

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition no. 02 of 2015

In the matter of:

Petition under Section 86(1)(f) of the Electricity Act, 2003 for adjudication of the disputes between M/s Swasti Power Ltd. and Uttarakhand Power Corp. Ltd. arising out of the Power Purchase Agreement dated 03.07.2009.

In the matter of:

M/s Swasti Power Ltd. ...Petitioner

And

In the matter of:

Uttarakhand Power Corporation Ltd. ...Respondent

CORAM

Shri Subhash Kumar Chairman

Shri C.S. Sharma Member

Shri K.P. Singh Member

Date of Hearing: August 18, 2015

Date of Order: September 22, 2015

The Order relates to the Petition dated 01.12.2014 filed by M/s Swasti Power Limited (hereinafter referred to as "Petitioner" or "M/s SPL") requesting Commission for adjudication of dispute arising out of Power Purchase Agreement dated 03.07.2009 as also Power Purchase Agreement dated 10.01.2013 and seeking refund of excess rebate deducted from payment of monthly energy bill by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "Respondent" or "UPCL" or "Licensee").

1. Background and Submissions

- 1.1 M/s Swasti Power Limited has submitted that it is a generating company engaged in the business of generation and sale of electricity and it had implemented, established and commissioned the Bhilangana Hydro Power (3 x 7.5 MW) generating station in the State of

Uttarakhand ('Project'). The Petitioner is supplying power to the Respondent since the commissioning of the Project in August, 2009 under a Power Purchase Agreement dated 03.07.2009 and the Supplementary Power Purchase Agreement executed on 10.01.2013 (herein after referred to collectively as PPA).

- 1.2 The Petitioner filed the instant Petition under Section 86 (1)(f) of the Electricity Act, 2003, for adjudication of dispute with the Respondent arising out of wrongful, unlawful and arbitrary actions of the Respondent in contravention of 'PPA' entered into between the parties for sale of energy generated from the Project to the Respondent on the terms and conditions as provided in the said PPA read with relevant RE Regulations notified by UERC from time to time.
- 1.3 M/s SPL submitted that since it was denied sale of power outside the State through open access by the Commission vide its Order issued in the month of December 2009 , it had entered into the PPA dated 03.07.2009 for sale of energy generated from the Project to UPCL. The decision of the Commission became the subject matter of proceedings before Hon'ble Appellate Tribunal which was finally disposed of in favor of the generators in January, 2011.
- 1.4 The Petitioner submitted that since the Project was commissioned during the pendency of the aforementioned proceedings before the Hon'ble Appellate Tribunal for Electricity, the Petitioner had entered into the PPA dated 03.07.2009 for sale of energy generated from the Project and in compliance of the provisions of the PPA dated 03.07.2009, the Petitioner has been supplying full power generated from the Project to the Respondent till date and the same continues to be in subsistence and binding on the parties.
- 1.5 The Petitioner further submitted that during the course of the supply of power from the Project to the Respondent, various disputes have arisen under the PPA between the Petitioner and the Respondent due to unilateral action on the part of the Respondent in contravention of the provisions of PPA and the relevant applicable regulations notified by the Commission from time to time. The issues were taken up with the Respondent, however, despite repeated requests from the Petitioner, the Respondent failed to look into the issues raised by the Petitioner and thus, the Petitioner was left with no other option but file the present Petition for adjudication of the disputes between the parties before this Hon'ble Commission.
- 1.6 The Petitioner also submitted that the Commission issued "Uttarakhand Electricity

Regulatory Commission (Tariff and other Terms for supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2010. Thereafter, Removal of Difficulty (First) Order dated 28.10.2010 issued by the Commission clarified that signing of PPAs is essential and also the PPAs should be in compliance with the RE Regulations issued by the Commission and in case of contradiction the Regulations shall prevail.

