THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2340 of 2026

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

Hon'ble Shri Griesh Kumar Vaish, Member (Law)

IN THE MATTER OF

Petition under Sections 86(1)(e) and (f) of the Electricity Act, 2003 read with the clauses 6.4, 7.3 and 9.1 of the PPA dated 21.08.2010, Rooftop PV & Small Solar Power Generation Programme (RPSSPG) Scheme of the National Solar Mission and Repowering Guidelines (2018) issued by Indian Renewable Energy Development Agency, seeking issuance of directions to Respondents to permit repowering/replacement of degraded Solar PV modules for the Petitioner's 1 MW Solar Power Project. Further, the Petition is also being filed seeking a declaration that denial of consent for repowering/replacement of defective/damaged modules of the Project, vide letter dated 09.10.2025 issued by Respondent No. 1, is unlawful, in view of the provisions of PPA and applicable Regulation and MNRE Guidelines for repowering of solar modules. Consequently, the Petitioner is also seeking compensation towards generation losses incurred by the Petitioner for the period from 16.12.2024 *(when the Petitioner approached the Respondents first time for seeking consent for repowering)* till 15.12.2025 amounting to Rs. 1.438 Crores (as on filing of the Petition).

AND

IN THE MATTER OF

M/s Dhruv Milkose Private Limited (DMPL),

Chandanagar, Khajrahabujurg, BHEL, Jhansi, Uttar Pradesh- 284120 **...Petitioner**

Versus

1. **Uttar Pradesh Power Corporation Limited (UPPCL),**
   Shakti Bhawan, 14 Ashok Marg, Lucknow, 226001

2. **Indian Renewable Energy Development Agency (IREDA),**

IREDA Limited, NBCC Office Complex, Office, Block No. II,
Plate B, 7th Floor, East Kidwai Nagar, New Delhi-110023

3. **Uttar Pradesh New and Renewable Energy Development Agency (UPNEDA),**
Vibhuti Khand, Gomti Nagar, Lucknow, Uttar Pradesh 226010

4. **Dakshinanchal Vidyut Vitran Nigam Limited (DVVNL),**
Urja Bhawan, Agra-Mathura By-Pass Road, Sikandra, Agra, Uttar Pradesh - 282007

...Respondent(s)

FOLLOWING WERE PRESENT

1. Sh. Aniket Tripathi, Advocate, IREDA
2. Sh. Samarivya Dhar Dwivedi, Advocate, IREDA
3. Sh. Abhishek Mishra, Advocate, IREDA
4. Sh. Tarun Tiwari, Advocate, IREDA
5. Sh. Mohit Chandra, Advocate, DMPL
6. Sh. Mridul Chakravarty, Advocate, DMPL
7. Ms. Nehel Sharma, Advocate, DMPL
8. Sh. Anirudh Patwary, A.M., DMPL
9. Sh. Divyanshu Bhatt, Advocate, UPPCL & UPNEDA
10. Sh. Abhayaditya Singh, Advocate, UPPCL & UPNEDA
11. Sh. Prakher Shukla, Advocate, UPPCL & UPNEDA
12. Sh. Anil Kumar, SE, UPPCL
13. Sh. Vijay Pratap Tiwari, EE, UPPCL
14. Sh. Deepak Mishra, EE, UPPCL
15. Sh. C.P. Maurya, AE, UPPCL

ORDER

(DATE OF HEARING: 03.09.2026)

1. The Petitioner, M/s Dhruv Milkose Private Limited (*hereinafter referred to as DMPL*) has filed instant Petition seeking issuance of directions to Respondents to permit repowering for the Petitioner's 1 MW Solar Power Project as well as declaration that denial of consent for repowering by UPPCL vide its letter dated 09.10.2025 is

unlawful, in view of the provisions of Power Purchase Agreement (PPA) and MNRE Guidelines. The prayers of the Petitioner are as follows:

a) Allow the present Petition and hold that the Petitioner is entitled to undertake repowering/replacement of degraded and defective Solar PV modules under the 1MW Solar PV Project commissioned under the RPSSGP Scheme, subject to maintaining the contracted 1 MW AC capacity, in terms stated in the present Petition.

b) Declare that denial of consent for repowering/replacement of defective/damaged modules of the Project, vide letter dated 09.10.2025, issued by Respondent No 1, is unlawful, in view of the provisions of PPA and applicable Regulations and MNRE Guidelines for repowering of solar modules, in terms stated in the present Petition.

c) Direct Respondents to grant consent/approval for the proposed repowering/replacement of modules, in accordance with the IREDA Guidelines dated 06.06.2018, the RPSSGP Scheme and the PPA dated 21.08.2010.

d) Declare that due to the denial of permission for over one year, the Petitioner suffered generation loss on account of degraded/defective modules, as per the PVsyst assessment, against a first-year projection of 1.77 MUs, a loss of 0.8031 MUs was incurred due to inaction of Respondents from 16.12.2024 onwards.

e) Direct the Respondents jointly and severally, to compensate the Petitioner for the consequent financial loss of approximately Rs.1.438 Crores qua the generation losses for the period between 16.12.2024 till 15.12.2025, along with interest till the disposal of the petition, or such amount as this Commission may deem fit.

f) Direct Respondents to reimburse the expenditures towards litigation to the Petitioner; and/or

g) Pass such further Orders or directions as this Commission may deem fit and proper in the facts and circumstances of the case.

Background of the case

2. The Petitioner has mainly submitted following in the Petition:

a) The Petitioner has set up a 1 MW Solar Photovoltaic Power Project situated at village Kharaha Bujurg, Baidora Road, District Jhansi, Uttar Pradesh under the 'Rooftop Photovoltaic and Small Solar Power Generation Programme' (RPSSGP) of the

National Solar Mission (NSM) Phase-I, approved by Ministry of New and Renewable Energy (MNRE), Government of India in 2010.

b) DMPL executed a Power Purchase Agreement on 21.08.2010 with Respondent No.4/ DVVNL, acting under the umbrella of UPPCL, for supply of solar power at the tariff determined by the Commission. The Commercial Operation Date (COD) was 13.03.2012 and the plant had since been injecting power into the State grid in accordance with the PPA.

c) On 06.06.2018, IREDA issued the Guidelines related to Repowering and CUF of the Solar PV Power Plants installed under RPSSGP Scheme. As per the said Guidelines, the request of the Project Proponents may be considered by IREDA for replacement of Solar PV modules and other components like inverters etc. of the projects under the scheme subject to the following conditions:

   (i) Wattage of old single PV module/ panel X total number of old PV module/ panel must be equal to Wattage of new/ replaced single PV module/ panel X total number of new PV module/ panel.

   (ii) Generation Based Incentive (GBI) will be limited to a maximum limit of 19% CUF of the plant w.e.f. claim period of 01.04.2016 onwards.

   (iii) Solar Power Developers may repair/ replace, if any, other old components like inverters etc. with new inverters/ components of the same rating/ capacity as of damaged/ old inverter(s)/ components.

d) The Plant had been generating desired capacity since its COD, however, from the year 2019 onwards fall in generation observed. Over the years, due to natural ageing and environmental exposure, the Solar PV modules of the plant experienced notable performance deterioration. As such, the Petitioner conducted inspection/ test at the Plant site and found damage/ deterioration in the solar modules. To assess the technical health of the system, the Petitioner engaged National Institute of Solar Energy (NISE) for conducting a holistic test. Accordingly, NISE conducted a detailed site inspection and released its Module Inspection Report dated 11.04.2019, establishing inter-alia, following:

   (i) No shadow was observed over the module during inspection.
   (ii) Few Spots and Corrosion observed over the PV module.
   (iii) Junction box adhesion issues are the common problem in the power plant.
   (iv) Total 81 number of modules have breakage and need replacement immediately.

(v) Hot Spots Modules to be replaced for safety precaution & performance improvement.

(vi) The tested sample 42 modules are degraded@ minimum 8.40% and maximum 85.89% with respect to nameplate data after 7 years of operation. However, two of them were not working.

(vii) Measurement of I-V data of all strings were done and found high degradation rate range from 14.98 % to 51% with respect to nameplate data after 7 years of operation.

e) Further, a detailed inspection of the Project was again conducted by NISE recently in December 2025. As per the NISE assessment reports of 2019 and 2025, all the 8,869 modules exhibit clear signs of degradation. Around 351 modules have been found to be damaged on account of intrinsic characteristics inherent to photovoltaic modules— an issue commonly observed across all module technologies. PV Syst Energy Yield study was also conducted in the year 2019, which provided the generation output from COD to 25th year of the Project.

f) Based on NISE findings and the IREDA Repowering Guidelines, DMPL prepared a formal repowering proposal and submitted it to UPPCL, UPNEDA and IREDA. Notably, along with the technical due diligence report, the Petitioner also shared the details of the degradation of CUF of the Project since last three years. In this regard, DMPL, through its letter dated 14.08.2019 to IREDA, sought permission for re-powering of solar modules. However, no response to the same was received. Through letters dated 16.12.2024, DMPL requested UPNEDA to grant permission for 100% repowering of its 1 MW Solar PV Power Plant. In response, UPPCL vide its letter dated 09.10.2025 refused to accord consent for carrying out repowering of solar modules by the Petitioner.

g) The Petitioner once again submitted a detailed representation to Chief Engineer (PPA) UPPCL on 15.11.2025 seeking approval to replace degraded modules in compliance with the MNRE and IREDA guidelines. UPPCL although acknowledged receipt of the Petitioner's submission on 15.11.2025, but did not issue any decision or objection, nor did it provide any reasoned order declining or approving the request. Further, on 02.02.2025, DMPL requested IREDA and UPNEDA for permission to carry out repowering of the degraded solar modules in the Project. However, till date, no response has been received either from IREDA or UPNEDA.

h) IREDA had been appointed as the "Programme Administrator" by the MNRE for administering the RPSSGP Scheme. The role of IREDA as the "Programme Administrator" has also been imbibed in the PPA executed by the Petitioner. The perusal of clause No. 1.8 and 2 of the PPA makes the following evident:

(i) The Generating Company was to abide by the provisions of the Electricity Act 2003, Rules, Codes, Regulations, Orders and Directions of the appropriate Authority/ Commission issued from time to time regarding generation, metering and evacuation of electricity.

(ii) The Generating Company was to abide by the Guidelines issued by IREDA for RPSSGP Scheme.

