

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition filed by M/s Him Urja Pvt Ltd. under UERC (Compliance of Renewable Purchase Obligation) Regulation, 2010 seeking accreditation and issuance of Renewable Energy Certificates for Rajwakti Generating Station.

AND

In the matter of:

M/s Him Urja Pvt. Ltd. ... Petitioner

AND

In the matter of:

Uttarakhand Renewable Energy Development Agency ... Respondent 1

Uttarakhand Power Corporation Ltd. ... Respondent 2

CORAM

Shri C.S. Sharma Member - Chairman

Shri K.P. Singh Member

Date of Hearing: March 24, 2014

Date of Order: May 28, 2014

The Order relates to the Petition filed by M/s Him Urja Pvt Ltd. on November 19, 2012 (hereinafter referred to as "M/s HUPL" or "Generator" or "Petitioner") seeking accreditation and issuance of Renewable Energy Certificates (RECs) under UERC (Compliance of Renewable Purchase Obligation) Regulation, 2010 in respect of its Rajwakti SHP (4.4 MW).

The Petitioner vide above referred Petition sought the following relief/relaxations:-

- (a) Grant accreditation to Rajwakti Generation Station 4.4 MW for Renewable Energy Certificate.
- (b) Respondent may be directed to issue the certificates from the date of Petition for accreditation.
- (c) Pass any other or further orders required in the interest of justice, equity and fairness.

1. Background

- 1.1. M/s HUPL established its Rajwakti SHP having capacity of 4.4 MW on river Nandakini in the year 2002 which is connected to 66 kV Srinagar-Joshimath transmission line at Mangrauli sub-station.
- 1.2. The generator entered into a PPA dated 21.12.2001 with Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Licensee" or "Respondent-2") for sale of power from the aforesaid SHP at Rs 2.50 per unit in accordance with the policy of GoU. The PPA was a subject matter of dispute and was finally upheld by Hon'ble ATE as valid.
- 1.3. The Petitioner submitted that since the Commission had vide its Order dated 29.05.2012 determined Average Pooled Cost of Power Purchase (APPC) as Rs 2.68 per unit which was higher than his selling price of power, i.e. Rs 2.50 per unit, therefore, it applied for accreditation under REC mechanism to Uttarakhand Renewable Energy Agency (hereinafter referred to as "UREDA" or "State Agency" or "Respondent-1") on 22.06.2012. Respondent-1 sought clarification from the Respondent-2 that whether the tariff at which power from the above referred HEP was purchased by it, was "Preferential Tariff" or "APPC".
- 1.4. Respondent-2 vide its letter dated 06.09.2012 informed Respondent-1 that it had executed a PPA dated 22.12.2001 & Supplementary PPA dated 08.03.2004, and, in accordance with the Order dated 30.10.2007 of the Hon'ble APTEL in the matter of tariff from Rajwakti HEP and above referred PPAs, the applicable tariff was Rs. 2.50 per unit. Respondent-2 also informed that concept of preferential tariff and APPC rate

came into existence when UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010 (hereinafter referred to as "RE Regulations, 2010) and UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 (hereinafter referred to as "RPO Regulations, 2010) were notified by the Commission. Respondent-2 also informed Respondent-1 that power purchased from Rajwakti HEP is being considered for achieving RPO in accordance with the regulations.

- 1.5. Since the view in the matter was pending with Respondent-1, the Commission vide letter dated 07.12.2013 advised the Petitioner to wait for the decision of UREDA and approach the Commission if it is aggrieved by the decision of UREDA. The Petitioner vide letter dated 23.01.2014 forwarded a copy of UREDA's letter dated 12.11.2012 rejecting its Petition for accreditation of Rajwakti HEP. Rationale for rejection of Petition as advanced by UREDA vide above letter was that NLDC vide email dated 21.08.2012 had informed it that the RE Project shall not be eligible under REC mechanism if the procurement of electricity component from the RE Project is being considered for the purpose of compliance of RPO by DISCOMs. UREDA vide above letter further stated that since UPCL was also considering power purchased from Rajwakti HEP towards compliance of its RPO, therefore, the application was rejected by it.
- 1.6. The Commission vide letter dated 03.02.2014 asked the Petitioner to file a proper representation clearly mentioning relief, if any, sought by it and reason in support thereof. The Petitioner vide its letter dated 24.02.2014 submitted that issues and relief sought were the same as mentioned in the Petition filed on 19.11.2012 and hence, the same may be admitted.
- 1.7. The Respondents-1 & 2 were directed to submit comments, if any, on the Petition latest by 21.03.2014. Respondent-1 vide letter dated 20.03.2014 submitted its comments, however, Respondent-2 vide its letter dated 19.03.2014 sought 15 days time for submission of reply.
- 1.8. The Commission heard the Petitioner and the Respondents-1 & 2 on 24.03.2014.

