

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 20 of 2022

In the matter of:

Application seeking approval of the Draft Power Purchase Agreement between Uttarakhand Power Corporation Limited and UJVN Limited for its Suringad-II Small Hydro Power Plant (2X2.25 MW).

In the matter of:

Uttarakhand Power Corporation Ltd. ... Petitioner

AND

In the matter of:

UJVN Ltd. ... Respondent

CORAM

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

Shri M.K. Jain Member (Technical)

Date of Order: September 02, 2022

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 Power Purchase Agreement (PPA) to be executed by it with Uttarakhand Jal Vidyut Nigam Ltd. (hereinafter referred to as "UJVN Ltd." or "Respondent") for procurement of power from Suringad-II Small Hydro Power Plant (SHP) of UJVN Ltd. having capacity of 5 MW (2x2.50 MW).

1. Petitioner's Submissions

1.1. UPCL has filed the Petition dated 11.07.2022 seeking approval of the Commission on the draft Power Purchase Agreement (PPA) for purchase of energy generated from the Respondent's SHP under Section 86(1)(b) of the Electricity Act, 2003 and clause 5.1, 5.2 & 5.4 of the license conditions of the Distribution and Retail Supply license dated 20.06.2003

issued by the Commission.

- 1.2. The Petitioner submitted that UJVN Ltd. is engaged in the business of power generation through its SHP having installed capacity of 5 MW (2X2.50 MW) situated in Munsyari Tehsil, Distt- Pithoragarh in the State of Uttarakhand.
- 1.3. The Petitioner submitted that the Respondent desires to sell entire energy scheduled to be generated from its project and the Petitioner is desirous of purchasing the entire energy on the terms and conditions as agreed between both the parties as per the terms and conditions laid down in draft PPA.
- 1.4. The Petitioner submitted that as per the provisions of the Electricity Act, 2003 read with the provisions of UERC (Conduct of Business) Regulations, 2014 and Distribution and Retail Supply License, the Petitioner is required to get the approval of the Commission on the PPA entered with the Generating Company.
- 1.5. The copy of the Petition was forwarded to the Respondent for providing an opportunity to it to submit its comments, if any, before the Commission. The Respondent submitted its comments, vide its letter dated 28.07.2022, on the clauses of the draft PPA which were forwarded to UPCL for their counter reply. UPCL submitted its rejoinders on 17.08.2022. Comments of the Respondent and rejoinders of the Petitioner have been dealt in the subsequent Paras.

2. Respondent's reply and Petitioner's rejoinder

- 2.1. The Respondent submitted that Clause 2.1(vii) of the draft PPA provides for the eligibility criteria for qualifying as generating station based on renewable energy source. In this regard, the Respondent submitted that the said clause should be in accordance with the provision of Regulation 4(3) of RE Regulations, 2018. The Petitioner vide its rejoinder agreed with the comments of the Respondent.
- 2.2. The Respondent proposed to add '*and as amended from time to time*' at the end of Clause 2.3 of the draft PPA after 'Regulations, 2018'. The Petitioner agreed to the same.
- 2.3. The Respondent proposed to replace 'Bill meter' with 'Main meter' under Clause 5.2 of the Draft PPA. The Petitioner has not raised any objection and agreed for the replacement of the Clause 5.4 of the draft PPA as mentioned by the Respondent.

2.4. With regard to Clause 8.6A under '*Interconnection facilities*' of draft PPA, the Respondent submitted the proviso indicates that all type of loss of generation to M/s HHPL would be attributable to Suringad SHP, which, however, may not be the actual case. The losses to M/s HHPL may arise due to technical reasons at the end of M/s HHPL SHPs and may also be due to breakdown in 33 kV & higher transmission lines of UPCL/PTCUL. Therefore, the loss of generation of M/s HHPL which is not due to running of Suringad SHP cannot be borne by UJVN Ltd. The Respondent also submitted that in order to avoid any generation loss to M/s HHPL's Motighat and Tanga SHPs, UJVN Ltd. would install Special Protection System at its end. However, in case of any failure of protection system, UJVN Ltd. would bear the burden of that generation loss to M/s HHPL which is established due to Suringad SHP.

In the matter, the Petitioner submitted that ad-interim arrangement is proposed on the request of UJVN Ltd. with the intention to provide connectivity to the stranded Suringad SHP, hence, any risk with regard to the probable deemed generation out of reasons not pertaining to UPCL shall be hedged by UJVN Ltd.

