

**Before**

# **UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No. 04 of 2017**

**In the matter of:**

Petition filed under Regulation 9, 20, 58, 59, 61 and 62 of the UERC (Conduct of Business Regulations), 2014 and Regulation 49 and 50 of UERC RE Regulation, 2013 for adjudication of dispute and other matter between UPCL and 04 Nos. Solar Power Generators.

**In the matter of:**

M/s Vivan Solar Pvt. Ltd.

M/s Purshotam Industries Ltd.

M/s Purshotam Ispat

M/s Eastman International

... Petitioners

**AND**

**In the matter of:**

Uttarakhand Power Corporation Ltd.

... Respondent

**CORAM**

**Shri Subhash Kumar      Chairman**

**Date of Hearing: January 09, 2017**

**Date of Order: April 12, 2017**

This Order relates to the Petition filed by M/s Vivan Solar Pvt. Ltd., M/s Purshotam Industries Ltd., M/s Purshotam Ispat and M/s Eastman International (hereinafter referred to as "Solar Power Developers" or "Petitioners" or "Generators") seeking adjudication of dispute and other matter with Uttarakhand Power Corporation Ltd. ( hereinafter referred to as "UPCL" or "Respondent" or "Licensee").

## **1. Background & Petitioners' Submissions**

- 1.1 All the 4 Petitioners had individually filed petitions dated 16.12.2016 & 19.12.2016 seeking adjudication of dispute with UPCL in the matter of effective date of commissioning and

corresponding tariffs in respect of their Solar PV Plants. Submissions made by the Petitioners have been discussed in following Paras.

- 1.2 In the month of August, 2014, UREDA, the nodal agency, had issued a RFP inviting bidders for setting up of the Solar Plant having aggregate capacity of 30 MW in the State of Uttarakhand and further the power generated by such plants was to be procured by the Respondent for the period of 25 years at approved bid price and at the terms of PPA between the parties as approved by the Commission. The Petitioners participated in the bidding process, and got Letter of Allotment (LoA) from UREDA.
- 1.3 The Petitioners submitted that as per the RfP, 18 months time from the LoA was given to the successful bidders for commissioning of the projects on 13.01.2015. PPAs were signed on 27.03.2015 after many repeated request to UPCL and upon the orders of the Commission directing the Respondent vide its order dated 20.03.2015 to sign the agreement before 31.3.2015 and commissioning of the plant was to be completed by 31.03.2016. The Commission vide its order dated 20.03.2015 reduced the time period for completion of the project from 18 months to 12 months against the terms and condition of the RFP. As per RFP the time period for completion of the project should have been 18 months from the issue of LoA and PPA was scheduled to be signed within one month of LoA. So effectively 17 months time should have been given for commissioning of the project from the date of signing of the PPA.
- 1.4 The Petitioners submitted that in the draft PPA there was a clause regarding the approval of the PPA by the Commission and that the changes suggested by the Commission were mandatorily required to be incorporated in the PPA, which suggested that the term and the condition of the PPA would attain finality only upon approval by the Commission and execution of the final PPA in light of the changes suggested by the Commission. As the PPA was not approved and had not attained finality, the bankers were not comfortable with the tentative clauses and, therefore, the process for obtaining the financial assistance from banking institution could not be materialized which was quite understandable as the power purchase agreement is the most important document for the project and any changes in its terms and conditions could make a lot of difference because of which the Banks were reluctant in advancing any loan till the PPA was finalized, which directly affected the financial closure and consequently caused certain delay which was not within the control of the Petitioner neither the same could possibly be avoided by the Petitioners by exercise of

due diligence. Later on this PPA was finally approved on 14.11.2015 by the Commission and upon repeated requests, the supplementary PPAs with UPCL was signed on 07.01.2016 & 11.01.2016.

