

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA

Case No. HERC/PRO- 35 of 2019

Date of Hearing : **07.07.2020**
Date of Order : **10.07.2020**

In the Matter of

Petition under Regulation 15 of the Haryana Electricity Regulatory Commission Regulations 2014 seeking relaxation in Regulation 3.5 of HERC Regulations 2014 Rooftop Solar Grid Interactive system based on Net Metering.

Petitioner Shree Cement Limited, Panipat
V/s

Respondents

The Chairman-cum-Managing Director
Uttar Haryana Bijli Vitran Nigam Limited Respondent-1

The Managing Director, HVPNL Respondent-2

Present

On behalf of the Petitioner through Vidyo App

Shri Amarjit Singh, Assistant Vice President, Shree Cement Limited

On behalf of the Respondent through Vidyo App

Shri B.S. Kamboj XEN (RA), UHBVNL
Shri Rajesh Goyal SE (Commercial), HVPNL

QUORUM

Shri D.S. Dhesi, Chairman
Shri Naresh Sardana, Member

ORDER

1. Brief Background of the Case:

- i. That the Petitioner is having its Cement production unit at Village-Khukhrana, PO - Assan Kalan in district Panipat is an HT consumer (a/c no.5038740000) of Respondent-1. The production facility of the Petitioner has a contract demand of 8000 KVA and draws power at 33 KV through an independent feeder from 132KV/33KV Mutlauda sub-station of Respondent-1.
- ii. That the Petitioner is an 'Eligible Consumer' under regulations 2.1 (g) of HERC (Rooftop Solar Grid Interactive System based on Net Metering) Regulations, 2014 ('**Net Metering Regulations**') for setting up a rooftop solar system of capacity not exceeding 1 MWp on net metering basis. The regulation 2.1 (g) is reproduced below:
"eligible consumer" means a consumer of electricity in the area of supply of the licensee, who intends to install or has installed a rooftop solar system in his premises, to offset part or all of his own energy requirement."
- iii. That the Petitioner has submitted an application for setting up of a 999 KWp capacity roof top Solar power plant on net metering basis at its cement production facility referred above ('**Premises**') to Respondent-1 on dated 5th April, 2019.
- iv. That based on the above application, SDO S/D Sub-Urban UHBVN, Panipat (Nodal Officer) has executed a Net Metering Connection Agreement with petitioner on 9thApril-19.
- v. That the Petitioner has already commenced installation activities for the solar plant. The Net metering agreement, though has been signed the same will be effectuated once the project gets commissioned, which is expected soon.
- vi. That the Petitioner is also an Open Access consumer and purchases power from IEX under open Access to meet part of its power requirement, as provided in HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012.

- vii. That the regulation 3.5 of HERC (Rooftop Solar Grid Interactive System based on Net Metering) Regulations, 2014 provides that net metering facility will not be available to open access consumers. Therefore, the petitioner will be forced to forgo the facility of open access once it commences net metering facility at its Premises. The regulation 3.5 reads as under:

"3.5 For open access consumers, the facility of net metering shall not be available, and they will have to take recourse to Regulation 3.4 above. "

- viii. That the regulation 7.2 of HERC (Rooftop Solar Grid Interactive System based on Net Metering) Regulations, 2014 limits maximum rooftop solar system capacity under net metering for a single eligible consumer to 1.0 MWp only. Regulation 7.2 is reproduced here under for easy reference of the Hon'ble commission:

"7.2 The maximum rooftop solar system capacity to be installed at any eligible consumer premises shall not exceed his connected load in case of Low-Tension connection and contract demand in case of High-Tension connection. Provided that the maximum installed capacity shall not exceed 1 MWp for a single eligible consumer. Provided further that a variation in the rated capacity of the system within a range of five percent shall be allowed.

- ix. That as explained in above paras, solar rooftop capacity that the petitioner can install at its premises is capped at 1 MWp only. Thus, at one end the Net Metering Regulations do not provide the consumer for installation of solar system equivalent to its total requirement and on other hand it also deprive it from taking Open Access facility. Such principle is thus inequitable and deprives a consumer of its right as bestowed under Electricity Act-2003.
- x. That the denial of OA facility to a consumer availing Net Metering is also against the principle enunciated under Electricity Act-2003. The facility of OA to a consumer by a Distribution Licensee is mandated under Section 42 of EA-2003. Section - 42 of EA-2003 for the purpose of ease is reproduced hereunder:

"Section -2 (Definitions) Para 47 -

"Open Access" - means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

Section-42 (Duties of distribution licensee and open access):

(2) The state commission shall introduce open access in such phases

And

[Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.]