- 2.5. The Respondent submitted that '*Chief Executive of the Generating Company*' should be replaced with 'General Manager (Commercial), UJVN Ltd.' in Clause 22(c) of the draft PPA. The Petitioner agreed to the comment of the Respondent.
- 2.6. The Respondent submitted that 'end' should be replaced with 'and' under Clause 26(c) of the draft PPA. The Petitioner agreed to the same.
- 2.7. The Respondent requested the Commission that Annexure-I to VIII enclosed in the draft PPA should be filled to which the Petitioner agreed.

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. As per Regulation 39(1) of the UERC (Conduct of Business) Regulations, 2014 the distribution licensee is required to file with the Commission in complete form copies of all the Power Purchase Agreements already entered by it. The relevant portion of the Regulation is reproduced hereunder:

"39. Regulation of Distribution Licensee's Purchase of Power

- (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.*
- (4) Nothing contained herein shall affect the obligations of distribution licensee under the existing contract and arrangement for purchase, import or acquisition of electricity from generating companies, electricity trader and from other persons with whom the licensee has agreements or arrangements of power purchase or procurement of energy in accordance with the terms and*

conditions of such agreement and arrangement consented to or approved by the Commission.

(5) The provisions of sub-regulations (2) and (3) above or any action taken therein shall not, in any manner, prejudice the exercise of functions and powers of the Commission under any of the other provisions of the applicable law, the Regulations and Orders issued from time to time."

3.1.5. Regulations 7(2) & 7(3) of the UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2018 and as amended from time to time (hereinafter referred to as "RE Regulations, 2018") specifies that:

"7. Sale of Power

(1) xxx

(2) The distribution licensee on an offer made by the said RE based Generating Stations and Cogenerating Stations may enter into a power purchase agreement in conformity with these Regulations and relevant provisions of other Regulations and the Act. However, if the distribution licensee intends to purchase power from such generator it shall sign the PPA within two months of offer made by the generating company. Otherwise, if the distribution licensee is not willing to purchase power from such generator it shall intimate the same to the generating company within one month of offer made by it...

(3) The distribution licensee shall make an application for approval of power purchase agreement entered into with the generating company in such form and manner as specified in these regulations and UERC (Conduct of Business) Regulations, 2014 as amended from time to time within one month of the date of signing the PPA."

(Emphasis added)

3.1.6. Accordingly, in accordance with the requirement of the Act and the Regulations referred above, UPCL as a distribution licensee is required to seek approval of the PPA entered or proposed to be entered by it from the Commission.

3.2. Consistency of the PPA with the Regulations

3.2.1. Regulation 6(7) of RE Regulations, 2018 specifies as under:

"All Power Purchase Agreements (PPAs) signed by the generating stations existing on the date of notification of these regulations shall be amended in accordance with these regulations, if inconsistent with these Regulations and such amended PPAs shall be valid for entire life of the RE Based Generating Stations and Co-generating Stations."

3.2.2. Hence, all the PPAs entered or to be entered into by UPCL are required to be amended in accordance with the RE Regulations if they are inconsistent with the provisions of RE Regulations, 2018. Accordingly, PPAs executed between UPCL and the generators are examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003 & RE Regulations, 2018.

3.3. Commission's Analysis of the draft PPA and Order on the same

3.3.1. The PPA is to be entered into between UPCL and the Respondent for supply of power from the Respondent's Suringad-II SHP having capacity of 5 MW (2x2.50 MW) situated within the State of Uttarakhand.

3.3.2. The PPA submitted by UPCL and the submissions of the Respondent have been examined in light of the relevant Act, rules & regulations. The Commission observed that certain clauses in the 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 final PPA with the project developer.

a) Para 1 of the draft PPA provides the date on which PPA is brought into effect. In the draft PPA, date, month and year needs to be filled up and completed while the final PPA is being signed.

b) Clause 2.1 (vii) of the draft PPA specifies as follows:

"Any new source or technology which would qualify as 'renewable energy', only after such source/technology is based on scientifically proved technology approved by MNRE or any competent authorities under the central ministry. Further, the Commission shall determine tariffs separately for each technology after the approval of such scientifically proven technology by competent authority under the central ministry."

With regard to aforesaid clause of the draft PPA, the Respondent submitted that Clause 2.1(vii) of the draft PPA should be in accordance with provisions of RE Regulations, 2018. In the matter, the Petitioner agreed that clauses of PPA should be in consonance with the provisions of RE Regulations.

Accordingly, Clause 2.1(vii) of the draft PPA shall be read as follows:

“Any new source or technology would qualify as ‘Renewable Energy’ only after such source/technology approved by MNRE or any competent authorities under the central ministry. Further, the Commission shall determine tariffs separately for each technology after the approval of such scientifically proven technology by competent authority under the central ministry.”