- 1.5 The Petitioners submitted that in the meanwhile they had decided to form a solar park and evacuate their power jointly at 33 kV voltage level. The solar park is located at village – Bishanpur, Laksar Road, Haridwar and the evacuation was to be done through 33/11 kV sub-station Bhattipur of the Respondent. This effort was made in order to curtail any further delay and was in furtherance of constant efforts to commission their plant within time, however, the Respondent without realizing the implication of delay in commissioning the plant on the Petitioners, did not take up the matter seriously and rather kept delaying the evacuation permission on 33 kV on one pretext or another without any basis or reasons making it even more difficult for the Petitioners to follow the stringent time schedule.
- 1.6 The Petitioners submitted that they had applied for grant of permission for the feasibility on 03.07.2015 & construction of common evacuation line from the Respondent on 26.11.2015, the grid feasibility report was provided after several reminders vide Respondent's letter dated 21.01.2016 and thereafter only the Petitioner could apply for the permission to construct the evacuation system. The Petitioners submitted that the effective time left with them to complete their plant was very less, i.e. less than 3 months, still they took the matter in good faith and tried their best to erect the line and commission the project within time.
- 1.7 The Petitioners submitted that for installation of the Solar plant large chunk of land is the primary requirement which is not only difficult to arrange but there are also various legal hassles to be overcome in obtaining the same, the Petitioners were not allowed to purchase land in the State of Uttarakhand as the Petitioners company did not have any land in the State before the year 2003 which is a mandatory requirement for purchasing the agriculture land and therefore, a special permission was required to be taken from the State Government for purchasing the land, the Petitioners applied for the permission to convert the land from agriculture to Non-agriculture under Section 143 of UPZANLR Act, 1950 on 26.09.2015. After repeated requests, letters and follow ups land conversion permission was received on 21.12.2015 and on 05.02.2016. Further the permission to purchase the land was applied on 29.01.2016 and the same has not been granted till date, thereafter, with the arrangement/understanding of land owner, plant was installed which reflects towards the efforts for timely completion of the plant.

- 1.8 The Petitioners submitted that the evacuation system/transmission line was successfully completed on 09.03.2016 and thereafter testing and trial of the line was done on 21.03.2016 and the complete plant and machinery was commissioned on 21.03.2016 in the presence of nodal officer, EE, EDD, Laksar, of UPCL. The Petitioners submitted that on this date the whole project in its entirety got completed and nothing else was required to be done on the part of Petitioners for commissioning the plant. Upon successful commissioning of the plant by connecting it to the grid and installation of the meter the certificate of commissioning was granted by the Nodal officer of the Respondent itself.
- 1.9 The Petitioners submitted that the grid voltage at the time of commissioning, i.e. on 21.03.2016 was very low and they were not aware of the same and had neither anticipated that the voltage could be so low and fluctuating because of which it was not possible to synchronize the plant as the plant was designed to work at voltage level of 33 kV with a permissible standard deviation of +/- 5%, however, the grid voltage available was much lower and was close to 26-28 kV. The available voltage was in no way suitable for synchronizing the plant. The Petitioners submitted that the Respondent while granting the technical feasibility report never disclosed about any voltage problem at the concerned sub-station. Further, due to lapse on the part of the Respondent it was not possible to synchronize the plant.
- 1.10 The Petitioners submitted that when it became apparent that the Respondent is not going to take any action and is totally insensitive to the problem of the Petitioners they were left with no choice but to take action on their own and sought guidance in the matter and it was advised by their technical advisor that it was neither safe for the plant nor good for the efficiency of the plant to tamper with the standard settings. However, the Petitioners had no option and they insisted upon taking some measures by their advisor and they reluctantly upon risk and liability of the Petitioners agreed to try to make certain adjustment in the settings of their plants so as to be able to evacuate the power and hence, the Petitioner forced with prevalent situation requested their inverter vendor to change the settings of inverter to work on current grid conditions at their own risk and cost. After consultation with the technical team on 25.04.2016, the Petitioners decided that they were making the required changes in the inverters. With the help of their technical advisor & vendors, the Petitioner was able to achieve MCR of the plant only in the month of April, May and July, 2016.
- 1.11 The Petitioners submitted that the Respondent without any basis is considering the date of

