

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No. 34 of 2022**

**In the matter of:**

Application seeking approval of the Commission on the draft Power Purchase Agreement for medium term power purchase between Uttarakhand Power Corporation Limited and M/s NTPC Vidyut Vyapar Nigam Ltd.

**In the matter of:**

Uttarakhand Power Corporation Limited

... Petitioner

**AND**

**In the matter of:**

M/s NTPC Vidyut Vyapar Nigam Ltd.

...Respondent

**CORAM**

**Shri D.P. Gairola**

**Member (Law) / Chairman (I/c)**

**Shri M.K. Jain**

**Member (Technical)**

**Date of Order: November 21, 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 to be executed for medium term power purchase with M/s NTPC Vidyut Vyapar Nigam Ltd. (hereinafter referred to as “NVVNL”).

**1. Background and 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 28.10.2022 seeking approval of the Commission on the draft Power Purchase Agreement (PPA) to be executed by UPCL for procurement of medium term power with M/s NVVNL.

- 12 The Petitioner submitted that it had from time to time informed the Commission regarding the power demand & availability position in the State as the overall demand & availability scenario of Uttarakhand has changed substantially in FY 2022-23. The Petitioner submitted that on one hand the demand has increased much more than what was estimated, may be due to the advent of early summers and increased industrial activities (post COVID effect) and on other hand the availability of power was not sufficient to meet out the demand such that the same was not even sufficient to meet out the 70% of State's demand.
- 13 The Petitioner submitted that the State based Gas Power Plant (M/s Shravanthi Energy Pvt. Ltd. (214 MW) & M/s Gamma Infraprop Pvt. Ltd. (107 MW)) 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 the chances of getting the gas in near future is also very bleak. The Petitioner further submitted that on account of 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 per kWh.
- 14 The Petitioner submitted that it has projected its demand and availability scenario for the next 3 years and the availability of gas power from M/s SEPL and M/s GIPL has not been considered as both the plants are under shutdown since October 2021 due to exorbitant high gas prices. The Petitioner further submitted that according to the projected demand the average base deficit in the months of October 2022 to March 2023 will be around 410 MW RTC and even in some of the block the maximum average deficit will touch 886 MW. Similarly, in FY 2023-24 the average base deficit would be around 228 MW with maximum

average deficit will reach 625 MW.

- 15 The Petitioner submitted that considering the demand and availability scenario, the Petitioner, in order to secure comfort upto March 2024, decided to go for a Medium-Term Tender for procurement of 350 MW RTC power from October 2022 to March 2024.
- 16 The Petitioner submitted that it had floated a medium-term tender for procuring 350 MW RTC power from October, 2022 to March, 2024 through DEEP Portal vide Tender Specification no. 05/CE(COMM)/UPCL-05/MTPP/2022. The Petitioner submitted that the initial price offer (IPO) was opened on dated 29.09.2022 and e-Reverse Auction (e-RA) was conducted on the same date, i.e. 29.09.2022. The Petitioner submitted that after the detailed consideration on the various offers received by the Petitioner and in light of the prior in-principle approval of the Commission, LoA was issued to M/s NTPC Vidyut Vyapar Nigam Ltd. (M/s NVVNL) for supply during the month of October, 2022 to March, 2024 at the rate of Rs. 5.41/kWh (delivery point shall be interconnection point of Central Transmission Utility (CTU) with Uttarakhand STU network) from the source of Jhabua Power Limited.
- 17 The Petitioner submitted that it had vide its letter no. 4028/UPCL/Com dated 01.10.2022 had apprised the Commission about the power situation and the detailed list of offers received against the above-mentioned tender and requested to accord in-principle approval for procurement. The Petitioner submitted that the Commission vide letter no. UERC/6/TF-533(A)/2022-23/2022/837 dated 10.10.2022 had accorded the in-principle approval for procurement of above said medium term power.
- 18 The Petitioner submitted that while taking cognizance of facts mentioned above & in-principle approval accorded by the Commission, applicant company was desirous of purchasing the entire energy on the terms and conditions as agreed between the parties as laid down in draft Power Purchase Agreement.
- 19 UPCL submitted a copy of the draft Power Purchase Agreement to be signed with NVVNL in this regard and requested the Commission to grant approval on the draft PPA to be executed between M/s NVVNL and the Petitioner Company.

- 1.10 The Commission also sought response from the M/s NVVNL on the draft PPA submitted by UPCL for approval of the Commission for procurement of power on medium term basis, in response to which M/s NVVNL vide their letter dated 10.11.2022 submitted their comments in the matter. Further, the Petitioner vide their letter dated 11.11.2022 submitted its rejoinder on the comments filed by M/s NVVNL.
- 1.11 The Petitioner's submission, the submission of Respondent, i.e. M/s NVVNL, and the Commission's views on the same is discussed in the subsequent paras.

## **2. Commission's Views & Decisions**

### **21 Legal Requirement for approval of PPA**

- 21.1 A PPA is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.
- 21.2 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.
- 21.3 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)*

214 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.*
- ...”*

215 Regulation 74 of MYT Regulations, 2021 specifies as under:

*“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.”*

21.6 In accordance with the RE Regulations, 2018 licensee is required to comply with the renewable purchase obligation as provided in the Regulations.

