

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition no. 16 of 2018

In the matter of:

Petition filed under Section 86(1)(f) of the Electricity Act, 2003 read with Article 23 of the PPAs, seeking payment of outstanding dues from Uttarakhand Power Corporation Limited for the common evacuation infrastructure constructed for 4x12.5 MW solar projects of ACME Solar Holdings Private Limited, in terms of the power purchase agreements executed between the parties.

In the matter of:

M/s ACME Solar Holdings (P) Ltd.

M/s Devishi Solar Power (P) Ltd.

M/s Devishi Renewable Energy (P) Ltd.

M/s Eminent Solar Power (P) Ltd.

M/s Sunworld Energy (P) Ltd.

... Petitioners

AND

In the matter of:

Uttarakhand Power Corporation Ltd. (UPCL)

Power Transmission Corporation of Uttarakhand Ltd. (PTCUL)

... Respondents

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: April 03, 2018

Date of Order: July 12, 2018

This Order relates to the Petition dated 21.02.2018 filed by M/s ACME Solar Holdings (P) Ltd. alongwith its special purpose vehicles being, M/s Devishi Solar Power (P) Ltd., M/s Devishi Renewable Energy (P) Ltd., M/s Eminent Solar Power (P) Ltd. and M/s Sunworld Energy (P) Ltd. (hereinafter collectively referred to as "Petitioners") under Section 86(1)(f) of the Electricity Act, 2003 (the Act) read with clause 23 of the respective Power Purchase

Agreement (PPA) executed with UPCL, for adjudication upon the dispute relating to the payment of outstanding dues by UPCL to the Petitioners for construction of transmission and evacuation infrastructure.

1. Background & Petitioner's submissions

- 1.1. The Petitioners submitted that M/s Devishi Solar Power (P) Ltd., M/s Devishi Renewable Energy (P) Ltd., M/s Eminent Solar Power (P) Ltd. and M/s Sunworld Energy (P) Ltd. are Special Purpose Vehicles (SPV) created by M/s ACME Solar Holding (P) Ltd. for setting up of solar power projects with an installed capacity of 12.5 MW each (i.e. 4x12.5 MW) at Khurpiya Farm, Kichha, US Nagar, Uttarakhand.
- 1.2. The Petitioners submitted that Uttarakhand Renewable Energy Development Agency (UREDA) issued a Request for Proposal dated 03.10.2015 for selection of successful bidders for setting up of 170 MW grid connected solar PV power projects through tariff based competitive bidding process, in accordance with Section 63 of the Act. Further, the successful bidders had to supply power to UPCL as per the terms and conditions of the Request for Selection document (RFS) and the model PPA issued thereunder. In terms of the RFS, the total aggregate capacity of solar projects which could be allocated to a company (including its parent, affiliate or ultimate parent or any other group company) was limited to 50 MW.
- 1.3. ACME Solar Holding (P) Ltd. was declared as one of the successful bidder for development of four projects with a total capacity of 50 MW (i.e. four projects having capacity of 12.5 MW each). Accordingly, ACME Solar formed SPV with M/s Devishi Solar Power (P) Ltd., M/s Devishi Renewable Energy (P) Ltd., M/s Eminent Solar Power (P) Ltd. and M/s Sunworld Energy (P) Ltd. for setting up solar power projects with an installed capacity of 12.5 MW each at Khurpiya Farm, Kichha, Uttarakhand. Subsequently, aforementioned SPVs of ACME Solar Holding (P) Ltd. executed PPA with UPCL for sale of entire electricity generated from the projects.
- 1.4. The Petitioners submitted that as per clause 2.2 read with clause 8 of the PPAs, the Petitioners had the option to construct the necessary infrastructure for evacuation of power from the projects upto the point of interconnection. Accordingly, the Petitioners opted to construct the necessary evacuation infrastructure in terms of the

aforementioned provisions of the PPAs. Accordingly, M/s Devishi Solar Power (P) Ltd. and M/s Devishi Renewable Energy (P) Ltd. are connected to the 33/11 kV Chinimill sub-station at Gadarpur, owned by UPCL by way of a 33 kV Double Circuit (D/C) transmission line while M/s Eminent Solar Power (P) Ltd. and M/s Sunworld Energy (P) Ltd. are connected to 132/33 kV Bazpur sub-station owned by PTCUL by way of a 33 kV D/C transmission line.

