

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 14 of 2022

In the matter of:

Application seeking approval of the Commission on the draft Power Purchase Agreement for short 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: June 22, 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 short term power purchases 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, 2015, 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 05.05.2022 seeking approval of the Commission on the Draft Power Purchase Agreement (PPA) to be executed by UPCL for procurement of short term power with M/s NVVNL.

- 12 The Petitioner submitted that the Commission considering the projected demand of the State and availability of power from various firm sources, has provided the power availability in the Tariff Order for FY 2022-23 and the deficit energy has been allowed to be arranged on short term basis/through Power Exchanges @ Rs. 3.56/unit. The Petitioner also submitted that, in the Tariff Order for FY 2022-23, against the total allowed firm energy the energy from the Gas Based generators situated in the State has been considered as per following details:

Station	Energy (MU)	Total Cost (In Crore)	Average Rate (Rs/KWh)
GIPL-I	712.07	440.63	6.19
GIPL-II	129.47	81.56	6.30
SEPL-I	1424.14	945.55	6.64
SEPL-II	258.93	163.13	6.30

- 13 The Petitioner submitted that due to exceptionally high gas prices on account of international reasons the gas arrangement at suitable prices could not be done and consequently the power from the aforesaid gas plants is not available since October, 2021 and shortfall in energy requirement was being managed through purchase from exchanges on day ahead/RTM basis. The Petitioner further submitted that due to acute coal shortage and unprecedented hike in demand across the country and in the State, the availability of power in the exchange has reduced substantially and that too is available at a very high rates, and inspite of placing the bids at higher rates in the exchange the actual percentage of clearing volume is very less even to the tune of 8-10% at times leaving the utility short of power. UPCL submitted that such shortages cause unscheduled rostering of power that leads to resentment of public and industries in specific.
- 14 UPCL submitted that only measure for contracting the confirmed adequate quantum was either through term ahead arrangement or through short term tender by way of DEEP portal, and since the shortages were to the tune of 12-14 MU per day, UPCL was required to arrange some quantum atleast for maintaining the reliable power to its consumers. UPCL submitted that as the market rates were consistently above Rs. 12/unit (at times

reached upto Rs. 17.00/unit) and availability of gas at reasonable prices was not expected in near future, the short term tender was published for supply of power from April, 2022 to March, 2023 as per following details:

Month	Timings		Quantum of Power (MW)	Minimum Bid Quantity (MW)	Delivery Point
	From	To			
Apr-22	00:00	24:00:00	200	50	Uttarakhand State Periphery
May-22	00:00	24:00:00	200	50	
Jun-22	00:00	24:00:00	200	50	
Jul-22	00:00	24:00:00	200	50	
Aug-22	00:00	24:00:00	200	50	
Sep-22	00:00	24:00:00	200	50	
Oct-22	00:00	24:00:00	200	50	
Nov-22	00:00	24:00:00	200	50	
Dec-22	00:00	24:00:00	200	50	
Jan-23	00:00	24:00:00	200	50	
Feb-23	00:00	24:00:00	200	50	
Mar-23	00:00	24:00:00	200	50	

- 15 UPCL submitted that proposals upto March, 2023 were invited considering that due to the present shortages UPCL was not in a position to forward bank any power in coming summers so as to receive back the same in the lean season, i.e. winters. UPCL further submitted that initial price offer (IPO) was opened on dated 04-04-2022 and e-Reverse Auction (e-RA) was conducted on the same day itself, and after detailed consideration on the various bids received by the Petitioner and in light of non-availability of power in power exchanges even after bidding on higher rates, LoA was issued to M/s NTPC Vidyut Vyapar Nigam Ltd. for the months of May and June, 2022 only at Rs. 12.01/unit for 100 MW RTC power.
- 16 UPCL submitted that the rates received in the tender were higher than usual and, accordingly, UPCL took time to evaluate the same in light of the market conditions, but as the scarcity of power increased the Petitioner decided to atleast procure power through this tender for the next two months. UPCL further submitted that the bidded quantum was much less than the original requirement and the TAM rates were soaring and the bidders were pushing to take decision immediately as they were unable to hold up the related generators for too long considering the rapidly changing environment of power scenario across the Country.
- 17 UPCL submitted that considering the above situation the Petitioner issued LoA to M/s NVVNL for ensuring atleast some firm quantum in anticipation that proper necessary

approval will be requested from the Commission in this regard. UPCL further submitted that the Petitioner vide letter dated 13.04.2022 had apprised the Commission regarding the power crisis that has occurred across the country and about the non-availability of power in open market and also about the exorbitantly high rates of power.

