

Before

## UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

### Petition No. 23 of 2023

**In the matter of:**

Application seeking approval of the Commission on the Draft Power Purchase Agreement between Uttarakhand Power Corporation Limited and UJVN Ltd. for 6.25 MW Canal Bank Ground Mounted Solar PV Plant at Dhalipur HEP, Uttarakhand.

### Petition No. 24 of 2023

**In the matter of:**

Application seeking approval of the Commission on the Draft Power Purchase Agreement between Uttarakhand Power Corporation Limited and UJVN Ltd. for 9.50 MW Canal Bank Ground Mounted Solar PV Plant at Kulhal HEP, Uttarakhand.

### Petition No. 25 of 2023

**In the matter of:**

Application seeking approval of the Commission on the Draft Power Purchase Agreement between Uttarakhand Power Corporation Limited and UJVN Ltd. for 1.25 MW Canal Bank Ground Mounted Solar PV Plant near Pashulok Barrage, Rishikesh, Uttarakhand.

**In the matter of:**

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

**In the matter of:**

UJVN Ltd.

... Respondent

CORAM

Shri D.P. Gairola

Member (Law)-Chairman (I/c)

Shri M.K. Jain

Member (Technical)

**Date of Order: June 21, 2023**

This Order relates to the Petitions filed by Uttarakhand Power Corporation Ltd.

(hereinafter referred to as “UPCL” or “Petitioner” or “Licensee”) seeking approval of the Draft Power Purchase Agreements (PPA) to be executed by it with UJVN Ltd. for procurement of energy to be generated from UJVN Ltd.’s Canal Bank Solar PV Plants having capacity of 6.25 MW located at Dhalipur HEP, 9.50 MW at Kulhal HEP and 1.25 MW located near Pashulok Barrage,.

As the nature of the Petitions are similar, the Commission has decided to merge all the three Petitions.

## **1. Background**

- 1.1 The Petitioner has filed the Petitions dated 19.04.2023 and 26.04.2023 under Section 86(1)(b) of the Electricity Act, 2003, Regulation 39(3) of UERC (Conduct of Business) Regulations, 2014 and clause 5.1, 5.2 & 5.4 of the license conditions of the Distribution and Retail Supply license dated 20.06.2003 issued by the Commission, seeking approval of the Commission on the Draft PPAs to be executed with UJVN Ltd. for procurement of energy to be generated from UJVN Ltd.’s Canal Bank Solar PV Plant having capacity of 6.25 MW at Dhalipur HEP, 9.50 MW at Kulhal HEP and 1.25 MW located near Pashulok Barrage.
- 1.2 M/s UJVN Ltd. desires to sell entire energy scheduled to be generated from its Solar PV Plants having capacity of 6.25 MW at Kulhal HEP, 9.50 MW at Dhalipur HEP and 1.25 MW located near Pashulok Barrage and UPCL is desirous of purchasing the entire energy on the terms and commission as agreed between the parties as laid down in the draft PPA of respective canal bank solar plant.
- 1.3 Accordingly, UPCL prepared the Draft PPAs to be signed with UJVN Ltd. and has requested the Commission to approve the Draft PPAs and allow UPCL to sign the PPAs with UJVN Ltd. in accordance with the provision of the applicable Regulations.

## **2. Petitioner’s submission**

- 2.1 The Petitioner submitted that as per the provisions of the Electricity Act, 2003 read with provisions of UERC (Conduct of Business) Regulations, 2014 and Distribution and Retail Supply License, it is required to get the prior approval of the Commission on the Draft Power Purchase Agreement proposed to be entered into with the Generating Company.
- 2.2 UPCL submitted that UJVN Ltd. is a company registered under the Company’s Act, 1956 and engaged in the business of power generation.

