

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition Nos. 7, 8, 9 & 10 of 2020

In the matter of:

Petition seeking approval of the Commission for advance and return banking of power with M/s Arunachal Pradesh Power Corporation Pvt. Ltd., M/s PTC India Ltd., M/s Kreate Energy (I) Pvt. Ltd. and M/s GMR Energy Trading Ltd. under an energy banking arrangement 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.

M/s PTC India Ltd.

M/s Kreate Energy (I) (P) Ltd.

M/s GMR Energy Trading Ltd.

... Respondents

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Shri D.P. Gairola Member (Law)

Shri M.K. Jain Member (Technical)

Date of Order: July 20, 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 Draft Power Banking Agreement (PBA) to be executed by it with M/s Arunachal Pradesh Power Corporation Pvt. Ltd. (hereinafter referred to as "M/s APPCPL"), M/s PTC India Ltd. (hereinafter referred to as "M/s PTCIL"), M/s Kreate Energy (I) Pvt. Ltd. (hereinafter referred to as "M/s KEIPL"), and M/s GMR Energy Trading Ltd. (hereinafter referred to as "GMRETL") under a banking arrangement.

1. Petitioner's Submissions

- 1.1. UPCL had filed the Petitions under Regulations 81(1) and 82 of UERC Tariff Regulations, 2018 read with Section 86(1)(b) of the Electricity Act, 2003 seeking approval of the Commission on the draft banking agreements for advance banking of the surplus power equivalent to 734.40 MUs on firm basis and upto 439.20 MUs on "as and when" basis, from the months of June 2020 to September 2020 which will be received back during the months of November 2020 to March 2021.
- 1.2. The Petitioner invited the tender for the same in which 4 bidders participated namely M/s Arunachal Pradesh Power Corporation Pvt. Ltd., M/s PTC India Ltd., M/s Kreate Energy (I) Pvt. Limited, and M/s GMR Energy Pvt. Ltd. The Petitioner further submitted that after the detailed consideration on the various offers received, UPCL issued LoIs to the 4 bidder namely M/s Arunachal Pradesh Power Corporation Pvt. Ltd., M/s PTC India Ltd., M/s Kreate Energy (I) Pvt. Limited, and M/s GMR Energy Pvt. Ltd. for month-wise Energy Banking on "Firm Basis" and on "As and When Basis" based on return percentage and quantum of power.
- 1.3. The Petitioner submitted that to ensure consistent electricity supply to its consumers, the best way to utilize the surplus power was to bank it and utilize it during power deficit period. The Petitioner, accordingly, after evaluating the proposals has proposed to enter into an Energy Banking Agreement with M/s Arunachal Pradesh Power Corporation Pvt. Ltd., M/s PTC India Ltd., M/s Kreate Energy (I) Pvt. Limited, and M/s GMR Energy Pvt. Ltd. for quantum of power, mode, percentage return, trading margin etc. as summarized below:

Supply of Power by UPCL to M/s APPCPL (Advance Banking) and Supply of Power by M/s APPCPL to UPCL (Return Banking)

Month	Mode "Firm basis"					
	Quantum of power to be supplied by UPCL (MW) (RTC)	Power to be supplied to	% Return (RTC)	Trading Margin payable by UPCL on quantum of return (Paise/kWh)	Duration of return of power to UPCL	Delivery Point
16-06-2020 to 30-06-2020	100	BYPL, Delhi	117.69 (H-1)	1.00	11-11-2020 to 31-03-2021	Northern Region Periphery

Mode "As & when available basis"						Delivery Point
Month	Quantum of power to be supplied by UPCL (MW) (RTC/ Non RTC)	Power to be supplied to	% Return (RTC)	Trading Margin payable by UPCL on quantum of return (Paise/kWh)	Duration of As & When return power to UPCL	
Jun-2020	Upto 150	BYPL, Delhi	110 (H-2)	1.00	01st Nov 2020 to 31st Mar 2021	Northern Region Periphery
	Upto 150	JITPL	108 (H-3)	Nil		
	Upto 75	CESC	103.50 (H-6)	Nil	01st Dec 2020 to 28th Feb 2021	
Jul-2020	Upto 150	BYPL, Delhi	109 (H-2)	1.00	01st Nov 2020 to 31st Mar 2021	
	Upto 50	JITPL	108 (H-3)	Nil		
	Upto 100	JITPL	105 (H-4)	Nil	01st Dec 2020 to 28th Feb 2021	
Aug-2020	Upto 50	JITPL	108 (H-2)	Nil	01st Nov 2020 to 31st Mar 2021	
	Upto 150	BYPL, Delhi	108 (H-3)	1.00		
	Upto 100	JITPL	105 (H-4)	Nil	01st Dec 2020 to 28th Feb 2021	
Sep-2020	Upto 50	JITPL	108 (H-2)	Nil	01st Nov 2020 to 31st Mar 2021	
	Upto 150	BYPL, Delhi	107 (H-3)	1.00		
	Upto 100	JITPL	105 (H-4)	Nil	01st Dec 2020 to 28th Feb 2021	
	Upto 75	CESC	103.5 (H-7)	Nil		