- 1.7 The Petitioner submitted that the RE Regulations, 2008 and RE Regulations, 2010 cast an obligation upon the Respondent to open a Letter of Credit in favor of the generating company for availing the Prompt Payment Rebate of 2% from the amount released to the generator for sale of power generated from the hydro electric project.
- 1.8 The Petitioner further submitted that vide its letter dated 16.07.2012 it had requested the Respondent for termination of the existing PPA dated 03.07.2009 and for signing of fresh PPA for 18 months. However, the Respondent vide its letter dated 29.09.2012 requested the Petitioner for entering into long term PPA in accordance with RE Regulations, 2010. The Respondent vide its letter dated 16.10.2012 again asked the Petitioner for signing of long term PPA else energy bills shall be paid at old tariff prescribed in RE Regulations, 2008 and further, differential amount already paid from July, 2010 to August 2012 shall be recovered from the energy bills of September, 2012.
- 1.9 The Petitioner had vide its letter dated 06.11.2012 requested UPCL to immediately pay the pending monthly bill of September 2012 which had not been released by the Respondent on a specious plea that the long term PPA has to be executed with UPCL only after which the energy bills of September, 2012 would be honored. The matter was raised before the Commission. The Commission vide Orders dated 17.12.2015 & 08.01.2013 directed the Respondent to adopt and sign a Supplementary PPA within three days and pay the outstanding payments within the next three days.
- 1.10 The Supplementary Power Purchase Agreement was signed on 10.01.2013 and its Clause 5.4 clearly states that UPCL shall make full payment against such monthly bills to the generating Company subject to receipt of bill with complete documents within thirty (30) working days after availing the 2% rebate.

Further, Clause 5.7 of the PPA talks about late payment surcharge which states that the amount of excess/shortfall with respect to the said disputed amount on final award of arbitration shall be paid/adjusted; but in case of excess, the adjustment shall be made with

interest at rate 1.25% per month from the date on which the amount in dispute was refundable by the generating company to UPCL.

1.11 The Supplementary Power Purchase agreement was signed on 10.01.2013 and approved by the Commission vide Order dated 07.11.2014 subject to the following amendments.

PPA dated 10.01.2013 & 03.07.2009 executed with M/s Swasti Power Ltd.

- a)
- b) *Clause 2.2 of the aforesaid PPA provides for rate applicable for supply of electricity by UPCL to the generating company. The same should be in accordance with the RE Regulations, 2013 as referred in Clause (e) of Para 2.3.2.1 of this Order.*
- c) *Clause 5.1 of the aforesaid PPA states for monthly bills for electricity raised by UPCL. The same should be in accordance with the RE Regulations, 2013 as referred in Clause (e) of Para 2.3.2.1 of this Order.*
- d) *Clause 5.4 of the aforesaid PPA states for making payment after rebate @ 2% within 30 days against the monthly bills for electricity raised by generator. The clause relating to rebate is inconsistent with the provision of the regulation and needs to be corrected in accordance with RE Regulations, 2010. (Emphasis added)*
- e)
- f) *Moreover, the PPA should also incorporate provisions of surcharge as specified in RE Regulations, 2010.*
- g) *Provision of deemed generation in accordance with Regulation 47 of RE Regulations, 2013 should also be incorporated in the PPA.*

1.12 The Commission in its Order issued on 07.11.2014 held that the clause (5.4) relating to rebate is inconsistent with the provision of the regulation and needs to be corrected in accordance with RE Regulations, 2013.

1.13 The Petitioner in its Petition has raised the following four major claims:

1.13.1 A claim of an amount of Rs. 1,40,31,088/- being the amount of Rs. 1,03,27,091/- refundable to the Petitioner on account of illegal and unlawful deduction of prompt payment rebate by the Respondent @ 2% in place of eligible rate of 1% from the payments released to the Petitioner in respect of the monthly energy bills raised by the Petitioner from the CoD of the project without opening of the Letter of Credit in violation

of the terms and conditions of the PPA read with Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms For Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008, as amended from time to time and an amount of Rs. 37,03,997/- as Late Payment Surcharge (LPS) on the withheld amount from the 61st day of the MEBs till 10.11.2014 and for interest calculated @ 18% p.a. from 10.11.2014 till the date of the actual receipt of the aforementioned amount of Rs. 1,40,31,088/- by the Petitioner.