- 2.3 UPCL submitted that UJVN Ltd. desires to sell entire energy scheduled to be generated from its upcoming solar projects and UPCL is desirous of purchasing the entire energy on the terms and conditions as agreed between both the parties as per the terms and conditions laid down in draft PPAs.
- 2.4 UPCL submitted that a deficit scenario during daytime with an average deficit of 414 MW has been projected during FY 2023-24 in the yearly forecast prepared by UPCL in consultation with its demand forecasting agency. Further, Uttarakhand Solar Policy 2023 has set a target for purchase of 1100 MW Solar Power upto FY 2027-28 by UPCL and in various meetings at Government level, UPCL was directed to purchase the solar power from the upcoming solar projects. Hence, in such a scenario it will be an additional benefit to procure solar power.
- 2.5 UPCL submitted that as per the provisions of the Electricity Act, 2003 read with the provisions of UERC (Conduct of Business) Regulations, 2014 and Distribution and Retail Supply License, UPCL is required to get the approval of the Commission. Therefore, the present Petition has been filed seeking approval of the Commission on the draft PPA to be executed between UPCL and UJVN Ltd.

### **3. Respondent's reply and Petitioner's rejoinder**

- 3.1 The Commission had forwarded the copy of the Petition to UJVN Ltd. for its comments. UJVN Ltd. vide its letter dated 06.05.2023 and 11.05.2023 submitted its reply to the Commission which were forwarded to UPCL for its counter reply. UPCL vide its letter dated 27.05.2023 submitted its rejoinder. The Commission has dealt with the reply and rejoinder of the parties in the subsequent paragraphs.
- 3.2 UJVN Ltd. vide its replies submitted that UJVN Ltd. is registered under the Company's Act 1956, therefore, the year 2013 should be replaced by 1956 under Para 1 of the draft PPAs. Further, pin code of Dehradun may also be added after the address of the Petitioner.

The Petitioner vide its rejoinder dated 27.05.2023 agreed with the comments of UJVN Ltd. and agreed to make necessary changes in the draft PPA.

- 3.3 UJVN Ltd. submitted that 'as amended from time to time' has been repeated under sub-clause 1.13 of Clause 1 of draft PPAs and, therefore, the same should be deleted. The Petitioner agreed to the same.

- 3.4 UJVN Ltd. submitted that sub-clause 1.16 of the Draft PPAs which provides the definition of 'Inter-connection point' should be as per the definition specified under RE Regulations, 2018. UPCL agreed to make necessary changes in the Draft PPAs as suggested by UJVN Ltd.
- 3.5 With regard to sub-clause 2.1 of the draft PPAs, UJVN Ltd. submitted that the tariff quoted by L-1 bidder is Rs. 4.18/kWh, Rs. 4.19/kWh and Rs. 4.26/kWh for canal based solar power plant situated at Kulhal HEP, Dhalipur HEP and Pashulok Barrage respectively which are 10% higher than tariff quoted by L-1 bidder, as allowed as per RE Regulations, 2018. UJVN Ltd. also submitted that as per Uttarakhand Solar Policy 2023, the completion period of the project is 24 months. Further, as per GoI TBCB guidelines, period of completion of solar projects is 18 months from the date of execution of the PPA. Further, UJVN Ltd. proposed that in case full commissioning of the plant is delayed, the PPA capacity be reduced to the project capacity commissioned and balance capacity PPA shall stand terminated.

The Petitioner vide its reply submitted that there is no provision for the part commissioning in the RE Regulations, and hence, the same cannot be allowed.

- 3.6 UJVN Ltd. submitted that since the capacity of Rishikesh canal bank solar plant is 1.25 MW, the evacuation of the power from the plant is proposed to be done at 11 kV line connected to 33/11 kV Sub-Station, Pashulok Barrage, Rishikesh, Uttarakhand.

UPCL vide its rejoinder dated 27.05.2023 agreed with the comment of UJVN Ltd. and agreed to make necessary changes in the draft PPA.

- 3.7 UJVN Ltd. submitted that Regulation 15(c) of RE Regulations, 2018 states that in case of solar generating company constructs the evacuation infrastructure at its own cost, a normative levelized tariff of 12 paise/unit over and above the generic tariff determined at point of inter-connection shall be allowed. Accordingly, it requested to make necessary modification in the draft PPAs.

