



Petition No. 1644 of 2020 & 1662 of 2020
BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Date of Order ~~24.2.2021~~ 24.2.2021

PRESENT:

1. Hon'ble Sh. Raj Pratap Singh, Chairman
2. Hon'ble Sh. Kaushal Kishor Sharma, Member
3. Hon'ble Sh. Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF: Petition under section 86(1)(c), 86(1)(e) and 86(1)(f) 86(1)(k) of the Electricity Act, 2003 seeking directions to the Respondents and appropriate orders(s) for grant of prayers sought by the present Petitioner.

M/s AMP Solar Clean Power Pvt. Ltd., 309, 3rd Floor, Rectangle One, Behind Sheraton Hotel, Saket, New Delhi -110017

----- **Petitioner**

1. M/s UP Power Corporation Ltd. (through its Managing Director), Shakti Bhawan Extn., 14 - Ashok Marg, Lucknow
2. M/s UP State Load Despatch Centre, Phase-II. (through its Director), Vibhuti Khand, Gomti Nagar, Lucknow
3. M/s UP Power Transmission Company Ltd., Shakti Bhawan Extn., 14 - Ashok Marg, Lucknow

----- **Respondent**

Following were present:

1. Sh. Deepak Raizada, SE, PPA-RE, UPPCL
2. Sh. Arunav
3. Sh. Rakshika Kaul
4. Sh. Amarjeet Singh Rakhra, Advocate
5. Ms. Mazag Andrabi, Advocate
6. Sh. Rahul Srivastava, Advocate
7. Sh. Piyush Shukla, Advocate
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9. Sh. Vivek Chaudhary



ORDER
(Date of Hearing 02.02.2021)

1. The Petition No(s). 1644 of 2020 & 1662 of 2020 are filed by M/s AMP Solar Clean Power Pvt. Ltd. The Petitioner has set up a solar power-based Generating Plant of 20MW capacity at Payagpur, District Bahraich in the State of Uttar Pradesh ("**State of UP**"). The Solar Project has been set up for supply of the entire energy generated to its consumers/Captive Users within the area of supply of Madhyanchal Vidyut Vityaran Nigam Limited.

Petition No. 1662/2020

2. The Petitioner in its Petition no. 1662 of 2020 has submitted as follows:
- a. On 28.12.2018, the Petitioner entered into Power Purchase Agreements ("PPA") with RCCPL Private Limited and Birla Corporation Limited ("Captive Users") respectively for supply of the entire energy generated by the Solar Project for a period of twenty-five years. The Captive Users are subsidiaries of M P Birla Group.
 - b. The Petitioner by way of application dated 25.10.2019 applied for grant of Long-term Open Access ("LTA") for transfer of 14MW capacity from Payagpur S/s to 133/33 kV Bachhrawan Substation and 6MW (4 MW + 2 MW) capacity from Payagpur S/s to 133/33 kV Tripulia Substation. UPPTCL granted LTA to the Petitioner's Solar Project by way of 'Approval for Long Term Open Access' dated 11.02.2020 ("LTA Approval") and pursuant thereto the Petitioner entered into Bulk Power Transmission Agreement dated 14.02.2020 for transmission of electricity under open access with UPPTCL ("BPTA").
 - c. The Petitioner has made possible efforts however the project could only demonstrate between 13MW to 14MW out of the installed capacity of 20MW due to harsh winter months; the Solar Power is infirm in nature and depends upon the weather conditions. However, UPSLDC vide email dated 05.08.2020 has instructed the Petitioner to comply with the procedure specified by the Commission for declaration of COD in the Amplus order dated 27.07.2020.
 - d. The Petitioner, Amp Solar has contended that the directions contained under Order dated 27.07.2020 is specific to M/s Amplus only and may not be applicable to other generators. The Petitioner has requested the Commission to issue appropriate directions in this regard.



3. The prayers of Petition no. 1662 of 2020 are as below:

- a. Direct Respondent No. 2 to rescind the email dated 05.08.2020 whereby the Petitioner has been directed to follow the 'interim guidelines' viz. the declaration of COD, specified by this Ld. Commission in the order dated 27.07.2020 in Petition No. 1517/2020,, the same not being applicable to the Petitioner;
- b. Issue appropriate order(s) for implementing a standard procedure for allowing part-commissioning of Solar Project;
- c. Pass any other order as this Hon'ble Commission may deem fit in the facts and circumstances of the present case and in the interest of justice.

