

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 67 of 2026

In the matter of:

Petition seeking adoption of tariff under Sections 63, 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 read with Regulation 59 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 for 15 MW/37.5 MWh Battery Energy Storage System at Khatima through Tariff Based Competitive Bidding with Viability Gap Funding Supported through Power System Development Fund.

AND

Petition No. 68 of 2026

In the matter of:

Petition seeking adoption of tariff under Sections 63, 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 read with Regulation 59 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 for 30 MW/75 MWh Battery Energy Storage System at Dhakrani through Tariff Based Competitive Bidding with Viability Gap Funding Supported through Power System Development Fund.

AND

Petition No. 69 of 2026

In the matter of:

Petition seeking adoption of tariff under Sections 63, 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 read with Regulation 59 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 for 16 MW/40 MWh Battery Energy Storage System at Pathri through Tariff Based Competitive Bidding with Viability Gap Funding Supported through Power System Development Fund.

In the matter of:

UJVN Ltd.

... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Limited.

M/s Patanjali Renewable Energy Pvt. Ltd.

...Respondents

AND

Petition No. 70 of 2026

In the matter of:

Petition seeking adoption of tariff under Sections 63, 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 read with Regulation 59 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 for 15 MW/37.5 MWh Battery Energy Storage System at Tiloth through Tariff Based Competitive Bidding with Viability Gap Funding Supported through Power System Development Fund.

In the matter of:

UJVN Ltd.

... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Limited.

M/s Armee Infotech Ltd.

...Respondents

AND

Petition No. 71 of 2026

In the matter of:

Petition under Section 86(1)(b) of the Electricity Act, 2003, read with the Regulation 39(3) of Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 and Regulation 74(1) of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2024 for approval for draft Battery Energy Storage Purchase Agreement (BESPA) between Uttarakhand Power Corporation Limited and UJVN Limited for procurement of

15MW/37.5 MWh Battery Energy Storage System capacity to be established near the Khatima Sub-Station, District Udham Singh Nagar, Uttarakhand.

AND

Petition No. 72 of 2026

In the matter of:

Petition under Section 86(1)(b) of the Electricity Act, 2003, read with Regulation 39(3) of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014, and Regulation 74(1) of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2024, for approval of the draft Battery Energy Storage Purchase Agreement (BESPA) proposed to be executed between Uttarakhand Power Corporation Limited and UJVN Limited for procurement of power from the 15 MW/37.5 MWh Battery Energy Storage System (BESS) Project proposed to be set up near the 220/33 kV Grid Sub-Station, Tiloth, Tiloth HEP, District Uttarkashi, Uttarakhand.

AND

Petition No. 73 of 2026

In the matter of:

Petition under Section 86(1)(b) of the Electricity Act, 2003, read with the Regulation 39(3) of Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 and Regulation 74(1) of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2024 for approval of draft Battery Energy Storage Purchase Agreement (BESPA) to be executed between Uttarakhand Power Corporation Limited and M/s UJVN Limited for procurement of power from the 16 MW/40 MWh Battery Energy Storage System (BESS) proposed to be set up at Pathri, District Haridwar, Uttarakhand.

AND

Petition No. 74 of 2026

In the matter of:

Petition under Section 86(1)(b) of the Electricity Act, 2003, read with Regulation 39(3) of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 and Regulation 74(1) of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2024 for approval of the draft Battery Energy Storage Purchase Agreement (BESPA) to be executed between Uttarakhand Power Corporation Limited and UJVN Limited for purchase of power from the 30 MW/75 MWh Battery Energy Storage System Project at Dhakrani S/s, District Dehradun, Uttarakhand.

In the matter of:

Uttarakhand Power Corporation Limited.

... Petitioner

AND

In the matter of:

UJVN Ltd.

... Respondents

AND

Petition No. 22 of 2026

In the matter of:

Petition under Section 86(1)(b) of the Electricity Act, 2003, read with the Regulation 39(3) of Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 and Regulation 74(1) of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2024 for approval for draft Battery Energy Storage Purchase Agreement (BESPA) between Uttarakhand Power Corporation Limited and Battery Energy Storage System Developer.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

CORAM

Shri M.L. Prasad

Chairman

Shri Anurag Sharma

Member (Law)

Shri Prabhat Kishor Dimri

Member (Technical)

Date of Order: September 30, 2026

This Order relates to the Petitions dated 25.08.2026 filed by UJVN Ltd. under Section

86(1)(b), Section 86(1)(e) read with Section 63 of the Electricity Act, 2003 and Regulation 59 of the UERC (Conduct of Business) Regulations, 2014, seeking adoption of tariff for Battery Energy Storage Projects to be developed, having capacity of 15 MW/37.5 MWh at Khatima, 30 MW/75 MWh at Dhakrani, 16 MW/40 MWh at Pathri and 15 MW/37/5 MWh at Tiloth, through tariff-based competitive bidding process in accordance with the Guidelines dated 10.03.2022 issued by Ministry of Power for Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services, with Viability Gap Funding supported through Power System Development Fund and the Petitions filed by Uttarakhand Power Corporation Ltd. (UPCL) under Section 86(1)(b) of the Electricity Act, 2003 read with Regulation 39(3) of UERC (Conduct of Business) Regulations, 2014 and Regulation 74(1) of UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2024 for approval of draft Battery Energy Storage Purchase Agreement (BESPA) proposed to be executed with UJVN Ltd. for procurement of power from proposed BESS projects, having capacity of 15 MW/37.5 MWh at Khatima, 30 MW/75 MWh at Dhakrani, 16 MW/40 MWh at Pathri and 15 MW/37/5 MWh at Tiloth.

Since all the above-mentioned Petitions are pertaining to the same proposed BESS projects, i.e. 15 MW/37.5 MWh at Khatima, 30 MW/75 MWh at Dhakrani, 16 MW/40 MWh at Pathri and 15 MW/37/5 MWh at Tiloth (collectively hereinafter referred to as “BESS projects”), accordingly, all the eight Petitions are being disposed of vide this common Order.

1. Background

1.1. On 10.03.2022, the Ministry of Power, Government of India (MoP, GoI) issued the “Guidelines for Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services” (BESS Guidelines). These Guidelines provide for procurement of power/energy from BESS projects through a competitive bidding process under Section 63 of the Electricity Act, 2003. The BESS projects are to be developed on a Build-Own-Operate (BOO) or Build-Own-Operate-Transfer (BOOT) basis.

1.2. Subsequently, vide letter dated 17.04.2025, the Principal Secretary (Energy), Government of Uttarakhand, conveyed the State Government’s willingness to implement 500 MWh of BESS capacity in Uttarakhand and requested in-principle approval for the eligible Viability Gap Funding (VGF). Pursuant to this request, the MoP, GoI under its VGF Scheme for

development of standalone BESS projects supported through the Power System Development Fund (PSDF), allocated 500 MWh BESS capacity to Uttarakhand. Out of this allocation, 250 MWh is being implemented through UJVN Ltd. and the remaining 250 MWh through UPCL.

- 1.3. Thereafter, the Commission, on the request of UJVN Ltd., vide its Order dated 06.01.2026 in Petition No. 94 of 2025 (Suo-Moto), translated the ceiling unit charges, as specified by the Commission through its UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) (Second Amendment) Regulations, 2025 (hereinafter referred to as "RE Regulations (Second Amendment), 2025") for BESS projects to be commissioned during FY 2025-26. Subsequently, while determining the benchmark capital cost and capacity charges for BESS and solar energy based projects for FY 2026-27, the Commission revised the applicable charges vide its Suo-Moto Order dated 04.06.2026.
- 1.4. UJVN Ltd. thereafter filed a Review Petition seeking review of the revised ceiling tariff/capacity charge for BESS projects and requested that the earlier ceiling capacity charge of Rs. 3,96,747/MW/month be continued for BESS projects proposed to be allotted during FY 2026-27. Further, a Petitioner was also filed by UPCL seeking removal of the regulatory difficulty arising on account of revision of the benchmark Capacity Charge after conclusion of the competitive bidding process and issuance of the Letters of Award, and for permitting implementation of the concluded procurement process under the benchmark Capacity Charge determined by the Commission vide Order dated 06.01.2026.

The Commission, however, vide its Orders dated 27.07.2026 in the matter, rejected the Petitions filed by UJVN Ltd. & UPCL and observed that, after completion of the ongoing tariff-based competitive bidding process, UJVN Ltd. may approach the Commission by filing an appropriate Petition under Section 63 of the Electricity Act, 2003 for adoption of the tariff discovered through the bidding process, in accordance with the UERC (Conduct of Business) Regulations, 2014, along with the consequential agreements, if any.

- 1.5. Accordingly, the present Petitions have been filed by UJVN Ltd. and UPCL seeking adoption of the tariff discovered through the tariff-based competitive bidding process under Section 63 of the Electricity Act, 2003 and approval of BESPA for the above mentions BESS projects respectively.

2. Petitioners' Submissions

A. UJVN Ltd.'s Submissions (Petition no. 67 to 70 of 2026)

- 2.1. UJVN Ltd. submitted that the Government of Uttarakhand has undertaken development of BESS projects in the State through its energy enterprises, namely UJVN Ltd./UPCL/PTCUL, with a view to addressing the challenges posed by increasing penetration of variable and intermittent renewable energy in the grid. UJVN Ltd. submitted that BESS facilitates grid stability, energy/peak shifting, ancillary support services and larger integration of renewable energy, and benefits consumers by reducing peak deficits and peak tariffs, lowering carbon emissions, deferring transmission and distribution capital expenditure, and enabling energy arbitrage.
- 2.2. UJVN Ltd. submitted that it has undertaken procurement of BESS capacity through a transparent Tariff Based Competitive Bidding ("TBCB") process, acting as an intermediary procurer/implementing agency that procures BESS capacity from the selected developer and, on a back-to-back basis, makes it available to UPCL. It is submitted that, for this purpose, UJVN Ltd. is required to execute a Battery Energy Storage Purchase Agreement (BESPA) with the selected developer and a corresponding Battery Energy Storage Sale Agreement (BESSA) with UPCL, with the Capacity Charge under both agreements being kept subject to adoption by the Commission.
- 2.3. UJVN Ltd. submitted that on 10.03.2022, MoP, GoI notified BESS Guidelines under Section 63 of the Act, for procurement of BESS capacity through competitive bidding on a Build-Own-Operate ("BOO")/Build-Own-Operate-Transfer ("BOOT") basis. UJVN Ltd. further submitted that, vide letter dated 17.04.2025, the Principal Secretary (Energy), Government of Uttarakhand, conveyed the State's willingness to implement an allocation of 500 MWh of BESS capacity and sought in-principle approval of the eligible VGF. Pursuant thereto, MoP, under the VGF Scheme for standalone BESS projects supported through PSDF, allocated 500 MWh of BESS capacity to the State, of which 250 MWh is being implemented through UJVN Ltd. and the remaining capacity through UPCL.

The four present Petitions relate to the BESS projects being implemented by UJVN Ltd. out of the said allocation, namely 30 MW/75 MWh at Dhakrani, 15 MW/37.5 MWh at Khatima, 16 MW/40 MWh at Pathri, and 15 MW/37.5 MWh at Tiloith.

- 2.4. UJVN Ltd. submitted that each of the four Petitions is filed under Section 63 of the Act, which provides that the Appropriate Commission shall adopt the tariff where it has been determined through a transparent process of bidding carried out in accordance with guidelines issued by the Central Government, read with Section 86(1)(b) and Section 86(1)(e) of the Act, and Regulation 59 of UERC (Conduct of Business) Regulations, 2014, which preserves the Commission's inherent and residuary powers.
- 2.5. UJVN Ltd. submitted that the Petitions have been filed pursuant to the Commission's Order dated 27.07.2026 in Miscellaneous Application No. 51 of 2026, directing UJVN Ltd. to approach the Commission for adoption of tariff upon completion of the bidding process.
- 2.6. UJVN Ltd. further submitted that the Commission, vide order dated 06.01.2026 in Petition No. 94 of 2025 (Suo-Moto), in which UJVN Ltd. was itself the applicant, had specified a Ceiling Capacity Charge for standalone BESS projects of Rs. 3,96,747/MW/Month, based on the market conditions and cost parameters then prevailing, and that this Ceiling Capacity Charge formed the basis on which UJVN Ltd. prepared and issued the RfPs and initiated the competitive bidding process for all four projects, with the entire process being conducted within the knowledge of, and subject to, the Commission's regulatory oversight.
- 2.7. UJVN Ltd. submitted that MD, UJVN Ltd. approved the bidding/RfP documents, including the qualification criteria, for the four BESS projects at Dhakrani (30 MW/75 MWh), Tiloth (15 MW/37.5 MWh), Khatima (15 MW/37.5 MWh) and Pathri (16 MW/40 MWh), at the Ceiling Capacity Charge determined vide order dated 06.01.2026, and that selection of bidders for all four projects was carried out through the e-Procurement process. It is submitted that RfPs for Dhakrani, Khatima and Tiloth, aggregating 60 MW/150 MWh, were floated as a single package of three projects on a BOOT basis, with the RfP issued/made available for download on 02.02.2026 through the Uttarakhand e-Procurement portal, while a separate RfP for the 16 MW/40 MWh Pathri project was issued on 06.02.2026. UJVN Ltd. submitted that the NIT and complete bidding documents for all four projects were, in addition to being uploaded on the e-Procurement portal and UJVN Ltd.'s official website, published in the Times of India, Hindustan Times, The Hindu, New Indian Express and local Hindi/English newspapers in Uttarakhand, to ensure wide publicity of the bidding process.

- 2.8. UJVN Ltd. submitted that, during the bidding period, queries common to all four tenders were received from several prospective bidders, including Power Grid Corporation of India Ltd., Him Urja, Ingro Infra One Pvt. Ltd., Veracity Renewables and Patanjali Renewable Energy Pvt. Ltd., amongst others, seeking clarifications on technical, qualification, commercial and contractual aspects of the RfPs, and that clarifications/addenda were issued in response through the e-Procurement portal. It is submitted that, to encourage wider participation and enhance competition, the bid submission timeline for all four tenders was extended on three occasions – first to 12.03.2026, then to 23.03.2026, and finally to 30.03.2026, which became the last date for submission of electronic bids for all four projects.
- 2.9. UJVN Ltd. submitted that, upon expiry of the final bid submission date, a total of 31 bids were received across the three-project package, 10 bids for Dhakrani, 10 bids for Khatima and 11 bids for Tiloth, while 12 bids were received for the separate Pathri tender and the technical parts of all were opened on 31.03.2026. It is submitted that a common Bid Evaluation Committee, comprising five members including two outside experts, was constituted vide the approval of Managing Director of the Company on 11.03.2026 for all four projects, and that it carried out a detailed technical scrutiny of the bids strictly in accordance with the eligibility, qualification and technical criteria prescribed in the respective RfPs, seeking clarifications from bidders wherever necessary.
- 2.10. According to UJVN Ltd., the techno-commercial evaluation for all four projects was completed on 29.07.2026, and the following bidders were found technically responsive and eligible for opening of financial bids:
- a. **Dhakrani (6 bidders):** M/s Patanjali Renewable Energy Pvt. Ltd., M/s Armee Infotech Ltd., M/s Opera Energy Pvt. Ltd., M/s Hetvi Construction Ltd., M/s LC Infra Projects Pvt. Ltd. and M/s JSIW Infrastructure Pvt. Ltd.
 - b. **Khatima (6 bidders):** M/s Patanjali Renewable Energy Pvt. Ltd., M/s SMA Energy & Infra Pvt. Ltd., M/s Opera Energy Pvt. Ltd., M/s JSIW Infrastructure Pvt. Ltd., M/s LC Infra Projects Pvt. Ltd. and M/s Bhoorathnom Construction Company Pvt. Ltd.
 - c. **Pathri (6 bidders):** M/s Patanjali Renewable Energy Pvt. Ltd., M/s Opera Energy Pvt. Ltd., M/s JSIW Infrastructure Pvt. Ltd., M/s Hetvi Construction Ltd., M/s LC Infra

Projects Pvt. Ltd. and M/s Bhoorathnom Construction Company Pvt. Ltd.

d. **Tiloth (7 bidders):** M/s Patanjali Renewable Energy Pvt. Ltd., M/s Armeem Infotech Ltd., M/s Opera Energy Pvt. Ltd., M/s Hetvi Construction Ltd., M/s LC Infra Projects Pvt. Ltd., M/s Bhoorathnom Construction Company Pvt. Ltd. and M/s SMA Energy & Infra Pvt. Ltd.