UPCL agreed to make necessary adjustment to add the provision of Regulation 15(c) of RE Regulations, 2018 in the draft PPAs.

- 3.8 With regard to Sub-Clause 21.4 of Clause 21 "Events of Default and Termination", UJVN Ltd. submitted that in case the full commissioning of the package is delayed beyond the extended period from planned commercial operation date, the PPAs capacity should be reduced/amended to the Project Capacity commissioned and the PPAs and the balance

capacity will stand terminated and shall be reduced from selected Project Capacity.

UPCL disagreed with the proposal of UJVN Ltd. stating that there is no provision in RE Regulations for any part commissioning of the project.

3.9 With regard to Clause 26 “Force Majeure”, UJVN Ltd. submitted that the provision should be in line with the provisions of RE Regulations, 2018. UPCL agreed to the same.

3.10 UJVN Ltd. submitted that there are only eight annexures to the draft PPA, however, under Clause-41 it is mentioned that there are ten annexures. UJVN Ltd. requested to make necessary corrections in the draft PPA. UPCL agreed to correct clause 41 of the draft PPAs.

## **4. Commission’s Views & Decisions**

### **4.1 Legal Requirement for approval of PPA**

4.1.1 A PPA is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.

4.1.2 Section 86(1)(b) of the Electricity Act, 2003 stipulates that one of the functions of the Commission is to regulate electricity purchase and procurement process of the distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

4.1.3 Further, the Distribution and Retail Supply License issued by the Commission lays down certain conditions of license, which amongst others also has the following:

*“5.1 The Licensee shall be entitled to:*

*(a) ...*

*(b) Purchase, import or otherwise acquire electricity from any generating company or any other person under Power Purchase Agreements or procurement process approved by the Commission; ...”*

*(Emphasis added)*

4.1.4 As per Regulation 39(1) of the UERC (Conduct of Business) Regulations, 2014 the distribution licensee is required to file with the Commission in complete form copies of all the Power Purchase Agreements already entered by it. The relevant portion of the Regulation is reproduced hereunder:

***“39. Regulation of Distribution Licensee’s Purchase of Power***

- (1) The distribution licensee shall file with the Commission in complete form copies of all Power Purchase Agreements already entered into by it.*
- (2) The distribution licensee to establish to the satisfaction of the Commission that the purchase of power by it is under a transparent power purchase procurement process and is economical and the power is necessary to meet its service obligation.*
- (3) The Distribution licensee shall apply to the Commission for approval of the draft Power Purchase agreement that it proposes to enter into with the suppliers. The Commission may pass orders:
  - a. Approving the agreement; or*
  - b. Approving the agreement with modifications proposed to the terms of the agreement;*
  - or*
  - c. Rejecting the agreement.**
- (4) Nothing contained herein shall affect the obligations of distribution licensee under the existing contract and arrangement for purchase, import or acquisition of electricity from generating companies, electricity trader and from other persons with whom the licensee has agreements or arrangements of power purchase or procurement of energy in accordance with the terms and conditions of such agreement and arrangement consented to or approved by the Commission.*
- (5) The provisions of sub-regulations (2) and (3) above or any action taken therein shall not, in any manner, prejudice the exercise of functions and powers of the Commission under any of the other provisions of the applicable law, the Regulations and Orders issued from time to time.”*

4.1.5 Further, Regulations 7(2) & 7(3) of UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2018 (RE Regulations, 2018) specifies that:

- “(2) The distribution licensee on an offer made by the said RE based Generating Stations and Co-generating Stations may enter into a power purchase agreement in conformity with these Regulations and relevant provisions of other Regulations and the Act. However, if the distribution licensee intends to purchase power from such generator it shall sign the PPA within two months of offer made by the generating company. Otherwise, if the distribution licensee is not willing to purchase power from such generator it shall intimate the same to the generating company within one month of offer made by it.*

*Provided that where a grid interactive roof top and small Solar PV plant, is installed in the Premises, by a third party who intends to sell net energy (i.e. after adjustment of entire consumption of owner of the premise) to the distribution licensee, a tripartite agreement will have to be entered into amongst the third Party, the Eligible Consumer and such Distribution Licensee.*