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

- xi. That nowhere in Section 42 of EA, 2003, it is provided that a discriminatory approach can be adopted vis-a-vis, open access with respect to a consumer who is availing Net Metering facility and a consumer who is not availing Net Metering. Therefore, such a restriction with respect to OA in Net Metering Regulations is against Section 42 of EA and thus illegal.
- xii. That such a restriction on simultaneous use of open access and net metering facility in the regulations is detrimental to wider adoption of solar rooftops by large industrial consumers. This limits the installation of solar

rooftop either by domestic consumers or by small industrial consumers only.

- xiii. That several other state commissions have notified Net Metering (or Similar) regulations for promoting installation of solar rooftops in their respective states and none has restricted simultaneous use of open access and net metering facility. Some of these states and their regulations are listed hereunder:

Name of State	Regulation
Rajasthan	RERC (Connectivity and Net Metering for Rooftop and Small Solar Grid Interactive Systems) Regulations, 2015
Punjab	PSERC (Grid Interactive Rooftop Solar Photo Voltaic Systems based on Net Metering) Regulations, 2015
Gujarat	GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016
Telangana	TSERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016

- xiv. That Haryana Renewable Energy Development Agency (HAREDA), a Govt. of Haryana undertaking and nodal agency for promotion & development of renewable energy in the state, in its Petition no. PRO 37 of 2017 has also proposed that open access consumers if intends to have rooftop solar power plants in their premises should be allowed net metering facility. Taking this in to consideration the Hon'ble commission in its Draft of Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive Systems Based on Net Metering) Regulations, 2018, floated for public comments in August-2018 removed this clause of restricting use of net metering facility by open access consumers. However, the same has not yet attained finality.
- xv. In view of the above, and the powers bestowed upon the Hon'ble Commission under regulation 15 of Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive System based on Net Metering) Regulations, 2014 it is humbly requested to relax the provisions of Regulation 3.5 of Net Metering Regulations.

Prayer:

- a. Relax the requirement of regulation 3.5 of Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive System based on Net Metering) Regulations, 2014 thereby permitting use of both net metering facility and open access to the Petitioner.
- b. Provide an opportunity to the Petitioner to present his case in person and be permitted to make additional submissions, if any, at the time of hearing.
- c. Any other order or direction which this Hon'ble Commission deems just and proper may kindly be passed.

2. Additional Written Submission dated 13th August, 2019 of Petitioner:

- i. That the Petitioner has filed a Petition under Regulation 15 of HERC (Rooftop Solar Grid Interactive System based on Net Metering) Regulations, 2014 seeking relaxation in Regulation 3.5 of the said regulation.
- ii. That the petition was first heard on 26th July 2019 and the Petitioner briefed the Petition to the Hon'ble Commission.
- iii. That in addition to the submissions, already made in the Petition, the Petitioner requests the liberty to submit the following additional submissions for kind consideration of the Hon'ble Commission.
- iv. That facility of open access to a consumer is provided under Section-42 of Electricity Act-2003. The act also emphasizes that if any person, whose premises is situated within the area of supply of a distribution licensee requires open access, he should be allowed a non-discriminatory open access in accordance to the State Commission's regulations. Nowhere in Section 42 of EA, 2003, it is provided that a discriminatory approach can be adopted vis-à-vis, open access with respect to a consumer who is availing Net Metering facility and a consumer who is not availing Net Metering. Therefore, such a restriction with respect to OA in Net Metering Regulations is against Section 42 of EA and thus illegal.
- v. Without prejudice to the above, it is submitted that it would had been justifiable to limit the capacity of Open Access (to the extent of Solar capacity installed) on grounds of technical limitations. However, denial of Open Access in totality in disregard to the provisions of Electricity Act 2003

as well as technical capabilities of system is arbitrary, prejudicial and goes against the very spirit of the Electricity Act, 2003. For example, if a consumer having contract demand of say 10 MVA, installs a solar plant of 1 MW, he may be allowed open access at least up to the extent of 9 MW but denial of Open Access all together is retrograde step and discriminatory in nature and thus needs to be done away with.