2.11. UJVN Ltd. submitted that the financial bids of the technically qualified bidders for all the four projects were opened on 30.07.2026 on the e-Procurement portal, and that, as per the common Clause 3.25.1(b) of the RfPs, the qualified bidders in each tender were arranged in ascending order of their quoted tariff, with the bidder quoting the lowest (L-1) tariff for the entire project period being declared successful, and ties, if any, were resolved by draw of lots.

2.12. UJVN Ltd. submitted the following project-wise outcome of the financial bid evaluation, in each case comparing the discovered L-1 Capacity Charge with the Ceiling Capacity Charge of Rs. 3,96,747/MW/Month fixed by the Commission's order dated 06.01.2026, which was applicable at the time the respective RfPs were issued:

Sr.	Project	L-1 Bidder / Awardee	Capacity Charge excl. GST (Rs./MW/Month)	Capacity Charge incl. 18% GST (Rs./MW/Month)
1.	Dhakrani (30 MW/75 MWh)	M/s Patanjali Renewable Energy Pvt. Ltd.	2,69,832	3,18,402
2.	Khatima (15 MW/37.5 MWh)	M/s Patanjali Renewable Energy Pvt. Ltd.	2,79,782	3,30,143
3.	Tiloth (15 MW/37.5 MWh)	M/s Patanjali Renewable Energy Pvt. Ltd. (original L-1); awarded to M/s Armeem Infotech Ltd. (L-2) at the L-1 rate	2,80,000	3,30,400
4.	Pathri (16 MW/40 MWh)	M/s Patanjali Renewable Energy Pvt. Ltd.	2,79,501	3,29,811

2.13. UJVN Ltd. submitted that, in each case, the discovered L-1 Capacity Charge was substantially below the Ceiling Capacity Charge, and that this demonstrated that the competitive bidding process had resulted in discovery of Capacity Charges below the applicable regulatory ceiling, reflecting, according to UJVN Ltd., a competitive market outcome in the interest of economic procurement.

2.14. UJVN Ltd. submitted that M/s Patanjali Renewable Energy Pvt. Ltd. emerged as the L-1 bidder in respect of all four projects, and further, that Clause 3.23, Note (1) of the RfP for Phase-I (Dhakrani, Tiloth and Khatima) restricted allotment of more than two projects to a

single successful bidder, providing that where a bidder emerges L-1 in more than two projects, the second-lowest bidder for the smallest lot would be offered the opportunity to match the L-1 rate, followed by subsequent bidders in order, if required. UJVN Ltd. submitted that, in light of this clause, UJVN Ltd. sought M/s Patanjali Renewable Energy Pvt. Ltd.'s option vide email dated 30.07.2026 to forego one of the three Phase-I projects, and that M/s Patanjali Renewable Energy Pvt. Ltd. exercised its option to forego the Tiloth project vide letter dated 31.07.2026. UJVN Ltd. submitted that it thereafter invited the next-ranked bidder for Tiloth, M/s Armee Infotech Ltd., to execute that project at the original L-1 Capacity Charge, which M/s Armee Infotech Ltd. unconditionally accepted vide letter dated 01.08.2026. Accordingly, adoption has been sought of the Capacity Charge of Rs. 2,80,000/MW/Month (excluding GST) for Tiloth, payable to M/s Armee Infotech Ltd. as the awarded developer, whereas for Dhakrani, Khatima and Pathri, the discovered Capacity Charge is proposed to be payable to M/s Patanjali Renewable Energy Pvt. Ltd.

- 2.15. UJVN Ltd. submitted that its Board of Directors, vide a common resolution dated 24.08.2026, accorded approval for award of the respective projects, i.e. Dhakrani, Khatima and Pathri to M/s Patanjali Renewable Energy Pvt. Ltd., and Tiloth to M/s Armee Infotech Ltd and for filing of the four present Petitions under Section 63 of the Act. It was further submitted that, pursuant to the Board's approval, UJVN Ltd. issued Letters of Award/Letters of Intent to the respective developers at the Capacity Charges set out above, subject to adoption of the tariff by the Commission.
- 2.16. UJVN Ltd. submitted that the bidding process for all four projects was conducted in an open, transparent and non-discriminatory manner, with wide publicity through the e-Procurement portal and national/regional newspapers, adequate and equal opportunity by way of clarifications and time extensions to prospective bidders, and technical and financial evaluation was carried out strictly in accordance with the respective RfPs and the BESS Guidelines, after obtaining prior approvals from UJVN Ltd.'s designated authorities and Board of Directors. It was submitted that each tender resulted in sufficient competition, with multiple technically responsive bidders participating, and that the L-1 Capacity Charge for each project was discovered through the bid evaluation methodology prescribed in the RfP, in accordance with Section 63 of the Act and the BESS Guidelines issued by MoP, such that the discovered Capacity Charges qualify for adoption by the

Commission under Section 63.

- 2.17. UJVN Ltd. submitted that, subsequent to the Commission's Order dated 06.01.2026 fixing the Ceiling Capacity Charge of Rs. 3,96,747/MW/Month, the Commission issued a Draft Order dated 07.04.2026 proposing to revise the benchmark capital cost and generic Capacity Charge for standalone BESS projects to be commissioned during FY 2026-27, on which UJVN Ltd. submitted detailed comments/objections during April-May 2026, supported by project-specific financial analysis, battery pricing, financing assumptions and project cash-flow/viability calculations. It was submitted that the Commission nonetheless passed its Order dated 04.06.2026 in Petition No. 18 of 2026 (Suo-Moto), revising the generic Capacity Charge for standalone BESS projects to Rs. 2,59,244/MW/Month.
- 2.18. UJVN Ltd. submitted that it filed a Review Petition on 30.06.2026 against the Order dated 04.06.2026, seeking retention of the Capacity Charge of Rs. 3,96,747/MW/Month for projects to be allotted during FY 2026-27. The Commission, vide its Order dated 27.07.2026 in the said Review Petition, permitted UJVN Ltd. to complete the ongoing competitive bidding process for all four projects and thereafter approach the Commission with appropriate petitions under Section 63 of the Act for adoption of the tariff discovered through such bidding. UJVN Ltd. submitted that the four present Petitions have, accordingly, been filed in compliance with, the said direction.
- 2.19. UJVN Ltd. submitted that implementation of each project requires execution of two separate agreements: (i) a BESPAs between UJVN Ltd. and the awarded developer, under which UJVN Ltd. shall procure the BESS capacity at the L-1 Capacity Charge discovered through the respective bidding process; and (ii) a BESSAs between UJVN Ltd. and UPCL, under which the Capacity Charge payable by UPCL to UJVN Ltd. shall comprise the said L-1 Capacity Charge plus the margin applicable to UJVN Ltd. as an intermediary procurer.

In this regard, UJVN Ltd. submitted that across all four Petitions, the margin presently applicable to it is Rs. 0.05/kWh (5 paise/unit), in terms of Regulation 2(3) of RE Regulations (Second Amendment), 2025 and that application of the said margin for computation of the Capacity Charge payable by UPCL to UJVN Ltd. would not cause prejudice to any party while enabling timely execution of the respective BESSAs.

- 2.20. It also submitted that, following completion of the financial bid process for all four projects, UJVN Ltd. intimated UPCL of the emerging L-1 bidders and the discovered Capacity Charges vide a common letter dated 03.08.2026, requesting UPCL to initiate action for execution of the BESPAs/BESSAs in view of the timeline prescribed under the MoP VGF Scheme, and again vide a common letter dated 13.08.2026, reiterating the request for preparation, examination, vetting and finalisation of the BESPAs/BESSAs (with the Capacity Charge in each case kept subject to the Commission's adoption under Section 63), while highlighting that the timeline for signing of the BESPAs/BESSAs had been extended by MoP up to 30.09.2026.
- 2.21. UJVN Ltd. submitted that timely adoption of the discovered Capacity Charges by the Commission is necessary to enable execution of the BESPAs/BESSAs for all four projects within the timeline of 30.09.2026 approved by MoP under the VGF Scheme and to enable timely commissioning of the BESS capacity and that any delay in adoption of the tariffs may adversely affect the availability of VGF support and jeopardise implementation of the BESS projects, along with the financial assistance available under the Scheme.
- 2.22. In each of the four Petitions, UJVN Ltd. has prayed that the Commission may be pleased to:
- (i) take the respective Petition on record;
 - (ii) adopt the tariff/Capacity Charge discovered for the concerned project namely, Rs. 2,69,832/MW/Month for Dhakrani, Rs. 2,79,782/MW/Month for Khatima, Rs. 2,79,501/MW/Month for Pathri and Rs. 2,80,000/MW/Month for Tiloth (all excluding GST) and approve the draft BESPAs submitted along with the concerned RfP, permitting its execution with the awarded developer;
 - (iii) approve/apply the margin of Rs. 0.05/kWh (5 paise/unit), presently applicable to UJVN Ltd. under Regulation 2(3) of RE Regulations (Second Amendment), 2025, over and above the adopted L-1 Capacity Charge, for computation of the Capacity Charge payable by UPCL to UJVN Ltd. under the respective BESSA;
 - (iv) approve the pass-through of the adopted tariff, the margin, and all change in law and other permissible charges to UPCL in terms of the respective BESSA;
 - (v) permit UJVN Ltd. to make further submissions in the course of the proceedings;

- (vi) pass such other order(s) as the Commission may deem fit in the facts and circumstances of each case.

B. UPCL's Submissions (Petition no. 71 to 74 of 2026)

- 2.23. UPCL submitted that each of the four Petitions have been filed under Section 86(1)(b) of the Electricity Act, 2003 ("Act"), read with Regulation 39(3) of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 ("Business Regulations, 2014"), and Regulation 74(1) of the UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2024 ("MYT Regulations, 2024"), seeking approval of the Commission for the draft BESPA proposed to be executed between UPCL and UJVN Ltd. for the concerned BESS projects.
- 2.24. UPCL submitted that Section 86(1)(b) of the Act empowers the Commission to regulate the electricity purchase and procurement process of the distribution licensees, including the price at which electricity is to be procured through agreements for purchase of power. UPCL further submitted that under its Distribution and Retail Supply Licence dated 20.06.2003, it is entitled to purchase or acquire electricity under power purchase agreements or procurement processes approved by the Commission, and is required to do so in an economical manner and through a transparent power purchase/procurement process, in accordance with the Regulations, guidelines and directions of the Commission. UPCL also relied on Regulation 39(3) of the UERC (Conduct of Business) Regulations, 2014, which requires a licensee to apply to the Commission for approval of a draft power purchase agreement, and on Regulation 74(1) of the MYT Regulations, 2024, which requires prior approval of the Commission for every agreement or arrangement for power procurement by a distribution licensee entered into after the Regulations came into effect.
- 2.25. UPCL submitted that with global advancements in renewable energy technology, renewable energy has emerged as a cost-effective and sustainable source for meeting growing energy demand, but that increasing penetration of variable renewable energy sources exposes the grid to operational challenges such as intermittency, variability and supply-demand mismatches.
- 2.26. UPCL submitted that the MoP, GoI, vide Guidelines dated 09.06.2025 under the Viability Gap Funding ("VGF") Scheme for development of BESS supported through the Power

System Development Fund ("PSDF"), has envisaged promotion of energy storage infrastructure, and that VGF support at the rate of Rs. 18 lakh per MWh has been approved for the State of Uttarakhand for development of 500 MWh of BESS capacity, to be extended to project developers.

- 2.27. UPCL submitted that BESS plays a crucial role in ensuring grid stability, particularly during peak demand, by storing excess energy during low demand and supplying it during high demand and provides rapid response capabilities that improve overall grid performance.
- 2.28. UPCL submitted, with reference to the Central Electricity Authority's ("CEA") Report on identification of storage usage and ancillary services, that Pumped Hydro Storage Systems ("PHS") and BESS are commercially viable storage solutions, and, with reference to CEA's Report on Optimal Generation Capacity Mix for FY 2029-30 (Version 2.0), that the said Report envisages installation of approximately 41,650 MW/208,250 MWh of BESS capacity, in addition to 18,986 MW of PHS.
- 2.29. UPCL submitted that as per the National Electricity Plan, 2023 ("NEP 2023"), the energy storage capacity requirement is projected at 16.13 GW (7.4 GW PSP and 8.68 GW BESS) for FY 2026-27, with a storage capacity of 82.32 GWh (47.6 GWh from PSP and 34.72 GWh from BESS), and that, in line with NEP 2023, the Commission has fixed a minimum percentage of total State power consumption to be met through Energy Storage Systems as the Energy Storage Obligation (ESO) of the State Discom.
- 2.30. UPCL submitted that the Commission, vide RE Regulations (First Amendment), 2024 introduced ESO targets applicable from FY 2023-24 onwards, specified in a graded manner requiring distribution licensees to progressively procure energy storage equivalent to 1.0% of total electricity consumption in FY 2023-24, increasing annually up to 4.0% by FY 2029-30, and that this obligation is deemed fulfilled only when at least 85% of the procured energy storage, on an annual basis, is sourced from renewable energy.
- 2.31. UPCL submitted, in materially similar terms across the Petitions, that UJVN Ltd. has undertaken to develop/ diversify into the BESS business at its power stations/sub-stations, pursuant to the MoP VGF Guidelines dated 09.06.2025. UPCL submitted that UJVN Ltd. had undertaken development of BESS capacity aggregating 76 MW/190 MWh in the State.

- 2.32. UPCL submitted that UJVN Ltd., acting as "Procurer," floated a RfP inviting bids from interested Bidders for selection of a Project Developer for the concerned BESS project, on a BOOT basis, through TBCB under Section 63 of the Act, with VGF support through the PSDF Scheme. UPCL submitted that DPR for each of the BESS project was got prepared for evaluating the technical and commercial feasibility of the concerned BESS project. UPCL further submitted that the selected Project Developer is required to commission the concerned BESS project within 18 months from the date of signing of the BESPA, or the date of start of the project, whichever is earlier.
- 2.33. UPCL submitted that the BESPA, discovered through the TBCB process (whether between UJVNL and the successful bidder, or the back-to-back agreement between UPCL and UJVNL, as applicable) is to be for a term of 12 years from the Commercial Operation Date (CoD) of the project. UPCL submitted that the underlying procurement of BESS capacity has been/is being undertaken by UJVNL through a transparent, tariff-based competitive bidding process, in accordance with Section 63 of the Act and the guidelines issued by the Ministry of Power, ensuring fair competition, transparency and optimal tariff/price discovery, and that the lowest evaluated (L-1) bidder is to be selected for execution of the BESPA, the tariff whereof would form the basis of UPCL's procurement under the draft BESPA placed before the Commission.
- 2.34. UPCL submitted that integration of BESS with its power procurement portfolio is expected to contribute to grid stability/flexibility, facilitate integration of renewable/hydro energy, and reduce dependence on conventional peaking power sources, thereby optimising costs; the fuller and project-specific formulations of anticipated benefits (including references to frequency regulation, greenhouse gas reduction, local employment and the domestic manufacturing ecosystem, or grid contingencies, as variously stated) are recorded under the project-specific submissions, as the language used differs materially between Petitions. UPCL submitted that the proposed procurement is a necessary step towards fulfilment of its statutory ESO targets.
- 2.35. UPCL submitted that it is under a statutory obligation to procure energy storage capacity under the applicable Regulations and policy framework, and the BESPA is a necessary step towards compliance with the prescribed ESO. UPCL also submitted that the procurement of BESS is being undertaken through a transparent and competitive bidding process

ensuring fair competition, optimal tariff discovery and protection of consumer interest under Section 63 of the Act. Further the proposed BESPAs conform to the applicable provisions of the Act, the Ministry of Power guidelines, and the regulatory framework governing power procurement and energy storage. UPCL stated that implementation of the BESPAs will enhance grid stability, facilitate efficient integration of renewable energy, and enable reliable and cost-effective power supply, serving the larger public interest and prior approval of the Commission is a mandatory pre-condition for execution of the BESPAs, and non-approval would adversely impact UPCL's ability to meet its regulatory obligations and ensure reliable power supply.