- (3) *The distribution licensee shall make an application for approval of power purchase agreement entered into with the generating company in such form and manner as specified in these regulations and UERC (Conduct of Business) Regulations, 2014 as amended from time to time within one month of the date of signing the PPA."*

*(Emphasis added)*

4.1.6 Accordingly, in accordance with the requirements of the Act and Regulations referred above, UPCL as a distribution licensee is required to seek approval from the Commission of the PPAs entered or proposed to be entered by it with the power generators.

#### **4.2 Consistency of the PPA with the Regulations**

4.2.1 Regulation 6(7) of RE Regulations, 2018 specifies as under:

*"All Power Purchase Agreements signed by the generating stations existing on the date of notification of these regulations shall be amended in accordance with these regulations, if inconsistent with these Regulations and such amended PPAs shall be valid for entire life of the RE Based Generating Stations and Co-generating Stations."*

4.2.2 Hence, all the PPAs to be entered into by UPCL are required to be amended in accordance with RE Regulations if they are inconsistent with the provisions of RE Regulations, 2018. Accordingly, PPAs proposed to be executed between UPCL and the generators are examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003 & RE Regulations, 2018.

#### **4.3 Commission's Analysis of the Model PPA and Order on the same**

4.3.1 The draft PPAs to be executed between UPCL and the UJVN Ltd. for supply of power to UPCL from the Canal Bank Solar PV projects having capacity of 6.25 MW at Dhalipur HEP, 9.50 MW at Kulhal HEP and 1.25 MW situated near Pashulok Barrage, Rishikesh, District-Dehradun, Uttarakhand.

4.3.2 The Draft PPAs submitted by UPCL and the submissions of the Respondent have been examined in light of the relevant Act, rules & regulations. The Commission observed that

certain clauses in the Draft PPAs submitted by UPCL are inconsistent with the provisions of the Act/Regulations. Such observations have been discussed in the subsequent sub-Paras. UPCL is required to take note of the same and incorporate necessary corrections in the respective draft PPA while executing the final PPAs with UJVN Ltd.

a) Para 1 of the draft PPAs provides as follows:

*“THIS AGREEMENT is made this      day of      2023 (hereinafter called the Effective Date), between M/s UJVN Ltd., a Company registered under the Company's Act, 2013 having its registered office at Ujjwal, Maharani Bagh, GMS Road, Dehradun, Uttarakhand hereinafter called the "Solar Photovoltaic Power Plant", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees as party of the first part, and Uttarakhand Power Corporation Limited a Company registered under the Company's Act, 1956, having its Registered Office at V.C.V. Gabar Singh Urja Bhawan, Kanwali Road, Dehradun, hereinafter called "UPCL", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees as party of the second part.”*

UJVN Ltd. is a company registered under the Company's Act, 1956. Therefore, 2013 shall be replaced with 1956 and Pin-code of the address shall be added after the address of both the parties. Further, in the draft PPAs, date, month and year needs to be filled up and completed while the final PPAs are being signed.

b) Sub-Clause 1.13 of Clause 3 of Draft PPAs specifies as follows:

*“Regulations’ means the Uttarakhand Electricity Regulatory Commission (Tariff and other terms for supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-Generating Stations) Regulations, 2018 as amended from time to time as amended from time to time.”*

There is repetition of “as amended from time to time” in the aforesaid clause. Accordingly, the Petitioner is directed to make necessary corrections while signing the PPAs.

c) Definition of ‘Inter-Connection Point’ under Sub-Clause 1.16 of Clause 1 specifies as follows:

*“‘Inter-connection Point’ in respect of all the RE based Solar Photovoltaic Power Plants, except Grid interactive Roof Top and Small Solar PV Power Projects, shall mean interface point of renewable energy generating facility with the transmission system or distribution system which*

