

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Miscellaneous Application No. 08 of 2026

In the matter of:

Petition under Section 86(1)(f) read with Sections 86(1) (c) & (e) & Section 42 of the Electricity Act, 2003 seeking compliance with Regulation 8(2) of the UERC (Terms and Conditions of Open Access) Regulations, 2015 and Regulation 8 of the UERC (Green Energy Open Access) Regulations, 2023 by the respondents.

In the matter of:

1. M/S TVS Srichakra Limited
SIDCUL, Pantnagar, Rudrapur, Tehsil Kichha, District Udham Singh Nagar
2. Evincea Renewables (Three) Private Limited
Village Fateu, Post office Samalta, Tehsil Kalsi, District Dehradun
3. Evincea Renewables (Six) Private Limited
Village Fateu, Post office Samalta, Tehsil Kalsi, District Dehradun

... Petitioners

AND

In the matter of:

1. Uttarakhand Power Corporation Limited (UPCL)
2. Power Transmission Corporation of Uttarakhand Limited (PTCUL)
3. State Load Despatch Centre (SLDC)
4. Uttarakhand Renewable Energy Development Agency (UREDA)

... Respondents

CORAM

**Shri M.L. Prasad
Shri Anurag Sharma
Shri Prabhat Kishor Dimri**

**Chairman
Member (Law)
Member (Technical)**

Date of Order: October 13, 2026

This Order relates to the Petition dated 23.01.2026, filed by M/S TVS Srichakra Limited & Ors. (P) Limited (hereinafter referred to as "Petitioner") Petition under Section 86(1)(f) read with Sections 86(1) (c) & (e) & Section 42 of the Electricity Act, 2003 seeking compliance with Regulation 8(2) of the UERC (Terms and Conditions of Open Access) Regulations, 2015 and Regulation 8 of the UERC (Green Energy Open Access) Regulations, 2023 by the respondents.

1. Background & Submissions

1.1. The Petitioner M/S TVS Srichakra Limited has submitted that it is a captive consumer of Evincea (Three) and Evincea (Six) in terms of the Electricity Act, 2003 read with Rule 3 of the Electricity Rules, 2005. The Petitioner owns not less than 26% equity in the power plants owned and operated by Evincea (Three) and Evincea (Six) and consumes 100% of the electricity generated therefrom since July, 2025. Additionally, the Petitioner has a service connection with UPCL having a contracted demand of 3.5 MW. Further, Evincea Renewable (Three) Private Limited and Evincea Renewable (Six) Private Limited are generating companies, each owning and operating a 2 MW solar power plant.

1.2. In the Petition, the Petitioner has raised the following contentions:

- i. Advance recovery of Cross-Subsidy Surcharge (CSS) and Additional Surcharge (AS) from captive consumers.
- ii. Non-Processing of MTOA /LTOA Applications.
- iii. Banking facility.
- iv. Scheduling and Operation Charges.
- v. Deemed Generation on account of back down instructions.
- vi. Transmission and wheeling charges exemption.
- vii. Green Cess and Electricity Duty exemption.

1.3. Regarding the Advance recovery of Cross-Subsidy Surcharge and Additional Surcharge from captive consumers, the relevant paras of the submission are reiterated below:

“... ”

15. As stated above, Section 42(2) and Section 42(4) of the Electricity Act, 2003 provide a clear statutory exemption to captive consumers from payment of Cross Subsidy Surcharge and Additional Surcharge. Notwithstanding the above statutory exemption, the UPCL has been recovering Cross Subsidy Surcharge and Additional Surcharge from TVS. There is no basis for such illegal recovery and the amounts are liable to refunded to TVS.

16. Further, no such levy can be made on TVS as such advance recovery is not envisaged under the Act or the applicable regulatory framework. On the other hand, the provisions of

Rule 3 of the Electricity Rules clearly provide that the determination of non-captive status can only be done at the end of the year, after verifying the consumption of electricity throughout the year. In this regard, Rule 3(2) of the Electricity Rules, inter-alia, provides.

17. Therefore, this determination, however, has to necessarily occur only on an annual basis. There cannot be any presumption in law for non-captive consumption.

18. In the circumstances, the UPCL ought to be restrained from levying such charges in advance on the presumption that the supply is non-captive. There is no such presumption in law, on the other hand the presumption is captive consumption, without verification and consequent action of levy of charges only at the end of the year, if such supply is found to be non-captive on any annual basis.

19. It is stated that the captive consumers cannot be treated as liable to such charges upfront, subject to post-facto refund. There is no provision for the above charges to be collected in advance by the discoms. On the other hand, as stated hereinabove, in terms of Rule 3(2) of the Electricity Rules 2005 only after verification of the consumption over the year if it is found that the captive requirements are not fulfilled, can the electricity be treated as noncaptive and subject to levy of cross-subsidy surcharge. Hence, treating captive plants as non-captive in advance is specifically disabled by the Electricity Rules.

20. In the circumstances, the levy of additional surcharge and cross-subsidy surcharge by the UPCL in the monthly bills is contrary to law, erroneous and is liable to be quashed."

1.4. Regarding the Non-Processing of MTOA/LTOA applications, the relevant paras of the submission are reiterated below:

"...

21. Regulation 8 of the UERC (Terms and Conditions of Open Access) Regulations, 2015 mandates that the distribution licensee shall approve or reject applications for connectivity within a period of thirty (30) days from receipt.

22. However, despite submission of complete applications in all respects, the TVS's MTOA/LTOA applications have remained unprocessed for extended periods, without any justification. Further, UPCL has not communicated any reasons for why the MTOA/LTOA applications have not been processed. It is stated that the Petitioners have been forced to apply for STOA every month resulting in financial and operational uncertainty."

- 1.5. Regarding the Banking facility, the Petitioner has submitted the following submission on the Petition, the relevant paras of the submission are reiterated below:

“ ...

25. TVS is an intra-state consumer, consuming up to 4.0 MW captive power from Evincea Three and Evincea Six within the State of Uttarakhand. Despite the above, UPCL has not applied the appropriate banking provision being Regulation 50 of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based cogenerating stations) Regulations, 2023 ("UERC RE Tariff Regulations, 2023")."

- 1.6. Regarding the Scheduling and Operation Charges, the relevant paras of the submission are reiterated below:

“ ...

27. The Petitioners are wheeling power on an intra-state basis and are connected to the distribution network for both injection and drawal, strictly in accordance with the provisions of the Uttarakhand Open Access Regulations, 2015. In cases where both injection and drawal points are connected to the distribution system, UPCL acts as the sole Nodal Agency for grant and operation of open access.

28. Despite the above, even if no schedules are provided, scheduling and operation charges are being levied on the Petitioners on monthly basis by SLDC. The above levy has significant financial implications on the Petitioners and hampers the operations of the consumers and generators operating on captive basis. Hence, appropriate directions may be issued to SLDC to not levy such charges from TVS and refund the already recovered amount of Rs. 9,60,000/-."

- 1.7. Regarding the Deemed Generation on account of backdown instructions, the relevant paras of the submission is reiterated below:

“ ...