During the hearing the Petitioner reiterated its submissions already made in its Petition. The Petitioner also submitted that it had applied for accreditation during the month of June, 2012, and therefore, eligibility criteria has to be seen in light of then prevailing RPO Regulations, 2010, which, according to the Petitioner, were fulfilled at the time of filing of application for accreditation by it. It also argued that PPA was not signed under “preferential tariff”. Respondent-2 disputed the eligibility of project under REC mechanism in accordance with RPO Regulations, 2010. In support of its argument, the Respondent-2 stated that it had executed legally valid long term PPA for purchase of power generation from Rajwakti HEP and also the Project did not have requisite “Connection Agreement”, therefore, it should not be considered as qualified under the eligibility criteria in accordance with RPO Regulations, 2010. During the hearing Respondent-2 questioned the action taken by Respondent-1 on application filed by the Petitioner as to why the aforesaid application was not immediately rejected by it. The Commission directed Respondent-2 to furnish pending reply in the matter latest by 31.03.2014. The Commission also directed Respondent-1 to file detailed written submission on the issues raised by the Respondent-2 latest by 31.03.2014.

- 1.9. UPCL vide its reply dated 26.03.2014 submitted that the Petition filed by the generator was not legally maintainable. Respondent-2 submitted that it had executed PPA dated 22.12.2001 with the Petitioner for purchase of power from Rajwakti HEP. Thereafter, in pursuance to GoU's Order dated 14.01.2004, a supplementary PPA dated 08.03.2004 had also been executed with the same terms & conditions as original PPA dated 22.12.2001 and, in accordance with the PPAs, the Petitioner was bound to supply power to it for 30 years from the date of synchronization of first unit of the Project. Respondent-2 also referred to the Hon'ble ATE's Order dated 09.04.2007 wherein, the above referred PPA had been accepted as valid enforceable documents for sale of power from Rajwakti HEP at Rs. 2.50 per unit.
- 1.10. UPCL further submitted that the Commission considers power purchased from Rajwakti HEP towards RPO compliance by it, hence, Petition filed by M/s HUPL is not maintainable. In its reply, UPCL also submitted that in accordance with Regulation 8.1

of the RPO Regulations, (First Amendment), 2013, the Petitioner does not have any connectivity to the State Network as per Intra State Open Access Regulations, 2010. UPCL further submitted that M/s HUPL has not terminated the aforesaid PPA yet and even if there is pre mature termination of the PPA, the Petitioner will not be eligible for participating in the REC mechanism for a period of 3 years from the date of the termination of agreement or till the schedule date of expiry of the PPA, whichever is earlier, as per proviso to Regulation 8.1 of the RPO Regulations. UPCL submitted that rejection of application by UREDA in view of the NLDC's information that "*the RE project is not eligible under REC mechanism if the procurement of the electricity component from RE project is considered for purpose of compliance of RPO by such DISCOM*" is as per law and, hence, the Petition is liable to be dismissed.

1.11. UPCL also submitted that there is valid PPA between the Petitioner and therefore, it should have been considered as necessary party in the present Petition by the Petitioner. UPCL submitted that relief sought by the Petitioner cannot be legally granted as neither the Commission grants accreditation nor the certificates can be issued from the date of application for accreditation. In addition, UPCL submitted that power generated by the Petitioner has already been sold and no certificates from retrospective effect can be granted. UPCL also submitted that the Petitioner has not amended the Petition as the regulation under which Petition has been filed has been amended vide RPO Regulations, (First Amendment), 2013 notified on 20.12.2013. UPCL also submitted that the Petition is liable to be rejected & the letter vide which Respondent-1 had rejected the application for accreditation be upheld.

1.12. Respondent-1 vide its written submission dated 28.03.2014 stated that since Respondent-2 has been considering the power purchased from Rajwakti HEP as compliance of RPO, therefore, based on NLDC's email dated 21.08.2012 it had rejected the application for accreditation in respect of Rajwakti HEP. Respondent-2 also submitted that relief sought by the Petitioner for accreditation under REC mechanism cannot be granted till UPCL considers power purchased from Rajwakti HEP as compliance for RPO.

