

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 44 of 2024

In the matter of:

Application seeking approval of the Commission on the Draft Power Purchase Agreement between Uttarakhand Power Corporation Limited and M/s JGN Sugar and Biofuels Pvt. Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd. (UPCL) ... Petitioner

AND

In the matter of:

M/s JGN Sugar and Biofuels Pvt. Ltd. ... Respondent

CORAM

Shri M.L. Prasad

Member (Technical)-Chairman(I/C)

Shri. Anurag Sharma

Member (Law)

Date of Order: September 19, 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 (PPA) to be executed by it with M/s JGN Sugar and Biofuels Pvt. Ltd. (hereinafter referred to as "Respondent") for procurement of surplus energy, i.e. 13 MW (plus 10% overloading) to be generated from the proposed bagasse based cogeneration power plant having installed capacity of 22 MW.

1. Background

1.1 The Petitioner has filed the Petition under Section 86(1)(b) of the Electricity Act, 2003, Regulation 39(3) of UERC (Conduct of Business) Regulations, 2014 and clause 5.1, 5.2 & 5.4 of the license conditions of the Distribution and Retail Supply license dated 20.06.2003 issued by the Commission, seeking approval of the Commission on the Draft PPA to be executed with the Respondent for procurement of 13 MW (plus 10% overloading) energy to be generated from its proposed bagasse based cogeneration plant having installed

capacity of 22 MW in Sitarganj, Distt. Udham Singh Nagar, Uttarakhand.

- 1.2 The Respondent desires to sell the entire 13 MW surplus energy with 10% overloading scheduled to be generated from its proposed bagasse based cogeneration plant and UPCL is desirous of purchasing the entire surplus energy on the terms and conditions as agreed between the parties as laid down in the draft PPA.
- 1.3 Accordingly, UPCL prepared the Draft PPA to be signed with the Respondent and has requested the Commission to approve the Draft PPAs and allow UPCL to sign the PPA with the Respondent in accordance with the provision of the applicable Regulations.

2. Petitioner's submission

- 2.1 The Petitioner submitted that as per the provisions of the Electricity Act, 2003 read with provisions of UERC (Conduct of Business) Regulations, 2014 and Distribution and Retail Supply License, it is required to get the prior approval of the Commission on the Draft PPA proposed to be entered into with the Generating Company.
- 2.2 UPCL submitted that M/s JGN Sugar and Biofuels Pvt. Ltd. is a company registered under the Company's Act, 1956 and will be engaged in the business of power generation through its bagasse based cogeneration power plant having installed capacity of 22 MW out of which 13 MW with 10% overloading will be supplied to UPCL. The plant is situated at Pilibhit Road, Village Sarkara, Sitarganj, Dist. Udham Singh Nagar in the State of Uttarakhand and UPCL is desirous of purchasing the entire surplus energy on the terms and conditions as agreed between both the parties as per the terms and conditions laid down in the draft PPA.
- 2.3 UPCL submitted that in the upcoming years in accordance with the RPO trajectory specified in the UERC (Tariff and other terms for supply of Electricity from Renewable Energy Sources and Non-Fossil fuel based Co-generating Stations) Regulations, 2023, , UPCL intends to purchase the power from the above proposed bagasse based power plant of the Respondent.
- 2.4 UPCL submitted that as per the provisions of the Electricity Act, 2003 read with the provisions of UERC (Conduct of Business) Regulations, 2014 and Distribution and Retail Supply License, UPCL is required to get the approval of the Commission. Therefore, the present Petition has been filed seeking approval of the Commission on the draft PPA to be executed between UPCL and the Respondent.

3. Respondent's reply and Petitioner's rejoinder

3.1 The Commission had forwarded the copy of the Petition to M/s JGN Sugar and Biofuels Pvt. Ltd. for its comments. The Respondent vide its letter dated 07.09.2024 informed the Commission that it does not have any objection or comments w.r.t. to the draft PPA submitted by the Petitioner before the Commission for approval.

4. Commission's Views & Decisions

4.1 Legal Requirement for approval of PPA

4.1.1 A PPA is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.

4.1.2 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.

4.1.3 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)

4.1.4 As per Regulation 39(1) of the UERC (Conduct of Business) Regulations, 2014 the distribution licensee is required to file with the Commission in complete form copies of all the Power Purchase Agreements already entered by it. The relevant portion of the Regulation is reproduced hereunder:

"39. Regulation of Distribution Licensee's Purchase of Power

(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.*
- (4) *Nothing contained herein shall affect the obligations of distribution licensee under the existing contract and arrangement for purchase, import or acquisition of electricity from generating companies, electricity trader and from other persons with whom the licensee has agreements or arrangements of power purchase or procurement of energy in accordance with the terms and conditions of such agreement and arrangement consented to or approved by the Commission.*
- (5) *The provisions of sub-regulations (2) and (3) above or any action taken therein shall not, in any manner, prejudice the exercise of functions and powers of the Commission under any of the other provisions of the applicable law, the Regulations and Orders issued from time to time."*

4.1.5 Further, Regulations 7(2) & 7(3) of UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2023 (RE Regulations, 2023) specifies that:

"(2) The distribution licensee on an offer made by the said RE based Generating Stations and Co-generating Stations may enter into a power purchase agreement in conformity with these Regulations and relevant provisions of other Regulations and the Act. However, if the distribution licensee intends to purchase power from such generator it shall sign the PPA within two months of offer made by the generating company. Otherwise, if the distribution licensee is not willing to purchase power from such generator it shall intimate the same to the generating company within one month of offer made by it.