29. In terms of Regulation 28 of the UERC RE Tariff Regulations, 2023, since RE Sources are dependent on vagaries of nature and are of small capacities, the principle of merit order dispatch/purchase shall not be applicable to supply of power from such sources to the distribution licensee or local rural grids within the State, i.e. they shall be treated as must run stations. Despite the above, frequent backing down instructions have been issued to generators. The above significantly affects the generation and consumption by Petitioners

and hampers meeting Renewable Consumption Obligation (RCO) compliances as per the Orders of the Hon'ble Commission.

30. Hence, in terms of Regulation 51 (1) of the UERC RE Tariff Regulations, 2023 Evincea Three and Evincea Six are entitled to Deemed Generation for the loss of generation on account of the backing down instructions issued by SLDC despite it being a must run plant. The above has disabled achieving CUF in terms of Regulation 2(1) and consequently, the generators are entitled to reimbursement of the loss suffered by them on account of the same. The details of the backdown received and the loss caused to Evincea Three and Evincea Six, respectively is annexed hereto. A copy of the UERC RE Tariff Regulations, 2023 is annexed hereto.

31. Hence, Evincea Three and Evincea Six are entitled to be compensated to the tune of Rs. 10,69,200/- and Rs.10,69,200/- respectively, for the generation loss caused to them on account of the backing down instructions issued by the SLDC from time to time."

1.8. Regarding the Transmission and wheeling charges exemption, the relevant paras of the submission is reiterated below:

" ...

32. The Uttarakhand Solar Energy Policy, 2023 has been notified by the Government of Uttarakhand with the objective of promoting renewable energy development in the State by providing fiscal and regulatory incentives to generators and consumers.

33. Pursuant to the Policy, several generators and consumers, including the Petitioners herein, have taken investment decisions to set up solar power projects and procure power through group captive arrangements.

34. However, the exemptions provided in the above Policy are not being adhered to and followed by the Respondent licensees, on the ground that implementation procedures are yet to be framed to ensure that the exemptions are reflected in the bills raised by the Respondent licensees.

35. It is submitted that such a stand of the licensees is erroneous, as the procedures are only for implementation of the exemptions. The exemptions themselves being the vested rights of the Petitioners, and infact the investment decisions taken on the basis of such policies, the exemptions cannot be denied for want of procedures.

36. In particular:

(a) Paragraph 7.6 of the Solar Policy provides for exemption from transmission and wheeling charges for captive and group captive solar plants;

(b) Paragraph 8.2.3 (II) provides a five-year exemption from transmission and wheeling charges for C&I consumers.

37. While the Solar Policy, 2023 provides complete exemption from payment of transmission and wheeling charges for five years, presently transmission charges and wheeling charges are continuing to be levied by the Respondent licensees. UPCL is levying wheeling charges on per MW per day basis, while for solar plants the levy is usually undertaken on a per unit basis across the country, more specifically in KWh.

38. Hence, while the Hon'ble Commission directs the Respondent licensees from granting exemption from payment of transmission and wheeling charges to the UPCL & PTCUL, respectively, the Hon'ble Commission may also clarify the basis on which such levy is to be undertaken post completion of the five year period."

1.9. Regarding the Green Cess and Electricity Duty exemption, the relevant paras of the submission is reiterated below:

"...

39. Further, the Solar Policy, 2023 also grants exemptions from payment of Green Cess and Electricity Duty, while the same is continuing to be levied by UPCL.

40. To avoid any issues on the implementation of the exemptions granted, it is respectfully submitted that the Hon'ble Commission may provide suitable directions for implementation of such exemptions under the Solar Policy. The same would also significantly enhance regulatory certainty and support long-term planning by renewable energy developers and consumers in the State. The benefits that the generators and consumers are entitled to under the Solar Policy may be accordingly provided for under the implementation procedure."

1.10. In light of the above facts, the Petitioner has made following prayers for the consideration of the Commission:

"...

Hold and declare that advance recovery of Cross Subsidy Surcharge and Additional Surcharge from the Petitioners is contrary to the Electricity Act, 2003, the Electricity Rules, 2005 and the Regulations of the Hon'ble Commission and is liable to be quashed;

Direct the Respondent No. 1 to undertake the verification of captive status in terms of Rule 3(2) of the Electricity Rules, 2005 after the year is over, and treat the supply as by a generating company (non-captive) only if it is found to have not fulfilled the conditions in Rule 3 at the end of the year;

Direct that the Petitioners is entitled to refund of Rs. 39,31,267.73/-already paid towards Cross Subsidy Surcharge and Additional Surcharge to Respondent No. 1 along with carrying cost;

Direct the Respondent licensee to comply with the Regulation 8(2) of the Open Access Regulations, 2015 and process the application of the Petitioners within the time provided in Regulation 8(2);

Direct that the Petitioners are entitled to banking facility as provided from under Regulation 50 of the UERC RE Tariff Regulations, 2023;

Direct the refund of Rs. 9,60,000/- already recovered by SLDC towards scheduling and operation charges;

Pass necessary directions and procedures for implementing the exemption on wheeling and transmission charges, green cess and electricity duty, for captive solar power projects in accordance with the Uttarakhand Solar Energy Policy, 2023; and

Clarify the manner in which wheeling and transmission charges are to be levied by the distribution licensee upon the completion of the 5 year period under the Solar Policy, 2023;

Hold that the Petitioner No. 2 and Petitioner No. 3 sare entitled to deemed generation compensation in terms of Regulation 51 of the UERC RE Tariff Regulations, 2023 and direct UPCL to refund a sum of Rs. 10,69,200/- and Rs. 10,69,200/-, respectively

Pass such other order or orders which are deemed fit and proper in the facts and circumstances of the case."

1.11. The Commission vide its letter dated 16.02.2026 has forwarded the application to the Respondents to provide their comments in the matter.

1.12. In response to the Commission letter, SLDC vide its letter dated 16.03.2026 submitted the comments on the admissibility of the matter, the same reiterated below:

" ...

1. **Issue raised by M/s TVS Srichakra Limited: Scheduling and Operation Charges** (point No. 27 and 28).

...

- (i) UPCL is Nodal Agency for grant of Open Access where the 'Drawl and injection point in distribution system' as per Regulation 12 (3) of UERC (Terms and Conditions of Intra State Open Access) Regulations, 2015 and its amendment thereof. Accordingly, UPCL granted the Short-Term Open Access to the Petitioner as per UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 and its amendment thereof.
- (ii) No such exemption from payment of 'System Operation Charges' is allowed to any type of Short-Term Open Access Customer under 20 (1) of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 and its amendment thereof.
- (iii) For preparation of Deviation Settlement Account of Open Access consumers, schedules of all Open Access consumers, irrespective of the type of Open Access or source of power or its connection voltage, are being incorporated in the Implemented Schedule by SLDC. Accordingly, the schedules of the Petitioner No. 1 are being incorporated (as per the intra-State Open Access approvals provided by UPCL) in the 'Implemented Schedule' for preparation of the Deviation Settlement Account. Schedules of Open Access consumers from all the sources are visible on the 'Web-Scheduling' of SLDC.
- (iv) In view of the above, the claim of the Petitioner No.1 that 'no schedules are provided:.. baseless and beyond the facts.
- (v) SLDC has not raised any bills to Petitioner Nos. 2 & 3 on account of 'System operation charges'. Therefore, the claim of Petitioner Nos. 2 & 3 for levying these charges is baseless and beyond the facts. However, as per UERC (Terms and Conditions of Intra. State Open Access) Regulations, 2015 and its amendment thereof, SLDC is raising bills of System Operation charges to Petitioner No.1 (Embedded open access consumer).