commissioning of the plant/unit as per the Maximum Continuous Rating reached, i.e. after the completion of FY 2015-16. The Petitioner submitted that it is not within the competence and control of them to attain MCR on the very date on which the plant is commissioned or in coming days as reaching the MCR is dependent upon various factors like irradiation levels which are totally outside the control of the generating stations. It would be totally arbitrary to consider that the solar plant like thermal and Gas based plant can obtain the MCR on the very date of commissioning or the date of commissioning should be considered related with the MCR. They submitted that the interpretation of the Respondent of the definition of CoD is not fit for Solar power plant and the definition cannot be considered relevant for the purpose of ascertaining the date of commissioning of the solar plant moreover even if there is any uncertainty regarding the application of the definition then it is incumbent that the Commission should interfere in the matter and clarify to the Respondent that the interpretation given by them or the definition of CoD in the Regulation does not apply to the solar plant in the manner suggested by the Respondent. It is pertinent to mention here that the Nodal Officer as per PPA has granted Certificate of Commissioning dated 30.03.2016 and has certified that the plant have been commissioned on 21.03.2016. The Respondent is barred by principle of estoppels from making any contradictory statement now, therefore associating the commissioning of the plant with MCR is totally illegal and against law. Further, even if for the sake of argument the contention of the Respondent is accepted then also Respondent themselves only are liable for the delay as they have failed to provide sufficient voltage for synchronization of the plant.

- 1.12 The Petitioners submitted that the Respondent by their wrong interpretation has effectively made the plant of the Petitioners totally commercially unviable because basing upon their illogical and unlawful interpretation of the CoD the Respondent is considering the applicable tariff of their plant lesser than what the Petitioners are legally entitled. The Petitioner as per the Regulation are entitled for the Tariff as per their respective letter of allotment, however, the Respondent by considering the CoD in the subsequent financial year has applied the Tariff of Rs. 7.40/unit for making the payment of the invoices. The said action on the part of Respondent is totally devoid of merits and has such prejudicial effect upon the financial condition of the plant that ultimately it would not be possible to run the plant for 25 years.
- 1.13 The Petitioners submitted that they had raised invoices for energy supplied to the Respondent, however, short-payment for the same was remitted to them with considerable

delay without giving any reasons/explanation for the same by the Respondent. The Petitioners submitted that they were on the verge of being declared as non-performing asset and had no option but to accept the payment under protest as made by the Respondent.

1.14 The Commission vide its daily Order dated 09.01.2017 decided to club all the 4 petitions and directed as follows:

*“Since these four Petitions are similar in nature, the Commission has decided to club the same. It is further ordered:*

- 1. Respondent to submit the copy of log-books of the respective S/s for the month of March & April, 2016 in respect of all above referred four solar power plants within a week from the date of Order.*
- 2. Petitioners are required to submit copies of MRI data for the month of March & April, 2016. “*

## **2. Respondent’s Submission**

- 2.1 The Respondent (UPCL) prima-facie contended that the Regulations under which the petitions have been filed by the Petitioners are contradictory. The Petitioners have sought relief under Regulation 20 of UERC (Conduct of Business) Regulations, 2014 seeking settlement of dispute, whereas, at the same time they have referred regulations 9, 20, 58, 59, 61 & 62 of the same Regulations and regulations 49 & 50 of RE Regulations, 2013 which provide for removal of difficulty, relaxations in implementation of regulations etc.
- 2.2 The Respondent submitted that from the fact and documents submitted by the Petitioners it is not clear that their plants were ready for commissioning before 31.03.2016 and prepared for generating at full capacities in accordance with the provisions of the Regulations.
- 2.3 The Respondent submitted that in accordance with the definition of the date of commissioning as provided in the Regulations, all kind of generators, except SHPs, are required to achieve maximum continuous rating (MCR) through a trial run for qualifying the unit or generating station as commissioned. Since the Petitioner themselves accepted that their plants did not reach MCR on or before 31.03.2016, their claim do stand and hence, there cannot be any dispute.
- 2.4 The Respondent submitted that the Petitioners had raised their first invoices after March, 2016 based on their bid rates without proper supporting documents w.r.t. the commissioning of the plants which were later sought/clarified not only from the generators but also from the Nodal Agency (UREDA). UPCL after examining the same had concluded that the CoD of the plants had actually happened after the deadline, i.e. 31.03.2016 and, accordingly,