Petition No. 1644/2020

4. The Petitioner in its Petition no. 1644 of 2020 has submitted as follows:

- a. The Petitioner has filed this petition to distinguish its case from Amplus Green Power Ltd. case, wherein the Commission vide Order dated 27.07.2020 in Petition No. 1517/2019 specifically directed M/s Amplus Green Power Pvt. Ltd. to declare COD of the plant, furnish Bank Guarantee to UPPCL along with an undertaking to fulfil the requirement for Captive Generating Plant, as a pre-condition, for the purpose of execution of WBA with the Distribution Licensees.
- b. The Petitioner has contended that its case stands on an entirely different footing as compared to Amplus, in so far as the captive arrangement is concerned. The Petitioner have fulfilled the statutory requirements of being a captive generating plant at the time of filing the present petition. Thus, the Petitioner should not fall under the scope and purview of the Amplus's order.
- c. The Petitioner has also submitted that the extant regulations framed by the Commission viz. CRE Regulations 2019 and Open Access Regulations 2019 does not contemplate any provisions relating to COD declaration and furnishing Bank Guarantee (BG). Further, the model BPTA, BPWA, WBA, notified by the Commission vide Order dated 05.03.2020 in Petition No. 1536/2019, does not speak on the requirement of BG. Any order/ interim directions passed by the Commission must be adopted by way of specific regulations or guidelines or amending the existing prevailing regulations or guidelines of the Commission.



- d. Without execution of wheeling agreements, the Petitioner cannot carry the electricity generated from the Solar Project to the destination of use by the Captive Users. Therefore, declaring commissioning of the Petitioner's Solar Project prior to signing of WBA will lead to solar panels being left idling thereby amounting to module degradation which will jeopardize the Solar Project, financially and commercially, and the same is evident from the Hon'ble APTEL's judgment in Balarch Renewable Energy Private Limited vs HERC [A. No. 343 of 2016].
- e. Also furnishing BG is not costless and is a very expensive exercise, as the Petitioner entails substantial amount of cost in terms of blocking of funds, availability of working capital, requirement of margin money, stamp duty, bank charges etc. The purpose of furnishing bank guarantee is recovery of CSS from the captive users in case of default in fulfilling captive status. In case of captive solar power developer defaulting at the end of the year, CSS ought to be recovered through raising of demand invoices. Also, if a captive generating plant defaults in fulfilling captive status, determined on annual basis, then the same shall be treated as a sale of electricity from a generating plant.
- f. Further, conjoint reading of Rule 3 (1) and Rule 3 (2) of Electricity Rules 2005 makes it aptly clear that the obligation of captive users of a captive generating plant requires fulfilment of captive status requirements, determined on an annual basis or in a year, and the same cannot be ascertained upfront. However, the ascertainment of captive status of a generating plant is on annual basis and the same has been upheld by the Hon'ble Appellate Tribunal for Electricity in the matter of M/s Prism Cement Limited vs Madhya Pradesh Electricity Regulatory Commission & Ors. being Appeal Nos. 02 of 2018 and 179 of 2018.
- g. Accordingly, the Petitioner has requested the Commission to direct UPPCL to execute wheeling banking agreement with petitioner on immediate basis prior to achieving COD.
5. The prayers of Petition no. 1644 of 2020 are as below:
- a. Direct the Respondent No. 1/UPPCL to execute Wheeling and Banking Agreement & Bulk Power Wheeling Agreement with the Petitioner on immediate basis prior to achieving COD.
- b. Hold and declare that any demand for a bank guarantee or letter of credit by the Respondent No. 1/UPPCL qua the Petitioner's Solar Project is illegal and bad in law and quash the Impugned Letter dated 31.08.2020.

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- c. Direct the Respondent No. 1/UPPCL to not take any coercive action(s) against the Petitioner, till the final disposal of the present petition.
- d. Pass any other order as this Hon'ble Commission may deem fit in the facts and circumstances of the present case and in the interest of justice.

