

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No.: 15 of 2022

In the matter of:

Petition seeking extension of Control Period of the benchmark capital cost & generic tariff as approved by the Commission vide its order dated 11/05/2020, 30/09/2020 and 05/10/2020 till March 2023 for installation of Solar PV Power Plants under the scheme of Mukhyamantri Saur Swarojgar Yojna.

In the matter of:

Uttarakhand Renewable Energy Development Agency ... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd. ... Respondent

CORAM

Shri D.P. Gairola Member (Law)-Chairman (I/c)

Shri M.K. Jain Member (Technical)

Date of Hearing: April 19, 2022

Date of Order: May 05, 2022

This Order relates to the Petition dated 04.04.2022 filed by Uttarakhand Renewable Energy Development Agency (hereinafter referred to as "UREDA" or "Petitioner") under the provisions of Regulations 11, 12, 51 and 52 of the UERC (Tariff And Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources and non-fossil based Co-generation stations) Regulations, 2018 (hereinafter referred to as "RE Regulations, 2018"), dated 06.09.2018 to extend the Control Period of benchmark capital cost & generic tariff as determined by the Commission for solar energy based power projects vide its Order dated 11.05.2020, 30.09.2020 and 05.10.2020 for Solar PV Power Plants allotted under the "मुख्यमंत्री सौर स्वरोजगार योजना".

1. Background & Submission

- 1.1 UREDA, department of Renewable Energy, Government of Uttarakhand is a State Nodal Agency of Ministry of New and Renewable Energy (MNRE), Government of India for deployment of renewable energy and State Designated Agency (SDA) of Bureau of Energy, GoI for implementing various energy conservation activities and programmes in the State of Uttarakhand.
- 1.2 The Petitioner submitted that the Government of Uttarakhand issued Uttarakhand Solar Energy Policy, 2013 on 27.06.2013 and amendment thereto on 26.09.2018. Solar energy based power projects are proposed to be setup under four categories in the Solar Energy Policy, 2013. The first type is reserved for UPCL meeting its Renewable Purchase Obligation (RPO) under which the Solar power projects are selected through the tariff based competitive bidding process. The second type is for projects to be set up on private land for captive/3rd party sale/under REC mode. The third type is similar to the second type with a difference that under the third type Govt. land will be used and will be given to developer who will provide maximum free power per MW to GoUK. Solar projects under the Jawaharlal Nehru National Solar Mission, GoI will be set up under type four of Solar policy.
- 1.3 The Petitioner submitted that the Govt. of Uttarakhand in September 2020 launched मुख्यमंत्री सौर स्वरोजगार योजना, (hereinafter referred as 'scheme') for Self-Employment through Solar Farming and designated UREDA as the nodal agency for implementation of the scheme. Under the scheme 10,000 nos. of small solar power plants of 25 kW each shall be allotted. The primary objectives of the scheme includes offering self-employment opportunities to unemployed migrants who have returned to their home State, stop migration of workers from hilly and rural areas of the State seeking jobs outside their home district and the State of Uttarakhand, promotion of green and clean energy and fulfilment of Renewable Purchase Obligation.
- 1.4 The Petitioner submitted that the Commission vide its Order dated 05.10.2020 took note of the said scheme and has stated that under the said scheme solar plants having capacity 25 kW each shall be installed and UPCL shall procure the power generated from such plants at levelled generic tariff determined by the Commission for Solar PV Plants without applying competitive bidding process. Further, UPCL shall be eligible to meet its

Solar RPO requirement through the solar energy procured from the plants installed under the scheme.

