

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 25 of 2019

In the matter of:

Petition for approval of Tariff rate revision from 70% CFA to Non CFA tariff rates for small solar plants, which already have 25 years PPA with UPCL under the “scheme for development of Grid Interactive Rooftop and Small Solar PV Power Projects-2016” for Residential/Institutional/Social Sector, published on 29.09.2016, under Jawaharlal Nehru National Solar Mission.

In the matter of:

M/s Akshay Urja Association

... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd.

Uttarakhand Renewable Energy Development Agency (UREDA)

... Respondents

CORAM

Shri D.P. Gairola Member (Law)

Shri M.K.Jain Member (Technical)

Date of Hearing: September 03, 2019

Date of Order: September 17, 2019

This Order relates to the Petition filed by M/s Akshay Urja Association (hereinafter referred to as “Petitioner”) under section 62 and section 86(1)(a) of the Electricity Act, 2003, Regulation 59 of UERC(Conduct of Business) Regulations, as amended from time to time and Regulation 51 & 52 of UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Station) Regulations, 2013 as amended from time to time seeking approval of tariff rates revision from 70% CFA to Non-CFA tariff rates for small solar power plants under PPAs executed under “Scheme for development of Grid Interactive Rooftop and Small Solar PV Power Projects-2016”.

1. Background & Petitioner's submissions

- 1.1. M/s Akshay Urja Association, a registered society under Society Registration Act, 1860, has filed instant Petition on behalf of the twelve developers who had been allotted projects under the "Scheme for development of Grid Interactive Rooftop and Small Solar PV Power Projects-2016" (hereinafter referred to as "Scheme") and willing to sell power to UPCL. The details of the applicants are as follows:

Table-1: List of Applicants

S. No.	Applicant	Capacity (in kW)
1	Vinod Bharadwaj	500
2	Gopal Batra	400
3	Neeraj	500
4	Mahipal Singh	500
5	Narendra Kumar	500
6	Ram Mehar Singh	500
7	Vidhyawati	500
8	Usha Singh	500
9	Rajendra Kumar	300
10	Vinay Kumar	500
11	Chandrakant Rawat	500
12	Neelu Jain	500

- 1.2. The Petitioner submitted that UREDA had invited expression of interest under the scheme for development of Grid Interactive Rooftop and Small Solar PV Power of capacity above 5 kW to 500 kW for Residential, Institution and Social sectors for cumulative capacity of 28.537 MW on tariff based competitive bidding under Type-I, i.e. Projects selected as per the competitive bidding process for selling power to Uttarakhand DISCOM for meeting their RPO Obligation as specified by UERC from time to time, under Uttarakhand Solar Power Policy, 2013.
- 1.3. The Petitioner submitted that as per Clause 19.1 of the tender document after receiving letter of allotment, the applicant was required to get the PPA signed with UPCL for sale of power for 25 years. In view of the aforesaid clause, PPA was executed with UPCL for supply of power from the proposed small solar PV plant of the respective applicant.
- 1.4. The Petitioner submitted that UREDA vide letter dated 24.04.2017 informed that as per the new directives received from MNRE, the installation of Rooftop Solar PV power plants was to be done on different building in residential, institutional and social sectors only and commercial buildings were not eligible for subsidy under the scheme. Subsequently, UREDA vide letter dated 08.05.2017 informed the applicants and the other bidders that MNRE had advised not to go ahead with the implementation under

Grid Connected Rooftop & Small Solar Power Plan Scheme till further directions from MNRE.

- 1.5. The Petitioner submitted that aggrieved by the decision of the Ministry, some of the applicants filled Petitions before Hon'ble High Court of Uttarakhand. The Hon'ble High Court disposed of the Writ Petitions giving liberty to the Government of India to carry out inspection of all the projects and either sanction the projects or limit the sanction of the projects to such an area where it was permissible under the law. Subsequently, in view of the judgment of the Hon'ble High Court, a Committee was constituted by MNRE, consisting of the members from MNRE, UREDA, National Institute of Solar Energy and revenue department of Uttarakhand to inspect all the rooftop & small solar projects allotted by UREDA under the said scheme.
- 1.6. The Petitioner submitted that after the inspection, UREDA vide letter dated 31.05.2019 informed some of the applicants that as per MNRE's direction no social or residential building was found at the proposed site, hence, the applicants should be excluded from the eligibility of CFA (Central Finance Assistance) and in case the applicants are willing to install the solar power plant without CFA, applicants may proceed to seek approval of the Commission for installation of small solar power plant as per prevailing RE Regulations.
- 1.7. The Petitioner submitted that its been almost more than two years since allotment of the project was made. Apart from the opportunity loss incurred due to unutilized premises, applicants have invested huge amount of money as well as time in mobilizing the projects. The Petitioner also submitted that the applicants had quoted a very low tariff rates in reverse bidding at the approved rates of the Commission for FY 2016-17 considering 70% CFA as per the tender documents. Accordingly, the Petitioner requested the Commission to allow non-CFA tariff rates as per prevailing RE Regulations.

