

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 41 of 2025

In the matter of:

Application seeking approval of the Commission for deviation/modification and/or clarification in specific clauses of the RFQ issued for procurement of 1320 MW RTC coal-based power under Long-Term procurement.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

CORAM

Shri M.L. Prasad

Chairman

Shri Anurag Sharma

Member (Law)

Date of Hearing: May 06, 2025

Date of Order: May 09, 2025

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 Commission for deviation/modification and/or clarification in specific clauses of the RFQ issued for procurement of 1320 MW RTC Coal-based power under Long-Term procurement.

1. Petitioner's Submissions

- 1.1 The Licensee under Section 86(1)(b) read with Section 63 of the Electricity Act, 2003, Clause 4 of the Guidelines for Procurement of Electricity for Long Term, and in accordance with Regulation 59(1) of the UERC (Conduct of Business) Regulations, 2014 filed a Petition dated 25.04.2025 seeking approval of the Commission for deviation/modification and/or clarification in specific clauses of the Request For Qualification (RFQ) document issued for procurement of 1320 MW of Coal-based power for Long Term under the State Coal Allocation Policy (Shakti-B), through the Tariff Based Competitive Bidding process.

- 1.2 The Petitioner submitted that the jurisdiction of the Commission to entertain and decide the present Petition arises from the statutory mandate under Section 86(1)(b) of the Electricity Act, 2003, and is further reinforced by the applicable guidelines issued by the Ministry of Power (MoP), Government of India, governing the procurement of electricity by distribution licensees under Long-Term arrangements, subject to approval of the Commission due to any deviation/modification/ clarification in bidding document. UPCL further submitted that, any power procurement process undertaken by the distribution licensee, including the pricing, and terms of the agreement with the power supplier, requires the scrutiny and approval of the Commission.
- 1.3 The Petitioner submitted that a Resource Adequacy Study was conducted by CEA, wherein it was recommended that State of Uttarakhand should augment its energy mix with an additional 1181 MW thermal capacity by the financial year 2031-32. Pursuant to this, a letter, bearing no. 1550/MD/UPCL/P-16 dated 07.03.2024 was issued by UPCL to UJVN Ltd. for setting up a coal-based power plant. Subsequently, a meeting was convened on 16.01.2025 under the chairmanship of Secretary (Energy), Government of Uttarakhand, wherein it was observed that the 1181 MW Thermal Power Project, proposed through a Joint Venture between THDC India Limited and UJVN Ltd., would not be commissioned within the required timeline to meet the anticipated power demand of the State.
- 1.4 Further, UPCL during the hearing submitted before the Commission a copy of the MoM dated 16.01.2025 held in the Chairmanship of Secretary Energy, GoUK, wherein officials of UPCL and UJVN Ltd. were also present. As per the aforesaid MoM, the Joint Venture between THDC India Limited and UJVN Ltd. would not be working on the proposed thermal project, and, therefore, the request given by UPCL to UJVN Ltd. vide letter 07.03.2024 was withdrawn.
- 1.5 The Petitioner submitted that in view of the emergent power deficit and the delay in the commissioning of the aforesaid project, it was resolved that a fresh tender for 1320 MW of coal-based power be floated under the State Coal Allocation Policy (Shakti-B), through the Tariff Based Competitive Bidding process. Further, the power from long-term tender is expected to materialize only from FY 2029-30 onwards.
- 1.6 The Petitioner submitted that in view of the above, it floated a Long-Term tender, through

M/s PFCCL, which was duly uploaded on the DEEP Portal on 03.02.2025, and subsequent to the publication and issuance of bidding documents, several bidders submitted queries and sought clarifications in respect of various clauses of the RFQ. UPCL submitted that in the current Petition, UPCL is seeking approval for modifications which are necessary for wider participation and increase in competitiveness of the bid.

- 1.7 The Petitioner under the cause of action, submitted that the same arose upon the issuance of queries by bidders and the Petitioner's subsequent identification of certain deviations from the Model Bidding Documents which are necessary to ensure transparency and competitiveness in the bidding process. The Petitioner submitted that it had proposed modifications/clarifications to the Commission vide its letter dated 07.04.2025, however, the Commission vide letter dated 17.04.2025 directed the Petitioner to file a formal Petition in this regard. The Petitioner further submitted that the Commission has time to time put emphasis to procure the deficit power by medium/ long term tender.
- 1.8 The Petitioner submitted that considering the deficit in power, it has initiated a transparent Long-Term procurement process in accordance with the Guidelines issued by the Ministry of Power (MoP), Government of India. The procurement of 1320 MW Round-the-Clock (RTC) coal-based thermal power is not only imperative to meet the immediate and projected power deficit in the State but also aligned with the objective of ensuring continuous and uninterrupted power supply to the consumers.
- 1.9 UPCL submitted that the bidding documents, namely the RFQ has been prepared based on the Model Bidding Documents notified by the Ministry of Power, however, considering the stakeholder's comments, it is felt that competitiveness, transparency, certain deviations and clarifications have become necessary to derive and discover the lowest tariff through the competitive bidding process. These deviations are essential to foster competition and facilitate a successful and fair bidding process.
- 1.10 UPCL further submitted that, Clause 4 of the Guidelines for Long Term procurement of Electricity expressly mandates that any deviation from the Model Bidding documents shall be made only with the prior approval of the Appropriate Commission, and in adherence to the regulatory framework and in keeping with the principles of transparency, legal sanctity, and consumer protection, the Petitioner has approached the Commission by way of the

present Petition.