Supply of Power by UPCL to PTC India Limited (Advance Banking) and Supply of Power by PTC India Limited to UPCL (Return Banking)

Month	Mode "Firm basis"					
	Quantum of power to be supplied by UPCL (MW) (RTC)	Power to be supplied to	% Return (RTC)	Trading Margin payable by UPCL on quantum of return (Paise/kWh)	Duration of return of power to UPCL	Delivery Point
16-06-2020 to 30-06-2020	100	BRPL, Delhi	117.69 (H-1)	1.00	11-11-2020 to 31-03-2021	Northern Region Periphery

Mode "As & when available basis"						
Month	Quantum of power to be supplied by UPCL (MW) (RTC/Non RTC)	Power to be supplied to	% Return (RTC)	Trading Margin payable by UPCL on quantum of return (Paise/kWh)	Duration of As & When return power To UPCL	Delivery Point
Jun-2020	Upto 150	BRPL, Delhi	110 (H-2)	1.00	01st Nov 2020 to 31st Mar 2021	Northern Region Periphery
Jul-2020	Upto 150	BRPL, Delhi	109 (H-2)	1.00		
Aug-2020	Upto 150	BRPL, Delhi	108 (H-3)	1.00		
Sep-2020	Upto 150	BRPL, Delhi	107 (H-3)	1.00		

Supply of Power by UPCL to KEIPL (Advance Banking) and Supply of Power by KEIPL to UPCL (Return Banking)

Mode "As & when available basis"						Delivery Point
Month	Quantum of power to be supplied by UPCL (MW) (RTC/Non RTC)	Power To be supplied to	% Return (RTC)	Trading Margin payable by UPCL on quantum of return (Paise/kWh)	Duration of As & When return power to UPCL	
Jun-2020	Upto 140	HPPC	106 (H-4)	4.00	Nov 2020 to Mar 2021	Northern Region Periphery
	Upto 150	IPCL	104 (H-5)	Nil	Nov-20	
	Upto 75	CESC	103.5 (H-7)	Nil	Dec-2020 to Feb-2021	
Jul-2020	Upto 140	HPPC	105 (H-5)	1.00	Nov 2020 to Mar 2021	
	Upto 150	IPCL	104 (H-6)	Nil	Dec-2020 & Jan-2021	
	Upto 75	CESC	103.5 (H-7)	Nil	Dec-2020 to Feb-2021	
Aug-2020	Upto 140	HPPC	105 (H-5)	1.00	Nov 2020 to Mar 2021	
	Upto 150	IPCL	104 (H-6)	Nil	Feb-2021	
	Upto 75	CESC	103.5 (H-7)	Nil	Dec-2020 to Feb-2021	
Sep-2020	Upto 140	HPPC	106 (H-5)	4.00	Nov 2020 to Mar 2021	
	Upto 150	IPCL	104 (H-6)	Nil	01-Mar-2021 to 31-Mar-2021	
	Upto 75	CESC	103.5 (H-7)	Nil	01-Dec-2020 to 28-Feb-2021	

Supply of Power by UPCL to GMRETL (Advance Banking) and Supply of Power by GMRETL to UPCL (Return Banking)

Month	Mode "Firm basis"					Delivery Point
	Quantum of power to be supplied by UPCL (MW) (RTC)	Power to be supplied to	% Return (RTC)	Trading Margin payable by UPCL on quantum of return (Paise/kWh)	Duration of return of power to UPCL	
01-07-2020 to 31-07-2020	250	PSPCL	117 (H-1)	7.00	Nov-2020 to Mar-2021	Northern Region Periphery
01-08-2020 to 31-08-2020	350	PSPCL	117 (H-1)	7.00		
01-09-2020 to 30-09-2020	300	PSPCL	117 (H-1)	7.00		

Mode "As & when available basis"						Delivery Point
Month	Quantum of power to be supplied by UPCL (MW) (RTC/Non RTC)	Power to be supplied to	% Return (RTC)	Trading Margin payable by UPCL on quantum of return (Paise/kWh)	Duration of As & When return power to UPCL	
Jun-2020	Upto 150	PSPCL	117 (H-1)	7.00	Nov-2020 to Mar-2021	Northern Region Periphery
	Upto 150	GWEL	102 (H-8)	3.00		
Jul-2020	Upto 150	PSPCL	117 (H-1)	7.00		
	Upto 150	GWEL	102 (H-8)	3.00		
Aug-2020	Upto 150	PSPCL	117 (H-1)	7.00		
	Upto 150	GWEL	102 (H-8)	3.00		
Sep-2020	Upto 150	PSPCL	117 (H-1)	7.00		
	Upto 150	GWEL	102 (H-8)	3.00		