Therefore, no such refund is applicable towards 'System Operation charges' recovered from the Petitioner No. 1 including other intra-State Open Access consumers.

2. **Issue raised by M/s TVS Srichakra Limited:** Deemed Generation on account of back down instructions (point No. 29, 30 & 31)

...

- (i) The generating stations of Petitioner Nos. 2 & 3 are connected to Distribution system of Distribution Licensee. Both of the above generating stations do not come under the laSTS control area as per Regulation 7.4 (2) of the UERC (State Grid Code)

Regulations, 2016 and its amendments thereof. Therefore, SLDC is not coordinating the scheduling of these Petitioner's generating stations.

*(ii) Petitioner schedules Nos. 2 & 3, at point No. 28 in their petition, are claiming that even if no petition, these Petitioners by SLDC. At the same time, at point No. 30 & 31 in their to Deemed are also claiming 'Evincea Three and Evincea Six are entitled instructions Generation issued by for the **loss of generation on account of the backing down SLDC** despite it being a must run plant'.*

(iii) It is to bring in kind notice of Hon'ble Commission that no backing down instruction has been issued by SLDC to above generators, Also, these Petitioners in their petition have not submitted any documentary evidence of backing down instructions of SLDC.

In view of the above, the claim of the Petitioner Nos. 2 & 3 is contradictory, baseless and misleading.

3. Issue raised by M/s TVS Srichakra Limited: Transmission Charges. (point No. 37 & 38)

...

As stated above, UPCL is Nodal Agency for grant of Open Access where the Drawl and injection point in distribution system' as per Regulation 12 (3) of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 and its amendment thereof. Accordingly, UPCL granted the Open Access to the Petitioner as per UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 and its amendment thereof. No such exemption from payment of Transmission Charges is allowed to any type of Short Term Open Access Customer under 21 (2) (b) of UERC (Terms and Conditions of Intra State Open Access) Regulations, 2015 and its amendment thereof.

It is submitted that the petition filed by Petitioner Nos. 1, 2, and 3 is not maintainable; therefore. Hon'ble Commission is requested not to admit the Petition."

1.13. In response to the Commission letter, PTCUL vide its letter dated 16.03.2026 submitted the comments on the admissibility of the matter, the same reiterated below:

“ ...

1. *The Applicants/ Petitioners, by letters dated 24.06.2024, sought clarifications on open access charges and requirements for intra-State solar power wheeling. Including MTOA, LTOA, and the captive/group captive route. Copies are enclosed.*
2. *PTCUL, by letter dated 01.07.2024, furnished the requested clarifications. A copy is enclosed.*
3. *Thereafter, by letter dated 07.06.2025, the Applicants/ Petitioners applied for grant of LTOA for intra-State solar power wheeling under the captive route. A copy is enclosed.*
4. *PTCUL, vide Letter No. 349/CE(C&R)/PTCUL dated 17.06.2025, informed the Hon' ble Commission that it had received an open access application from M/s TVS Srichakra Limited under the Green Energy Open Access Regulations, 2023. PTCUL also stated that the draft detailed procedure had already been submitted to the Hon'ble Commission on 04.01.2024, and the revised draft submitted on 11.06.2024, and that approval and further directions are awaited. Copies are enclosed.*
5. *Hon'ble Commission is humbly requested to issue necessary directions in the matter. PTCUL shall comply with the directions issued by the Hon'ble Commission.”*

1.14. In response to the Commission letter, UREDA vide its letter dated 18.03.2026 submitted the comments on the admissibility of the matter, the same reiterated below:

“ ...

1. *Evincea Renewable (Three) Private Limited को Village Danda, Tehsil Kalsi, District Dehradun में 2000 कि०वा० क्षमता कैप्टिव सोलर पावर प्लान्ट स्थापित किये जाने हेतु उरेडा द्वारा पत्र संख्या 2565 दिनांक 07 मार्च, 2024 से LOA निर्गत किया गया है।*
2. *Evincea Renewable (Six) Private Limited को Village Danda, Tehsil Kalsi, District Dehradun में 2000 कि०वा० क्षमता कैप्टिव सोलर पावर प्लान्ट स्थापित किये जाने हेतु उरेडा द्वारा पत्र संख्या 23 दिनांक 03 अप्रैल 2025 से LOA निर्गत किया गया है।*

...”

1.15. In response to the Commission letter, UPCL vide its letter dated 04.05.2026 submitted the comments on the admissibility of the matter, the same reiterated below:

“ ...

3. *The entire Petition proceeds on the assumption that TVS is a captive consumer entitled to all exemptions flowing therefrom. However, under Rule 3(1)(a)(ii) of the Electricity Rules, 2005 (“Rules”), captive status can only be determined on an annual basis after verifying that not less than 51% of aggregate electricity generated has been consumed for captive use. The open access commenced only in July 2025 and the annual verification has not been completed. In the absence of established captive status, no relief claimed in the Petition whether exemption from charges, or Solar Policy benefits can be granted.*
4. *The Petitioners have in the same breath invoked the UERC (Green Energy Open Access) Regulations, 2023 under which SLDC/PTCUL are the designated Nodal Agencies in case of short-term & Medium-term/Long Term respectively and the UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 under which UPCL is the Nodal Agency when both injection and drawal points are on the distribution system. These two frameworks contemplate different nodal agencies, different procedures and different obligations and cannot be clubbed together in a single omnibus petition. The Petition as framed discloses no clear and consistent cause of action under either framework and is liable to be dismissed at the threshold.*
5. *At the time of filing their Short Term Open Access (“STOA”) application, the Petitioners voluntarily furnished a binding undertaking to UPCL agreeing to pay all open access charges including transmission and wheeling charges and any surcharges as notified by UERC/CERC from time to time. Further, Regulation 10(2) of the Open Access Regulations, 2015 itself makes open access conditional upon payment of wheeling and other charges as determined by the Commission. The Petitioners cannot approbate and reprobate simultaneously by first giving an undertaking to pay charges and then approaching this Hon'ble Commission alleging that the very same charges are illegally levied.*
6. *No Long Term Open Access (“LTOA”) application was filed with UPCL, it was filed with PTCUL under UERC (Green Energy Open Access) Regulations, 2023. The MTOA applications filed on 08.09.2025 were incomplete as the mandatory fee was not submitted, and therefore the 20-day processing clock under Regulation 12(3) never commenced. UPCL has been granting STOA to the Petitioners every month in a timely manner, as is evident from the Petitioners' own Annexure A. The Petitioners are themselves confused about what type of open access arrangement they require and*

under which regulatory framework, and cannot attribute blame to UPCL for consequences flowing from their own defaults.

7. The deemed generation claim of Rs. 10,69,200/- each is made without filing the foundational **Annexure C** and without any supporting data on outage periods, CUF achievement or monthly reconciliation as required under Regulation 51(2) of the RE Regulations 2023.
8. The Solar Policy 2023 exemptions are not enforceable as no corresponding amendment to UERC regulations has been notified. The banking facility claims falls as the Petitioners themselves have failed to comply with the mandatory day-ahead scheduling requirement under Regulation 50(d). In sum, the Petition is a collection of premature, misdirected and unsubstantiated claims that deserve to be dismissed in their entirety.

