

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition no. 02 of 2012

In the matter of:

M/s. R.V. Akash Ganga Infrastructure Limited

.....Petitioner

Versus

Uttarakhand Power Corporation Limited

.....Respondent

And

In the matter of:

Petition seeking amendments in the Power Purchase Agreement dated 21.08.2010 executed with UPCL in accordance with the provisions of UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2010 and also Removal of Difficulty (First) Order, 2010 dated 28.10.2010.

Coram

Shri Jag Mohan Lal Chairman

Date of Order: 14th February 2012

ORDER

This Petition has been filed by M/s. R.V. Akash Ganga Infrastructure Limited (hereinafter referred to as "Petitioner") under Regulation 42, 45, 46 and 47 of UERC

(Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2010 (hereinafter referred to as "Regulations").

1 Background and Procedural History

- 1.1 The Petitioner is setting up a solar PV plant having capacity of 2 MW at village Salair Sallahpur Zadeed Mustehkam, Pargana Bhagwanpur, Village Roorkee, District Haridwar. Uttarakhand Power Corporation Limited (hereinafter referred to as "respondent" or "UPCL") was desirous of purchasing the entire power generated by the Petitioner and consequently entered into a Power Purchase Agreement (hereinafter referred to as "PPA") with the Petitioner Company on 21.08.2010.
- 1.2 The Commission had notified the UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2010 and subsequently based on the representations made by the UPCL and few developers, the Commission issued UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010, Removal of Difficulty (First) Order, 2010 dated 28.10.2010 (hereinafter referred to as "Order") clarifying various issues to remove the difficulties in implementing the provisions of the Regulations.
- 1.3 The Petitioner filed a Petition dated 23.09.2011 seeking amendments in the PPA dated 21.08.2010 so as to bring it in consonance with the Regulations. The Commission sent a copy of the Petition to UPCL seeking its replies to the issues raised by the Petitioner in its Petition on 25.10.2011. UPCL submitted its replies on the issues raised in the Petition vide its letter dated 01.12.2011. The Petitioner was subsequently asked to submit its rejoinder on the reply filed by UPCL. The Petitioner filed its rejoinder on 30.12.2011. The Commission also held a hearing on 20.01.2012 in the matter where representatives of both UPCL and the Petitioner Company were heard.
- 1.4 The issues raised by the Petitioner in its Petition and also during the hearing

and reply on the same by UPCL and Commission's views are being dealt in the subsequent Paras.

2 Petitioner's Submissions, UPCL's Response & Commission's View

The issues emerging after examining the Petition, UPCL's replies and also the rejoinder filed by the Petitioner also after hearing both the parties are being discussed in this Section along with the Commission's views on the same.

2.1 Evacuation Infrastructure:

2.1.1 Petitioner's submissions

The Petitioner has submitted that the responsibility to construct the transmission line, i.e. to provide the connectivity lies with the licensee, and only an option is given to the generating company to construct the line at its own cost, but the licensee cannot compel the generating company to construct the evacuation system, neither they can compel the generating company to purchase the dedicated transmission line if the generating company/developer decides to forego the 5 paise/unit additional tariff. It has also made reference to Section 86(1)(e) of the Electricity Act, 2003 and has submitted that the main emphasis of the Government Policy is to promote Generation of Electricity from Solar Energy and that it is also the duty of the Commission to regulate the Generation of Electricity from Solar Energy in such a way that the setting up of solar generating station are not hampered and also to frame regulation keeping in mind the National and States Electricity Policy, and in case of difficulty, to remove the same and further to relax the provisions in such a way that objective and cause of promoting the Generation of Electricity from Solar Energy is advanced. Further, the Petitioner has submitted that in the PPA dated 21.08.2010, the respondent has fastened the liability to construct the dedicated transmission line on the Petitioner and neither any option was provided to it as required under the Regulation and clarified under the removal of difficulty Order nor there is any mention of the additional tariff of 5 paise/unit above the tariff fixed.

The Petitioner has further submitted that in order to cut short the time and save the cost of installation of the dedicated transmission line, if the Generator opts to construct the line at its own cost then it should be entitled to the refund of the amount incurred in the construction of the evacuation system within certain time frame with interest or alternatively the compensation in the tariff be increased from 5 paise to some reasonable and practically feasible amount commiserating with Solar PV Generators having capacity utilisation factor (CUF) as low as 19%.