- 2.36. With respect to the Dhakrani BESS Project (30 MW/75 MWh), UPCL submitted that the DPR assessed the technical and commercial feasibility of the proposed BESS, based on two charge-discharge cycles per day, a Depth of Discharge of 95%, and a Round Trip Efficiency of 85%. As per the DPR, the total project cost was estimated at Rs. 170.98 Crore (including taxes), with a capacity charge of Rs. 5,97,255.74 per MW per month, levelized cost of storage of Rs. 5.96 per kWh, Project IRR of 9.68%, Equity IRR of 11.16%, and a payback period of 7 years

UPCL submitted that as per the RfP the selected Project Developer (BESSD) is required to commission the project within 18 months of BESPAs signing/project start (whichever earlier), on a BOOT basis, with UJVNL Ltd. providing land on a right-to-use basis; and the BESPAs between UJVNL and the successful BESSD is to run for 12 years from CoD. UPCL further submitted that it proposes to purchase the entire/surplus power made available from the Dhakrani BESS Project from UJVNL.

- 2.37. With regard to the Khatima BESS Project (15 MW/37.5 MWh), UPCL submitted that the DPR assessed the technical and commercial feasibility of the proposed BESS, based on two charge-discharge cycles per day, which was identified as the optimal configuration for the Khatima site based on an analysis of annual hourly peak-load data. The total project cost was estimated at Rs. 85.45 Crore (including taxes), with an indicative capacity charge of approximately Rs. 5,97,255.74 per MW per month.

UPCL further submitted that, as per the RfP, the selected BESSD is required to commission the project within 18 months from the date of signing of the BESPAs or commencement of the project, whichever is earlier, on a BOOT basis, with UJVNL Ltd.

providing the land on a right-to-use basis. The BESPA between UJVN Ltd. and the successful BESSD is to remain in force for 12 years from CoD.

UPCL also submitted that integration of the Khatima BESS is expected to enhance grid stability by mitigating intermittency and improving frequency regulation. It would also facilitate optimal utilisation of hydro and renewable energy by enabling surplus energy during off-peak periods to be stored for use during peak-demand periods, thereby reducing dependence on conventional peaking sources and optimising costs and emissions. UPCL further submitted that deployment of the BESS is aligned with the objective of reducing greenhouse gas emissions and is expected to contribute to economic growth through local employment and support for the domestic renewable energy manufacturing ecosystem.

- 2.38. With regard to the Pathri BESS Project (16 MW/40 MWh), UPCL submitted that, as per the DPR, the estimated project cost is Rs. 88.24 Crore, and the project is required to be commissioned within 18 months from the date of signing of the BESPA or commencement of the project, whichever is earlier.

UPCL further submitted that the DPR assessed the technical and financial feasibility of the proposed 16 MW/40 MWh BESS. The project site is located within the premises of UJVN Ltd.'s Pathri Sub-Station at Pathri HEP, on approximately 2,336 sq. m. of land owned by UJVN Ltd. The site falls under Seismic Zone-IV, and the BESS is proposed to be interconnected at the 66 kV bus of the Sub-Station.

UPCL submitted that UPCL and UJVN Ltd. have finalised the draft BESPA for procurement of the entire/surplus power available from the 16 MW/40 MWh BESS at Pathri on an "on-demand" basis, with two charge-discharge cycles per day, for a period of 12 years from the date of COD, subject to approval of the Commission.

- 2.39. With regard to Tiloth BESS Project (15 MW/37.5 MWh), UPCL submitted that the estimated Project cost as per the DPR is Rs. 85.45 Crore, with an Earnest Money Deposit of Rs. 75.00 Lac; UJVNL shall provide land near the Tiloth Sub-Station to the selected Project Developer on a right-to-use basis for a period of 12 years plus 18 months; the BESSD shall establish, own, operate and maintain the Project on that basis; commissioning is required within 18 months of BESPA signing/ date of start; and the BESPA between UJVNL and the

BESSD shall be valid for 12 years from CoD.

UPCL submitted that the proposed deployment is aimed at enabling greater grid flexibility to manage variability in renewable generation, ensuring reliability of supply during peak demand and grid contingencies, and improving operational efficiency by reducing dependence on conventional peaking sources, optimising costs and emissions; and that it is aligned with reduction of greenhouse gas emissions and promotion of sustainable energy practices.

2.40. UPCL has prayed as follows in its Petitions

- (a) take the Petition on record;
- (b) approve the draft BESPA proposed to be executed by UPCL with the successful bidder(s) pursuant to the competitive bidding process;
- (c) grant UPCL suitable opportunity, within a reasonable time frame, to file additional material information as may subsequently become available or as may be required by the Commission;
- (d) pass such other order(s) as may be deemed fit and proper in the facts and circumstances of the case. No prayer for interim order was made in any of the four Petitions.

3. Respondents' Submission

A. UPCL's submissions (Petition No. 67 to 70 of 2026)

- 3.1. The Commission forwarded the copies of the Petitions filed by UJVN Ltd. to the Respondents namely, UPCL, M/s Patanjali Renewable Energy Pvt. Ltd. and M/s Armeem Infotech Ltd. UPCL and M/s Armeem Infotech Ltd. submitted their comments on 16.09.2026 in all the four Petitions filed by UJVN Ltd. whereas, M/s Patanjali Renewable Energy Pvt. Ltd. submitted its reply on 21.09.2026. As the submissions made by the parties in the four replies are, in substance, identical or substantially similar, they are recorded together hereunder.
- 3.2. UPCL submitted that its comments were with regard to the implications arising from the Commission's successive regulatory Orders on the procurement and implementation of BESS capacity in the State, particularly with regard to timely availability of the contracted storage capacity and the interests of the distribution licensee and consumers. UPCL further

submitted that the development of BESS capacity in the State is being undertaken under the Government of India's policy framework, including the VGF Scheme of MoP, GoI, which provides for development of BESS capacity through tariff-based competitive bidding to facilitate timely deployment of storage capacity and improve the commercial viability of BESS projects.

- 3.3. UPCL submitted that the present matter has its genesis in the successive regulatory developments concerning the benchmark Capacity Charges for standalone BESS projects in the State, and submitted that the Commission notified the RE Regulations, 2023 on 16.08.2023, subsequently amended through the RE Regulations (First Amendment), 2024 and RE Regulations (Second Amendment), 2025. Further, MoP, GoI has issued the applicable framework/guidelines for procurement and utilisation of BESS and notified the VGF Scheme for development of BESS projects through tariff-based competitive bidding. Uttarakhand was identified as an eligible State and BESS capacity was allocated for development in the State with VGF support.

The Commission, vide its Suo-Moto Order dated 06.01.2026 in Petition No. 94 of 2025, determined the benchmark/ceiling Capacity Charges for BESS projects at Rs. 3,96,747/MW/month. UPCL also submitted that prior to the aforesaid determination, UPCL had, vide its communication dated 09.10.2025 addressed to UJVN Ltd., conveyed its assessment based, inter alia, on the Resource Adequacy Study undertaken with reference to the State's projected demand and power-resource requirements, and had supported consideration of BESS capacity of up to 500 MWh, subject to the applicable regulatory framework and compliance with the requirements of the Commission and the Government of India, with implementation to be considered in a phased manner.

- 3.4. Upon UJVN Ltd. seeking consideration of a capacity charge-based tariff framework for standalone BESS and the applicable trading margin under the Second Amendment to the RE Regulations, 2023, UPCL, in its communication filed in response to the Commission's letter dated 15.12.2025, conveyed its agreement to the capacity charge-based tariff mechanism for standalone BESS (expressed in Rs./MW/month), stating this to be relevant for financial viability, lender confidence and timely implementation under MoP's framework and support mechanisms such as PSDF/VGF.

UPCL also submitted that it was in agreement with the provision relating to trading

margin stipulated under the RE Regulations (Second Amendment), 2025, having regard to the fact that the trading margin would form part of the overall cost of procurement of BESS capacity by the distribution licensee. UPCL further submitted that, insofar as the trading margin/intermediary margin applicable to UJVN Ltd. as an intermediary procurer is concerned, the same may be considered by the Commission in accordance with the applicable provisions of the RE Regulations (Second Amendment), 2025 and the regulatory framework governing the procurement.

- 3.5. UPCL submitted that the Commission's Draft Order dated 07.04.2026 proposed a benchmark capital cost of Rs. 160 lakh/MW and corresponding Capacity Charges of Rs. 2,54,583/MW/month for BESS projects to be commissioned during FY 2026-27. UPCL also submitted that various stakeholders, including UPCL and UJVN Ltd., had furnished comments during the said proceedings, raising concerns inter alia regarding the rapidly evolving nature of BESS technology, project implementation timelines, battery costs, financing and exchange-rate considerations, project-specific implementation challenges, and the implications of revising the benchmark during an ongoing procurement exercise.

The Commission's Suo-Moto Order dated 04.06.2026 retained the benchmark capital cost at Rs. 160 lakh/MW and revised the corresponding Capacity Charges to Rs. 2,59,244/MW/month, having considered, inter alia, market-discovered tariffs in recent BESS tenders, the VGF framework, the changing cost of BESS systems and stakeholder submissions, and observing that the benchmark was intended to reflect prevailing market conditions and was not intended to guarantee any particular return to a project developer; the Commission directed that the revised Capacity Charges would apply to BESS projects commissioned within 18 months of the said Order and observed that concerned utilities would need to be proactive in finalising the procurement process.

- 3.6. UPCL submitted that UJVN Ltd. thereafter filed a Review Petition against the Order dated 04.06.2026, principally on the ground that the revision of the benchmark Capacity Charges had taken place after the procurement process had already progressed substantially, with implications for implementation of the BESS projects; the Commission did not find grounds warranting review and rejected the Review Petition vide its Order dated 27.07.2026; and in the said Order dated 27.07.2026, the Commission, while examining the applicability of the benchmark Capacity Charges determined under the RE Regulations,

clarified that such benchmark Capacity Charges would not apply to BESS projects being implemented with monetary assistance under the VGF Scheme, and further observed that, upon completion of the tariff-based competitive bidding process, UJVN Ltd. may approach the Commission under Section 63 of the Electricity Act, 2003 for adoption of the tariff discovered through the bidding process.

- 3.7. UPCL submitted that UJVN Ltd., in its capacity as the agency entrusted with procurement of BESS capacity, initiated the procurement process for BESS projects proposed at different locations in the State. UPCL submitted that, being the Distribution Licensee and the entity ultimately concerned with the availability and utilisation of the contracted BESS capacity for meeting the requirements of the State distribution system, it has been associated with the said procurement framework and has a direct regulatory and commercial interest in timely implementation of the BESS projects.
- 3.8. UPCL submitted that UJVN Ltd. is undertaking the procurement as the intermediary/procuring agency, pursuant to which the selected BESS developer is to provide the contracted BESS capacity/services to UJVN Ltd., which is thereafter intended to be made available to the licensee, including UPCL, in accordance with the applicable contractual and regulatory framework. UPCL submitted that any regulatory uncertainty concerning the applicable tariff framework, or delay in implementation of the BESS projects, has a direct bearing on UPCL's ability to secure the intended storage capacity within the timelines contemplated under the Government of India's VGF framework.
- 3.9. UPCL submitted that the regulatory position recorded in the Commission's Order dated 27.07.2026 is required to be considered in the context of the present procurement(s), having regard to the fact that the procurement(s) have been undertaken under the VGF framework and the process has progressed to the stage of tariff discovery.
- 3.10. UPCL submitted that timely implementation of the BESS projects assumes considerable importance in view of the objectives and timelines associated with the VGF Scheme, which has been introduced with the objective of facilitating accelerated deployment of BESS capacity by providing financial support so as to improve the commercial viability of storage projects, timely commissioning being an integral part of the intended benefit of the scheme. UPCL submitted that any prolonged regulatory uncertainty after conclusion of the procurement process may have a consequential impact on execution of the projects,

including finalisation of contractual arrangements, financial closure, mobilisation of the selected BESS developers and achievement of the commissioning timelines contemplated under the applicable VGF framework.

- 3.11. UPCL submitted that, from its perspective as the Distribution Licensee, timely availability of the contracted BESS capacity is of significance for effective management of the State's power system, particularly in view of the increasing requirement for flexibility, peak management and balancing resources.
- 3.12. UPCL submitted that the Commission may consider ensuring that UJVN Ltd., as the intermediary Procurer, duly verifies and secures, in a timely manner, the availability and adequacy of the land required for implementation of the concerned BESS project, as well as the requisite statutory, regulatory and other approvals and clearances, so as to help ensure that no issues relating to land, approvals or statutory clearances arise at a later stage and that the project is implemented within the stipulated timelines, thereby facilitating timely availability of the contracted BESS capacity to UPCL.
- 3.13. UPCL submitted that, as the Distribution Licensee, its primary concern is to ensure that the procurement and availability of BESS capacity takes place in a manner consistent with the applicable regulatory framework, the requirements of the State power system, and the interests of electricity consumers, and that the regulatory treatment of the concluded procurement process may appropriately take into consideration the need to avoid any avoidable delay in implementation of the BESS projects, particularly in view of the timelines prescribed under the applicable Government of India framework. UPCL submitted that the BESS capacity proposed to be procured is intended to form part of the State's overall power-resource planning and is expected to provide flexibility in meeting system requirements, and that delay in commissioning of the contracted capacity may consequently affect the ability of the State distribution system to derive the intended benefits of the storage infrastructure.
- 3.14. UPCL submitted that the financial implications arising from procurement of BESS capacity ultimately bears upon the cost of power procurement and, consequently, upon the interests of consumers, and that it is, therefore, necessary that the regulatory treatment of the procurement remains within the framework prescribed by the Commission and the applicable provisions of the Electricity Act, 2003 and the VGF Scheme. UPCL further

submitted that timely implementation of the BESS project by UJVN Ltd., including timely completion of the requisite verifications and clearances, would also enable UPCL to meet its prescribed Energy Storage Obligation within the stipulated timelines and avoid any adverse impact arising from delay in availability of the contracted storage capacity.

- 3.15. UPCL accordingly submitted that the issue may be considered by the Commission by balancing the requirement of timely implementation of BESS projects with the statutory mandate of safeguarding consumer interest and ensuring that the procurement is dealt with in accordance with the applicable competitive bidding and regulatory framework.
- 3.16. UPCL submitted that, as recorded in the Review Petition and the Order dated 27.07.2026, the BESS procurement under consideration in each of the four Petitions is being undertaken through tariff-based competitive bidding under the applicable VGF framework. UPCL submitted that UJVN Ltd. has placed before the Commission the status of the respective procurement process and has referred to the tariff/Capacity Charge discovered for the concerned BESS project, and that the issue therefore arises in the context of a procurement process which has progressed to the stage of tariff discovery and is required to be taken forward in accordance with the applicable statutory and regulatory framework.
- 3.17. UPCL submitted that the tariff discovered through the competitive bidding process may be considered by the Commission in the appropriate proceedings under Section 63 of the Electricity Act, 2003, and further submitted that such consideration would provide regulatory certainty to the procurement process while also enabling the Commission to examine the relevant statutory, regulatory, VGF and contractual aspects in accordance with law.
- 3.18. UPCL reiterated that the matter may be considered in the overall context of the VGF framework, the regulatory orders of the Commission, the tariff discovered through the concluded competitive bidding process, and the need for timely implementation of the BESS projects in the State, subject to such prudence check as the Commission may deem appropriate. UPCL accordingly submitted that the Commission may take an appropriate view in accordance with law, keeping in consideration the interests of the State power system, timely commissioning of the BESS capacity, and the interests of the distribution licensee and consumers.

B. M/s Amree Infotech Ltd.'s submissions (Petition No. 67 to 70 of 2026)

3.19. M/s Amree Infotech Ltd. vide its email dated 16.09.2026 submitted that they do not have any comments on the Petition filed by UJVN Ltd. for adoption of tariff for 15 MW/37.5 MWh BESS project proposed to be developed by M/s Amree Infotech Ltd. at Tiloth.

C. M/s Amree Infotech Ltd.'s submissions (Petition No. 67 to 70 of 2026)

3.20. For the remaining projects where M/s Patanjali Renewables Energy Pvt. Ltd. has been selected as L-1 bidder, it submitted that the Commission, vide its Order dated 06.01.2026 specified the ceiling Capacity charges for Standalone BESS project of Rs. 3,96,747/MW/Month. It is also submitted that M/s Patanjali Renewable Energy Pvt. Ltd.'s quoted tariff for development of BESS projects at Dhakrani, Kulhal and Pathri is lower than the ceiling limit specified in Order dated 06.01.2026.

3.21. M/s Patanjali Renewable Energy Pvt. Ltd. submitted that it does not have any objection on the Petitions filed by UJVN Ltd. for adoption of tariff for BESS projects to be developed by it at Dharani, Kulhal and Pathri.

