THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2332 of 2025 and

IA for stalling UPRVUNL Tender & Application for abeyance

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 section 86(1)(f) read with Section 158 and Section 94(2) along with other relevant provisions of the Electricity Act, 2003 read with terms of the Power Purchase Agreements, seeking referral of certain non-tariff issues for arbitration in terms of Clause 17.3.2 of the Power Purchase Agreements.

AND

IN THE MATTER OF

1. **M/s B & G Renewable Energy Private Ltd. (B&GREPL),**
   Through its Authorized Representative,
   New No. 25, Old No. 10, Sir Madhavan Nair Road,
   Mahalingapuram, Nungambakkam, Chennai – 600034

2. **Nirgajini Hydel Project Pvt. Ltd. (NHPPL),**
   Through its Authorized Representative,
   New No. 25, Old No. 10, Sir Madhavan Nair Road,
   Mahalingapuram, Nungambakkam, Chennai – 600034

3. **Salawa Hydel Project Pvt. Ltd. (SHPPL),**
   Through its Authorized Representative,
   New No. 25, Old No. 10, Sir Madhavan Nair Road,
   Mahalingapuram, Nungambakkam, Chennai – 600034.

...Petitioner(s)

VERSUS

1. **Uttar Pradesh Power Corporation Limited (UPPCL),**
   Through its Managing Director
   Shakti Bhawan, 14, Ashok Marg, Lucknow – 226001

2. **UP Rajya Vidyut Utpadan Nigam Limited (UPRVUNL),**
   (formerly UP Jal Vidyut Nigam Ltd.)
   Through its Managing Director,
   Shakti Bhawan 14, Ashok Marg, Lucknow-226001

3. **Chief Engineer (PPA),**
   Uttar Pradesh Power Corporation Limited (UPPCL),
   Shakti Bhawan, 14, Ashok Marg, Lucknow – 226001

...Respondent(s)

FOLLOWING WERE PRESENT

1. Sh. Shailesh Verma, Advocate, B&GREPL
2. Ms. Chandni Bhatia, Advocate, B&GREPL
3. Sh. Sanyam Agarwal, Advocate, B&GREPL
4. Sh. Anurag Srivastava, B&GREPL
5. Sh. Divyanshu Bhatt, Advocate, UPRVUNL
6. Sh. Abhayaditya Singh, Advocate, UPRVUNL
7. Ms. Puja Priyadarshini, Advocate, UPPCL
8. Sh. Deeptanshu Chandak, Advocate, UPPCL
9. Sh. Manish Dwivedi, CE(PPA), UPPCL
10. Sh. Anil Kumar, SE(PPA), UPPCL
11. Sh. Vikas Gupta, EE(PPA), UPPCL

ORDER

(DATE OF HEARING: 27.10.2026)

1. The Petitioners, namely B&G Renewable energy Pvt. Ltd. (Petitioner No. 1) and its wholly owned subsidiaries Nirgajni Hydel Projects Ltd. and Salawa Hydel Project Ltd. (Petitioner Nos. 2 and 3 respectively), have filed the present Petition under Section 86(1)(f) read with Sections 158 and 94(2) of the Electricity Act,

2003 and the terms of the PPAs, seeking referral of the non-tariff disputes to arbitration in terms of Article 17.3.2 of the PPAs.

2. The Petitioners have made the following prayers:

Prayer(s):

a) Refer the present dispute for **arbitration** under Section 86(1)(f) read with Section 158 of the Electricity Act in accordance with Article 17.3.2 of the PPA(s) and Article 13.1 of the MoA pertaining early termination of PPA and wrongful invocation of Performance Guarantee and to seek consequential damages.

b) Restrain the Respondent No 1 from **terminating the PPAs**, pursuant to the dispute notice dt. 07.07.2025, during the pendency of the arbitration proceedings, in exercise of the powers under Section 94(2) of the Electricity Act, 2003; and/or

c) Pass any other order which this Commission may deem just and proper.

Submission of parties:

Petitioners' Submissions

3. The Petitioners submitted that in 2014 UPRUVNL (earlier UPJVNL) invited bids for procurement of power from Small Hydro Projects at five sites, of which Petitioner No. 1 won three (Nirgajini, Salawa and Chitaura). Under Clause 1.8 of the RFQ and Clause 1.6 of the RFP, the sites were to be transferred within 60 days of signing the PPAs per the GoUP Policy dated 24.09.2008, and Clause 2.7.2.3 of the RFP barred any change in the time schedule, yet the land was not transferred in time.

4. The Petitioners contended that UPJVNL, as UPPCL's authorised representative, made representations and warranties before the PPAs and in the MoA dated 17.12.2015 that bind UPPCL under promissory estoppel. Since Article 1.2.17 of the PPA gives the Bidding Document precedence over the PPA, they argued that its statement on land transfer created a legitimate expectation that UPJVNL had the land available and cited the Commission's Order dated 16.02.2015 in Petition No. 985/2014, noting that here the Government was providing the land on lease.

5. The PPAs were signed on 01.02.2017 with the SCOD fixed at 30 months, later extended by Supplementary PPA to 48 months (01.02.2021). However, the land was transferred only in December 2023, almost seven years after the PPAs and well beyond the SCOD. Because of this delay, the Petitioners approached the Commission in Petition No. 1573/2020, in which the Commission vide its order dated 19.02.2021 directed that a roadmap be finalised specifying timeline for transfer of land by irrigation Dept and completion of Nirgajni & Salawa Project and the PPA for Chitaura SHP was rescinded for non-availability of land.

6. The Petitioners submitted that they served dispute notices on UPPCL on 13.05.2022 in respect of the Nirgajini and Salawa projects, seeking extension of the SCOD and of time under Article 4.5.1, and raising issues of damages, change in law, DPR approval and non-fulfilment of the Respondents' obligations, which UPPCL dismissed as not maintainable on the ground that it could not be held responsible for the transfer of land. Subsequently, Lease deeds were executed on 06.12.2023 and 08.12.2023. By letter dated 23.12.2023, the Petitioners sought roadmap determination, tariff re-fixation on account of change in law events, and damages linked to the Bank Guarantees, and proposed mutual settlement, which UPPCL declined by letter dated 06.03.2024, directing the Petitioners to approach the Commission.

7. The Petitioners then filed Petition No. 2101/2024 but withdrew it with liberty to file afresh. UPJVNL issued letters dated 13.11.2024 and 213.03.2025 for completion of the SHPs. The Petitioners' letters dated 17.01.2025 and 17.03.2025, summarising the earlier dispute notices and the legal and factual impediments, and requesting a conciliation meeting under Article 17 of the PPA, yielded no result. The Petitioners thereafter filed Petition Nos. 2214/2025 and 2217/2025, seeking extension of the SCOD and fixation of the roadmap, and re-fixation of tariff on account of change in law, respectively.

8. The Petitioners submitted that they furnished Bank Guarantees in favour of UPJVNL at Rs. 7.5 lakh per MW in compliance with Clause 2.13.1 of the RFP. Although the SCOD had expired on 01.02.2021 owing to the Respondents' failure to transfer the land, the Petitioners continued to renew the Bank

Guarantees at the Respondents' request in order to demonstrate their bona fides. Pursuant to UPJVNL's letter dated 24.02.2025, the Guarantees, collectively valued at Rs. 96 lakhs, were made valid till 30.04.2026. During the pendency of Petition Nos. 2214/2025 and 2217/2025, the Respondents sought invocation of the Bank Guarantees, as communicated by the bank on 03.07.2025.