(iii) In the event of any inconsistency between the PPA and IREDA guidelines/ UPERC Orders passed from time to time, the latter shall prevail upon.

i) For that, in terms of directions issued by MNRE, IREDA issued Guidelines for repowering and CUF of the Solar PV Power Plants installed under RPSSGP GBI Scheme of MNRE in June 2018. Per the said Guidelines, the request of the Project Proponents may be considered by IREDA for replacement of Solar PV modules and other components like inverters etc. for the projects. Further, Guidelines categorically stipulate that the requests for repowering of Solar Power Projects under RPSSGP scheme shall be examined by IREDA for all such cases after appropriate measures and verifications.

j) Since the Project had been installed under the RPSSGP Guidelines, as per the Repowering Guidelines, the Petitioner was entitled to repower the degraded solar PV modules. UPPCL was obligated to recognize and give effect to national guidelines incorporated into the PPA framework. Thus, since the repowering guidelines explicitly allow repowering of solar modules in terms of the RPSSGP Scheme, the same has to be read in terms of the PPA and are squarely applicable to the Petitioner.

k) In terms of the RPSSGP Scheme, the Petitioner was obligated to maintain the CUF and annual performance of the project throughout its operational life. However, in the past years, all the 8869 nos. of Solar PV modules are degraded/ damaged. Therefore, it is imperative that such modules are repowered/ replaced. The decline in CUF has directly reduced the plant's ability to meet contracted performance levels.

l) As per the RPSSGP Scheme, IREDA has been designated as Programme Administrator, whose operational and performance guidelines bind all RPSSGP developers. Considering that module degradation was an expected phenomenon, the same was duly addressed by the Scheme through the Repowering Guidelines. Thus, the denial to accord consent to repowering by UPPCL completely undermines the guidelines of IREDA and refusal of replacement also undermines the performance-based architecture of RPSSGP.

m) Schedule II of the CEA (Technical Standards for Connectivity to the Grid) Regulations, 2007 imposes mandatory technical obligations on all generating stations connected to the grid to ensure the reliability of generating equipment, maintain a stable and continuous injection of power into the grid, and comply with prescribed voltage and frequency standards. Continued operation of a solar plant with significantly degraded modules— documented through NISE inspection— results in unstable output, reduced reliability, and non-uniform generation, thereby contravening these statutory technical standards. Consequently, replacement of degraded PV modules becomes necessary to maintain compliance with Schedule II and to ensure safe, reliable, and technically sound grid-connected operation.

n) The solar modules installed in the Project under the RPSSGP Scheme have suffered severe degradation/ damage in last few years of operation. NISE conducted a detailed site inspection of the Project and released its Module Inspection Report dated 11.04.2019, which clearly stipulated that a significant number of modules installed in the Project have suffered degradation/ damage for over 7 years of operation. The extent of degradation was between the range of 8.40% to 85.89%, and as such necessitate repowering by the Petitioner. A detailed inspection of the Project was again conducted by NISE recently in December 2025 wherein it was revealed that module replacement has been suggested for rectification of the damage already done and to lower the generation losses being suffered by the Project.

o) The CUF for a Solar PV Project is the ratio of actual energy generated by the project over the year to the equaling energy output at its rated capacity over the yearly period. It depends on many things, like location of the plant, sunshine hours, type and quality of solar panels and operation and maintenance standards of the plant. However, the generation fall from the Plant started from the year 2017 and the generation for the year 10 is 28.70 % less than the first-year generation. Further, current year generation is 37.61 % less than the first year generation. Thus,

installed Modules at the Plant were highly damaged/deteriorated and needed replacement to increase the generational capacity.

p) The Project installed by the Petitioner is underperforming for the last 6 years. The data with respect to actual generation and expected generation is set out below:

Year	Year as per PV syst report given by NISE	Expected Generation (MU)	Actual Generation (MU)	Deviation (%)
2019-20	8	1.6375	1.12	-31.6%
2020-21	9	1.6244	1.08	-33.5%
2021-22	10	1.5114	1.10	-27.2%
2022-23	11	1.5986	1.04	-34.9%
2023-24	12	1.5858	0.88	-44.5%
2024-25	13	1.5731	0.77	-51.1%

q) The Petitioner issued communications to the Respondents for the first time on 16.12.2024. However, due to inaction of the Respondents since then, the Petitioner has suffered considerable Generation loss due to degraded / defective modules. As per the PV syst report generation in the first year was 1.77 MUs but for the period between 16.12.2024 till 15.12.2025, the generation loss is 0.8031 MUs, resulting in financial loss of Rs 1.438 crores.

r) As per clauses 6.4, 7 and 9 of the PPA, the responsibility to maintain the equipment at generating end is upon the Petitioner. As is discernible from the above-mentioned clause, the PPA requires the Petitioner to operate and maintain the Solar Generating Station in accordance with prudent utility practices, MNRE/IREDA guidelines, and applicable CEA standards. This obligation necessarily includes inspection, repair, overhaul, and replacement of defective or degraded components, including PV modules. Thus, repowering/ replacement of degraded solar modules is deemed to be a part of "the maintenance" of equipment at generating end.

s) UPPCL, while denying the consent for repowering/ replacement of degraded solar PV modules, has failed to recognise that through the said repowering, the Petitioner does not seek to make any change in the contracted 1 MW AC capacity. As per industry norms and technical performance data, solar modules experience degradation of approximately 0.7-1% annually, leading to a material reduction in actual generation from designed capacity. At present, the project has witnessed a cumulative decline in output of approximately 51%, adversely affecting the Annual Energy Generation (AEP), CUF, performance benchmarks, Revenue realization and project viability.

t) The Repowering Guidelines dated 06.06.2018 explicitly provide that repowering/ replacement of the solar PV modules was to be done at the cost borne by the Project Proponent/ Solar Power Developer. It thus follows that the repowering/ replacement of solar PV modules would not cause any revision in tariff payable for power supplied by the Project, any additional compensation payable by UPPCL or any passing on of costs to UPPCL/ end consumer. As such, there does not arise a reasonable basis for denying consent for carrying out the repowering/ replacement of degraded solar modules of the Project, particularly considering the decline in energy efficiency due to damage/ degradation of solar PV modules. The proposed repowering/ replacement of solar PV modules was to be undertaken entirely at the Petitioner's cost and to restore the generation by the Project to contracted efficiency. Therefore, UPPCL's refusal lacks commercial, technical, or regulatory rationale and was arbitrary.

u) In the absence of any reference to a concrete statutory or contractual prohibition, UPPCL's conclusion does not satisfy the requirement of a reasoned order, as required under the principles of natural justice. The Petitioner is left without clarity as to the precise legal basis for the denial, undermining its right to a transparent, fair, and rational decision-making process. The lack of a reasoned decision becomes particularly untenable when repowering is expressly permitted under applicable IREDA Repowering Guidelines and not barred under the PPA or extant regulatory framework. The Petitioner submitted a detailed representation on 02.02.2025, enclosing following documents/ data/ information to IREDA and UPNEDA:

- NISE Report,
- PV Syst Analysis,
- RPSSGP Guidelines,
- MNRE/IREDA Repowering Guidelines,
- Technical assurances.

However, the said Respondents have failed to acknowledge the same or give any response to the Petitioner. This unexplained non-decision constitutes a violation of natural justice and warrants interference by the Commission.

v) UPPCL is under a legal obligation to comply with all directives, orders, and regulatory standards determined by the State Commission under Sections 86, 61, and 181 of the Electricity Act, 2003 including any orders passed for promotion of renewable energy generation and interpretation of the PPAs entered with distribution licensee. As such, refusal by UPPCL in processing the Petitioner's request for module

replacement, despite MNRE/IREDA guidelines and PPA obligations, was therefore contrary to its statutory duties and requires intervention by the Commission to ensure adherence to the legislative and regulatory framework.

w) It is a well-established fact that the degraded modules cause erratic generation profiles, adversely affecting SLDC forecasting and scheduling accuracy. Repowering/Replacement stabilizes output, improving grid reliability and ensuring predictable renewable energy injection.

x) Repowering is not merely permitted but is recognized and encouraged under the very NSM/RPSSGP scheme pursuant to which the Petitioner's project was installed. Its purpose is to restore generation efficiency and ensure long-term viability of solar projects, not to confer any undue benefit. There is also persuasive regulatory precedent. The Petitioner's request dated 02.02.2025 was supported by the NISE Technical Due Diligence Inspection Report, along with detailed technical documentation evidencing significant deterioration and underperformance of modules between 2021-2024. Repowering therefore aims only to restore the project to fair operational efficiency consistent with its original design and not to secure any windfall benefit under the RPSSGP tariff.

y) The Petitioner, through its various representations/ communications, had clarified following:

- It does not intend to procure high-efficiency modules to derive commercial gain.
- All replacements shall be in strict compliance with MNRE/IREDA guidelines; and
- Installed AC capacity shall remain 1 MW, exactly as contracted.

Thus, there was no prejudice to UPPCL whatsoever since there will be no tariff change, no cost implication, no capacity increase, and no adverse impact on system operation. The technical necessity for replacement has been fully demonstrated, whereas UPPCL's denial lacks any technical counter-analysis or regulatory justification.

Records of Proceedings

3. During the hearing dated 09.04.2026, on the Commission's query regarding provision for repowering under the PPA, learned Counsel of Petitioner submitted that though the PPA does not expressly use the term "repowering", Clause 2.2 mandates compliance with the Guidelines issued by IREDA for the RPSSGP Scheme and IREDA subsequently issued repowering Guidelines in 2018. Sh. Manish Dwivedi, on behalf

of UPPCL, submitted that tariff payable to the Petitioner is higher than the recently discovered solar tariff and further stated that copy of the Petition was not served upon UPPCL. The Commission directed the Petitioner to serve copy of the Petition upon the Respondent(s), granted time to Respondent(s) to file their reply and the Petitioner for filing its rejoinder.

4. On hearing dated 04.06.2026, Sh. Divyanshu Bhatt, learned Counsel for UPPCL, submitted that reply had been filed on the previous day. The Commission expressed its displeasure over delayed filing of reply despite repeated directions in several matters. Sh. Bhatt tendered apology and submitted that such practice would not be repeated. He further submitted that UPNEDA would file its reply within 10 days. Sh. Abhishek Mishra, learned Counsel for IREDA, submitted that copy of the Petition had not been served. The Commission directed the Petitioner to serve copy of the Petition upon all Respondents. On the Commission's query regarding tariff and GBI, Sh. Bhatt submitted that tariff being paid was Rs.5.67/kWh, GBI received was Rs.12.24/kWh, resulting in an effective tariff of Rs.17.91/kWh, and details with supporting documents would be placed on record. The Commission granted time to UPPCL and UPNEDA and IREDA to file replies/submission, and the Petitioner for filing rejoinder. UPPCL was further directed to submit details regarding Energy Supplied, Actual CUF, Effective Tariff Payable by UPPCL, GBI Received, Tariff Payable to Developer and other details in the prescribed format.

5. On hearing dated 21.07.2026, learned Counsel for UPPCL and UPNEDA, submitted that replies of UPPCL and UPNEDA had been filed. The learned Counsel for IREDA submitted that he was in the process of filing Vakalatnama and sought one week's time to file reply. The Commission observed that a similar submission had been made during the previous hearing. The learned counsel for IREDA submitted that notarised copy of Vakalatnama had recently been received from IREDA and apologised for the delay. He again sought one week's time to file reply. The learned Counsel for DMPL also sought one week's time to file rejoinder to the replies filed. The Commission granted one week's time to IREDA to file reply and one week thereafter to DMPL to file rejoinder.

6. On hearing dated 13.08.2026, learned counsel for IREDA submitted that reply was filed on 29.07.2026. The learned Counsel for DMPL sought time to file rejoinder to IREDA's reply. The Commission observed that despite expiry of the one-week period granted earlier, the Petitioner had failed to file rejoinder. The Commission observed

that compliance with timelines is essential for expeditious adjudication and expressed displeasure over the casual approach adopted by the Petitioner. Accordingly, a cost of Rs.5,000/- (Rupees Five Thousand) was imposed upon the Petitioner for non-compliance of the Commission's Order and the same was directed to be deposited within one week. The Commission further noted that IREDA, in its reply, had stated that it is the Programme Administrator under the RPSSGP Scheme and repowering proposals are processed in accordance with applicable MNRE Guidelines and directions. IREDA further submitted that MNRE, vide communication dated 04.08.2025, directed IREDA not to accord any fresh repowering proposals. The Commission granted one week's time as a final opportunity to the Petitioner to file rejoinder.