applicable rates for sale of power would be lesser than the bid rates of the generators and prevailing UERC base rate for FY 2016-17 would be applicable. Payment to the Petitioners were made as per the Regulations/PPA and the same were accepted by the Petitioners without any protest and neither any protest through correspondence in this regard were made with the Respondent before filing of the Petitions nor any letter had been communicated regarding non-agreement with the interpretation of the Regulations by UPCL in the matter.

- 2.5 The Respondent submitted that the Petition is simply an afterthought as UPCL has strictly acted as per the provisions of the Regulations and nowhere in the Petition substitute interpretation of the same provisions have been provided by the Petitioners. The Respondent has contended that the Petition is not legally maintainable and is liable to be dismissed.

### **3. Commission's views and decisions**

- 3.1 The Commission feels pertinent to reproduce Regulations 59 of the UERC (Conduct of Business) Regulations, 2014 which specifies as under:

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#### **59 Inherent power of the Commission**

- (1) *Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.*
- (2) *Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Central Act or State Act, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient for dealing with such a matter or class of matters.*
- (3) *Nothing in these Regulations shall, expressly or impliedly bar the Commission to deal with any matter or exercise any power under the Central Act or State Act, for which no Regulations have been framed, and the Commission may deal with such matters or exercise such powers and functions in a manner it thinks fit.*

“

Similar provisions are also provided in the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating

Stations) Regulations, 2013. Apparently, the Commission has power to make such orders as may be necessary for ends of justice and also to deal with any matter or exercise any power under the Central Act or State Act, for which no Regulations have been framed, and the Commission may deal with such matters or exercise such powers and functions in a manner it thinks fit. Since implementation of solar power plants is being carried out by Petitioners under the tariff based bidding process, therefore reason for delay in commissioning of such plants and corresponding financial implications is required to be analysed before taking any view in the matter by the Commission. Accordingly, the Commission decided to admit the Petition for further analysis, on the merits, based on the facts submitted by the concerning parties.

3.2 The Petitioners vide their letter dated 13.01.2017 submitted the MRI data in respect of all the four solar power plants for the months of March & April, 2016. The Respondent vide its letter dated 16.01.2017 submitted copy of log book of its 33/11 kV Bhattipur Sub-Station for the months of March and April, 2016. From the details provided by project developers and UPCL it was observed that voltage available at 33/11 kV Bhattipur Sub-Station by and large was in the range of 27-30 kV during the period when the solar developers could have synchronised their respective solar power plants with the UPCL's system for exchange of energy. From the details submitted by the Petitioners it was also noted that during the month of March, 2016 the Petitioners imported energy from UPCL. The Commission asked the Petitioners to clarify on the issue. The Petitioners were also directed to submit technical specification of the inverter and copy of electrical inspector certificate issued in respect of all the four power plants. In order to validate installation of solar power plants, the Commission also asked UREDA, the State Nodal Agency, to provide documentary evidence and procedures followed by it for substantiating commissioning of such power plants.

3.3 In response, the project developers submitted copies of Electrical Inspector Certificate dated 30.03.2016 indicating that their projects were completed and were also ready for commissioning on 18.03.2016, i.e. date of inspection by Electrical Inspector. UREDA vide its letter dated 08.02.2017 submitted copies of documents namely meter sealing certificate issued by concerned Executive Engineer of UPCL, injection of power into grid and inspection report of Electrical Inspector and State Nodal Agency contended that these are the main documents for considering commissioning of solar power plants. UREDA further submitted that its concerned district level officer has inspected the plants and furnished the report including

details of the power plants equipment such as number of solar modules with ratings, inverter rating etc. UREDA submitted that from the details provided by the said designated officer it is evident that the project developers have installed the full capacity of solar power projects as allocated by UREDA, being a State nodal agency in the matter. UREDA submitted that on the basis of inspection report provided by its designated officer, sealing certificate of UPCL and clearance certificate issued by Electrical Inspector, commissioning of solar power plants on 21.03.2016 was considered and the same was reported to GoU and MNRE for updation of records.