During the course of hearing, the Petitioner submitted before the Commission that liability of constructing the evacuation system was thrust upon the Generator by UPCL which amounts to violation of the provisions of the Regulations and requested the Commission to set aside this inconsistent condition included in PPA. Elaborating on the revenue stream over the life of the project calculated on the basis of normative CUF of solar PV stations, the Generator submitted that the capital cost incurred by it on the evacuation system beyond inter connection point cannot be recovered over the life of the project at the additional tariff of 5 paise/unit allowed in the regulations. Under these circumstances, the Generator pleaded that the evacuation infrastructure beyond inter connection point created by it should be purchased by UPCL exercising the option provided in the Commission's order dated 23.10.2010.

2.1.2 UPCL's response

UPCL has relied upon Regulation 6(4) which according to it makes it abundantly clear that it is the duty of the Generating Stations to establish (i.e. construct), operate and maintain, generating stations, substations and dedicated transmission lines. Further, UPCL has referred to Para 3(a) of Removal of Difficulty Order dated 28.10.2010 which stipulates that the basic responsibility of providing connectivity to the Generators lies with the licensee only, i.e. distribution licensee and/or the transmission licensee which is also in consonance with Regulation 38(1) of UERC Regulations, 2010.

UPCL also referred to Section 10(1) of Indian Electricity Act 2003 which provides as:

“Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating station, tie lines, substation and

dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder."

UPCL has also referred to the definitions provided at clause 2(1) (p) and 2(1) (q) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 which are reproduced below:

"2(1)(p) Connection Point- A point at which a Plant and/or Apparatus connects to the Transmission/ Distribution System;"

"2(1)(q) Connectivity- The state of getting connected to the inter-State transmission system by a generating station, including a captive generating plant, a bulk consumer or an inter-State transmission licensee;"

The respondent has thus submitted that the above definition clarifies that word "connectivity" in power distribution and transmission system means the state of getting connected to the point (viz. a substation, lines etc.) at which transmission/distribution line is connected to draw or inject power. The Petitioner appears to have drawn wrong interpretation of Para 3(a) of the removal of difficulty order dated 28.10.10 by considering "the basic responsibility of providing connectivity to the Generators lies with the licensee only i.e. distribution licensee and/or the transmission licensee" as "the basic responsibility to construct transmission line lies with the licensee only i.e. distribution licensee and/or the transmission licensee". Whereas the regulation and subsequent clarification makes it amply clear that the basic responsibility of distribution licensee and/or the transmission licensee is to provide connectivity, i.e. to provide the point (viz a substation, lines etc. of the respondent) at which transmission/distribution line is to be connected to the Generator to draw or inject power. UPCL also submitted that it has already provided connection point through which the power is to be evacuated and therefore has provided the petitioner, connectivity while discharging its duty entrusted upon it in the UERC Regulations, 2010.

UPCL also referred to Para 3(a) of Removal of Difficulty Order dated 28.10.2010 which provided an option to the Generators that they can construct the dedicated line upto the nearest sub-station of the licensee, for the purpose of evacuation of power, at their own cost so as to facilitate the process and to ensure that no generating capacity is unduly blocked up due to commercial constraints on the part of licensees. UPCL has further submitted that the above clarification is also in

consonance with Regulation 38(2) and 38(3) of UERC Regulations, 2010 and is also in line with the provision of section 10(1) of the Indian Electricity Act 2003. Thus, the Regulations itself provides that the cost of laying the transmission line upto the nearest sub-station shall be borne by the generating station and the generating company can carry out the work of construction of evacuation arrangement on its own or through transmission/distribution licensee. Thus, there is no question of compelling the generating company to construct the Transmission line connecting the Generating Station and UPCL connection point, viz. sub-station, line etc. in view of specific provisions in Regulation wherein generating company is to bear the cost of construction of evacuation arrangement and the option lies with the Generator itself as to how it wishes to construct evacuation arrangement.

Further, Regulation 16(b) also provides that it is the generating company which shall bear the cost of construction of power evacuation arrangement and option of choosing as to who will construct the power evacuation arrangement lies with the generating company whether it wishes to construct the evacuation arrangement on its own or through the licensee. Once the power evacuation arrangement has been constructed by the generating company, the generating station shall be allowed a normative levelised tariff of 5 paise/unit over and above the generic tariff determined at the point of inter-connection.