1.13.2 A claim against illegal and unlawful deduction of an amount of Rs. 22,07,994/- including an amount of Rs. 1,90,717 in the form of 2% of the prompt payment rebate in respect of payment of Rs. 0.05 per unit released in January 2013 as transmission charges payable by the Respondent for the period July, 2010 till December 2012 along with a late payment surcharge of Rs. 20,17,277/- calculated from the 61st day of the MEBs till 10.11.2014 and interest calculated @ 18% p.a. from 10.11.2014 till the date of the actual receipt of the aforementioned amount of Rs. 22,07,994/- by the Petitioner.

1.13.3 A claim of an amount of Rs. 32,06,324/- being an amount of Rs. 17,43,024/- illegally and unlawfully deducted by the Respondent equivalent to 2% Prompt Payment Rebate from the amount released to the Respondent for sale of energy generated from the Project from MEBs pertaining to the period from September, 2012 to November, 2012 and paid after a delay ranging from 37 to 98 days and late Payment Surcharge of Rs. 14,63,300/- calculated @ 1.25% per month for the delay in payment from the 61st day of the MEBs till 10.11.2014 and for interest calculated @18% p.a. from 10.11.2014 till the date of the actual receipt of the aforementioned amount of Rs. 32,06,324/- by the Petitioner.

1.13.4 A Claim of an amount of Rs. 5,78,191/-, being an amount of Rs. 4,37,108/- which includes 2% prompt payment rebate unilaterally, illegally and unlawfully deducted by the Respondent from the supplementary monthly energy bills for the months of April-August 2014, which were paid in October 2014 and an amount of Rs. 1,41,083/- towards late payment surcharge calculated @ 1.25% per month from the 61st day of the supplementary bills till 10.11.2014 and for payment of interest @ 18% p.a. from 10.11.2014 till the actual payment thereof by the Respondent.

1.14 The Respondent in its reply has questioned the maintainability of the petition and denied all claims. The basis of denying these claims as submitted by UPCL is reproduced hereunder:

“UPCL submitted that the claims are not legally valid as the Commission had in its Order dated 14.02.2012 held that rebate and surcharge are commercial arrangements agreed upon between the parties while entering into any type of agreement including PPAs subject to the condition provided therein and that if the generator was to offer higher rebate to UPCL it was always open for the generator to do so.

Also UPCL submitted that the dispute under PPA have to be resolved in the manner provided in clause 22 of the PPA , and the same needs to be amicably settled as per clause 22(b) of the PPA. It is humbly submitted that no dispute can come up before the Hon’ble Commission under clause 22 (d) of the PPA unless the sub- clause a to c of clause 22 are first complied.

1.15 Further UPCL submitted that the PPA signed on 02.07.2009 was not a long term PPA and had an exit clause thus these Regulations do not apply to the same. The submissions of UPCL are reproduced hereunder:

“That the contention by the petitioner regarding PPA are not correct the PPA dated 03 July 2009 was a conditional agreement wherein the duration of the PPA as provided in clause 19.1 of the said PPA reads as under:

“Unless terminated by default, this agreement shall be valid till the expiry of 30 years or after two months from received of notice from Generating Company if the final decision on the legal issue is in favor of Generating Company regarding the sale of power to other than consumer outside the state of Uttarakhand to PTC and permitting the company to give the power outside the State to PTC., which ever is earlier.”

UPCL submitted that the Petitioner did not opt to be covered under the RE Regulations, 2010 until it signed a long term PPA with UPCL on 10.01.2103. The Respondent also submitted that there are no such claims after the Commission issued its Order on 07.11.2014.

1.16 The Petitioner further submitted the rejoinder stating that the contents of the Reply as stated by UPCL are incorrect and denied it.