- 1.5. The Petitioner submitted that as per the provisions of PPAs, the construction of the aforesaid transmission lines are subject to the provisions of Regulation 15(1) of UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 (hereinafter referred to as “RE Regulations, 2013”) which expressly states that in case the solar power developer opts to construct the necessary infrastructure for evacuation of power from the project upto the point of interconnection, it shall be entitled to an additional tariff of 12 paise/unit over and above the tariff mentioned under the respective PPAs. Further, the Petitioners also submitted the total cost incurred by the solar generators for the construction of aforementioned transmission lines which is as follows:

S. No.	Project	Construction Cost of TL and associated works (Rs. in Crore.)
1.	M/s Devishi Renewable Energy (P) Ltd.	1.53
2.	M/s Devishi Solar Power (P) Ltd.	1.56
3.	M/s Eminent Solar Power (P) Ltd.	1.43
4.	M/s Sunworld Energy (P) Ltd.	1.45

- 1.6. The Petitioners submitted that in accordance with Regulation 15(1) of RE Regulations, 2013, they had approached UPCL to either buy the evacuation line constructed by the Petitioners at the depreciated cost indicated in the latest audited accounts of the Petitioners or else pay the enhanced tariff to the respective Petitioners in terms of the aforesaid Regulations. In reply, UPCL vide letter dated 27.11.2017 intimated M/s ACME Solar Holding (P) Ltd. that it had decided to pay the additional tariff, i.e. 12 paise/unit in accordance with RE Regulations, 2013 to the Petitioners on account of the common evacuation infrastructure constructed by the Petitioners.
- 1.7. The Petitioners submitted that Regulation 15(1)(b) of RE Regulation, 2013 envisages construction of single circuit lines from a project to the point of interconnection and the payment structure mentioned in the said Regulations is in terms of the same. The

Petitioners submitted that they have constructed two double circuit lines with each such Transmission Line connecting two projects each to the point of interconnection. As such, out of the total of four circuits constructed by the Petitioners, each circuit is catering to one project each of M/s ACME Solar Holding (P) Ltd., which is clearly within the scope of the construction envisaged under the RE Regulations, 2013.

- 1.8. The Petitioners submitted that vide letter dated 04.01.2018, UPCL was informed regarding its liability towards payment of additional tariff of 12 paise/unit in accordance to Regulation 15(1)(b) of RE Regulations, 2013 whereas the actual payment made by UPCL works out to 6 paise/unit. The Petitioners also submitted that vide letter dated 17.01.2018 they once again informed regarding aforementioned outstanding dues, however, UPCL vide its letter dated 24.01.2018 submitted that it had made all the payments for the transmission lines in accordance with the RE Regulations, 2013.
- 1.9. The Petitioner submitted that the construction of two double circuit lines as opposed to four single circuit lines, carried out by the Petitioners is not prohibited by RE Regulations, 2013 and the same has been done in order to optimize costs and to avoid any unnecessary cluttering and congestion in the transmission infrastructure. Further, the intent of the said regulation is to compensate the solar power developer for construction of the necessary infrastructure for evacuation of power from the project upto the point of interconnection. Accordingly, there is no violation of RE Regulations, 2013 and therefore, the Petitioners are entitled for 12 paise/unit as per RE Regulations, 2013 on account of construction of transmission lines which is less than 10 km as envisaged under RE Regulations, 2013. The Petitioner also requested the Commission to allow legal and administrative costs incurred by the Petitioners in pursuing the present Petition.
- 1.10. The Petitioners submitted that UPCL does not have any legal justification for arbitrary withholding the payment due to the Petitioners and making payment at a rate of around 6 paise/unit as opposed to 12 paise/unit expressly mentioned in RE Regulations, 2013. The Petitioner also submitted that RE Regulations, 2013 lays down a normative cost of Rs. 85 Lakh for construction of a single circuit transmission line and in case the procurer refuses to buy the said transmission line at the aforesaid normative cost allowed to the generator, it has to make a payment at a rate of 12 paise/unit over and above the tariff

mentioned in the PPA executed by the generator with such procurer. The Petitioners submitted that the actual cost incurred for the construction of necessary power evacuation infrastructure is much more than the normative capital cost specified by the Commission. Accordingly, any payment less than 12 paise/unit can only be made when the actual cost incurred by the generator is less than the normative capital cost.