Relief sought by petitioner	Why it cannot be granted
Relief A: Declaration that advance recovery of Cross Subsidy Surcharge (CSS) and Additional Surcharge (AS) is contrary to law and liable to be quashed	Not maintainable. Captive status is yet to be verified on annual basis as mandated by Rule 3(2). Until annual verification is complete, UPCL is legally obligated to levy CSS & AS. No conclusive determination of captive status can be made mid-year. Petitioner has itself given undertaking to pay all open access charges.
Relief B: Direction to UPCL to verify captive status only at year-end per Rule 3(2) and treat supply as noncaptive only upon non-fulfilment	Premature. UPCL has not treated the plant as permanently non-captive. Charges are levied as protective measure pending annual verification. The very Rule invoked by petitioner supports UPCL's position that determination is annual no interim exemption flows therefrom.
Relief C: Refund of Rs. 39,31,267.73 paid towards CSS and AS along with carrying cost	Not maintainable. Captive status unverified no entitlement to refund crystallises until annual verification confirms captive conditions were met. Petitioner gave undertaking to pay total bill including all charges. Claim for carrying cost is entirely speculative and unsupported.
Relief D: Direction to UPCL to comply with Regulation 12(3) of Open Access Regulations 2015 and process MTOA/LTOA applications within prescribed time	Misleading. No LTOA application was ever filed with UPCL it was filed with PTCUL. MTOA applications filed on 08.09.2025 were incomplete as mandatory fee was not submitted, hence 20-day clock never started. STOA has been granted continuously and timely.

	<i>Petitioners' own Annexure A contradicts this allegation.</i>
Relief E: <i>Direction that petitioners are entitled to banking facility under Regulation 50, UERC RE Tariff Regulations 2023</i>	Not maintainable. <i>Petitioners have failed to comply with mandatory condition under Regulation 50(d) day ahead scheduling was never done despite introduction of intra-state ABT. Cannot seek benefit of a regulation while flouting its own mandatory conditions. Captive status itself unestablished.</i>
Relief F: <i>Refund of Rs. 9,60,000 recovered by SLDC towards scheduling and operation charges</i>	Wrong party. <i>Scheduling and operation charges are levied by SLDC Respondent No. 3. No relief can be sought against UPCL on this count.</i>
Relief G: <i>Directions to implement exemption on wheeling, transmission charges, green cess and electricity duty under Solar Policy 2023</i>	Not enforceable. <i>Solar Policy 2023 is a policy document, not a regulation. No amendment to UERC regulations has been made pursuant thereto. Solar Policy itself contemplates UERC notification of implementation methodology before exemptions apply. Petitioners gave undertaking to pay all charges. Captive status unestablished exemption available only to captive plants.</i>
Relief H: <i>Clarification on manner of levy of wheeling and transmission charges post 5-year exemption period under Solar Policy 2023</i>	Premature. <i>The 5-year period has not even commenced as no exemption has been granted yet. The question of post-exemption levy is purely academic and premature at this stage. UERC tariff regulations govern levy of charges and no amendment has been made.</i>
Relief I: <i>Deemed generation compensation of Rs. 10,69,200/- each for Evincea Three and Evincea Six on account of back down instructions</i>	Not maintainable. <i>Annexure C the sole supporting document has not been filed. No data on period of outage, actual vs. normative CUF, monthly reconciliation or pro-rata computation as required under Regulation 51(2). Back down instructions issued by SLDC, not UPCL. Must-run principle applies to supply to distribution licensee, not captive supply. Captive status unverified.</i>

9. At the very outset, it is submitted that the Petitioner has simultaneously invoked two separate and distinct regulatory frameworks, namely: (a) Regulation 8 of the Uttarakhand Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 ("GEOA Regulations, 2023"); and (b) Regulation 8(2) of the Uttarakhand Electricity Regulatory Commission (Terms and Conditions of Intra-State Open Access) Regulations, 2015 ("Open Access Regulations, 2015").

10. It is respectfully submitted that the aforesaid two regulatory frameworks operate in entirely different domains and contemplate different nodal agencies for the grant and administration of open access. The Petitioner cannot simultaneously invoke both frameworks in a single petition, as the same leads to a fundamental contradiction in the very foundation of the Petition. ”

1.16. The Commission has decided to hold a hearing on the admissibility of the application on 16.06.2026. As scheduled, the hearing on admissibility was conducted in the matter.

1.17. Further, the Petitioner has filed the rejoinder dated 16.06.2026 to the Commission, in its rejoinder, Petitioner has contested the objections raised by UPCL regarding the maintainability of the Petition and submitted that the provisions of the UERC (Green Energy Open Access) Regulations, 2023 and the UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 are complementary and that the Petition raises multiple issues relating to CSS, Additional Surcharge, banking, MTOA/LTOA, scheduling and other exemptions. The Petitioner has further submitted that, in the absence of the implementation procedure under the Green Energy Open Access Regulations, it was required to proceed under the Open Access Regulations, 2015 for its immediate Open Access requirements.

With regard to captive status, the Petitioner has submitted that the requisite conditions under Rule 3 of the Electricity Rules, 2005 are satisfied, as TVS Srichakra Limited holds at least 26% equity in both Evincea Renewables (Three) Private Limited and Evincea Renewables (Six) Private Limited and consumes 100% of the electricity generated by the said plants. It has also submitted that UPCL's own Open Access approval letters recognize TVS as a “Captive Consumer” and the Evincea plants as “Captive Generating Plants”. The Petitioner has further stated that the requisite annual captive verification data, including meter reading data, Joint Meter Reading reports and consumption details, has already been submitted to UPCL.

The Petitioner has disputed UPCL's contention that CSS and Additional Surcharge can be levied pending annual verification of captive status. It has submitted that Rule 3(2) of the Electricity Rules, 2005 operates as a consequence provision where the captive conditions are found not to be satisfied at the end of the relevant year and does not authorise a presumption of non-captive status during the year. The Petitioner has also relied upon the judgment of the Hon'ble Supreme Court

in “*Maharashtra State Electricity Distribution Co. Ltd. v. JSW Steel Limited & Ors.*”, (2022) 2 SCC 742, in support of its claim regarding exemption from CSS and Additional Surcharge for captive consumers.

Regarding banking, the Petitioner has submitted that it had repeatedly approached UPCL for clarification regarding the day-ahead scheduling procedure and that UPCL had informed it about the non-availability of the requisite scheduling infrastructure. It has therefore contended that non-compliance with the scheduling requirement could not be attributed to the Petitioners in such circumstances. The Petitioner has further submitted that Regulation 50 of the UERC RE Tariff Regulations, 2023 expressly provides for banking of power from captive RE generating plants.

With respect to LTOA/MTOA, the Petitioner has submitted that the LTOA application was correctly filed with PTCUL, being the designated Nodal Agency under the GEOA Regulations, 2023, and that the grievance regarding non-processing was therefore directed against PTCUL. In respect of the MTOA application, the Petitioner has contended that the application was submitted along with the requisite documents and that the application fee could not be deposited as UPCL had not made the relevant bank account details publicly available. It has further submitted that UPCL did not issue any deficiency notice or communicate rejection within the prescribed period under the Open Access Regulations, 2015.

