Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 42 of 2024

In the matter of:

Application seeking approval of the Commission on the Draft Power Purchase Agreement for short term between Uttarakhand Power Corp. Ltd. and M/s Arunachal Pradesh Power Corporation Pvt. Ltd. (APPCPL) under a Short-Term Power Purchase Agreement with Uttarakhand Power Corporation Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd. … Petitioner

AND

In the matter of:

M/s Arunachal Pradesh Power Corporation Pvt. Ltd. … Respondent

CORAM

Shri M.L. Prasad	**Member (Technical) -Chairman (I/c)**
Shri Anurag Sharma	**Member (Law)**

Date of Order: October 08, 2024

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 for short term power purchase from M/s Arunachal Pradesh Power Corporation Pvt. Ltd. (hereinafter referred to as "M/s APPCPL").

1. 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 12.08.2024 seeking approval of the Commission on the Draft Power Purchase Agreement.

1.2 The Petitioner submitted that it had from time to time informed the Commission regarding the power demand & availability position in the State. UPCL submitted that this year the overall demand & availability scenario of Uttarakhand has changed substantially. Further, the generation from hydro plants of UJVNL/IPPs of the State remains at lower side during the winter season in comparison to the summer season which created substantial difference in demand and availability of power in the State.

1.3 The Petitioner submitted that, in view of the power demand and availability position in the State, UPCL has been floating back to back tenders for securing power, and in lieu of same, UPCL floated a tender for procurement of power on short term basis for the months from July-24 to March-25.

1.4 UPCL submitted that in ongoing and upcoming months the power shortage will persist and may even create a mean deficit of around 200 MW to 300 MW and UPCL will be left with no other option but to procure power through power exchanges to supply 24x7 power to the consumers of the State that may have a possibility of un-cleared power and even power cleared may cause excessive financial burden on UPCL and the APPC of UPCL will also get higher which will affect the financial health of UPCL.

1.5 UPCL submitted that in view of the tight situation of power availability and to secure power on economical rates, UPCL had floated a short term tender for RTC power through DEEP Portal for aforesaid months, vide Tender Specification no. 16/CE (COMM)/UPCL-16/2024, as summarized in the Table given below:

Month	**Timings**		**Quantum of Power (MW)**	**Minimum Bid Quantity (MW)**	**Delivery Point**
	From	**To**			
Jul-24	00:00	24:00	150	20	**Uttarakhand State Periphery**
Aug-24	00:00	24:00	150	20	
Sep-24	00:00	24:00	150	20	
Oct-24	00:00	24:00	150	20	
Nov-24	00:00	24:00	150	20	
Dec-24	00:00	24:00	200	20	
Jan-25	00:00	24:00	200	20	
Feb-25	00:00	24:00	200	20	
Mar-25	00:00	24:00	200	20	

1.6 UPCL submitted that the technical part of the tender was opened on 18.06.2024 and after evaluation of Part-I, all participated bidders have been found qualified in technical evaluation, thereafter initial price offers (IPO) was opened on dated 24.06.2024 and e-Reverse Auction (e-RA) was also conducted on dated 24.06.2024 itself. UPCL submitted that M/s Power Finance Corporation Consulting Limited (M/s PFCCL) provided the results of e-RA (DEEP Portal) after carrying out bucket filling procedure. UPCL submitted that it had apprised the Commission about the power situation and further requested to accord in-principle approval for procurement, in response to which the Commission vide letter no. UERC/6/TF-533(B)/2024-25/2024/532 dated 15.07.2024 had accorded the in-principle approval for procurement of above said short term power.

1.7 UPCL submitted that subsequent to the in-principle approval accorded by the Commission and detailed consideration on the matter, Letter of Intent (LoI) was issued to M/s APPCPL based on tariff and quantum of power vide their letter no. 3515/UPCL/Comm)/Tender-16/SE dated 18.07.2024.

1.8 UPCL submitted that while taking cognizance of the facts mentioned above & in-principle approval accorded by the Commission, applicant company was desirous of purchasing the entire such energy on the terms and conditions as agreed between the parties as per the terms and condition laid down in the draft Power Purchase Agreements. In this regard, UPCL also submitted a copy of the draft Power Purchase Agreement to be entered with M/s APPCPL.

1.9 UPCL submitted that, as per the provisions of the Electricity Act, 2003 read with the provisions of Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014, Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulation, 2015 and Distribution & Retail Supply Licensee, the applicant is required to seek approval on the Power Purchase Agreement to be entered into with the generating company. The Petitioner, accordingly, requested the Commission to grant approval on the Draft Power Purchase Agreements to be executed with M/s APPCPL with the Applicant Company for purchase of electricity as mentioned above.

1.10 Meanwhile, the Respondent vide its submission dated 02.09.2024 submitted that an addition may be made to sub-clause (ii) of the point no. 11 of the PPA "Payment Terms and Payment Security to be Made Available by the Procurer", as follows:

"If the application is processed under T-GNA, then the T-GNA charges shall be reimbursed by UPCL within 05 working days"

In response to the same, the Petitioner vide its submission dated 23.09.2024 agreed to incorporate the same as the same is in line with the tender specifications floated by UPCL.