9. The Petitioners requested withdrawal of the invocation by letter dated 04.07.2025 without success and challenged the invocation before the Hon'ble Allahabad High Court in Writ-C No. 6487 of 2025. By order dated 07.07.2025, the High Court declined to intervene in view of the limited scope for injunction against invocation of bank guarantees but granted liberty to pursue other remedies. The Bank Guarantees were encashed on the same day. The Petitioners submitted that the encashment was wrongful, since Article 3.3.2 of the PPA permits invocation only for recovery of damages and adjustment towards liquidated damages.

10. The Petitioners further submitted that the Respondent issued dispute notices dated 07.07.2025 under Article 17 of the PPA threatening termination of the PPAs, although Article 17 deals only with amicable settlement and dispute resolution before the Commission or an Arbitral Tribunal and vests no power of termination in the Respondent; the threat of termination under the garb of such notice is therefore non-est. Without prejudice, it was submitted that UPPCL may terminate the PPA unilaterally only in the circumstances contemplated by Articles 3.3.2 and 3.3.3. According to the Petitioners, Article 3.3.2 can be invoked only if the Petitioner fails to provide additional Performance Guarantee, while Article 3.3.3 applies only where a force majeure extension exceeds ten months, in which event Article 3.5.1 requires the Bank Guarantee to be returned to the Petitioners.

11. On the question of jurisdiction and arbitrability, the Petitioners submitted that the dispute cannot be settled amicably, and dispute specified by the Petitioners vide the above Dispute Notice dated 19.07.2025 cannot be settled amicably between the parties. Therefore, in compliance with Article 17.2.3 of the PPAs, dispute ought to be "referred to Dispute Resolution in accordance with Article

17.3". Article 17.3.1 provides for adjudication by the Appropriate Commission in case of disputes pertaining change in tariff or falling within scope of Articles 4.7.1, 13.2, 18.1 or 10.1.3 of Schedule 17. The present case does not fall within the ambit of any of the above clauses of the PPA and is also not a tariff dispute. Further, Article 17.3.2 of the PPA refers to disputes not covered under Article 17.3.1 of the PPA. Under this Article 17.3.2, such disputes are to be resolved by arbitration under the Arbitration and Conciliation Act 1996 and relevant corresponding Rules of the Indian Council of Arbitration.

12. The Petitioners submitted that it is settled law that only this Commission, in exercise of its power under Section 86(1)(f) read with Section 158 of the Act, can refer a dispute between a licensee or distribution company and a generating company to arbitration, and relied on the decision of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755.

13. Finally, the Petitioners submitted that the Respondents were aware that the project could not have been initiated until transfer of the land in December 2023, and that thereafter the Petitioners repeatedly sought extension of the SCOD and other timelines without response. The Respondents, while demanding completion in accordance with the PPA timelines, simultaneously encashed the Bank Guarantees, which, according to the Petitioners, was an attempt to harass, corner and coerce them into renouncing the PPAs, placing them in an impossible situation.

14. The Petitioners, during the pendency of the present Petition, filed an urgent Interlocutory Application (IA) on 07.04.2026 (without a supporting affidavit) and on 08.04.2026, accompanied by a supporting affidavit, seeking directions to restrain UPRVUNL from proceeding with Tender No. 04/E-Tender/Jal Vidyut/2026 (the "Impugned Tender"). The last date for submission of the e-tender had been extended to 22.04.2026, and the date of opening of the e-tender was fixed as 23.04.2026.

15. In the IA filed, the Petitioners pleaded that Respondent No. 2 had issued Tender seeking bids for implementation of the ROMT model ("Renovation, Operation, Maintenance & Transfer on Right to Use) for small hydroelectric power projects, to augment power generation capacity through optimal utilisation of existing

assets, and if the tender were allowed to proceed, the commissioning and setting up of their Nirgajini and Salawa SHPs would be rendered impossible and the said projects would become inviable. On this basis, the Petitioners sought a direction restraining Respondent No. 2 from proceeding with the Impugned Tender with respect to Nirgajini and Salawa during the pendency of Petition No. 2332 of 2025.

UPPCL's Submissions

16. UPPCL in its Replies to the IA and to the Petition and in its written submissions filed pursuant to the direction given on 27.10.2026, submitted as follows:

(i) The Impugned Tender concerns only the renovation of small hydro projects owned and presently operated by UPRVUNL in the Nirgajini and Salawa area, and the Petitioners' prayer would in effect restrain UPRVUNL from smoothly running its own existing assets.

(ii) The Petitioners have shown no bona fides or equities in their favour: even after the land was made available in December 2023, they have taken no concrete steps for over two and a half years, have made no physical progress or investment at the site, and have not even constructed a boundary wall, exposing the Government land to the risk of adverse possession.

(iii) The IA filed by the Petitioners for stalling the tender process would compound the loss of power supply whereas it is already suffering due to non-implementation projects by the Petitioners.

(iv) It was contended that, where maintainability of the proceedings is questioned, interim relief in any form ought to be preceded by at least a prima facie satisfaction that the proceedings are maintainable and not barred by law; that interim relief can be granted only in aid of the final relief. Since the final relief sought in the main Petition cannot be granted, the interim relief sought in the IA cannot be granted either.

(v) The main Petition being itself non-maintainable, the IA must necessarily fail as well. UPPCL relying on *State of Orissa v. Madan Gopal Rungta* and *Cotton Corporation of India Ltd. v. United Industrial Bank Ltd.* submitted that the IA falls with the Petition for the rule that interim relief is only in aid of the final relief.

(vi) The relief of reference to arbitration had already been withdrawn by the Petitioners in Petition Nos. 2214 and 2217 of 2025, as allowed by the

Commission's Orders dated 06.01.2026 and 07.01.2026 respectively, and since no liberty was granted to re-file on the same issue, the present Petition is barred by Order XXIII Rule 1 of the CPC as explained in *Sarguja Transport Service v. S.T.A.T.*

(vii) Section 86(1)(f) gives the Commission discretion either to adjudicate a dispute or to refer it to arbitration, as held in *GUVNL v. Essar Power Ltd.*,

(viii) The Commission has already adjudicated termination of the PPAs and encashment of the Bank Guarantees in its Order dated 13.10.2026 in Petition Nos. 2214 and 2217 of 2025. A reference now would put an arbitral tribunal in appeal over the Commission, contrary to the appellate scheme before APTEL under Section 111. UPPCL also relied on the Petitioners' own application of 24.10.2026 for keeping the present proceedings in abeyance, which admits that the Order of 13.10.2026 affects the issues in this Petition.

(ix) The dispute is tariff-linked and therefore non-arbitrable under Article 17.3.1 of the PPAs, relying on *MP Power Management Co. Ltd. v. Damodar Valley Corporation* (APTEL, affirmed by the Supreme Court) and *Renew Wind Energy (AP2) v. SECI* (Delhi High Court). It pointed to the Commission's finding in the Order of 13.10.2026 that the Petitioners would not execute the Projects without tariff escalation.