3.4 Based on the submissions made by the Petitioners, Respondent and UREDA, sequence of events of power plants is being summarized as following:

S. No.	Particulars	M/s Vivan	M/s Purshotam Industries	M/s Purshotam Ispat	M/s Eastman
1	Capacity	3 MW	2 x 1 MW = 2 MW	1x2= 2 MW	0.63MW
2	Letter of Award (date)	13.1.2015	13.01.2015	13.01.2015	13.01.2015
3	SCoD as per LoA	18 months from LoA	18 months from LoA	18 months from LoA	18 months from LoA
4	SCoD as per Commission's Order dated 20.03.2016	31.03.2016	31.03.2016	31.03.2016	31.03.2016
5	Tariff as per LoA (Rs./Unit)	7.93	7.71 & 7.73	7.96 & Rs. 7.88	7.99
6	PPA/Supp PPA (date)	27.03.2015 & 07.01.2016	27.03.2015/ 11.01.2016	27.03.2015 & 11.01.2016	27.0.2015 & 07.01.2016
7	Date of Inspection/ Electrical Inspector Certificate	18.03.2016/ 30.03.2016	18.03.2016/ 30.03.2016	18.03.2016/ 30.03.2016	18.03.2016/ 30.03.2016
8	Date of meter sealing and injection of power into grid	21.3.2016	21.03.2016	21.03.2016	21.03.2016
9	Date of Commissioning claimed by the Petitioners	21.3.2016	21.03.2016	21.03.2016	21.03.2016
10	Date of MCR achieved	29.04.2016	08.05.2016 & 13.05.2016	07.07.2016 & 06.05.2016	20.04.2016

3.5 With regard to import of energy from UPCL, the project developers submitted that when the inverter synchronises with the grid for small moment it draws more energy from the grid for auxiliary consumption of solar power plant. Further, inverter's auxiliary voltage range is much wider than its operating voltage. Once the inverter in synchronized mode is kept ON than it rapidly tries to synchronise with grid and utilises auxiliary power though it is not recommended to keep it in switch ON mode under such low voltage grid conditions as inverter many times tries to switch OFF and switch ON contactors and other switch gears, which may reduce inverter life. The Commission, from inverter specification sheet noted that the auxiliary supply voltage have been provided in the voltage range of 195-253 V suggesting

that the auxiliaries of inverter consume power even at low voltage of supply, however, plant does not get synchronised due to inadequate grid voltage.

- 3.6 The contention of the Petitioners is that the Respondent is not remitting energy bills at the tariff at which the solar capacity was allocated to them. The Respondent is of the opinion that since maximum continuous rating of the Petitioners' solar power plant could not be achieved on before 31.03.2016, hence, in accordance with the RE Regulations, 2013 and respective PPAs, the Petitioners' solar power plants cannot be considered as commissioned before 31.03.2016, hence, the same are not eligible for the tariffs bid by them. Regulation 3(1)(l) of the RE Regulations, 2013 provides that:

*"Date of commercial operation or Commissioning (CoD)" in relation to a unit means the date declared by the generator on achieving maximum continuous rating through a successful trial run and in relation to the generating station, the date of commercial operation means the date of commercial operation of the last unit or block of generating station and expression 'commissioning' shall be construed accordingly. In case of Small Hydro Plants the date of commissioning shall, however, not be linked to achieving maximum continuous rating, but the generator will have to demonstrate the same within three years of commissioning."*