1.11 UPCL submitted that it has received 54 number of queries from various bidders and has provided clarification on all these queries except the following for which the approval for deviations/modifications/clarifications based on comments and suggestions is sought:

1. Certificates from Statutory Auditors for Technical and Financial capacity.
2. Certificates from Statutory Auditors regarding PPP projects.

1.12 UPCL submitted that the present Petition pertains to queries in regard to RFQ only and after approval by the Commission the same will be uploaded on DEEP portal. Further, the qualified bidders may raise queries in regard to RFP and PSA.

1.13 UPCL, accordingly, submitted that the deviations/modifications and clarifications proposed in the RFQ document for procurement of 1320 MW RTC coal-based thermal power under Long-Term arrangement may be approved by the Commission.

2. Commission's Views & Decisions

2.1 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.

2.2 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)

2.3 Regulation 59 (1) of UERC (Conduct of Business) Regulations, 2014 specifies as under:

"59. Inherent power of the Commission

1. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such Orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission."

2.4 Clause 4 of the terms and conditions of Guidelines for Long Term Procurement of Electricity, reads as under:

"Any deviation from the Model Bidding Documents shall be made only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents."

2.5 The modifications proposed by UPCL in the RFQ document for procurement of power for Long Term were examined by the Commission and the same are dealt with in subsequent paras of this Order.

2.6 The Commission observed that w.r.t the clause related to certificates from the Statutory Auditors for Technical and Financial capacity, as submitted by UPCL, few of the bidders have requested to permit an option to submit the required certificates through a practicing Chartered Accountant instead of Statutory Auditor **or** permit them to submit the certificates relating to Financial and Technical Capacity in the format as per the guidelines issued by the Institute of Chartered Accountant of India (ICAI) and not in the format as per RFQ document of MoP, GoI.

UPCL proposed that bidders may be allowed to submit the certificate relating to Financial and Technical capacity as per the ICAI guidelines duly verified by Chartered Accountant while submitting their application.

In this regard, the Commission would like to state that the certificates, as aforesaid, given in the Standard Bidding document (RFQ) have been listed with a specific purpose to serve the information requirement related to the bid. These formats call upon specific information that may be needed for analysis of the bid documents without searching for the same in separate certificates/ documents which the bidders may provide in different formats. Moreover, no modification in the same has been carried by the Ministry of Power, GoI in this

regard, considering that the guidelines were issued almost 6 years back on 6th March, 2019 and had the bidders in the past been facing any difficulty in complying with the same, they may have approached the Ministry concerned for necessary modifications. The Commission, accordingly, is of the view that no modification w.r.t the same is required in the RFQ document, however, UPCL may communicate to bidders that they may enclose the Statutory Auditor's certificate in accordance with the guidelines issued by the ICAI, alongwith the duly filled certificates included in the RFQ document, to comprehend the same.

- 2.7 Further, the Commission observed that UPCL, based on query from bidders, has proposed a modification in the content of 'Certificate from the Statutory Auditor regarding PPP projects' as given in the Appendix I, Annexure IV (Instruction-13) of the RFQ document, to include the terminology 'total project cost' alongwith the existing term 'estimated project cost' as the Standard Bidding document does not provide for details of cost for completed projects and the inclusion of same will provide better clarification.

The Commission agrees with the proposed modification by UPCL in the format and directs it to modify the second para of the 'Certificate from the Statutory Auditor regarding PPP projects' given in the Appendix I, Annexure IV (Instruction-13) of the RFQ document as follows:

“...We further certify that the total **project cost as on CoD** / estimated capital cost of the project is...”

- 2.8 The Commission would like to clarify that this Order is only limited to the scope of the Petition, i.e., extent of approval for modification/deviation sought by UPCL in the RFQ document and should not be construed, in any way, to be approval for quantum of power projection made by UPCL w.r.t demand and availability and subsequent requirement in upcoming period. As there can be various factors that might come into play due to the intervening time, and all such possibilities and effect needs to be considered, as far as possible for the purpose, therefore, the Commission deems it necessary to direct UPCL to justify to the satisfaction of the Commission, the requirement of power projected by it vis-à-vis quantum proposed to be procured through the aforesaid tender, before proceeding with the finalization of the tender process.

2.9 Further, w.r.t the UPCL's submission regarding filing of application in the present Petition itself, for the queries in reference to RFP and PSA documents which may be received subsequently after floating of the aforesaid documents by UPCL as per the due procedure, the Commission directs UPCL to bring the matter afresh for consideration of the Commission, if so required.

2.10 Ordered accordingly.

(Anurag Sharma)
Member (Law)

(M.L. Prasad)
Chairman