UPRVUNL's Submissions

17. UPRVUNL, in its Replies to the IA and to the Petition and in its written submissions filed pursuant to the direction given on 27.10.2026, submitted as follows:

(i) As regards the IA, the first IA was filed without a supporting affidavit and the second IA was filed subsequently in contravention of the Conduct of Business Regulations, and the IA is therefore liable to be rejected.

(ii) On merits, the Impugned Tender pertains to the augmentation of UPRVUNL's own pre-existing assets, the Petitioners have failed to establish a prima facie case warranting any interference, and interference in a tender process is permissible only where there is apparent arbitrariness, mala fides or irrationality, none of which has been pleaded or presented.

(iii) UPRVUNL is neither a necessary nor a proper respondent for the reliefs sought, as the PPAs were executed between the Petitioners and UPPCL, so that reliefs such as reference to arbitration and restraint on termination cannot be enforced against UPRVUNL, whose role in the bidding process was limited to that of an authorised representative.

(iv) The Petition is not maintainable, as the Petitioners and UPRVUNL are both generating companies, and a dispute between two generating companies is neither envisaged under the PPA nor dealt with under the Electricity Act, 2003.

(v) The dispute is tariff-linked rather than arbitral, since the reliefs concern delay, change in law and project completion, which affect tariff and should be decided by the Commission and not by an arbitral tribunal.

(vi) The invocation of the Bank Guarantees was lawful; the guarantees having been furnished as performance guarantees and the Petitioners admittedly having failed to implement the Projects by the SCOD. The Hon'ble Allahabad High Court (Lucknow Bench) in Writ Petition (C) No. 6487 of 2025 had already declined to interfere with the encashment, and the Petitioners' voluntary renewal of the guarantees undermines their objection to the invocation.

(vii) On facts, the SHP Policy's 60-day period applies only to the Irrigation Department's NOC, responsibility for taking possession of the land lay on the Petitioners under Article 3.1.2(vi) of the PPAs, and the delay was caused by the Petitioners' defective land proposals and their insistence on tariff revision despite the Order dated 04.11.2024. No work was done for about two and a half years after possession was given in December 2023.

(viii) The Petition is hit by the doctrine of res sub judice, since Petition Nos. 2214 and 2217 of 2025, now decided by the Commission by its Order dated 13.10.2026, cover SCOD extension and change-in-law issues, and the present Petition overlaps substantially with them.

(ix) The Commission, by its Order dated 13.10.2026, finally decided that the delay was attributable to the Petitioners and that the Bank Guarantees were rightly encashed. Any arbitral ruling on termination or invocation would necessarily have to decide fault for the delay again, so that the Petition is barred by res

judicata. UPRVUNL relied on *Rithwik Energy Generation (P) Ltd. v. BESCOM* (matters "directly and substantially in issue"), *U.P. Power Corpn. Ltd. v. NTPC* and *Ramachandra Rao v. Nagabhushana Rao* (general principles of res judicata apply to tribunals), and *Lal Chand v. Radha Krishan*.

(x) The Petitioners' applications dated 24.10.2026 and 02.11.2026 for abeyance of the Petition should be rejected, as there is no independent cause of action and no prejudice has been shown.

(xi) Relying on *GUVNL v. Essar Power Ltd.* and the decision of the Hon'ble APTEL in *GUVNL v. Tata Power Company Ltd.*, Appeal No. 348 of 2025, reference to arbitration under Section 86(1)(f) is discretionary and not mandatory. *Damodar Valley Corporation* is distinguishable, as it concerns the mandatory regime under Section 79(1)(f), and *Renew Wind* concerns the maintainability of petitions under Section 9 of the Arbitration and Conciliation Act, 1996 in view of Section 94(2) of the Act.

Petitioner's Submissions:

18. Petitioner submitted the following points with regard to IA for stay on UPRVUNL tender and rejoinder to the UPPCL reply:

(i) The pre-existing SHPs of UPRVUNL and the Petitioners' proposed SHPs are located at the same site, so that water can flow through only one of the projects, and allowing UPRVUNL to renovate its existing SHPs would render the Petitioners' proposed SHPs redundant.

(ii) They submitted that the SCOD of their Projects expired in January 2021 and that the land, which was to be transferred within 60 days, was transferred only after about seven years, and that the SCOD should therefore commence only once the change in law events of that seven-year period are decided.

(iii) Reliance placed by UPPCL on the Order in Petition No. 2101 of 2024 is liable to be rejected, as that petition was withdrawn with liberty to file afresh.

(iv) While deciding an IA, the Commission is required to take only a prima facie view on the maintainability of the Petition, and on the basis of that prima facie view, it may proceed to decide the IA.

(v) On the plea of res sub judice, they contended that similarity in the originating cause of action cannot operate as a bar under Section 10 of the CPC, and that the reliefs claimed in Petition Nos. 2214 of 2025, 2217 of 2025 and 2332 of 2025 are distinct. The genesis of the present dispute lies not in the delay in transfer of land but in the Dispute Notice dated 07.07.2025 issued by UPPCL, and that the dispute relates to termination of the PPAs and encashment of the Bank Guarantees and is therefore a non-tariff dispute.

(vi) The counterclaim of UPPCL regarding termination of the PPAs is not linked to the claims in the present Petition and is, in any case, purely arbitrable and hence not maintainable before the Commission.

(vii) Lastly, they submitted that the reference to arbitration sought in Petition No. 2214 of 2025 related only to the non-extension of the SCOD, and not to termination of the PPAs and encashment of the Bank Guarantees as in the present case.

Record of Proceedings

19. The Petition was taken up for hearing on 26.02.2026, when counsel for UPPCL and UPRVUNL sought six weeks' time to file their replies. By Order dated 06.03.2026, the Commission allowed six weeks to the Respondents to file their detailed replies, with a copy to the Petitioners, and allowed the Petitioners to file rejoinders within two weeks thereafter, listing the matter on 14.05.2026. UPPCL filed its reply on 30.04.2026 and UPRVUNL on 12.05.2026, and the Petitioners filed their rejoinder to UPPCL's reply on 13.05.2026.

20. Meanwhile, the Petitioners filed an urgent IA (07.04.2026, refiled with an affidavit on 08.04.2026) seeking to restrain UPRVUNL from proceeding with Tender No. 04/E-Tender/Jal Vidyut/2026 with respect to the Nirgajini and Salawa SHPs. By Order dated 11.05.2026 (hearing of 05.05.2026), the Commission noted the Petitioners' submission that the tender projects were adjacent to their project site, and UPPCL's objections on res sub judice, and UPRVUNL's objection on maintainability. It allowed the Respondents to reply to the IA and listed it on 14.05.2026 along with the main Petition. UPPCL and UPRVUNL filed their replies to the IA on 12.05.2026 and 13.05.2026

respectively, and the Petitioners filed a rejoinder to UPPCL's reply on 13.05.2026.