1.17 The Commission held a hearing on the merits of the Petition on 18.08.2015, wherein, both the parties reiterated the submissions already made in writing before the Commission.

2. Commission’s Views and Decision

2.1 The Commission observes that at Annexure-P8 of the Petition M/s SPL has submitted computation of claim no.1 in respect of deduction of prompt payment rebate by the

Respondent @ 2% in place of eligible rate of 1% from the payments for the monthly energy bills amount. The period for which claim has been submitted by Petitioner is from August, 2009 to July, 2014. At Annexure-P11 of the Petition M/s SPL has submitted computation of claim no. 2 on account of deduction of 2% rebate from payments of transmission charges and corresponding delayed payment surcharge for the period from July, 2010 to December, 2012. Similarly, at Annexure-P18 of the Petition M/s SPL has submitted computation of claim no. 3 on account of deduction of 2% rebate from payments of monthly energy bills for the month of September–November, 2012. Fourth claim has been submitted at Annexure-P25 of the Petition, wherein, the Petitioner has mentioned excess rebate deducted by Respondent from supplementary energy bills for the months of April-August 2014.

- 2.2 The Commission is of the view that these claims of the Petitioner have to be seen in light of Regulations & PPA executed thereunder by the Petitioner with the Respondent. The Commission first examines whether the claims raised by the Petitioner under the RE Regulations, 2008, RE Regulations 2010 and RE Regulations 2013 are legally tenable or not.
- 2.3 The Petitioner in its Petition has raised the claims towards unlawful deduction of prompt payment rebate by the Respondent as well as withholding Late Payment Surcharge on the amount remaining unpaid from the date of commissioning of its project till 10.11.2014.
- 2.4 The PPA dated 03.07.2009 was executed between the Petitioner and the Respondent with an exit clause and it was not a long term PPA as per RE Regulations, 2010 specified by the Commission. The PPA was executed by both the parties with due knowledge of the provisions of the Regulations.
- 2.5 The PPA dated 03.07.2009 was entered into by the Petitioner under RE Regulations, 2008. The Commission in a separate matter filed by the Petitioner, had its Order dated 17th December, 2012 with regard to the PPA had held as under:

“16. Taking cognizance of the terms and conditions of the PPA dated 03.07.2009 entered between the Petitioner and the Respondent, the Commission is of the view that the said PPA cannot be construed as a valid long term agreement particularly on account of the conditions provided in the agreement. Some of the conditions are reproduced below:

“WHEREAS, the Generating Company desires to sell entire 22.5 MW (Plus 10% overload) power scheduled to be generated in the Generating Company’s facility to UPCL pending resolution of legal issues regarding the sale of power other than consumer outside the state of

Uttarakhand subject to the following conditions: 1. Company's right in regard to sale of power outside the State of Uttarakhand to PTC and others on the Final decision on the issue by UERC/Tribunal/Court if the decision is in the favour of the Company 2. The terms and conditions contained in the PPA and the rights and obligations specified would be subject to the final decision on the legal issues of the sale of power by the company to PTC. However, generating company shall give two months notice to UPCL before termination of this agreement."

"19. Duration

19.1 Unless terminated by default, this agreement shall be valid till the expiry of 30 years or after two months from received of notice from Generating Company if the final decision on the legal issue is in favour of Generating Company regarding the sale of power to other than consumer outside the state of Uttarakhand to PTC and permitted the company to give the outside the State to PTC, whichever is earlier."