- 1.11. The Petitioners submitted that the Commission is duty bound to promote generation of electricity from renewable sources of energy in terms of Section 86(1)(e) of the Act and as such, disallowance of payments which the Petitioners are legitimately entitled to in terms of the RE Regulations, 2013 and the provisions of the PPAs will have an adverse effect on the viability of the Projects, thereby defeating the intent and purpose of Section 86(1)(e) of the Act. Further, the Petitioners cannot be penalized for resorting to a more prudent and cost-effective approach of construction of two double circuit lines as opposed to four single circuit lines. The said approach was followed to optimize costs and to avoid any unnecessary cluttering and congestion in the transmission infrastructure. In view thereof, the Petitioners ought not to be penalized for following a more prudent approach which is not prohibited by the RE Regulations, 2013.
- 1.12. The Petitioner submitted that UPCL by way of communication dated 24.01.2018 has failed to furnish any valid and legally sustainable reason for withholding the payments legitimately due to the Petitioners in terms of the provisions of the PPAs and the RE Regulations, 2013. Further, UPCL has also failed to demonstrate as to how the payments made by them are in compliance of the provisions of the PPAs and the RE Regulations, 2013.
- 1.13. The Petition was heard on 03.04.2018. The Commission admitted the Petition and directed UPCL to submit its reply in the matter. On the replies of the Respondents, the Petitioners submitted their rejoinder. Subsequently, the Petitioners vide letter dated 26.04.2018 requested the Commission to schedule a hearing on the merits in the matter and vide submission dated 03.05.2018 requested the Commission to amend its prayer and requested the Commission to direct UPCL to make payment @ 12 paise/unit for each project and to clear the outstanding dues of the Petitioners alongwith the applicable surcharge of 1.25% in terms of PPA. Subsequently, the Petitioners vide submission dated 19.06.2018 sought interest @14% on the outstanding dues. The Commission, based on the

request made by the Petitioners, heard the Petition on merits on 19.06.2018 and reserved the judgement. Further, Rejoinders and Replies submitted by the Petitioners and UPCL have been dealt in the subsequent paras of this Order.

2. Respondents' submissions and Petitioners' reply

- 2.1. The Commission had forwarded a copy of the Petition to UPCL and PTCUL for comments. In reply, PTCUL submitted that it had provided the transmission facility to M/s Eminent Solar Power (P) Ltd. and M/s Sunworld Energy (P) Ltd. in accordance with the Connection Agreement signed with respective plants of M/s ACME Solar Holding (P) Ltd. Accordingly, evacuation system from the respective solar power projects upto 132 kV S/s Bazpur was constructed by the solar power generators themselves.
- 2.2. UPCL submitted that there is no dispute that is required to be adjudicated u/s 86(1)(f) of the Act. Further, M/s ACME Solar Holding (P) Ltd. has no *locus standi* in the matter and the other Petitioners did not make any correspondence in the matter. UPCL also submitted that the Petitioners have filed the present Petition in contravention of the provision of clause 23 of the PPA entered which mandates that only if the dispute/dissatisfaction remains unresolved in accordance with the said clause 23, the either party can file the Petition before the Commission for settlement of dispute hence, the Petition cannot be entertained.

In reply, the Petitioners submitted that M/s ACME Solar Holding (P) Ltd. was declared as one of the successful bidders for development of four projects with a total capacity of 50 MW pursuant to RfP. Further, clause 2.16 of RfP allowed the bidder to incorporate one or more project companies for setting up of power project and supply of power. Accordingly, M/s ACME Solar Holding (P) Ltd. formed wholly owned project companies with an installed capacity of 12.5 MW each. In view thereof, M/s ACME Solar Holding (P) Ltd. as a parent company has a *locus standi* to make communication in regard to the dispute with UPCL and to file Petition. UPLC has never questioned the *locus standi* of M/s ACME Solar Holding (P) Ltd. in any of the earlier communications done with it. Further, with regard to the question of dispute, the Petitioners submitted that they made all efforts to amicably resolve the said dispute on non payment of outstanding transmission charges in terms of the provisions of the PPAs by repeatedly

notifying the concerned officials of UPCL to make necessary payments. However, neither any meeting was scheduled nor payment was made. Accordingly, the issue clearly qualifies as a dispute requiring adjudication by the Commission under Section 86(1)(f) of the Act.