Regarding the exemptions claimed under the Uttarakhand Solar Energy Policy, 2023, the Petitioner has submitted that the undertaking furnished at the time of Open Access applications cannot override statutory or regulatory rights available to captive consumers. It has contended that the undertaking itself refers to charges as applicable under the pricing mechanism notified by UERC/CERC from time to time and, therefore, does not require payment of CSS and Additional Surcharge where such charges are not applicable to captive consumers under the prevailing regulatory framework.

The Petitioner has further submitted that the Commission has jurisdiction to issue appropriate directions for implementation of the exemptions contemplated under the Uttarakhand Solar Energy Policy, 2023. It has contended that the absence of a separate implementation procedure does not negate the substantive exemptions provided under the Policy and has sought appropriate directions to UPCL and

PTCUL for giving effect to the same. The Petitioner has also reiterated that its captive status is established on the basis of its equity ownership, captive consumption and the recognition of such status in UPCL's own documents.

On the issue of deemed generation, the Petitioner has submitted that compensation/deemed generation may be allowed in cases of wrongful curtailment or back-down, relying upon decisions of the Hon'ble Appellate Tribunal for Electricity, including "*Swasti Power Limited v. UERC & Ors. and National Solar Energy Federation of India v. TNERC & Ors.*". It has further contended that the must-run principle under the UERC RE Regulations, 2023 applies to renewable energy generation irrespective of whether the electricity is supplied to a distribution licensee, captive consumer or the grid. The Petitioner has furnished details of grid outages during July 2025 to December 2025 and stated that Evincea Renewables (Three) and Evincea Renewables (Six) suffered approximately 95.33 hours and 85.33 hours of grid outages, respectively.

Finally, with regard to the refund claim, the Petitioner sought refund of ₹39,31,267.73 towards CSS and Additional Surcharge along with carrying cost, contending that the said amounts were recovered despite the Petitioners being captive consumers entitled to the applicable exemption. The Petitioner has also submitted that the claim for refund of ₹9,60,000 towards scheduling and operation charges, stated to have been wrongly levied, may appropriately be considered against SLDC, being Respondent No. 3.

- 1.18. Further, the Petitioner, vide its email dated 09.09.2026, submitted additional submissions in the matter pertaining to its claim for exemption from transmission charges under Clause 42 of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and Non-Fossil Fuel Based Co-generating Stations) Regulations, 2023. The Petitioner also placed on record copies of the transmission bills for the months of June 2026 and July 2026, issued by PTCUL vide its letter dated 21.08.2026, in support of its submissions. The aforesaid submissions and documents have been taken on record for due consideration by the Commission.

2. Commission's Views & Decisions

2.1 The Commission has considered and analyzed the submissions made by both the parties in the matter and pursued the record and relevant Rules & Regulations. The issues raised in the Petition governed or fell within the following legal framework, namely:

- (a) Electricity Rules, 2005,
- (b) Electricity (Amendment) Rules, 2026,
- (c) UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 ("OA Regulations, 2015");
- (d) UERC (Green Energy Open Access) Regulations, 2023 ("GEOA Regulations, 2023"); and
- (e) UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based co-generating stations) Regulations, 2023 ("RE Regulations, 2023").

The Commission has separately examined the relevant issues involved in the matter, and the same are discussed hereunder:

2.1.1 Advance recovery of Cross Subsidy Surcharge (CSS) and Additional surcharge (AS) from Captive user:

The Petitioner No. 1, in Prayers (a), (b) and (c), has sought relief against the advance recovery of Cross Subsidy Surcharge ("CSS") and Additional Surcharge ("AS") by the DISCOM, referring to the provisions of the Electricity Rules.

In this regard, the Commission observes that it is not in dispute that the captive user status of the Petitioner No. 1, whether determined under Rule 3 of the Electricity Rules, 2005, as applicable during the relevant period, or under the substituted Rule 3 introduced by the Electricity (Amendment) Rules, 2026, is required to be verified with reference to the prescribed annual consumption criteria. However, the distinction between the two provisions, as relevant to the present matter, is that the applicability of Cross-Subsidy Surcharge (CSS) and Additional Surcharge (AS) is not required to be determined in advance of verification of captive status under the amended Rules. Accordingly, the captive user status of Petitioner No. 1 for the period commencing from July 2025 and

ending on 12 March 2026, which is governed by the Electricity Rules, 2005, is yet to be verified in accordance with the applicable provisions.

The Commission is unable to accept the contention of the Petitioner that UPCL was, ipso facto, barred from levying CSS and AS merely because the captive user status of Petitioner No. 1 was pending verification. Under Rule 3 of the Electricity Rules, 2005, which governed the period from July 2025 to 12 March 2026, there was no statutory prohibition against the distribution licensee levying CSS and AS on a provisional basis pending completion of the annual verification of captive status. Accordingly, such levy, if made as a protective measure pending such verification, cannot, at this stage, be held to be illegal or without authority of law.

Accordingly, the Commission finds that Prayers (a), (b) and (c), insofar as they seek quashing of the levy for the aforesaid period and consequential refund of ₹39,31,267.73/- along with carrying cost, are not legally tenable and are, therefore, cannot be accepted. This rejection shall, however, be without prejudice to the Petitioner No. 1 right to seek appropriate adjustment/refund, along with carrying cost, in accordance with law, upon completion of the annual verification of captive status for the said period.

In the event the Petitioner No. 1 is subsequently found to have satisfied the conditions prescribed under Rule 3 of the Electricity Rules, 2005 for the relevant period, the CSS and AS recovered from Petitioner No. 1 for such period shall be liable to be adjusted/refunded, along with applicable carrying cost, in accordance with the applicable regulatory and legal provisions.

2.1.2 Further, the Commission observes that, with effect from 13.03.2026, i.e., the date on which the Electricity (Amendment) Rules, 2026 came into force, the legal position stands materially altered. The relevant provision of the aforesaid Rules is reiterated below:

“ ...

4.

(a) *Pending verification of captive status for any financial year, the cross-subsidy surcharge and additional surcharge shall not be levied, subject to the*

declaration furnished by the captive user(s) in accordance with the procedure issued by the nodal agency or NLDC, as the case may be:

Provided that where the power plant fails verification of captive status for the financial year after furnishing such declaration, the applicable cross-subsidy surcharge and additional surcharge, as determined by the respective State Commission, along with the carrying cost calculated at the base rate of Late Payment Surcharge specified in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, as amended from time to time, shall be payable."

It is evident from the above provision that, there is no requirement of prior verification of captive user status during the course of Open Access sanction in the year and CSS & AS shall not be levied on such captive user, subject to furnishing of the prescribed declaration in accordance with the procedure specified by the nodal agency or NLDC, as the case may be. The amended provision thus specifically provides a statutory mechanism whereby the levy of CSS and AS remains deferred during the pendency of verification, while simultaneously protecting the revenue entitlement of the distribution licensee in the event the generating plant subsequently fails to satisfy the conditions for captive user status.