7. On hearing dated 03.09.2026, the Commission asked whether the cost of Rs. 5,000/- , imposed during the last hearing, had been deposited by Petitioner? learned Counsel of Petitioner responded that the cost was deposited on the next day after the date of Order and further undertook to place on record an affidavit for the same. The learned Counsel for the Petitioner submitted that 1 MW Solar PV Power Project was established at Jhansi, Uttar Pradesh under the RPSSGP Scheme of the National Solar Mission Phase-I, approved by the MNRE in 2010. Since commissioning of the Project in 2012, the Project had witnessed gradual degradation in its performance. The learned Counsel further submitted that IREDA being the Programme Administrator of the RPSSGP Scheme as well as Repowering Guidelines 2018, requested by Petitioner for approval of repowering to IREDA.

8. The learned Counsel submitted that the NISE report of 2019 had clearly recorded degradation of the Project and recommended repowering/replacement of equipment. Based on the said report, the Petitioner through its letter dated 14.08.2019 to IREDA, along with the NISE report, sought approval for repowering, however, no response was received from IREDA. The Commission observed that the highlighted letter dated 14.08.2019 neither addressed to any concerned officer/designation nor contain address particulars, and therefore there was a possibility that the letter might have misplaced and therefore, such lackadaisical approach cannot be expected from the Petitioner in writing the letter. The learned Counsel for the Petitioner agreed with the observation of the Commission and submitted that again on 04.02.2025 a letter was issued to IREDA. The learned Counsel further submitted that the entire repowering cost would be borne by the Petitioner and would neither affect the

DISCOM nor alter the agreed and approved tariff. He further submitted that the Project is continuously witnessing degradation in its performance, and therefore the Commission may permit repowering of the Project.

9. The Commission sought clarification regarding IREDA's submission that MNRE had directed it not to grant consent for repowering and therefore consent could not be provided to the Petitioner. In response, the learned counsel of Petitioner submitted that IREDA was relying upon an email received from MNRE in August 2025, whereas the Petitioner's communications were of 2019 and February 2025, much prior to the said MNRE's email. He submitted that the email pertains to fresh approvals, whereas the Petitioner's request had remained pending since 2019. The learned Counsel while relying upon the Hon'ble Supreme Court judgment in *BSNL vs Tata Communications Limited* and submitted that administrative/executive orders or circulars cannot be applied retrospectively in the absence of legislative competence. Accordingly, the referred MNRE email was received after the Petitioner's request.

10. The learned Counsel for IREDA denied the receipt of Petitioner's proposal vide letter dated 14.08.2019, however, incomplete proposal of 2025 was emailed on 04.02.2025 that too by officer of 'GAM Solar' and not by the Petitioner. Thereafter, telephonically asked the Petitioner to clarify the relationship between DMPL and GAM Solar along with hardcopy of the complete proposal, however, no response was provided for the sought clarification. The Commission asked why no reminder letters were sent to IREDA immediately after the 2019 request and why the next communication was sent only after about six years in 2025 despite significant degradation of the plant, the learned Counsel admitted that there was delay on record by the Petitioner; however, even after submission of the repowering proposal in 2025, it was not processed.

11. The learned Counsel for UPPCL and UPNEDA submitted that two issues arise for consideration, namely, responsibility for the present condition of the plant and computation of the alleged loss. He further submitted that, pursuant to execution of the PPA, supply of power is governed entirely by the PPA, and Articles 6, 7 and 9 clearly cast the obligation of operation and maintenance upon the Petitioner. The PPA nowhere requires prior consent of the procurer, i.e., UPPCL, for maintaining the plant. He further submitted that although the Petitioner claimed to have approached IREDA in 2019, it did not approach UPPCL until 2025, which itself demonstrates that the Petitioner considered IREDA's approval necessary for repowering and not UPPCL's approval. He referred to the Petitioner's letter dated 02.02.2025 addressed to UPPCL,

wherein it was stated that based on technical due diligence carried out by NISE, the plant was underperforming and its CUF had been coming down for the last three years i.e., during 2021-2024. The learned Counsel for UPPCL further submitted that UPPCL vide its letter dated 09.10.2025, denied consent for repowering based upon the PPA and MNRE Guidelines because O&M of the project is the responsibility of the Petitioner. He also pointed out that the Petitioner's letter dated 02.02.2025 did not disclose whether IREDA had been approached, nor did it provide the relevant reports or details of the proposal, and therefore, in the absence of necessary documents, UPPCL denied consent. The Counsel requested the Commission to reject the Petitioner's prayers because the Petitioner was aware about the Plant's degradation since 2019 yet remained inactive for nearly six years. Had the same efforts been undertaken in 2019, the matter could have progressed earlier. He also argued that UPNEDA was not a proper party for the reliefs claimed in the matter.

12. In its rebuttal, the Counsel for the Petitioner clarified that GAM Solar being the General Asset Management Solar which is a vertical company of the Petitioner's organisation. He denied having received any telephonic communication from IREDA. On being asked by the Commission regarding the consequences of failure of the Project under the PPA, the counsel responded that under Article 15 of the PPA, the PPA would be liable for termination. After concluding the arguments of the parties, the matter was reserved for Orders.

Reply of the Respondents

13. On 03.06.2026, UPPCL filed its reply wherein it mainly submitted following:

a) Solar photovoltaic projects, by their very nature, are subject to degradation of modules over time and replacement of defective or deteriorated components may become necessary during the operational life of the project. UPPCL does not dispute that prudent operation and maintenance practices may require replacement of degraded modules in appropriate circumstances. However, such replacement exercises, particularly where they involve large-scale repowering of the principal generating equipment of a project operating under a long-term preferential tariff framework, necessarily require careful examination from technical, contractual and regulatory standpoints.

b) The Petition, in its present form, effectively seeks adjudication upon broad technical and commercial issues in absence of a finalized and duly scrutinized repowering

proposal approved by the competent authorities under the applicable framework. The Commission, while exercising regulatory jurisdiction, would necessarily require complete technical particulars, verification reports, compliance assessments and clarity regarding the impact of the proposed repowering on project parameters before any direction can be considered.

c) Without prejudice, UPPCL remains bound by and committed to the broader objective of promotion of renewable energy in accordance with the Act and the applicable regulatory framework. However, such promotion must necessarily operate within the discipline of contractual sanctity, regulatory oversight, technical compliance and protection of consumer interest. The Petitioner cannot invoke the general objective of renewable energy promotion so as to claim an unrestricted and unconditional right to undertake extensive repowering under an existing preferential tariff arrangement without adherence to the applicable approval and scrutiny framework.

d) Neither the PPA nor the extant regulatory provisions preclude the repowering/replacement of the defective PV modules by the Petitioner. Pertinently, the express provisions of the PPA obligate only the Petitioner to undertake O&M works in accordance with the prudent utility practices. It has further been admitted by the Petitioner that the IREDA guidelines permit Project Proponents under the RPSSGP Scheme to undertake repowering subject to the approval of IREDA.

e) The Repowering Guidelines were issued by IREDA in its capacity as the Programme Administrator for projects established under the RPSSGP Scheme. The said Guidelines contemplate a structured process involving examination and scrutiny of repowering proposals before any such proposal can be acted upon. Consequently, the Petitioner cannot selectively rely upon the portions of the Guidelines which support module replacement while ignoring the procedural requirements and approval mechanism contained therein.

f) The Repowering Guidelines do not confer any automatic, unconditional or self-executing right upon a project proponent to undertake repowering merely upon formation of an intention to do so. On the contrary, the framework itself contemplates examination of the proposal by IREDA before any determination can be arrived at regarding the permissibility, scope and implementation of the proposed repowering exercise. The very existence of such a scrutiny mechanism demonstrates that repowering was not intended to operate as a matter of unilateral election by the generator.

g) In the absence of any determination by IREDA upon the Petitioner's Repowering proposal, the present Petition is premature and misconceived. The Petitioner cannot seek to short-circuit the very process contemplated under the Repowering Guidelines by requesting the Commission to proceed on the assumption that the proposed repowering exercise is already compliant with all technical and regulatory requirements. Such an approach would render the scrutiny mechanism contemplated under the Guidelines otiose.

h) The Petitioner has failed to appreciate the distinction between the role of IREDA under the RPSSGP Scheme and the role of UPPCL as the procurer of power under the applicable contractual arrangement. While UPPCL is required to consider the implications of any proposed modification from the standpoint of procurement obligations, contractual compliance and consumer interest, the technical examination and scheme-level scrutiny contemplated under the Repowering Guidelines necessarily falls within the framework administered by IREDA. Therefore, in the absence of completion of the scrutiny process contemplated under the Guidelines themselves, no enforceable cause of action can be stated to have arisen against UPPCL.

i) In view of the foregoing, and without prejudice thereto, UPPCL's 'refusal' to grant its consent is a legal nullity and contractually inessential for the Petitioner to undertake O&M works. The Petitioner proceeded on a false and misplaced understanding of the contractual regime. However, the Petitioner now seeks to be compensated for its apparent losses arising out of its own actions, which were premised on no legal or regulatory mandate.

j) Notably, the Petitioner has failed to place on record any efforts towards corrective maintenance after the NISE 2019 report. Instead, a singular letter to IREDA dated 14.08.2019 has been relied upon to claim that the Petitioner has been rendered remediless. In the absence of timely intervention by the Petitioner to restrict further degradation of the Project, the damage to the systems has compounded. The Petitioner engaged NISE yet again for inspection of the Project, whereby NISE furnished its detailed report on 04.12.2025. In the absence of any mitigating efforts by the Petitioner, the NISE Report dated 04.12.2025 makes evident that technical defects in the Project had systemically worsened.

k) A comparison of the two reports provides a comprehensive illustration of the persistent failure of the Petitioner to undertake requisite O&M intervention over the

period of more than six years between the two reports furnished by NISE. By allowing broken panels to remain connected and letting strings open up, the asset has transitioned from a poorly performing plant in Year 7 (2019) to a partially defunct asset in Year 13 (2025). To bring this 1MW plant back to any viable commercial standard would now require an aggressive, full-scale repowering strategy (re-wiring and complete module replacement) rather than simple component repairs.

l) The Petitioner has placed extensive reliance on the Order of the Gujarat Electricity Regulatory Commission dated 25.09.2024 in Petition No. 2018 of 2021 ('Konark Order'). It is imperative at this juncture to outline the key distinction between the facts of the Konark Order and the present Petition. While, ostensibly, the two factual scenarios are analogous, the procurer therein (Gujarat Urja Vikas Nigam Limited) had placed an express prohibition against the change of panels after COD and threatened termination for failure to adhere to its directions. No such prohibition existed qua the Petitioner to undertake what is, incontrovertibly, O&M work mandated under the PPA framework. In the absence of any express or implied prohibition against undertaking O&M work, no prayer for directions to UPPCL to grant its permission is necessary or maintainable.