3.Proceedings:

- 3.1 The case was initially heard on 26/07/2019. The Respondents sought time to file the reply. Acceding their request, the Commission directed the Respondents to submit their replies to the Commission and copy to Petitioner before next date of hearing.
- 3.2 The case came up again for hearing on dated 13/08/2019 and the Commission has decided as under:
 - a) *The representative appeared on behalf of the Respondent submitted that Net Metering facility is for small consumers and should not be allowed to big Open Access consumers, as allowing it to Open Access consumers will lead to increase in tariff for low end consumers. They further sought time to submit their detailed written replies.*
 - b) *Acceding to the request of the Respondent, the Commission directed the Respondents to submit their replies before the 27/08/2019. The Petitioner may file its rejoinder within week after receipt of the replies, if they desire so.*
- 3.3 In response to the interim order, the Respondent/UHBVN filed its reply dated 14.08.2020 is reproduced as under:
 - i. The present reply is being filed on behalf of Uttar Haryana Bijli Vitran Nigam Ltd. ("Respondent" or "UHBVN") in response to the above captioned petition filed by M/s Shree Cement Limited ("Petitioner") and all submissions are made in the alternative and without prejudice to each other. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.
 - ii. That the Petitioner, in this Petition has prayed for relaxation of Regulation 3.5 of HERC 31/2014 on "**Rooftop Solar Grid**

Interactive System based on Net Metering Regulation, 2014”

(‘Net Metering Regulations, 2014’ for brevity) dated 25.11.2014.

- iii. That the present petition has been filed to relax provision of Regulation 3.5 of Net Metering Regulations, 2014. No provision of the alleged regulations permits amendment in regulations in favour of a single stakeholder. Hence, the present Petition is untenable.
- iv. That the Petitioner has sought relaxation/modification/amendment to regulations, which if allowed to the Petitioner will bring with it multiplicity of such petitions by different stakeholders. In this regard, it is pertinent to bring to the kind notice of this Hon’ble Commission that the power to frame Regulations cannot be made a subject matter of the hearing, as in the case of other petitions and proceedings before the Commission where under one of the parties files a petition, the other party is called upon to answer the complaint in the petition and the Commission takes the view under the adjudicatory powers. The consistent practice adopted by the Hon’ble HERC is not to entertain any petition by any person/group of people asking the Hon’ble HERC to frame or amend a regulation. The request for framing a Regulation can be made only by way of representation to the Commission. It is for the Commission to decide whether there is a need to enact the Regulation or not. The exercise of such legislative power to frame Regulation cannot be a matter of judicial hearing as in the case of other petitions.
- v. That various parameters/provisions specified/ made in the HERC Regulations that were framed by this Hon’ble Commission are based on an exhaustive study and discussions inviting comments from all stakeholders. Therefore, any amendment/ relaxation in the Regulations sought to be made should also be based on a similar comprehensive study wherein various implications/ repercussions that could arise on account of proposed amendment/relaxation have been examined beforehand. Thus, there is no basis with the Hon’ble Commission for affecting any amendments/relaxations in the HERC Regulations and that too on the request of single stakeholder.

- vi. That the Hon'ble Haryana Electricity Regulation Commission in its Order dated 26.06.2019 in case of Petition filed by Haryana Chamber of Commerce and Industries, Panipat (PRO-13 of 2018) has rejected the request regarding relaxations/amendment of Regulation. The relevant part of Order dated 26.06.2019 is reproduced below: -

The Petitioner has primarily raised a challenge to ibid Regulations under the garb of seeking relaxation thereto. Any such exercise cannot be undertaken by the Commission in an adjudicatory framework. The same is more in the nature of exercising legislative function of the Commission as the Regulations framed by it are in the nature of sub-ordinate (delegated) legislation. Hence, ordinarily relaxation in the Regulations cannot be considered on a Petition filed by the Petitioner comprising particular category of consumers.

- vii. That the prayer of the Petition seeking relaxations in Regulations 3.5 of Net Metering Regulations, 2014 is misconceived and untenable. The regulation 3.5 of said regulations stipulates that "For open access consumers, the facility of net metering shall not be available and they will have to take recourse to Regulation 3.4".