Accordingly, with effect from 13.03.2026 and for all billing periods thereafter, pending verification of captive status for any financial year, the CSS and AS shall not be levied upon captive users subject to furnishing the declaration to UPCL as prescribed under Rule 3 of the Electricity (Amendment) Rules, 2026. However, be without prejudice to the right of UPCL to recover CSS and AS retrospectively for the relevant financial year, together with carrying cost calculated at the base rate of Late Payment Surcharge specified under the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, as amended from time to time, in the event the annual verification establishes that captive users has failed to satisfy the conditions prescribed under Rule 3 of Electricity (Amendment) Rules, 2026 for captive status.

For avoidance of doubt, any CSS and AS that become payable consequent to failure of captive user status verification shall be recoverable in accordance

with the aforesaid statutory provisions and the determination of the Commission.

2.1.3 Non-Processing of MTOA/LTOA applications:

The Petitioner No. 1, in Prayer (d), has raised the issue regarding the alleged non-processing of its applications within the prescribed time period stipulated under the UERC (Open Access) Regulations, 2015 ("UERC (OA) Regulations, 2015").

In this regard, the relevant provision governing the time-period for processing Open Access applications is Regulation 12 of the UERC (OA) Regulations, 2015, same reads as under:

" ...

12. Application procedure for Open Access:

(1) All applications for open access shall be made in the prescribed Form and submitted to the Nodal Agency in accordance with these regulations. In case an Applicant is connected to the distribution licensee, the copy of the application shall also be sent to the distribution licensee for information.

Provided that in case an applicant is a consumer of distribution licensee, then alongwith other documents he shall submit a copy of last paid bill alongwith the application.

(2) All Applicants seeking open access shall submit an affidavit of not having entered into power purchase agreement (PPA) or any other bilateral agreement for the capacity (quantum of power) for which open access is sought.

(3) The Nodal Agency, Application fee, Documents to accompany the application and time frame for disposal of application shall be as specified in the following Table:

... "

With regard to Medium-Term Open Access (MTOA), UPCL has submitted that the application filed by Petitioner No. 1 on 08.09.2025 was not accompanied with the prescribed application fee. Consequently, the statutory time period prescribed under Regulation 12(3) of the UERC (OA) Regulations, 2015 did not commence. UPCL has further submitted that, in the meanwhile, it has continued

to grant Short-Term Open Access (STOA) to the Petitioners on a monthly basis, as borne out from Annexure-A to the Petition.

With regard to LTOA, Respondent No. 1, UPCL, has submitted that no application for Long-Term Open Access (LTOA) was filed by Petitioner No. 1 before UPCL. It has further submitted that the LTOA application was filed before PTCUL under the GEOA Regulations, 2023, and that UPCL under the said GEOA Regulations, 2023 is not the Nodal Agency, which responsible for processing such application, therefore, the allegation of non-processing of the LTOA application against UPCL is misconceived. Whereas, PTCUL in this regard, has submitted that, at the relevant time, the GEOA Procedures were pending for approval of the Commission and, consequently, PTCUL was unable to process the LTOA application under the prevailing GEOA regulatory framework.

In order to consider the submission of the parties it is relevant to see as to what has been provided in the Regulations mentioned above. From the bare perusal of the said Regulation, it is evident that the Regulation provides for the documents to accompany the application, application fee and the timeframe for disposal of the application. There is a clear mandate of 20 days for disposal of the application, therefore the application cannot be kept pending for an indefinite time.

In this regard, the Commission observes that the application was admittedly not accompanied by the prescribed fee. The Petitioner cannot insist upon disposal of the application unless the prescribed fees has been paid, it is evident that the application filed by the Petitioner was incomplete because of which the same could not be disposed by the distribution licensee. The Commission is of the view that the statutory period for processing the application under Regulation 12(3) of the UERC (Open Access) Regulations, 2015 cannot be reckoned from the date of submission of an incomplete application, particularly when the prescribed fee, being an essential requirement for processing the application, had not been deposited. Accordingly, on the basis of facts and material available on record, any intentional violation of Regulation 12(3) of the UERC (Open Access) Regulations, 2015 by UPCL is not established in the present case.

The Commission has further observed that the Regulation 12 does not specifically mentions about acceptance or rejection of application as is in Regulation 8, but only mentions about disposal of the same, the word disposal itself implies that application cannot be kept pending and has to be either rejected or allowed, therefore, in order to remove any ambiguity regarding the commencement of the prescribed processing period, the Commission deems it appropriate to clarify that MTOA and LTOA applications received by the distribution licensee shall be disposed of either by accepting or rejecting the application within the time period provided for disposal of the said application, however, while rejecting any application due to any deficiency in the application or an application being not in accordance with the Regulation, including non-payment or short payment of the prescribed fee, the distribution licensee shall intimate the applicant the reasons for rejection in writing.

Further, with regard to granting of LTOA, the Commission observes that the LTOA application referred by Petitioner No. 1 was not submitted to UPCL, but was submitted to PTCUL, being the designated Nodal Agency under the applicable UERC (GEOA) Regulations, 2023. Therefore, the Commission finds that no obligation or corresponding liability under the UERC (Open Access) Regulations, 2015 can be fastened upon UPCL in respect of processing of the aforesaid LTOA application, which was submitted to PTCUL under the GEOA framework.

Considering the submission of PTCUL, the Commission is of the view that there is no deliberate or intentional delay in approving such application, PTCUL could not possibly have dealt with the application in absence of the procedures which are pending for approval. In the present circumstances, the Commission is of the view that pendency of approval of the detailed GEOA Procedures should not, by itself, result in denial or withholding of connectivity and open access to eligible GEOA consumers. Therefore deems it appropriate to provide mechanism to deal with the applications until the procedure is approved by the Commission, for the purpose of which the Commission directs the concerned Nodal Agency to process and facilitate the grant of connectivity and open access to GEOA consumers in accordance with the applicable provisions of the prevailing procedures framed under OA Regulations,

however, from the date of approval of the GEOA Procedures by the Commission, all applications and other matters relating to Connectivity and Open Access under the GEOA framework shall be dealt with in accordance with the approved procedures.

2.1.4 Banking Facility:

The Petitioners, in Prayer (e), has raised the issue regarding its entitlement to the banking facility. In this regard, the Respondent, UPCL, has submitted that the Petitioners have failed to comply with the mandatory day-ahead scheduling requirement prescribed under Regulation 50 (1)(d) of the UERC RE Regulations, 2023, despite the introduction of intra-State ABT.

The Commission notes that Regulation 50(1)(d) of the UERC RE Regulations, 2023 makes the availability of the banking facility subject to compliance with the day-ahead scheduling requirement and other conditions prescribed therein. The relevant para of the said Regulation is reproduced below:

***“50. Banking of Power (Applicable only in case of Captive RE sources
Generating Plants & Non-fossil fuel based Co-generating Stations)***

- (1) The Generating Stations shall be allowed to bank power within a period of one calendar month, for the purpose of withdrawal of the banked power in the event of emergency or shut down or maintenance of the plant, subject to following conditions:*
 - (a) Banking of energy upto 100%, as agreed between the plant and the distribution licensee, shall be allowed during the period declared by the Commission as peak hours from time to time in its Tariff Orders.*
 - (b) Withdrawal of power shall be allowed only during the period other than the period declared by the Commission as peak hours from time to time in its Tariff Orders.*
 - (c) The plants shall provide ABT compliant Special Energy Meters and the monthly settlement of energy sales shall be done based on Power supplied during the peak hours as per SEM meter readings shall be considered as banked power.*
 - (d) Upon introduction of intra-state ABT in the State, the banking as well*

as withdrawal of banked energy shall be subject to day ahead scheduling.

