

UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

SKV Law Offices Secures Landmark Approval for 511 MW Long-Term Cross-Border Hydro Power Procurement Before UPERC

Background

SKV Law Offices successfully represented Tata Power Trading Company Limited (“TPTCL”) before the Uttar Pradesh Electricity Regulatory Commission (“UPERC”) in Petition No. 2294 of 2025. The Petition, filed by Uttar Pradesh Power Corporation Limited (“UPPCL”) under Section 86(1)(b) of the Electricity Act, 2003 (“the Act”), sought approval for procurement of 511 MW of cross-border hydro power from the Khorlochhu Hydro Power Limited (“KHPL”) project in Bhutan for 30 years at a levelized tariff of Rs. 6.75 per unit at the Indo-Bhutan Periphery, through TPTCL as inter-state trading licensee.

This is one-of-a-kind transaction considering the cross-border implications and the view taken by the Regulators in such cases.

The Regulatory and Legal Complexity

The proceedings raised several intersecting legal and regulatory challenges. A threshold issue was whether UPERC possessed jurisdiction under Section 86(1)(b) of the Act over a cross-border procurement involving a generator located outside India, and whether TPTCL had requisite authority under the CERC (Cross Border Trade of Electricity) Regulations, 2019 (“CBTE Regulations”), including whether prior CEA approval under the MoP Guidelines on Cross Border Trade of Electricity, 2018 (“MoP Guidelines”), was a condition precedent to the PSA.

The further contested issue was the continuing validity of the Indo-Bhutan bilateral framework, comprising the Indo-Bhutan Agreement 2006 and the Indo-Bhutan Protocol 2009, following SJVN Ltd.’s exit from the project company and Tata Power Company Limited’s acquisition of a 40% equity stake in KHPL in October 2024. The proposed levelized

tariff of Rs. 6.75/kWh (Bus-Bar tariff of Rs. 6.47/kWh under CERC Tariff Regulations, 2024, plus Rs. 0.28/kWh transmission charges to the Indo-Bhutan border) were further scrutinized for comparability with domestic alternatives and older Bhutanese hydro projects.

Representation by SKV Law Offices

SKV Law Offices made detailed submissions across multiple hearings, addressing each of the Commission’s queries with precision.

1. On jurisdiction, it was submitted that Section 86(1)(b) of the Act is expansively worded and covers procurement by a distribution licensee from any source including outside India, rendering the seller’s location irrelevant.
2. On the inter-governmental framework, SKV Law Offices argued that the Indo-Bhutan Agreement 2006 and Protocol 2009 established a bilateral cooperation architecture expressly contemplating both public and private sector participation, and that SJVN’s exit could not extinguish a framework operating at the sovereign level, TPTCL’s authority for cross-border trade is independently established under the MoP Guidelines, 2018.
3. On tariff, it was demonstrated that Rs. 6.75/kWh was derived strictly in terms of the extant CERC Tariff Regulations, 2024 and was all-inclusive of the 5 paise trading margin agreed between TPTCL and KHPL and SNA charges, with no additional amount payable by UPPCL.
4. On comparability with Chhukha and Kurichhu, SKV Law Offices argued that those projects (*commissioned in 1986-88 and 2001-02*) belonged to an entirely different era of cost parameters compared to KHPL’s greenfield with COD of September 2029.

5. On State Government concurrence, it was submitted that no provision of law mandated approval for a procurement of this nature under the CBTE Regulations and the CEA's Designated Authority approval would be obtained subsequent to the UPERC's approval of the PSA.

The Order and Its Significance

By its Order dated 27.05.2026, UPERC approved the procurement of 511 MW (+10% overload) of hydro power from KHPL through TPTCL and approved the PSA, subject to compliance with the conditions set out by it in the order and the applicable cross-border trade framework. UPERC found the project's peak supply period, i.e., May to October, aligned with UPPCL's peak summer demand, with 4 hours of storage capacity addressing peak hour requirements and the fixed tariff of Rs. 6.75 per unit for the 30-year tenure ensuring price certainty for consumers.

The order carries significant precedential value. It affirms state commission jurisdiction under Section 86(1)(b) of the Act over cross-border procurement irrespective of the seller's location and settles the continuity of the Indo-Bhutan bilateral framework, with direct implications for future private sector hydro projects in Bhutan. For distribution licensees with Hydro Purchase Obligation targets, the order establishes a template for long-term cross-border procurement to ensure energy security.

Team

Tata Power Trading Company Limited was represented by Mr. Shri Venkatesh (Founding Partner), assisted by Mr. Ashutosh K. Srivastava (Partner), Mr. Aashwyn Singh (Senior Associate) and Mr. Aniket Kanhaua (Associate) from SKV Law Offices.

FOR FURTHER INFORMATION PLEASE CONTACT

Kanika Chugh

MANAGING PARTNER

Kanika.chugh@skvlawoffices.com