- c) The Respondent has proposed to add ‘as amended from time to time’ at the end of Clause 2.3 under *“Power Purchase and Sale”*. The Petitioner has agreed on the same. Accordingly, Clause 2.3 shall be read as follows:

“Energy accounting for supply of electricity by UPCL to the Generating Company shall be as per Regulation 47 of the Uttarakhand Electricity Regulatory Commission as provided in Uttarakhand Electricity Regulatory Commission (Tariff and other terms of supply of Electricity from Renewable Energy Sources and non-fossil fuel based co-generating stations) Regulations, 2018 and as amended from time to time.”

- d) The Commission observed that under Clause 5.2 of the draft PPA, the Petitioner has used terminology ‘Bill meter’ instead of ‘Main meter’. The Respondent has also raised the same objection. Further, the Petitioner vide its rejoinder has agreed to replace the ‘Bill meter’ with ‘Main meter’. Accordingly, Clause 5.2 of draft PPA shall be replaced with the following:

“The Monthly Bill in triplicate along with supported documents viz. Joint Meter Readings and the MRI document (Bill & Check Meter) duly signed by Executive Engineer (Distribution), Executive Engineer (Test) UPCL of the concerned division within 3 days after the meter reading is taken and where either of the authorised officer of UPCL is not available during these three days signature of one officer of UPCL should suffice with load survey data of previous 35 days raised by the Generating Company shall be delivered to UPCL at office of Chief Engineer (Commercial), V.C.V. Gabar Singh Urja Bhawan Kanwali Road Dehradun on or before the fifth (5th) working day of the following month hereinafter called the Monthly Bill date.”

- e) Clause 8.6A of the Draft PPA, specifies as follows:

“As the technical feasibility for power evacuation at 33/11 kV Substation Darati is interim and is subject to the vacation of stay by Hon’ble UERC, therefore the generating company shall be under obligation to obtain the appropriate order from Hon’ble UERC in this regard further the generating company shall ensure to comply with the conditions which the

Hon'ble UERC may impose including the suitable mechanism to install Special Protection System (SPS) at their end and on their cost in order to avoid any generation loss to M/s HHPL's Motighat (5 MW) and Tanga(5 MW) until the evacuation will be done after the construction of 220/33 kV substation Baram of PTCUL and charging of associated 33 kV Seraghat- Baram-Jauljivi line .

Provided further, that during the period of ad-interim connectivity of Suringad-II SHP, in case of any loss of generation to M/S HHPL the same shall be solely attributable to UJVNL and all such burden shall be borne exclusively by UJVN Ltd. for which UPCL shall not be liable in any way."

With regard to proviso of Clause 8.6A of the draft PPA, the Respondent has submitted that all type of loss of generation to M/s HHPL would be attributable to Suringad-II SHP which, however, may not be the actual case. The losses to M/s HHPL may arise due to technical reasons at the end of M/s HHPL SHPs and/or due to breakdown of 33 kV & higher transmission lines of UPCL/PTCUL. Therefore, the loss of generation of M/s HHPL which is not due to running of Suringad-II SHP cannot be borne by UJVN Ltd. The Respondent also proposed that it would install Special Protection System at its end to avoid any generation loss to M/s HHPL's Motighat and Tanga SHP. Further, any loss of generation to M/s HHPL's aforesaid SHPs shall be borne by UJVN Ltd. where it is established that the said loss of generation is due to Suraingad-II SHP. The submission made by the Respondent is reproduced hereunder:

"As the technical feasibility for power evacuation at 33/11 kV substation Darati is interim and is subject to the vacation of stay by Hon'ble UERC, therefore, the generating company shall be under obligation to obtain the appropriate order from Hon'ble UERC in this regard further the generating company shall ensure to comply with the conditions which the Hon'ble UERC may impose including the suitable mechanism to install Special Protection System (SPS) at their end and on their cost in order to avoid any generation loss to M/s HHPL's Motighat (5 MW) and Tanga (5 MW) until the evacuation will be done after the construction of 220/33 kV substation Baram of PTCUL and charging of associated 33 kV Seraghat-Baram-Jauljivi Line.

Provided further that during the period of ad-interim connectivity of Suringad SHP, in case of any generation loss to M/s HHPL is established due to Suringad SHP of UJVN Ltd. the same shall be solely attributable to UJVNL and all such burden shall be borne exclusively by UJVNL for which UPCL shall not be liable in any way. Provided further, in this regard any

direction of Hon'ble UERC would prevail."