Provided that where a GRPV/GSPV plant, is installed in the Premises, by a third party who intends to sell net energy (i.e. after adjustment of entire consumption of owner of the premise) to the distribution licensee, a tripartite agreement will have to be entered into amongst the third Party, the Eligible Consumer and such Distribution Licensee.

- (3) *The distribution licensee shall make an application for approval of power purchase agreement entered into with the generating company in such form and manner as specified in these regulations and UERC (Conduct of Business) Regulations, 2014 as amended from time to time within one month of the date of signing the PPA.*

Provided further that the application for approval of PPA should be accompanied with an unconditional Technical Feasibility Report and the connectivity agreement signed with the Transmission/Distribution Licensee shall form part of the PPA”

(Emphasis added)

4.1.6 Accordingly, in accordance with the requirements of the Act and Regulations referred above, UPCL as a distribution licensee is required to seek approval from the Commission of the PPAs entered or proposed to be entered by it with the power generators.

4.2 Consistency of the PPA with the Regulations

4.2.1 Regulation 6(7) of RE Regulations, 2023 specifies as under:

“All Power Purchase Agreements signed by the generating stations existing on the date of notification of these regulations shall be amended in accordance with these regulations, if inconsistent with these Regulations and such amended PPAs shall be valid for entire life of the RE Based Generating Stations and Co-generating Stations.”

4.2.2 Hence, all the PPAs to be entered into by UPCL are required to be amended in accordance with RE Regulations if they are inconsistent with the provisions of RE Regulations, 2023. Accordingly, PPAs proposed to be executed between UPCL and the generators are examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003 & RE Regulations, 2023.

4.3 Commission’s Analysis of the Model PPA and Order on the same

- 4.3.1 The draft PPA is to be executed between UPCL and the M/s JGN Sugar and Biofuels Pvt. Ltd. for supply of surplus energy equivalent to 13 MW with 10% overloading to UPCL from its bagasse based cogenerating power plant situated at Pilibhit Road, Village Sarkara, Sitarganj, Dist. Udham Singh Nagar in the state of Uttarakhand.
- 4.3.2 The Draft PPA submitted by UPCL has been examined in light of the relevant Act, rules & regulations. The Respondent submitted that it does not have any objection or comments on the provisions of draft PPA to be executed with UPCL. The Commission

observed that certain clauses in the draft PPA submitted by UPCL are inconsistent with the provisions of the Act/Regulations. Such observations have been discussed in the subsequent Para. UPCL is required to take note of the same and incorporate necessary corrections in the draft PPA while executing the PPA with the project developers.

- a) 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 final PPAs are being signed.
- b) Annexure-I of the draft PPA to be executed between UPCL and M/s JGN Sugar and Biofuels Pvt. Ltd. specifies the plant capacity as 2 MW (Export 13 MW). However, in actual the proposed plant's installed capacity will be 22 MW as per clauses of draft PPA. Accordingly, the Petitioner is directed to mention the correct installed capacity in Annexure-I while signing the PPA with the Respondent.
- c) Clause 20.4 under 'Events of Default and Termination' specifies that in case of delay of more than three months from the schedule CoD specified under Annexure-I, UPCL reserves the right to terminate this agreement upon one month notice to the generation station.

In the matter, it is worth mentioning that UPCL has put an obligation of termination of PPA in case of delay in commissioning of generating station, however, nothing is mentioned in the draft PPA what the arrangement will be if UPCL fails to construct the proposed 33/11 kV sub-station, Chini Mill Sarkar, Sitarganj, Uttarakhand on or before the Scheduled CoD of the generating plant. The Commission is of the view that UPCL is required to insert an appropriate provision under Clause 20.4 to provide interim arrangement for power evacuation from the proposed bagasse based cogenerating power plant of the Respondent in the event of delay in commissioning of above-mentioned proposed sub-station.

- d) The other provisions of the draft PPA have been examined which are in accordance with the provisions of the Act and Regulations.
- e) Annexure-I mentioned in the clauses of the draft PPA needs to be completed before signing the final PPA.

5. 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 JGN Sugar and Biofuels Pvt. Ltd. after incorporating the same and submit the same to the Commission within fifteen working days of signing of the PPA.
6. Ordered accordingly.

(Anurag Sharma)
Member (Law)

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