D. UJVN Ltd.'s submission (Petition No. 71 to 74 of 2026)

3.22. With regard to the Petitions filed by UPCL seeking approval of BESPA to be executed with UJVN Ltd. for the proposed BESS projects at Dhakrani, Kulhal, Pathri and Tiloth, UJVN Ltd. submitted that the BESPA has been examined with reference to the applicable Regulations and the corresponding contractual provisions of the BESPA proposed to be executed between UJVN Ltd. and the selected BESSD pursuant to the RfP issued for procurement of BESS capacity/services. UJVN Ltd. submitted that the cross-references in Clause 5.5, which presently refer to Clauses 2.3 and 2.4, may be read as references to Clauses 5.2, 5.3 and 5.4. UJVN Ltd. further submitted that no specific comments are proposed on the other provisions of the BESPA.

3.23. UJVN Ltd. also submitted that the commercial and contractual provisions of UPCL-UJVN Ltd. BESPA should remain aligned, on a back-to-back basis, with corresponding provisions of the BESPA to be executed between UJVN Ltd. and the selected BESSDs pursuant to RfP. This is necessary to ensure consistency in the respective contractual obligations, payment mechanism and project implementation framework.

3.24. Subsequently, UJVN Ltd., vide its letter dated 25.09.2026 requested the Commission that

Clause 2.1 of the BESPAs should be read as follows:

“UPCL shall accept and purchase entre/surplus MW/... MWh of power made available to PTCUL/UPCL system from the Battery Energy Storage System (BESS) @ Rs. /MW/Month as per bidding process conducted by UJVNL in accordance with the Order dated.... passed by the Hon’ble Commission plus UJVNL margin of ...paise per unit as approved by the Hon’ble UERC.”

3.25. UJVNL Ltd. also requested to add the following provision under Para 2 of all BESPAs

“The Charing Power for charging of the BESS Capacity as per requirement shall be scheduled and supplied by the Buying Entity (UPCL) free of cost.”

4. Petitioners’ Rejoinder

A. UJVNL Ltd.’s submissions (Petition No. 67 to 70 of 2026)

- 4.1. UJVNL Ltd. submitted that UPCL has supported consideration of the tariff discovered through the concluded competitive bidding process under the proceedings initiated by UJVNL Ltd. under Section 63 of the Act. UPCL has also recognized that the present procurement has been undertaken under the Government of India VGF framework and that the process has already progressed to the stage of tariff discovery.
- 4.2. UJVNL Ltd. also submitted that the above position of UPCL is consistent with the regulatory framework and the specific directions contained in the Commission’s Order dated 27.07.2026, pursuant to which, upon completion of the TBCB process, UJVNL Ltd. was required to approach the Commission under Section 63 of the Act for adoption of tariff discovered through the bidding process.

B. UPCL’s submissions (Petition No. 71 to 74 of 2026)

- 4.3. UPCL vide its letter dated 25.09.2026 submitted its counter comments on the suggestions made by UJVNL Ltd. With regard to UJVNL Ltd. comments on Clause 2.1 of the draft BESPAs, UPCL submitted that “power made available to PTCUL/UPCL system” should be replaced with “power made available to UPCL system”.
- 4.4. Further, with regard to other comments, UPCL agreed with the suggestions/remark made by UJVNL Ltd.

5. Commission’s Views & Decisions

- 5.1. Four Petitions have been filed by UJVN Ltd. seeking adoption of Tariff under Sections 63, 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 read with Regulation 59 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 for 15 MW/37.5 MWh BESS at Khatima, 30 MW/ 75 MWh BESS at Dhakrani, 16 MW/40 MWh BESS at Pathri and 15 MW/ 37.5 MWh BESS at Tiloth through TBCB with VGF Support through PSDF.
- 5.2. Further, four Petitions have been filed by UPCL under Section 86(1)(b) of the Act, read with Regulation 39(3) of UERC (Conduct of Business) Regulations, 2014, and Regulation 74(1) of the UERC MYT Regulations, 2024, for approval of the draft BESPAs proposed to be executed between UPCL and UJVN Ltd. for procurement of power from above stated BESS projects for which UJVN Ltd. has filed Petitions for adoption of tariff under Section 63 of the Act.
- 5.3. The Commission has considered the Petitions, the submissions made by UJVN Ltd., UPCL and selected BESSDs, the applicable statutory and regulatory provisions, the BESS Guidelines issued by MoP, GoI, and the documents placed on record. The Commission notes that the present Petitions arise from the implementation of standalone BESS capacity allocated to the State of Uttarakhand under VGF Scheme supported through PSDF and the subsequent tariff-based competitive bidding process undertaken by UJVN Ltd.
- 5.4. The Commission notes that the MoP, GoI, vide its Guidelines dated 10.03.2022 titled “Guidelines for Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services” (BESS Guidelines), provided for procurement of power/energy from BESS through a competitive bidding process under Section 63 of the Electricity Act, 2003. The BESS Guidelines also provide for development of BESS projects on a Build-Own-Operate (BOO) or Build-Own-Operate-Transfer (BOOT) basis.
- 5.5. The Commission further notes that the Principal Secretary (Energy), Government of Uttarakhand, vide letter dated 17.04.2025, conveyed the State Government’s willingness to implement 500 MWh of BESS capacity in Uttarakhand and sought in-principle approval for the eligible VGF. Pursuant thereto, the MoP, GoI allocated 500 MWh of BESS capacity to Uttarakhand under the VGF Scheme for development of standalone BESS projects supported through PSDF. Out of this allocation, 250 MWh is being implemented through

UJVN Ltd. and the remaining 250 MWh through UPCL.

- 5.6. The Commission also notes that, pursuant to the request of UJVN Ltd., the Commission, vide its Order dated 06.01.2026 in Petition No. 94 of 2025 (Suo-Moto), translated the ceiling unit charges specified under the RE Regulations (Second Amendment), for BESS projects to be commissioned during FY 2025-26. Subsequently, while determining the benchmark capital cost and capacity charges for BESS and solar energy-based projects for FY 2026-27, the Commission revised the applicable charges vide its Suo-Moto Order dated 04.06.2026.
- 5.7. The Commission further notes that UJVN Ltd. thereafter had filed a Review Petition seeking review of the revised ceiling tariff/capacity charge applicable to BESS projects and requested continuation of the earlier ceiling capacity charge of Rs. 3,96,747/MW/month for BESS projects proposed to be allotted during FY 2026-27. UPCL had also filed a Petition seeking removal of the regulatory difficulty arising from revision of the benchmark capacity charge after conclusion of the competitive bidding process and issuance of the Letters of Award, and sought permission to implement the concluded procurement process at the benchmark capacity charge determined by the Commission vide Order dated 06.01.2026.
- 5.8. The Commission, vide its Order dated 27.07.2026, rejected the Petitions filed by UJVN Ltd. and UPCL and observed that, upon completion of the ongoing tariff-based competitive bidding process, UJVN Ltd. could approach the Commission by filing an appropriate Petition under Section 63 of the Electricity Act, 2003 for adoption of the tariff discovered through the bidding process, in accordance with the UERC (Conduct of Business) Regulations, 2014, along with the consequential agreements, if any.
- 5.9. In view of the above, the present Petitions have been filed by UJVN Ltd. and UPCL seeking, respectively, adoption of the tariff discovered through the tariff-based competitive bidding process under Section 63 of the Electricity Act, 2003 and approval of the BESPA proposed for the aforesaid BESS projects. The Commission is, therefore, examining the Petitions in light of the applicable statutory and regulatory framework, the BESS Guidelines, the bidding process and documents placed on record, and the specific issues arising in relation to the tariff discovered through competitive bidding and the proposed contractual arrangements.

5.10. The Commission has examined the role and status of UJVN Ltd. in the procurement and development of the BESS projects, particularly to ascertain the capacity under which UJVN Ltd. has undertaken the bidding process. The Commission notes that the Government of Uttarakhand has allocated 250 MWh of BESS capacity to UJVN Ltd. for implementation. However, the documents placed on record do not clearly establish the capacity or role in which UJVN Ltd. is undertaking the development of the said BESS capacity, i.e. whether as an Intermediary Procurer or Implementing Agency, or BESSD.

The Commission further notes that, in the Petitions filed for adoption of tariff, UJVN Ltd. has also sought approval of the BESPAs proposed to be executed between UJVN Ltd. and the successful bidders for development of BESS projects at different locations. On the other hand, UPCL has filed separate Petitions seeking approval of the BESPAs proposed to be executed between UPCL and UJVN Ltd., wherein UJVN Ltd. has been identified as the BESSD. Further, the submissions have been made by UJVN Ltd. and UPCL describing UJVN Ltd. as the Intermediary Procurer/Implementing Agency. Thus, the role and legal status of UJVN Ltd. vis-à-vis UPCL and the successful BESSD(s) require examination and clarification.

In this regard, the BESS Guidelines requires that BESPAs shall be executed between the BESSD and the Intermediary Procurer and the BESSAs shall be executed between the Intermediary Procurer and the End Procurer. Hence, in light of the same, the Commission has examined the BESS Guidelines to ascertain the role and eligibility of an Intermediary Procurer/Implementing Agency and UJVN Ltd.'s status so far as bidding was carried out by it. Section-II of the BESS Guidelines defines "Intermediary Procurer" or "Implementing Agency" as follows:

"Intermediary Procurer" or "Implementing Agency": In some cases, an intermediary between the distribution licensee(s) and the BESSD(s), or an "Implementing Agency" as notified by the Government of India, may be required either to aggregate the power purchased and/or firming the same with large scale energy storage capacity from different developers, and sell it to the End Procurer(s). In such cases, the "Procurer" would be a trading licensee or an Implementing Agency, buying power from the Developer(s) and selling the same to one or more distribution licensees, such distribution licensees shall be the "End Procurer" and the trading licensee shall be "Intermediary Procurer" for the purpose of these Guidelines."

The above definition indicates that an Intermediary Procurer, where acting as the procurer between the BESSD(s) and distribution licensee(s), is envisaged to be a trading licensee, whereas an Implementing Agency is required to be notified by the Government of India. The Commission, therefore, finds it necessary to establish the basis on which UJVN Ltd. has undertaken the bidding process and the capacity in which it proposes to enter into the BESPAs with the successful BESSD(s), particularly where UJVN Ltd. is not a trading licensee or has been conferred with the status of an Implementing Agency notified by the Government of India.

Accordingly, the Commission sought clarification from UPCL, with a copy to UJVN Ltd., regarding the legal status of the parties inter se UPCL, UJVN Ltd. and the successful BESSD(s) and the consequent contractual arrangement proposed amongst them. Both the parties were, accordingly, directed to make submissions clarifying the role of UJVN Ltd. in the procurement and development of the BESS projects and to identify the documents required to be executed between the respective parties in the matter.

In reply, UPCL vide its submission dated 25.09.2026 submitted that as per MoM dated 17.06.2026 under the Chairmanship of Principle Secretary (Energy), GoUK, it was noted that against the Uttarakhand State Allocation of 500 MWh BESS capacity under the VGF scheme, 250 MWh capacity is being implemented by UPCL and balance 250 MWh capacity is being implemented by UJVN Ltd. at their own land and has undertaken the project planning and bidding process. UJVN Ltd. will implement, supervise and monitor these BESS projects in future as per tender conditions. UPCL further submitted that it is of the view that back-to-back BESPAs are to be signed between UPCL and UJVN Ltd. and also between UJVN Ltd. & successful bidders as per respective tender document and prevailing RE Regulations after approval of BESPAs from the Commission and UJVN Ltd. may be allowed appropriate charges accordingly.

Meanwhile, a meeting was held between officers of UJVN Ltd. and UPCL on 24.09.2026 in response to the Commission's letter dated 21.09.2026, wherein as per the MoM dated 24.09.2026 forwarded to the Commission, following were agreed between UPCL and UJVN Ltd.:

1. BESPAs may suitably clarify the contractual relationship amongst the parties by incorporating the following provision in BESPAs between UPCL and UJVN

Ltd.:

“Nothing contained in this Agreement shall create any direct contractual or payment relationship between UPCL and the selected BESS Developer. The obligations and liabilities of the selected BESS Developers towards UJVN Ltd. shall be governed by the separate agreement executed between UJVN Ltd. and the selected BESS Developer. UJVN Ltd. shall discharge its corresponding obligations towards UPCL in accordance with this Agreement and on a back-to-back basis with the corresponding contractual arrangement with the selected BESS Developer.”

2. A specific clarification regarding charging energy for BESS was also discussed for incorporation in the UPCL-UJVN Ltd. BESPAs as follows:

“The charging power as per requirement shall be supplied free of cost by End procurer/UPCL to the UJVN Ltd./Battery Energy Storage System Project.

The electricity requirement for charging of BESS shall be scheduled, drawn, accounted for and settled in accordance with the applicable Regulations, Grid Code, SLDC procedures and the approved scheduling and settlement mechanism.”

3. In pursuant to the “Guidelines for Procurement and Utilization of Battery Energy Storage System (BESS) issued by MoP, GoI, UPCL may be recognized as “End Procurer or Buying Entity” and UJVN Ltd. may be recognized as “Authorised representative or Agent of the End Procurer or Buying Entity i.e. UPCL” for the purpose of BESPAs between UPCL and UJVN Ltd. for procurement of the contracted BESS capacity/services.

On examining the reply of UPCL and MoM dated 24.09.2026, it is evident that the role of UJVN Ltd. in this factual matrix is being recognized as an Authorised Representative/Agent acting on behalf of UPCL. As mentioned above at S. No. 3, it was agreed between the two Corporations that UPCL be recognized as the End procurer or Buying Entity and UJVN Ltd. be recognized as Authorised Representative or Agent of the end procurer, i.e. UPCL.

Thus, the Commission in light of the BESS Guidelines, intent of the parties and facts of the matter, is of the view that UJVN Ltd. has acted to an extent as an Authorised Representative/Agent of UPCL in the instant matter as tendering/bidding process has

been carried out by it on behalf of UPCL and is also carrying out certain obligations commensurating with the obligations of Intermediary Procurer as per the BESS Guidelines. Further, UJVN Ltd. has also contributed its own land for installation of the BESS projects. Since the BESS Guidelines requires that BESPAs shall be executed between the BESSD and the Intermediary Procurer and the BESSAs shall be executed between the Intermediary Procurer and the End Procurer, and UJVN Ltd. being neither an Intermediary Procurer or an Implementing Agency.

The Commission finds that UJVN Ltd. has not only conducted the bidding process on behalf of UPCL as an Authorised representative/ Agent of UPCL, but parties intended that all the obligations of the end procurer laid down in the Guidelines or the RfP issued by UJVN Ltd. shall also be fulfilled by it. Although the specific roles of the parties are not strictly as per the BESS Guidelines, however, taking into consideration the intent of GoU, UPCL and UJVN Ltd., the Commission is of the view that the terms and conditions of the documents to be executed between the parties shall be such that it reflects true and correct intent of the parties and lays down the agreed rights and obligations so as to obviate any difficulties arising out of implementation of the respective obligations.

Since as per the BESS Guidelines execution of two BESPAs are not provided for but requires execution of separate BESPAs and BESSAs, however, considering the fact that in the present case, the parties have intended that UJVN Ltd. although not being an Intermediary Procurer has been conferred with the obligations to carry out the functions of the same and UPCL has intended to act only as the End Procurer, apart from this UJVN Ltd. has also conducted the bidding process as a representative of UPCL and contributed its own land for the BESS installations, therefore, strictly the documents required to be executed as per the BESS Guidelines cannot be done in the present matter in the light of intermingling of various facts.

However, taking into consideration that no specific document, in the said Guidelines is provided to be executed by the authorised Representative and typically in such a situation considering the installation of BESS under the VGF Scheme of MoP, GoI, the Commission is of the view that in order to lay down the *inter-se* rights and obligations, i.e. terms and conditions between the parties a single agreement can be executed which shall conveniently provide for the rights and obligations of all the parties involved.

Therefore, a common tripartite agreement between the BESS developer, UJVN Ltd. and UPCL can be executed which will segregate the roles and responsibilities of the three entities and serve the purpose.

Since, as discussed above, UJVN Ltd. has acted to an extent as an Authorised Representative/Agent of UPCL and is also carrying out certain obligations commensurating with the obligations of Intermediary Procurer as per the BESS Guidelines and has also contributed its own land for installation of the BESS projects, hence, during the tenure of the BESPA, it would be reasonable to allow it to receive a consideration of 5 paise per unit as specified in the Regulations towards the said obligations which is also permissible to the Intermediary Procurer in the BESS Guidelines.