*shall be line isolator on outgoing feeder on HV side of generator transformer;*

*Provided that in respect of Grid interactive rooftop & Small Solar PV projects, Inter-connection Point shall mean the interface of solar power generation facility under net metering arrangement with the network of licensee and shall normally be the point where export/import meter is installed to measure the energy transfer between the licensee and the eligible consumer."*

Regulation 3(1)(bb) of RE Regulations, 2018 defines 'interconnection point' as follows:

*"'Inter-connection Point' in respect of all the RE based generating stations, except Grid interactive Roof Top & Small Solar PV Power Projects, shall mean interface point of line isolator on outgoing feeder on HV side of generator transformer in the switching yard of renewable energy generating facility with the transmission system or distribution system.*

*Provided that in respect of Grid interactive rooftop & Small Solar PV projects, Inter-connection Point shall mean the interface of solar power generation facility under net metering arrangement with the network of licensee and shall normally be the point where export/import meter is installed to measure the energy transfer between the licensee and the eligible consumer."*

Taking cognizance of the fact that UPCL desires to procure entire energy scheduled to be generated from the canal bank Solar PV plants having capacity of 6.25 MW at Dhalipur HEP, 9.50 MW at Kulhal HEP and 1.25 MW near Pashulok Barrage, sub-Clause 1.16 shall be read as follows:

*"'Inter-connection Point' shall mean interface point of line isolator on outgoing feeder on HV side of generator transformer in the switching yard of renewable energy generating facility with the transmission system or distribution system.*

d) Sub-Clause 2.1 of the Draft PPAs provides as follows:

*"UPCL shall accept and purchase entire/surplus .... MW of power made available to UPCL system from Solar Photovoltaic Power Plant @ Rs. .... as per bidding process conducted by UJVNL Ltd. in accordance with the Clause 2 (3) of the UERC (Tariff and other terms for supply of electricity from renewable energy sources and non-fossil fuel based Co-generating stations) Regulations, 2018.*

*Above rate of sale of Power shall be applicable only if the Solar Photovoltaic Power Plant commissions its plant on or before ..... in accordance with the Order dated*

*..... passed by Hon'ble Commission. However, if the plant is commissioned after ....., the rate of sale of power would be as determined by the UERC for the year of commissioning if such rates are lower than the tariff agreed to in the PPA otherwise tariff agreed in this PPA shall continue.*

UJVN Ltd. submitted that the tariff quoted by L-1 bidder is Rs. 4.18/kWh, Rs. 4.19/kWh and Rs. 4.26/unit for canal bank based solar power plants located at Dhalipur HEP, Kulhal HEP and near Pashulok barrage respectively. Therefore, respective PPAs with UPCL will be signed at tariff of Rs. 4.60/kWh, Rs. 4.61/kWh and Rs. 4.69/kWh, which is 10% higher than tariff quoted by L-1 bidder, as allowed in the RE Regulations, 2018. Further, UJVN Ltd. submitted that TBCB guideline specifies completion period of 18 months from the date of execution of the PPA.

UJVN Ltd. requested to replace the above clause with the following:

*"UPCL shall accept and purchase entire/surplus .... MW of power made available to UPCL system from Solar Photovoltaic Power Plant @ Rs. .... as per bidding process conducted by UJVN Ltd. in accordance with the Clause 2 (3) of the UERC (Tariff and other terms for supply of electricity from renewable energy sources and non-fossil fuel based Co-generating stations) Regulations, 2018 which provides as follows:*

*"... Provided that implementation of Canal Bank and Canal Top Solar PV Plants by the eligible government organization (as specified by MNRE) and implementation of solar PV plants by eligible government organization shall be done through tariff based competitive bidding process. In such case, PPA for sale of power from these plants shall be signed with distribution licensee at a tariff which shall be 10% higher than the tariff quoted by L-1 bidder."*

*Above rate of sale of Power shall be applicable if the Solar Photovoltaic Power Plant commissions its plant on or before 12 months from the date of execution of PPA in accordance with the Order dated ..... passed by Hon'ble Commission.*