Record of Proceedings

6. During the hearing held on 19.01.2021, the Commission observed that guidelines for COD of Solar Power Plant have already been deliberated in Amplus matter in Petition No. 1517/2019 vide judicial order dated 27.07.2020 till framing any specific guidelines/procedures. However, the Petitioner is facing difficulty to declare COD of the project, due to weather conditions and is not able to supply power to its customers despite having signed the PPAs. Therefore, to promote open access to small Solar Projects in the state, part commissioning of the Project may be allowed. Mazag Andrabi, learned Counsel of the Petitioner requested the Commission to allow her to file an application to amend the prayers of the Petition no. 1662 of 2020 regarding declaration of COD for part capacity of its solar power plant. The same was allowed by the Commission.
7. Accordingly, the Petitioner has amended the prayers vide its interim application dated 20.01.2021 and the amended prayers are as below:
 - a. Allow the Petitioner, in the interim, to declare COD for part capacity of 14MW out of the total 20MW installed capacity of its Solar Project.
 - b. Allow Petitioner to gradually demonstrate incremental generation capacity till it is able to demonstrate the installed capacity of the Solar Project.
 - c. Allow relaxation of up to 20% while declaring COD of part/full capacity of the Petitioner's Solar Project.
 - d. Allow the Petitioner to execute Bulk Power Wheeling Agreement and Wheeling and Banking Agreement with Respondent No. 1 as and when it declares COD for part capacity of 14 MW.
 - e. Allow the Petitioner to execute Bulk Power Wheeling Agreement and Wheeling and Banking Agreement with Respondent No. 1 as and when it declares COD for the balance capacity of 6 MW, whether in parts or as a whole as per the procedure specified by this Ld. Commission.
 - f. Issue any other Order or direction that this Ld. Commission may deem just and equitable in favor of the Petitioner.



8. SLDC vide its affidavit dated 22.01.2021 submitted that the data submitted by the Petitioner does not seem to be MRI data. As per MRI data (provided by STU) available with SLDC, the peak generation demonstrated by the Petitioner is below:

Highest Generation of the Day (At transmission End)				
Date	Time Block	Time	Total generation of BAY 1 & 2 as per MRI data (KWhr)	Total Generation peak (in MW)
25-Dec-20	49	12:00-12:15	3364.2	13.4569
07-Jan-21	50	12:15-12:30	3391.2	13.5648
08-Jan-21	51	12:30-12:45	3631.8	14.5272

9. The Commission heard the matter on 27.01.2021 and directed UPPCL to submit its written submission regarding part commissioning of Petitioner's solar power plant and for signing of wheeling and Banking Agreement.
10. UPPCL vide affidavit dated 30.01.2021 has submitted as follows:
- M/s AmpSolar is seeking Part COD of 14 MW in view of the fact that it has a PPA with the M/s RCCPL Pvt. Ltd which is an Open Access Customer for 14 MW. The remaining two Open Access Customers are having PPAs of 4 MW and 2 MW.
 - The Protocol of COD as approved by the Commission in the matter of M/s Amplus is now being enforced on all Solar Developers having third party sale where there is no PPA, does not capture the seasonality of the Commissioning period which affects solar irradiance at that time of year.
 - In the Banking Agreement with UPPCL, Banking is on energy basis and as per UPERC, CRE Regulation 2019, UPPCL is entitled for Banking Charges of 6 percent against Energy Banked.
 - As per UPSLDC M.R.I data, M/s AmpSolar has demonstrated peak generation of 14.52 MW on 08.01.2021.
 - UPPCL has not objection for declaration of COD for Part capacity of 14 MW out of total 20 MW of Petitioner's Project, however, the same may not be treated as a precedent by Solar Power Developers against their open access customers.



11. During the hearing on 02.02.2021, Ms. Mazag Andrabi, Counsel of the Petitioner submitted the Petitioner may be allowed to declare COD for part capacity of 14 MW for its 20 MW plant. She further submitted that as and when the Solar irradiation/weather will improve, the Petitioner may also be allowed to declare the COD of such higher capacity as demonstrated.
12. Ms. Mazag Andrabi, Counsel of the Petitioner further submitted that furnishing BG is a very expensive exercise, as the Petitioner entails substantial amount of cost in terms of blocking of funds, availability of working capital, requirement of margin money, stamp duty, bank charges etc. In case a captive solar power developer defaults at the end of the year, then CSS ought to be recovered through raising of demand invoices. However, after getting instructions from her client, the Counsel submitted that the Petitioner is not inclined press upon this issue of Bank Guarantee anymore and the Commission may accordingly pass Orders.

Commission's Analysis and decision

The Commission has following two issues which have been pressed upon by the Petitioner during the hearing in the matter:

13. **Issue No.1: Part Commissioning of the Project capacity** The Commission has already issued a detailed procedure for declaration of COD in Amplus matter Petition No. 1517/2019 vide judicial order dated 22.07.2020 as follows:

12. *The Commission is of the view that synchronization of generation unit within the State Grid must be as per UPERC (Grid Code) Regulations 2007. The same is clear with the Regulations 4.8.5 of UPERC Grid Code, Regulations 2007. The relevant provisions of UPERC Grid Code Regulations 2007 are reproduced as below:-*

UPERC Grid Code Regulations 2007

"4.8.5 No generating units shall be synchronized with the State Power Grid without the necessary instructions from SLDC."