21. At the hearing on 14.05.2026, the Petitioners contended that Petition Nos. 2214 and 2217 of 2025 concern extension of SCOD and the change in law event, whereas the present Petition concerns arbitration regarding the invocation of the Bank Guarantees and the dispute notice dated 07.07.2025, and is therefore distinct. They stated, on the Commission's query, that the Bank Guarantees had not been encashed when Petition No. 2214 of 2025 was filed. UPPCL argued that the Petition is not maintainable because (i) the Petitioners did not seek liberty to withdraw the arbitration prayer in Petition No. 2214 of 2025 and re-file (Order XXIII Rule 1, CPC), (ii) it is barred under Section 10, CPC, and (iii) all three petitions arise from a single cause of action, namely the delay in transfer of land, so the IA also fails. At the fag-end of the proceedings, after both sides had argued, the Petitioners sought that the presence of the Member (Law) was essential, relying on Supreme Court rulings.

22. By Order dated 30.06.2026, the Commission observed that the Petitioners had filed the Petition and the IA knowing of the vacancy of the Judicial Member, had participated fully and sought urgent intervention, and raised the objection only after being queried on certain aspects, which the Commission termed a "U-turn". The Commission found the Petitioners' conduct disheartening, noted that they had in the past tested different forums and tried to escape final orders, and held the situation akin to *T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd.*, (2014) 11 SCC 53, on acquiescence. Nevertheless, relying on *State of Gujarat v. Utility Users' Welfare Assn.*, (2018) 6 SCC 21, as a measure of abundant caution and at the Petitioners' request, it put the matter in abeyance till the appointment of the Member (Law).

23. On 25.08.2026, UPRVUNL filed an application, supported by an affidavit, seeking urgent listing of the Petition. It submitted that the Member (Law) had since been appointed, that Petition Nos. 2214 and 2217 of 2025, involving overlapping issues concerning the same Projects, had been finally argued and orders reserved, and that early listing would ensure consistency in adjudication and avoid parallel or inconsistent findings.

24. Following the appointment of the Member (Law), the matter was heard by a full Bench of the Chairman, Member and Member (Law) on 15.10.2026. The Petitioners sought two weeks' time to analyse the Commission's Order dated 13.10.2026 in Petition Nos. 2214 and 2217 of 2025, stating that it has a bearing on the present matter. The Respondents did not object, and by Order dated 22.10.2026 the Commission granted the adjournment and listed the matter for the next hearing on 27.10.2026.

25. During the hearing on 27.10.2026, the Petitioners' counsel referred to their application dated 24.10.2026 for keeping the proceedings in abeyance, which had been e-filed on 24.10.2026 and physically filed at 10:30 AM on 27.10.2026. UPPCL and UPRVUNL strongly objected, on the ground that the germane issues of SCOD extension and tariff revision due to delay in transfer of land had already been decided by the Commission by its Order dated 13.10.2026 in Petition Nos. 2214 and 2217 of 2025, and there was no issue left for arbitration as prayed in the Petition. The Commission also noted that the alleged non-tariff issues prayed to be referred to arbitration were linked to financial impact only. The Commission allowed the parties to file their written submissions within a week and reserved the order.

26. On 02.11.2026, the Petitioners filed a C.M. Application, supported by the affidavit of the Director of Petitioner No. 1. It seeks further time to file written submissions and asks the Commission to take the affidavit on record and decide their application dated 24.10.2026 to keep the Petition in abeyance until they file a review petition. The Petitioners state that they went through the Order dated 13.10.2026 on the evening of 14.10.2026, that the limitation for filing a review expires on 11.01.2027, that certain facts were not considered in that Order, and that filing written submissions before the review petition is filed and decided, or before the 90 days expire, would not be in the interest of the Petition. They repeat the prayer for abeyance until the review petition is filed within time. Written submissions were filed by UPPCL and UPRVUNL on 03.11.2026; none has been filed on behalf of the Petitioners.

ANALYSIS AND DECISION

27. The Commission has considered the Petition, the IA, the replies of UPPCL and UPRVUNL, the Petitioners' rejoinders, the submissions at the hearings of 14.05.2026, 15.10.2026 and 27.10.2026, and the written submissions filed by UPPCL and UPRVUNL pursuant to the direction given on 27.10.2026. The Commission has also considered the Petitioners' application dated 24.10.2026 and their C.M. Application dated 02.11.2026 seeking abeyance.

28. The objection regarding the vacancy of the Member (Law) was dealt with in the Order dated 30.06.2026. The Commission held that the Petitioners had filed the Petition and the IA knowing of the vacancy, sought urgent intervention and argued the matter fully, and raised the objection only after being queried on certain aspects, which the Commission termed a "U-turn". It treated this as acquiescence in terms of *T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd.*, (2014) 11 SCC 53, where the Hon'ble Supreme Court, while accepting that adjudicatory functions generally ought not to be conducted by a State Commission in the absence of a judicial member, declined to interfere with the Commission's jurisdiction at the instance of a party that had willingly participated:

> *"55. We, however, find substance in the submission of Mr Nariman that adjudicatory functions generally ought not to be conducted by the State Commission in the absence of a judicial member, especially in relation to disputes which are not fairly relative to tariff fixation or the advisory and recommendatory functions of the State Commission. … 63. These observations, however, do not in any manner affect the jurisdiction exercised by the State Commission in the present matter. It has been rightly pointed out by the respondent that having filed the written statement in reply to the petition filed by the respondent, the appellant willingly participated in the proceedings and invited the findings recorded by the State Commission. It would be too late in the day to interfere with the jurisdiction exercised by the State Commission in these proceedings."*

29. Nevertheless, as a measure of abundant caution and in view of *State of Gujarat v. Utility Users' Welfare Assn.*, (2018) 6 SCC 21, the matter was kept in abeyance until the Member (Law) was appointed. The Member (Law) has since been appointed, and the matter has been heard and is being decided by a Bench that includes him. **The objection therefore does not survive.**

30. The Petitioners seek by their application dated 24.10.2026, e-filed on that date and physically filed on 27.10.2026, and by the C.M. Application dated 02.11.2026, that the proceedings be kept in abeyance until they file a review petition against the Order dated 13.10.2026. They state that limitation for the review expires on 11.01.2027. The Respondents opposed the application of 27.10.2026. The Commission passed no order on it at that time, directed written submissions within a week, and reserved its decision.

31. **The Commission is not persuaded to grant the application, for five reasons.** First, no review petition has been filed, and the application rests only on a contemplated review, which the Petitioners say they were still taking legal advice on. Second, neither the pendency nor the contemplation of a review suspends the operation or finality of the Order dated 13.10.2026, and no stay of that Order has been sought or granted. Third, the Petitioners themselves admit that the Order contains findings directly affecting the issues and reliefs in this Petition. That admission supports the Respondents' case on overlap of earlier filed petitions 2214 and 2217 of 2025 with this petition. The Petitioners have not identified any cause of action in this Petition that is independent of those findings.

