

Before

# UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 40 of 2025

**In the matter of:**

Application seeking approval of the Commission for deviation/modification and/or clarification in specific clauses of the bidding documents (RFQ, RFP, and APP) issued for procurement of 500 MW RTC coal-based power under Medium-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: 06.05.2025**

**Date of Order: May 15, 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 bidding documents (RFQ, RFP, and APP) issued for procurement of 500 MW RTC Coal-based power under Medium-Term procurement.

## **1. Petitioner’s Submissions**

1.1 The Licensee under Section 86(1)(b) of the Electricity Act, 2003, Clause 4 of the Guidelines for Procurement of Electricity for Medium 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 bidding documents (RFQ, RFP, and APP) issued for procurement of 500 MW RTC coal-based power under Medium-Term procurement.

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 medium-term arrangements, subject to the approval of the Commission due to any deviation/modification/ clarification in bidding document. Accordingly, 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 the 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 the 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, and in the interim, to bridge the power deficit and to ensure continuous and reliable electricity supply to the consumers of the State, it was decided to undertake procurement of power through a medium-term

arrangement.

- 1.6 The Petitioner submitted that based on the projected demand-supply scenario a procurement of 500 MW RTC coal-based thermal power for a period of four years was needed. UPCL further submitted that it has been envisaged that there would be a substantial increase in the demand for power by consumers in the State, as summarized in the Table given below:

S. No.	Financial Year	Demand at State Periphery (in MUs)
1.	2022-23	15866.39
2.	2023-24	16431.17
3.	2024-25	17360.38 (provisional)
4.	2025-26	17721 (Forecasted)
5.	2026-27	18622 (Forecasted)
6.	2027-28	19721 (Forecasted)
7.	2028-29	20935 (Forecasted)
8.	2029-30	22222 (Forecasted)

- 1.7 The Petitioner submitted that in view of the above, it floated a Medium-Term tender, through M/s PFCCL, which was duly uploaded on the DEEP Portal on 22.02.2025, and subsequent to the publication and issuance of the bid documents, several bidders submitted queries and sought clarifications in respect of various clauses of the RFQ (Request For Qualification), RFP (Request For Proposal) , and APP (Agreement For Procurement of Power). 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.
- 1.8 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 were 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 03.04.2025, 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 and again put an emphasis to procure the deficit power by medium/ long term tender.
- 1.9 The Petitioner submitted that considering the deficit in power, it has initiated a Medium-Term procurement process in accordance with the Guidelines issued by the Ministry of Power (MoP), Government of India. The procurement of 500 MW Round-the-Clock (RTC)

coal-based thermal power for a period of four years is not only imperative to meet the immediate and projected power deficit in the State but also aligned with the objectives of ensuring continuous and uninterrupted power supply to the consumers.

- 1.10 UPCL submitted that the bidding documents, namely the RFQ, RFP, and APP, have 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.
- 1.11 UPCL further submitted that, Clause 4 of the Guidelines for Medium Term procurement 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.
- 1.12 UPCL submitted that the deviations/modifications/clarifications, based on comments and suggestions as received, for which approval is sought on account of Medium-Term power procurement under the present Petition, are as follows:
1. Appointment of statutory auditors
  2. Participation of multiple generators under same parent company in bidding process
  3. Statutory auditor's certificate as per ICAI guidelines
  4. Inclusion of additional clauses in bank guarantee
  5. Obligations relating to SLDC and RLDC charges
  6. Tariff inclusivity and Tax adjustment under change in law
  7. Appointment of Auditors
  8. Documents required to be uploaded as per this RFQ
  9. Delivery point
- 1.13 UPCL, accordingly, submitted that the modifications and clarifications proposed in the RFQ, RFP, and APP documents for procurement of 500 MW RTC coal-based thermal power under

Medium-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 Guidelines for Procurement of Electricity for Medium-Term 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, RFP, and APP documents for procurement of power for Medium-Term were examined by the Commission and the same are dealt with

in the subsequent paras of this Order.

## 2.6 Clauses related to APP documents floated by UPCL.

### i. Clause 16.2: Appointment of Auditor.

The Commission observed that w.r.t the above clause UPCL at one place has proposed to modify clause 16.2.1 of the APP to relax the said clause for entities where the Statutory Auditor of the Supplier is appointed by the Comptroller & Auditor General of India (CAG), as it would not be possible to comply with the requirement of the subject clause if Statutory Auditor is required to be appointed by the CAG. Subsequently, UPCL has proposed to remove the aforesaid Clause 16.2 in entirety from the APP document stating that the said clause is relevant where the entire capacity is dedicated for the procurer, and in case the supplier has signed multiple medium term PPAs with different Procurers it would be difficult to comply with this requirement. UPCL submitted that the said clause is proposed to be removed to provide flexibility to bidders to appoint Statutory Auditors including in case of bidders where the Statutory Auditors are required to be appointed by CAG.