The Commission noted that the above mentioned definition stipulates demonstration of MCR for declaration of CoD of all the plants except SHP. The solar power plants of the Petitioners got completed before 31.03.2016 as certified by Electrical Inspector, UREDA and the certificate issued by Executive Engineer of licensee. During the hearing, concerned Executive Engineer of the Respondent also submitted that after completion of the necessary works, meters were installed at respective power plants and then only certificate of meter sealing were issued to these solar project developers. Further, meter ceiling certificate also states that the power was injected on 21.03.2016. Relevant extract of the certificate dated 30.03.2016 in respect of M/s Vivaan Solar Pvt. Ltd. issued by Executive Engineer of UPCL is as follows:

*"It is to certify that 3.5 MW solar power plant of M/s Vivaan Solar Pvt. Ltd. , Vill-Bishanpur Kundi, Laksar Road Haridwar [reference : Power Purchase Agreement dated 27-03-2015 and supplementary Power Purchase Agreement dated 07.01.2016 for 3.5 MW solar generation executed between Uttarakhand Power Corporation Limited and M/s Vivaan Solar Pvt. Ltd., Vill- Bishanpur Kundi, Laksar Road Haridwar] has been commissioned by installing meter on plant of the above Solar Generator on dated 21.03.2016 and power was also injected into the grid on 21.03.2016."*

Similar certificate have also been issued for other projects also. Hence, there is no ambiguity in relation to installation/completion and operation of solar power plants before 31.03.2016, i.e. before closing of FY 2016-17 as also verified by the officer of UREDA, nodal agency. Officer of the Respondent has also corroborated the fact as above.

- 3.7 For commissioning of any power plant completion/installation of all the project components is a pre-requisite. From the above discussion it cannot be denied that as on 21.03.2016 projects were ready for commissioning. Certificate issued by Executive Engineer, Clearance Certificate of Electrical Inspector and Report of designated officer of UREDA clearly establishes the fact that the solar power plants were operational w.e.f. 21.03.2016, however, the same could not demonstrate the maximum continuous rating (MCR) on account of persistent low voltage problem in associated distribution line of the Respondent. Project developers have been provided connectivity based on the Respondent's study, however, issue of low voltage problem at the concerned sub-station was not intimated then in the technical feasibility report given by the Respondent. The project developers had vide their letters dated 25.03.2016 and 28.03.2016 requested UPCL for initiating necessary measures for rectification of voltage related problem. Apparently, on the above grounds, the Petitioners cannot be held solely responsible for failure to achieve MCR within the stipulated timelines. Further, MCR of the plants was achieved after adjustment in inverter's setting. Further, if the problem related to low voltage at concerning sub-station could have been informed to the project developers beforehand they would have taken necessary measures to deal with such problem much earlier. Moreover, voltage in associated line of UPCL was lesser than the prescribed voltage limits in the Regulations. Accordingly, delay in demonstration of MCR cannot be considered within the control of the Petitioners.
- 3.8 The Commission is of the view that instant case of determination of date of commercial operation of the solar power plants based on the demonstration of MCR shall lead to undue financial loss for such power developers inspite of the fact that they had completed their respective works for installation of the plants & putting them to use within the stipulated timeline of 31.03.2016. Notwithstanding any shortcoming on the part of distribution licensee's system such as problem of voltage in associated line etc., one of the reason for failure to demonstrate MCR by the solar PV power plants could be inadequate solar radiations during the period when the solar PV power plant is ready for generation of power alongwith appropriate evacuation system of the distribution licensee. Accordingly, for

determination of CoD for the purpose of availing tariff discovered through bidding process for the above referred projects, the Commission by exercising the powers available to it in accordance with the Regulation 50 of the RE Regulations, 2013 decides to relax the stipulation of demonstrating maximum continuous rating (MCR) for determination of date of commissioning of solar PV power plants. Date of first injection of power into the licensee's grid after completion of project as certified by the Executive Engineer of the licensee and UREDA, the State nodal agency, shall be reckoned as commissioning of plants. Accordingly, rate of sale of power for all the above referred solar PV plants shall be the tariff mentioned in the LoA issued by the UREDA, State Agency for allotment of solar plant capacity to such solar power developers in accordance with the tariff based bidding process.

3.9 Ordered accordingly.

**(Subhash Kumar)**  
**Chairman**