32. Fourth, the Petitioners obtained two weeks on 15.10.2026 to study the Order, argued the matter on 27.10.2026, and have shown no concrete prejudice from a decision now. The Respondents, on the other hand, would be left in uncertainty on issues already decided, in a matter that has already been in abeyance from 30.06.2026 until the appointment of the Member (Law). Fifth, the power to keep a matter in abeyance is a discretionary, inherent power that is exercised where the balance of convenience requires it, and the balance here lies against the Petitioners, whose conduct the Commission has already recorded. *(The Petitioners have also not filed written submissions as directed on 27.10.2026; the Commission therefore decides on the pleadings and the arguments advanced.)* **The application is, therefore, rejected.**

33. **The Commission now turns to the preliminary objections to the maintainability of the Petition.** For this purpose, it is necessary to set out the background facts of the case.

34. The Petitioners first filed Petition No. 2101 of 2024, praying inter alia for approval of a roadmap with fresh timelines, a tariff increase for both Projects, and damages due to delay in transfer of land. By prayer (a)(viii) of that Petition they sought:

"(viii) to pay Damages for causing financial loss to the Seller by preventing the seller from commissioning the project by 01.02.2021 and unjustly forcing the seller to extend Performance Bank Guarantee by blocking the fund."

35. The Commission observed that the prayers were generic and expansive and that revision of tariff of a Section 63 project cannot be allowed except for a Change in Law event under the PPA. The Petitioners admitted that their reliefs were not based on any provision of the PPA but on "extraordinary circumstances", and the Petition was disposed of by Order dated 04.11.2024, which records:

"4. ... When the Commission told the Counsel of Petitioner that neither the Commission can grant his prayer, which dehors the PPA, nor the Commission can consider his vague prayers, which are utopian in nature having no nexus with applicable legal framework ... 5. After hearing, the Commission allows withdrawal of the instant Petition with liberty to file a fresh, if required. Petition stands disposed of as withdrawn and also in view of the fact that prayers in the Petition are hit by doctrine of impossibility."

36. The Commission does not treat that Order as an adjudication on merits, as the Petition was withdrawn with liberty to file afresh. It refers to it only to record what the Petitioners themselves stated, and the liberty which they then sought and obtained. In their rejoinder, the Petitioners rely on the same fact to contend that the Order cannot be used against them.

37. The Petitioners thereafter segregated the same prayers into two petitions in 2025, namely Petition No. 2214 of 2025 for extension of SCOD and Petition No. 2217 of 2025 for tariff escalation on account of Change in Law, both founded on the delay in transfer of land, and each with an alternative prayer for arbitration:

"c) In the alternative, direct the Parties to arbitration for the damages arising out of the issues raised herein, and/or"

"g) In the alternative, direct the Parties to arbitration for the damages arising out of the transfer of land after seven years (approximately), and/or"

38. While those Petitions were pending, the Dispute Notice was issued and the Performance Bank Guarantees were invoked in July 2025.

39. The Petitioners approached the Hon'ble High Court at Allahabad in Writ (C) No. 6487 of 2025, which declined to interfere and observed:

"5. The Hon'ble Supreme Court has clearly delineated the grounds on which interference can be made in case of encashment of bank guarantee. None of the grounds have been taken in the writ petition nor the arguments advanced are covered by the said grounds. We, therefore, find no reason to grant the relief prayed for. 6. With the aforesaid observations, the writ petition is dismissed, however, without prejudice to the rights of the petitioners to pursue the litigation before the Regulatory Commission or to take recourse to other remedies prescribed in law."

40. Being unsuccessful in securing any favourable orders from the Hon'ble High Court of Allahabad, the Petitioner turned to this Commission and in their Additional Submissions dated 25.07.2025 in Petition No. 2214 of 2025, the Petitioners raised the issues of threat of termination and encashment of bank guarantee before this Commission. The relevant pleadings of the Petitioners are as follows:

"B. That the petitioners had filed the captioned petition before this Hon'ble Commission in terms of Clause 17.3.1 of the PPAs seeking extension of Scheduled Commercial Operation Date ("SCOD")."

"L. Furthermore, the Procurer's representative (i.e. UPJVNL) has invoked the Performance Bank Guarantee on 02.07.2025 followed by the issuance of a Dispute Notice dated 07.07.2025 by the procurer, in an attempt to terminate the PPA. The Petitioner had approached the Hon'ble High Court at Lucknow seeking interim stay on the encashment of the Bank Guarantee, however, the Hon'ble Court after noting its limited scope of intervention in such

matters directed the Petitioner to approach this Hon'ble Commission vide order dated 07.07.2025. Therefore, in terms of the PPA, the Petitioner submitted a detailed reply to the said termination notice on 18.07.2025 inter alia objecting to the termination of the PPAs and also issued a Preliminary Default Notice dated 19.07.2025. ..."

"M. Furthermore, after the filing of the present petition, the Respondents have now invoked the Performance Guarantee without following due notice procedure while the present matter is pending before this Hon'ble Commission is unjustified and contrary to law"

41. Before this Commission could even take up these issues of threat of termination and encashment of bank guarantee for adjudication, the Petitioners immediately filed OMP (I) (Comm.) Nos. 310 and 311 of 2025 under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court at Delhi raising the same issues of threat of termination and encashment of bank guarantee, and later facing difficulty in securing orders from the Hon'ble High Court of Delhi withdrew them by the following order:

"1. Learned counsel appearing for the petitioners seeks liberty to withdraw the instant petitions with further liberty to raise all objections before the emergency arbitrator and to take appropriate recourse in accordance with law.

2. Without making any observation on the merits of the matter and reserving all rights and contentions of the parties, the petitions stand disposed of, as withdrawn."

The above Order made no observation on merits, and the liberty was reserved only to take recourse in accordance with law. It does not enlarge the rights of the Petitioners before this Commission.

42. The Petitioners then tried invoking arbitration before the Indian Council of Arbitration on the same issues of threat of termination and encashment of bank guarantees.

43. Thereafter, coming back to this Commission, the Petitioners abandoned the prayer of reference to arbitration in Petition Nos. 2214 and 2217 of 2025, and

filed the present Petition on 09.12.2025 seeking reference of the said issues of threat of termination and encashment of bank guarantee, to arbitration.

44. For clarity, while the Petitioner dropped their prayer for reference to arbitration in Petition Nos. 2214 and 2217 of 2025, the counter claims of UPPCL were filed in Petition No. 2214 of 2025 wherein, UPPCL prayed *inter alia* to:

"b) Declare that the timelines of the Projects have suffered owing to the Petitioners own acts and omissions;

c) Allow UPPCL to terminate the PPAs and recover the damages as pre-estimated under the PPAs;"

45. Further, all parties – whether Petitioners or the Respondents – raised and pleaded the issue of threat of termination and encashment of bank guarantee while adjudication of Petition Nos. 2214 and 2217 of 2025.

46. Since the issues of extension of SCOD, escalation in tariff, threat of termination of PPAs and encashment of bank guarantees were all intrinsically linked and flowed out of a singular issue/allegation of delay in transfer of land and were categorically raised and pleaded by the Petitioners and Respondents in Petition Nos. 2214 and 2217 of 2025, by Order dated 13.10.2026, the Commission decided to adjudicate these issues in Petition Nos. 2214 and 2217 of 2025 together. It recorded, at paragraph 4:

"The core issues under Petition No. 2214 of 2025 and Petition No. 2217 of 2025 are intrinsically linked and inseparable. Thus, the issues in both petitions are being dealt with & decided jointly under the present Order."