- 1.13. On the issues raised by Respondent-2 during the hearing, Respondent-1 submitted that application for accreditation filed by any RE based generator is scrutinised in accordance with the Procedures framed under the RE Regulations and RPO Regulations, and in consultation with UPCL, PTCUL & SLDC, the application is processed. Respondent-1 submitted that RE based project is accredited on fulfillment of all the eligibility criteria in accordance with the Regulations & Procedures. Respondent-1 also submitted that in order to expedite the scrutiny process under REC mechanism, information were sought from Petitioner & Respondent-2 simultaneously.
- 1.14. Respondent-1 submitted a copy of report dated 24.05.2002 signed by the Petitioner & Respondent-2 in the matter of Synchronisation of Rajwakti HEP with 66 kV Joshimath feeder on 24.05.2002.
- 1.15. Written submissions made by Respondent-1 & 2 were forwarded to the Petitioner for submission of rejoinder. The Petitioner submitted its rejoinder on 21.04.2014 wherein it submitted that issues of maintainability of its Petition raised by UPCL were baseless & UPCL had no legal basis for making such observation. In its rejoinder, the Petitioner submitted that the Orders of the Commission in the matter referred by UPCL was set aside by the Hon'ble APTEL upholding validity of the PPA and, therefore, observations made in the Petition or the Order of the Commission do not hold good and cannot be used against the Petitioner. Vide its above referred rejoinder, the Petitioner also submitted that neither PPA nor any other communication of it suggests that the power was being sold to UPCL for meeting its RPO compliance. It further argued that the scheme of REC has been devised by bifurcating the attributes of supply of electricity component consisting of the supply of electricity from any type of generation and the green attribute relating to supply of renewable electricity. The values of these attributes are separately assigned for the purposes of marketable titles. The Petitioner submitted that the PPA with UPCL was only for supply of electricity component as the concept of REC had not evolved at the time of signing of the PPA and the same has not been modified to include the green attributes after the adoption of concept of REC. M/s HUPL further argued that the green attributes could have been

included in the supply of electricity had the Commission decided the tariff in accordance with provision of the Electricity Act, 2003 (Sec 61 & Sec 86 of the Act).

- 1.16. The Petitioner submitted that it has neither denied the obligation to supply electricity as per terms & condition of the PPA nor threatened termination of the PPA anywhere in the application to UREDA or in its Petition before the Commission. However, UPCL has not explained as to why the accreditation cannot be accepted during the existence of the PPA when there is no such stipulation in the regulations. With respect to UPCL's contention that the generator does not have connectivity to state network as required under regulation 8.1 of the RPO Regulations, 2010, the Petitioner submitted that the word "state network" has not been defined in this regulation, however, regulation 2.2 of the RPO Regulations, 2010 provides that words not defined in the regulation shall have the meaning as defined in the Act or other regulations of the Commission. It referred to the definition of state grid in UERC (State Grid Code) Regulations, 2007 and argued that though "state network" or "state grid" has not been defined in the UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010 and RPO Regulations, 2010 but UPCL has unilaterally decided to modify the regulation to include provision of the aforesaid regulations regarding connectivity to argue its case. The Petitioner contended that it is connected to 66 kV grid.
- 1.17. The Petitioner submitted that though it does not wish to terminate PPA at this stage, however, Clause 15.19, 15.20, 15.21 & 15.22 of the PPA entitles it for captive use of the power so generated or third party sale within or outside the State.
- 1.18. M/s HUPL while referring to regulation 8.1 of the RPO (Amendment) Regulations, 2013 submitted that tariff for its generating station has not been determined u/s 62 or 63 of the Electricity Act, 2003 and, therefore, it is entitled for REC. The Petitioner alleged that based on some interpretation of UPCL & NLDC, its rights & entitlements cannot be wished away. It, further, submitted that utilization of green attributes without any explicit agreement cannot deprive it of its legal entitlements. It submitted that penalty should be imposed on UPCL for using green attributes illegally.
- 1.19. The Petitioner submitted that UPCL's contention for non-joinder is not tenable as it has

no rights under the issuance of accreditation. It also referred to regulations 15, 16, 17 & 18 of the RPO Regulations, 2010 and submitted that the Commission can pass any order in the interest of justice.