UPCL has also referred to Para 3(a) of Removal of Difficulty Order dated 28.10.2010 wherein it has been provided that UPCL cannot force a Generator to purchase a dedicated line constructed by UPCL in case the developer decides to forego the 5 paise/unit additional tariff decided by the Commission for the purpose. Thus, this makes it clear that normative levelised tariff of 5 paise/unit over and above the generic tariff shall not be permissible if the evacuation infrastructure already lies constructed by respondent.

UPCL has also submitted that Clause 8.3 of the PPA pertaining to the cost of laying the Transmission line is in line with the first para of Regulation 38(2) of UERC Regulations, 2010 with appropriate modification with respect to solar plant of Petitioner. The respondent has not fastened any liability to construct the dedicated Transmission line on to the petitioner. As per clause 38(2) option lies with the generating station whether it wishes to carry out the construction of power evacuation arrangement on its own or through distribution licensee. The allegation

of the petitioner that “no option was provided to the petitioner as required under the aforesaid RE Regulation of 2010” is wrong. It is submitted before the Commission that normative tariff of 5 paise/unit is a part of tariff of UERC Regulations, 2010. Hence it is unnecessary to incorporate clause related to normative tariff of 5 paise/unit in the PPA signed with the petitioner. The option of purchasing the power evacuation arrangement or allowing the generating company normative tariff of 5 paise/unit lies with the respondent, which can be exercised only after the power evacuation arrangement, has been constructed.

2.1.3 Commission’s view

UPCL has referred to Regulation 6(4) and also Section 10(1) of the Electricity Act, 2003 which casts upon the Generator the duty to establish, operate and maintain generating station, substation and dedicated transmission lines. It is not denied that the evacuation upto the inter-connection point is the responsibility of the generating company. Similarly, evacuation of power beyond the inter-connection point is the responsibility of the licensee. This has been the practice of Central Sector and State Sector Generating Stations. Regulation 3(1)(p)(a) has defined inter-connection point which is reproduced hereunder:

“Inter-connection Point” shall mean interface point of renewable energy generating facility with the transmission system or distribution system, as the case may be:

(i) in relation to wind energy projects and Solar Photovoltaic Projects, inter-connection point shall be line isolator on outgoing feeder on HV side of the pooling sub-station;...”

Further, Para 6 of the Commission’s Order dated 28.10.2010 stipulates as under:

“Under the new regulations, interconnection point has been shifted from the licensee’s nearest sub-station with which the generating station is connected, to sub-station of the Generating station as is the practice with Central Sector and State Sector Generating Stations. UPCL has sought clarification regarding treatment of losses in the dedicated lines and management of voltage at the distribution end in case of long lines. In this connection it is to clarify that as per the general practice losses are borne by the beneficiaries only (whether a consumer

or a licensee) and not by the generators as the same are not considered while deciding the tariffs for generating stations. Accordingly, losses in the dedicated line would have to be borne by the, distribution licensee only in case power is supplied to it by RE based generating station."

Thus, it is amply clear from the above readings that the responsibility of evacuation of power upto the inter-connection point is that of the Generator and beyond the inter-connection point, the responsibility is that of the licensee. Further, going by the interpretation drawn by UPCL of Section 10 of the Electricity Act, 2003, if it was the duty of the generating company to create dedicated transmission lines for evacuation of power even beyond the inter-connection point, then there would be no requirement to create separate transmission licensees under the Act rendering the Generators to create transmission infrastructure for evacuation of power upto the distribution periphery.

This is also a view of Hon'ble Appellate Tribunal given in Para 7(ii) of its Order dated 08.01.2010 in Appeal no. 93 of 2009. The Para is reproduced below:

"Under Section 10 (1) of the Act, it is the duty of the generating company to establish, operate and maintain the generating stations. As per Section 3 of the Electricity Act, 2003, the Central Government has to announce a tariff policy from time to time. Accordingly, the Govt. of India had issued a tariff policy. As per this, the Central Electricity Regulatory Commission (CERC) has to issue the regulations for the power procurement. Accordingly, the Central Commission on 16.09.2009 framed the Non-Conventional Energy Source Regulation, 2009. As per these regulations, the inter-connection point means the inter face point of energy generating facility with the transmission system or the distribution system as the case may be. Accordingly, the inter connection point of the Appellant is 110 KV level for 33/110 KV sub-station and 230/33 KV sub-station. Thus, it is clear that as per Section 10(1) and as per Central Commission regulations, it is the duty of the generating companies to carry out the works of erecting sub-station and allied inter connection lines. But as agreed by the parties concerned the Appellant erected the power transformers/transmission lines at his own cost for the benefit of wind generating companies. In order to permit NCES energy, the Appellant took the pain to complete the above work and therefore collected the proportionate cost as IDC from the wind developers since

the small wind developers could not execute, erect and maintain the transmission network. This expenditure incurred by the Appellant can not be included in the tariff as it is a burden on the general public. It cannot be disputed that evacuation beyond the inter connection point is the responsibility of State Transmission Utility. Similarly, evacuation of power before the inter connection point is the responsibility of the generating company. If the evacuation work up to inter connection point is carried out by the generator and bring the 110 KV line to connect the consumers to the electricity 110 KV grid, then the Appellant will have to carry out the erection work beyond 110 KV point."

(Emphasis added)

Thus, it is clear that duty of the Generator to create an evacuation infrastructure is only upto the inter-connection point. This has also been clarified by the Commission in its Order dated 28.10.2010 in Para 3(a)(a) which is reproduced hereunder:

"The basic responsibility of providing connectivity to the generators lies with the licensees only, i.e. distribution licensee and/or the transmission licensees. However, under the RE Regulation 2010, so as to facilitate the process and to ensure that no generating capacity is unduly blocked up due to commercial constraints on the part of licensees, an option has been provided to generators that they can opt to construct the dedicated line upto the nearest sub-station of the licensee, for purposes of evacuation of power, at their own cost. However, such a provision is only optional, accordingly, UPCL(Distribution Licensee) cannot force an existing developer (generator) or an upcoming developer (generator) to purchase a dedicated line constructed by UPCL(Distribution Licensee) in case the developer decides to forego the 5 paise/unit additional tariff decided by the Commission for the purpose."

Further, reference made to Regulation 38(2) & 38(3) by UPCL was also irrelevant as these Regulations would be applicable in case the Generator decides to construct the evacuation infrastructure beyond the inter-connection point upto the sub-station of the licensee in accordance with the option available to it under Regulation 16(1)(b). Further, if the generating company takes upon itself to construct the evacuation line, the cost has to be borne by the Generator which has also been

specified in Regulation 38(2) and the normative levelised tariff of 5 paise/unit for construction of such evacuation infrastructure has been specified by the Commission over and above the generic tariff determined at the point of inter-connection.

As already discussed above, the Regulations provides the Generator with an option to create evacuation infrastructure, if it so desires, in which case an additional tariff of 5 paise/unit has been allowed over and above the generic tariffs specified by the Commission. However, it has been the contention of the Petitioner that it was not given any opportunity by UPCL to exercise its option but was made to agree upon constructing its own evacuation infrastructure. During the hearing, UPCL on being asked by the Commission that whether any such option was provided to the Generator by them. UPCL, affirmatively, replied that no such option was given to the Generator prior to signing of the PPA. Thus, it appears that UPCL misused its monopolistic position and did not provide the Generator the opportunity to exercise its option. Now, since, the Generator has already created its own evacuation infrastructure, the issue of providing option and amending the PPA would not be of relevance anymore. However, Commission's Order dated 28.10.2010 provides that UPCL shall have the first right to buy the evacuation line of the Generator at the depreciated cost indicated in the latest accounts of the developer, so as to protect its own commercial interest or pay an additional 5 paise as per regulations.

Based of the above, the Commission is of the view that UPCL did not provide any opportunity to the Generator to exercise the option, prior to signing of PPA, as to whether the Generator desires to construct the evacuation line and other associated equipments at its own cost . It appears from the submission of both the petitioner and the respondent that the licensee caused to incorporate such condition in the PPA which compulsorily required the Generator to construct the evacuation system at its own cost. Since no such opportunity was given to the Generator by the licensee prior to the signing of PPA, the Commission directs UPCL to seek option from the Generator now as to whether the Generator desires to construct the evacuation line and other associated equipments at its own cost or not. Thereafter, based on the option submitted by the Generator thereof, the licensee is directed to take further necessary action in this regard in accordance with the provisions of the UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2010.