47. It held that responsibility for taking possession of the land rested on the Petitioners under Article 3.1.2(vi) of the PPAs and that the delay in transfer of Project sites was attributable to the Petitioners itself. At paragraph 112 it concluded:

"Above analysis makes it amply clear that against the asserted fulfilment of 3 out of 8 Conditions Subsequent, in reality, the Petitioner(s) have fulfilled 0 out of the 8 Conditions Subsequent in the pendency of 9 years after entering into the PPA. It is pertinent to note that a contract requires performance of

reciprocal promises. The Petitioner(s) failed to submit technically sound DPRs and NoCs for the Projects and having failed on their part, they cannot demand land transfer in a timely manner by the concerned authorities. Based on the documents on record, it is evident that the delay in transfer of Project sites was attributable to the Petitioner(s) itself."

48. It further held that no case of force majeure or Procurer Event of Default was made out, that delay in transfer of land is not a Change in Law event, and that Article 3.3.4 bars tariff adjustment on account of any extension of time. Pertinently, the Commission categorically held under the Order dated 13.10.2026 in Petition Nos. 2214 and 2217 of 2025 that the Projects should be terminated and that the performance bank guarantee has rightly been encashed by the Respondents. The operative findings, at paragraph 158, are:

"The Commission is of the view that the timelines of the Projects have suffered owing to the Petitioner(s) own acts and omissions. Thus, the present case is not a fit case where the extension of SCOD should be allowed to the Petitioner(s). Accordingly, the prayer seeking extension of SCOD by 48 months from the date of this Order, is rejected. It is also pertinent to mention here that SCOD of the project has expired/lapsed long back. The prayer of the Petitioner(s) regarding compensation or tariff hike on account of 'Change in Law' on account of GST, is also denied. The prayer for determining formula for tariff escalation on account of Change in Law is also denied. ***As a natural corollary, we hold that UPPCL's counter claim seeking termination, stands allowed. In the circumstances, the Performance Bank Guarantee of the Petitioner(s), has rightly been encashed.*** *Since the Land Use Permission Agreements dated 01.12.2023 and 04.12.2023 is co-terminus with the PPA, the Petitioner(s) are directed to return the land to the relevant authorities within 60 days of this Order."*

49. **The present Petition seeks reference to arbitration the issues of "threat of early termination" of the PPAs, the "wrongful invocation" of the Performance Guarantee, and "consequential damages", together with a restraint on termination under Section 94(2). As evident from above, these issues were before the Commission in Petition No. 2214 of 2025 and have already been decided vide the Order dated 13.10.2026 issued by this Commission.**

50. **The Commission has allowed the counterclaim and held the notice of termination to be justified in the circumstances. Nothing on these issues remains to be decided, and the Petitioners, who themselves placed them before the Commission in Petition No. 2214 of 2025, cannot now seek re-adjudication through this Petition.**

51. The Petitioners rely on *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, (2008) 4 SCC 755, for the proposition that only this Commission can refer a dispute between a licensee and a generating company to arbitration. That proposition is not in doubt. Section 86(1)(f) of the Act, however, empowers the State Commission to "adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration", and the same judgment holds that the word "and" in that provision is to be read as "or", because the State Commission cannot both decide a dispute itself and refer it to an arbitrator. It also holds that the choice between the two is within the discretion of the State Commission. The judgment thus supports the Respondents. The relevant excerpts are as below:

"26. It may be noted that Section 86(1)(f) of the Act of 2003 is a special provision for adjudication of disputes between the licensee and the generating companies. Such disputes can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration. In our opinion the word 'and' in Section 86(1)(f) between the words 'generating companies' and 'to refer any dispute for arbitration' means 'or'. It is well settled that sometimes 'and' can mean 'or' and sometimes 'or' can mean 'and' (vide G.P. Singh's 'Principle of Statutory Interpretation' 9th Edition, 2004 page 404.)"

"27. In our opinion in Section 86(1)(f) of the Electricity Act, 2003 the word 'and' between the words 'generating companies' and the words 'refer any dispute' means 'or', otherwise it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself and also refer it to some Arbitrator. Hence the word 'and' in Section 86(1)(f) means 'or'."

"28. Section 86(1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating companies. It is well settled that the special law overrides the general law. Hence, in our

opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies, and only Section 86(1)(f) shall apply in such a situation."

"30. ... In our opinion there is no violation of Article 14 at all. It is in the discretion of the State Commission whether the dispute should be decided itself or it should be referred to an arbitrator. ..."

52. The same view was taken by the Hon'ble APTEL in *Gujarat Urja Vikas Nigam Ltd. v. Tata Power Company Ltd.*, Appeal No. 348 of 2025, as relied upon by UPRVUNL. That decision distinguishes the mandatory position under Section 79(1)(f), which governs the Central Commission, from the discretion conferred on State Commissions under Section 86(1)(f).

53. The Commission has already exercised that discretion in favour of adjudication and has decided the termination of the PPAs and the encashment of the guarantees on merits. Referring the same disputes to an arbitral tribunal now would create an anomaly. It would also place an arbitral tribunal in the position of reviewing this Commission's decision, whereas the Electricity Act, 2003 provides a statutory remedy against the Commission's orders only before the Hon'ble APTEL under Section 111.

54. **The present Petition is also barred by the principle of res judicata.** Section 11 of the CPC provides:

"11. Res judicata. – No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

55. Res judicata is not limited to civil courts. The Hon'ble Supreme Court has held in *U.P. Power Corpn. Ltd. v. NTPC*, (2009) 6 SCC 235, that the general principles of res judicata apply to any forum exercising adjudicatory powers. In *Ramachandra Rao v. Nagabhushana Rao*, (2024) 17 SCC 361, it held that

Section 11 is the statutory recognition of the doctrine and not its foundation. In *Lal Chand v. Radha Krishan*, (1977) 2 SCC 88, it held that the principle bars re-agitation of an identical issue between the same parties once it has been finally decided by a competent forum. In *Rithwik Energy Generation (P) Ltd. v. Bangalore Electricity Supply Co. Ltd.*, (2018) 17 SCC 223, it explained when an issue is directly and substantially in issue:

"15. … One test is that if the issue was 'necessary' to be decided for adjudicating on the principal issue, and was decided, it would be treated as directly and substantially in issue as the judgment was, in fact, based upon such a decision. The other principle is that the issue must be decided on the facts of each case, the material test to be applied being whether the Court considers the adjudication of the said issue material and essential for its decision."