A. Adoption of Tariff under Section 63 of the Act, 2003

5.11. With regard to adoption of Tariff, Section 63 of the Act, 2003 specifies as follows:

“Section 63. (Determination of tariff by bidding process):

Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. “

5.12. Accordingly, the Commission has examined the BESS guidelines and observed that the Bid Evaluation Committee constituted for evaluation of bids is required to certify that the bidding process. Subsequently, the Commission vide its letter dated 21.09.2026 directed UJVN Ltd. to submit report of the Bid Evaluation Committee (one of the requirements of BESS Guidelines) duly certifying that bidding process and the evaluation has been conducted in conformity to the provisions of BESS Guidelines.

5.13. In this regard, UJVN Ltd., vide its letter dated 28.09.2026, submitted a copy of the certificate issued by the Bid Evaluation Committee. The Commission observes that the Bid Evaluation Committee has certified that the bidding process, evaluation of bids and award/selection of successful bidders for the aforesaid BESS projects have been conducted in conformity with the applicable provisions of the BESS Guidelines, except for the adoption of e-Reverse Auction, which constitutes a deviation from the said Guidelines. The Bid Evaluation Committee has further stated that the Government of Uttarakhand has been requested to accord approval for the said deviation from the BESS Guidelines.

5.14. UJVN Ltd. has discovered the prices for the BESS project, details of which is as follows:

S. No.	Project	Successful bidder	Discovered price (without GST) (Rs./MW/Month)	Discovered price (with GST) (Rs./MW/Month)
1	15 MW/37.5 MWh BESS at Khatima	M/s Patanjali Renewable Energy Pvt. Ltd.	Rs. 2,79,782	Rs. 3,30,143
2	30 MW/ 75 MWh BESS at Dhakrani		Rs. 2,69,832	Rs. 3,18,402
3	16 MW/40 MWh BESS at Pathri		Rs. 2,79,501	Rs. 3,29,811
4	15 MW/ 37.5 MWh BESS at Tiloth	M/s Armeem Infotech Ltd.	Rs. 2,80,000	Rs. 3,30,400

5.15. The Commission examined the various BESS tenders floated in other States and observed that DERC has recently vide its Order dated 09.09.2026 in Petition no. 13/2026 has adopted the discovered tariff of Rs. 2.99 Lakh/MW/month (excluding taxes) for development of 12.5 MW/25 MWh BESS project by RE Connect Energy Solutions Ltd. for BSES Rajdhani Power Ltd. Further, Punjab State Power Corporation Limited awarded 500 MW / 1,000 MWh of standalone BESS capacity through competitive bidding in May 2026. M/s Stockwell Solar Services was L1 at Rs. 3.35 lakh/MW/month for 150 MW / 300 MWh; M/s Rama Reflection India and M/s Ceigall India were selected at ₹ 3.44 lakh/MW/month for 250 MW / 500 MWh and 100 MW / 200 MWh, respectively.

From the above details, it can be concluded that tariff discovered for BESS projects to be developed at Dhakrani, Kulhal, Tiloth and Pathri are lower than the rates discovered in Delhi and Punjab.

5.16. From perusal of the Report of the Bid Evaluation Committee, it emerges that the selection of the successful bidder and the discovery of the Monthly Capacity Charges per MW of the respective Projects have been carried out by the Bid Evaluation Committee through a transparent process of competitive bidding in accordance with BESS Guidelines issued by MoP, GoI under Section 63 of the Act subject to the deviation relating to the adoption of e-Reverse Auction, for which approval of the Government of Uttarakhand has already been sought by UJVN Ltd.

5.17. With regard to deviation from the BESS Guidelines, Clause A(1)(1.1)(a) of Section -III i.e. 'Bidding process and award of projects' specifies that the procurer shall seek approval of Appropriate Government for deviations. However, as per above report it appears that the

approval of Government of Uttarakhand w.r.t. deviation from e-reverse auction is still pending.

- 5.18. Accordingly, considering the certification of the Bid Evaluation Committee, the Commission approves and adopt the discovered capacity charges (Rs./MW/month) for the respective BESS projects **subject to approval by the Government of Uttarakhand of the deviation relating to the adoption of e-Reverse Auction from the applicable provisions of the BESS Guidelines**. Further, reduction in GST, if any, and its consequential benefits shall be passed on to the consumers of the State of Uttarakhand.
- 5.19. Further, as per the requirement of the provisions of G(7) of Section-III of the BESS Guidelines, UJVN Ltd. and UPCL shall, after the execution of BESPA, publicly disclose the name(s) of the successful bidder(s) and the tariff/charges quoted by them together with breakup into components, if any. The public disclosure shall be made by posting the requisite details on the website of parties for atleast 30 days.

B. Approval of BESPA

5.20. Legal requirement for approval of BESPA

- 5.20.1. A PPA/BESPA is a legal document incorporating operational, technical & commercial provisions to be complied in accordance with the relevant rules & regulations.
- 5.20.2. 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.
- 5.20.3. 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)

5.20.4. As per Regulation 39 of the UERC (Conduct of Business) Regulations, 2014 the distribution licensee is required to apply to the Commission for approval of the draft Power Purchase Agreements that is proposed to be entered into with the suppliers. 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.”*

5.20.5. 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 BESPAs entered or proposed to be entered.

5.21. Consistency of the BESPAs with the Regulations

5.21.1. Regulation 74(1) of UERC Tariff Regulations, 2024 specifies as under:

“Every agreement or arrangement for power procurement by a Distribution Licensee from a Generating Company or Licensee or from other source of supply entered into after the date of effectiveness of these Regulations shall come into effect only with the prior approval of the Commission:

Provided that the prior approval of the Commission shall be required in respect of any agreement or arrangement for power procurement by the Distribution Licensee from a Generating Company or Licensee or from any other source of supply on a standby basis:

Provided further that the prior approval of the Commission shall also be required for any change to an existing arrangement or agreement for power procurement, whether or not such existing arrangement or agreement was approved by the Commission.”

5.21.2. Hence, all the BESPAs to be entered into by UPCL are required to be approved by the Commission. Accordingly, BESPAs proposed to be executed is being examined for consistency and conformity with the relevant provisions of the Electricity Act, 2003 & relevant regulations, bidding documents and guidelines issued by MoP vide resolution dated 10.03.2022 for procurement and utilization of BESS as part of Generation, Transmission and Distribution assets, alongwith Ancillary Services.

5.21.3. UPCL had filed a separate Petition No. 22 of 2026 for approval of draft Model BESPA to be executed with the successful bidders. Since, the Commission is approving project specific BESPAs with the successful bidders, hence, the Commission is of the view that the approval of draft BESPA is no longer required and UPCL would execute future BESPAs in accordance with the observations laid down in this Order. Accordingly, Petition No. 22 Of 2026 is also disposed off.

5.22. Commission’s Analysis of the BESPA

5.22.1. UPCL has filed 04 Petitions seeking approval of BESPAs for BESS project at following locations:

Sr.	Project	Location	BESSD
1.	Dhakrani (30 MW/75 MWh)	Near 33/11 kV Dhakrani S/s, Dhakrani, Uttarakhand	M/s Patanjali Renewable Energy Pvt. Ltd.
2.	Khatima (15 MW/37.5 MWh)	Near 132/33 kV Khatima S/s, Khatima HEP, Udham Singh nagar, Uttarakhand	M/s Patanjali Renewable Energy Pvt. Ltd.
3.	Pathri (16 MW/40 MWh)	Near 66/11 kV Pathri S/s, Pathri HEP, Haridwar,	M/s Patanjali Renewable Energy Pvt. Ltd.

		Uttarakhand	
4.	Tiloth (15 MW/37.5 MWh)	Near 220/33 kV Tiloth S/s, Tiloth HEP, Uttarkashi, Uttarakhand	M/s Armee Infotech Ltd.

Further, UJVN Ltd. has also requested the Commission to approve BESPAs to be executed by it with the successful bidders for above mentioned BESS projects.

- 5.22.2. The Commission notes that the four draft BESPAs are substantially similar in nature. Accordingly, the Commission has examined, in detail, the draft BESPAs proposed for the 15 MW/37.5 MWh Khatima BESS Project, located near 132/33 kV Khatima Sub-Station, Khatima HEP, Udham Singh Nagar, Uttarakhand. The observations and directions recorded in respect of the said BESPAs shall, to the extent applicable, also apply to the remaining three BESPAs.
- 5.22.3. As discussed in the preceding paragraphs of this Order, the draft BESPAs submitted by UPCL in its respective Petitions were proposed to be executed with UJVN Ltd., wherein UJVN Ltd. was identified as the BESSD. However, based on the subsequent submissions made before the Commission including MoM dated 24.09.2026, UJVN Ltd. being recognized as an Authorised representative/ Agent of UPCL and with such capacity, has the selected BESSDs for procurement of energy storage services on an “on-demand” basis from the BESS projects to be developed by the selected BESSDs at different locations.
- 5.22.4. In light of the above, the Commission is of the view that the contractual arrangement should appropriately reflect the respective roles of the parties. Accordingly, as already discussed above, a tripartite agreement among UPCL, UJVN Ltd. and the selected BESSD would be appropriate, wherein UJVN Ltd. shall act as the Authorised representative/ Agent of UPCL and provide land, ensure installation of the BESS projects as per the BESS Guidelines and technical standards together with other obligations including coordinate in matters relating to scheduling, billing and other related activities, as agreed amongst the parties.
- 5.22.5. The Draft BESPAs has been examined in light of the relevant Act, Rules & Regulations, guidelines issued by MoP, GoI and RfP/bidding documents. The Commission observed that certain clauses in the Draft BESPAs submitted by UPCL are inconsistent with the provisions of the Act/Regulations/RfP. 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 BESPA while executing the final BESPAs with the selected BESSDs.

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

“THIS AGREEMENT is made this day of 20.... (hereinafter called the Effective Date), between UJVN Ltd., a Company incorporated under the Companies Act 1956 having its registered office at Ujjwal, Maharani Bagh, GMS Road, Dehradun-248001, Uttarakhand hereinafter called the “Battery Energy Storage Project System” or “Project Developer” “BESSD”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include it successors and permitted assigns) as a party of the first part, and...

WHEREAS, the “Battery Energy Storage Project System” is engaged in the business to meet/facilitate to peak demand and strengthening the Grid stability in the state of Uttarakhand, more particularly described in Annexure-I attached hereto and made a part

AND WHEREAS, UPCL is a distribution licensee operating in the State of Uttarakhand, and has license to supply power in entire State.

WHEREAS the “Battery Energy Storage Project System” desires to sale entire/surplus 15 MW/37.5 MWh energy scheduled to be operated in “Battery Energy Storage Project System” facility.

”

From the above paragraph, it is observed that UJVN Ltd. has been identified as the BESSD/Project Developer under the draft BESPA. However, as discussed in the preceding paragraphs, the selected BESSD for the Khatima BESS Project is M/s Patanjali Renewable Energy Pvt. Ltd., while UJVN Ltd. is proposed to act as the Authorised representative/ Agent of UPCL.

Accordingly, UPCL is directed to suitably modify the aforesaid provisions of the draft BESPA so as to correctly reflect the roles of the parties. In particular, M/s Patanjali Renewable Energy Pvt. Ltd. shall be incorporated as the BESSD/Project Developer, and UJVN Ltd. shall be identified in its appropriate capacity as the Authorised representative/agent, in accordance with the arrangement approved by the Commission. The corresponding modifications shall also be made in the remaining BESPAs, as applicable.

- b) As UJVN Ltd. is proposed to act as the Authorised Representative of UPCL in relation to the BESS projects, the following definition of “Authorised Representative” shall be inserted under Clause 1 – Definitions of the draft BESPAs:

“Authorised Representative” means UJVN Ltd., authorised by UPCL to act as its representative or an agent and to coordinate and communicate between UPCL and the BESSD in matters relating to the BESS Project, as specified in this BESPAs.”

- c) Para 8 of the Draft BESPAs specifies as follows:

“This agreement shall be subject to approval of UERC and any change suggested by Hon’ble UERC in this agreement shall be incorporated in the BESSA during execution.”

It is pertinent to mention that the 04 Petitions has been filed seeking approval of the BESPAs, whereas the aforesaid provisions refer to the BESSA. Accordingly, it is directed to make appropriate modifications in the aforesaid clause to ensure consistency with the nature of the agreement under consideration.

- d) Sub-Clause 1.1 of Clause 1 i.e. ‘Definitions’ of Draft BESPAs specifies as follows:

“Main meter’ means Import and Export Meter on the basis of which energy bills shall be raised by the Battery Energy Storage System Project/UPCL.”

As per the above definition, the term “Main Meter” is intended to serve as the primary meter for energy accounting and billing purposes. However, the subsequent definitions and provisions of the Draft BESPAs use the term “Bill Meter” instead. For the sake of consistency and to avoid any ambiguity in interpretation, UPCL is directed to replace the term “Bill Meter” with “Main Meter” throughout all relevant provisions of the Draft BESPAs.

- e) Sub-clause 2.1 of Clause 2 i.e. ‘Power Purchase, Sale and Banking’ specifies as follows:

*“UJVNL shall accept and purchase **entire/surplus 15 MW/37.5 MWh of power** made available to UPCL system from the Battery Storage System (BESS) @ Rs .../MW/month as per bidding process conducted by UJVNL in accordance with the Order dated passed by Hon’ble Commission. The procurement shall be in power (MW/MWh) terms plus UJVNL margin as per passed by Hon’ble UERC. The BESSD shall install, operate and maintain the BESS to offer facility to the Buying Entity to charge and discharge the BESS on an “on demand” basis.*

Above rate of sale of Power shall be applicable if the Battery Energy Storage System Project

commissions its plant on or before 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 Battery Energy Storage System Project and PPA tariff shall be applicable."

The Commission observes that the heading of Clause 2 refers to "Power Purchase, Sale and Banking". However, the RfP issued by UJVN Ltd. contemplates procurement of BESS services, wherein the BESSD is required to provide storage services and the charging power is to be made available by the procurer. The Commission notes that BESS procurement may broadly involve two models: (i) the BESSD arranges the energy required for charging the BESS and supplies the stored energy to the procurer as per the agreed schedule; or (ii) the BESSD provides storage services, while the charging energy is supplied by the procurer and the stored energy is discharged as per the procurer's requirement. The present procurement process is based on the second model.

Accordingly, the heading of Clause 2 should appropriately reflect the nature of the services being procured and shall, therefore, be read as "BESS Services and Applicable Capacity Charges"

The Commission further notes that the entire power being generated by UJVN Ltd. is tied up with UPCL. Accordingly, the energy required for charging the BESS, as and when scheduled by UPCL, shall be provided by UPCL to the BESSD without any separate charge for the charging energy.

With regard to delay in commissioning, the Commission observes that the draft BESPA provides that, in case of delay in commissioning, the lower of the tariff determined by the Commission for the year of commissioning of the BESS Project and the tariff discovered through the bidding process shall apply. At the same time, Clause 22.4 of the draft BESPA provides that UPCL may terminate the agreement by giving one month's notice if the BESS Project fails to commence dispatch of capacity within three months from the Scheduled Commercial Operation Date. These provisions require alignment with the provisions of the BESS Guidelines governing delay in commissioning which are discussed hereunder.

In this regard, Clause C.3(b) of Section-IV of the BESS Guidelines, relating to "Implementation of the Project", provides, inter alia, that delay in commissioning

beyond the Scheduled Commissioning Date, subject to the provisions relating to Force Majeure, shall attract liquidated damages. The Guidelines further provide that where the delay extends beyond nine months after the Scheduled Commissioning Date, the contracted capacity shall be reduced to the project capacity commissioned up to that period, the entire Performance Guarantee shall be encashed by the Procurer/Intermediary Procurer, and the BESPA shall stand terminated in respect of the balance un-commissioned capacity.

Thus, the consequences of delay in commissioning are specifically provided for under the BESS Guidelines. The BESPA provisions relating to delay and termination should, therefore, be made consistent with the said provisions.

The Commission also notes that the BESS Guidelines provides for a commissioning period of 18 months from the effective/signing date of the BESPA. The Commission further observes that timely availability of land is a critical prerequisite for development of the BESS Project, as construction can commence only after possession of the project site is made available to BESSD. Any delay in handing over the land would defeat the objective of expeditious deployment of energy storage capacity in the State. Accordingly, UJVN Ltd. shall ensure that the land, on a right-to-use basis, is handed over to the successful BESSD within 2 weeks from the date of this Order so as to facilitate timely development and commissioning of the Project and enable UPCL and the consumers of the State to avail the intended benefits of the BESS in a timely manner. A clause to this effect is required to be incorporated in the Agreement.