- (e) The power withdrawn by the plant as ascertained by SEM readings, which could not be considered as withdrawal from banked power, shall be considered as power purchased by the plant.*
- (f) The purchase of power by these plants under clause (e) or otherwise shall be charged as per the provisions of Regulation 49 above.*
- (g) A Generating Station shall be allowed to withdraw power that was banked during a particular financial year in the same year.*
- (h) The banked power remaining unutilized on the expiry of the financial year would be treated as sale and the financial settlement shall be made at the tariff determined by the Commission in its Tariff Order for the year during which the power was banked or at the generic tariff specified by the Commission in case of a Non-fossil fuel based Co-generating Stations. No banking charges shall be deducted from such unutilized banked energy.*
- (i) Banking charges shall be adjusted in kind @ 8% of the energy banked.*
- (j) In case of a Non-fossil fuel based Co-generating Stations, which is not a captive generating plant, the facility of banking shall apply only if it has a PPA with the distribution licensee in the State.*
- (k) The energy banked during non-peak hours (TOD slots) shall be permitted to be drawn during non-peak hours (TOD slots) by only paying the banking charges and from non-peak hours (TOD slot) to peak hours (TOD slot) by paying charges in kind @ equivalent to % of difference between the Peak hours energy charge rate and Normal hours energy charge rate (as defined in the respective Tariff Orders issued by the Commission) of the energy banked in addition to the above banking charges specified under these regulations."*

Further, in the proviso of Regulation 4 (1) of UERC DSM Regulations, 2017, all RE generators connected to 11 kV and above were mandated to submit their schedule to the SLDC, the relevant para of the aforesaid Regulation is reproduced below:

“ ...

4. Scope

- (1) *These Regulations shall be applicable to buyers and sellers i.e. State Distribution Licensee(s), Intra-State Generating Stations and Open Access Customers (except RE generators) connected to the State Grid:*

[Explanation: - 'State Grid' means the Intra-State Transmission System/network owned by the State Transmission Utility/Transmission Licensee(s) and/or the High Voltage Distribution System/network owned by the Distribution Licensee(s) within the State.]

Provided that Renewable Energy Generation Sources namely SHPs, Wind, Solar, Bio-mass, Co-generation, Biogas etc. connected to the State Grid and selling power within or outside the State are excluded from these Regulations till such time the Commission decides to bring them under the ambit of Deviation Settlement Mechanism (DSM). However, all Renewable Energy Generation Sources connected at 11 kV and above voltage level of the State Grid shall submit their schedule to SLDC enabling it to prepare despatch schedule.”

From the perusal of the provisions of abovementioned Regulations, it is evident that not only all renewable energy generation source connected at 11 kV and above voltage level of the state grid are mandated to submit their schedule to SLDC for preparing of Despatch schedule but also the facility of banking as well as withdrawal of banked energy is subject to the day ahead scheduling. The Petitioner has failed to place any documentary evidence or to demonstrate that it has complied with aforesaid provisions of the Regulations, the submissions of UPCL in this regard are correct, the petitioner have to first comply with the provisions of the regulations before claiming any such right, there is no arbitrary or unlawful denial to the petitioner of such facility by UPCL, therefore, the Commission is of the view that in the absence of any documentary evidence placed on record by the Petitioners and considering the submissions made by UPCL, that the Petitioners have failed to demonstrate compliance with the mandatory day-ahead scheduling requirement stipulated under Regulation 50(1)(d). Accordingly, the claim for availing of the banking

facility, in the manner sought by the Petitioners, is premature at this stage. Accordingly, Prayer (v) is rejected.

2.1.5 Scheduling and System Operating Charges:

The Petitioners, under Prayer (f), have sought refund of the Scheduling and System Operation Charges levied by SLDC. In this regard, the Respondent, SLDC, has clarified that the schedules of Petitioner No. 1 are duly incorporated in the Implemented Schedule for preparation of the Deviation Settlement Account. SLDC has further submitted that the System Operation Charges have been levied on Petitioner No. 1 only in its capacity as an embedded Open Access consumer, in accordance with the provisions of the UERC OA Regulations, 2015, and that no such charges have been levied upon Petitioner Nos. 2 and 3.

Further, SLDC has submitted that Petitioners have not demonstrated or established any exemption available to them from payment of System Operation Charges under Regulation 21(2)(b) of the UERC OA Regulations, 2015.

The Commission notes that Regulation 21(2)(b) of the UERC OA Regulations, 2015 provides for the applicability of System Operation Charges. The relevant regulation is reproduced below:

“ ...

21. SLDC and System Operation Charges:

...

(2) Transactions not involving inter-State transmission system

(b) Short-term open access

System Operation charge per day or for part of the day shall be payable by a short-term open access customer for each transaction to SLDC as determined by the Commission from time to time. ...”

In view of the aforesaid provision, Petitioner No. 1, being an embedded Open Access consumer, is liable to pay System Operation Charges for availing short-term open access, in accordance with the aforesaid provision of the UERC OA Regulations, 2015. Further, the Petitioners has failed to establish any regulatory provision or exemption under which such charges would not be applicable to them.

Accordingly, in light of the above discussion, the Commission finds that the claim for refund of ₹9,60,000/- towards Scheduling and System Operation Charges is not sustainable and does not survive for consideration. Hence, the Petitioner is not entitled for refund of any amount and accordingly, prayer (f) is rejected.

2.1.6 Transmission Charges, Wheeling Charges, Green Cess and Electricity Duty:

The Petitioners, in Prayers (g) and (h), have sought exemption from Transmission Charges, Wheeling Charges, Green Cess and Electricity Duty under the Uttarakhand Solar Energy Policy, 2023.

In this regard, the Commission observes that the applicability of Open Access charges, including Transmission Charges and Wheeling Charges, in respect of captive projects/captive users (consumers installing captive solar plants) is governed by the relevant provisions of the Electricity Act, 2003 and Regulations, specifically, third proviso to Regulation 9(1) of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and Non-Fossil Fuel Based Co-generating Stations) Regulations, 2023 (“UERC RE Regulations, 2023”).

The Petitioner has claimed exemption from applicability of charges stated above, on the basis of provisions in Uttarakhand Solar Policy 2023, in this regard it is relevant to refer the relevant extract of Uttarakhand Solar Policy 2023 is reproduced herein below:

“...

8.2.3 Commercial and Industrial (C&I) Consumers

...

ii. Open Access

...

Incentives

All C&I consumers installing solar power plants as per the criteria specified in the earlier section shall be eligible for the following incentives:

- *For intra-state Open access (captive, group-captive and third-party projects)*

Exemption from transmission and wheeling charges: Grid-connected solar captive power projects (including storage systems) or group captive projects shall attract 100% exemption from transmission and wheeling charges for a period of 5 years from the date of commissioning of the project. The transmission and distribution losses, however, are fully applicable for both third-party projects as well as captive solar within the state.

Exemption from cross-subsidy surcharge and additional surcharge: The cross-subsidy surcharge and additional surcharge shall be exempted for captive/group captive solar power plants through open access."