- 2.3. UPCL submitted that the Petitioners have admitted that the infrastructure for evacuation of power is common and the Petitioners on the basis of assumptions have wrongly considered that there is any due which is outstanding. UPCL submitted that it has made payment as per the provisions of Regulation 15(1)(b) which provides that for a single evacuation system 12 paise/unit is to be paid. Further, the payment has been made to the respective generator on pro-rata basis as the evacuation system is shared by two generators.

In reply, the Petitioners submitted that clause 2.2 of the PPA gives an option to construct the evacuation infrastructure from the project upto the interconnection point subject to Regulation 15(1) of RE Regulations, 2013 according to which the solar generator shall be entitled to a normative levelised tariff of 12 paise/unit. The Petitioners submitted that all infrastructures comprising Transmission Lines such as bays, transformers, check meters, main meters, line isolators etc. has been installed separately for each project and the only thing common between two power projects is transmission towers. The Petitioners submitted that when all the material and equipment used in the construction of the evacuation infrastructure is separate for each project, mere construction of a common transmission tower cannot be construed to mean that the cost has been and the evacuation infrastructure is being shared by the Petitioners.

- 2.4. UPCL submitted that the Petitioners has admitted that the purpose of Regulation 15(1)(b) of RE Regulations, 2013 is to compensate the solar developer for only construction of the necessary infrastructure for evacuation of power and it cannot be a source of income for the solar developer. The Petitioners' demand of 12 paise/unit will entail the recovery of the total cost of the line in 5-6 years and thereafter the Petitioners would be making unlawful gain through enhanced tariff, which clearly shows that the Petitioners are misrepresenting the provisions of RE Regulations, 2013. Further, UCPL submitted that it has agreed to pay 12 paise/unit on the assumption that the Petitioners

are jointly entitled for 12 paise additional tariff for each evacuation system and not on the basis that all four generators would claim 12 paise for themselves as if four evacuation infrastructures have been constructed. Regulations are explicit that for an evacuation infrastructure there shall be allowed normative levelized tariff of 12 paise/unit over and above the generic tariff, if the interpretation of Regulation 15 as given by the Petitioner.

In reply, the Petitioners submitted that it is incorrect that the Petitioners shall not continue to be owner of the evacuation infrastructure in the event the procurer opts to make payment of normative additional tariff of 12 paise/unit as opposed to making upfront payment for the lines in terms of the said Regulations. As per Regulation 15(1)(b) of RE Regulations, UPCL had the option to either buy the evacuation line constructed by the Petitioners or else pay the enhanced tariff. Further, Regulation 15(1)(c) of RE Regulations, 2013 provides that in case the distribution licensee choose to pay the normative tariff, the ownership of the line shall stay with the Petitioner. The Petitioner also submitted that the compensation to the generator envisaged under RE Regulations, 2013 for construction of the evacuation infrastructure is based on normative costs as opposed to actual costs. Once norms have been fixed by the Commission in terms of RE Regulations, 2013 for allowance of a certain cost, the said normative parameters have to be adopted for recovery of the cost for construction of the said evacuation infrastructure. The RE Regulations, 2013 envisages payment of a normative tariff to the generator upon construction of the evacuation infrastructure by the said generator and once the normative tariff is determined under said regulations, the benefit or loss on account of actual cost incurred for construction of evacuation infrastructure is to be borne by the generators. UPCL cannot deny payment to the Petitioners at the rate of 12 paise/unit on the ground that such payment would lead to an unjust gain to the Petitioners.

- 2.5. UPCL submitted that the Petitioners on one hand have failed to ensure compliance with the provisions of RE Regulations, 2013 whereas on the other hand are relying upon the same regulations to obtain financial gains. The Petitioners have admitted that the construction was done to optimize cost and adopted more prudent and cost effective approach of construction. UPCL also submitted that the intent of the regulations was

only to compensate for the evacuation system with 12 paise/unit for each evacuation facility.

In reply, the Petitioners submitted that the Petitioners are only claiming the normative tariff allowed in RE Regulations, 2013 on the basis of the cost incurred by them in the construction of evacuation infrastructure.

