

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition Nos. 4 & 5 of 2022

In the matter of:

Application seeking approval on the two Draft Power Purchase Agreements proposed to be entered into between UPCL and M/s Sravanthi Energy Pvt. Ltd & M/s Gama Infraprop Pvt. Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd. ...Petitioner

AND

M/s Sravanthi Energy Pvt. Ltd. ...Respondent No. 1

M/s Gama Infraprop Pvt. Ltd. ...Respondent No. 2

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

Shri M.K. Jain Member (Technical)

Date of Order: February 03, 2022

This Order relates to the Petitions filed by Uttarakhand Power Corporation Ltd., a distribution licensee (hereinafter referred to as "UPCL" or "Petitioner") seeking approval of draft PPA's for purchase of power from the Gas based power plants to be commissioned at Village Khaikhera, Kashipur, Dist. Udhamasinghnagar owned by M/s Sravanthi Energy (P) Ltd. (hereinafter referred to as "M/s SEPL" or "Respondent No. 1") & M/s Gama Infraprop Pvt. Ltd. (hereinafter referred to as "M/s GIPL" or "Respondent No.2").

1. Background

1.1 The Petitioner filed two Petitions dated 11.01.2022 seeking approval of draft PPA's to be executed with M/s SEPL & M/s GIPL. The Petitions have been filed under Section 86(1)(b) of the Electricity Act, 2003, license conditions issued to UPCL, Regulation 39(3) of UERC (Conduct of Business) Regulations, 2014. The Commission decided to merge both the

Petitions as the same were of similar nature.

- 1.2 The Petitioner submitted that the GoU vide earlier order no. 456/I/2015-04(03)/160/2010 dated 28.04.2015 and 442/2016/2016-04/15/2015 dated 10.06.2016 had directed the Petitioner to sign PPAs with three gas based generators in the ratio of 2:1:1 of their installed capacities.
- 1.3 The Petitioner submitted that in compliance of the directions given vide above mentioned GOs it had signed Power Purchase Agreements (PPAs) with M/s Sravanthi Energy Pvt. Ltd., M/s Gama Infraprop Pvt. Ltd. & M/s Beta Infratech Pvt. Ltd. (M/s BIPL) for 214, 107 & 107 MW capacities respectively.
- 1.4 The Petitioner submitted that M/s SEPL & M/s GIPL had commissioned their plants subsequent to the signing of PPAs. However, M/s BIPL inspite of giving repeated opportunities had not commissioned its plant and UPCL considering the repeated default on the part of the generator (M/s BIPL) and as per the provisions of PPA had terminated the PPA with M/s BIPL on 19.03.2019.
- 1.5 The Petitioner further submitted that GoU vide its GO No. 13/I-1/2022-04/15/2015 dated 06.01.2022, considering the termination of PPA with M/s BIPL and consequent spare capacity of 107 MW, has allocated this spare capacity of 107 MW between M/s SEPL and M/s GIPL in the ratio of their installed capacities, i.e. 71.33 MW and 35.67 MW respectively as had been allocated originally vide GO dated 28.04.2015 and 10.06.2016. The Petitioner also submitted that GoU vide aforementioned GO dated 06.01.2022 has also directed UPCL to sign the PPA with the two gas based generators, i.e. M/s SEPL and M/s GIPL.
- 1.6 The Petitioner submitted that consequent to the GO dated 06.01.2022, M/s SEPL vide their letter dt. 06.01.2022 and M/s GIPL vide their letter dated 07.01.2022 has requested UPCL to sign the PPA for 71.33 MW capacity and 35.67 MW capacity respectively as directed in GO.
- 1.7 The Commission admitted both the Petitions on 12.01.2022 and also forwarded a copy of the Petition to the respective generators, namely M/s SEPL and M/s GIPL for submission of their comments on the same.
- 1.8 M/s SEPL vide and M/s GIPL vide their mails dated 13.01.2022 respectively, submitted that they have no comments in the matter.
- 1.9 The Commission vide its letter dated 17.01.2022 asked UPCL to submit the

need/requirement of power w.r.t. PPAs proposed with both the aforementioned generators namely, M/s SEPL and M/s GIPL. UPCL vide its letter dated 31.01.2022 submitted its response on the same.

1.10 The Petitioner's submission, Respondent's submission and Commission' view on the same are dealt with at relevant paras of this Order.

2. Commission's Views & Decisions

2.1 Legal Requirement for approval of PPA

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

2.1.2 Section 86(1)(b) of the Electricity Act, 2003 stipulates that one of the function 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 Licence 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”*

(Emphasis added)

2.1.5 Further, Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021, provides as:-

“74. Approval of power purchase agreement/arrangement

(1) Every agreement or arrangement for power procurement by a Distribution Licensee from a Generating Company or Licensee or from other source of supply entered into after the date of effectiveness of these Regulations shall come into effect only with the prior approval of the Commission:

Provided that the prior approval of the Commission shall be required in respect of any agreement or arrangement for power procurement by the Distribution Licensee from a Generating Company or Licensee or from any other source of supply on a standby basis:

Provided further that the prior approval of the Commission shall also be required for any change to an existing arrangement or agreement for power procurement, whether or not such existing arrangement or agreement was approved by the Commission.