21.7 Further, 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.

21.8 Further, 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 takes 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 was issued to M/s NVVNL by the Petitioner over and above the rates approved by the Commission for deficit power purchase in FY 2022-23. Here it is pertinent to note that the said rates were approved based on the then prevailing rates for short term procurement of power, for meeting the deficit in FY

2022-23 through short term procurement whereas the proposal for approval of PPA in the current Petition is for medium term power procurement, therefore, comparing the rate of procurement of power in proposed PPA with the rate of Rs. 3.56/kWh approved by the Commission for deficit purchases is not a viable option.

21.9 In this regard, as also submitted by the Petitioner, the Commission had on the request made by UPCL, owing to power crisis scenario, and expected shortage of power during the winter months, accorded in principle approval to the Petitioner Company for procuring 100 MW RTC power from M/s NVVNL during the period 01.10.2022 to 31.03.2024 at the rate of Rs. 5.41/kWh at Uttarakhand State Periphery, vide Commission's letter dated 10.10.2022. Accordingly, the same is being considered and adopted by the Commission.

21.10 M/s NVVNL submitted that the Commission may consider that all the corrigendum issued by UPCL with respect to the aforesaid tender shall form an integral part of the approved PPA. In response to the same, the Petitioner accepted the comments of M/s NVVNL and further added that such conditions shall prevail over other general conditions of PPA.

The Commission accepts the same, however, any such condition having the effect of modifying the PPA approved by the Commission through this Order will not have effect except with the prior approval of the Commission.

21.11 M/s NVVNL further submitted that clause no. 3.1 of the draft PPA should be modified as under:

Original Clause No. 3.1.1 of the draft PPA:

*"3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein for supply thereof to the Utility (the "Procurement Contract") for a period of 18 Months or upto 31st March 2024 whichever is earlier commencing from the Appointed Date, and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.*

*Provided that at any time 3 (three) months, prior to the expiry of the Contract Period specified hereinabove, the parties may with mutual agreement extend the Contract Period for such further period as they may determine, but not exceeding the lower of 25% (twenty five percent) of initial contract period or one year whichever is lower."*

Changes proposed in Clause No. 3.1.1 of the draft PPA by M/s NVVNL

*"3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein for supply thereof to the Utility (the "Procurement Contract") for a period of 18 Months commencing from the Appointed Date, and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.*

*Provided that at any time 3 (three) months, prior to the expiry of the Contract Period specified hereinabove, the parties may with mutual agreement extend the Contract Period for such further period as they may determine, but not exceeding the lower of 25% (twenty five percent) of initial contract period or one year whichever is lower."*

In response to the same, UPCL submitted that in tender conditions the last date of contract period is 31<sup>st</sup> March 2024, however, considering the delay in start of power due to time elapsed in signing of the PPA and consequent issuance of coal the time extension beyond 31<sup>st</sup> March, 2024 may be allowed upto the limit of delayed period and with mutual consent of both the parties.

The Commission analyzed the submission of the Petitioner and the Respondent in this regard and observed that the proviso to clause 3.1.1 in the draft PPA already contains provision w.r.t extension of contract period beyond the date of the expiry of the contract with mutual consent of both the parties. The Commission, accordingly, is of the view that modification as proposed by the Respondent is not necessitated in view of the already existing proviso in the said clause of the draft PPA. The Commission, however, modifies the proviso to clause 3.1.1 of the draft PPA to make it subject to the prior approval of the Commission.



Accordingly, the Commission directs UPCL to carry out the aforesaid modification in the draft PPA to be executed with M/s NVVNL as follows:

*“3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein for supply thereof to the Utility (the "Procurement Contract") for a period of 18 Months or upto 31st March 2024 whichever is earlier commencing from the Appointed Date, and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.*

*Provided that at any time 3 (three) months, prior to the expiry of the Contract Period specified hereinabove, the parties may with mutual agreement extend the Contract Period for such further period as they may determine, but not exceeding the lower of 25% (twenty five percent) of initial contract period or one year whichever is lower, **subject to prior approval of the Commission.**”*

- 21.12 M/s NVVNL further submitted that w.r.t clause no. 3.2, if extension is sought beyond 31<sup>st</sup> March 2024 but period of supply is less than 18 months then applicable tariff shall be as per Article 11 of the Draft Model Bidding Document, and the applicability of this Clause 3.2.2 shall be only when supply period is beyond 18 months.

In response to the same UPCL submitted that in case contract period exceeds beyond 31<sup>st</sup> March, 2024 as per clause no 3.1 then all the terms including payment terms shall remain same without any change.

The Commission analyzed the submission of the Petitioner and the Respondent in this regard and observed that the Respondent has mistakenly typed the clause 3.2.2 in its reply in place of clause 3.2 as the draft PPA does not contains clause 3.2.2. Further, the Commission, as discussed in previous para, has modified the proviso to clause 3.1.1 such that prior approval of the Commission would be necessitated for extension of the contract beyond 31<sup>st</sup> March 2024, and in light of the same the Commission clarifies that the same shall include prior approval for payment terms as well. Accordingly, clause 3.2.2 of the draft PPA shall remain unaltered.

