

**BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW**

Petition No. 547/2008

**In the matter of :** Approval of long term Power Sale Agreement executed between UPPCL and M/s PTC for purchase of power from Karcham Wangtoo HEP and Teesta-III HEP.

**AND**

**In the matter of :** Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14 Ashok Marg,  
Lucknow-226001 .....Petitioner

The following were present:

1. Shri Amarjeet Singh Rakhra, Advocate, UPPCL.
2. Shri R.K. Jauhar, CE (PPA), UPPCL.
3. Shri S.P.Srivastava, EE (SPATC), UPPCL.
4. Shri A.K.Singh, EE (SPATC), UPPCL.
5. Shri R.C. Chowdhri, PTC.

**ORDER**

(Date of Hearing 17.11.08 &13.03.2009)

UPPCL has filed this Petition on 19.06.2008 for approval of long term Power Sale Agreements (PSA) signed with M/s Power Trading Corporation (PTC) for the purchase of:

- (i) 200 MW Power from 1000 MW Karcham Wangtoo HEP, (Himanchal Pradesh) vide PSA dated 13.09.2006;

Karcham Wangtoo HEP is under development in the State of Himachal Pradesh and expected to be commissioned in 2009-10. PTC signed a power purchase agreement (PPA) with M/s Japyee Karcham Hydro Corporation Limited (Karcham) for purchase of 704 MW of power from 4x250 MW Karcham Wangtoo HEP on 21.03.2006 for 35

years. After signing said PPA, PTC signed a Memorandum of Understanding with UPPCL on 22.03.2006 and subsequently a power sale agreement on 13.09.2006 for sale of 200MW for a period of 35 years.

- (ii) 200 MW from 1200 MW Teesta HEP (Sikkim) vide PSA dated 27.09.2006.

PTC and Teesta Urja Limited (Teesta) entered into a power purchase agreement (Teesta PPA) on 28.07.2006 for purchase of entire capacity 1200 MW (6 x 200 MW) Teesta Stage-III Hydro Electric Power Project in Sikkim (Teesta Project), expected to be commissioned in 2012. Thereafter, PTC entered into PSA with UPPCL on 27.09.2006 for the sale of 200 MW from the project.

Both the PSAs, as mentioned above, contain similar provisions.

As per PPAs, between PTC and generator, one of the Conditions Precedent is that the 'power sale agreements' between purchaser and PTC should be approved by the Appropriate Commission. Since UPPCL is purchasing power from PTC, the petition for the approval of the said PSAs has been filed before the Commission.

The PSAs were discussed in the hearing on 17.11.08 and the Commission advised the petitioner to come prepared on the next date of hearing to address the issues relating to (i) jurisdiction of the Commission to approve the PSA without having power to regulate power purchase under PPA signed between PTC & above named generating companies, (ii) power sale agreements preferred to be signed with PTC instead of direct purchase agreements with generating companies which could have reduced the risk of breach of agreement and reduced the tariff by amount of trading margin to be paid to PTC under PSAs, (iii) The competitive bidding process could have been adopted, (iv)

possibility of impleading generating companies in the petition and (v) the manner, the tariff would be determined if Commission approves PSAs.

In subsequent hearing fixed on 13.03.2009, Shri Amarjeet Singh Rakhra, the learned counsel of UPPCL submitted that the matter of approval of PSA is purely technical in nature and Commission has jurisdiction to approve the power sale agreements between PTC and UPPCL and determine tariff for supply of power in accordance with the section-86 (1) (b) of EA-2003.

Shri A.K.Singh EE, UPPCL, stated that the Petitioner selected PTC to supply power through the route of the negotiation when PTC approached UPPCL in 2005 as per direction of MoP/CEA to approach beneficiaries and based on information given by M/s PTC, the power purchase from Karcham Wangtoo HEP was considered necessary to bridge the gap between demand and supply in the State at cheap cost and accordingly the power supply agreement (PSA) was executed with PTC on 13.09.2006. Further, a Memorandum of Understanding (MoU) was signed on 22.03.2006 for purchase of power from Teesta Project and this MoU formed the basis of PSA with PTC. Shri A.K.Singh referred to clause no-9.1.2 of the power sale agreements between PTC and UPPCL which states, *“The Purchaser shall pay tariff to PTC based on the capital cost and means of finance thereof, as approved by CEA/CERC on completion of the project, in proportion to the ratio of Purchaser Contracted Power to the rated capacity, such rated capacity being adjusted for free power. The tariff payable by the Purchaser will be determined in accordance with the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations’ 2004 and as may be modified or amended up to the date of execution of the PPA. Determination of tariff would be subject to approval by CERC. Subject to Section 1.1.1, the tariff as approved by CERC will be applicable for purchase and sale of the Purchaser Contracted Power and Purchaser Contracted Energy.”*

The Commission agreed that PSAs entered with a electricity trader could be approved under the said sections of the Act and desired to know from the Petitioner as to who would determine the capital cost of the project on completion and tariff thereof. Representative of PTC Shri R.C. Chowdhari submitted that CEA had earlier approved the capital costs of these projects and the final completion costs shall also be approved by CEA and based on such cost, tariff shall be calculated as per prevalent CERC Regulations and approved by UPERC under section 86(1)(b).