2.2 Additional Tariff of 5 paise/unit for creation of evacuation infrastructure and also maintenance of such infrastructure inadequate

2.2.1 Petitioner's Submissions

The Petitioner has submitted that the generation of electricity from Solar energy cannot be equated with the generation of electricity from other sources as the CUF in solar PV is as low as 19%. Besides the policy of the Government to promote the generation of electricity from harnessing solar energy should also be kept in mind. Further, the Petitioner also referred to Section 86 of the Electricity Act, 2003 which lists down the functions of the State Commission and sub-section (1)(e) of this Section lists the promotion of cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person as one of the function.

Hence, in case the Generator constructs the evacuation infrastructure, the compensation of 5 paisa per unit to the Generator is neither suitable nor is reasonable and practically feasible for solar PV, on the contrary it would cast extra burden on the Generator setting up the generating station using solar energy a non-profitable venture with no or very little incentive, which would directly affect the promotion of solar PV based generation station, hence, making the policy of the Government futile. Further in case the licensee constructs the dedicated transmission line, no time period is fixed in the aforesaid regulation for constructing the same, whereas there is certain time limit for the petitioner within which he has to make the unit functional, therefore, it is imperative that certain time period should be fixed for the Licensee to provide evacuation infrastructure to the generating company so that the project and its functionality are not hampered and it is commissioned within the time limit.

Further, Clause 8.4 of the PPA casts a responsibility for the maintenance of terminal equipment at the generating end and the dedicated transmission line owned by the generating station of the Generating Company/Project proponent. There are various practical difficulties in maintaining the dedicated transmission line, it will not only impose extra financial burden upon the Petitioner but also no effective supervision and control can be maintained and in case of any malfunctioning the Petitioner will be doubly effected for both maintenance and

generation losses, and also as the responsibility of the construction of the dedicated transmission line is of the respondent, so even if the Petitioner constructs the same, it is only just and expedient that the respondent should only be fastened with the responsibility to maintain the dedicated transmission line.

2.2.2 UPCL's Response

As per Regulation 38(2) and 38(3), the option lies with the generating station whether it wishes to carry out the construction of power evacuation arrangement on its own or through a distribution licensee. Further, the Order dated 28.10.2010 stipulates that where the dedicated line has been constructed by the developer, the distribution licensee will have to pay the additional tariff of 5 paise/unit to the developer provided ownership of such lines remains with the developers. However, the first option shall be of UPCL to either buy the line of the Generator. Further, it is the Generator who shall bear the cost of construction of the power evacuation arrangement with option of selection of the construction agency and after construction of power evacuation arrangement, when the project of the generating company is ready to generate electricity, then the option lies with the respondent, to purchase the power evacuation arrangement or pay an additional tariff of 5 paise/unit.

Further, UPCL has submitted that the contention of the Petitioner regarding construction of power evacuation arrangement casting extra burden on solar PV Generator as the compensation of 5 paise per unit being neither suitable nor reasonable and practically feasible for solar PV is wrong.

The contention of the Petitioner for fixing time frame for construction the power evacuation arrangement for the licensee is concerned it is submitted that it is not commercially viable for respondent to construct power evacuation arrangement by exhausting its own internal funds in the initial phase when the renewable project is under construction. Normally the projects get delayed and fail to achieve commissioning within specified time frame. Many projects in fact are lying incomplete due to unforeseen reasons. Had respondent constructed the power evacuation arrangement of all such projects, respondent's internal funds would have been unduly blocked seriously hampering the commercial interest of respondent. The Commission has already facilitated the Generators by specifying that the

Generator will construct the line and will bear the cost of the same as in such scenario the generating company can manage it better to achieve commissioning of its project in totality without depending upon the licensee.

Further, as per the Regulations, the basic responsibility of constructing the line lies with the generating company and the cost of the construction of the power evacuation arrangement is to be borne by the generating company. Regulation 39 also specifies that the generating station shall be responsible for the maintenance of terminal equipment at the generating end and the dedicated transmission lines owned by such generating stations. The distribution licensee or the transmission licensee or the state transmission utility, as the case may be, shall be responsible for maintenance of the terminal equipment(s) at the sub-station of the concerned licensee.