*However, a maximum six months extension from planned commercial date may be allowed to solar developer. Further, in case, the full commissioning of the package is delayed beyond extended period from planned commercial operation date, the PPA capacity shall stand reduced/amended to the Project Capacity commissioned and the PPA for the balance capacity will stand terminated and shall be reduced from the selected Project Capacity.*

*The part commissioning may be allowed. However, planned commercial operation date will not get altered due to part commissioning, irrespective of dates of part commissioning or full*

*commissioning, the PPA will remain in force for a period of 25 (Twenty Five) years from the planned commercial operate date."*

With regard to the Canal Bank, Canal Top Solar PV Plants and Solar PV plants constructed by Government Organisations, the proviso wrt to additional tariff @ 10% of the bid tariff quoted by L-1 bidder exists in the existing RE Regulations, 2018 whose control period has ended on 31.03.2023. For projects expected to be commissioned thereafter, the tariffs would be governed by the subsequent Regulations notified by the Commission.

Further, with regard to the completion period, UJVN Ltd. proposed the completion period of 12 months for applicability of the tariff rates determined through bidding process plus 10%. The Commission has gone through the RfP of the proposed plants and observed that as per RfP, the scheduled commercial operation date is nine months from the date of signing of the PPA whereas Uttarakhand State Solar Policy, 2023 specifies completion period of 24 months from the date of allotment of land. However, in the present case, as UJVN Ltd. is already in the possession of the land, the question of procurement/ allotment of land does not arise. Therefore, it will not be justifiable to allow completion period of 24 months in the present case. Accordingly, in view of the scheduled completion period specified in the RfP, the Commission is of the view that the tariff specified under the Regulations for the subsequent control period shall be applicable for nine months from the date of signing of the PPA and in case of any delay, the lower of the tariff determined by the Commission for the year of commissioning of the proposed plant or the PPA tariff shall be applicable.

UJVN Ltd. also proposed to reduce the contracted/PPA capacity to the actual commissioned capacity and termination of the balance capacity if the full capacity is not commissioned within six months from lapse of the scheduled completion period. In the matter, it is pertinent to mention that the distribution licensee is required to forecast power availability to meet its demand and, accordingly, plans its activity for procurement of power from various sources. If the proposal of UJVN Ltd. is accepted, it may hamper the accuracy of power procurement the of distribution licensee. Further, Regulation 14(7) of RE Regulations, 2018 specifies that a renewable energy

developer shall be eligible for 50% of the fixed cost component of levelized generic tariff as charges against infirm power till the commissioning of the entire project. Accordingly, the Commission rejects the proposal of UJVN Ltd. w.r.t provision of restricted capacity of the proposed plant upto the actual commissioned capacity in case of delay.

Based on the above discussion, Sub-clause 2.1 of Draft PPAs shall be read as follows:

*“UPCL shall accept and purchase entire/surplus ..... MW of power made available to UPCL system from Solar Photovoltaic Power Plant @ Rs..... as per bidding process conducted by UJVN Ltd. in accordance with the first proviso of Regulation 2(3) of the UERC (Tariff and other terms for supply of electricity from renewable energy sources and non-fossil fuel based Co-generating stations) Regulations, 2018 subject to the condition that in no case tariff shall exceeds the ceiling tariff as specified the Hon’ble Commission in the RE Regulations as applicable for the year of commissioning.*

*Above rate of sale of Power shall be applicable if the Solar Photovoltaic Power Plant commissions its plant on or before 09 months from the date of execution of PPA in accordance with the Order dated ..... passed by Hon’ble Commission and in case of any delay, the lower of the tariff determined by the Hon’ble Commission for the year of commissioning of the Canal Bank Solar Photovoltaic Power Plant and PPA tariff shall be applicable.”*

- e) Sub-Clause 8.2 of the draft PPA to be executed between UPCL and UJVN Ltd. for procurement of power from solar power plant of 1.25 MW Capacity situated near Pashulok Barrage provides as follows:

*“Power from the Solar Photovoltaic Power Plant shall be transmitted at 33 kV voltage connected to the 33/11 kV Sub-station, Pashulok Barrage, Rishikesh, Dehradun, Uttarakhand, owned, maintained and operated by UPCL.”*

UJVN Ltd. proposed that the evacuation of power from the solar PV plant may be done at 11 kV because the capacity of the said plant is only 1.25 MW.