56. This Petitioners submission is that the threat of the termination of the PPAs and the invocation of the guarantees were wrongful. To decide this, the Commission must first decide who caused the delay in executing the Projects. The Commission has already decided in the Order dated 13.10.2026 that the fault lies with the Petitioners and has allowed the termination counter-claim and upheld the encashment on that basis. When this Petition was filed, the same matters were pending before the Commission in Petition No. 2214 of 2025, and the principle underlying Section 10 CPC, which provides as follows, applied:

"10. Stay of Suit - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India …"

57. **Now that those germane matters have been decided, the principle of res judicata applies.**

58. The Petitioners argue that the reliefs in the three petitions are distinct, and that the Bank Guarantees had not been encashed when Petition No. 2214 of 2025 was filed. That does not assist them. **The test is whether the matter in issue is the same, not whether the prayers are worded differently.** The

encashment took place during the pendency of that Petition and was placed before the Commission through the Additional Submissions dated 25.07.2025. The Petitioners' contention that the present dispute originates in the Dispute Notice dated 07.07.2025, and not in the delay in transfer of land, cannot be accepted. **That Notice and the invocation are both consequences of the failure to achieve SCOD, which the Petitioners have throughout attributed to the delay in transfer of land.**

59. **The Petition is further barred by the principle underlying Order XXIII Rule 1(4) CPC**, which provides:

"(4) Where the plaintiff— (a) abandons any suit or part of claim under sub-rule (1), or (b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim."

60. The Petitioners had prayed for arbitration in the alternative in both Petition Nos. 2214 and 2217 of 2025. As to Petition No. 2214 of 2025, the Record of Proceedings dated 06.01.2026 for the hearing of 09.12.2025 records:

"3. … On 03.12.2025, Petitioner issued notice to UPPCL invoking arbitration and marked the same to the Indian Council of Arbitration (ICA). Ms. Puja Priyadarshini argued that Petitioner was attempting to dilute the counterclaim filed by UPPCL for termination of PPA by initiating proceedings at multiple forums. Sh. Chopra requested for withdrawal of prayer (c) in the matter as mentioned in the rejoinder to the reply of UPPCL."

61. The Petitioners did not seek, and the Commission did not grant, liberty to re-file. The Commission accepted the Petitioners' decision not to press the matter as an abandonment of the prayer for reference to arbitration.

62. Paragraph 3 of the Order dated 13.10.2026 in Petition No. 2217 of 2025 records:

"… the Petitioner(s) filed their 'Rejoinder to UPPCL's Reply' dated 08.12.2025, wherein the Petitioner(s) has stated that they are not pressing prayer (g), i.e. the prayer for damages and reference to arbitration of the issue. … On

account of the Petitioner(s) not pressing for relief, no opinion is being expressed on … the issue of 'reference to arbitration for the damages arising out of transfer of land after seven years' … ."

63. In *Sarguja Transport Service v. S.T.A.T.*, (1987) 1 SCC 5, the Hon'ble Supreme Court explained the principle underlying the Rule:

"7. … The principle underlying Rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the court to file fresh suit. … In order to prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code … In the case of abandonment or withdrawal of a suit without the permission of the court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the court."

64. **The present Petition seeks the same relief that was abandoned, and was filed on 09.12.2025, the very day on which the Petitioners gave up that prayer in Petition No. 2214 of 2025.** The Commission recorded in the Order dated 13.10.2026 that, since the Petitioners did not press the prayer, no opinion was expressed on it. That does not help the Petitioners. It is because the claim was abandoned that it cannot be revived by a fresh petition. As *Sarguja* holds, the bar under Order XXIII Rule 1(4) does not depend on prior adjudication and is distinct from res judicata.

65. **The dispute is, in any event, tariff-linked and cannot be referred to arbitration under Article 17.3.2 of the PPAs.** The Petitioners contend that the present dispute originates in the Dispute Notice dated 07.07.2025 and

relates to termination and encashment and not to the delay in transfer of land, so that it is a non-tariff dispute. **A dispute is characterized by its substance and not by the label given to it.** The Bank Guarantees were furnished as performance security for achieving SCOD, which lapsed without any work on the ground. The Petitioners' consistent case in each of their petitions is that the lapse was caused by the delay in transfer of land, and that the invocation and the threatened termination are therefore arbitrary. A challenge to termination and invocation can succeed only if the delay is held to be the Respondents' default, and the "consequential damages" claimed are damages for the same delay for which tariff enhancement and damages were sought in Petition Nos. 2101 of 2024, 2214 of 2025 and 2217 of 2025.

66. The Commission has already examined the nature of the Petitioners' grievance. At paragraph 88 of the Order dated 13.10.2026, it recorded:

"It is important to clarify that the Petitioner(s) is not merely seeking an extension of timelines but is also fervently seeking an escalation in tariff on account of the alleged delay in transfer of land. In fact, the Petitioner(s)'s stance throughout (including in the instant Petition) has been that it will not execute the Project unless a tariff increase is allowed to it on account of delay in transfer of land."

67. At paragraph 118, the Commission noted that this was a consistent stand, as seen from the Petitioners' own correspondence:

"... The pleadings and the arguments advanced before us by the Petitioner(s) make it amply clear that an extension of timelines of the Projects will not help in revival of these Projects simpliciter because the Petitioner(s) is adamant that it will not construct the Projects, if tariff escalation on account of delay in transfer of land is not granted to it. In fact, this is not an isolated stand adopted in the present proceedings but has been a consistent stand of the Petitioner(s) – as can be seen from the documents on record. ..."

68. One such document is the Petitioners' letter dated 25.08.2020, which reads:

"Since the entire demarcated land requested by us for the Chitaura SHP is not available, it may be explored for retrofitting scheme in the existing

Chitaura infrastructure since no other viable and cost effective. The other two SHPs for which land availability was confirmed by UPJVNL vide its letter dated 04/07/2020 can only be taken up if tariff revision on account of GST and cost escalation due to delay in land transfer is addressed. ..."

69. At paragraphs 119 and 120, the Commission further recorded:

"119. The stance that the Petitioner(s) will not initiate project activities till the time tariff escalation is granted to it on account of alleged delay in transfer of land, has been reiterated by the Petitioner(s) during the course of arguments under the present Petition as well. ... 120. Thus, from the above, it is clear that even if the highest relief were to be granted to the Petitioner(s), it can only be for extension of timelines under Article 3.3.3 and not escalation in tariff as it is specifically prohibited under Article 3.3.4 of the PPA. The extension of timelines sought under the present Petition, even if it is granted, would clearly be an academic exercise and would not lead to revival of these Projects. We feel constrained to hold that the conduct of the Petitioner(s) has led to a complete standstill in the Projects."

70. **The Petitioners' insistence on tariff escalation as a condition for implementing the Projects is thus what led to the standstill, to the invocation of the guarantees and to the Dispute Notice. The termination and the invocation are not independent of the tariff-linked claims. They are consequences of them.**

71. The PPAs themselves draw the line between disputes for the Commission and disputes for arbitration. Articles 17.3.1 and 17.3.2, as quoted in the written submissions of UPPCL, provide:

"17.3.1 Where any Dispute arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles 4.7.1, 13.2, 18.1 or clause 10.1.3 of Schedule 17 hereof, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time."

"17.3.2 If the Dispute arises out of or in connection with any claims not covered in Article 17.3.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 17.2.3 hereof, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration."

72. Article 17.3.1 is not confined to a claim for change in tariff. It extends to "any matter related to Tariff" and to claims which "partly or wholly relate to any change in the Tariff". Article 17.3.2 is residuary and applies only to claims not covered by Article 17.3.1. The Petitioners themselves invoked Article 17.3.1 in their pleadings filed in Petition No. 2214 of 2025 before this Commission. The Commission, accordingly, finds that the dispute is covered by Article 17.3.1 and cannot be taken out of it by invoking Article 17.3.2.