Hence, it is clear that it is the generating company which needs to carry out maintenance of terminal equipment at the generating end and the dedicated transmission lines owned by such generating stations. Moreover the generating company has an option to get the maintenance of terminal equipment at the generating end and the dedicated transmission lines owned by such generating stations carried out by the licensee by paying charges as laid down in regulation 39 of the Regulations.

Further Regulation 6 also illustrates the same. Thus, it appears that the generating company in the garb of wrong interpretations wants to shy away from the responsibility of constructing the evacuation line.

2.2.3 Commission's view

Regarding, the contention of the Petitioner that the CUF in solar PV is as low as 19%, it is to be mentioned that the Commission was fully aware of its functions under the Electricity Act, 2003 and the Commission had issued the Regulations, 2010 after considering responses of all the stakeholders with a view to promote generation from renewable sources of energy including solar. The Commission ensured recovery of the AFC of solar projects at 19% CUF, which also included a component of return on equity being an incentive to the Generator. Further, under the Regulations, interconnection point has been shifted from the licensee's nearest sub-station with which the generating station is connected, to sub-station of the

Generating station as is the practice with Central Sector and State Sector Generating Stations. Hence, it cannot be alleged that the Commission is not promoting solar projects.

Further, the issue of sufficiency of additional tariffs to cater to the cost of creation of evacuation infrastructure cannot be raised at this juncture. The Commission had framed the Regulations under legal framework following due public process. At that time, the Petitioner did not submit its comments on the issue. Based on the comments received, the Commission specified an additional tariff of 5 paise per unit which would be applicable not only to solar projects including project of the Petitioner which is at a plain terrain and near rail head but also to hydro projects which are developed in remote and difficult locations. However, no hydro developer has as of now commented about the adequacy of the additional tariff. Further, this is a matter of review of Regulations which cannot be done through an Order. Any amendment in the Regulation will again have to be carried out by following due public process. Moreover, the creation of evacuation infrastructure by the developer was not mandatory for the developer. Under the RE Regulation 2010, so as to facilitate the process and to ensure that no generating capacity was unduly blocked up due to commercial constraints on the part of licensees, an option was provided to Generators that they can opt to construct the dedicated line upto the nearest sub-station of the licensee, for the purposes of evacuation of power, at their own cost. However, since in Para 2.1 above, the Commission has directed UPCL to exercise the option so provided in its Order dated 28.10.2010 to purchase the evacuation infrastructure considering the contention of the Petitioner, that it was not provided with any such option by UPCL. Hence, this issue would not be relevant anymore.

Regarding the contention of the Petitioner that in case the licensee constructs the dedicated transmission line, no time period is fixed in the aforesaid regulation for constructing the same, whereas there is certain time limit for the Petitioner within which he has to make the unit functional, therefore, certain time period should also be fixed for the Licensee to provide evacuation infrastructure to the generating company so that the project and its functionality are not hampered and it is commissioned within the time limit. It is to be clarified that the Commission has not specified any time period for the Generators to commission their project. If any such

time period has been specified, it is by the GoU in the IA with the developers. Further, it is in the best interest of both the developers and also the licensee to commission their assets so that the assets can be utilised for revenue generation efficiently.

With regard to maintenance of evacuation line and associated equipments, regulation 39 clearly provide option to the Generator for carrying maintenance of transmission lines and equipments either by itself or by the licensee and the same are reproduced below:

“39. Maintenance of Transmission lines and Equipment

(1) The generating station shall be responsible for the maintenance of terminal equipment at the generating end and the dedicated transmission lines owned by such generating stations. However, transmission/distribution licensees, as the case may be, may carry out maintenance of the dedicated transmission line, if so desired by the generating company, on mutually agreed charges not less than 1.5% of cost of line and associated equipment as per norms specified in Regulation 16(1)(b) for 2009-10 with annual escalation @ 5.72% p.a.

(2) The distribution licensee or the transmission licensee or the state transmission utility, as the case may be, shall be responsible for maintenance of the terminal equipment(s) at the sub-station of the concerned licensee.”

Thus, the above provisions in the Regulations with regard to maintenance of evacuation line and other associated terminal equipments are unequivocal and are applicable in a situation when Generator, exercising the option provided in the Regulations, constructs the evacuation line and other associated equipments at its own cost. However, in the absence of any such option exercised by the Generator, the evacuation system has to be constructed by the licensee at its own cost. Further, the Commission finds no ambiguity in expressing that whosoever owns the evacuation line/system, whether it is petitioner or the respondent, should be responsible for its maintenance also subject to the exception provided to the Generators in the regulations in this regard. Based on the above, the Commission is of the view that either of the party should not have any reservation in incorporating the conditions pertaining to maintenance of the evacuation system, consistent with the regulations, in their PPA.