It is pertinent to mention here that as per regulation 3.4 of Net Metering Regulations, 2014, the petitioner may enter into a power purchase agreement with the licensees or go for third party sale. The relevant part of the Regulation is reproduced as under: -

In such cases if the power generated is 250 kW or above, the generator may enter into a power purchase agreement with the licensee serving that area or go for third party sale through open access. The generator shall inject the entire power generated into the system of the licensee at a single point without permitting any of this power to be consumed in the individual premises. Purchase of such generated power shall entitle the licensee to Renewable Purchase Obligation (RPO) benefits or to the generator for REC as per the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 and subsequent amendments thereof. The cost of the additional equipment required for connectivity in such cases shall be borne by the generator. The licensee shall be under an obligation to buy the solar power generated through rooftop solar system in Haryana up to the ceiling of solar RPO and at rates limited to or lower than the feed in tariff of solar energy.

- viii. That MERC Order dated 12.06.2018 in Case No 163 of 2017 has rejected the Petition of Cleanmax Enviro Energy Solutions Pvt Limited, seeking clarification on the net metering arrangement for Open Access consumer, specifying that *“Net metering and open access are two different sets of arrangements for different eligible consumers and its regulatory framework has also been provided by the two different regulations. If these two arrangements are mixed up, then there are various issues related to grid security, accounting, billing, settlement, etc. Hence, the commission has made net metering regulations for “below 1 MW” and open access for “1 MW and above” and these cannot be availed simultaneously by the same consumer.”*
- ix. Presently the petitioner is getting power from two sources i.e. open access and Discoms. In case, if net metering facility is allowed to the open access consumer, then such consumer will be getting power from three sources which will lead to complexity in Grid Security, Energy Accounting, Billing, Settlement etc.
- x. Moreover, it has been settled by a Constitution Bench decision of the Hon’ble Supreme Court in PTC India Limited v/s Central Electricity Regulatory Commission (2010) 4 SCC 603 that power of the Regulatory Commission to frame Regulations is distinguished from its Adjudicatory functions. Any person filing a Petition to amend the Regulation cannot be entertained as the same is a matter of judicial review and such power are not conferred to the Regulatory Commission under the adjudicatory framework. Therefore, it is requested that the Hon’ble Commission may kindly reject the Petition as the procedure for amending regulations is altogether different from the process of adjudication.
- xi. In view of the foregoing submissions, the present petition is liable to be dismissed being untenable and bereft of any merit.

3.3 Further, the matter was again heard on dated 23/10/2019 by the Commission and decided as under:

- a) The representative of the Petitioner, Shri Amarjit Singh requested the Commission to schedule the matter for hearing after notification

Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive System based on Net Metering) Regulations, 2019 which is under process.

b) Acceding to the request of the Petitioner, the Commission adjourned the matter.

3.4 The matter was scheduled for hearing on 05/02/2020 but on the written request to adjourn the hearing due to pre-occupancy of the Petitioner in another Commission, the Commission adjourned the matter and fixed the next date of hearing on 21.04.2020. Amidst Corona virus, the date of hearing was rescheduled for 07.07.2020.

3.5 Finally the matter was heard on 07.07. 2020 as scheduled, through virtual court with the help of Vidyo app. Both the parties were present.

4. Commission's Analysis and Orders:

The Commission has carefully examined the contents of the Petition, reply made by the Respondents, averments made by the representatives of both the parties during the various hearings in the matter and observes that the relief/relaxation being sought by the petitioner was subject matter of a Draft Regulation. However, after hearing all stake holders and considering the merits of the matter, it had been decided not to provide the facility of net metering to Open Access Consumers. The Haryana Electricity Regulatory Commission (Rooftop Solar Grid Interactive System Based on Net Metering) Regulation, 2019 was notified on 25.10.2019. As per Regulation 3.5 "The Facility of Net metering shall not be available to Open Access consumers."

The said notification has been issued in recent past after due diligence. As such there is no justification for reconsideration of matter. The petition is disallowed.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 10/07/2020.

Date: 10/07/2020

Place: Panchkula

(Naresh Sardana)

Member

(D.S. Dhesi)

Chairman