(2) The Commission shall review an application for approval of power procurement agreement/arrangement having regard to the approved power procurement plan of the Distribution Licensee and the following factors:

- a) Requirement for power procurement under the approved power procurement plan;*
- b) Adherence to a transparent process of bidding in accordance with guidelines issued by the Central Government;*
- c) Adherence to the terms and conditions for determination of tariff specified under these Regulations where the process specified in (b) above has not been adopted;*
- d) Availability (or expected availability) of capacity in the intra-State transmission system for evacuation and supply of power procured under the agreement/arrangement;*
- e) Need to promote co-generation and generation of electricity from renewable sources of*

energy.”

- 2.1.6 The Commission asked UPCL to submit the need/requirement of power w.r.t. PPAs proposed to be entered with M/s SEPL and M/s GIPL, in response to which UPCL submitted its energy requirement and energy availability projections for FY 2022-23 to FY 2024-25. UPCL also submitted the quantum of energy projected to be procured from short term sources.
- 2.1.7 UPCL has projected 266.52 MUs of excess availability in FY 2022-23 after considering generation of 396 MUs from Vyasi HEP and procurement of power from short term sources to the extent of 640 MUs. UPCL further submitted that no firm date of commissioning for Vyasi HEP has been informed by UJVN Ltd. Thus, taking the same into consideration the power deficit from firm sources for FY 2022-23 works out to 769.48 MUs (about 104 MW RTC power).
- 2.1.8 Further, for FY 2023-24 UPCL has projected 274.34 MUs of excess availability of energy after considering 86 MUs of power from Bazpur-Nandehi co-generation plant and procurement of power from short term sources to the extent of 1025 MUs. UPCL further submitted that UJVNL officials have informed that the proposal of Bazpur-Nandehi co-generation plant has been dropped by the Government. Thus, taking the same into consideration the power deficit from firm sources for FY 2023-24 works out to 836.66 MUs (about 112 MW RTC power).

Similarly, for FY 2024-25 UPCL has projected 282.14 MUs of excess availability of energy after considering 86 MUs of power from Bazpur-Nandehi co-generation plant and procurement of power from short term sources to the extent of 536 MUs. Thus, taking the same into consideration the power deficit from firm sources for FY 2024-25 works out to 339.86 MUs (about 46 MW RTC power).

- 2.1.9 The Commission in view of the above power deficit scenario faced by the discom, is of the view that the approval of proposed draft PPAs with M/s SEPL & M/s GIPL holds merit as the same would enable discom to procure power through firm sources and thus reducing its dependency on short term power procurement to bare minimum which is uncertain as have been experienced in the past months where the rate of power at IEX went up to as high as Rs. 20 per unit.
- 2.1.10 In view of the above and in accordance with the requirement of the Act and

Regulations referred above, UPCL as a distribution licensee is required to seek approval of the Commission of the PPAs entered or proposed to be entered into by it. Accordingly, the draft PPA between UPCL and M/s SEPL & M/s GIPL respectively is being examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003, MYT Regulations, 2021 and also in light of the Schemes/guidelines issued by MoP in this regard.

2.2 Consistency of the PPA with the Regulations

- 2.2.1 The draft PPA submitted by UPCL has been examined in light of the relevant rules & regulations. The Commission observed that certain clauses in the draft PPA submitted by UPCL are inconsistent with the provisions of the Act/Regulations. 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 PPA while executing the PPA with the project developers.
- a. The Commission observes that the date mentioned in first line of the draft PPA has been left blank, hence, it should be duly specified at the time of signing the PPA.
 - b. The Commission observes that in Clause 11.1(i)(C) of the draft PPA the word “dangerous” has been misspelled as “dangel’Ous”. UPCL is required to correct the same before signing of the PPA.
 - c. Draft PPA proposed to be entered with M/s GIPL in clause 9.2.1.ii. has a reference made to UJVN Ltd. The same should be replaced by M/s. GIPL.
- 2.2.2 The Commission observes that proposed draft PPAs are mostly on similar lines as the PPAs for earlier contracted capacity entered into by M/s SEPL & M/s GIPL, except few minor changes, and as such no major inconsistency has been observed w.r.t. the same.
- 2.2.3 Accordingly, UPCL and M/s SEPL & M/s GIPL respectively are directed to incorporate the changes discussed above in the draft PPAs and sign the PPA within 15 days of the date of the Order. UPCL is also directed to submit the copy of the signed PPAs before the Commission within a week of executing the same with respective generators.
- 2.2.4 The Draft Agreements does not mention the Scheduled Delivery Date or the Scheduled

date of Commissioning. The same should also be incorporated after discussions with UPCL.

2.3 Directions w.r.t. to the draft PPAs

- 2.3.1 UERC MYT Regulations 2021 defines Date of commercial operation in case of a generating unit or block of the thermal generating station as the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run after notice to the beneficiaries, if any, and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station. In this regard, the Commission directs both the generators to give atleast 15 days' notice to UPCL before declaring the commissioning of the contracted capacity. However, with regard to synchronization of the proposed capacity, it should be done in conformity with Clause 6.1 of the draft PPA.
- 2.3.2 The Commission directs both the generators that the commissioning of the scheduled capacity of the gas-based projects respectively be made only after firm gas tie up at the rates agreed upon by UPCL.
- 2.3.3 The generators are also directed to submit the connectivity agreement for evacuation of the proposed power to be tied up with UPCL within 15 days of the date of this Order.
- 2.3.4 UPCL is directed to submit the final signed PPAs before the Commission within 15 days of the date of the Order.

2.4 With this, Petition no. 4 & 5 of 2022 stands disposed.

2.5 Ordered accordingly.

(Shri M.K. Jain)
Member (Technical)

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