- 2.6 In this regard, in the Order referred above, the Commission had opined that the Petitioner as well as the Respondent were required to abide by the relevant provisions of that regulation and must enter into a PPA consistent with the Regulations.
- 2.7 The RE Regulations, 2008 do specify that for SHPs the life of the project shall be 35 years and also specifies PPA period as 30 years. However, these regulations do not provide that the tariffs determined in the Regulations would only be applicable for projects who enter into a long term PPA with the distribution licensee. Whereas, RE Regulations, 2010 specify the Tariff period which shall be the period for which tariff is to be determined by the Commission on the basis of norms specified under these Regulations and this Tariff period shall be equal to the useful life of the project, i.e. 35 years for SHPs. Further the Regulations specify that PPA shall be required to be executed with the distribution licensee for the entire Tariff period.
- 2.8 Infact, UPCL had incorrectly made payment to it at tariffs specified under RE Regulations, 2010 even before the Petitioner became eligible to be governed by RE Regulations, 2010. However, taking a holistic view in the matter, the Commission had decided to give the Petitioner an option to either enter into a fresh long term PPA or execute a supplementary agreement to the existing PPA with the Respondent consistent with the provisions of the RE Regulations, 2010, for sale of power for the entire useful life of the plant. The Commission also decided that if a valid long term PPA was executed between the Petitioner and the Respondent, the tariff provided in RE Regulation, 2010 would be applicable on the

Petitioner's plant from the date of effectiveness of the regulations.

However, mere allowance of tariff as a special case does not afford coverage of PPA by the regulations and cannot be construed to vest right to Petitioner to dispute the amount of rebate deducted by the Respondent or DPS not paid to it for the period prior to signing of the Supplementary PPA.

Accordingly, the provisions as existed in the earlier PPA would prevail for the period prior to signing of a valid long term PPA as the PPA entered into by the Petitioner was not in compliance of the RE Regulations, 2010. The Petitioner cannot claim any rebate or late payment surcharge in accordance with the RE Regulations, 2010. Hence, no claim of the Petitioner can be considered for the period prior to signing of the Supplementary PPA as it wasn't covered under RE Regulations, 2010 under which it was billing for power sold to UPCL.

2.9 It is furthermore necessary to point out that the Petitioner was fully aware of the provisions of Regulations with respect to Rebate and Delayed Payment Surcharge and infact it had been allowing UPCL higher rebates than that allowed in the Regulations without any protest. If it did not have any issue in offering a higher rebate to UPCL earlier, then there is no explanation for agitating the issue after a period of 5 years from CoD. The claims for refund of rebate for the period prior to signing of long term PPA on 10.01.2013 are not valid and hence are rejected.

2.10 RE Regulations, 2010 specifies as under:

*"Provided further that in all the cases, where legally valid PPAs have been entered into with the distribution licensee or where financial closure of the project has taken place prior to coming into force of these Regulations on the basis of previous Regulations/Orders of the Commission, such generators shall have the option to be covered under these Regulations, in which case these Regulations shall be applicable to them and the generators would be required to convey such option within one month of the notification of these Regulations. **The PPAs of such generators would need to be amended to make them in line with these Regulations (as amended from time to time), failing which the provisions of these Regulations shall be deemed to have been incorporated in their PPAs and will have overriding effect over any of the previous provisions.**"*

(Emphasis added)

From the above, it is apparent that the if a legally valid PPA have been entered into with the distribution licensee by the RE generator or the financial closure of the project has taken place prior to coming into force of these Regulations on the basis of previous Regulations/Orders of the Commission, the PPAs of such generators would need to be amended to make them in line with the RE Regulations, 2010 failing which the provisions of these Regulations shall be deemed to have been incorporated in their PPAs and will have overriding effect over any of the previous provisions.

2.11 Both the Parties executed the Supplementary PPA on 10.01.2013 enabling main PPA dated 03.07.2009 to be termed as long term PPA in accordance with the regulations. Therefore, all the claims after 10.01.2013 shall be dealt with in accordance with the governing Regulations.

2.12 **Claim no.1 in respect of deduction of prompt payment rebate by the Respondent @ 2% in place of eligible rate of 1% from the payments for the monthly energy bills amount:**

The period for which claim has been submitted by Petitioner is from August, 2009 to July, 2014. As mentioned heretoabove, claims of the Petitioner for period prior to signing of Supplementary PPA are not valid and are rejected. From Annexure-P8 of the Petition, it is observed that post signing of the Supplementary PPA majority of the payments of energy bills have been received by the Petitioner within 2 to 7 days of submissions of the bills. Infact, this was also the period agreed upon the Petitioner with the Respondent vide the letter dated 06.11.2012.