Further, the Central Government has issued an Amendment in Operational Guidelines for VGF Scheme for development of BESS System supported through PSDF dated 04.08.2025 wherein a new clause has been inserted in Guideline 4 where eligible entity is made responsible to ensure that the BESS installed is of requisite quality as per best industry practices and refurbished battery cells are not used in the project. Accordingly, UJVN Ltd. acting as an authorised representative of UPCL conferred with other rights and obligations, and also since the project would be installed in its land, shall be required to ensure the same.

Hence, in light of the above discussions, the Commission considers it appropriate that the Scheduled Commissioning Date should be linked to the date of handing over of

the land under the Right of Use (RoU) arrangement, so that the period available to the BESSD for commissioning commences only after the requisite land is made available.

“UPCL shall accept the power stored and discharged as per schedule from the 15 MW/37.5 MWh BESS Project at Khatima and shall pay the applicable Capacity Charges for BESS Services at the rate of Rs. 3,30,143/MW/month, being the tariff discovered through the bidding process conducted by UJVN Ltd., plus a margin of 5 paise/kWh.

UJVN Ltd. shall retain the margin of 5 paise/kWh and transfer the balance amount, after deduction of TDS, if applicable, to the BESSD.

The Scheduled Commissioning Date (SCD) for commissioning of the full contracted capacity of the Project shall be 18 months from the later of (i) the Effective Date of the BESPA, or (ii) the date of handing over of the land to the BESSD under the Right of Use (RoU) arrangement subject to sub-clause 22.4 of this BESPA.

The energy required for charging the BESS, as per the requirement/schedule of UPCL, shall be scheduled and supplied by UPCL to the BESSD without any separate charge for such charging energy.

UJVN Ltd. shall ensure that the BESS installed is of requisite quality as per best industry practices and refurbished battery cells are not used in the project.”

- f) Clause 2.3 of Clause 2 of Draft BESPA specifies as follows which deals with the charges towards supply by distribution licensee to BESSD where BESS is not in a position to provide electricity:

“The supply of electricity by UPCL to Battery Energy Storage System Project, in case Battery Storage System is not in a position to provide electricity to meet the requirement of its own use or for start-up and consequently power is required to be drawn from UJVNL/UPCL, shall be as per Regulation ... of Uttarakhand Electricity Regulatory Commission Regulations, whatever.”

The Commission observes that Sub-Clause 13.5 of the draft BESPA provides that the BESSD shall obtain a separate, metered connection for the auxiliary power requirements of the BESS, and the cost of such electricity shall be borne by the BESSD.

The Commission notes that the above provisions do not clearly provide for a consistent arrangement. While Clause 2.3 provides for supply of electricity by UPCL/UJVN Ltd. for the BESS's own use/ start-up requirements in accordance with the

applicable Regulations, Clause 13.5 provides for a separate metered connection for auxiliary power supply. In this regard, as already held that the entire power of UJVNL Ltd. has been tied up with UPCL, hence, only UPCL can provide supply to the BESSD for charging of BESS system or for start up or auxiliary consumption for which separate connection would be required by the BESSD.

Accordingly, UPCL is directed to align the provisions of Clauses 2.3 and 13.5 and clearly specify the applicable tariff/charges and metering requirements, in accordance with the applicable Regulations. The necessary modifications shall be incorporated in the final BESPA before its execution.

g) Sub-clause 2.5.1 and 2.5.2 of the draft BESPA specifies as follows:

“2.5.1 The BESSD shall guarantee a minimum annual system Availability of 95% on annual basis. The BESSD shall pay the liquidated damages for such shortfall and shall duly pay such damages to UPCL. Amount of such liquidated damages shall be twice the Capacity Charges as per BESSA between UPCL and UJVNL for the capacity not made. Liquidated Damages on account of shortage in annual system Availability, as calculated from formula provided/illustrated in Annexure-VII).

2.5.2 Similarly, BESSD shall guarantee to maintain AC to AC roundtrip system efficiency (RtE) of 85% on monthly basis. The BESSD shall pay to UPCL for liquidated damages, if any as per following criteria:

- i. for $70\% \leq \text{RtE} < 85\%$ there shall be a liquidated damage levied @ APPC charge of previous financial year of UPCL levied upon excess conversion losses considering system $\text{RtE}=85\%$. Illustration for calculation of such liquidated damage has been provided in Annexure-VII.*
- ii. For $\text{RtE} < 70\%$, there shall be liquidated damage [levied @1.5](#) times APPC charge of previous financial year of UPCL levied upon excess conversion losses considering system $\text{RtE}=85\%$.*
- iii. For $\text{RtE} > 85\%$, there shall be incentive @ Rs. 0.50 per unit of excess discharge of energy considering system $\text{RtE}=85\%$.*

...”

The Commission observes that the above provision refers to the “BESSA between

UPCL and UJVNL” for determining the amount of liquidated damages. However, no such BESSA has been placed before the Commission for approval. It appears that the reference to “BESSA” has been made inadvertently and is required to be corrected. Further, in view of the Commission’s observation in the preceding paragraphs that the contractual arrangement is to be reflected through a tripartite agreement among UPCL, UJVN Ltd. and the selected BESSD, the reference to an agreement between UPCL and UJVN Ltd. is not appropriate in the aforesaid provision.

Accordingly, the expression “twice the Capacity Charges as per BESSA between UPCL and UJVN Ltd. for the capacity not made” shall be replaced with “twice the Capacity Charges as per this BESPA between the parties for the capacity not made available.”

Accordingly, the sub-clause 2.5.1 and 2.5.2 shall be read as follows:

“2.5.1 The BESSD shall guarantee a minimum annual system Availability of 95% on annual basis. The BESSD shall pay the liquidated damages for such shortfall and shall duly pay such damages to UJVN Ltd. who in turn will pay the same to UPCL. Amount of such liquidated damages shall be twice the Capacity Charges as per this BESPA between the parties for the capacity not made available. Liquidated Damages on account of shortage in annual system Availability, as calculated from formula provided/illustrated in Annexure-VII.

2.5.2 Similarly, BESSD shall guarantee to maintain AC to AC roundtrip system efficiency (RtE) of 85% on monthly basis. The BESSD shall pay for liquidated damages, if any as per following criteria:

- i. for $70\% \leq \text{RtE} < 85\%$ there shall be a liquidated damage levied @ APPC charge of previous financial year of UPCL levied upon excess conversion losses considering system $\text{RtE}=85\%$. Illustration for calculation of such liquidated damage has been provided in Annexure-VII.*
- ii. For $\text{RtE} < 70\%$, there shall be liquidated damage levied @1.5 times APPC charge of previous financial year of UPCL levied upon excess conversion losses considering system $\text{RtE}=85\%$.*
- iii. For $\text{RtE} > 85\%$, there shall be incentive @ Rs. 0.50 per unit of excess discharge of energy considering system $\text{RtE}=85\%$.”*

- h) As the BESS projects are being developed through TBCB with VGF support under the PSDF, and the RfP issued by UJVN Ltd. contains provisions relating to the payment of VGF to the BESSD, the Commission considers it appropriate that the VGF mechanism and the related obligations of the parties are expressly incorporated in the BESPA.

Accordingly, a new Clause 2.6, titled “Viability Gap Funding (VGF) Mechanism”, shall be incorporated in the BESPA, suitably capturing the applicable provisions of the VGF Scheme and the RfP, including the conditions governing disbursement of VGF to the BESSD and the respective obligations of the parties.

“2.6 Viability Gap Funding Mechanism

In this scheme, bidder will be selected through tariff based competitive bidding process. A central Financial Assistance/ Viability Gap Funding @ 18 Lac/MWh, available will be received in three tranches by UJVN Ltd. and UJVN Ltd. after receipt of same will transfer the same to the selected bidder as under: -

- 1. 20% on financial Closure of the project against Performance Bank Guarantee of such amount valid up to 2 years beyond date of financial closure of project.*
- 2. 50% on Commercial Operation Date (COD) of the project against Performance Bank Guarantee of such amount valid up to 1 years beyond date of Commercial Operation Date of project.*
- 3. 30% on completion of 1st year from the COD of the project.*
- 4. Rest of the investment will be made by the bidder himself.*
- 5. If the BESSD fails to commission the project in the timeline provided in this BESPA, and the project gets terminated after disbursement of the quantum of VGF, UJVN Ltd. shall have full right to recover the total amount of VGF being disbursed till the date of termination of BESPA plus interest @ SBI-MCLR (1 Year) plus five (5) percent, as existing on the date of disbursement, accrued from the date of disbursement on the disbursed amount. In case Project capacity is being reduced, recovery of VGF amount shall be made on pro-rata basis corresponding to the capacity being terminated.*
- 6. UJVN Ltd. will have the right to recover the VGF disbursed through encashment of BG, if the BESPA gets terminated within the first (1) year after COD of the Project, on account of reasons solely attributable to the BESSD. Irrespective of the year of termination within*

the first years after COD, the VGF amount to be recovered will be fixed as the amount disbursed until COD plus interest @ SBI-MCLR (1 Year) plus five (5) percent, as existing on the date of disbursement, accrued from the date of disbursement on the disbursed amount.

- 7. If the Project is transferred or sold to a third party during the above tenure, the BG will be re-issued by the new entity, corresponding to the amount applicable. The sale/transfer of the Project shall be effective only on submission of BG by new entity. However, this will be subject to prior approval of sanctioning authority of Grants-in-Aid {Rule230(9)}, in view of the asset being acquired substantially out of Government Grants.*
- 8. BESS Project acquired wholly or substantially out of Central Government Grants shall not be disposed of during the contract period without obtaining the prior approval of the sanctioning authority of Grants-in-Aid {Rule 230(9)}. Shareholding of the bidding entity in the SPV/ project company executing the BESS project shall not fall below fifty-one per cent at any time prior to Commercial Operation Date (COD).*
- 9. The VGF amount (Grant-in-Aid) is also subject to the Chapter 9 of the General Financial Rules, 2017, as amended from time to time, read with the Government of India's decisions incorporated there-under, and any other guidelines which may be issued in this regard."*

- i) Sub-clause 3.1 of Clause 3, i.e. "Maintenance Requirement of the Battery Storage System" of the draft BESPA specifies as follows:

"Planned Maintenance Outage duly informed by the BESSD to the off-taker/UPCL/SLDC with at least one month's prior notice, subject to total no. of planned outage period being not more than 34 hours in a two-month period. BESSD will have to comply with the Charging and Discharging Schedule as intimated by SLDC/UPCL. Alternation if any in Charging. It is clarified that discharge of BESS shall take place subject to the transmission constraints at the UJVN Ltd.'s substation. For example, discharge of power from BESS during peak Solar hours (say, 11:00 AM- 2:00 PM) may be subject to the Grid constraints.

In addition to above, the BESSD shall also submit Available energy Test Report for the Project Capacity as per IEC 62933-2-1 on Annual basis. It shall be the responsibility of the BESSD to make periodic replacements/replenishments of system capacities (to ensure annual guaranteed system ratings), if and when required, up to the Term of the Contract. Outage time as a result of replacement will also be counted as an "Accountable BESS Outage" for the purpose of

computing BESS Availability.”

As discussed in the preceding paragraphs of this Order, UJVN Ltd. shall be the agent of UPCL to coordinate with the BESSD, accordingly, BESSD shall inform UJVN Ltd. about the planned maintenance outages and UJVN Ltd. shall inform UPCL about the planned maintenance outage.

Further, the Commission observes that as per the above sub-clause, the BESSD shall be responsible to make periodic replacement/replenishments of system capacities to ensure annual guaranteed system rating. However, it is observed that draft BESPA does not contain any provision governing the holding and safe disposal of unit batteries from the BESS. In the matter, the Commission has examined the BESS guidelines dated 10.03.2022 issued by MoP, GoI on procurement and utilization of BESS as part of generation, transmission and distribution assets alongwith Ancillary services. In accordance with the said guidelines, the BESSD is required to comply with the requirement of Hazardous & other Waste (Management and Transboundary Movement) Rules, 2016 and e-waste (Management and Handling) Rules, 2016 for disposal of defective/non-operational/ non-repairable batteries.

Considering the environmental and safety implications associated with disposal of end-of-life battery modules, the Commission is of the view that an explicit obligation should be incorporated in the BESPA requiring the BESSD to ensure disposal, recycling and waste management in accordance with the applicable statutory framework. Accordingly, the following sub-clause 3.1 shall be read as follows:

“Planned Maintenance Outage duly informed by the BESSD to UJVN Ltd. who will subsequently inform the off-taker/UPCL/SLDC with at least one month’s prior notice, subject to total no. of planned outage period being not more than 34 hours in a two-month period. BESSD will have to comply with the Charging and Discharging Schedule as intimated by SLDC/UPCL. Alternation if any in Charging. It is clarified that discharge of BESS shall take place subject to the transmission constraints at the UJVNL substation. For example, discharge of power from BESS during non-Solar hours (say, 6:00 PM- 9:00 PM) may be subject to the Grid constraints

In addition to above, the BESSD shall also submit Available energy Test Report for the Project Capacity as per IEC 62933-2-1 on Annual basis. It shall be the responsibility of the BESSD to

make periodic replacements/replenishments of system capacities (to ensure annual guaranteed system ratings), if and when required, upto the Term of the Contract. Outage time as a result of replacement will also be counted as an "Accountable BESS Outage" for the purpose of computing BESS Availability.

The BESSD shall comply with the requirements under Hazardous & other Waste (Management and Transboundary Movement) Rules, 2016, as amended from time to time, as applicable. The BESSD shall ensure that all Unit Battery modules from the plant after their 'end of life' (when they become defective/ non-operational/ non-repairable) are disposed in accordance with the "e-waste (Management and Handling Rules, 2016" notified by the Government, as and when notified by the Government of India/ Government of Uttarakhand."

j) Clause 4 i.e. 'Supply Schedule' specifies as follows:

"4.1 The BESSD shall be responsible to for directly coordinating and dealing with the UPCL, Load Dispatch Centres (SLDC), Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Stored Energy Capacity and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the BESSD and UPCL are the Grid connected entities in respect of the Battery Energy Storage Capacity contracted under this Agreement.

4.2 Further, the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof

4.3. As part of scheduling of power / energy from / to the Project for discharging / charging, the BESSD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interface of SLDC for the corridor of power flow, as per the Regulations in force, under intimation to UPCL. UPCL may facilitate in identification of any discrepancy and assist the BESSD for its early rectification without any liability on UPCL. The BESSD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices / penalty.

4.4. After signing of BESPA, the BESSD shall apply for drawl NOC(s) from the STU as per the power mapping provided by UPCL/SLDC."

As discussed in the preceding paragraphs of this Order, the contractual

arrangement is to be reflected through a tripartite agreement among UPCL, UJVN Ltd. and the selected BESSD, the reference to an agreement between UPCL and UJVN Ltd. is not appropriate in the aforesaid provision. Accordingly, Clause 4 shall be read as follows:

“4.1 The BESSD shall be responsible for coordinating with and providing all necessary information and assistance to UJVN Ltd. for dealing with UPCL, the State Load Dispatch Centre (SLDC), Regional Power Committees, and other concerned authorities in all matters relating to declaration of availability, scheduling and dispatch of Stored Energy Capacity, compliance with the deviation and settlement mechanism, and the applicable Grid Code and State/Central Regulations. The BESSD shall coordinate and communicate with such agencies through UJVN Ltd and shall comply with the directions and requirements communicated through UJVN Ltd. The BESSD and UPCL shall remain the Grid-connected entities in respect of the Battery Energy Storage Capacity contracted under this Agreement.

4.2 Further, the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof.

4.3. As part of scheduling of power / energy from / to the Project for discharging / charging, the BESSD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interface of SLDC for the corridor of power flow, as per the Regulations in force, under intimation to UPCL through UJVN Ltd. UPCL may facilitate in identification of any discrepancy and assist the BESSD for its early rectification without any liability on UPCL. The BESSD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices / penalty.

4.4. After signing of BESPA, the BESSD shall apply for drawl NOC(s) from the STU as per the power mapping provided by UPCL/SLDC.”

- k) It appears that Clause “2” has inadvertently been mentioned against “BILLING PROCEDURE AND PAYMENTS” instead of Clause “5”. UPCL is directed to make the necessary correction accordingly.