m) The Petitioner's computation of alleged generation losses and consequential claims of compensation begins from 16.12.2024, i.e., when the Petitioner first wrote to UPNEDA for its consent for repowering. The letter forming the basis of the Petitioner's claims for compensation was neither addressed to nor provided to UPPCL. Notably, the Guidelines dated 06.06.2018 posit that the authority to permit such works rests solely with IREDA, with no reference being made to any state-level Competent Authorities.

n) The Petitioner incorrectly invoked the authority of UPNEDA and cannot, at this juncture, be permitted to compute generation losses from 16.12.2024. Contrary to the averment that the losses incurred by the Petitioner were on account of the Respondent's alleged inaction from 16.12.2024, the record portrays a flagrant ignorance of the very Guidelines that the Petitioner seeks to invoke before the Commission. Further, the compensation claim advanced by the Petitioner is liable to be rejected on the independent ground that the Petitioner has failed to establish any causal nexus between the alleged generation losses and the communication issued by UPPCL. The entire compensation claim is founded upon the assumption that the alleged decline in generation was occasioned by UPPCL's refusal to permit

repowering. However, the chronology pleaded by the Petitioner itself demonstrates that such assumption is factually unsustainable.

o) The compensation claimed by the Petitioner pertains to a period during which the alleged degradation had already materialised and the Project had admittedly been operating with deteriorated performance parameters. The losses claimed by the Petitioner are therefore the result of the cumulative operational condition of the Project developed over several years and cannot be retrospectively attributed to any single communication issued by UPPCL. This becomes especially relevant in light of Clauses 6.4, 7.3, and 9.1 of the PPA, which not only permit but mandate the operational upkeep of the Project by the Petitioner.

p) In terms of Clause 6.3 of the PPA, no material changes or additions to the Project could be made, which may have an adverse impact on the systems of the procurer, without the prior written consent of the procurer. Without the benefit of any particulars being provided to UPPCL about the nature of the proposed repowering/replacement, UPPCL was well within its right in terms of the PPA to withhold its consent for the works. The extant regulatory and contractual framework does not disallow the routine O&M of the Project, which includes the replacement of damaged PV modules, subject to the approval by IREDA. The only occasion for seeking UPPCL's permission for works arises only when material changes or additions are to be considered. Absent any particulars, UPPCL was constrained to withhold its consent in response to the letter dated 02.02.2025.

q) The Petitioner had computed generation losses in accordance with the PVsyst assessment dated 09.07.2012, against a first-year projection of 1.77 MUs, as 0.8031 MUs. The PVsyst assessment itself considers an annual degradation of 0.8% in the yield of the Project, which leads to the conclusion that the degradation of the Project has been at a pace that is disproportionate with the industry standards and the pre-commissioning projections. This is indicative of the Petitioner's own negligence in the O&M of the Project. However, no justification has been provided by the Petitioner for the computation of 0.8301 MUs generation losses in the intervening period of 16.12.2024 and 15.12.2025.

r) The present Petition is liable to be dismissed in limine as the Petitioner had failed to establish the existence of any vested, accrued or unconditional right in its favour to undertake the proposed repowering exercise in the manner claimed in the Petition. The guidelines relied upon by the Petitioner do not create any automatic entitlement

in favour of the Project Developer, nor do they contemplate that the procurer/licensee is bound to mechanically permit repowering merely upon submission of a proposal by the generator. On the contrary, the framework relied upon by the Petitioner itself contemplates examination, scrutiny and verification of such proposals by the concerned authorities/agencies before any approval can be acted upon.

14. On 15.07.2026, UPNEDA filed its reply wherein it mainly submitted following:

a) The Repowering Guidelines, under which the Petitioner claims its entitlement for repowering its Project, are governed by IREDA. Accordingly, the authority to grant permission for repowering under the RPSSGP Scheme lies only with IREDA. While UPNEDA is the Nodal Authority for the implementation of the RPSSGP Scheme, its functions were limited to the facilitation of the application and setting up processes under the scheme. Only IREDA is authorised to permit repowering of solar power projects set up under the RPSSGP Scheme as per the express terms of the Repowering Guidelines.

b) None of the Prayers sought by the Petitioner is either directed against or enforceable against the UPNEDA. The Petitioner claims losses from 16.12.2024 onwards, i.e., from the date it sent a letter to UPNEDA in blatant disregard for the extant regime governing repowering of solar PV modules under the RPSSGP Scheme. The Petitioner cannot claim to have been injured by the alleged inaction of the Respondent when the Repowering Guidelines the Petitioner relies on to support its claim do not vest UPNEDA with the authority to act in the first place. Therefore, the Prayer seeking compensation for the alleged generation losses of the Petitioner is not maintainable against UPNEDA.

15. On 29.07.2026, IREDA filed its reply wherein it mainly submitted following:

a) Grant of repowering approval is subject to fulfilment of prescribed conditions and submission of complete documents by the project developer. MNRE vide email dated 04.08.2025 had directed IREDA not to accord any fresh repowering approvals pending review of the guidelines. No further directions or revised guidelines have been received till date. Hence, IREDA had not accorded any fresh approvals after the said date.

b) The Petitioner had not submitted a complete and proper repowering proposal to IREDA as per the guidelines. No formal request in the prescribed manner with all

requisite documents had been received. The IREDA did not receive any complete repowering request as per documents available in physical/e-files. There was no record of the alleged repowering application dated 14.08.2019. Repowering proposals can be considered only upon submission of complete information and documents prescribed under the guidelines.

c) The Project continues to receive Generation Based Incentive (GBI) under the RPSSGP Scheme. The details as per records are as under:
   (i) Total GBI released: Rs. 17.84 Crores
   (ii) Against claims of Rs. 18.07 Crores
   (iii) Pending claims: Rs. 0.22 Crores (funds already requested from MNRE vide letter dated 22.04.2026).

d) The grant of repowering approval is subject to fulfilment of prescribed conditions and submission of requisite documents. IREDA issued guidelines dated 06.06.2018 in line with MNRE directions dated 26.04.2018. Further, the compensation as proposed is not sustainable because no proper request was received from the Petitioner as regards to the alleged request for repowering. An email proposal was received from GAM Solar via email dated 04.02.2025. The Petitioner was requested telephonically to clarify the relationship between DMPL and Greenko and to submit the hard copy of the proposal along with:
   (i) Consent of DISCOM for repowering.
   (ii) RFID details of modules
   (iii) Justification for delay in submission of proposal as the inspection report was completed on 06.08.2019.

Rejoinder of the Petitioner

16. On 06.07.2026, Petitioner filed its rejoinder to UPPCL's reply, wherein it mainly submitted following:

a) The role of IREDA as the "Programme Administrator" has also been imbibed in the PPA dated 21.08.2010, which explicitly provides that guidelines uploaded on the website of IREDA are binding in nature. A perusal of the provisions envisaged, under the PPA read with the RPSSGP Scheme makes it crystal clear that it was '***consensus ad idem***' between the parties at the time of execution of PPA and installation of the Project, that the parties are mandatorily bound by the guidelines issued by IREDA.

b) The Repowering Guidelines dated 06.06.2018 provide conditions under which GBI shall be limited post-repowering and stipulate documentary requirements for IREDA's examination. Most pertinently, the Guidelines do not at all require IREDA's prior approval as a condition precedent for undertaking O&M activities, including module replacement. In fact, the Guidelines themselves state that "the request of the Project Proponents can be considered" by IREDA, which does not constitute a mandatory exercise.

c) The PPA dated 21.08.2010 itself contains the governing contractual framework, wherein, Articles 2.2 & 7.3 of the PPA unambiguously place the responsibility for abiding with the guidelines issued by IREDA under the RPSSGP Programme as well as the maintenance of equipment at the generating end on the Petitioner. Such maintenance, which necessarily includes replacement of degraded or defective components, therefore constitutes an obligation which cannot be circumscribed by requiring prior approval from a third party (IREDA) that is not party to the PPA. Article 6.4 further mandates that the Petitioner operates and maintains its facility in accordance with accepted prudent utility practices. Therefore, any refusal on the part of UPPCL to allow the Petitioner to fulfil its own contractual O&M obligation runs contrary to the entire contractual framework. The aforesaid may also be read with Article 9.1 of the PPA, wherein, on request, UPPCL was mandated to provide technical assistance to the Petitioner for laying down standard operating and maintenance procedures.

d) As a matter of fact, UPPCL itself acknowledges that "UPPCL does not dispute that prudent O&M practices may require replacement of degraded modules in appropriate circumstances". Having conceded so, UPPCL cannot then attempt to establish an artificial procedural barrier by insisting on IREDA approval as a condition precedent for what it has itself acknowledged to be a legitimate O&M activity prescribed under the PPA.

e) It is the case of the Petitioner that the replacement of modules/ repowering is mandated under the PPA read with the Repowering Guidelines and that no separate approval of IREDA was required. The Petitioner, out of abundant caution, approached IREDA as far back as 2019. However, any non- response on the part of IREDA cannot be used as a shield by UPPCL to deny the Petitioner the right to undertake repowering of modules. When the statutory scheme and the contract/ PPA give a right to the Petitioner, the same cannot be held hostage to a letter

written by the said Petitioner under a bonafide mistake and out of abundant caution.

f) The Commission has plenary statutory jurisdiction to adjudicate disputes between licensees and generating companies, and issue appropriate directions in the interest of promoting renewable energy. A hyper-technical reading of scheme-level guidelines would run foul of the statutory jurisdiction of the Commission and defeat the legislative intent of Sections 86(1)(e) and (f) of the EA 2003, read with the regulatory requirement of undertaking re-powering of modules.

g) UPPCL attempts to portray the Petitioner as grossly negligent in its O&M obligations between 2019 and 2025, suggesting that the deterioration of the Project was entirely self-inflicted. This characterisation is factually incorrect, legally untenable and contrary to the documentary record, as explained. Over the years, due to natural ageing and environmental exposure, the Solar PV modules of the plant experienced notable performance deterioration. The Petitioner proactively engaged 'NISE' to conduct a detailed technical inspection of the Project. In the aforesaid circumstances, the NISE Module Inspection Report came to be issued on 11.04.2019, which confirmed extensive degradation of the solar modules with tested modules showing degradation ranging from minimum 8.40% to maximum 85.89%.

h) Materially, the principal reason the Petitioner could not proceed with module replacement pursuant to the 2019 NISE Report is that the Petitioner sought, and was denied, the requisite consent and regulatory clarity from the UPPCL. This is forthcoming from the documents on record, which show that:

   (i) The Petitioner approached IREDA in 2019 and received no response.

   (ii) Thereafter, the Petitioner approached UPNEDA in December 2024, and UPPCL in February 2025.

   (iii) Against the aforesaid, UPPCL issued a blanket refusal on 09.10.2025.