2. Respondents' submissions and Petitioner's reply

- 2.1. The Commission had forwarded the copy of the Petition to UREDA and UPCL for its comments, if any, in the matter. UREDA and UPCL vide their letter dated 09.08.2019 submitted their reply to the Commission which were forwarded to the Petitioner for counter reply. The Petitioner vide its letter dated 02.09.2019 submitted its rejoinder. The

Commission has dealt with the reply and rejoinder of the parties in the subsequent paragraphs.

- 2.2. UREDA vide letter dated 09.08.2019 submitted that a investigation committee was formed to examine the Solar Power plants of all the successful bidders in compliance to the judgment dated 13.06.2018 of the Hon'ble High Court of Uttarakhand. After the investigation, MNRE vide its letter dated 29.04.2019 stated that Applicant under social and residential sector where no social/residential building was found at the proposed project sites of the respective applicants should be excluded from the eligibility of CFA. UREDA submitted that considering the aforesaid letter of MNRE the applicants are not eligible for CFA, the Commission may approve that tariff without subsidy for the small solar plants of the applicants.
- 2.3. UPCL vide its letter dated 09.08.2019 submitted that UPCL had signed the PPAs with the bidders selected by UREDA based on the Letter of Award (LoA) issued by UREDA. Since the LoAs stands cancelled, there is no relevance of PPAs as such.

In the matter, the Petitioner submitted that MNRE has excluded the projects of the applicants from the eligibility of CFA and it has maintained that with regard to applicability of commercial tariff (without subsidy), UREDA may approach the Commission. Further, stand of UREDA in the matter suggests that LoA issued to these projects have not been cancelled but only CFA will not be allowed.

- 2.4. UPCL submitted that UREDA had timely informed all the applicants about the change in MNRE policy. Further, PPA signed with the bidders has no provision to replace rates discovered through reverse bidding by higher tariff rates even on account of variation in CFA.

The Petitioner vide its rejoinder submitted that MNRE has not cancelled the allotments of the applicants. It has only considered the case for grant or refusal of subsidy to the solar plant developers. Further, tariff of each bidder were discovered through the reverse bidding conducted by UREDA considering 70% CFA. Now circumstances have changed and projects are not eligible for 70% CFA. Therefore, the terms of PPA regarding tariff are also bound to be changed.

3. Commission's Analysis and view

- 3.1. The present Petition has been filed under Regulation 51 and Regulation 52 of RE Regulations, 2013 seeking approval of revision of tariff rates from 70% CFA to Non-CFA tariff rates for small solar power plants of the applicants.

Regulation 51 and Regulation 52 of the RE Regulations, 2015 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.”

- 3.2. The Commission conducted a hearing on the merit of the Petitions on 03.09.2019. The Commission heard both the parties and carefully considered their written submissions. The Commission has critically analysed contentions of the Petitioner and the Respondents in the matter. After examining the relevant material available on records, issues raised by the Petitioner have been dealt in the subsequent paragraphs of this Order.
- 3.3. The Commission analysed the documents submitted by the Petitioner and observed that UREDA had invited bids to install Rooftop and Small Solar PV plants in the state of Uttarakhand under the scheme for “Development of Grid interactive Rooftop and Small Solar PV Power Projects- 2016”. The Applicants mentioned under Table-1 in Para 1.1 above had been issued LOA on 10.04.2017 alongwith other successful bidders for development of the Solar PV Plant under the said scheme. Subsequently, the applicants executed PPAs with UPCL at the rates determined through reverse tariff based competitive bidding considering 70% CFA.
- 3.4. With regard to the validity of the PPA, UPCL referring to UREDA's letter dated 31.03.2019 issued to the applicants stated that the applicants had been excluded from the eligibility of CFA and therefore, their allotment under the scheme were cancelled by UREDA. Hence, PPA executed with the applicants also stands cancelled.

In the matter, during the hearing, UREDA clarified that the LoAs issued to the applicants are still valid as far as installation of the projects is concerned, however, these project shall not be eligible for any financial support from the government under the said scheme.