21.13 M/s NVVNL further submitted that clause no. 26.1, Definitions, of the draft PPA should be modified as under:

Original Clause No. 26.1, Definitions, of the draft PPA:

*"Appointed Date" means the date on which all the Conditions Precedent are achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;"*

Changes proposed in Clause No. 26.1, Definitions, of the draft PPA by M/s NVVNL:

*"Appointed Date" means the date on which all the Conditions Precedent are achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and assurance of unlocking of Linkage Fuel Supply from Coal India Ltd against the Contracted Capacity and such date shall be the date of commencement of the Contract Period;"*

M/s NVVNL submitted that assurance of unlocking of Linkage Fuel Supply from Coal India Limited may be considered as a Condition Precedent.

In response to the same, UPCL agreed with the modification proposed by the Respondent, however, subject to condition that the unlocking of linkage of fuel supply from Coal India Limited (CIL) shall not be out of any controllable reason attributable to generator.

The Commission analyzed the submission of the Petitioner and the Respondent in this regard and observed that M/s NVVNL has proposed to consider the assurance of unlocking of Linkage Fuel Supply from Coal India Limited as a Condition Precedent, whereas UPCL is proposing that the same should not be out of any controllable reason attributable to the generator. In this regard, the Commission after considering the submission of both the Petitioner and the Respondent is of the view that the condition of unlocking of linkage of fuel supply from Coal India Limited (CIL) cannot be treated as condition precedent as it is the business arrangement of M/s NVVNL which they need to take care of through their efficient operations.

Accordingly, in view of the above, the Commission directs UPCL to carry out the modification in clause 26.1, Definitions, in the draft PPA to be executed with M/s NVVNL as follows:

*"Appointed Date" means the date on which all the Conditions Precedent are achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and assurance of unlocking of Linkage Fuel Supply from Coal India Ltd against the Contracted Capacity, and such date shall be the date of commencement of the Contract Period;*

*However, the unlocking of linkage of fuel supply from Coal India Limited (CIL) shall not be out of any controllable reason attributable to generator."*

- 21.14 M/s NVVNL further submitted that clause no. 5.5 of the draft PPA should be modified as under:

Original Clause No. 5.5 of the draft PPA:

*"5.5 Obligations relating to transmission charges*

*The Supplier shall be liable for payment of all charges, due and payable under Applicable Laws, for inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of inter-state and intra-state transmission shall, subject to the provisions of Clause 11.4.4, be borne by the Supplier. The Parties further agree that the obligation of the Supplier to pay the regulated charges for transmission of electricity shall be restricted to the tariffs and rates applicable on the Bid Date for and in respect of the Contracted Capacity and any differential arising from revision of the regulated tariffs and rates thereafter shall be payable or recoverable, as the case may be, by the Utility. The Parties also agree that the regulated charges applicable for transmission of electricity referred to hereinabove as on the Bid Date shall be deemed to be Rs **0.500 per KWH (fifty paisa per KWH)** for and in respect of the Contracted Capacity (100 MW), which charges shall at all times be due and payable by the Supplier."*

M/s NVVNL, in this regard, sought confirmation from the Commission that, applying the open access under Short Term shall be in accordance with procedure of Bilateral Transaction based on CERC Open Access Regulation dated 25.01.2008 and subsequent amendments from time to time. Also, in case of congestion of Open Access Corridor, any additional Cost of Bidding beyond Rs. 0.50/kWh shall be borne by the UPCL.

In response to the same, UPCL agreed to the submission made by the Respondent, and submitted that the supplier is required to acquire open access at all times and in case open access is available only through the bidding mode by the respective RLDC the difference of open access charges per unit – (minus) Rs. 0.50 per unit shall be reimbursed from utility to supplier. Further, if the supplier wants to accommodate the open access through utilities LTA, if available, then Rs. 0.50 per unit shall be reimbursed to the utility by the supplier as these rates are quoted by the supplier against the transmission charges.

The Commission analyzed the submission of the Petitioner and the Respondent in this regard and accepts the same. The Commission, accordingly, is of the view that a proviso may be added to clause 5.5 of the draft PPA for the sake of clarity.

Accordingly, in view of the above, the Commission directs UPCL to add the following proviso in clause 5.5 of the draft PPA to be executed with M/s NVVNL as follows:

*“Provided that the supplier is required to acquire open access at all times and in case open access is available only through the bidding mode by the respective RLDC the difference of open access charges per unit – (minus) Rs. 0.50 per unit shall be reimbursed from utility to supplier. Provided further, if the supplier wants to accommodate the open access through utilities LTA, if available, then Rs. 0.50 per unit shall be reimbursed to the utility by the supplier as these rates are quoted by the supplier against the transmission charges.”*

21.15 The other provisions of the draft PPAs have been examined which are in accordance with the Regulations. However, UPCL and M/s NVVNL are hereby directed to incorporate the changes proposed as above by the Commission in the draft PPA before signing the same and submit the same to the Commission within 15 days of the date of Order.

3. Ordered accordingly.

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

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