- 1.5 The Petitioner submitted that at the time of launch of scheme, the technical condition specified that solar power plant having capacity of 25 kW shall be allotted at places having aerial distance of 300 meters (in hilly areas) and 100 meters (in plain areas) from 63 kVA and above capacity transformers installed by UPCL. However, due to lesser availability of 63 kVA and above capacity transformers in the hilly area of the State, there were delays caused in obtaining technical feasibility report (TFR) from UPCL. Thus, addressing the problem, the initial technical condition was modified vide government notification dated 25.01.2021 which specified that solar power plant having capacity of 20 kW shall be allotted at places having aerial distance of 300 meters (in hilly areas) and 100 meters (in plain areas) from 25 kVA and above capacity transformers installed by UPCL and solar power plant having capacity of 25 kW shall be allotted from 63 kVA transformers with similar aerial distance.
- 1.6 The Petitioner submitted that during the initial period of launch of the scheme, the interested participants faced difficulty in availing loans from State Co-operative and other Banks. UREDA, held several meetings with officials of State Level Banking Committee (SLBC) and directions were issued to the concerned officials and the issues were resolved. Further, issues with respect to Change of Land Use under Section 143 UPZALR Act was addressed by UREDA by asking all District Magistrates of the State to expedite the change of land use with respect to solar plants allotted under the said scheme.
- 1.7 The Petitioner submitted that second wave of Covid-19 pandemic grappled the entire nation during the period April, 2021 till July, 2021 and the implementation of said scheme was also badly hit during the said period. Further, due to the recently concluded State assembly elections in Uttarakhand, the Model Code of Conduct was in effect during the election period and for that reason too the implementation of the scheme got affected.
- 1.8 The Petitioner submitted that 1472 nos. of applications under the said scheme have been received in UREDA against which 781 Letter of Awards have been issued till the date of filing of the Petition, which goes on to state that there is a huge gap to cover for successfully achieving the target set out in the scheme.
- 1.9 Accordingly, the Petitioner requested the Commission to relax the order dated 07.06.2019,

11.05.2020, 30.09.2020 and 05.10.2020 and subsequently extend the Control Period of the prevailing benchmark capital cost and generic tariff till March 2023 for 10,000 nos. of grid connected Solar PV power plants of 25 kW capacity each and cumulative capacity of 250 MW. The following relief has been sought by the Petitioner:

- i) To admit the Petition.
- ii) To relax Commission's Order dated 07.06.2019, 11.05.2020, 30.09.2020 and 05.10.2020 and subsequently extend the Control Period of the prevailing benchmark capital cost & generic tariff as till March 2023 for cumulative capacity of 250 MW for 10,000 nos. of grid connected Solar PV plants having capacity of 25 kW each.
- iii) Condone any inadvertent omissions/errors/shortcoming and permit Petitioner to add/change/modify/alter the Petition and make further submissions as may be required at a future date.
- iv) Pass such further order, as the Commission may deem fit and proper keeping in view of facts and circumstances of the case.

2. Respondent's submissions

- 2.1 The Commission forwarded the copy of the Petition to UPCL for its comments, if any, in the matter. UPCL vide their letter dated 18.04.2022 submitted its reply to the Commission. The Commission has dealt with the reply of the Respondent in the subsequent paragraphs.
- 2.2 UPCL vide its letter dated 18.04.2022 submitted that the relief sought by the Petitioner cannot be granted as there is no provision under the Electricity Act, 2003 or the relevant regulations whereby any order passed by the Commission can be relaxed.
- 2.3 UPCL submitted that RE Regulations, 2018 mandates for determination of tariff for the Control Period and the Commission in discharge of the requirement of Regulation 11 of the RE Regulations, 2018 has already decided to lay down the norms for the benchmark capital cost for the Solar PV, Solar thermal and Grid interactive rooftop & small Solar PV plants and has also notified the draft Order dated 21.03.2022 laying down the generic tariff for the projects to be commissioned during FY 2022-23.
- 2.4 UPCL submitted that the tariff has to be realistic and should be relatable to the year of commissioning and also the facts that for past many years no revision in the benchmark capital cost was carried out, there is no reasonable justification to further extend the

benchmark capital cost prevailing for the past years to be further applicable in FY 2022-23.