3. Commission's Analysis and view

- 3.1. The present Petition has been filed under Section 86(1)(f) of the Act read with clause 23 of the PPAs executed between parties seeking payment of outstanding dues from UPCL for the common evacuation infrastructure constructed for 4x12.5 MW solar projects of ACME Solar holding (P) Ltd. in terms of the respective executed PPAs.
- 3.2. With regard to the Petitioners' submission that the Commission is duty bound to promote generation of electricity from renewable sources of energy in terms of Section 86(1)(e) of the Act, it is to be noted that the Commission frames Regulations in accordance with the Act and policies made thereunder and besides promotion of co-generation and generation of electricity from renewable sources of energy, the Commission is required to ensure the availability of electricity to consumers at reasonable and competitive rates.
- 3.3. The Commission has gone through the submissions made by the Petitioners and the Respondents and observes that the issues agitated in the Petition are as follows:
 - (i) whether there is any contravention of the provisions of clause 23 of PPAs executed with the Petitioners,
 - (ii) whether M/s ACME Solar Holding (P) Ltd. has no locus standi in the matter,
 - (iii) whether the ownership of such evacuation system should be transferred to the licensee once the entire cost is recovered; and
 - (iv) charges to be paid for the evacuation system constructed by the Petitioners.
- 3.4. With regard to issue of contravention of clause 23 of respective PPAs, it is to be noted that clause 23 of PPA provides the methodology to be adopted for resolving any dispute between the parties which is as follows:

"23. DISPUTE AND ARBITRATION

In the event of any dispute or difference between the parties concerning performance of this agreement and/or the rights and liabilities of the parties in respect of which a procedure for the resolution is not otherwise provided for in this agreement the following provisions shall apply:

- a. **Executive Engineer, Electricity Distribution Division, Rudrapur** on behalf of UPCL, and the **authorised representative of the Solar Photovoltaic Power Plant** would be empowered to indicate explicitly the nature and material particulars of the dispute/dissatisfaction and the relief sought and serve notice thereof on the other, with copy to the UPCL's **Superintending Engineer, Electricity Distribution Circle, Rudrapur**, under whose jurisdiction the Solar Photovoltaic Power Plant is located.*
- b. On receiving such information, the **Superintending Engineer, Electricity Distribution Circle, Rudrapur** of UPCL in which Solar Photovoltaic Power Plant is located, shall be required to personally meet the **authorised representative of the Solar Photovoltaic Power Plant** and the **Executive Engineer, Electricity Distribution Division, Rudrapur** at his own office, separately and/or together, within 15 (Fifteen) days of the date of receipt of such notice, and attempt in good faith to resolve the dispute to the mutual satisfaction of the two parties, within the stipulated dictated by the letter and spirit of the agreement.*
- c. If the dispute is not resolved by way of a settlement being arrived at and duly signed by each of the above officer within (30) thirty days of receipt of the notice described in clause (a) above, the matter may be referred by either or both above designated officers of the two parties to the UPCL's **Chief Engineer, (Commercial), UPCL, V.C.V. Gabar Singh Bhawan, Kanwali Road, Dehradun** with information to the **Chief Executive of the Solar Photovoltaic Power Plant**. Within 15 days of receipt of such notice, the **Chief Engineer, (Commercial)** and the **Chief Executive of the Solar Photovoltaic Power Plant** would be required to meet at the formers office and endeavour to settle the dispute within a further period of (30) thirty days i.e. within a total period of 45 (Forty Five) days from the initial date of receipt of the notice by the **Superintending Engineer, Electricity Distribution Circle, Rudrapur of UPCL**.*
- d. If the said dispute/ dissatisfaction remains unresolved, either party can file a petition before UERC, whose decision will be final and binding on both the parties. UERC shall be empowered to determine the exact nature and modalities of the procedure to be adopted in resolving the matter."*

Aforementioned clause provides the procedure to be followed for resolving any dispute amongst the parties to the PPA. The disagreement with regard to the PPA should be settled at the level of Superintending Engineer of Licensee. Further, in case

dispute is not resolved, the matter would be referred to Chief Engineer (Commercial) of the licensee who shall endeavour to resolve the dispute within specified time period. However, in case the dispute remains unresolved, either party can file a Petition before the Commission.