- 1.20. With regard to UPCL's contention that the Petition has not been filed under amendment regulation of RE Regulations, 2013, the Petitioner submitted that entire arguments during the hearing were based on the amendment regulations.
- 1.21. The Petitioner submitted that UREDA acted illegally in accepting the recommendations of the NLDC which is contrary to the existing law. It, further, submitted that issuance of REC to the Petitioner cannot be linked to compliance of RPO by UPCL.
- 1.22. The generator while referring to regulation 8.1 of the RPO Regulations, 2010 submitted that it is connected to the State network and its tariff is not a preferential tariff determined u/s 62 or 63 of the Electricity Act, 2003. It, further, submitted that it is selling power at a rate lower than the APPC determined by the Commission in accordance with the PPA dated 22.12.2001. It submitted that it possess necessary infrastructure to carry out energy metering. It again submitted that neither the PPA nor any subsequent communication indicate that the supply was for the purposes of meeting the RPO. The Petitioner submitted that the option to sell green attributes is with the generator of the green energy and such right cannot be extinguished by wrong accounting by UPCL for the purposes of meeting obligations under RPO.
- 1.23. During the hearing, Petitioner was asked regarding rate of sale of power from the date of commissioning of its generating station and corresponding preferential tariff since the date, the concept of preferential tariff came in to existence. In its rejoinder, the Petitioner argued that issue of the date of PPA & corresponding APPC to be determined on the date of PPA and such an interpretation does not flow from the wording used in the regulations or Statement of Reasons. It submitted that the market is dynamic and, therefore, issuance of REC each year has been correlated with the APPC to be determined by the respective Commissions each year. It further submitted that basic feature of the regulation is that the option to sell the green attributes is with

the generator and such intention to sell the green attributes have to be specific and in writing. It also contended that UPCL is purchasing power at Rs 2.85 per unit from other developer having commissioned their plant in 2002 and UPCL is using the same for compliance of RPO.

2. Commission's views and decision

2.1. The Commission observed that the Petitioner had filed the Petition under the then prevailing RPO Regulations, 2010. Relevant Regulations 8.1 of RPO Regulations, 2010 specifying eligibility criteria for accreditation under REC mechanism is as follows:

“8.0 Eligibility for Accreditation

8.1 A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for accreditation subject to following conditions:

a. It has connectivity to the State network;

b. It does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Commission;

c. It sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase (excluding transmission charges) of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price; and

Explanation: For the purpose of these regulations, “Pooled Cost of Purchases” means the weighted average pooled price at which the distribution licensee has purchased the electricity including the cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.

d. It possesses the necessary infrastructure required to carry out energy metering and time-block wise accounting.

Provided that the renewable energy purchased by the obligated entity in excess of its Renewable Purchase Obligation, as certified by the State Nodal Agency, shall be deemed to have been supplied by the renewable generators at pooled cost of purchases on pro-rata basis,

at the option of such generators being given in writing to the concerned obligated entity and the State Nodal Agency and such generators shall also be entitled for accreditation only for such excess generation. The State Nodal Agency shall certify the quantum of such units for each generator after taking necessary data from all concerned. PPAs of such generators shall also have to be modified accordingly."

(Emphasis added)

The above regulations have been replaced by RPO (First Amendment) Regulations, 2013 w.e.f. 28.12.2013 given below:

"8.1 A generating company engaged in generation of electricity from renewable energy sources including self-consumption of generation from renewable energy based captive generation plant and renewable energy based Co-generation plants shall be eligible to apply for accreditation subject to following conditions:

a. It has connectivity to the State network and injects power into the grid. However, injection of power into the grid will not be a pre-requisite for accreditation in case of self consumption of generation from RE based captive generation plants and RE based Co-generation plants.

b. It does not have any power purchase agreement for the capacity related to such generation to sell electricity, to any Entity for the purpose of meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under section 63 of the Act by the appropriate Commission:

Provided that self consumption of generation from renewable energy sources based captive generation plants and renewable energy sources based cogeneration plants shall be based on the capacity as assessed by the distribution licensee of the State, and the same shall be considered as the capacity for captive consumption for the purpose of issue of certificates.

c. It sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at the pooled cost of power purchase (excluding transmission charges) of such distribution licensee as determined by the Commission, or (ii) to any other licensee or to an open

access consumer at a mutually agreed price, or through power exchange at market determined price; and

Explanation: For the purpose of these regulations, "Pooled Cost of Purchases" means the weighted average pooled price at which the distribution licensee has purchased the electricity including the cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be."