Note:

- (1) Trading margin on per unit of energy (kWh) shall be payable by UPCL during Return Banking only on total return of banked energy (Banked energy along with percentage of return) for respective combination of quantum (MW), utility and percentage return as mentioned against each month above.
- (2) The return of 'As & When Available Basis' Energy Banking will be taken on RTC Basis during the period from Nov-2020 to March 2021 as per mutual consents of both the parties i.e. UPCL and M/s Arunachal Pradesh Power Corporation Pvt. Ltd., M/s PTC India Ltd., M/s Kreate Energy (I) Pvt. Ltd., and M/s GMR Energy Trading Ltd. respectively, based on the return percentage quoted in bidding process.

- 1.4. The Petitioner submitted that the actual and final quantum of power to be banked with M/s APPCPL, M/s PTCIL, M/s KEIPL, and M/s GMRETL respectively, will be known after the month of September 2020, and, accordingly, the respective bidders are required to return energy (in MU) to UPCL based on return percentage quoted by them during the period from November 2020 to March 2021. The Petitioner submitted that this clause has already been incorporated in the Draft Energy Banking Agreement.
- 1.5. The Petitioner submitted that the Commission in its various orders has laid down that banking of power will be the most cost-effective arrangement, and, accordingly, UPCL has planned to take back banked power from November 2020 to March 2021 when UPCL remains in power deficit. The Petitioner also submitted that, if the said arrangement is not considered then the Petitioner will have to either procure power from the power exchange or to go for short term power procurement which may be an expensive proposition and may consequently & unnecessarily burden the consumers.
- 1.6. The Petitioner requested before the Commission to approve the draft Energy Banking Agreement and allow Advance & Return banking of energy with M/s APPCPL, M/s PTCIL,

M/s KEIPL, and M/s GMRETL respectively, so that the necessary Energy Banking Agreements in this regard may be signed with the respective bidders.

2. Commission's Views & Decisions

2.1. Legal Requirement for approval of PPA

- 2.1.1. A power banking agreement is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.
- 2.1.2. Regulation 81(1) of the UERC Tariff Regulations, 2018 provides that power purchase/banking/trading agreements as approved by the Commission shall be considered to determine the power purchase cost of the distribution licensee. Further, 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.
- 2.1.3. The Commission vide its Tariff Order dated 18.04.2020 directed the Petitioner to bank the surplus energy during the month of May, 2020 to September, 2020 and withdraw the same in the month of October, 2020 to March, 2021. The relevant extract of the said Tariff Order is as follows:

"The Commission directs the Petitioner to bank the surplus energy available during the months of May 2020 to September 2020 and withdraw the same in the months of October 2020 to March 2021."

- 2.1.4. Accordingly, in accordance with the requirement of the Act, Regulations and Order referred above, UPCL is required to seek approval of the draft Energy Banking Agreement (EBA) proposed to be entered by it from the Commission.

2.2. Commission's Analysis of the PBA and Order on the same

- 2.2.1. The draft Energy Banking Agreements is to be entered into between UPCL and M/s APPCPL, M/s PTCIL, M/s KEIPL, and M/s GMRETL respectively for supply of 734.40 MUs on firm basis and upto 439.20 MUs on "as and when" basis, from the months of

June 2020 to September 2020 which will be received back during the months of November 2020 to March 2021 on the terms and conditions as discussed before.

2.2.2. The draft EBA submitted by UPCL has been examined in light of the relevant rules & regulations. The Commission observed that the draft PBA submitted by UPCL are consistent with the provisions of the Act/Regulations, however, UPCL should ensure that blanks for dates are duly filled and completed while signing the final EBA.

2.2.3. Further, M/s GMRETL and M/s PTCIL in their comments submitted that Clause 4.1 of the EBA was not part of the original tender document, and, moreover, the same has been covered under clause 4.3 of EBA which is in line with clause 16 of tender document, therefore the same may be deleted to avoid repetition. The clause 4.1 of the EBA is reproduced hereunder:

“4.1 The exchange of power between GMRETL and UPCL is supposed to be a cashless transaction. However, if delivered energy deviates from scheduled energy the same shall be billed at the average rate of power purchase cost (Rs. 3.53 per kWh) approved by Hon’ble UERC vide order dated 27th Feb-2019 on Approval of Business Plan and MYT petition for third control period plus Rs. 2.00 per kWh on provisional basis. The bill shall be raised by the GMRETL/UPCL on weekly basis and the surcharge @ 1.25% per month shall be levied on day to day basis on outstanding amount beyond due date and the final bill shall be adjusted after issuance of REA account.”