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)

2.1.4 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.

…."

2.1.5 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, 2021 also provides for preparation of power procurement plan and approval of the same by the Commission.

2.1.6 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 2024-25 in the tariff Order dated 28.03.2024, the Commission had approved power purchase rate of Rs. 5.62/kWh to meet the deficit power purchase. However, the LOA's were issued to respective bidder by the Petitioner over and above the rates approved by the Commission for deficit power purchase in FY 2024-25 in few of the months, as tabulated below:

Month / Period	Quantum of Power (MW)	Delivery Point	Registration No. in MSTC for source of power of supply along with name of source/region	Rate at Delivery Point (Rs./kWh)
Oct-24	25	Uttarakhand State Periphery	MSTC REGN NO 513599, GENERATOR IN WR, CONNECTED WITH CTU	5.69
	50		MSTC REGN NO 407472, GENERATOR IN WR, CONNECTED WITH CTU	5.69
Nov-24	25		MSTC REGN NO 513599, GENERATOR IN WR, CONNECTED WITH CTU	5.60
	50		MSTC REGN NO 407472, GENERATOR IN WR, CONNECTED WITH CTU	5.60
Dec-24	25		MSTC REGN NO 513599, GENERATOR IN WR, CONNECTED WITH CTU	5.60
	50		MSTC REGN NO 407472, GENERATOR IN WR, CONNECTED WITH CTU	5.60
Jan-25	25		MSTC REGN NO 513599, GENERATOR IN WR, CONNECTED WITH CTU	5.63
	50		MSTC REGN NO 407472, GENERATOR IN WR, CONNECTED WITH CTU	5.63
Feb-25	25		MSTC REGN NO 513599, GENERATOR IN WR, CONNECTED WITH CTU	5.63
	25		MSTC REGN NO 407472, GENERATOR IN WR, CONNECTED WITH CTU	5.63

In this regard, as also submitted by the Petitioner, the Commission vide its letter dated 15.07.2022 on the request made by UPCL, owing to the expected shortage of power in the coming months as projected by UPCL, had accorded the in-principle approval to UPCL for procurement of power during the aforesaid months at the rates and quantum stated above. Accordingly, the same is being considered and adopted by the Commission.

2.1.7 The draft PPAs submitted by UPCL has been examined in light of the relevant rules & regulations. The Respondent submitted that an addition may be made to sub-clause (ii) of the point no. 11 of the PPA "Payment Terms and Payment Security to be Made Available by the Procurer", as follows:

"If the application is processed under T-GNA, then the T-GNA charges shall be reimbursed by UPCL within 05 working days"

In response to the same, UPCL agreed to incorporate the same in the PPA as the said condition was part of the tender specification floated by it.

The Commission analysed the submission made by the Petitioner and the

Respondent and observed that in the bid document the following condition has been mentioned at Clause 4.2, w.r.t the GNA and T-GNA:

"…

Power will be scheduled under GNA. If GNA is not available then power will be scheduled under T-GNA and charge of T-GNA will be borne by buyer.

…"

In this regard, the Commission further observed that similar clause has been stated as a 'Note' by UPCL in the draft PPA submitted by UPCL for approval of the Commission for the similar period and identical terms (varied by quantum and rates) to be executed with M/s Tata Power Trading Company Limited. Accordingly, the Commission is of the view that the same can also be included in the PPA proposed to be executed with M/s APPCPL to align the same with the bid document and maintain consistency. Accordingly, UPCL is required to take note of the same and incorporate the following additional 'Note' under Clause 11 in the draft PPA while executing the PPA with M/s APPCPL.

"Note: The T-GNA charges shall be reimbursed by UPCL within 05 working days of production of proof of payment of T-GNA charges through email and intimation of bill production via telephonically to concerned officer/official of UPCL."

2.1.8 Further, the Commission observed that the Clause 4. "Risk Allocation Between Parties-Force Majeure Events:" does not include the requirement of giving notice of the force majeure event in writing by one party to the other. The Commission, accordingly, directs UPCL to include the following sub-clause under Clause 4 of the PPA before signing the same.

"The party invoking this clause shall satisfy the other party of the occurrence of such an event and give written notice explaining the circumstances, within seven days to the other party and take all possible steps to revert to normal conditions at the earliest.

Any payments that become/have become due under this agreement shall not be withheld, on grounds of force majeure conditions developing."

2.1.9 Para 1 of the draft PPA provides the day on which the PPA is brought into effect. The place for dates has been left blank. The above-mentioned Para needs to be completed while the signing the final PPA.

2.1.10 The Commission observed that the other clauses in the draft PPA submitted by UPCL are in accordance with the provisions of the Act/Regulations and, hence, the Commission approves the draft PPA submitted by UPCL.

2.1.11 UPCL is directed to amend the draft PPA in accordance with the observations of the Commission in this Order and sign the PPA with M/s APPCPL after incorporating the same and submit the same to the Commission within fifteen working days of signing of the PPA.

2.1.12 Ordered accordingly.

(Anurag Sharma)
Member (Law)

(M.L. Prasad)
Member (Technical)- Chairman (I/c)