- 1.8 UPCL submitted a copy of Draft Power Purchase Agreements to be signed with NVVNL in this regard, and requested the Commission to allow purchase of 100 MW RTC power for the months of May and June, 2022 at Rs. 12.01/unit considering the peculiar market conditions and acute shortage of power in the overall market.
- 1.9 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 short term basis, in response to which M/s NVVNL vide their mail dated 01.06.2022 submitted that the Commission may approve the draft PPA and UPCL's prayer in the Petition.
- 1.10 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

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 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.
- 2.1.3 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)

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

216 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, 2018 also provides for preparation of power procurement plan and approval of the same by the Commission.

21.7 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 26.04.2021, the Commission had approved power purchase rate of Rs. 3.56/kWh to meet the deficit power purchase. However, the LOA was issued to respective bidder, i.e. NVVNL, by the Petitioner over and above the rates approved by the Commission for deficit power purchase in FY 2022-23, as tabulated below:

Month	Name of Bidder	Quantum of Power (MW)	Rate at Delivery Point (Rs./kWh)	Delivery Point
May-2022	M/s NVVNL	100	12.01	Uttarakhand State periphery
June-2022	M/s NVVNL	100	12.01	

21.8 In this regard, the Commission would like to state that in the Tariff Order for FY 2022-23 specific directions have been issued to UPCL to seek prior approval of the Commission in case the variation in power purchase quantum or total power purchase cost exceeds 5% of the approved power purchase quantum and cost for the respective quarter. The relevant portion of the Tariff Order dated 31.03.2022 is reproduced hereunder:

“The Commission, further, directs the Petitioner to seek prior approval of the Commission, in case the variation in power purchase quantum or total power purchase cost in any quarter exceeds by more than 5% of the approved power purchase quantum and cost for the respective quarter worked out on pro-rata basis from the total approved quantum and cost for FY 2022-23 as indicated in the Table below, failing which, the Commission may disallow power purchases so made while Truing up the ARR for FY 2022-23.”

21.9 As can be seen from above, the Commission has given clear directions to UPCL for seeking prior approval in case variation in power purchase cost exceeds 105% of the rate approved by the Commission, however, in the instant case no such prior permission was sought by UPCL. This is clear violation of the directions issued by the Commission and the Commission expresses its extreme displeasure on such a lackadaisical approach being followed by the utility in complying with the directions

issued by the Commission.

- 21.10 Further, Regulation 75 of MYT Regulations, 2021 speaks about additional short term power procurement, the relevant portion of which is reproduced hereunder:

“...

(2) Where there has been a shortfall or failure in the supply of electricity from any approved source of supply during the financial year, the Distribution Licensee may enter into additional short-term arrangement or agreement for procurement of power (short-term means upto period of one year):

Provided that if the total power purchase cost or quantum for any block of six months including such short-term power procurement exceeds 105% of the power purchase cost or quantum as approved by the Commission for the respective block of six months, the Distribution Licensee shall have to obtain prior approval of the Commission;

...

(4) The Distribution Licensee may enter into a short-term arrangement or agreement for procurement of power without the prior approval of the Commission when faced with emergency conditions that threaten the stability of the distribution system or when directed to do so by the State Load Despatch Centre to prevent grid failure.

...

(5) Within fifteen (15) days from the date of entering into an agreement or arrangement for short-term power procurement for which prior approval is not required, the Distribution Licensee shall provide the Commission, full details of such agreement or arrangement, including quantum, tariff calculations, duration, supplier details, method for supplier selection and such other details as the Commission may require with regard to such agreement/arrangement to assess that the conditions specified in this Regulation have been complied with:

Provided that where the Commission has reasonable grounds to believe that the arrangement or agreement entered into by the Distribution Licensee does not meet the criteria specified in sub-Regulation (2) to sub-Regulation (4) above, the Commission may disallow any increase in the total cost of power procurement (net of additional revenue) over the approved level arising therefrom or any loss incurred by the Distribution Licensee as a result, from being passed through to consumers.