The Commission analyzed the submission made by UPCL and is of the view that removing the clause related to Auditors in entirety will defeat the purpose for which the said clause exists in the Model Bidding document. However, it is also understandable that in case the Statutory Auditor of the Supplier is to be appointed by the Comptroller & Auditor General of India, then compliance of the existing clause of the APP may not be possible. Furthermore, it would not be feasible to have separate statutory auditors, one in compliance of the Companies Act and the another for the purpose of the bidding as required under Clause 16.2.1 which states that the Supplier shall appoint and have during the subsistence of the Agreement Statutory Auditors firm chosen by it. The Commission, accordingly, directs modification of Clause 16.2 of the APP document as follows:

#### **"16.2 Auditors**

**16.2.1 The Supplier shall have during the subsistence of this agreement a firm chosen by it as its Statutory Auditor, and in cases where the Statutory Auditor of the Supplier is appointed by the Comptroller & Auditor General of India, the Auditor so appointed shall be considered in compliance to the requirement as**

**aforesaid.”**

The Clause 16.2.2 and 16.2.3 of the APP document shall be deleted in pursuance to the above modification.

**ii. Clause 5.5: Obligation relating to SLDC and RLDC charges**

UPCL proposed to modify the aforesaid clause of the APP document to bring in more clarity in relation to obligation towards the charges payable up to the Delivery point (interconnection point in the Inter-State transmission system).

In this regard, as discussed in subsequent paras of this Order, the Commission has opined that the evaluation of the bid will be done at the interconnection point of the seller, therefore the modification proposed by UPCL in the APP document is not required.

**iii. Clause 11.8: Taxes and duties**

UPCL proposed to modify clause 11.8.1 of the APP document to provide clarity in respect of adjustment in taxes due to change in law and suggested adding the following at the end of the clause 11.8.1.

*“For avoidance of doubt, it is clarified that the Tariff quoted is inclusive of all the Taxes & Duties, as applicable on Bid Due Date and any variation in the same after the Bid Due Date shall be subject to adjustment, in accordance with the provision of Change in Law.”*

The Commission accepts the aforesaid modification proposed by UPCL in this regard and approves the same to bring in more clarity in the bidding document.

**2.7 Clauses related to RFQ document floated by UPCL.**

**i. Clause 2.2.1 (b) regarding eligibility of bidders**

UPCL submitted that the bidders have sought clarification w.r.t clause 2.2.1 (b) of the RFQ document as follows:

*“The bidder understands that different power stations owned & operated by a Company and the subsidiary of the Company are allowed to participate in the Bidding process.*

*For example: Power Stations X and Y are owned & operated by ABC Ltd. Further, EFG Ltd. is a 100% subsidiary of ABC Ltd. Then can ABC Ltd. submit two separate bids from Power Station X and Y respectively and EFG Ltd., offering its own power, can also participate.*

*Further, EFG Ltd. will be using the financial strength of ABC Ltd. to participate in the tender where ABC Ltd being associate of EFG Ltd. Also, confirm there shall be no conflict of interest."*

UPCL proposed to issue the following clarification in respect of the query of the bidder, to allow larger participation and a larger pool of power stations being available for receiving the bids:

- 1. ABC Ltd can submit two separate bids for two separate power stations X and Y.**
- 2. Subsidiary EFG Ltd can submit separate bid except for the power stations X and Y.**

UPCL further submitted that due to the stipulation of L1 matching, a bidder participating from multiple plants may have to match the tariff offered from its lowest tariff plant. Further, conflict of interest is not defined in the Standard Bidding document of Medium-Term tender, and, hence, UPCL intends to allow participation from multiple power stations owned and operated by a Company and the subsidiary of the Company.

The Commission analyzed the submission made by UPCL and is of the view that the rationale given by UPCL for issuing clarification to the bidder w.r.t the aforesaid clause is reasonable, as it will attract larger participation of bidders in the bidding process and will promote healthy competition. The Commission, accordingly, approves the above-mentioned clarification proposed by UPCL w.r.t the clause 2.2.1(b) of the RFQ document.

**ii. Annexure II – Instruction 5 regarding certificate from the Statutory Auditor:**

UPCL submitted that the bidders have requested flexibility in providing the requested certification as per ICAI guidelines. UPCL proposed that the certificate format given in the RFQ document is not as per ICAI guidelines, therefore, Statutory Auditor will not be able to provide the certificate in the same format.

In this regard, the Commission would like to state that the certificate, 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 30<sup>th</sup>



January, 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 certificate included in the RFQ document, to comprehend the same.

**iii. Clause 2.12.2 regarding documents required to be uploaded:**

UPCL submitted that the bidders have sought clarification w.r.t clause 2.12.2 (iv) of the RFQ document as follows:

*"As "Powerpulse Trading Solutions Ltd" (PTSL), (Category -1 Trading Licence) was incorporated on 13th February 2024. As per section 2 (41) of the Companies Act 2013, in case of Company incorporated post 1st January of a year, financial year means period ending on the 31st of March of the following year. Extract of relevant section is reproduced below:*

*"As per Section 2 (41) of Companies Act 2013, "financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:"*

*Accordingly, no audited financial statement of PTSL for the period ended 31st March 2024 is available as on date. The first audited balance sheet will be for the period from 13th February 2024 to 31st March 2025 as per requirement of Section 2 (41) of Companies Act, 2013.*

*However, we can submit Audited Financial results of the Parent company. Please confirm."*

UPCL, for allowing larger participation, and a larger pool of power stations being available for receiving the bids, proposed to issue the following clarification in respect of the query of the bidder.