   (iv) Thereafter, the Petitioner again wrote a letter on 15.11.2025 to UPPCL, reiterating the repowering/ replacement of defective/ damaged module and reconsider its decision conveyed vide letter dated 09.10.2025.

i) UPPCL now seeks to put blame onto the Petitioner for the delay that UPPCL itself caused. Since, the denial of consent by UPPCL is illegal, the same means that the Petitioner was entitled to repower its modules in December 2024 itself which it could not undertake. As such, UPPCL is liable for generation losses suffered by the

Petitioner on account of the wrongful withholding of consent by UPPCL. It is settled law that a party cannot benefit out of its default, reference for which is drawn to the judgment of the Hon'ble Supreme Court titled as *Kusheshwar Prasad Singh vs State of Bihar & Ors., reported in (2007) 11 SCC 447*.

j) In fact, NISE Report dated 04.12.2025 itself acknowledges that the module degradation observed is "larger than the expected value" due to environmental conditions and physical damage to module glass. These constitute external and natural causes, not O&M failures. The Petitioner cannot be held liable for degradation, which is the product of natural ageing and environmental exposure over 13 years of operation under conditions well-recognised in the solar energy sector.

k) The Petitioner, while issuing the letter dated 16.12.2024 to UPNEDA and letter dated 02.02.2025 to UPPCL for grant of permission for 100% repowering, had furnished following detailed documentation which conclusively establishes the technical condition of the Project and the nature of the proposed repowering:

   (i) Technical Due Diligence Report dated 11.04.2019 by NISE.
   (ii) PVSyst Energy Yield Report.
   (iii) Actual versus Expected Generation and CUF Report.
   (iv) Draft Proposal for repowering.
   (v) IREDA Repowering Guidelines; and
   (vi) References to the relevant provisions of the PPA dated 21.08.2010.

l) It is to be noted that in both *Konark Gujarat PV Pvt. Ltd. vs GUVNL* (Order dated 25.09.2024 in Petition No. 2018 of 2021) and Jai Hind Projects Limited vs GUVNL (Order dated 17.07.2023 in Petition No. 1948 of 2021), the GERC categorically rejected the procurer's attempt to impose a 'Base CUF' or to limit the tariff payable on the ground that module replacement might lead to increased generation. UPPCL's concern that module replacement might result in higher generation within the same contracted capacity is precisely the kind of concern that GERC has rejected as illegal and arbitrary.

m) Clause 6.3 of the PPA stipulates that consent for material changes or additions which may adversely affect the DISCOM system shall not be unreasonably withheld. The repowering proposed by the Petitioner, being module replacement at the same contracted capacity, with no change in the single-line diagram or tariff,

does not constitute a "material change or addition" within the meaning of Clause 6.3. Even if it were so construed, the PPA imposes a positive duty on the procurer not to withhold consent unreasonably.

n) The PPA further stipulates that in the event of any inconsistency between the PPA and the IREDA guidelines, the latter shall prevail. The IREDA Repowering Guidelines expressly permit module replacement. UPPCL's refusal was therefore not only unreasonable under the PPA but also inconsistent with the IREDA Guidelines which contractually take precedence over any inconsistent provision of the PPA.

o) UPPCL claims that compensation claimed by the Petitioner is speculative, remote and unsupported by any demonstrable causal connection between the alleged losses and the actions of UPPCL. In this regard, it may be reiterated that the Petitioner issued communications to the Respondents for the first time on 16.12.2024. However, due to inaction of the Respondents since then, the Petitioner has suffered considerable generation loss due to degraded/ defective modules.

p) The Petitioner's compensation claim is quantified with reference to the PVSyst assessment and the NISE Reports, which are industry-standard tools and methodologies for assessing generation losses in solar PV projects. The computation of generation shortfall against expected/ normative generation as certified by NISE is not speculative, rather it is evidence-based quantification using the very assessment framework that the PPA and applicable guidelines contemplate. Thus, as per the PVSyst report generation in the first year was 1.77 MUs but for the period from 16.12.2024 to 15.12.2025, the generation loss is 0.8031 MUs, resulting in financial loss of Rs. 1.438 Crores.

q) The Repowering Guidelines dated 06.06.2018, explicitly provide that repowering/ replacement of the solar PV modules is to be done at the cost borne by the Solar Power Developer. It thus follows that the repowering/ replacement of solar PV modules would not cause any revision in tariff payable for power supplied by the Project, any additional compensation payable by UPPCL or any passing on of costs to UPPCL/ end consumer. As such, there did not arise a reasonable basis for denying consent to the Petitioner for carrying out the repowering/ replacement of degraded solar modules of the Project, particularly considering the decline in energy efficiency due to the natural damage/ degradation of solar PV modules.

r) The distinction as afforded by UPPCL is misconceived since the fundamental principle established in the Konark Order was that a solar project developer was entitled to replace/ repower degraded solar PV modules without increasing contracted capacity, and that such replacement constitutes legitimate O&M activity. The '***ratio decidendi***' is of general application and is not limited to cases where the procurer had issued a formal termination notice. Further, the facts of the Konark case are strikingly similar to the present case, and the parallels reinforce the applicability of the GERC's ruling. These are explained hereunder:

(i) In the Konark case, the project was commissioned in January 2012 and generation drop was observed from 2017. In the present case, the PPA was executed in 2010, the project was commissioned thereafter, and degradation was observed from 2019. In both the aforesaid cases, significant performance deterioration was observed approximately 7-8 years after commissioning.

(ii) In the Konark case, the Petitioner therein relied on thermography/ infrared scanning and IV Curve tests conducted by external agencies to establish module degradation. In the present case, the Petitioner similarly engaged NISE, a reputed national-level institution, to conduct a detailed technical inspection, which confirmed extensive degradation.

(iii) In both the cases, the procurer opposed full replacement on the ground that newer, more efficient modules would allow the generator to claim higher tariff and receive increased revenues. In the Konark case, the GERC squarely rejected this argument as 'illegal' and 'arbitrary'.

(iv) The '***ratio decidendi***' established in the Konark case was that a solar project developer is entitled to replace damaged/ defective modules without increasing contracted capacity, and that such replacement constitutes legitimate O&M activity. Such an observation is of general application and is not limited to cases where the procurer has issued a formal termination notice.

17. On 13.08.2026, DMPL filed its rejoinder to UPNEDA's reply, wherein it mainly submitted following:

a) UPNEDA's contention that only IREDA was the proper authority to grant approval qua repowering constitutes a condition not stipulated under the PPA or under the RPSSGP Scheme, as a prerequisite for module replacement. The Petitioner's approach to IREDA in 2019 was made out of abundant caution, and non-response

from IREDA cannot be used by UPNEDA as a shield to deny the Petitioner its contractual rights.

b) UPNEDA is neither a formal nor a proforma party to the present proceedings. The Government of Uttar Pradesh declared on 08.04.2010, UPNEDA as the Competent Authority for administering the RPSSGP Scheme in the State of Uttar Pradesh, and UPNEDA is the State-level Nodal Agency for the implementation of the said Scheme. Notably, UPNEDA itself admits that it is the "Nodal Authority for the implementation of the RPSSGP Scheme". Having admitted so, UPNEDA cannot simultaneously contend that no relief can be sought or enforced against it in a *lis* which squarely pertains to the implementation of the very Scheme which it administers in the State.

c) The functions of a Nodal Agency for the "implementation" of a scheme cannot be artificially cut down to mere "facilitation of the application and setting up processes", as is sought to be contended under the Reply. The implementation of the RPSSGP Scheme necessarily encompasses processing, facilitation and onward transmission of the requests made by Project Proponents in relation to the Projects set up under the said Scheme, including requests for repowering/ replacement of degraded solar PV modules.

d) It is reiterated that the Petitioner addressed its letter dated 16.12.2024 to UPNEDA seeking permission for 100% repowering of its 1 MW Solar PV Project. Thereafter, the Petitioner issued a detailed representation dated 02.02.2025 to UPNEDA and IREDA, enclosing therewith the NISE Report, the PVSyst Analysis, the RPSSGP Guidelines, the MNRE/ IREDA Repowering Guidelines and the technical assurances. However, till date, UPNEDA has neither responded to, acknowledged, nor even forwarded the said requests.

e) Insofar as the contention that none of the prayers is "directed against or enforceable against" UPNEDA is concerned, the same is factually incorrect as regards a bare perusal of the Petition, wherein, Prayer (c) of the Petition seeks a direction to the Respondents to grant consent/ approval for the proposed repowering/ replacement of modules in accordance with the IREDA Guidelines dated 06.06.2018, the RPSSGP Scheme and the PPA dated 21.08.2010. Also, Prayers (d) & (e) seek a declaration and compensation on account of the inaction of the Respondents from 16.12.2024 onwards.

f) Reference is drawn upon the settled principle of law that where a public authority holds out a course of conduct pursuant to a scheme or policy administered by it, the

expectation legitimately created thereby must be given due weight in its decision-making, and any departure from the same must be founded upon reasons germane to the public interest and must be preceded by a fair and non-arbitrary consideration of the case of the affected party. As such, the doctrine of legitimate expectation obliges the authority to consider the request of the affected party and to communicate a reasoned decision thereon.

g) To buttress the foregoing, reference is drawn upon the following judgments, which lay down the principles encompassing the doctrine of legitimate expectation:

(i) In National Buildings Construction Corporation v. S. Raghunathan, reported in (1998) 7 SCC 66, it was held as under:

> *"18. The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel."*

(ii) In Secretary, State of Karnataka & Ors. v. Umadevi & Ors., reported in (2006) 4 SCC 1, it was held as under:

> *"46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , Jacob [Jacob M. Puthuparambil v. Kerala Water Authority, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and Gujarat Agricultural University [Gujarat Agricultural University v. Rathod Labhu Bechar, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in Council for Civil Services Union v. Minister of Civil Service [1985 AC 374: (1984) 3 All ER 935: (1984) 3 WLR*

1174 (HL)], National Buildings Construction Corpn. v. S. Raghunathan [(1998) 7 SCC 66: 1998 SCC (L&S) 1770] and Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485: 2003 SCC (L&S) 322]. There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it..."

h) In the present case, the Respondents have not adhered to the above. As regards to UPNEDA, despite the Petitioner having addressed letters dated 16.12.2024 and 02.02.2025, enclosing the NISE Report, the PVSyst Analysis, the RPSSGP Guidelines, the MNRE/ IREDA Repowering Guidelines and the technical assurances, UPNEDA has, till date, neither considered nor decided nor even acknowledged the same, and has instead maintained complete and unexplained silence for over a year, only to now contend before the Commission that it bears no responsibility whatsoever in the matter. Such conduct on the part of a State instrumentality, which admittedly stands declared as the Competent Authority for administering the Scheme, is arbitrary, violative of the mandate of Article 14 of the Constitution of India, and destructive of the legitimate expectation upon which the Petitioner acted to its detriment.

i) The contention that the Petitioner claims losses from 16.12.2024 onwards in "blatant disregard" of the extant regime governing repowering is baseless and is specifically denied. On 16.12.2024, the Petitioner first formally approached UPNEDA seeking permission for repowering, and the compensation has been claimed for the period from 16.12.2024 till 15.12.2025, i.e., the period during which the Petitioner's requests remained unactioned/ stood refused. The generation loss for the said period has been quantified at 0.8031 MUs, as against the first-year PVSyst projection of 1.77 MUs, translating into a financial loss of Rs. 1.438 Crores. The claim of the Petitioner is thus an evidence-based quantification of the losses directly attributable to the collective inaction/ refusal of the Respondents.

