further, the Respondent in its bid submission towards UPCL banking tender has clearly mentioned that the power is to be uniformly returned during 21.06.2023 to 31.09.2023.

In the matter, the Commission has gone through the tender document wherein one of the qualification criteria is that authorization letter from utility shall be submitted. Relevant extract of the Bid Document is as follows:

“2.0 Qualification Criteria

(iv) In case bidder is a trader then it shall submit an authorization letter from utility for the month wise quantum of power to be banked and month wise quantum of power to be supplied.”

BYPL, while authorizing M/s APPCPL to bid on its behalf, vide its authorization letter dated 04.10.2022 which is one of the qualification criteria, had specifically mentioned that return of power from UPCL to BYPL shall be uniform during 21.06.2023 to 30.09.2023 while accepting the other terms and conditions of UPCL’s bid document. M/s APPCPL vide its bid submission had made a conditional offer which was accepted by the Petitioner and accordingly, the Commission is of the view that the power shall be returned uniformly during the period from 21.06.2023 to 30.09.2023. The Petitioner is directed to make necessary corrections in the draft EBA accordingly.

- f) The Respondent submitted that Important Notes from S. No. 1 to S. No. 3 may be deleted which specifies as follows under the Table of “Return by UPCL to BYPL (through APPCPL)”;

“1. Return Percentage (Premium) will be entered in price bid by the bidders as explained in price bid Annexure-C itself (eg. Extra return of 5% is to be entered as 105 and less return of 5% is to be entered as 95.

2. Bidder shall not allowed to quote trading margin below 0.00 paise/kWh and above 7.00/kWh as per CERC Regulation. If the bidder enters the trading margin beyond the range of 0.00 paise/kWh to 7.00 paise/kWh, bid will be rejected without sharing any reason on it.
3. Minimum quantum of power for advance banking which the bidder is required to bid is 50MW on RTC/Non-RTC basis under all categories."

UPCL agrees to delete the same. Accordingly, UPCL is required to remove the same in the final EBA.

- g) Sub-clause 4.4.3 under "Trading Margin" of the Draft EBA specifies as follows:

"Trading margin will be paid by UPCL to successful trade at rates quoted by trader in part-II (Price bid) against the quantum of energy supplied to UPCL."

The Respondent submitted that the above sub-clause should be replaced with the following:

"Trading margin of 1.50 paisa/unit shall be paid by UPCL to APPCPL against the quantum of energy supplied to UPCL."

UPCL agrees on the same. Accordingly, sub-clause 4.4.3 of the draft EBA shall be replaced with the clause suggested by the Respondent.

- h) Note under Clause 4.4.1 "Trading Margin" of draft EBA provides as follows:

"Note: The bidder shall not be allowed to quote a trading margin of more than paisa 7.00 per kWh and less than paisa 0.00 per kWh in any mode of banking ('Firm Basis')."

It appears that the said note was reference note for submission of quotation which does not has any relevance in the EBA. Accordingly, the same needs to be deleted in the final EBA.

- i) Clause 4.7 of the draft EBA specifies as follows:

"No rebate shall be applicable on the open access bills and trading margin bills. A rebate of 2% shall be applicable on adjustment bill of energy, if the payment is made within due date."

The Respondent suggested to delete the above-mentioned clause of the draft EBA. UPCL agrees for the same. Accordingly, the above stated clause shall be removed from the final EBA.

- j) The Respondent requested to insert the following proviso after the clause 6 of the draft

EBA:

“Provided that, any shortfall of returnable energy will be settled as per the clause 4.2 of this agreement.”

UPCL agreed on the same. Accordingly, the above-mentioned proviso shall be inserted under clause-6 of the EBA.

- k) With regard to Clause 8 “Termination”, the Respondent submitted that UPCL shall be responsible to ensure return of already banked power. Further, in case of any failure in returning power as per terms and conditions, UPCL shall be liable to pay penalty as per provisions contained in clause 4.2. of the EBA. UPCL agreed on the same. Accordingly, Clause 8 of the draft EBA shall be replaced with the following:

“8.0 Termination:

UPCL reserves the full right to terminate the bilateral Energy Banking Agreement during its execution if M/s APPCPL/BYPL fails to abide by the terms and conditions provided herein:

In case UPCL terminates the Energy Banking Agreement signed with M/s APPCPL on account of default of M/s APPCPL following actions will be applicable in that order:-

- (1) The security amount deposited with UPCL in the form of BG/CPG shall be forfeited.*
 - (2) Despite termination of EBA, M/s UPCL shall ensure return of already banked power as per terms and conditions and schedule provided herein/bid document.*
 - (3) In case UPCL fails to return power as per terms and conditions and schedule of power provided herein/bid document, it shall be liable to pay penalty as per provisions contained in clause 4.2.”*
- l) The Respondent submitted that ‘trader/utility’ may be replaced with “M/s APPCPL and BYPL’ under Clause 9 ‘Breach of Contract’ of draft EBA. The Petitioner agreed on the same. Accordingly, Clause 9 shall be read as follows:

“In case of the breach of the terms and conditions of the contract by M/s APPCPL/BYPL, UPCL shall reserve the right to take punitive action against M/s APPCPL/BYPL which may include the forfeiting the security cum performance guarantee including debarring/blacklisting for further participating in future tenders of UPCL, based on the merits and demerits of the case.”

- m) The Petitioner is directed to complete the details under Clause 10 before signing the final EBA.

3.2.3 The other provisions of the draft EBA have been examined which is 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.

(M.K. Jain)
Member (Technical)

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