UPCL in response to the same submitted that the aforesaid clause 4.1 of the EBA was not part of original tender document, and, therefore, may be removed from the final EBA to be executed between the parties. UPCL is directed to amend the draft EBA in this respect, and remove the clause 4.1 from the same as discussed above from all the four EBA’s proposed to be executed with M/s APPCPL, M/s PTCIL, M/s KEIPL, and M/s GMRETL respectively.

2.2.4. Further, M/s GMRETL and M/s PTCIL in their comments submitted that Clause 4.8 of the EBA regarding rebate was not the part of original tender document, and, therefore, should be removed from the EBA in line with the terms and conditions of the tender document. The Clause 4.8 of the EBA is reproduced hereunder:

“4.8 No rebate shall be applicable on the open access bills and trading margin bills. A rebate of 2% shall be applicable on adjustment bill of energy if the payment is made within due date.”

UPCL in this regard submitted that the said clause is the general term & condition of the EBA and has also remained a part of the EBA's executed with the aforesaid parties in past period. The Commission analyzed the submission of the Petitioner and the respondent in this regard and is of the view that since the clause of rebate as given in clause 4.8 of the proposed EBA finds no mention in the tender document floated by UPCL for current energy banking arrangement, therefore, as a prudent business practice the same cannot be allowed to be part of the final EBA to executed between the parties. However, the Commission is of the opinion that it is part of the commercial arrangements between the parties, and hence, if both the parties agree the same may be provided for in the Agreement. However, in case both the parties do not agree then UPCL is directed to amend the EBA so as to remove the clause 4.8 from the EBA's to be executed with M/s APPCPL, M/s PTCIL, M/s KEIPL, and M/s GMRETL respectively.

2.2.5. Further, M/s PTCIL in its comments submitted that the clause 4.2 of EBA regarding booking of corridor is not in line with the tender document in so far that the words "*in case cost is to be borne by UPCL as explained above*" of the original tender document have been replaced with the words "*the cost of participation in e-bidding*" in last line of the aforesaid clause 4.2 of draft EBA. The relevant clause of tender document and EBA is reproduced hereunder:

Clause 16.1 of the tender document:

"16.1 Booking of Corridor

*The successful bidder shall put all efforts to ensure booking of corridor through Advance Application (3 months/2 months/1 month basis), First Come First Serve (FCFS) basis, Day Ahead basis, Contingency basis under short term open access arrangement. The efforts shall include participation in e-bidding for booking of corridor in case Corridor booking application is not approved and respective RLDC decides to go for e-bidding. The cost of e-bidding of Booking of corridor shall be borne by exporting entity if e-bidding is carried out to book corridor for transmitting power from source to delivery point i.e. Northern Regional Periphery. Further, the cost of e-bidding of Booking of corridor shall be borne by importing entity if e-bidding is carried out to book corridor for transmitting power from delivery point i.e. Northern Regional Periphery to destination. Rate of bidding for participation in such e-bidding will be placed only after consultation with Uttarakhand Power Corporation Limited. **In case cost is to be borne by UPCL as explained above** will be refunded by UPCL to bidder after*

production of bill in this regard."

Clause 4.2 of the EBA:

"4.2 Booking of Corridor

M/s PTC INDIA LIMITED shall put all efforts to ensure booking of corridor through Advance Application (3 months/2 months/1 month basis), First Come First Serve (FCFS) basis, Day Ahead basis, Contingency basis under short term open access arrangement. The efforts shall include participation in e-bidding for booking of corridor in case Corridor booking application is not approved and respective RLDC decides to go for e-bidding.

The cost of e-bidding of Booking of corridor shall be borne by exporting entity if e-bidding is carried out to book corridor for transmitting power from source to delivery point i.e. Northern Regional Periphery. Further, the cost of e-bidding of Booking of corridor shall be borne by importing entity if e-bidding is carried out to book corridor for transmitting power from delivery point i.e. Northern Regional Periphery to destination.

*Rate (cost) of bidding for participation in such e- bidding will be placed only after consultation with Uttarakhand Power Corporation Limited. **The cost of participation in e-bidding** will be refunded by UPCL to M/s PTC after production of bill in this regard."*

UPCL in this regard submitted that the said clause was part of the original tender document and shall remain as such in the draft EBA. The Commission observed the submissions of the Petitioner and the respondent in this behalf, and directs UPCL to amend the clause 4.2 of the proposed EBA to be executed with M/s APPCPL, M/s PTCIL, M/s KEIPL, and M/s GMRETL respectively, so as to align the same exactly in line with the terms used in the original tender document.

2.2.6. UPCL is directed to make the necessary changes in the draft PPA and submit the final signed PPA within 2 weeks of the date of Order.

3. Ordered accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)