18. On 13.08.2026, DMPL filed its rejoinder to IREDA's reply, wherein it mainly submitted following:

a) IREDA expressly admits the receipt of an email proposal dated 04.02.2025 and has annexed the said email to its Reply. A bare perusal of the said email demonstrates that the email was addressed to IREDA, bears the subject "M/s Dhruv Milkose Power Plant for Re-powering approval", expressly requests IREDA to "grant permission for re-powering", and encloses following documents:

(i) The Cover Letter.
(ii) The Proposal for Re-powering.
(iii) The NISE Report Module, along with the Corrigendum thereto.
(iv) The PV Syst-Energy Yield Report.
(v) The IREDA Repowering Guidelines.
(vi) The Repowering Notification; and
(vii) The RPSSGP Scheme of the National Solar Mission.

b) The documents so transmitted are precisely those contemplated by the Repowering Guidelines dated 06.06.2018, including a detailed technical due diligence report prepared by a reputed institution working in the area of Solar Energy, the NISE being the apex national institution of the MNRE itself in the said field. Having itself placed the said email on the record of these proceedings, IREDA cannot simultaneously contend that it has never been in receipt of any repowering request from the Petitioner.

c) The Proposal for repowering enclosed along with the email dated 04.02.2025 itself categorically contained the following information:
(i) A brief description of the project.
(ii) A summary of the technical due diligence report issued by NISE.
(iii) Generation report & CUF from COD (i.e., from April 2021 to November 2024).
(iv) A formal proposal for repowering.
(v) Serial numbers/RFID numbers of the installed modules which were degraded.
(vi) Details with regards to the compliance of repowering; and
(vii) Module Manufacturer's Declaration for non-production of thin film module.

Therefore, the averment of IREDA that the Petitioner did not submit a complete and proper repowering proposal as per guidelines stands wholly untenable.

d) Insofar as the denial of the letter dated 02.02.2025 is concerned, the same proceeds on a purely technical and untenable basis. The substance of the said representation, namely, the repowering proposal together with the NISE Report, the PVSyst assessment, the Repowering Guidelines and the RPSSGP Scheme documents, was admittedly on the record of IREDA. A difference of two days in date cannot furnish a ground for a public authority to decline to consider a proposal on merits. Equally, the plea that the communication is neither marked to IREDA nor signed is denied,

which was addressed to an officer of IREDA and bears the name, designation and contact particulars of the sender.

e) As regards the alleged telephonic requisition, IREDA has not disclosed the date of the alleged call, the officer who is stated to have made it, the person who is stated to have received it, or any contemporaneous note, file entry or record thereof. Significantly, at no point has IREDA issued any written communication, deficiency memo or query to the Petitioner calling for any further document or information. Where a public authority is seized of an application for a benefit under a scheme framed by the Government, the requirements of fairness and of a reasoned administrative process demand that any perceived shortcoming be communicated in writing and a reasonable opportunity afforded to remedy it. An oral requisition, unsupported by any record and denied by the applicant, cannot constitute a lawful basis for keeping a proposal pending indefinitely and without decision.

f) In any event, the requisites now sought to be relied upon by IREDA are unsustainable, for the following reasons:

(i) The consent of the DISCOM for repowering is not a condition prescribed either by the Repowering Guidelines dated 06.06.2018 or by the MNRE letter dated 26.04.2018, which IREDA has annexed. Neither instrument contemplates the consent of the distribution licensee as a document to be furnished by the Project Proponent. More fundamentally, the consent so demanded was the very consent which UPPCL has denied vide its letter dated 09.10.2025, and which forms the subject matter of the present Petition.

(ii) Thus, the consequence which falls from the above was that IREDA declined to consider the proposal for want of the DISCOM's consent, UPPCL declined consent by reference to the absence of IREDA's approval, and UPNEDA contended that the matter lies solely with IREDA. Each instrumentality points to the other, with the Petitioner being rendered wholly remediless.

(iii) As regards the RFID details of the modules, the Repowering Guidelines provide that the Project Proponent "may provide" the details of the faulty/ degraded modules along with their RFID numbers. The said stipulation is plainly enabling in nature and is not framed as a condition precedent. In any event, the degraded, broken and hot-spot affected modules stand identified in the NISE Reports which were furnished to IREDA; and

(iv) As regards the clarification sought concerning the relationship between DMPL and Greenko, the Project is recorded as Project No. R061 under DVVNL in the name of "Dhruv Milkose Pvt. Ltd.", and GBI continues to be released in respect of the Project in that very name. The Petitioner is, and has at all material times been, M/s Dhruv Milkose Private Limited, being the same entity which executed the PPA dated 21.08.2010 and which stands registered under the RPSSGP Scheme. There has been no change whatsoever in the identity or the title of the project entity which could warrant any clarification.

g) IREDA contends that MNRE, vide email dated 04.08.2025, has directed it not to accord any fresh repowering approvals pending the review of the Repowering Guidelines, that no further directions or revised guidelines have been received till date, and that consequently, no fresh approvals have been accorded thereafter. The said contention is wholly misplaced, for the reasons set out hereinafter.

h) The email relied upon was dated 04.08.2025. It can therefore have no application whatsoever to the anterior period. The Petitioner approached IREDA as far back as on 14.08.2019 and, on 04.02.2025. For a period of nearly six years, and in any event for a period of six months immediately preceding 04.08.2025, there existed no impediment of any nature whatsoever to the consideration and decision of the Petitioner's proposal. IREDA has offered no explanation whatsoever for its failure to act during the mentioned period. Therefore, the communication dated 04.08.2025 cannot operate retrospectively so as to validate an inaction which had already continued for years before it came into existence.

i) Further, the instrument relied upon by IREDA is nothing more than an internal email addressed by a Scientist 'C' of the MNRE to an officer of IREDA. It is not a notification, not a statutory instrument, not a reasoned policy decision, and it has admittedly neither been published nor communicated to the Project Proponents whose subsisting proposals it purports to affect. By contrast, the Repowering Guidelines dated 06.06.2018 were issued pursuant to the MNRE letter dated 26.04.2018, which expressly records that the same was issued with the approval of the Hon'ble Minister (Power & NRE). An operative policy framework issued with the approval of the Hon'ble Minister, under which rights have been created and acted upon, cannot be kept in abeyance, nor can accrued rights thereunder be defeated, by way of an internal email.

j) The Petitioner's proposal was not, on 04.08.2025, a fresh proposal at all. The same was pending on the file of IREDA since the year 2019 and, on IREDA's own admission, since 04.02.2025. A proposal already pending consideration cannot be characterised as a fresh approval, and the said email therefore furnishes no answer to the Petitioner's grievance in the present case. The pendency of a policy review at the level of the MNRE cannot operate to suspend the contractual and regulatory right of the Petitioner to operate and maintain its own generating station in accordance with prudent utility practices under the PPA dated 21.08.2010.

k) Most significantly, IREDA's Reply conclusively establishes the very degradation which forms the foundation of the present Petition. The "Actual CUF" of the Project, as computed and recorded by IREDA itself, has declined steadily and without interruption from 14.66% in FY 2017-18 to 13.61% in FY 2018-19, 12.52% in FY 2019-20, 12.03% in FY 2020-21, 11.66% in FY 2022-23, 9.81% in FY 2023-24 and 8.49% in FY 2024-25. Correspondingly, the net energy supplied by the Petitioner had fallen from 1.28 MU in FY 2017-18 to 0.74 MU in FY 2024-25, i.e., a decline of approximately 42%. The degradation of the modules of the Project was therefore not, as IREDA would have it, an "alleged" event outside its knowledge. The same constates as a fact recorded, computed and certified in IREDA's own books, year after year, over more than a decade.

l) Further, the reliance placed by IREDA upon the continued release of GBI is, with respect, of no assistance to it and in fact fortifies the case of the Petitioner. GBI under the RPSSGP Scheme is payable at the rate of Rs. 12.24 per kWh of energy actually supplied, and a decline in generation therefore translates directly into a corresponding decline in the GBI receivable. IREDA's own figures record the GBI payable falling from Rs. 1.57 Crores in FY 2017-18 to Rs. 0.91 Crores in FY 2024-25. Far from demonstrating that the Project is in a state of health, the very records upon which IREDA relies serve to quantify the magnitude of the loss which the Petitioner has been made to suffer.

m) The continued release of GBI further demonstrates that the Project remains a live and registered project under the RPSSGP Scheme, being recorded in IREDA's own records as Project No. R061 under DVVNL, and that IREDA continues to this day to discharge the functions of the Programme Administrator in relation to the very Project of the Petitioner, including by requesting funds from the MNRE in respect of the Petitioner's pending claims vide its letter dated 22.04.2026. A subsisting and

continuing administrative relationship between IREDA and the Project therefore stand admitted on the record, and the attempt of IREDA to disclaim any role qua the Project is untenable.

n) The PPA dated 21.08.2010 expressly renders the guidelines uploaded on the website of IREDA binding upon the parties thereto. The tariff payable under the said PPA is the very tariff by reference to which IREDA computes and disburses the GBI. The Scheme under which the Project was established, and under which the Petitioner seeks to repower its modules, is administered by IREDA itself as the Programme Administrator. IREDA cannot claim for itself the office of administering the Scheme while simultaneously disclaiming all knowledge of the instruments through which that very Scheme operates.

o) No prejudice of any nature can be caused to IREDA or to the MNRE by the grant of the prayers sought in the present Petition. The proposed repowering is capacity-neutral in terms of condition 1 of the Repowering Guidelines, is to be undertaken entirely at the cost of the Project Proponent in terms of condition (f) thereof, and the GBI in the post-repowering period stands expressly capped, by condition 2 of the said Guidelines, at a maximum of 19% CUF with effect from the claim period commencing 01.04.2016.

p) It is clarified that the compensation has been claimed against the Respondents jointly and severally, inasmuch as the losses suffered by the Petitioner are the direct consequence of the refusal of consent by UPPCL vide its letter dated 09.10.2025, coupled with the continued silence and inaction of IREDA and UPNEDA qua the repeated requests of the Petitioner. The question of apportionment of liability '***inter se***' the Respondents, if any, is a matter to be considered and adjudicated upon by the Commission on merits, and the same cannot constitute a ground for IREDA to seek dismissal of the claims of the Petitioner at the threshold.

Analysis & Decision

19. The Petitioner, DMPL, operates a 1 MW solar PV project at Village Kharaha Bujurg, District Jhansi, set up under the RPSSGP Scheme of NSM Phase-I. It supplies power to DVVNL/UPPCL under a PPA dated 21.08.2010, with COD on 13.03.2012. NISE inspected the plant in April 2019 and again in December 2025 and found severe module degradation: tested modules had degraded by 8.40% to 85.89%, strings by 14.98% to 51%, about 351 modules were damaged, and all 8,869 modules showed

signs of degradation. As a result, actual generation in 2024-25 was 51.1% below the expected level. For the period 16.12.2024 to 15.12.2025, the Petitioner claims a generation loss of 0.8031 MU, worth about Rs 1.438 crore.