Further, it is relevant to refer to Regulation 9 (1) of UERC RE Regulations, 2023, the relevant proviso of UERC RE Regulations, 2023 is reproduced herein below:

" ...

9. Open Access

(1) Non-discriminatory Open access in State Transmission/Distribution System shall be allowed to all RE based Generating stations and Co-generating Stations for captive use and to those covered under Regulation 7(1), which shall be subject to the provisions of the Open Access Regulations.

Provided that the 'open access' shall be allowed subject to the availability of surplus capacity in the State Transmission/Distribution System.

Provided that the captive power plants shall be required to pay Parallel Operation Charges to Distribution Licensee and/or Transmission Licensee, as the case may be, for utilization of grid support from Distribution Licensee and/or Transmission Licensee. The Commission shall specify the Parallel Operation Charges in its Tariff Orders for distribution licensee or transmission licensee, as the case may be, on annual basis.

Provided that levy of Open Access Charges on captive projects shall be governed by the relevant provisions of the Act and policies issued by Central/State Government from time to time. "

[Emphasis Added]

The Commission observes that the Uttarakhand Solar Energy Policy, 2023 issued by the State Government and that the exemptions/concessions contemplated therein are required to be given effect in accordance with the regulatory framework notified by the Commission. As evident from aforesaid mentioned proviso to Regulation 9(1) of UERC RE Regulations, 2023, the Commission has already incorporated/given effect to the relevant provisions of the State Government Policy through the applicable provisions of the UERC RE Regulations, 2023. Accordingly, the exemptions/concessions contemplated under the Uttarakhand Solar Energy Policy, 2023, to the extent provided for under the applicable Regulations of the Commission are applicable to captive projects/captive users (consumer installing captive solar plants).

However, with regard to the applicability of Electricity Duty (ED), Green Cess and other statutory levies/charges on electricity consumed by the Petitioner No. 1 from their captive projects, the Commission observes that Electricity Duty and Green Cess are State Govt. levies, and their applicability is required to be determined with reference to the relevant provisions of the applicable State Govt. legislation, rules, notifications, orders and amendments issued by the State Govt. from time to time.

The status of a consumer as a captive consumer, by itself, does not result in an automatic exemption from such State Govt. levies unless a specific exemption is available under the relevant statutory or governmental provisions. Accordingly, UPCL shall levy and recover Electricity Duty and Green Cess, wherever applicable, on the captive consumption by Petitioner No. 1 strictly in accordance with the applicable statutory Govt. Act, Rules, Notifications, Policies and Orders governing such levy.

Therefore, in light of the aforesaid discussion, the Commission finds the submission of Petitioner to the extent of Open Access Charges including Transmission and Wheeling Charges as correct except for Green Cess and Electricity Duty. Accordingly, UPCL is directed to give effect to the applicable exemptions/concessions under the Uttarakhand Solar Energy Policy, 2023, while determining and levying Open Access charges, including CSS and AS, on the captive consumption of Petitioner No. 1, strictly in accordance with the

provisions of the UERC RE Regulations, 2023 and other applicable regulatory provisions.

Further, UPCL and PTCUL are directed to discontinue, with immediate effect, the levy of transmission/wheeling charges in respect of power supplied by the Petitioner No. 2 & 3 from their generating station to the captive consuming entity of Petitioner No. 1 as per the abovementioned provision of UERC RE Regulations, 2023. PTCUL shall also review the transmission charges already levied/recovered from the Petitioners in respect of the aforesaid power transaction and, upon verification, refund or adjust the amount, as applicable, in the subsequent billing cycle(s).

UPCL is advised to strictly monitor and apply exemption from Electricity Duty or Green Cess available to Petitioner No. 1 under the Uttarakhand Solar Energy Policy, 2023, or any other applicable Government Act/Rules/Policies/Orders. Such exemptions shall be extended strictly in accordance with the prevailing governmental provisions, including the conditions and period for which such exemption is available.

2.1.7 Deemed Generation:

The Petitioners, in Prayer (i), have sought compensation towards deemed generation on account of back-down instructions under Regulation 51 of the UERC (RE) Regulations, 2023. The relevant para of the said Regulations is reproduced below:

“...

51. Deemed Generation

(Applicable only in case of Small Hydro Generating Plants & Solar PV Plants & Solar Thermal Projects excluding Solar power plants installed under net metering arrangement)

(1) After the COD of the Project, loss of generation at the Station on account of reasons attributed to the following, or any one of the following, shall count towards Deemed Generation:

- Non availability of evacuation system beyond the Interconnection Point;*
- and*

- Receipt of backing down instructions from the SLDC.

Provided that the following shall not count towards Deemed Generation:

- (i) *The loss of generation at the Station on account of aforesaid factor(s) but attributed to the Force Majeure event(s);*
- (ii) *The loss of generation at the Station due to the interruptions/outages attributed to the aforesaid factor(s) during the period in which the total duration of such outages/ interruptions, other than that excluded under above, is within the limit of:*
 - *48 hours in a month in case of small hydro project, and*
 - *12 hours in a month in case of solar PV and Solar Thermal Project.*
 - *Provided that for working out the ceiling of 12 Hrs. in a month for Solar PV and Solar Thermal Projects, the interruptions/outages occurring during 18.00 hours in the evening to 6.00 hours in the morning shall not be counted;”*

The Commission observes that the concept of deemed generation under the RE Regulations is intended to compensate only the generating stations mentioned in the Regulations i.e. Small Hydro Generating Plants, Solar PV Plants & Solar Thermal Projects, for loss of generation attributable to specified circumstances beyond the control of the generator, such as non-availability of the evacuation system or backing-down instructions, subject to the conditions stipulated in the applicable Regulations and the relevant Power Purchase Agreement (PPA), and not to the captive generating plant, further the payment mechanism provided under the Regulation does not align with the idea of compensating those generating plant which do not have a Power Purchase Agreement with the Distribution Licensee and accordingly do not have any tariff determined by the commission or generic tariff for such generators. The view also gets fortified from the word ‘COD’ mentioned in the Regulation. Even otherwise the basic idea for such provisions is to compensate the generators to the extent of non-achievement of CUF, so as to assist them in recovering their AFC.

In the case of a RE based Captive Generating Plant, the electricity generated by the plant is intended for consumption by its captive user and is not sold to the

Distribution Licensee. Where the captive generating plant utilises the Transmission/Distribution network of the Transmission/Distribution Licensee for conveyance of electricity to its captive consumer, such use of the network constitutes a transmission/wheeling i.e. non-discriminatory open-access arrangement under Act/Regulations and, by itself, does not create a sale of electricity to the Distribution Licensee.

Therefore, where a captive RE Generating Plant has no Power Purchase Agreement with the Distribution Licensee and is using the Transmission/Distribution Licensee's network only for transmitting/wheeling electricity to its captive consumer, the claim for deemed generation is not tenable and such captive generating plant is not eligible for deemed generation claim under the applicable RE Regulations. Hence, Prayer (i) is, therefore, rejected.

In light of the above discussion and directions, Miscellaneous Application No. 08 of 2026 is disposed of accordingly.

Ordered accordingly.

(Prabhat Kishor Dimri)
Member (Technical)

(Anurag Sharma)
Member (Law)

(M.L. Prasad)
Chairman