Further, since the said Clause deals with the billing procedure and payments, UPCL is directed to suitably modify the sub-clauses to clearly specify the billing mechanism, including the manner in which the BESSD shall raise the bill on UJVN Ltd.

and UJVN Ltd. shall raise the corresponding bills alongwith a margin of 5 paise/kWh on UPCL, along with the supporting documents to be submitted at each stage. The Clause shall also clearly provide for the applicable payment rebate and Late Payment Surcharge (LPS), including the circumstances and period of delay, and specify the corresponding liability for delay in payment by UPCL to UJVN Ltd. and by UJVN Ltd. to the BESSD.

1) Clause 5.2 of the draft BESPAspecifies as follows:

“(a) The BESSD shall issue to UPCL hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period, including the time-block-wise data in the tabular format as per illustrated in annexure-VII of BESPAs, along with all relevant documents. The BESSD shall also submit calculations of System Availability and Round-trip Efficiency in line with the provisions of this Agreement, as part of the Monthly Bill/Supplementary Bil.

(b) As per applicable regulation(s) of the Appropriate Commission(s), charges pertaining to scheduling of power beyond delivery point, if any, shall be borne by UPCL.

(c) All payments required to be made under this Agreement shall also include any deduction or set off for:

1. deduction required by the Law; and

2. amount claimed by UPCL, if any, from the BESSD, will be adjusted from the monthly energy payment.

As discussed above while dealing Clause 2.1 of draft BESPAs, it can be construed that UJVN Ltd. will raise the monthly bill to UPCL comprising Capacity Charges for BESS services and margin money. The Commission further observes that the draft BESPAs includes Annexure-III (Invoice); however, the said Annexure has not been referred to at any other place in the draft BESPAs. Since billing is being dealt with under this Clause, reference to Annexure-III may appropriately be made herein. Accordingly, Clause 5.2 shall be read as follows:

“(a) The BESSD shall issue to UJVN Ltd. hard copy of a signed Monthly Bill/Supplementary Bill alongwith Annexure-III for the immediately preceding Month/relevant period, including the time-block-wise data in the tabular format as per illustrated in annexure-VII of BESPAs, along with all relevant documents. The BESSD shall also submit calculations of System Availability

and Round-trip Efficiency in line with provisions of this Agreement, as part of the Monthly Bill/Supplementary Bill. UJVN Ltd. shall then raise the bill supported with all the details with a margin money of Rs. 5 paise/kWh to UPCL.

(b) As per applicable regulation(s) of the Appropriate Commission(s), charges pertaining to scheduling of power beyond delivery point, if any, shall be borne by UJVN Ltd..

(c) All payments required to be made under this Agreement shall also include any deduction or set off for:

1. deduction required by the Law; and

2. amount claimed by UJVN Ltd., if any, from the BESSD, will be adjusted from the monthly energy payment."

m) Sub-clause 5.8 of Clause 5 i.e. 'Delivery and Content of Monthly Bills/Supplementary Bills' specifies as follows:

"In case of any dispute regarding the bill raised by the Battery Storage System, UPCL shall file a written objection with the Project Developer within fifteen days of receipt of the bill giving full particulars of the disputed item(s), with full details/data and reasons of discrepancies and amount disputed against each item. The Battery Energy Storage System Project shall resolve the above with UPCL within 30 working days."

As discussed in the preceding paragraphs of this Order, the present Agreement is proposed to be a tripartite agreement among UPCL, UJVN Ltd. and the BESSD. Accordingly, the above provision needs to be modified to recognize that a dispute may arise between any of the directly related parties, including between UJVN Ltd. and the BESSD or between UPCL and UJVN Ltd. The existing provision, however, contemplates disputes only between UPCL and the BESSD, who are not directly related under the proposed contractual arrangement. Accordingly, the provision needs to be suitably modified to provide for resolution of disputes between the respective parties to the Agreement. The provision shall, therefore, be read as follows:

"In case of any dispute regarding any bill raised under this Agreement, the party raising the dispute shall submit a written objection to the concerned party within fifteen days of receipt of the bill, setting out full particulars of the disputed item(s), including the relevant details/data, reasons for the discrepancy and the amount disputed against each item. The concerned parties shall

endeavor to resolve the dispute within thirty working days from the date of receipt of such objection. Where the dispute involves more than two parties, the parties concerned shall coordinate with each other through UJVN Ltd. for resolution of the dispute."

- n) Sub-clause 5.9 of Clause 5 i.e. 'Delivery and Content of Monthly Bills/Supplementary Bills' of the draft BESPAs specifies as follows:

Sub-clause 5.9

"In case, the dispute is not resolved within 30 working days as provided above, and in the event, it is decided to proceed with the Arbitration, then UPCL shall pay 100% of the disputed amount forthwith and refer the dispute for arbitration as provided in this agreement. 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 Battery Energy Storage System Project to UPCL."

Upon examination of the draft BESPAs, the Commission observes that sub-Clause 5.9 deals with reference of any dispute to arbitration. In this regard, Section 86(1)(f) of the Electricity Act, 2003 already provides an adjudicatory function of the Commission. The Commission considering the complex nature of the document and laying down of rights and liabilities between the parties and also the fact that certain omissions with respect to such rights and liabilities may remain unspecified or a need may be felt to clarify, substitute, align or delete the existing clauses so as to achieve the objective and align it with the applicable Rules and Guidelines, in such a situation, the Commission does not find arbitration as an effective alternate dispute redressal mechanism. In such a situation the statutory remedy for dispute resolution under Section 86(1)(f) read with other relevant provisions of the Regulations, the Commission would be in a best position to adjudicate the disputes, suggest changes and interpret the provisions of the agreements. Further, the Commission depending on the nature of disputes, may also refer that matter to arbitration as also provided in the Act and the Regulations. Hence, sub-clause 5.9 should be deleted.

Accordingly, Sub-clause 5.9 shall be deleted from Clause 5 at the time of execution of the BESPAs.

Further, the heading of Clause 24 reads as "Disputes and Arbitration".

However, from the reading of the sub-clauses the same relates to internal dispute redressal mechanism and in the event of any dispute remaining unresolved, reference of the matter to the Commission for adjudication. The sub-clauses does not talk about arbitration. Hence, the heading shall be suitably modified to “Settlement of Disputes” instead of “Disputes and Arbitration”.

- o) Sub-clause (a) and (e) of Clause 5.10 i.e. Payment Security Mechanism (Letter of Credit) of the draft BEPSA specifies as follows:

“(a) UPCL shall open a letter of Credit (LC) with a public sector scheduled bank at least one month prior to the commencement of power supply from the Battery Energy Storage System Project which would be exercised by the Battery Energy Storage System Project only in case of default in the payments by the UJVNL beyond due date. All the bank charges for opening/maintaining LC shall be borne by the UPCL.

...

(e) In case of payment through LC, the Generators shall present bill (s) to the said Bankers with a copy to the UPCL. The bill(s) so presented by the generator to the said Bankers shall be promptly paid on their presentation.”

As the agreement to be executed is a tripartite agreement under which UPCL shall make payments to UJVN Ltd., and UJVN Ltd. shall, after deducting its applicable margin, make the corresponding payment to the BESSD, the above provisions are required to be aligned with the payment arrangement under the Agreement.

Accordingly, the above provisions shall be read as follows:

“(a) UPCL shall open a Letter of Credit (LC) with a public sector scheduled bank at least one month prior to the commencement of power supply from the Battery Energy Storage System Project. The LC opened by UPCL shall be available for invocation by UJVN Ltd. only in case of default in payment by UPCL beyond the due date. All bank charges for opening and maintaining the respective LC shall be borne by UPCL.

...

(e) In case of payment through LC, the BESSD shall present its bill(s) to UJVN Ltd. Thereafter, UJVN Ltd. shall present its bill(s) to the designated bank against the LC opened by UPCL, with a copy to UPCL. The bill(s) so presented to the designated bank shall be promptly paid

on presentation, subject to the terms and conditions of the respective LC.”

- p) Clause 7 i.e. ‘Generation facilities owned and operated by the Battery Storage System (BESS)’ of draft BESPAs specifies as follows:

“7.1 The Battery Storage system (BESS) Project shall own, install, operate, and maintain the Project equipment’s and associated dedicated transmission line described in Annexure I of BESPAs. Battery Storage system (BESS) Project shall follow such operating procedures on its side of the electric interconnection with UPCL system, as are consistent with applicable laws, rules and regulations, the terms and conditions of this Agreement, provisions of the SGC, and other related guidelines, if any, issued by UERC, SLDC and UPCL.

7.2 All electrical equipment shall be installed in compliance with the requirements of the Director of Electrical Safety, Government of Uttarakhand and safety specifications of the Central Electricity Authority (CEA) under section 53 of the Electricity Act, 2003.

7.3 The Battery Storage system (BESS) Project further agrees to make no material changes or additions to, its facility, which may have an adverse effect on UPCL system or amend the single-line diagram, relay list and/or trip scheme given in Annexure I, without UPCL's prior written consent. UPCL agrees that such consent shall not be unreasonably withheld or given.

7.4 Without prejudice to the foregoing, the Battery Storage system (BESS) Project shall install, operate, and maintain its facility in accordance with accepted prudent utility practices in the electricity industry. The Battery Storage system (BESS) Project’s operation and Maintenance schedules and staffing shall be adequate to meet such standards at all times.

7.5 UPCL shall follow such operating procedures on its side of the electric interconnection point with the Battery Storage system (BESS) Project, as required to receive Power from the Battery Storage system (BESS) Project’s facility, without avoidable interruptions or adverse consequences on the Battery Storage system (BESS) Project, and consistent with applicable laws, rules and regulations, and the terms and conditions of this Agreement.”

As discussed in the preceding paragraphs of this Order, the Agreement is a tripartite agreement under which UJVN Ltd. shall provide the land for installation of the BESS Project by the BESSD, and the storage services are to be provided to UPCL through UJVN Ltd. Accordingly, the above clause requires appropriate modification to clearly specify the operating procedures to be followed at UJVN Ltd. and UPCL end of the electrical interconnection point, the requirements relating to any material

modification in the BESS Project that may affect the systems of UJVN Ltd. or UPCL, and the operating procedures to be followed by UJVN Ltd. and UPCL on their respective sides of the electrical interconnection points.

Accordingly, Clause 7 shall be read as follows:

- “7.1 The BESSD shall own, install, operate and maintain the BESS Project equipment and associated dedicated transmission line as described in Annexure I of the BESP. The BESSD shall follow, on its side of the electrical interconnection with the UJVN Ltd. system, such operating procedures as are consistent with applicable laws, rules and regulations, the terms and conditions of this Agreement, the State Grid Code (SGC), and other applicable guidelines, if any, issued by UERC, SLDC and UJVN Ltd. Since the BESS services are to be provided to UPCL through UJVN Ltd., the BESSD shall also comply with the applicable operating procedures and requirements communicated by UJVN Ltd. for providing such services to UPCL.*
- 7.2 All electrical equipment shall be installed in compliance with the requirements of the Director of Electrical Safety, Government of Uttarakhand, and the safety specifications of the Central Electricity Authority (CEA) under Section 53 of the Electricity Act, 2003, as applicable.*
- 7.3 The BESSD shall not make any material changes or additions to its facility that may adversely affect the electrical systems of UJVN Ltd. or UPCL, or amend the single-line diagram, relay list and/or trip scheme specified in Annexure I, without the prior written consent of UJVN Ltd. and, where such change affects the UPCL system, UPCL. Such consent shall not be unreasonably withheld or delayed.*
- 7.4 Without prejudice to the foregoing, the BESSD shall install, operate and maintain its facility in accordance with accepted prudent utility practices in the electricity industry. The BESSD’s operation and maintenance schedules and staffing shall be adequate to meet such standards at all times.*
- 7.5 UJVN Ltd. shall follow, on its side of the electrical interconnection point with the BESSD, such operating procedures as are necessary for receiving the BESS services from the BESSD and providing such services to UPCL, without avoidable interruptions or adverse consequences to the BESSD, and consistent with applicable laws, rules and regulations, the terms and conditions of this Agreement, the SGC and other applicable guidelines issued by UERC and SLDC.*
- 7.6 UPCL shall follow, on its side of the electrical interconnection point with UJVN Ltd., such operating procedures as are necessary for receiving the BESS services from UJVN Ltd., without*

avoidable interruptions or adverse consequences to the BESSD or UJVN Ltd., and consistent with applicable laws, rules and regulations, the terms and conditions of this Agreement, the SGC and other applicable guidelines issued by UERC and SLDC.”

- q) Sub-clause 8.5 to Sub-clause 8.9 of Clause 8 i.e. ‘Interconnection facilities’ of the draft BESPAspecifies as follows:

“8.5 Maintenance of terminal equipment at the generating end and the dedicated transmission line owned by such generating station and maintenance of the terminal equipment(s) at the UJVNL 33/11 KV Grid connecting Sub-Station, Dhakrani District- Dehradun ,Uttarakhand, Uttarakhand shall be as per Regulation in force.

8.6 Any work to be done by the Battery Energy Storage System Project shall be taken up only with a specific approval and on the basis of approved drawings and specifications from UPCL which has to approve or otherwise shall be conveyed to the Battery Energy Storage System Project within 30 days by UPCL and in compliance with the safety requirements as per SGC. On the completion of work, final approval shall be obtain from UPCL before charging the Line. The Battery Storage System (BESS) shall obtain all statutory clearances/approvals required for this purpose.

8.7 The Battery Energy Storage System Project shall consult UPCL on the scheme of protection of the interconnecting line(s) and the facilities at both ends and accordingly provide the equipment at both ends. The protection system, installed by the Battery Energy Storage System Project ant, shall be tested by UPCL.

8.8 Without limiting the foregoing, the Battery Energy Storage System Project and UPCL shall, operate and maintain the interconnection and parallel operation facility in accordance with accepted good engineering practices in the electricity industry and the State Grid Code Regulations, CEA(Safety requirement of construction, Operation & Maintenance of Electrical Plants and Electric Lines) Regulation, 2011, CEA(Technical Standard for constructions of Electric Plants and Electric Lines) Regulations,2022 ,CEA(Technical Standard Connectivity in the Grid) Regulations,2007 & CEA (Measures relating to safety and Electric Supply) Regulations,2023 read with their amended from time to time and directions of Director Electrical Safety (GOU) and Safety requirements as specified by the Authority under section 53 of Electricity Act, 2003.

8.9 The interconnection facilities, to be provided by the Battery Energy Storage System Project

are set forth in Annexure IV attached hereto and made a part hereof.”

As discussed earlier, it is a tripartite agreement, accordingly, the above sub-clauses shall be read as follows:

“8.5 The BESSD shall be responsible for the operation and maintenance of the BESS-side terminal equipment and the dedicated transmission line owned by the BESSD. UJVN Ltd. shall be responsible for the operation and maintenance of the terminal equipment and other interconnection facilities on its side of the point of interconnection, in accordance with the applicable Regulations and approved interconnection scheme. The responsibilities of UPCL, wherever applicable, shall be limited to the facilities under its ownership and control.

8.6 Any work proposed by the BESSD in connection with the interconnection facilities shall be undertaken only with the prior approval of UJVN Ltd., based on approved drawings and specifications and in compliance with the applicable safety requirements and the State Grid Code. UJVN Ltd. shall convey its approval or otherwise within 30 days of receipt of the complete proposal. Upon completion of the work, the BESSD shall obtain the final approval of UJVN Ltd. before charging the transmission line and energising the interconnection facilities. The BESSD shall obtain all statutory clearances and approvals required for the purpose.

8.7 The BESSD shall consult UJVN Ltd. and UPCL, as applicable, regarding the protection scheme for the interconnecting line(s) and facilities at both ends and shall provide the required protection equipment in accordance with the approved scheme. The protection system installed by the BESSD shall be tested and approved by UJVN Ltd./UPCL, as applicable, before commissioning of the interconnection facilities.

8.8 The BESSD and UJVN Ltd. shall operate and maintain the interconnection and parallel operation facilities on their respective sides of the point of interconnection in accordance with accepted good engineering practices in the electricity industry, the State Grid Code and all applicable regulations, including the CEA (Safety Requirements for Construction, Operation and Maintenance of Electrical Plants and Electric Lines) Regulations, 2011, CEA (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2022, CEA (Technical Standards for Connectivity to the Grid) Regulations, 2007, CEA (Measures relating to Safety and Electric Supply) Regulations, 2023, as amended from time to time, directions issued by the Director, Electrical Safety, Government of Uttarakhand, and the safety requirements specified under Section 53 of the Electricity Act, 2003.