2.3 Rebate for Timely Payment

2.3.1 **Petitioner's Submissions**

The Petitioner has submitted that Clause 5.4 incorporated in the agreement is against the Regulation 23 which only provides for 1 month time and the rebate of 1%. The said clause needs to be amended to make it in consonance with the provisions of the Regulation and to avoid any ambiguity and likely hood of dispute in the future. Further, the Petitioner has submitted that the contract has not attained finality, as it is yet to be finally approved by the Commission, and the amendments approved by the Commission have to be incorporated in the said agreement.

2.3.2 **UPCL's response:**

UPCL has submitted that the Generators insist on ensuring payment security and Letter of Credit (LC) is one of such mechanism. As specified in Regulation 23, 2% of rebate has been specified for payment made by licensee (i.e. if licensee makes sure that payment will be made by way of letter of Credit). Thus clause 23 addresses the main concern of secured payment of Generators. However, it is also amply clear that the option regarding choosing mode of payment, lies with the licensee, i.e. respondent in present case, whether it wishes to pay the bills through LC or not.

Further, Regulation 23 do not prohibit the Generator and the respondent to adopt more competitive rebate options. Here it is pertinent to mention that in case of central sector generating stations viz. NTPC, NHPC etc., respondent is availing rebate options which are better than the rebate options provided in concerned CERC Regulations for making prompt payment. It is, further, humbly submitted that main concern of the Generators are prompt payment and central sector generating stations viz NTPC, NHPC etc. has agreed and considered parity between prompt payment and secured payment. Considering these view points and in fact after due deliberation with petitioner 2% rebate clause was laid down in the Power Purchase Agreement dated 21.08.2010.

Once the Petitioner after due deliberation signed and agreed for a 2% rebate on the payment of bill as laid down in PPA, it cannot go back from it and if it goes back from 2% rebate clause, it would be tantamount to breach of provisions of Power Purchase Agreement. The agreement operates as estoppels against the petitioner to claim otherwise than the agreed payment at agreed rate.

2.3.3 Commission's view

Regulation 23 specifies as under:

"For payment of bills through the letter of credit on presentation, a rebate of 2% shall be allowed. If the payments are made by a mode other than through the letter of credit but within a period of one month of presentation of bills by the generating company, a rebate of 1% shall be allowed."

However, Clause 5.4 of the PPA reads as under:

"UPCL shall make full payment against such monthly bills to the Generating Company/Project proponent subject to receive complete documents within thirty (30) working days of the receipt of the Monthly Bill after the 2% rebate."

Here, it can be seen that a deviation has been made in the PPA from the provisions specified in the Regulations. The Commission is of the view that rebates and surcharges are commercial arrangements agreed upon between the two parties while entering into any type of agreement including PPAs subject to conditions provided therein. If the seller of goods (in this case a Generator) wants to offer higher rebate to buyer (UPCL in this case) it is always open for the seller (Generator) to do so.. However, since here the Generator is aggrieved by the condition of rebate for timely payment in the PPA and is itself contesting the provision incorporated in the agreement/contract, the Commission directs both the parties to be guided by the provisions of the Regulation in this regard and settle amongst themselves this issue of rebate and make necessary changes in the PPA accordingly.

2.4 Line Losses

2.4.1 Petitioner's Submissions

The Petitioner has submitted that the respondent had informed it that the line losses will be the responsibility of the Petitioner which is total non-compliance of the provisions of the Regulations and the Order dated 28.10.2010. When the evacuation point is the HV side of the Generators substation, the question of line loss to be borne by the petitioner, as stated by the respondent, does not arise. Losses in the dedicated line would have to be solely borne by the distribution licensee, in case power is supplied to it by RE based generating station.

2.4.2 UPCL's response

The respondent never stated that the line losses are to be borne by the Petitioner. The issue raised by the petitioner is dealt with in detail in the UERC Regulations, 2010 and Removal of Difficulty Order dated 28.10.2010 and is applicable in present case by virtue of conditions of PPA and UERC Regulations, 2010.