In the present case, dispute arose when the Petitioners demanded normative levelised tariff of 12 paise/unit over & above the generic tariff for individual solar power generator whereas UPCL paid the said normative levelised tariff based on the number of evacuation infrastructures constructed by the Petitioner. With regard to the disagreement on the issue of payment of normative tariff of 12 paise/unit, the Petitioners have submitted the letters vide which they had claimed for payment of outstanding transmission charges. It has been observed from the said letters that the Petitioners had directly approached Chief Engineer (Commercial) referring outstanding payment towards evacuation infrastructure constructed by them whereas as per above discussion, the Petitioners should have brought the matter before Superintending Engineer. The Commission agrees with UPCL that the Petitioners have not followed the procedure specified under clause 23 of the PPAs for resolving any dispute. The Petitioners should have approached to Superintending Engineer in case of any dissatisfaction regarding payment towards the evacuation system constructed by them. However, it is also pertinent to mention that the provisions of aforesaid clause are applicable to both the parties to the agreement and in the present case, UPCL instead of asking generator to follow the procedure specified under clause 23 of the PPA to settle down any dispute, replied to the communication done by the Petitioners stating that UPCL is paying 12 paise/unit over & above the generic tariff by dividing the same equally between the generators connected to common evacuation system.

Accordingly, as the Petitioners and UPCL have already made communication at Chief engineer level and the matter is still unresolved, the Commission is of the view that the dispute exists in the matter and has decided to examine the dispute regarding payment over and above the generic tariff to the Petitioners on account of construction of evacuation system by the Petitioners.

- 3.5. With regard to question whether M/s ACME Solar Holding (P) Ltd. has capacity to bring the matter, UPCL has submitted that PPA has not been entered with M/s ACME

Solar Holding (P) Ltd. therefore, there is no contractual relation or legal obligation between the parties and any correspondence done with it cannot be treated as dispute. In this regard, it is to be noted that the Petition has been filed by five Petitioners, i.e. M/s ACME Solar Holding (P) Ltd., M/s Devishi Solar Power (P) Ltd., M/s Devishi Renewable Energy (P) Ltd., M/s Eminent Solar Power (P) Ltd. and M/s Sunworld Energy (P) Ltd. M/s ACME Solar Holding (P) Ltd., co-petitioner, is a parent/holding company that created four wholly owned subsidiary companies/SPVs for the development of solar power plants and being a holding company has financial interest as well as controlling power in Board of Directors of the SPVs. Moreover, UPCL has also communicated with M/s ACME Solar Holding (P) Ltd. regarding the issue raised in the present case. Accordingly, the Commission is of the view that M/s ACME Solar Holding (P) Ltd., being a parent company, has *locus standi* to exchange communication in regard to the dispute/disagreement with UPCL.

- 3.6. With respect to the issue regarding ownership of the evacuation system once the cost of line is recovered by the Petitioners, UPCL has submitted that the provisions of RE Regulations, 2013 do not envisage that the Petitioners would continue to be the owner of the line when the total cost of the line has been recovered by the Petitioners from UPCL during the course of time. In this regard, it is to be noted that apart from capital cost, other expenditures are also required to be incurred to maintain such evacuation system and mere recovery of capital cost does not curtail the entitlement on the evacuation infrastructure created by the Petitioners. Based on the above and considering the useful life of the solar projects, the normative levelised tariff of 12 paise/unit has been worked out for the evacuation system. Further, there is no provision in the Regulation which provides that the ownership will transfer to UPCL when the capital cost of evacuation system is recovered. Accordingly, UPCL's contention that the ownership of the evacuation system should not remain with the Petitioner once the total cost of line is recovered is not tenable.
- 3.7. With regard to the payment towards the construction of evacuation system, the Petitioners submitted that they opted to construct the necessary evacuation infrastructure in terms of the provisions of PPA and accordingly, constructed 33 kV D/C transmission line that connects solar power plants of M/s Devishi Solar Power (P) Ltd.

and M/s Devishi Renewable Energy (P) Ltd. with UPCL's 33/11 kV Chinimill sub-station at Gadarpur and constructed another 33 kV D/C transmission line that connects solar power plants of M/s Eminent Solar Power (P) Ltd. and M/s Sunworld Energy (P) Ltd. with 132/33 kV Bazpur sub-station of PTCUL. The Petitioners also submitted that as the construction of two double circuit lines as opposed to four single circuit lines, carried out in the instant case is not prohibited by RE Regulations, 2013, they are entitled for 12 paise/unit over and above the tariff mentioned in PPA for individual solar plant. Whereas UPCL submitted that the RE Regulations, 2013 provides 12 paise/unit to be paid for single evacuation system and in the present case single evacuation system is shared by two generators therefore the payment has been made to them pro-rata dividing 12 paise equally among the users of one evacuation system.