Provided that such a generating company having entered into a power purchase agreement for sale of electricity with the obligated entity for the purpose of meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under section 63 of the Act by the Commission shall not, in case of pre-mature termination of the agreement, be eligible for participating in the Renewable Energy Certificate (REC) scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement, whichever is earlier.

...."

(Emphasis added)

Regulation 8.1(b) of the above referred RPO Regulations, 2010 stipulates that the Project should not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Commission. In this regard, the Commission observed that the Petitioner had entered into a PPA dated 22.12.2001 for sale of power from its Rajwakti HEP to Respondent-2 at the rate of Rs. 2.50 PU as per the Policy of GoU. This rate was fixed and the PPA stipulated that this rate shall not be changed due to any reason, relevant clause of the aforesaid PPA is as under:

"6.2 TARIFF FOR NET SALEABLE ENERGY

The Corporation shall pay for Net Saleable Energy delivered by the Company to the Corporation at the Interconnection Point at a fixed rate of Rs 2.50 (Rupees two paise fifty only) per kilowatt hour. This rate is firm and fixed and shall not be changed due to any

reason whatsoever."

- 2.2. The Commission also observed that in exercise of its power under the Electricity Act, 2003, this Commission had determined the tariff for Rajwakti HEP and the rate worked out was even less than the rate agreed in the PPA. The order of the Commission was challenged in the Hon'ble ATE by the Petitioner. Hon'ble ATE vide its Order dated 30.10.2007 set aside the Order and ordered the Commission to adopt the tariff as per the power purchase agreement. The Petitioner continued to make supplies to the Respondent No. 2 at that tariff. This Commission prescribed RPO Obligation under UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2008 and the detailed mechanism for accreditation under renewable energy certificate (REC) framework were notified on November, 2010. The Petitioner continued to make supplies at the agreed and adopted rate till 2011-12. Only in 2012-13 when the average power purchase cost (APPC) exceeded marginally than the agreed tariff, he has come up for accreditation. Mere exceeding of APPC over his agreed rate cannot be a basis of claiming that, ab-initio, only the energy component was contracted and he is now entitled to separate compensation for environmental attributes. If that was so, the contention should have been raised by the Petitioner at the time of notification of RPO obligation or atleast when in November, 2010, the mechanism for accreditation was issued.
- 2.3. The Petitioner submitted that its tariff has not been determined u/s 62 or 63 of the Electricity Act, 2003, therefore, it should be entitled to REC. In this regard, it is hereby clarified that this Commission had determined the tariff of the Rajwakti HEP u/s 62 of the Electricity Act, 2003 and the same was much lower than the rate agreed upon vide PPA dated 22.12.2001. The Petitioner also contended that the Commission's Order was set aside by the Hon'ble ATE. In this regard, it can be noted that the Hon'ble ATE vide Order dated 30.10.2007 had dealt with and settled the issue of validity/applicability of the PPA dated 22.12.2001. Relevant extract of the aforesaid Order is reproduced as following:

“

Decision with reasons:

23) The validity of the PPA is the basic question in this appeal. If the PPA is valid, the price of power determined by the PPA cannot be undone by a tariff order of the Commission.

...

35) In view of the above opinion expressed by us, the tariff vis-à-vis UPCL, respondent No.2, will have to be based on the PPA dated 22.12.2001. We do not find it necessary to go into the other objections, listed in para 10(a) to (g) above, to the impugned tariff order. We, therefore, allow the appeal and direct the Commission to adopt the tariff as per P.P.A. of 22.12.2001 between the appellant and the UPCL w.e.f. from the commercial operation date of the appellant's station and the appellant will be entitled to receive the arrears, if any, with interest @ 6% from the respondent No.2, UPCL.

...”

Emphasis added

Consequently the tariff as per the PPA existing between Petitioner and Respondent No. 2 stands adopted by the Commission and such adoption can only be under Section 63 of Electricity Act, 2003 as no other Section of the Act authorises the Commission to adopt the tariff. Moreover, the tariff adopted was higher than tariff determined by the Commission u/s 62 of the Electricity Act, 2003. Accordingly, contention of the Petitioner that his tariff has not been determined u/s 62 or 63 is not valid and hence, rejected.