20. The Petitioner's project has been set up under Jawahar Lal Nehru National Solar Mission (JNNSM) announced by the MNRE, Government of India to promote solar energy in India. The Mission encourages grid connected Rooftop Solar PV and other Small Solar Power Generation connected to HT/LT voltage of the grid and envisages to set up 100 MW by 31st March 2013 through a programme referred to as "Rooftop Solar PV and Small Solar Generation Programme (RPSSGP)". Under this scheme, Generation based incentive (GBI) has been kept equal to the difference between the tariff determined by the Central Electricity Regulatory Commission (CERC) and the base rate i.e., Rs. 5.50/kWh in the first fiscal year of the commissioning i.e. FY 2011-12 for projects registered in FY 2010-11. The tariff tenure is for 25 years on levelized basis, and the base rate once determined for a particular project for the purpose of computation of GBI had to remain constant over the period of 25 years.

21. The Commission, vide its order dated 22.06.2010 in Petition No. 679/2010, approved the base tariff of Rs.5.50 per unit with escalation of 3% for the Petitioner's 1 MW Solar PV project. The applicable tariff for Petitioner's project, commissioned in 2011-12 is Rs. 17.91 per unit with base tariff of Rs. 5.67/unit and GBI of Rs.12.24 per unit.

22. The Repowering Guidelines dated 06.06.2018 allow replacement of Solar PV modules, inverters etc. under the RPSSGP Scheme at the Project Developer's own cost, provided total wattage remains the same, and GBI limited to 19% CUF. Relying on Repowering Guidelines, the Petitioner submits that it sought permission to replace the degraded modules through representations to IREDA on 14.08.2019 & 04.02.2025, to UPNEDA on 16.12.2024 & 02.02.2025 and to UPPCL on 02.02.2025. However, IREDA and UPNEDA did not respond or even acknowledge the aforesaid Petitioner's representation, while UPPCL denied consent by its letter dated 09.10.2025 without giving any reason.

23. The Petitioner further contends that the IREDA guidelines bind the parties via Clauses 1.8 and 2 of the PPA, resolving any conflict between the guidelines and the agreement. Replacing degraded modules is part of its maintenance obligations under Clauses 6.4, 7 and 9 of the PPA. This replacement is also legally mandated to ensure

grid reliability and comply with Schedule II of the CEA's Grid Connectivity Regulations, 2007. Since the proposed repowering will not change the project's installed capacity of 1MW and its cost will be borne by the Petitioner, hence, there will be no financial burden on UPPCL. Therefore, UPPCL's unreasoned refusal is arbitrary, breaches natural justice, and goes against its statutory duties under Sections 61, 86 and 181 of the Electricity Act, 2003.

24. *Per Contra*, UPPCL, concedes that solar modules naturally degrade over a period of Solar PV project's operational life and thereby require its replacement. It contends that neither the PPA nor the regulations prohibit replacing defective modules, which is the Petitioner's own O&M duty under Clauses 6.4, 7.3 and 9.1, of the PPA and hence its consent is under the given facts legally unnecessary, except under Clause 6.3 which applies for material changes that could harm the procurer's systems. UPPCL also submitted that present Petition is not maintainable for the reason that under the Repowering Guidelines dated 06.06.2018, IREDA—as the Programme Administrator of the RPSSGP Scheme and the designated approving authority—holds sole scrutiny and approval powers, meaning the guidelines give no automatic or unconditional right to repower. Further, IREDA has not yet decided on the Petitioner's Repowering proposal and until it does so, no cause of action arises against UPPCL. UPPCL distinguishes the GERC Konark Order on the grounds that the procurer, in that case, had expressly prohibited panel replacement after COD and threatened PPA termination, which UPPCL never did here. UPPCL has also argued that it is the Petitioner's own negligence leading to worsening condition of the plant despite the findings highlighted in the NISE reports in 2019 & 2025. The Petitioner took no corrective steps beyond a single letter to IREDA. Finally, UPPCL rejects the claim of Rs 1.438 crore for losses because the Petitioner's claimed losses come from Plant's degradation over the operational years.

25. UPNEDA has argued that under the Repowering Guidelines only IREDA can permit repowering of projects under RPSSGP Scheme, while UPNEDA, as Nodal Agency, can only facilitate applications and project establishment. None of the Petitioner's prayers is directed at or enforceable against UPNEDA. The compensation claim from 16.12.2024, based on a letter wrongly addressed to UPNEDA, is therefore not maintainable against it.

26. IREDA submits that repowering approval depends on meeting the prescribed conditions and submission of complete documents in accordance with "*Guidelines*

related to Repowering and CUF of the Solar PV Power Plants installed under RPSSGP Scheme of NSM", dated 6th June 2018. IREDA says the Petitioner never submitted a complete, formal proposal and that it has no record of the alleged application dated 14.08.2019. It received only an email for proposal from GAM Solar on 04.02.2025. The Petitioner was then asked by telephone to clarify the "DMPL–GAM Solar" relationship and to submit a hard copy along with DISCOM consent, RFID details of the modules, and a justification for the delay in submission of proposal when the inspection report was completed in 2019. IREDA further submitted that MNRE, vide email dated 04.08.2025, directed it to stop granting fresh approvals for repowering until further directions. No revised directions have been received since then. IREDA adds that the Project continues to receive GBI and Rs 17.84 crore was released against claims of Rs 18.07 crore. It also contends that the compensation for the claimed generation loss is not sustainable.

27. In its rejoinder to UPPCL, the Petitioner argues that under Articles 2.2, 6.4, 7.3 and 9.1 of the PPA, module replacement is the Petitioner's own O&M duty and hence it cannot depend on IREDA's approval, which is not a party to the PPA. The Petitioner points out that UPPCL itself admitted that replacement of module is a legitimate O&M practice. The Repowering Guidelines do not make IREDA's prior approval a condition for O&M though it approached IREDA in 2019 only out of abundant caution. The Petitioner denies its negligence, citing the 2025 NISE Report, which clearly attributes the degradation due to environmental conditions and module glass damage. The Petitioner contends that UPPCL's refusal to grant consent was based on the ground that replacement of the module does not constitute a "material change" under Clause 6.3 and that withholding of such consent unreasonably cannot be treated as legally valid action. The Petitioner added that 2024, 2025 representations were supported by full documentation and that the Konark order of GERC lay down a general principle that capacity-neutral module replacement is valid O&M, and that its claim of Rs 1.438 crore is based on PVsyst and NISE data.

28. Against UPNEDA, the Petitioner argues that the State Government declared UPNEDA the Competent Authority for the RPSSGP Scheme on 08.04.2010. Its role therefore includes processing and forwarding repowering requests, not just facilitating set-up. Prayers (c) to (e) are directed at all the Respondents. UPNEDA's failure to act on the letters of 16.12.2024 and 02.02.2025 for over a year is arbitrary and defeats the Petitioner's legitimate expectation.

29. Against IREDA's reply, the Petitioner says IREDA has itself placed on record the email of 04.02.2025, which contained a complete proposal with the NISE reports, the PVsyst study, RFID details and the compliance documents. The claimed telephonic request has no record behind it, and no written deficiency memo was ever issued. As sought by IREDA, DISCOM consent is not a requirement under the Guidelines, and providing RFID details is optional. The MNRE email of 04.08.2025 is only internal communication. It cannot apply to the inaction before that date, cannot override Guidelines issued with ministerial approval, and does not cover a proposal that was already pending. IREDA's own records show CUF falling from 14.66% to 8.49% and GBI falling from Rs 1.57 crore to Rs 0.91 crore, which confirms the loss. The continued release of GBI confirms IREDA's ongoing role as Programme Administrator. Since the repowering is capacity-neutral, paid for by the Petitioner, and subject to GBI capped at 19% CUF, it causes no prejudice. The Petitioner claims compensation from all the Respondents jointly and severally and leaves the apportionment of liability to the Commission.

30. Under the RPSSGP Scheme, State Competent Authority i.e., UPNEDA was empowered to issue pre-registration certificate required for registering the project with Programme Administrator and subsequently reporting progress of project implementation. IREDA was designated as 'Programme Administrator' for project registration and disbursement of GBI. GBI has to be paid directly to distribution licensee/procurer by IREDA for solar power purchased under the PPA. The distribution licensee i.e., DVVNL/UPPCL, is to provide certificate of power purchased from the project to IREDA on monthly basis. **Therefore, under the RPSSGP scheme, it is evident that UPNEDA was responsible for facilitating project set-up in the State and not an appropriate approving authority of the project under the Scheme.**

31. Now, in order to understand the contention of the parties, two documents, namely the PPA dated 21.08.2010 and IREDA's Repowering Guidelines dated 06.06.2018 are relevant. The role of IREDA as the "Programme Administrator" has also been imbibed in the PPA dated 21.08.2010 executed by the Petitioner. A perusal of clauses 1.8 and 2 of the PPA makes the following evident:

    a) The Generating Company was bound to abide by the provisions of the Electricity Act 2003, Rules, Codes, Regulations, Orders and directions of the appropriate

Authority/ Commission issued from time to time regarding electricity generation, metering and evacuation.

b) The Generating Company was to abide by the Guidelines issued by IREDA under the RPSSGP Scheme.

c) In the event of any inconsistency between the PPA and IREDA guidelines/ UPERC Orders passed from time to time, the latter shall prevail.

32. Regarding the interconnection and operation of the generation facility, the PPA under clauses 6 and 7 provides for the following instances when UPPCL's approval would be required:

"6. GENERATION FACILITIES OWNED AND OPERATED BY THE GENERATING PLANT

6.1 The Generating Company shall own, install, operate, and maintain the generating plant equipments. The Generating Plant shall follow such operating procedures on its side of the electric interconnection with DISCOM system, as are consistent with applicable laws, rules and regulations, the terms and conditions of this Agreement, provisions of the UP-Electricity Grid Cod, and other related guidelines, if any, issued by UPERC, SLDC, DISCOM.

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

6.3 ***The Generating Plant further agrees to make no material changes or additions to its facility, which may have an adverse effect on DISCOM system, or amend the single-line diagram, relay list and/or without DISCOM's prior written consent. DISCOM agrees that such consent shall not be unreasonably withheld.***

6.4 Without prejudice to the foregoing, the Generating Plant shall install, operate, and maintain its facility in accordance with accepted prudent utility practices in the electricity industry. The Generating Plant's operation and Maintenance schedules and staffing shall be adequate to meet such standards at all times.

6.5 DISCOM shall follow such operating procedures on its side of the electric interconnection point with the Generating Plant, as required to receive Power from the Generating Plant's facility, without avoidable interruptions or adverse consequences on the Generating Plant, and consistent with applicable laws, rules and regulations, and the terms and conditions of this Agreement.

7. INETRCONNECTION FACILITIES

7.1 Power from the Generating Plant shall be transmitted at below 33 KV voltage. The power so transmitted shall be interfaced with DISCOM's 33 KV/11 KV Substation.

7.2 DISCOM shall provide necessary approvals and infrastructure for evacuating power generated. Further, the interconnection shall be at the nearest distribution substation of the DISCOM.

7.3 The Generating Plant shall be responsible for the Maintenance of equipment at the generating end.

7.4 Any work to be done by the Generating Plant shall be taken up only with specific approval and on the basis of approved drawings and specifications from DISCOM and in compliance with the safety requirements as per the UP-Electricity Grid Code. On the completion of work, final approval shall be obtained from DISCOM before charging the line. The Generating plant would obtain all statutory clearance/approvals required for this purpose.

7.5 The Generating Plant shall consult DISCOM 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 Generating Plant, shall be checked by DISCOM.