2.4.3 Commission's views

Regulation 3(1)(p) has defined inter-connection point. Further, Para 6 of the Commission's Order dated 28.10.2010 stipulates as under:

“Under the new regulations, interconnection point has been shifted from the licensee's nearest sub-station with which the generating station is connected, to sub-station of the Generating station as is the practice with Central Sector and State Sector Generating Stations. UPCL has sought clarification regarding treatment of losses in the dedicated lines and management of voltage at the distribution end in case of long lines. In this connection it is to clarify that as per the general practice losses are borne by the beneficiaries only (whether a consumer or a licensee) and not by the generators as the same are not considered while deciding the tariffs for generating stations. Accordingly, losses in the dedicated line would have to be borne by the, distribution licensee only in case power is supplied to it by RE based generating station.”

So from the reading of the above clarification, it is clear that losses beyond the inter-connection point will be borne by the distribution licensee.

2.5 Deemed Generation

2.5.1 Petitioner's Submissions

The generation of the electricity from the Solar energy is dependent on divergent factor and the generation of electric energy from solar energy cannot be put together with other modes of generation, and, hence, needs to be put in a different category and different consideration for the need and development of the electric energy from the solar energy is to be given, the provisions of deemed energy

in the RE Regulation 2010 are not practical and just keeping in mind the contingencies and the various difficulty and factors which effect the generation of electricity from the solar energy including CUF of solar generation. That it is incumbent that the time period should be fixed, during which the fault and defect in the transmission system or the grid is to be corrected and the energy is drawn from the generating station and after which the penalty should be imposed and the generating company should be compensated. The Petitioner has also submitted that for the purpose of Deemed Energy the provisions made by various other state like Haryana in respect to the deemed energy with respect to the electricity generated from solar energy can also be considered.

2.5.2 UPCL's response

It would be worthwhile to refer to the clarification provided in para 6 of Removal of Difficulty Order dated 28.10.2010 in reference to UERC Regulations, 2010 which is being reproduced below:

"With regard to issue of 'deemed generation' raised by the RE developers following is clarified:

- a. That the Commission has worked out the Generic Tariffs considering low Capacity Utilization Factor which is as low as 45% in case of small hydro generating stations.*
- b. That all RE based generating stations have been kept out of the ambit of Merit Order Dispatch and Scheduling.*
- c. That on RE based generating stations principle of ABT are not applied.*
- d. That all RE based generating stations have been allowed to retain additional earning in case of generation above CUF as incentive.*

Keeping in view the above concessions/relaxations allowed to RE based generating stations, the provisions of deemed generation has not been considered as necessary under the RE Regulations, 2010 in case of day to day tripping and outage of lines."

Thus the RE Generators have already been allowed various concessions/relaxations in the above quoted order so the demand of the petitioner is

wrong and is liable to be rejected. Moreover, reference of Haryana is irrelevant in the case of Uttarakhand.

2.5.3 Commission's views

Neither the Regulations nor the Order dated 28.10.2010, as quoted above, has allowed deemed generation to any Generator. The matter is under consideration of the Commission and it cannot be allowed by way of an Order. If any relaxation is to be made in the Regulation, it can only be through a public process inviting the comments/suggestions of all stakeholders in accordance with the provisions of the Electricity Act, 2003 and Regulations made thereunder and till such time no deemed generation can be allowed.

2.6 Based on the views of the Commission given in Para 2.1.3 to 2.5.3 above, both the Petitioner and the Respondent are directed to ensure compliance of the Order. The Commission is of the view that since the above issues dealt in the Order are exhaustive, both UPCL and the Generator (M/s Akash Ganga) should re-enter into either a fresh power purchase agreement or an agreement supplementary to the existing agreement, duly incorporating the conditions consistent with this Order.

2.7 Further, taking cognisance of the fact that three more PPA's entered into by UPCL with other upcoming Solar Generators are pending approval of the Commission, UPCL is hereby directed to approach these upcoming Generators and mutually amend/incorporate the conditions consistent with this Order. Thereafter, modified PPAs can be submitted for approval of the Commission.

2.8 UPCL is hereby directed to submit Compliance cum Action taken report within one month of the date of the Order.

2.9 The Petition is disposed off accordingly.

(Jag Mohan Lal)
Chairman