73. The decisions relied upon by the Petitioners do not assist them. In *Madhya Pradesh Power Management Co. Ltd. v. Damodar Valley Corporation*, 2024 SCC OnLine APTEL 76, which the Hon'ble Supreme Court did not interfere with in Civil Appeal No. 10480 of 2024, the Hon'ble APTEL held:

"25. ... In our considered opinion, all the matters which would have a bearing upon the tariff for a generating company would constitute "tariff disputes" namely disputes related to Change in Law, delayed completion of projects, invocation of Force Majeure events etc. Such matters impact the tariff for a generating company directly and, therefore, fall solely within the jurisdiction of the Central Commission under Section 79(1) of the Electricity Act, 2003. However, the disputes related to termination or breach of contract which do not impact the tariff either directly or indirectly, can be considered as non-tariff related disputes referable to arbitration."

74. In *Renew Wind Energy (AP2) (P) Ltd. v. Solar Energy Corpn. of India*, 2025 SCC OnLine Del 8252, the Hon'ble Delhi High Court clarified the above passage, and held in respect of a PPA clause framed in terms similar to Article 17.3.2:

"107. It is important to clarify that the words used by APTEL "disputes related to termination or breach of contract" must be considered in the context of the preceding finding as well in conjunction with the following words in the same sentence. Meaning thereby, the disputes related to termination or breach of contract, without impacting the tariff either directly or indirectly, would qualify as non-tariff disputes. Merely because a dispute has arisen from a breach of contract would not necessarily be determinative of the nature of dispute."

"100. … As a natural corollary, for a dispute to fall within the scope of the arbitration clause under clause 16.3.2, it must not have arisen from "any matter related to tariff" and thus, must be a non-tariff matter."

75. Tested on these principles, the present dispute is one that affects tariff, directly or at least indirectly. It cannot be decided without first deciding whether the delay in transfer of land is attributable to the Respondents, which is the very foundation of the Petitioners' claims for extension of SCOD, tariff escalation and damages. That question has been decided against the Petitioners.

76. UPRVUNL has made detailed submissions on attribution of fault for the delay in transfer of land, including on promissory estoppel and *contra proferentem*. These are consistent with the findings in paragraphs 93 to 114 of the Order dated 13.10.2026, which was passed after hearing all the parties, and the Commission does not reopen them. UPRVUNL's further objection, that it is not a necessary party and that a dispute between two generating companies is not contemplated, does not need to be decided in view of the findings above.

77. **The Commission also notes the Petitioners' conduct.** They approached the Hon'ble High Court at Lucknow, then the Hon'ble High Court at Delhi, and invoked arbitration before the Indian Council of Arbitration. They then sought the same arbitration from this Commission while their petitions were pending and now seek abeyance of this Petition. In the Order dated 30.06.2026, the Commission had already observed that the Petitioners have in the past sought to test different forums and tried to escape final orders:

"… the Petitioner(s) have been indulging into this practice not only before this Commission but have in the past too, sought to test waters with different forums and thereafter, tried to escape final orders being passed."

78. In the Order dated 13.10.2026, the Commission recorded, at paragraph 157:

"We find that the Petitioner(s) have completely failed to follow its obligations under the PPA. We find that the execution of the project has been at a complete stand-still for an unreasonable amount of time, without any reasonable explanation for the same. We further note that the Petitioner(s) have engaged in multiple dilatory tactics such as engaging in multiple litigations over various forums, raising frivolous demands from the Procurers, raising demands from this Commission and seeking reliefs that are completely de hors the PPA and alien to the regulatory regime with one sole objective i.e., to delay the implementation of the Projects."

79. The prayer under Section 94(2) to restrain UPPCL from terminating the PPAs during arbitration is ancillary to the prayer for reference. The Hon'ble Supreme Court held in *State of Orissa v. Madan Gopal Rungta*, 1951 SCC 1024:

"15. ... An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit for proceeding. ..."

80. and in *Cotton Corporation of India Ltd. v. United Industrial Bank Ltd.*, (1983) 4 SCC 625:

"10. ... But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted. ..."

81. The Petitioners' reliance on the Commission's powers under Section 94(2) in *Renew Wind* does not help them. Since the reference cannot be made, and UPPCL's counterclaim for termination has been allowed by the Order dated 13.10.2026, the prayer for restraint has no basis and is rejected.

82. The IA seeks to restrain UPRVUNL from proceeding with Tender No. 04/E-Tender/Jal Vidyut/2026 in respect of Nirgajini and Salawa. The IA is dependent on the Petition and must fail with it. In *Asma Lateef v. Shabbir Ahmad*, (2024)

4 SCC 696, on which the Petitioners themselves rely, the Hon'ble Supreme Court held:

"50. … Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law. … If the court is of the opinion at the stage of hearing the application for interim relief that the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief. …"

83. **On the findings above, the Petition is barred, and the IA is liable to be refused on that ground alone.**

84. **The tender concerns the renovation of UPRVUNL's own existing and operating plants, and no arbitrariness, mala fides or irrationality in the tender process has been pleaded or shown. The Petitioners' claim of prejudice rests on the viability of their own projects, on which no work has been done. The Commission has held that SCOD has lapsed, that the PPAs stand terminated at UPPCL's instance, and that the land is to be returned. The balance of convenience and the question of irreparable injury do not favor the Petitioners. Restraining the renovation of operating plants would only add to the loss of supply that UPPCL says it is already facing.**

85. The Commission notes that, in the Order dated 13.10.2026, it observed at paragraph 159:

"We would like to record that the Petitioner(s) case qualifies for the imposition of heavy cost due to the conduct of the Petitioner(s). The Petitioner(s) in the present case has, time and again, raised unreasonable demands, engaged into protracted litigations, repeatedly claimed reliefs de hors the PPA and deliberately delayed and stalled the execution of the

Project. Yet, the Commission is refraining from imposing any cost on the Petitioner(s) at this juncture."

86. The present Petition, filed during the pendency of Petition Nos. 2214 and 2217 of 2025 and seeking arbitration of issues already before the Commission, and followed by an application for abeyance, is a further instance of such conduct. Nevertheless, the Commission refrains from imposing costs at this stage, as it did in the Order dated 13.10.2026.

Commission's View:

87. For the reasons above,

(i) The applications dated 24.10.2026 and 02.11.2026 seeking abeyance of the Petition are rejected.

(ii) Petition No. 2332 of 2025 is held not maintainable, being barred by res judicata in view of the Order dated 13.10.2026 in Petition Nos. 2214 and 2217 of 2025, and by the principle underlying Order XXIII Rule 1(4) CPC.

(iii) The disputes raised, namely termination of the PPAs, invocation of the Performance Bank Guarantees and consequential damages, are tariff-linked, have already been adjudicated by the Commission, and are not fit for reference to arbitration under Article 17.3.2 of the PPAs.

The Commission, having exercised its discretion under Section 86(1)(f) in favor of adjudication, declines the reference. The prayers for reference to arbitration and for restraint on termination are rejected. The Commission refrain from imposing costs and the Petition, the IA and the applications for abeyance stand disposed of accordingly.

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

Place: Lucknow

Dated: 19.11.2026