The Petitioner vide its rejoinder submitted that the Ad-interim arrangement is proposed on the request of the Respondent with the intention to provide connectivity to the stranded Suringad-II SHP. Hence, any risk with regard to the probable deemed generation out of reasons not pertaining to UPCL shall be hedged by UJVN Ltd. The Petitioner in this regard submitted its comments as under:

"With regard to suggestion made by UJVN Ltd. in 1st proviso it is provided that the same should be modified as follows:

Provided that during the period of ad-interim connectivity of Suringad-II SHP for all instances of loss of generation to M/s HHPL, other than those which shall conclusively be attributable to UPCL or M/s HHPL, UJVN Ltd. shall be solely responsible and accordingly, shall bear the burden of Deemed Generation or any other loss to M/s HHPL."

With regard to interim connectivity of Suringad-II SHP at 33/11 kV Darati Sub-station, it is worthwhile to note that M/s HHPL has been made a party to the contract proposed to be entered between UPCL and UJVN Ltd. although it is stranger to the proposed draft PPA.

According to Section 2(h) of the Indian Contract Act 1872, a contract is an agreement between two parties enforceable by law backed by some consideration. The essence of the law of contract lies in the promise which both parties have made towards each other for fulfilling their part of the contract. The doctrine of privity of a contract is a common law principle which implies that only parties to a contract are allowed to sue each other to enforce their rights and liabilities and no stranger is allowed to confer obligations upon any person who is not a party to contract even though the contract have been entered into for his benefit. The rule of privity is basically based on the 'interest theory' which implies that the only person having an interest in the contract is entitled as per law to protect his rights. Though some interest is supposedly being conferred on M/s HHPL regarding claim of loss of generation from UJVN Ltd., however, in the PPA entered between M/s HHPL and UPCL, UPCL is bound to pay it deemed generation for loss of generation as per RE Regulations. Thus, the two

set of PPA's are contradictory with each other. Besides, the provisions proposed by both the Respondent and the Petitioner would lead to future disputes as it would be difficult to ascertain as to the party in default for the generation loss.

With respect to connectivity of Suringad SHP at 33/11 kV Darati Sub-station, the Commission in its Order dated 30.06.2021 held as under:

*"7.4 In the view of the above discussion it is evident that Petitioner has a valid PPA with UPCL for 35 years life of Motighat and Tanga SHP duly approved by the Commission and UPCL has given TFR application vide letter dated 10.05.2005 to evacuate power at 33/11 kV Darati Sub-station and UPCL is struggling to evacuate the 10 MW of power from Petitioner's aforesaid SHPs and in this manner there is no capacity at the said Darati Sub-station to evacuate power more than it is already agreed to from Petitioner's SHP. **There is no provision in the Act and Regulations to give temporary connectivity as submitted on behalf of UJVN Ltd. during the final hearing before the Commission.** Further, it will not be out of place to mention that UPCL in its letter dated 04.03.2021 by Executive Engineer, Dharchula has categorically stated that it is not technically feasible to evacuate power from Suringad SHP at Darati Sub-station and till date no technical feasibility report has been given by UPCL to connect Suringad SHP at 33/11 kV Darati Sub-station. In light of this, the Commission is of the view that in the prevailing circumstances it is not feasible to allow connectivity to any other SHP viz-a-viz UJVN Ltd.'s Suringad SHP to 33/11 kV Darati Sub-station and the existing 33 kV network besides the Petitioner's SHPs."*

(Emphasis added)

Accordingly, vide the said Order UPCL was directed not to connect any other SHP to the 33/11 kV Darati Sub-station and/or existing 33 kV network till 220 kV Baram S/s alongwith associated lines is ready for evacuation.

The Commission vide its Order dated March 23, 2022 on the Petition filed by UJVN Ltd. seeking permission to connect the Suringad (5 MW) SHP from 33/11 Darati S/s of UPCL, had held as under:

"6.5 Besides above, the Commission has made following observations:

- (i) The Commission is in agreement with the submission of Respondent No. 3 whereby, it has submitted that as on date the said S/s has been unable to continuously evacuate the full installed capacity of 10 MW + 10% overload from the Respondent's two SHPs because of network constraints in UPCL's 33 kV transmission system namely abnormally high bus voltages exceeding 36 kV and frequent grid failures. In such circumstances accepting Petitioner's request will*

only lead to instability in the system.