*"Audited financials of parent/affiliate may be submitted by the Bidder."*

The Commission analyzed the submission made by UPCL and is of the view that the rationale given by UPCL for issuing clarification to the bidder w.r.t the aforesaid clause is

reasonable, as it will attract larger participation of bidders in the bidding process and will promote healthy competition. The Commission, accordingly, directs UPCL to add the following proviso to the clause 2.12.2(iv) of the RFQ document.

**“Provided that, where audited financial statement of the Company are not available for the preceding three years as per Section 2(41) of the Companies Act, 2013, then in such a case Audited financials of parent/affiliate may be submitted by the Bidder.”**

#### **iv. Clause 1.1.1 regarding Delivery Point**

UPCL submitted that the Delivery Point has been defined in the APP document as follows:

*“Any point in the Inter-State Transmission System where the Power Station of the Supplier is delivering power either through ISTS connectivity, or through a dedicated transmission line or through the Intra state transmission system of the state in which it is located.*

*Provided that in case this agreement has been signed pursuant to the bidding carried out by utilities located in the same state, Delivery Point, for the Supplier located in this state, shall mean any point in the Intra-State grid where the electricity is delivered by the Supplier.”*

UPCL submitted that bidders have made the following submission in this regard:

*“Explanation (Further to explanation under 1.2.12 of RFQ & Explanation to 1.1.5 of RFP):*

*For project located outside the state of Uttarakhand i.e. inter-state project, the bidder shall quote the cost of ISTS transmission charges and cost of transmission losses, in addition to base fixed charge and base variable charge. Further, cost of transmission charge & transmission loss for project connected with Uttarakhand STU system shall be considered as NIL.*

*It is further clarified that ISTS Charges and ISTS Losses quoted by inter-state project shall be used only for the purpose of evaluation of bids.*

*UPCL shall issue LOA at the tariff discovered based on the result of e- Reverse Auction, to the successful bidders as below*

*(1) For inter-state Project, LOA will be issued after deducting ISTS charges and ISTS losses (as provided by UPCL before bid submission) from tariff discovered after e-Reverse Auction followed by L1 Matching rounds.*

*(2) For projects connected to Uttarakhand STU system, LOA will be issued at tariff discovered after e-Reverse Auction followed by L1 Matching rounds.”*

In this regard, UPCL submitted that transmission charges are to be paid by the buyer as per the GNA regulation. Further, transmission losses are varying continuously, so seller will not be in a position of quoting the price after considering a fixed transmission loss. UPCL, accordingly, proposed that following clarification be issued to the bidders in respect of the same:

“The evaluation will be done at State periphery while the billing will be done at the interconnection point of the seller.”

The Commission analysed the submissions made by the Petitioner and is of the view that since billing is to be done at the interconnection point of the seller, there is no point in evaluating the bids at the State periphery as different bidders would quote different GNA charges and losses which will distort the rates. Hence, to enable fairness and competitiveness, the evaluation should also be done at the interconnection point of the seller. Hence, the said clause needs to be modified accordingly.

## 2.8 Clause related RFP document floated by UPCL:

### i. APPENDIX – II - Bank Guarantee for Bid Security

UPCL proposed the addition of the following points in the Bank Guarantee as per the current format to remove difficulty in procuring Bank Guarantee by the bidders

**“Notwithstanding anything contained herein,**

- i) Our liability under this Bank Guarantee shall not exceed Rs. .... (Rupees.....only);**
- ii) This Bank Guarantee shall be valid up to ..... [ the Expiry Date of the Guarantee] only; and**
- iii) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before ....., if no written claim or demand is received by us within the aforesaid period then all your rights under this Bank guarantee shall stand extinguished and we shall be discharged of all liabilities under this Bank Guarantee thereafter.**

**iv) This bank guarantee is subject to the ICC uniform rules for demand guarantees (ICC publication no. 758) and shall be governed by and construed in all respects, in accordance with the laws of India.”**

The Commission analyzed the submission made by the Petitioner and is of the view that the proposed inclusion of additional clauses in the ‘Bank Guarantee for Bid Security’ by UPCL will ease the procedural requirement for bidders. The Commission, accordingly, approves the addition of the aforesaid clauses proposed by UPCL, after clause no. 13 of ‘Appendix-II (Bank Guarantee for Bid Security)’ of the RFP document.

2.9 The Commission would like to clarify that this Order is only limited to the extent of approval for modification/ deviation sought by UPCL in the APP, RFQ and RFP documents 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.

2.10 Ordered accordingly.

**(Anurag Sharma)**  
**Member (Law)**

**(M.L. Prasad)**  
**Chairman**