- 2.4. Regulation 8.1(b) of the RPO (First Amendment) Regulations, 2013 clearly specifies that the RE based generating station should not have any PPA for the capacity related to such generation to sell electricity, to any “Obligated Entity” for the purpose of meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under section 63 of the Act by the appropriate Commission. The Commission in its analysis in para 2.3 above, has determined that the contention of Petitioner that

tariff was not determined u/s 62 or 63 of the Electricity Act, 2003 is not valid. In fact, Petitioner got a tariff better than that determined by the Commission u/s 62 Electricity Act, 2003. This being so, the Commission holds that the Petitioner squarely falls in the ambit of Regulation 8.1(b) mentioned above.

- 2.5. The Petitioner argued that neither the PPA nor any subsequent communication indicates that the supply was for the purposes of meeting the RPO compliances. This is a mere afterthought. If the Petitioner was of the view that he is selling only the energy component, appropriate time for agitating this was when regulation for accreditation was notified.
- 2.6. The Commission is not denying the submission of the Petitioner that the option to sell the green attributes lies with the generator but that in the instant case such option is unavailable to him owing to his prior commitments to Respondent No. 2.
- 2.7. The Petitioner while expressing its willingness for supplying of power to Respondent-2 also referred to the Clauses 15.18, 15.19, 15.20, 15.21 & 15.22 and stated that it is entitled for captive use or third party sale of power within or outside the State. The above referred Clauses of the PPA provide that:

15.18 *TRIPARTITE AGREEMENT*

Both the parties agree that if the Company, in terms of the provisions under Implementation Agreement, consider it necessary to incorporate a new Public/Private Limited Company for the implementation and operation of the Project and a Tripartite Agreement is entered amongst the Government/Company and the newly formed company, whereby all the rights and obligations of the Company under the Implementation Agreement or transferred to such newly formed Company a similar Tripartite Agreement shall also be entered into amongst the Corporation, the Company and newly formed company in respect of this Agreement.

15.19 *CAPTIVE USE*

If the Company opts to make captive use of the Net Salable Energy at a subsequent time during the Agreement period, both the parties agree that a Supplementary Agreement shall be executed for the purpose, the period of such an Agreement not exceeding the terms specified under Article-10.

In the event of a Tripartite Agreement as per Section 15.18, if the Company and the newly formed company request the Corporation for allowing for captive use of power by the Company the same shall be allowed by the Corporation so long as the holds equity shares of not less than 51% in the newly formed company. Such captive use shall also be governed by the terms and conditions of the Supplementary Agreement.

15.20 Wheeling for captive use within the State shall be allowed by Corporation at a fee of 2% (including system losses). For sale/captive use of power outside the State of Uttaranchal the Corporation shall levy wheeling Charges of 10% (including system losses) of the energy received (excluding royalty) at the interconnection point for wheeling/transfer of power upto the mutually agreed interstate point. The benefit on account of deemed generation shall not be allowed in case where captive use/third party sale is intended to be made outside the State.

15.21 The waiver of royalty for 15 years will however not be applicable to the projects, which make captive use of power outside the State or make third party sale outside the State.

15.22 Thirty party sale within State will not be allowed except as provided in Clause 10.7.1.

Though in accordance with above mentioned provision of the PPA, the Petitioner is entitled for captive use of power, however, Clause 15.22 clearly restricts third party sale within the State. Accordingly to this extent, the contention of Petitioner is not sustainable. Infact, as provided in Section 10 of the Electricity Act, 2003, the generator is free to sell power to any licensee or a consumer subject to sub-section (2) of section 42. However, having signed the PPA, both the parties shall have to abide by the stipulations provided therein till such time the PPA is amended for the Petitioner to become eligible to be covered under the REC framework.

2.8. The Petitioner prayed that Respondent No. 1 may be directed to issue the certificates from the date of Application for accreditation. It also referred to regulations 15, 16, 17 & 18 of the RPO Regulations, 2010 and submitted that the Commission can pass any order in the interest of justice. In this regard, the Commission clarifies that accreditation under REC mechanism is allowed by the nodal agency on fulfillment of eligibility criteria in accordance with the regulations.

2.9. Based on the above, the Commission upholds the contentions advanced by both the

Respondents-1 & 2 that Rajwakti HEP of the Petitioner does not meet the eligibility criteria for accreditation under REC mechanism and, hence, is not entitled to reliefs sought.

2.10. Accordingly, the Petition is hereby disposed off.

2.11. Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member - Chairman