UPCL in its written submission also referred to the said letter of the Respondent and submitted that the Petitioner itself offered it a rebate of 2% subject to payment of bills within 7 working days from the date of presentation and that the Petitioner neither requested for opening a letter of credit or for amending the PPA in this regard. UPCL also submitted that this consent was never withdrawn by the Petitioner and till date the Petitioner never raised any objection regarding the mode and manner of payment of the bills and the rebate being deducted by UPCL. In response, the Petitioner submitted that the letter dated 06.11.2012 was issued by it as it was running a risk of default in its debt servicing and consequently of being termed as a NPA as UPCL had withheld the payment of energy bills for the month of September and October, 2012 and the same could not be considered as its consent. It is also noted that the said terms were inferior to those incorporated in PPA as the PPA allowed 2% rebate for payment within 30 days.

In this regard, it is noted that the Petitioner continued offering the Respondent 2% rebate without any protest as per the letter dated 06.11.2012 till July, 2014 wherein for the first time it raised the dispute regarding payment of rebate and late payment surcharge in accordance with the Regulation after a period of almost 18 months.

Provision of payment under LC mechanism and corresponding rebate of 2% was made in the regulations to ensure prompt payment of energy bills by the distribution licensee for maintaining smooth cash-flow of the generating stations. Moreover, LC is a payment security mechanism. It is basically a guarantee from the bank that a buyer's payment to a seller would be received on time and for the correct amount and in case the buyer is unable to make payment on the purchase, the bank would be required to cover the full or remaining amount of the purchase. Furthermore, during this period the respondent has made prompt payments to avail higher rebate and that was accepted by the Petitioner. Keeping in view that they have agitated this issue after 18 months, they cannot be allowed both a lower rebate and prompt payment.

In sum and substance, while it is held that the Petitioner gets coverage under prevailing Regulation since the said regulation expressly provided such coverage, it nonetheless is relevant that respondent kept on making prompt payment to avail higher rebate and such deduction was not objected to by the Petitioner. It is therefore ordered that whenever payment has been made within 3 working days, the respondent would be entitled for 2% rebate in this period. This adjudication is being made in the particular circumstances of this case and will not have general application.

2.13 Claim no. 2 on account of deduction of 2% rebate from payments of transmission charges and corresponding delay payment surcharge:

At Annexure-P11 of the Petition M/s SPL has submitted computation of claim no. 2 on account of deduction of 2% rebate from payments of transmission charges and corresponding delayed payment surcharge for the period from Jul, 2010 to December, 2012. The Petitioner submitted that it had already constructed the dedicated 33kV transmission line for evacuation of the energy generated from the project bus bar to the substation of UPCL at Ghansali, hence, it is entitled to receive additional 5 paise per kWh over and above the generic tariff applicable for the Project. M/s SPL submitted that the monthly energy bills were being raised by the Petitioner in accordance with these RE Regulations, 2010 from July,

2010 onwards. However, the Respondent started deducting 5 paise per kWh in all the MEBs till December, 2012 and the payment of withheld amount was finally paid on 11.02.2013 by cheque. While making this payment, instead of paying the delayed payment surcharge of 1.25% per month Respondent chose to deduct 2% of the amount as prompt payment rebate. In this regard, the Commission is of the view that the period mentioned above is prior to signing of the Supplementary PPA i.e. 10.01.2013, accordingly, as discussed above, this transaction will be governed by agreed provisions of their PPA and not of the regulations. The Petitioner was not eligible to be covered under the RE Regulations, 2010 and the same view was taken by the Commission in its Order dated 17.12.2012. Relevant extracts of the same are reproduced hereunder:

“20. Examining the above provisions, the Commission is of the view that RE Regulations, 2008 do specify that for SHPs the life of the project shall be 35 years and also specifies PPA period as 30 years. However, these regulations do not provide that for tariffs determined in the Regulations would only be applicable for projects who enter into a long term PPA with the distribution licensee. Whereas, RE Regulations, 2010 specify the Tariff period which shall be the period for which tariff is to be determined by the Commission on the basis of norms specified under these Regulations and this Tariff period shall be equal to the useful life of the project i.e. 35 years for SHPs. Further specifying that PPA shall be required to be executed with the distribution licensee for the entire Tariff period. Therefore, the Commission holds that in the absence of Petitioner having long term PPA with the Respondent, the Petitioner is neither entitled to nor can claim for payment of Tariffs as per rate of charge prescribed in RE Regulations, 2010.”

As the Delayed Payment Surcharge was not provided for in PPA, the claim for the same is not sustainable. However, as the payments were delayed beyond 30 days, rebate is not attracted and its deduction is unjustified. The claim of Petitioner for refund of rebate deducted is therefore upheld.

2.14 Claim no. 3 on account of deduction of 2% rebate from payments of monthly energy bills for the months of September–November, 2012:

At Annexure-P18 of the Petition M/s SPL has submitted computation of claim no. 3 on account of deduction of 2% rebate from payments of monthly energy bills for the months of September–November, 2012. The Petitioner submitted that the Respondent stopped payment of energy bills unilaterally from September, 2012 onward which became a matter of dispute between the Petitioner and the Respondent arising from the PPA dated 03.07.2009. In this

regard, as already discussed above, the period mentioned above pertains prior to the signing of the Supplementary PPA i.e. 10.01.2013 and hence shall be governed by the terms of PPA and not the regulations. As the PPA did not provide for any Delayed Payment Surcharge, the claim is not sustainable and hence rejected.

2.15 Claim no. 4 on account of deduction of excess rebate deducted by Respondent from supplementary energy bills for the months of April-August 2014:

M/s SPL has made fourth claim at Annexure-P25 of the Petition, wherein, Petitioner has mentioned excess rebate deducted by Respondent from supplementary energy bills for the months of April-August 2014 and has also claimed DPS. The Petitioner submitted that the Commission on 20.06.2014 issued the Second amendment to the RE Regulations, 2010 and consequent to the same, the Petitioner was entitled to an enhancement in tariff for sale of energy generated from the Project to an extent of Rs. 0.40 per unit over and above the tariff of Rs. 3.30 per unit, which was being paid to the Petitioner in terms of the Regulations, 2010. The Petitioner submitted that in compliance of the provisions of the aforesaid (Second Amendment) Regulations, 2014, it raised the supplementary bills for the energy supplied during the months of April and May 2014 on 03.07.2014. Similarly, supplementary bills for the energy supplied during the months of June and July 2014 was submitted on 07.08.2014 and energy bill for August, 2014 was raised on 11.09.2014. However, the payment of the above mentioned bills was made on 15.10.2014. In this regard, the Commission observed that period of billing is after signing of Supplementary PPA i.e. 10.01.2013. The Commission had issued second amendment of RE Regulations, 2010 vide which PLF of SHPs and corresponding tariffs were revised w.e.f. 01.04.2014, however, the same was notified in official gazette on 05.07.2014. It may be noted that sub-section of the Electricity Act, 2003 stipulates:

“(1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.”

Further, notification has also been defined under the Act as follows:

““notification” means notification published in the Official Gazette and the expression “notify” shall be construed accordingly;”

In view of the above stipulation under the Act, the second amendment to the RE Regulations, 2010 became operational w.e.f. 05.07.2014. Accordingly, claim for both refund of

rebate and levy of DPS are upheld with the proviso that such claim shall be recognized from the date of operationalisation of the amendment, i.e. 05.07.2014.

2.16 The Petitioner is ordered to recast their claims based on decisions heretoabove and Respondent is ordered to pay the same within 15 days of receipt of claims after due verification. Failure to do so will entitle the Petitioner to claim DPS on payment not made.

2.17 Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member

(Subhash Kumar)
Chairman