- 2.5 UPCL submitted that the policies stated by the Petitioner pertains to the installation of the solar plants of the specified capacities and does not have correlation with the rates which will ultimately be governed according to the applicable tariff as per the year of the commissioning of the plant. There is no basis or reasoning for the Petitioner to seek extension in order to avail the benefit of higher tariffs when infact the statute mandates the tariff to be as per the year of commissioning.

3. Commission's Views & Decisions

- 3.1 Before going into the merits of the present Petition, it is worth mentioning that earlier UREDA vide its letter dated 09.02.2022 had requested the Commission to extend the Control Period of benchmark capital cost and generic tariff as determined by the Commission for FY 2019-20 till 31.03.2023. In the matter, the Commission directed the Petitioner to file a Petition before the Commission. Accordingly, the present Petition has been filed by UREDA under Regulation 11, 12, 51 and 52 of RE Regulations, 2018 seeking relaxation of the Commission's Order dated 07.06.2019, 11.05.2020, 30.09.2020 and 05.10.2020 and extension of the Control Period of the prevailing benchmark capital cost and generic tariff till March 2023 for 10,000 nos. of grid connected Solar PV power plants of 25 kW capacity each and cumulative capacity of 250 MW.

- 3.2 Regulation 11 of 12 of RE Regulations, 2018 specifies the Control Period and tariff & PPA period which are as follows:

"11. Control Period or Review Period

- (1) The Control Period or Review Period under these Regulations shall be of five years, of which the first year shall be the financial year 2018-19.*

Provided that the benchmark capital cost of Solar PV, Canal Bank & Canal Top Solar PV, Solar Thermal, Municipal Solid Waste based power projects, Refuse Derived Fuel based power projects and Grid interactive Roof Top and Small Solar PV projects may be reviewed annually by the Commission.

Provided further that the tariff determined as per these Regulations for the RE projects commissioned during the Control Period, shall continue to be applicable for the entire Tariff Period.

12. Tariff and PPA Period

- (1) *The Tariff Period for Renewable Energy power projects shall be equal to Useful life of the Project as specified in Regulation 3(1)(aaa) of these Regulations.*
- (2) *Tariff period under these Regulations shall be considered from the date of commercial operation or commissioning of the renewable energy plant.*
- (3) *The PPA shall be required to be executed with distribution licensee for the entire Tariff Period."*

As per aforesaid regulations, benchmark capital cost of solar energy-based power plants may be reviewed by the Commission annually. Further, tariff period shall be considered from the date of commercial operation of the plant.

3.3 The Commission vide Order dated 07.06.2019 reviewed the benchmark capital cost and generic tariff for the solar energy based solar power plants to be commissioned during FY 2019-20. Subsequently, the Commission vide Orders dated 11.05.2020 and 30.09.2020 taking cognizance of effects of COVID pandemic and non-availability of financial data pertaining to Solar PV modules, decided that the benchmark capital cost and generic tariff determined by the Commission for FY 2019-20 vide Order dated 07.06.2019 shall remain same for FY 2020-21. Subsequently, UREDA had filled a Petition before the Commission requesting to allow the applicability of generic tariff applicable for FY 2020-21 till March 2022 for upcoming 10,000 nos. of grid connected Solar PV plants having capacity of 25 kW each and cumulative capacity of 250 MW. In the matter, the Commission vide Order dated 05.10.2020 as one time exception allowed the extension of benchmark capital cost and generic tariff as determined by the Commission for FY 2020-21 till March 2022 taking cognizance of the fact that the said scheme was approved in September, 2020 by GoU and five to six month would be required for various activities such as promotion of the scheme, scrutiny of applications, site visit, feasibility report etc., before issuance of allotment letters (LoA) to the eligible applicants. Accordingly, it was assumed that the LoA will be issued by the end of March, 2021 and plant would be completed by the end of March, 2022 by successful bidders. The relevant extract of the Order dated 05.10.2020 is as follows:

"4.7... In the present case, the said scheme has been approved on 22.09.2020 by the Government of Uttarakhand and as per past practice followed by UREDA, six months may be required for various activities such as promotion of the scheme, scrutiny of applications, site visit, feasibility report etc., before issuance of allotment letters (LoA) to the eligible applicants. Accordingly, it is assumed that the

LoA will be issued by the end of March, 2021 positively to the eligible applicants for the development of Solar PV plants under the said scheme and as per Solar Energy Policy, 2013, schedule completion time for the solar PV projects is twelve months from the issue of LoA. Accordingly, successful bidders may commission their plants by March, 2022.