(6) Subject to the cases specified in sub-Regulation (2) to sub-Regulation (4) above, where the Distribution Licensee enters into any agreement or arrangement for short-term power

procurement without the approval of the Commission, any increase in the total cost of power procurement (net of additional revenue) over the approved level arising therefrom shall be deemed to be a variation in performance attributable entirely to controllable factors."

- 21.11 As can be seen from above, it has been very clearly stated by the Commission in the MYT Regulations, 2021 that where short-term power procurement exceeds 105% of the power purchase cost or quantum as approved by the Commission, the Distribution Licensee shall have to obtain prior approval of the Commission.

The Commission in the aforesaid Regulations had allowed the Distribution Licensee to enter into a short-term arrangement or agreement for procurement of power without the prior approval of the Commission when faced with emergency conditions that threaten the stability of the distribution system or when directed to do so by the State Load Despatch Centre (SLDC) to prevent grid failure, however, from the submissions made by the Petitioner and further analysis by the Commission it can safely be assumed that no such situation had occurred nor any directions from SLDC have been brought on record by the Petitioner.

Further, the aforesaid Regulation also provides that where the Distribution Licensee enters into any agreement or arrangement for short-term power procurement without the approval of the Commission, any increase in the total cost of power procurement (net of additional revenue) over the approved level arising therefrom shall be deemed to be a variation in performance attributable entirely to controllable factors.

In light of above, the Commission does not find any merit in the instant case to relax the provisions of the Regulations wherein the distribution licensee is required to seek prior approval of the Commission as UPCL without obtaining any in principle approval of the Commission has started procuring such power at exorbitant rates the burden of which will ultimately fall on the consumers.

- 21.12 Moreover, the Petitioner through a separate letter dated 28.04.2022 apprised the Commission regarding shortage of power/abnormal increase in power purchase cost and stated that during the month of April, 2022 (1st to 26th) it had procured power from exchange at an average rate of Rs. 9.48 per unit, and projected the power

procurement from April 27th till the end of June, 2022 at an average rate of Rs. 12 per unit.

In this regard, the Commission asked UPCL to submit the reason/justification for not seeking prior approval of the Commission for procurement of power at a rate higher than that approved by the Commission in light of the specific directions given in the Tariff Order to this effect. In response to the same, UPCL vide its letter dated 02.06.2022 submitted that it had no intention of not taking prior approval of the Commission for purchase of power, but in actual the power scenario was such that it was not possible to devise any concrete action plan. UPCL also submitted that it had not planned for any forward banking of power in FY 2022-23 considering the prevailing shortages of power and would be required to make arrangements for winters.

The Commission also asked UPCL to submit as to how it proposes to meet the gap/requirement of funds for procuring power at such a high rate and also the cost benefit analysis of such costly procurement. In response to the same, UPCL submitted that the increase in demand during the period clearly suggested that industries were producing strongly, and long curtailments would affect their productivity. UPCL also submitted that high temperatures, festive period and Char Dham Yatra restrained them from rostering beyond certain length on day to day basis. UPCL submitted that the benefit of such costly purchase was that the economic growth of the State was not allowed to be hampered even in such testing times and in various meetings industries have also shown grave concern of impact of non-availability of electricity on their productions and industrial viability.

The Commission does not find the reasons given by UPCL for not seeking prior approval of the Commission to be very satisfying to warrant the relaxation of the conditions of the Regulations and also the directions issued by the Commission in the Tariff Order for FY 2022-23. Economic growth mentioned by UPCL comes with a cost and proper cost-benefit analysis should have been carried out for procuring power at an exorbitant rate. Industrial production has been submitted as a reason for procuring power at higher rates, but whether UPCL has done any cost-benefit analysis of the revenue it would gain by supplying to industries vis-à-vis additional cost it

would incur in procuring such costly power. This aspect should have been delved into by UPCL. However, no cost-benefit analysis as also required by the Commission was submitted by UPCL.

- 21.13 The Commission, in the instant case, is of the view that there is no denying that UPCL has not followed the directives issued by the Commission in the Tariff Order and has also contravened the provisions of the applicable Regulations. The Commission also expresses its displeasure on the adventurism of UPCL to ignore the requirements of the Act/Regulations and approach the Commission subsequently to seek approval of its inactions. The Commission cannot accept such an approach of UPCL and is of the view that the instant Petition filed by UPCL be rejected.

3. Ordered accordingly.

(M.K. Jain)
Member (Technical)

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