8.9 Since UJVN Ltd. has selected the BESSD for development of the BESS Project and shall provide the BESS services to UPCL under this Agreement, UJVN Ltd. shall coordinate with UPCL, wherever required, in respect of grid operation, scheduling, charging/discharging and other operational matters affecting UPCL's system. Any operational procedure to be followed by UPCL on its side of the electrical interconnection point shall be governed by the applicable UERC Regulations, State Grid Code and the mutually agreed operating procedure.

8.10 The Interconnection Facilities to be provided by the BESSD and the respective responsibilities of the BESSD, UJVN Ltd. and UPCL shall be as set forth in Annexure-IV, which shall form an integral part of this Agreement."

- r) Clause 10 i.e. 'Technical assistance by UJVNL & Battery Energy Storage system projects responsibility' of draft BESPAs deals with the technical assistance to be provided by UPCL whereas the heading suggests technical assistance by UJVN Ltd.
- s) Clause 10, titled "Technical Assistance by UJVNL & Battery Energy Storage System Project's Responsibility", of the draft BESPAs provides for technical assistance to be provided by UPCL, whereas the heading of the clause indicates that such assistance is to be provided by UJVN Ltd.

Since the BESS Projects are proposed to be installed on land provided by UJVN Ltd. at its HEPs, it would be appropriate for UJVN Ltd. to provide necessary technical assistance to the BESSD, as and when requested, in relation to the preparing design and specifications of the required facilities for laying down standard operating and maintenance procedure. Accordingly, UPCL is directed to suitably modify the above clause to reflect the aforesaid arrangement and to ensure consistency between the heading and the provisions of the clause.2

- t) Clause 14 i.e. 'Liaison with & Assistance from UPCL' of the draft BESPAs specifies as follows:

"The Battery Energy Storage System Project shall closely liaise with Nodal Officer Executive Engineer, Electricity Distribution Division, Khatima of UPCL and shall inform the date of commencement of delivery of power to the designated officials Executive Engineer, Electricity Distribution Division, Khatima of UPCL one month in advance and also arrange for testing and commissioning of the protection system at least 15 days in advance. If requested by the Battery Energy Storage System Project, UJVNL shall extend assistance for testing, subject to the

condition that the shall pay the charges for such assistance to UPCL, if so indicated by the concerned Testing Division of UPCL in accordance with the Regulation. The Battery Energy Storage System Project shall conduct Commissioning tests in presence of designated officials of UPCL and submit the testing results to UPCL and UERC."

The above provision does not clearly specify the party responsible for bearing the charges for extended assistance. Ideally the BESSD is required to pay the charges for testing and commissioning of the protection system. Hence, the same needs to be clearly specified. Further, it is not clear why the payment for such assistance is proposed to be made to UPCL as UPCL's role is limited only to testing of the meters. Hence, the Commission is of the view that the BESSD shall bear the charges for extended assistance provided by UJVN Ltd. for testing. Accordingly, the Clause shall be modified and read as follows:

"The Battery Energy Storage System Project shall closely liaise with Nodal Officer Executive Engineer, Electricity Distribution Division, Khatima of UPCL and shall inform the date of commencement of delivery of power to the designated officials Executive Engineer, Electricity Distribution Division, Khatima of UPCL one month in advance and also arrange for testing and commissioning of the protection system at least 15 days in advance. If requested by the Battery Energy Storage System Project, UJVNL shall extend assistance for testing, subject to the condition that the BESSD shall pay the charges for such assistance to UJVNL, if so indicated by the concerned Testing Division of UJVN Ltd. in accordance with the Regulation. The Battery Energy Storage System Project shall conduct Commissioning tests in presence of designated officials of UPCL and submit the test results to UPCL, UJVN Ltd. and UERC."

- u) Clause 19, i.e. 'Daily/Monthly/Annual Report' of the draft BESPAs provides that the BESSD shall submit daily/monthly/annual and other reports on the format, and as per the procedure, specified in the SGC as amended from time to time and under the Regulations or as desired by the Petitioner.

The Commission has examined the aforesaid provision and observes that the BESS guidelines dated 10.03.2022 prescribe a detailed framework for performance monitoring of BESS projects. The Commission is of the view that incorporation of such provisions in the BESPAs would facilitate effective monitoring of the operational performance of the BESS, ensure transparency in data sharing, and enable UPCL to

verify compliance with contractual performance requirements throughout the term of the Agreement.

Accordingly, the following Clause 19A shall be inserted after Clause 19 of the BESPA:

“19 A. Performance Monitoring

As part of the performance monitoring, the following shall be carried out:

- 1. The BESSD must install necessary equipment to continuously measure BESS operating parameters (including but not limited to voltage, current, ambient conditions etc.) as well as energy input into and energy output from the BESS alongwith metering arrangement. They will be required to submit this data to UPCL on-line or/and through a report on regular basis every month for entire duration of contract.*
 - 2. The BESSD shall provide access to authorised representative of UPCL for installing any additional monitoring equipment to facilitate on-line transfer of data for the entire period of contract.*
 - 3. The BESS SCADA should be OPC version 2.0a (or a later version including OPC UA) compliant and implement appropriate OPC-DA server as per the specifications of OPC Foundation. All data should be accessible through this OPC server for providing real time online data (BESS parameters) to UPCL. This time series data shall be available from the project SCADA system to facilitate monitoring and should include parameters to facilitate daily, monthly and annual report for performance monitoring.*
 - 4. Web-based monitoring should be available, which should not be machine dependent. The web-based monitoring should provide the same screens as available in the plant. Also, it should be possible to download reports from a remote web-client in PFD or Excel format.”*
- v) Sub-clause 22.4 of Clause 22, i.e. ‘Event of Default and Termination’ of draft BESPA specifies as follows:

“UPCL reserves the right to terminate this agreement upon one month’s notice to the Battery Energy Storage System Project, if the Battery Energy Storage System Project’s facility fails to commence dispatch capacity power within three months from the planned commercial operation date mentioned in Annexure-I.”

The Commission has examined the above provision in light of the provisions of

the RE Regulations, 2023, the bidding documents and the BESS Guidelines issued by the MoP, GoI vide notification dated 10.03.2022.

The Commission observes that the RE Regulations, 2023 do not contain any specific provision governing the consequences of delay in commissioning of a BESS. It is further observed that the aforesaid provision of the draft BESPAs is broadly in line with the bidding document, which contemplates termination of the BESPAs in the event of failure of the BESSD to commission the project within the stipulated period.

However, the MoP Guidelines dated 10.03.2022 prescribe a more comprehensive and balanced framework for addressing delays in commissioning. The Guidelines provide for levy of liquidated damages for delay in commissioning up to nine months beyond the Scheduled Commissioning Date (SCoD) and termination only in respect of the un-commissioned capacity after the expiry of the said period. The relevant provisions are reproduced below:

“3. Commissioning Schedule

a. ...

b. Subject to the provisions of these Guidelines regarding Force Majeure, delay in commissioning beyond the Scheduled Commissioning Date mentioned in Annexure-I, shall involve liquidated damages levied on the BESSD, as detailed below:

i. For delay in commissioning upto 9 months after SCD, the BESSD shall be levied liquidated damages in the form of encashment of the PBG/POI on a per-day basis, pro-rata to the Contracted Capacity not commissioned. Payment of such liquidated damages could be done as follows:

i. By direct payment of the damages of the Procurer/Intermediary Procurer

ii. By encashment of the BG/POI

THE BESSD would have the option of choosing between these two options and the tie period for making this choice will be specified in BESPAs.

ii. For delay in commissioning beyond 9 months after SCD, Contracted Capacity shall be reduced to the project capacity commissioned upto 9 months after SCD, the entire Performance Guarantee will be encashed by the Procurer/Intermediary Procurer and the BESPAs for the Project shall stand terminated for the balance un-commissioned capacity.

- iii. *However, if for some reason, the above period of liquidated damages needs to be reduced than that provided in these Guidelines, the Procurer can do the same."*

The Commission is of the view that termination of the BESPA, if case of delay would be harsh on the BESSD who has made investments in the project and could not commission the project whatsoever be the reason. Cancellation of BESPA would impact negatively on BESSD and it would not be able to recover the amount it has invested. MoP's guidelines provides a balanced approach wherein BESPA remains effective for the commissioned part capacity and penalisation to the developer by way of encashment of BG/POI by procurer or direct payment of the damages to the procurer for delay.

Accordingly, the Commission directs that Sub-clause 22.4 of the draft BESPA shall be substituted with the following:

"Subject to the provisions regarding Force Majeure, delay in commissioning beyond the Scheduled Commissioning Date as mentioned in Annexure-I, shall involve liquidated damages levied on the BESSD, as detailed below:

For delay in commissioning upto 9 months after SCD, the BESSD shall be levied liquidated damages in the form of encashment of the PBG/POI on a per-day basis, pro-rata to the Contracted Capacity not commissioned. Payment of such liquidated damages could be done either by direct payment of the damages of the Procurer/Intermediary Procurer or by encashment of the BG/POI.

For delay in commissioning beyond 9 months after SCD, Contracted Capacity shall be reduced to the project capacity commissioned upto 9 months after SCD, the entire Performance Guarantee will be encashed by the Procurer/Intermediary Procurer and the BESPA for the Project shall stand terminated for the balance un-commissioned capacity."

Further, as stipulated in the aforesaid Guidelines, in the event of delay in commissioning of up to nine (9) months beyond the Scheduled Commissioning Date, the BESSD shall have the option to either make direct payment of the applicable liquidated damages to the Procurer/Intermediary Procurer or permit recovery of such damages through encashment of the BG/POI by the Procurer/Intermediary Procurer. The choice of the mode of payment/recovery shall be exercised by the successful BESSD at the time of execution of the BESPA. Accordingly, UPCL is directed to incorporate

both the aforesaid options in the BESPAs and suitably specify, in the relevant provision, the option elected by the BESSD at the time of execution of the Agreement.

- w) Sub-clause 27.1 (i) of Clause 27 i.e. 'Force Majeure' of the draft BESPAs specifies as follows:

"Acts of God, including but not limited to lightning, landslide, storm, action of the elements, earthquakes, volcanic eruption, flood, pandemic, cyclone, typhoon or tornado, if it is declared by competent drought and natural disaster or exceptionally adverse weather conditions"

The Commission observes that the above provision does not clearly convey the intended scope of Force Majeure events. In particular, the phrase "if it is declared by competent..." appears to be incomplete and misplaced, thereby rendering the provision ambiguous. Regulation 3(1)(xxv) of RE Regulations, 2023 has adequately defined Force majeure events. Accordingly, suitable modification is required and the same shall be in accordance with the RE Regulations, 2023.

- x) The Commission observes that the draft BESPAs does not contain any provision relating to Change in Law. In this regard, the Commission has examined the BESS guidelines issued by the MoP vide Resolution dated 10.03.2022. The said Guidelines contain the following provisions with respect to Change in Law:

"J. CHANGE IN LAW

1. *In these Guidelines, the term 'Change in Law' shall refer to the occurrence of any of the following events, after the last date of the bid submission, which have a direct effect on the Project, leading to corresponding changes in the cost requiring change in tariff, and includes (i) a change in interpretation of any law by a competent court; or (ii) the enactment of any new law; or (iii) a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union Territory administration leading to corresponding changes in the cost; or (iv) a change in any condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity, unless specifically excluded in the agreement for the purchase, supply or transmission of electricity, which results in any change in the cost;. However, Change in Law/Regulation shall not include (i) any change in taxes on corporate income or any change in any withholding tax on income or dividends, or (ii) change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission. The term "law" in*

this provision, includes any Act, Ordinance, order, bye-law, rule, regulation, notification, for the time being in force, in the territory of India.

- 2. In the event a Change in Law results in any adverse financial loss/ gain to the BESSD/Procurer then, in order to ensure that the BESSD/Procurer is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law / Regulation, the BESSD/ Procurer shall be entitled to compensation by the other party, as the case may be. Compensation payment on account of such 'Change in Law' shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.*

3. Compensation payable on account of Change in Law:

- a. In case of Change in Law taking place prior to commissioning of the Project, the compensation will be passed through on in the form of increase/decrease in the tariff, linked with increase/decrease in the Project cost, which will be automatically paid through the monthly energy billing. The pass through in this case shall be effective from date of commissioning of the Project. The bidding documents shall contain the appropriate formula/provision to calculate the applicable increase/decrease in the tariff.*
- b. In case of Change in Law taking place subsequent to commissioning of the Project capacity, and changes in taxes/duties/cess etc. are defined as a percentage or the ratio of the tariff, the changes will be automatically passed on as appropriate increment/decrement in the tariff, and will be paid through monthly energy billing.*
- c. In the above two cases, the pass through according to the formula stipulated in the BESPA, will come into effect automatically after 60 days of submission of the all the necessary documents by the affected party to substantiate its claim for relief under such change in law event.*
- d. Truing up of the calculations on account of the above Change in Law events will be done by the Appropriate Commission. In the event of any decision by the Appropriate Commission which modifies or cancels any changes in the tariff, recovery/additional payment of the amount already paid until then, will be done suitably.*
- e. In case of Change in Law during the operational period of the Project, and where such change is not applicable as an automatic modification in the tariff, suitable compensation will be provided as decided by the Appropriate Commission.*
- f. In case a Change in Law results in delay in commissioning, where cause and effect between these two can be clearly established, the Procurer may provide suitable extension to*

financial closure and commissioning deadlines of the Project."

Clause 2, i.e. *Scope of the Guidelines*, of the above-mentioned guidelines of MoP dated 10.03.2022 provides that the provisions of the Guidelines shall be binding on the BESSD, Procurer, Intermediary Procurer, End Procurer, Implementing Agency and the Authorised Representative of the Procurer. The Commission is of the view that inclusion of a suitable Change in Law clause is necessary to address the impact of any subsequent change in applicable laws or governmental actions during the term of the BESPA. In the absence of such a provision, disputes may arise regarding the allocation of the resulting costs and obligations. Accordingly, incorporation of a Change in Law clause would provide contractual certainty and help avoid future disputes between the contracting parties. Therefore, UPCL is directed to incorporate an appropriate Change in Law provision in the final BESPA to be executed with the successful BESSDs.

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

As discussed in the preceding paragraphs of this Order, the BESPA is a tripartite agreement among UPCL, UJVN Ltd. and the BESSD. Under the arrangement, the BESSD has been selected by UJVN Ltd. for development of the BESS Project, while UJVN Ltd. shall act as the Authorised Representative/Agent of UPCL for coordination with the BESSD and shall facilitate the provision of BESS services to UPCL in accordance with the terms of the Agreement. Accordingly, the roles and responsibilities of UPCL, UJVN Ltd. and the BESSD are required to be appropriately reflected throughout the BESPA.

The Commission further considers that, notwithstanding the responsibilities assigned to UJVN Ltd. as the Authorised Representative under the agreement, the obligations of the BESS Developer are ultimately connected with the provision of BESS Services to UPCL as the End Procurer. Accordingly, any failure or non-compliance by the BESS Developer with its obligations under the agreement, which may adversely affect the provision, availability, performance or continuity of BESS Services to UPCL, shall upon inaction or timely action by UJVN Ltd. shall not preclude UPCL from taking appropriate action to ensure compliance with such obligations. In such circumstances, UPCL shall have the right to intervene, either directly or through UJVN Ltd., so as to enforce such rights and obligations against the BESSD requiring the BESS Developer to fulfil its contractual obligations, including rectification of

any default or deficiency within the stipulated period. However, such intervention by UPCL shall be without prejudice to the rights and remedies available to UJVN Ltd. under the agreement and shall not, by itself, alter the respective roles and responsibilities of UPCL, UJVN Ltd. and the BESS Developer under the agreement. Accordingly, provision to this effect shall be incorporated in the BESPA.

As discussed above, the Commission has modified few of the provisions of the draft BESPA for reference, to align them with the aforesaid tripartite arrangement. UPCL is directed to suitably review and make consequential modifications in all other provisions of the draft BESPA, wherever required, so as to ensure consistency with the tripartite nature of the Agreement and clearly describe the respective roles, responsibilities, rights and obligations of UPCL, UJVN Ltd. and the BESSD.

5.22.6. UPCL is directed to amend the draft BESPA in accordance with the observations of the Commission in this Order and sign the BESPA with UJVN Ltd. and BESSD after incorporating the same and submit the same to the Commission within fifteen working days of signing of each BESPA. In addition, the approval sought by UJVN Ltd. from GoU, as discussed in Para 5.18 above, shall be submitted within fifteen days of the date of Order.

6. Ordered accordingly.

(Prabhat Kishor Dimri)
Member (Technical)

(Anurag Sharma)
Member (Law)

(M.L. Prasad)
Chairman