...

...

Accordingly, in the present case, the Commission as a one-time exception allows extension of benchmark capital cost and generic tariff applicable for FY 2019-20 (which has already been extended by the Commission till 31.03.2021 vide Suo-moto Order dated 30.09.2020) upto March, 2022 for upcoming Solar PV Power Plants having capacity of 25 kW each (cumulative capacity of 250 MW) under “मुख्यमंत्री सौर स्वरोजगार योजना” and also exempt them from bidding as small developers may not be in a position to bid the tariffs.”

3.4 As mentioned earlier in this Order, UPCL submitted that the Commission concurs with its views that the “मुख्यमंत्री सौर स्वरोजगार योजना” provides for only installation of Solar PV plants of specified capacities and does not have any correlation with the rates. The Commission agrees with the view of UPCL. The rates at which electricity generated from the Solar PV plants installed under the scheme will be governed according to the applicable tariff as per the year of commissioning of the plants. Moreover, it is explicitly clear from clause 2 of the scheme that year wise targets of Solar PV plants to be installed shall be decided after consultation with MSME and Finance Department with a view that total 10,000 nos. of Solar PV plants will be installed in the State of Uttarakhand under the said scheme. Accordingly, it would not be appropriate to extend the benchmark capital cost and generic tariff till the installation of 10,000 nos. of Solar PV plants under the scheme. It is worth mentioning that with the passage of time and up-gradation of technology in respect of solar projects, capital cost and financial parameters change. The tariff must be realistic and should be relatable to the year of commissioning of the plants.

3.5 Further, the Petitioner also relied on Regulation 51 and 52 of RE Regulations, 2018 which specifies as follows:

“51. Power to Remove Difficulties

If any difficulty arises in giving effect to these regulations, the Commission may, of its own motion or otherwise, by an order and after giving a reasonable opportunity to those likely to be affected by such order, make such provisions, not inconsistent with these regulations, as may appear to be necessary for removing the difficulty.

52. Power to Relax

The Commission, for reasons to be recorded in writing, may vary any of the provisions of these regulations on its own motion or on an application made before it by an interested person."

In the matter, it is pertinent to mention that with regard to extension of Control Period, Hon'ble Supreme Court vide its Judgement dated 25.10.2017 in the matter of Gujarat Urja Vikas Nigam Ltd. vs Solar Semiconductor Power Company Pvt. Ltd. stated that the exercise of power which has the effect of amending the PPA by varying the tariff can only be done as per statutory provisions and not under the inherent power referred to in the Regulations. The Control Period is not something prescribed by the Commission under the Conduct of Business Regulations. The Control Period is also not an order by the Commission for doing any act. Commissioning of a project is an act to be performed in terms of the obligation under the PPA and that is between the producer and the purchaser. Hence, the Commission cannot extend the time stipulated under the PPA for doing any act contemplated under the agreement in exercise of its powers under the Regulations. Therefore, there cannot be an extension of the Control Period under the inherent power of the Commission.

In view of the above discussions, the Petition filed by the Petitioner for extension of Control Period of the benchmark capital cost and generic tariff as declared by the Commission vide Order dated 07.06.2019, 11.05.2020 and 30.09.2020 is rejected. Accordingly Miscellaneous Application No. 15 of 2022 stands disposed of.

Further, it is to clarify that the tariff, as determined by the Commission for solar projects, prevalent/effective on the date of commissioning of solar power project shall be applicable for the supply of solar energy to UPCL.

3.6 Ordered accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)- Chairman (I/c)