

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 22 of 2020

In the matter of:

Application seeking approval of the Commission on the Draft Power Purchase Agreement to be executed between Uttarakhand Power Corporation Limited and Uttarakhand Power Development & Construction Corp. Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd. ... Petitioner

AND

In the matter of:

Uttarakhand Power Development & Construction Corp, Ltd. (UPDCCL) ... Respondent

CORAM

Shri D.P. Gairola Member (Law)

Shri M.K. Jain Member (Technical)

Date of Hearing: October 13, 2020

Date of Order: October 29, 2020

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 Uttarakhand Power Development & Construction Corp, Ltd. (hereinafter referred to as “UPDCCL” or “Respondent”) for procurement of power from Small Hydro Power Plant (SHP) having installed capacity of 100 kW situated at Bijapur, District- Dehradun.

1. Background

1.1. The Petitioner filed the Petition seeking approval of the Commission on the Draft Power Purchase Agreement for purchase of energy to be generated from the Respondent’s Small Hydro Power Plant under Section 86(1)(b) of the Electricity Act, 2003, 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.

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, the Petitioner is required to get the approval of the Commission on the PPA entered into with the Generating Company.
- 2.2. UPCL submitted that UPDCCL is registered under the Company Act, 1956 and has been created by Government of Uttarakhand in year 2010 to provide construction and consultancy services in the field of Civil Engineering. UPDCCL has proposed to undertake construction of Bijapur SHP (100 kW) and is desirous to sell entire energy scheduled to be generated from the said project and the Petitioner is desirous of purchasing the entire energy on the terms and conditions as agreed between the parties.

3. Respondent's submission

- 3.1. UPDCCL vide its letter dated 13.10.2020 submitted its consent to execute PPA with UPCL for supply of entire power to be generated from its proposed 100 kW Bijapur SHP on generic rate as specified in UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2018 (hereinafter referred to as "RE Regulations, 2018"). The Respondent requested the Commission to allow the execution of such PPA at district level.

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 function 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. Further, Regulations 7(2) & 7(4) of UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2018 (RE Regulations, 2018) 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 grid interactive roof top and small Solar PV 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."

(Emphasis added)

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

4.2. Consistency of the PPA with the Regulations

- 4.2.1. Regulation 6(7) of RE Regulations, 2018 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 Model/draft 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, 2018. Accordingly, PPA proposed to be executed between UPCL and the generator is examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003 & RE Regulations, 2018.

4.3. Commission's Analysis of the Draft PPA and Order on the same

4.3.1. The draft PPA is to be entered into between UPCL and the Respondent for supply of the entire power generated from Bijapur SHP having installed capacity of 100 kW and situated at Bijapur, District- Dehradun to UPCL.

4.3.2. The Petition was heard on 13.10.2020 and during the hearing, the Petitioner reiterated their submission and requested the Commission to approve the draft PPA in accordance with the provisions of the Electricity Act, 2003 and prevailing regulations.

4.3.3. 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 sub-Paras. UPCL is directed to take note on the same and incorporate necessary corrections in the draft PPA while executing the PPAs with the project developers.

a) Clause 2.1 of the Draft PPA provides as follows:

*"UPCL shall accept and purchase 100 kW made available to UPCL system from Generating Company SHP's on the rates determined by the Commission as per provisions of Uttarakhand Electricity Regulatory Commission (Tariff and other terms for supply of Electricity from Renewable Energy Sources and non-fossil fuel based co-generating stations) Regulations, 2018 as amended from time to time based on sources and technologies as mentioned at point no. (i) below:-
..."*

There is ambiguity in the aforesaid clause w.r.t. the tariff rates to be applicable for the supply of electricity from proposed Bijapur SHP. It is not clear whether the above provision refers to the project specific tariff to be determined by the Commission or generic tariff as specified by the Commission under RE Regulations, 2018 for such

SHP shall be applicable. Accordingly, during the hearing, the Commission asked the generator to clarify its position in the matter. In reply, the Respondent accorded its consent to opt for generic tariff specified under RE Regulations, 2018 for SHPs having capacity upto 5 MW. Subsequently, the Respondent vide its letter dated 13.10.2020 also conveyed to the Commission to execute PPA on generic rate as per RE Regulations, 2018.

Accordingly, based on the above discussion, Clause 2.1 of the draft PPA is required to be corrected and shall be read as follows:

*“UPCL shall accept and purchase 100 kW made available to UPCL system from Generating Company SHP’s on the generic tariff specified by the Commission for SHPs having capacity upto 5 MW vide Uttarakhand Electricity Regulatory Commission (Tariff and other terms for supply of Electricity from Renewable Energy Sources and non-fossil fuel based co-generating stations) Regulations, 2018 as amended from time to time based on sources and technologies as mentioned at point no. (i) below:-
...”*

b) Clause 8.3 of the Model PPA provides as follows:

“The cost of laying the dedicated transmission line from Generating Station to the 33/11 kV Sub-station, Anarwala, Uttarakhand owned, maintained and operated by UPCL, the required bay, terminal equipments and associated synchronization equipments, etc. shall be borne as per clause 41(3) of UERC regulation 2018 as amended from time to time.”

With regard to connectivity, Regulation 41 of RE Regulations, 2018 specifies as follows:

“41. Evacuation of Power

- (1) Distribution Licensees shall provide connectivity to the RE Based Generating Stations having capacity upto 25 MW at its nearest distribution sub-station preferably within a range of 10 kilometers from the location of such generating station. They may further mutually agree to provide connectivity at appropriate voltage level subject to technical feasibility and technical standards for construction of electrical lines and connectivity with the grid as may be specified by CEA.*
- (2) XXX*
- (3) In case RE based Generating Stations exercise the option to construct the evacuation system including the line upto the nearest substation of Transmission/Distribution*

Licensee, the required bay, terminal equipments, associated synchronization equipments and above pooling switching station, if any, etc. the cost of such evacuation system shall be borne by such generating stations:

Provided that such Generating Stations may also get the work of construction of the power evacuation system carried out by State transmission/distribution licensee;

Provided further that the land for extending the bay shall be provided by the owner of the transmission or distribution sub-station, as the case may be, free of cost."

It is to be noted that although RE based generator has an option to construct the evacuation system including the line upto the nearest sub-station of the distribution licensee, it is responsibility of the distribution licensee to provide the connectivity to the RE Based Generating Stations having capacity upto 25 MW at its nearest distribution sub-station as per aforesaid Regulation.

Further, it is pertinent to mention that if the generator opts to construct the evacuation infrastructure, at its own cost, it shall be allowed a normative tariff of 5 paise/kWh over and above the tariff determined through tariff based competitive bidding for the respective successful bidder in accordance with the Regulation 15(1)(c) of RE Regulations, 2018.

Accordingly, the Petitioner is advised to amend Clause 8.3 of the draft PPA, if required, considering the financial viability of the connectivity arrangements after providing an option to the developers in accordance with the RE Regulations, 2018.

- c) All Annexures mentioned in the clauses of the draft PPA needs to be completed before signing the final PPA.

4.3.4. The other provisions of the draft PPA has been examined which is in accordance with the Regulations. However, UPCL and the generator are hereby directed to incorporate the changes proposed by the Commission in the draft PPA and submit the same to the Commission within 15 days of the date of order.

5. Ordered accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)