With regard to the additional payment over and above the tariff decided in PPA on account of construction of evacuation infrastructure from point of inter-connection to the nearest sub-station of transmission or distribution licensee, Regulation 15(1)(b) specifies as follows:

"15. Financial Principles

(1) Capital Cost

(a) XXX

(b) In case, the generating company opts to construct the evacuation infrastructure from point of inter-connection to the nearest sub-station of transmission or distribution licensee to which the generating station is connected, it shall be allowed a normative levelised tariff of 5 paise/unit over and above the generic tariff determined at the point of inter-connection. However, in case of a solar generating company a normative levelised tariff of 12 paise/unit over and above the generic tariff determined at the point of inter-connection shall be allowed. The said normative tariff for evacuation infrastructure has been arrived at considering the cost of normative line length of 10 kms. (including cost of terminal equipments) for different capacities of generating stations as per normative cost given below:

- i. Upto 3 MW, 11 kV S/C - Rs. 44 lakh*
- ii. Above 3 MW and upto 13 MW, 33 kV S/C - Rs. 85 lakh*
- iii. Above 13 MW and upto 25 MW, 33 kV 2 x S/C or D/C - Rs. 170 lakh"*

The above reading of the Regulations makes it clear that the generator was provided with an option to construct the evacuation infra-structure on their own at the normative cost specified in the Regulations. Further, as per the aforesaid regulation, solar energy based generating company who opts to construct evacuation infrastructure shall be entitled for 12 paise/unit over and above the generic tariff and the said normative levelised tariff has been arrived at by considering the normative cost of evacuation infrastructure. It is evident from the above that the intent of the aforesaid regulations is that an individual generating station is entitled for additional normative levelized tariff of 12 paise/unit over and above the generic tariff for construction of evacuation infrastructure whereas in the present case, two solar projects of M/s Devishi Solar Power (P) Ltd. & M/s Devishi Renewable Energy (P) Ltd. jointly constructed a common evacuation system connected with 33/11 kV Chinimill sub-station of UPCL at Gadarpur and M/s Eminent Solar Power (P) Ltd. & M/s Sunworld Energy (P) Ltd. jointly constructed a common evacuation system connected with 132/33 kV Bazpur sub-station of PTCUL.

Since, a single/common evacuation infrastructure has been constructed for two solar projects, the normative levelized tariff of 12 paise/unit for the common infrastructure shall be apportioned equally among the solar generating companies using such common infrastructure. The intent of the Commission by referring to a generating company as specified in the above Regulations was to one project and not to multiple projects as in the instant case. Further, the Regulations also specify the minimum voltage at which a particular capacity of RE generating station needs to be connected. The 12.5 MW generation was sufficient to be evacuated through 33 kV S/c line, however, the Petitioner chose to construct 33 kV Double circuit line to evacuate 25 MW capacity of two separate projects. Hence, allowing a recovery of 12 paise/unit would be allowing undue enrichment to the generators as the normative tariff of 12 paise/unit is for a particular evacuation infrastructure of specified nature which in the instant case is a 33 kV D/C line and not to individual generating stations connected to that evacuation infrastructure. Infact the Petitioner in its Petition has also submitted that the approach was followed to optimize costs and to avoid any unnecessary cluttering and congestion in the transmission infrastructure. Hence, the Petitioner was very well aware of the requirement of the Regulations.

- 3.8. The Petitioners submission that the actual cost incurred for the construction of necessary power evacuation infrastructure is much more than the normative capital cost specified by the Commission and that any payment less than 12 paise/unit can only be made when the actual cost incurred by the generator is less than the normative capital cost is also flawed. The tariff of 12 paise/unit for creation of evacuation infrastructure is normative and is also based on the normative capital cost specified by the Commission and any gain or loss out of the same has to be borne by the generator and the same cannot be a premise for seeking additional tariff. Hence, the Commission is of the opinion that the approach followed by UPCL in making payment of normative tariff for creation of evacuation infrastructure is correct and accordingly, the Petition and the consequent Supplementary Petition filed by the Petitioners is rejected.
- 3.9. There shall be no order as to costs. Ordered accordingly.

(Subhash Kumar)
Chairman