The Commission required the petitioner to put up the facts regarding approval of the capital costs of the projects by CEA and background of signing of MoUs. Sri. Rakhra put up the facts from the letter addressed to him by Chief Engineer, PPA vide letter dt.164-SPATC dt.12.3.09, a copy of which was submitted on direction of the Commission. The Petitioner had earlier submitted letter dt.17.4.08 stating the anticipated levelised tariff of these projects. The facts related to cost tariff and background of signing of MoUs, based on above letters, are as below:

1. Karcham Wangtoo HEP was cleared by CEA in March, 2003, at the completion cost of Rs. 5910 Crs. With this estimated completion cost of the project, the levelised tariff for 35 years has been calculated, based on CERC Norms with debt equity ratio of 80 : 20 and an interest rate of 9.5%, which works out to Rs. 2.00/kWh at the busbar of the generating company.
2. CEA has accorded concurrence to Teesta HEP under section-8 of Electricity Act-2003 at an estimated completion cost of Rs. 5705 .55 Crs. including IDC and FC of Rs. 603.73 Crs. vide OM No. 2/SKM/11/05-CEA/PAC/751-75 dated 12.05.2006. As per letter No. 245/SPATC dated 17.04.2008, the expected levelised tariff for power procurement from Teesta HEP is Rs. 2.08/kWh.
3. In respect to Karcham Wangtoo HEP, the excerpts from minutes of meeting between Secretary (Power) on 24.12.04 (submitted with letter dt. 12.3.09)

states, “PFC informed that the equity plan of the project is yet to be finalized. The 30% equity is being brought up by M/s JPIL and the remaining 30% equity is yet to be tied up. The project promoter informed that proposed power sale to Haryana and Punjab either directly or through PTC is yet to be firmed up. Secretary (Power) requested PTC to approach NREB for sale of power to all northern region constituents and PGCIL could then be approached for developing the transmission network for evacuation of power. Secretary (Power) also desired that ministry of power will have a meeting on transmission system with PGCIL, CEA and the project promoter. The Promoter also informed that the tariff expected was Rs. 2.49. Secretary (Power) desired that tariff be targeted for Rs. 2.00/unit. ....”

4. A minutes of meeting dt. 20.3.06 was signed between PTC and UPPCL regarding proposal of Teesta Urja Ltd. for setting up 1200 MW Teesta Stage III, HEP on the main Teesta River in North Sikkim and for selling to UPPCL the sellable energy up to 300 MW from the project through PTC.

In both the above cases, trading margin to PTC and transmission/wheeling charges and other charges applicable under clause 9.1.1 of PSA including that incurred by PTC under PPA shall be paid additionally by UPPCL. It is stated in letter dated 12.03.2009 that the said PSAs had been executed on the basis of initiative taken and direction issued by MoP hence it was not felt by UPPCL to make generators opposite parties in the Petition.

Section-4.3.2 of PSAs provides that “notwithstanding anything to the contrary in this agreement, PTC shall not be in breach of this agreement if , due to termination of PPA or otherwise, PTC supplies power at mutually agreed rates to the purchaser from one or more alternative sources”. In view of above provision and in case the generating companies do not supply power to PTC due to any reason, the generating companies and UPPCL should endeavor to enter in to an agreement for direct supply of electricity from these projects.

Dispute under the PSAs are to be settled by arbitration. The Commission has power under section 86(1)(f) to refer any dispute for arbitration as such Arbitrators in these cases shall be as appointed by the Commission.

In consideration of submissions, written and oral, made before the Commission; the power sale agreements signed by the Petitioner with PTC are approved with the following conditions that :

- (a) tariff shall be as approved by CERC or otherwise worked out as per prevalent CERC Regulations, based on completion cost of the projects as determined by CEA ;
- (b) any dispute arising between UPPCL and PTC shall be settled by Arbitrator(s) to be appointed by UPERC under Section 86(1)(f) read with section 158 of the Electricity Act, 2003; and
- (c) in case the generating companies do not supply power to PTC due to any reason, the generating companies and UPPCL should endeavor to enter in to an agreement for direct supply of electricity from these projects.

The Petition is disposed.

(R.D.Gupta)  
Member

(P.N. Pathak)  
Member

(Rajesh Awasthi)  
Chairman

Dated : 12 / 05/2009  
Lucknow