To declare COD, the generating unit need to demonstrate the generation capacity equal to installed capacity. In case of PPA with Discom, such demonstration must be as per the terms of PPA with Discom as provided in CRE Regulations, 6(i)(d). For



system security and safety, no generating unit shall be synchronized with the State Power Grid without the necessary instructions from SLDC and inject power into the Grid without declaration of COD.

13. *COD is the date when generating plant has demonstrated the installed capacity as per the terms of the PPA in case of plants having PPA with Discom, because under Section 86(1)(b) of Electricity Act, 2003, power procurement of the Discom is approved by the Commission and same cannot be in variance with the approved PPA. In case of third-party sale where there is no PPA or generator is selling the power at exchange, the installed capacity, for which the generator seeks COD, must be demonstrated. The same should not be an issue as there is historical data available with SLDC from the date of synchronization. Therefore, the Petitioner shall provide the generation data to the SLDC which shall be verified by SLDC from the data available with it and accordingly provide clearance for issuance of COD in accordance with the codes, practices and procedures and applicable Regulations and grant of connectivity. In view of intermittent generation from renewable energy projects, generating plant needs to demonstrate at least maintaining the peak corresponding to the installed capacity over one-time block of 15 minute for at least any three days within a continuous period of two weeks.*

14. The above procedure shall be applicable till the Commission frames specific guidelines / procedure in respect of commissioning and declaration of COD by Solar Projects. However, in the present case, the Petitioner has signed PPA with its customers and could not demonstrate the commissioning of Project capacity due to harsh weather conditions and is suffering losses on this account. Therefore, the Commission taking a pragmatic approach and promote renewable energy in the State of U.P., under the facts and circumstances of this case, is inclined to allow part commissioning of the Project and COD declaration thereof.

15. **As per MRI data as submitted by SLDC vide affidavit dated 22.01.2021, part capacity of 13.4569 MW has been demonstrated in terms of the Commission's order dated 22.07.2020, though the highest capacity demonstrated on 08.01.2021 is 14.5272. UPPCL vide its affidavit dated 20.01.2021 has consented for commissioning of part capacity of 14 MW. Therefore, the Commission approves the part commissioning of 14 MW on 08.01.2021 for the Petitioner's 20**



MW Solar Project. Further, the Petitioner can declare commissioning of 4 mw and 2 MW capacity as and when the same is demonstrated in accordance with the Commission's Order dated 27.07.2020 in Petition no. 1517/2019.

Issue No.2: Submission of Bank Guarantee and signing of WBA

16. Further, on the issue regarding submission of BG, the Commission observed that the interim procedure related to entering Banking and Wheeling agreement has been specified in the Commission's Order dated 27.07.2020 in Petition no. 1517/2019 as below:

..... The sequence for entering WBA with the Discom shall be as follows:

- Declaration of COD, which is essential for commercial operation of the Plant.*
- UPPCL to give format of bank guarantee format within two weeks and Petitioner to submit Bank Guarantee for an amount equal to applicable charges payable as per Regulations/ tariff order to UPPCL for the eventuality that petitioner fails to meet the captive generator status.*
- Signing of WBA agreement. The Petitioner shall also submit an undertaking stating that the WBA will be subject to the generating plant satisfying the conditions of the Captive Generating Plant.*

17. Moreover, the Petitioner has also submitted that it would not like to pursue the prayer of exemption from submission of Bank Guarantee. **Therefore, the procedure as stipulated in the Commission's Order dated 27.07.2020 in Petition no. 1517/2019 shall be applicable till the Commission frames any specific guidelines/procedure. The Petitioner may approach UPPCL for signing of WBA for 14 MW at present and subsequently separate WBA for the capacity of 4 MW and 2 MW as and when demonstrated in terms of Commission's Order dated 27.07.2020 in Petition no. 1517/2019.**

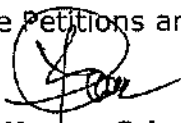
Commission's View

18. The Commission, in view of deliberations at Para 15 above, approves the part commissioning of 14 MW on 08.01.2021 for the Petitioner's 20 MW Solar Project. Further, as deliberated at para 17



above, the Commission of the view that the procedure as stipulated in the Commission's Order dated 27.07.2020 in Petition no. 1517/2019 shall be applicable till the Commission frames any specific guidelines/procedure and separate WBA shall be signed for each part capacity of 14 MW, 4 MW and 2 MW.

These Petitions are disposed of accordingly.


(Vinod Kumar Srivastava) (Kaushal Kishore Sharma) (Raj Pratap Singh)
Member (Law) Member Chairman

Place: Lucknow

Dated: 24.2.2021