The Petitioner agreed with the proposal made by UJVN Ltd. Accordingly, Sub-Clause 8.2 shall be read as:

*“Power from the Solar Photovoltaic Power Plant shall be transmitted at 11 kV voltage connected to the 33/11 kV Sub-station, Pashulok Barrage, Rishikesh, Dehradun, Uttarakhand,*

*owned, maintained and operated by UPCL.”*

- f) Sub-Clause 8.3 of Draft PPA provides as follows:

For Canal Bank Solar PV Plant at Dhalipur HEP:

*“The cost of laying the transmission line up-to UJVN Ltd. 132/33 KV Grid Connecting Sub-Station, Dhalipur HEP, Uttarakhand, owned, maintained and operated by UJVN Ltd, the required bay, terminal equipments and associated synchronization equipments, etc shall be borne as per clause 41 (3) of UERC regulation 2018 by the owner.”*

For Canal Bank Solar PV Plant at Kulhal HEP:

*“The cost of laying the transmission line up-to UJVN Ltd. 33/11 KV Grid Connecting Sub-Station, Kulhal HEP, Uttarakhand, owned, maintained and operated by UJVN Ltd, the required bay, terminal equipments and associated synchronization equipments, etc shall be borne as per clause 41 (3) of UERC regulation 2018 by the owner.”*

For Canal Bank Solar PV Plant near Pashulok Barrage:

*“The cost of laying the transmission line up-to 33/11 kV Sub-station, Pashulok Barrage, Rishikesh, Dehradun, Uttarakhand, owned, maintained and operated by UPCL, the required bay, terminal equipments and associated synchronization equipments, etc shall be borne as per clause 41(3) of UERC regulation 2018 by the owner.”*

UJVN Ltd. requested to add the provision w.r.t. construction of evacuation system by the generation station.

With regard to connectivity, the Regulation 41 of the existing RE Regulations, 2018 specifies as follows:

***“41. Evacuation of Power***

*(1) Distribution Licensees shall provide connectivity to the RE Based Generating Stations having capacity upto 25 MW at its nearest distribution sub-station preferably within a range of 10 kilometers from the location of such generating station. They may further mutually agree to provide connectivity at appropriate voltage level subject to technical feasibility and technical standards for construction of electrical lines and connectivity with the grid as may be specified by CEA.*

*(2) XXX*

*(3) In case RE based Generating Stations exercise the option to construct the evacuation system*

*including the line upto the nearest substation of Transmission/Distribution Licensee, the required bay, terminal equipments, associated synchronization equipments and above pooling switching station, if any, etc. the cost of such evacuation system shall be borne by such generating stations: Provided that such Generating Stations may also get the work of construction of the power evacuation system carried out by State transmission/distribution licensee; Provided further that the land for extending the bay shall be provided by the owner of the transmission or distribution sub-station, as the case may be, free of cost."*

It is to be noted that although RE based generator has an option to construct the evacuation system including the line upto the nearest sub-station of the distribution licensee, it is the responsibility of the distribution licensee to provide the connectivity to the RE Based Generating Stations at its nearest distribution sub-station as per aforesaid Regulation.

Further, it is pertinent to mention that if the generator opts to construct the evacuation infrastructure, at its own cost, it shall be allowed a normative tariff of 12 paise/kWh over and above the tariff rate in accordance with the Regulation 15(1)(c) of the existing RE Regulations, 2018. However, the same shall be governed by the applicable Regulations prevalent at the time of commissioning of the project.