- (ii) *It is surprising that UJVN Ltd. is proposing to indemnify Respondent No. 3 for the deemed generation claims in case of any deviation. It is observed that as per the prevailing RE Regulations, only a distribution licensee is obligated to pay the deemed generation claims, the Regulations does not provide any provision with regard to payment of deemed generation claims by the generator to another generator. Hence, such a proposal cannot be allowed.*
- (iii) *UPCL in its submission has admitted evacuation constraints existing in the Darati S/s and has submitted that, "... the Petitioner is well aware that due to existing evacuation constraints it was not possible for the respondent to provide connectivity at Darati sub-station, the issue was even placed before the Hon'ble Commission and all relevant developments thereafter have been under the knowledge of Hon'ble Commission...". It is surprising that knowing all the challenges/constraints of the network, and itself admitting to it as can be seen from the above, UPCL seems very wary of its own stance in the matter...."*

Hence, as is evident from the above the Commission in its previous two Orders referred above has categorically held that it would not be feasible to allow connectivity to any other SHP viz-a-viz UJVN Ltd.'s Suringad SHP to 33/11 kV Darati Sub-station and the existing 33 kV network, accordingly, the possibility of ad-interim temporary connectivity is ruled out..

Moreover, it would be pertinent to mention that the Respondent has filed a separate Petition before this Commission seeking permission for connectivity and evacuation of power from Suringad-II SHP using 33/11 kV Sub-station, Darati and the matter is sub judice before the Commission, hence, at present the Commission is not approving the connectivity clause of the PPA, pending final disposal of the Petition filed by UJVN Ltd. The clause 8 of the draft PPA shall be accordingly, modified based on the decision of the Commission.

- f) Clause 22(c) of the draft PPA specifies as follows:

"If the dispute is not resolved by way of a settlement being arrived at and duly signed by each of the above officers within (30) thirty days of the date of receipt of the notice described in clause (a) above, the matter may be referred by either or both the above designated officers of the two parties to the UPCL's Chief Engineer (Comm.), UPCL, V.C.V. Gabar Singh Urja

Bhawan, Kanwali Road, Dehradun with information to the Chief Executive of the Generating Company. Within 15 days of receipt of such notice, the Chief Engineer (Comml.) and the Chief Executive of the Generating Company would be required to meet at the formers office and endeavor to settle the dispute within a further period of (30) thirty days i.e. within a total period of 45 (forty Five) days from the initial date of receipt of the notice by the Superintending Engineer, EDC, Pithoragarh."

The Respondent vide its reply dated 28.07.2022 requested to replace 'Chief Executive of the Generating Company' with 'General Manager (Commercial), UJVN Ltd.' The Petitioner vide its rejoinder agreed to the same. Accordingly, Clause 22(c) of the draft PPA shall be read as follows:

"If the dispute is not resolved by way of a settlement being arrived at and duly signed by each of the above officers within (30) thirty days of the date of receipt of the notice described in clause (a) above, the matter may be referred by either or both the above designated officers of the two parties to the UPCL's Chief Engineer (Comml.), UPCL, V.C.V. Gabar Singh Urja Bhawan, Kanwali Road, Dehradun with information to the General Manager (Commercial), UJVN Ltd. Within 15 days of receipt of such notice, the Chief Engineer (Comml.) and the General Manager (Commercial), UJVN Ltd. would be required to meet at the formers office and endeavor to settle the dispute within a further period of (30) thirty days i.e. within a total period of 45 (forty Five) days from the initial date of receipt of the notice by the Superintending Engineer, EDC, Pithoragarh."

- g) In Clause 26(c) of the draft PPA, the Respondent submitted that 'end' should be replaced with 'and'. The Petitioner vide its rejoinder submitted that it was a typographical error and agreed with the comment of the Respondent. Accordingly, Clause 26(c) of draft PPA shall be replaced with the following:

"No consent of any person or entity not a party to this agreement, including any governmental authority, is required for such execution, delivery and performance by each respective party. All necessary consents have been either obtained or shall be obtained in the future as and when they become due."

- h) After Clause 40 of the PPA, the place for dates have been left blank and year specified is 2022. The above-mentioned Para needs to be completed while the final PPA is being signed between the Petitioner and the Respondent in the presence of the witnesses.

i) All Annexures mentioned in the clauses of the draft PPA needs to be completed before signing the final PPA.

3.3.3. UPCL is directed to take note of the above observations/corrections/modifications pointed out in the PPA and carry out the same in the PPA. As far as Clause 8.6A of the draft PPA is concerned, the Commission shall take a view separately based on the final decision of the Commission on the Petition filed by the Respondent w.r.t. connectivity of Suringad SHP. UPCL is directed to submit the amended/supplementary PPA to the Commission within 15 days of the date of the Order.

4. Ordered Accordingly.

(M.K. Jain)
Member (Technical)

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