7.6 Without limiting the foregoing, the Generating Plant and DISCOM shall, operate and maintain the interconnection and parallel operation facilities in accordance with accepted good engineering practices in the electricity industry and the UP-Electricity Grid Code as amended from time to time and directions of Director Electrical Safety (GOUP) and safety requirement as specified by the authority under section 53 of the Act."

33. Therefore, in light of Clauses 6.4 and 7.3 no material changes or additions to the Project could be made, which may have an adverse impact on the systems of the procurer, without the prior written consent of the procurer, otherwise the PPA not only permits but mandates the operational upkeep of the Project by the Petitioner. The extant regulatory and contractual framework does not disallow the routine O&M of the Project, the only occasion for seeking UPPCL's permission for works arises only when material changes or additions are to be considered. Further, in terms of clause 9 of the PPA, the Petitioner is responsible for procurement, installation and operation of the generating plant whereas DISCOM/UPPCL shall be provide assistance only. The relevant extract of the said clause 9 of the PPA is as below:

*"9. **TECHNICAL ASSISTANCE BY DISCOM & GENERATING PLANT RESPONSIBILITY***

9.1 On request, DISCOM shall provide reasonable technical assistance to the Generating Plant in preparing the design and specification of the required facilities and for laying down the standard operating and maintenance procedure. The

Generating Plant shall be responsible for procurement, installation, testing, maintenance and operation of the electrical system installed in the Generating Plant's premises.

9.2 Notwithstanding the above, DISCOM shall not be responsible for any damage caused to the electrical system/generating set of the Generating Plant, on account of errors or defects in the design, procurement, installation, testing, maintenance and operation of the system."

34. **In terms of the RPSSGP Scheme, the Petitioner was obligated to maintain performance of the project throughout its operational life. However, the documents, placed on record, reveal that since commissioning i.e., FY 2012-13, the generation has been in the range of 1.04 MUs to 1.32 MUs up to FY 2022-23, i.e., at an average CUF of 13.50% only against 19% required under the scheme.** In fact, the NISE Report dated 11.04.2019 mentioned that the project, which has been in operation for seven years, has degraded up to 85%. This deterioration did not occur in one year but resulted from a continuous process since COD. The relevant extracts of the said NISE report are as below:

"*1. No shadow was observed over the module during inspection.*
2. Few Spots and Corrosion observed over the PV module.
3. Junction box adhesion issues are the common problem in the power plant.
4. There are total 81 number of modules has breakage and need to replace immediately.
5. Hot Spots Modules to be replaced for safety precaution & performance improvement.
6. The tested sample 42 modules are degraded@ minimum 8.40% and maximum 85.89% with respect to nameplate data after 7 years of operation. However, two of them were not working.
7. Measurement of I-V data of all strings were done and found high degradation rate range from 14.98% to 51% with respect to nameplate data after 7 years of operation.

35. Therefore, what is gathered from these reports is that, even after knowledge of deteriorating performance of the Project, the Petitioner approached UPNEDA, UPPCL, and IREDA for the first time on 16.12.2024, 02.02.2025 and 04.02.2025 respectively. Hence, the Petitioner acted in a tardy manner and was totally oblivious towards its responsibility compliances to resolve the issues in a timely manner. Accordingly, it is a fit case for the legal maxim ***'Vigilantibus non dormientibus jura subveniunt'*** meaning that "The law assists those who are vigilant, not those who sleep on their rights.

36. Further, Guidelines related to repowering and CUF of the Solar PV Power Plants installed under RPSSGP Scheme dated 06.06.2018 provide that request for repowering of Solar project can be considered by IREDA based on stipulated conditions after appropriate measures and verifications. The relevant extract of the said Guidelines dated 06.06.2018 is reproduced as below:

> *"**Guidelines related to Repowering and CUF of the Solar PV Power Plants installed under RPSSGP Scheme of NSM.***
>
> *As per the directions received from Ministry of New and Renewable Energy, Government of India in reference to the guidelines of RPSSGP scheme, the request of the Project Proponents can be considered by IREDA for replacement of Solar PV modules and other components like inverters etc. for the projects under the scheme subject to the conditions as under:*
>
> *1. Wattage of old single PV module/panel X Total number of old PV module/panel must be equal to Wattage of new/replaced single PV module/panel X Total number of new PV module/panel.*
>
> *2. Generation Based Incentive (GBI) will be limited to a maximum limit of 19% CUF of the plant w.e.f. claim period of 01.04.2016 onwards.*
>
> *3. Solar Power Developers may repair/replace, if any, other old components like inverters etc. with new inverters/ components of the same rating/capacity as of damaged/old inverter(s)/components.*
>
> ***The requests for repowering of Solar Power Projects under RPSSGP scheme can be considered by IREDA for all such cases based on above conditions after appropriate measures and verifications,** such as:*
>
> *i. The Project Proponent has to provide the detailed Technical due diligence report of their Solar PV Plant based on the study carried out by the reputed institutions working in the area of Solar Energy.*
>
> *ii. The request can be considered at IREDA, if the report confirms that the plant is underperforming and the CUF for the project is regularly coming down since last three years or from the Date of Commissioning of their project. This condition may however not be applicable if, the solar PV modules are being replaced due to natural calamities/ disasters/on account of accidents taking place at the project site and the required documents are submitted to the satisfaction of IREDA in support of the same.*
>
> *iii. The Project Proponent may provide the details of all the faulty/degraded modules for replacement along with their RFID numbers (RFID No. of old modules with RFID No's of new replaced modules).*
>
> *iv. The company shall be allowed maximum 3 times for Repowering of their Solar PV Modules during the tenure of the Scheme i.e.25 years from the date of COD.*
>
> *v. The field visits may be carried out by IREDA if required based on the study report submitted by the Project Proponent for repowering of their project.*

vi. *The Project Proponent shall have to confirm that they will comply with the Technical requirements as per RPSSGP scheme / guidelines and shall provide the required information /documents to the satisfaction of IREDA in support of their request on complete replacement of equipment's at their site.*

vii. *The cost of replacement of any equipment's shall be borne by the Project Proponents only."*

37. The Petitioner contended that it had submitted its repowering proposal before the IREDA on 14.08.2019 and 04.02.2025 along with the requisite details in terms of the Repowering Guidelines dated 06.06.2018. However, it is observed that Petitioner in its submission mentioned that copy of letter dated 14.08.2019 was not available with them but strangely it was discovered that Petitioner had annexed a copy of the same letter dated 14.08.2019 as Annexure-L of the Petition. It is surprising to find that the contents of the letter dated 14.08.2019 to IREDA and letter dated 02.02.2025 to Chief Engineer, UPPCL are alike. Further, the letter dated 14.08.2019 to IREDA was without any designation and signature of the sending authority of the Petitioner. **Therefore, the Commission finds that authenticity and veracity of the letter dated 14.08.2019 to IREDA by the Petitioner is extremely questionable and cannot be accepted even with a sack of salt.**

38. IREDA in its submission denied receiving any proper proposal from the Petitioner through letter dated 14.08.2019 or 04.02.2025. It also appears that the referred email dated 04.02.2025 was sent by Dy. Manager, GAM Solar and not by the Petitioner herein. Further, it is difficult to understand the fact that the entity, whose project performance was deteriorating since 2019 and has got its assessment conducted twice by NISE, did not even bother to remind the IREDA (the administrator) and the same was initially submitted on 04.02.2025 and that too without acknowledgment of its completeness on an email in a jiggery-pokery manner. When it was imperative for the Petitioner to act diligently in order to get the approval of the IREDA in a timely manner.

39. In the meantime, MNRE vide email dated 04.08.2025 informed IREDA that RPSSGP Scheme is under examination and requested IREDA not to accord fresh approval. Accordingly, IREDA cannot accord fresh approval even after complete proposal is furnished by the Petitioner. The relevant extract of the referred email dated 04.08.2025 is as below:

"Madam,

The undersigned has been directed to convey that the Repowering Guidelines under the RPSSGP Scheme are currently under examination at MNRE. In this regard, IREDA is requested ***not to accord any fresh approvals*** *for repowering of solar projects under the RPSSGP Scheme until further directions are issued.*

Regards
Schin Meena
Scientist C
Ministry of New and Renewable Energy"

40. The Commission has examined the Order dated 25.09.2024 in Petition No. 2018 of 2021 in the case of ***Konark Gujarat PV Pvt. Ltd. vs GUVNL.*** The key distinction between the facts of the Konark Order and the present Petition is that the procurer therein (Gujarat Urja Vikas Nigam Limited) had placed an express prohibition against the change of panels after COD and threatened termination for failure to adhere to its directions. No such prohibition existed qua the Petitioner to undertake what is, incontrovertibly, O&M work mandated under the PPA framework. In the absence of any express or implied prohibition against undertaking O&M work, no prayer for directions to UPPCL to grant its permission is necessary or maintainable.

Commission's View

41. Therefore, what emerges from the above analysis is that:

(a The PPA binds the parties to comply with IREDA's guidelines under the RPSSGP Scheme. However, read as a whole, the Repowering Guidelines specifically govern the meaning of "replacement" under the scheme. These guidelines mandate that any replacement must be capacity-neutral, cap the Generation Based Incentive (GBI) at a 19% Capacity Utilisation Factor (CUF), and require the project developer to bear all associated costs. Crucially, the GBI is disbursed by IREDA from funds allocated by the MNRE, rather than by the distribution licensee or UPPCL. Consequently, IREDA's scrutiny under the guidelines solely determines the Petitioner's continued eligibility for the GBI post-replacement; it does not dictate the Petitioner's independent contractual right and obligation under the PPA to maintain its plant. Interpreting the guidelines to prohibit a generator from replacing damaged modules until IREDA takes action would fundamentally defeat the very purpose for which these guidelines were issued.

(b) Under the Repowering Guidelines, IREDA holds exclusive authority to examine Repowering proposals. While UPNEDA serves as the State Nodal Agency, it possesses no approval function within this framework. Although its failure to

respond to the letters dated 16.12.2024 and 02.02.2025 constitutes poor administrative conduct, this silence created no legal barrier for the Petitioner to perform its function in terms of the PPA. Consequently, no formal relief is required against UPNEDA.

(c) The generation shortfall results from Solar PV Module degradation that had built up since at least 2019. The 2019 NISE Report called for immediate replacement of 81 broken and hot-spot-affected modules on safety grounds. **Nothing on record shows that the Petitioner carried out even the limited corrective replacement highlighted by NISE, which needed no one's approval.**

(d) The PPA provides for payment of energy actually supplied and contains no provision for compensating for a generation shortfall. **The GBI component of the claimed loss is, in any case, not payable by UPPCL, and a claim against IREDA, which is not licensee, is outside the Commission's adjudicatory jurisdiction.**

(e) **Notwithstanding observations from (a) to (d) above,** in light of the MNRE directive restricting IREDA from granting new approvals for Solar PV project repowering, **the sought relief by the Petitioner has no legs to stand now thus, relief cannot be granted on this ground alone**.

42. The prayers in the Petition are answered accordingly and the Petition stands **disposed of** in terms of above.

(Griesh Kumar Vaish)	(Sanjay Kumar Singh)	(Arvind Kumar)
Member (Law)	**Member**	**Chairman**

Place: Lucknow
Dated: 28.10.2026