Accordingly, the Petitioner is advised to amend Clause 8.3 of the draft PPAs, if required, considering the financial viability of the connectivity arrangements after providing an option to the developers in accordance with the applicable Regulations.

g) Sub-Clause 21.4 of the draft PPAs provides as follows:

*"UPCL reserves the right to terminate this agreement upon one month notice to the Solar Photovoltaic Power Plant, if the Solar Photovoltaic Power Plant's facility fails to commence production of electric power within three months from the planned commercial operation date mentioned in Annexure-I."*

UJVN Ltd. requested to increase the period from three months to six months for delay in commissioning of the Solar Photovoltaic Power Plant from the schedule commercial operation and also proposed to allow amendment of the PPA based on the actual commissioned capacity on lapse of six months period. UJVN Ltd. submitted that the foresaid sub-clause may be replaced with the following:

*"UPCL reserves the right to terminate this agreement upon one month notice to the Solar*

*Photovoltaic Power Plant, if the Solar Photovoltaic Power Plant's facility fails to commence production of electric power within six months from the planned commercial operation date mentioned in Annexure-I. Further, in case, the full commissioning of the package is delayed beyond extended period from planned commercial operation date, the PPA capacity shall stand reduced/amended to the Project Capacity commissioned and the PPA for the balance capacity will stand terminated and shall be reduced from the selected Project Capacity."*

UPCL vide its rejoinder submitted that RE Regulations, 2018 does not have any provision regarding part commissioning of solar power projects.

As discussed above in this Order, there is no provision regarding part commissioning of renewable energy projects in RE Regulations, 2018. Further, accepting the proposal of UJVN Ltd. may hamper the accuracy of power procurement planning of distribution licensee. Therefore, the request of UJVN Ltd. is rejected.

h) Sub-Clause 26.1 of the Draft PPAs specifies as follows:

*"Force Majeure Event means, with respect to any party, any event or circumstance which is not within the reasonable control of, or due to an act or omission of, that party and which, by the exercise of reasonable care and diligence, that party is not able to prevent, including, without limiting the generality of the foregoing:*

- i. Lightning, storm, earthquakes, flood, natural disaster and action of the natural elements;*
- ii. Acts of public enemy, blockades, insurrections, riots, revolution and sabotage;*
- iii. Unavoidable accident, including but not limited to fire, explosion, radioactive contamination and toxic dangerous chemical contamination"*

The Commission observes that the aforesaid clause is not in accordance with RE Regulations. Accordingly, the same shall be replaced with Regulation 3(1) (s) of RE Regulations, 2018 which specifies 'Force Majeure Event' as follows:

*"“Force Majeure Event” with respect to any party, any event or circumstance which is not within the reasonable control of, or due to an act or omission of, that party and which, by the exercise of reasonable care and due diligence, that party is not able to prevent, including, without limiting the generality of the foregoing:*

- i. Acts of God like lightning, landslide, storm, action of the elements, earthquakes, flood, drought and natural disaster or exceptionally adverse weather conditions;*
- ii. Any act of public enemy, wars (declared or undeclared), blockades, embargo,*

*insurrections, riots, revolution, sabotage, terrorist or military action, vandalism and civil disturbance;*

iii. *Unavoidable accident, fire, explosion, radioactive contamination and toxic dangerous chemical contamination;*

iv. *Any shutdown or interruption of the grid, which is required or directed by the State or Central Government or by the Commission or the State Load Despatch Centre; and any shut down or interruption, which is required to avoid serious and immediate risks of a significant plant or equipment failure."*

- i) All Annexures mentioned in the clauses of the draft PPA needs to be completed before signing the final PPA.

4.3.3 UPCL is directed to amend the draft PPA in accordance with the observations of the Commission in this Order and sign the PPA with UJVN Ltd. after incorporating the same and submit the same to the Commission within fifteen working days of signing of each PPA. It is also relevant to mention that the Commission is finalizing the RE Regulations, 2023 which shall be applicable for the Control Period 2023-2028. Hence, if any provision of the PPA is inconsistent with the new Regulations, the provisions contained in the new Regulations shall apply and the PPA shall be construed to be modified accordingly.

5. Ordered accordingly.

**(M.K. Jain)**  
**Member (Technical)**

**(D.P. Gairola)**  
**Member (Law)-Chairman (I/c)**