

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 20 of 2023

In the matter of:

Application seeking prior approval of the Commission on the Draft Power Purchase Agreement for procurement of power between Uttarakhand Power Corporation Ltd. and M/s Adani Enterprises Ltd. under a Short-Term Power Purchase Agreement.

Petition No. 21 of 2023

In the matter of:

Application seeking prior approval of the Commission on the Draft Power Purchase Agreement for procurement of power between Uttarakhand Power Corporation Ltd and M/s Tata Power Trading Company Ltd. under a Short-Term Power Purchase Agreement.

Petition No. 22 of 2023

In the matter of:

Application seeking prior approval of the Commission on the Draft Power Purchase Agreement for short term between Uttarakhand Power Corporation Ltd and M/s Ambitious Power Trading Company Ltd. under a Short-Term Power Purchase Agreement.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

In the matter of:

M/s Adani Enterprises Ltd.

M/s Tata Power Trading Company Ltd.

M/s Ambitious Power Trading Company Ltd.

... Respondent

CORAM

Shri D.P. Gairola

Member (Law)-Chairman (I/c)

Shri M.K. Jain

Member (Technical)

Date of Order: May 12, 2023

This Order relates to the Petitions filed by Uttarakhand Power Corporation Ltd.

(hereinafter referred to as “UPCL” or “Petitioner” or “Licensee”) seeking approval of the draft Power Purchase Agreements for short term power purchase from M/s Adani Enterprises Ltd. (hereinafter referred to as “M/s AEL”), from M/s Tata Power Trading Company Ltd. (hereinafter referred to as “M/s TPTCL”) and from M/s Ambitious Power Trading Company Ltd. (hereinafter referred to as “M/s APTCL”) (hereinafter collectively referred to as “Respondents”).

As the nature of the Petitions are similar, the Commission has decided to merge all the three Petitions.

1. Petitioner’s Submissions

- 1.1 The Licensee under Section 86(1)(b) of the Electricity Act, 2003 and in accordance with Regulation 74(1) of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021, Regulation 39(3) of the UERC (Conduct of Business) Regulations, 2014 & Chapter-II of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 filed a Petition dated 05.04.2023 seeking approval of the Commission on the Draft Power Purchase Agreement proposed to be entered with the Respondents.
- 1.2 The Petitioner submitted that during FY 2022-23 the overall demand & availability scenario of Uttarakhand has changed substantially. Moreover, the State based gas power plant, i.e. M/s Shravanthi 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 it has apprised the Commission from time to time regarding demand and availability position in the State and, accordingly, UPCL has been floating back to back tenders for securing power and in the lieu of the same, UPCL floated a tender for procurement of power on short term basis for the month of March 2023.
- 1.4 The Petitioner submitted that due to shortage of power, it has to procure power through power exchange to supply 24x7 power to the consumers of the State that may have a possibility of un-cleared power and even power cleared may cause excessive financial burden on UPCL and the APPC of UPCL will also get higher which will affect the financial health of UPCL.

- 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 short term tender for RTC power through DEEP portal for the month of March, 2023 as follows:

Month/Period	Timings		Quantum of Power (MW)	Minimum Bid Quantity (MW)	Delivery Point at Uttarakhand State Periphery
	From	To			
March, 2023	00:00	24:00	325	20	

- 1.6 The Petitioner submitted that initial price offers was opened on 16.02.2023 and e-Reverse Auction was also conducted on the same day. M/s AEL, M/s TPTCL and M/s APTCL provided the results of e-Reserve Auction after carrying out bucket filling procedure.
- 1.7 The Petitioner submitted that it had apprised the Commission vide its letters dated 27.02.2023 about the power situation and the detailed list of offers received against the above-mentioned tender and further had requested the Commission to accord in-principle approval for procurement of power. The Commission vide its letter dated 28.02.2023 had accorded the in-principle approval for procurement of said short-term power from the selected bidders.
- 1.8 The Petitioner submitted that Letter of Awards were issued to the above-mentioned successful bidders. The Petitioner also submitted that while taking cognizance of the facts mentioned above and in-principle approval accorded by the Commission, the Petitioner is desirous of purchasing the entire energy on the terms and conditions as agreed between the parties as per the terms and condition laid down in the draft Power Purchase Agreement.

2. Respondents' reply and Petitioner's rejoinder

- 2.1 The copy of the Petition was forwarded to the Respondents for comment. In the matter, M/s AEL and M/s APTCL vide its letters dated 01.05.2023 submitted they do not have any comments on the said matter whereas M/s TPTCL vide its letter dated 28.04.2023 submitted its comments which were forwarded to the Petitioner for rejoinder. UPCL submitted its rejoinder vide letter dated 02.05.2023. Reply and rejoinder has been discussed in the subsequent paragraphs of this Order.
- 2.2 M/s TPTCL vide its reply dated 28.04.2023 submitted that LoI no. mentioned in the draft PPA is 903/UPCL/COMM/Tender/SE whereas the original LoI no. is 903/UPCL/Comm/Tender-08/SE. Accordingly, the same needs to be corrected. UPCL agreed to make necessary correction in the PPA.

2.3 M/s TPTCL vide its reply submitted that Clause 13 (Arbitration) of the draft PPA refers to Indian Arbitration and Conciliation Act, 1996 whereas Clause 22.2 (Dispute Resolution) of the tender document refers Indian Arbitration and Conciliation Act, 2015.

3. Commission's Views & Decisions

3.1 Legal Requirement for approval of PPA

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

3.1.2 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.

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 Ministry of Power vide its notification dated 30.03.2016 issued “Guidelines for short-term (i.e. for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process”. Clause 4.1 of these guidelines provides that:

*“The Procurer(s) shall procure short term power **as per the plan approved by Appropriate Commission or appropriate body** as may have been constituted for the purpose by the Appropriate Commission. In such case the Distribution Licensees will intimate about the initiation of the procurement process to the Appropriate Commission.”*

In addition, Regulation 72 & 73 of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021 also provides for preparation of power procurement plan and approval of the same by the Commission.

3.1.6 Clause 11.4 of the MoP guidelines provides that:

“If the quantum of power procured and tariff determined are within the blanket approval granted by the Appropriate Commission in Annual Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the Appropriate Commission.”

The Commission taking cognizance of the fact that while approving the cost of power purchase for FY 2022-23 in the tariff Order dated 31.03.2022, the Commission had approved power purchase rate of Rs. 3.56/kWh to meet the deficit power purchase. However, the LOA’s were issued to respective bidders by the Petitioner over and above the rates approved by the Commission for deficit power purchase in FY 2022-23, as tabulated below:

Month/Period	Name of Bidder	Quantum of Power (MW)	Rate at Delivery Point (Rs./kWh)	Delivery Point
March, 2023	M/s TPTCL	100	8.31	Uttarakhand State periphery
	M/s APTCL	25	8.32	
	M/s AEL	200	9.00	

In this regard, as also submitted by the Petitioner, the Commission vide its

letter dated 28.02.2023 on the request made by UPCL, owing to power deficit scenario had accorded the in-principle approval to UPCL for procurement of power during the aforesaid month at the rates and quantum stated above. Accordingly, the same is being considered and adopted by the Commission.

3.2 Commission's Analysis of the draft PPAs and Order on the same

- 3.2.1 The draft PPAs to be executed between UPCL and M/s AEL, M/s TPTCL and M/s APTCL for procurement of quantum of 200 MW, 100 MW and 25 MW respectively was for the month of March, 2023 on short term basis.
- 3.2.2 The draft PPAs submitted by UPCL have been examined in light of the relevant rules & regulations. The Commission observed that M/s TPTCL has submitted certain observations on the draft short term PPA 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 PPAs while executing it with the Respondents.
- a) Para 1 of the draft PPAs provides the day on which PPAs is brought into effect. The Place for dates has been left blank. The above-mentioned Para needs to be completed while the final PPAs are being signed.
 - b) M/s TPTCL vide its submission stated that LoI no. mentioned in the draft PPA does not match with the original LoI. The Petitioner agreed to make necessary correction in the draft PPA. Accordingly, the Petitioner is directed to make necessary corrections in all the three short-term PPAs in this regard.
 - c) M/s TPTCL vide its reply submitted that Clause 22.2 (Dispute Resolution) of tender documents mentions 'Indian Arbitration and Conciliation Act, 2015' whereas in the draft PPA, Clause 13 (Arbitration) 'Indian Arbitration and Conciliation Act, 1996 has been mentioned. The Petitioner agreed to replace 'Indian Arbitration and Conciliation Act, 1996' with 'Indian Arbitration and Conciliation Act, 2015'. Accordingly, the Petitioner is required to make necessary corrections in all three PPAs in this regard.
- 3.2.3 The other provisions of the draft PPAs have been examined which is in accordance with the Regulations. However, UPCL and the Respondents are hereby directed to

incorporate the changes proposed in the draft PPAs 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)