The Commission has gone through the MNRE letter date 19.09.2017 and observed that MNRE had asked UREDA not to release subsidy to the applicants and approach the Commission to include the applicants under commercial tariff (without subsidy) category. Further, as per MNRE letter dated 29.04.2019, in compliance to the directions of the Hon'ble High Court of Uttarakhand, a committee was formed by MNRE consisting of members from MNRE, UREDA, NISE and revenue department of Uttarakhand to inspect all the sanctioned rooftop solar projects under the scheme and after the examination of the sites, the committee excluded the applicants from the eligibility of CFA. The Commission observed that MNRE had not recommended/directed UREDA vide any of its correspondence to cancel the allotment of any of the selected bidders. Further, UREDA during the hearing clarified that LoA is still valid, however, applicants shall not be entitled for any CFA. Accordingly, based on the above discussion, it can be concluded that the PPAs are still legally valid as cancellation of LoA was made one of the ground by UPCL for the PPA not in existence.

- 3.5. With regard to expenditure, it is to be noted that the Commission observed that about a month later from the issuance of LoAs to the respective applicants, UREDA vide letter dated 08.05.2017 directed all the selected bidders not to go ahead with the installation of the solar power plants. In the matter, it is to be noted that as per Uttarakhand Solar Energy Policy, 2013 as amended from time to time, the completion period to commission a solar project is twelve month from the date of issue of letter of award. Further, as per LoA, the initial milestone was the submission of copy of PPA with UPCL and work order/agreements with installation firm. Accordingly, most of the applicants had executed agreements with the installation firms and paid advances. Further, in the milestones specified for installation of solar power plant, no time duration had been specified for acquisition of land. Furthermore, supply & erection of Mounting Structure at site was to be done within 90 days from the issue of LoA. Accordingly, land related formalities/works were to be done expeditiously so that once the work orders/agreements are executed, the supply & erection of mounting structure at site can be

completed without any delay.

Accordingly, based on the above discussion, it can be understood that the applicants had incurred expenditure for acquisition of land and/or converting waste land suitable for installation of solar power plant and also made advances to the installation firms.

- 3.6. With regard to tariff rate, it is to be noted that the Commission has analysed the clause related to the Tariff i.e. Clause 2.1 of the existing PPAs executed between UPCL and selected bidders. The Commission observed that the applicants had offered a tariff rate ranging from Rs. 2.81/kWh to Rs. 3.80/kWh against the levelised/ceiling rate of Rs. 4.80/kWh as determined by the Commission vide suo-moto Order dated 16.06.2016 in the matter of review of the Benchmark Capital Cost for Solar PV, Solar Thermal and Grid Interactive Rooftop & Small Solar PV Plants to be applicable for FY 2016-17 and onwards till reviewed/revised by the Commission. Further, as per the said provision of respective PPAs, these rates of sale of power were applicable only if, the tariff determined by the Commission for Rooftop & Small solar power plants for the year of commissioning is higher than the rates agreed in the respective PPA. The Relevant clause of the existing PPAs is as follows:

“The Distribution Licensee shall accept all the power made available to UPCL system from Rooftop Solar Plant @/kWh as intimated vide letter no. after the bidding process conducted by UREDA. Moreover, this rate of sale of Power shall be applicable only if, the tariff determined for Rooftop Plant by UERC for the year of commissioning is higher than the rate agreed in this PPA otherwise the tariff determined by UERC will be applicable.”

In the matter, it is pertinent to mention that the rates offered by the applicants were quoted after taking into account 70% CFA supposed to be received from MNRE. However, as discussed in preceding paragraphs of this Order, the applicants have been removed from the category of the CFA. Accordingly, the scenario under which the tariff rates were quoted by the Applicants, i.e. rates with a subsidy of 70% of the capital cost, has changed and it would be inappropriate to apply the same rates when the applicants are desirous to develop the small solar power plant at their own without any financial support from the Central/State Government. Hence, based on the above discussion, the Commission is of the view that tariff related clause in the respective PPA needs to be amended.

Further, as far as tariff rate for the year of commissioning is concerned, it is to be noted that the Commission vide its Order dated 07.06.2019 has reviewed the benchmark capital cost and generic tariff for the Solar Energy based power plants for FY 2019-20 and the Commission has determined the net tariff of Rs 4.38/kWh after adjusting accelerated depreciation for the Grid interactive Rooftop & Small Solar PV plants having capacity above 100 kW and upto 500 kW for FY 2019-20.

Hence, based on its requirement of solar power to meet the RPO and considering the rate of generic tariff determined by the Commission for FY 2019-20, UPCL should enter into a revised PPA with these 12 generators in which clause 2.1 of the respective PPA be read as follows:

“The Distribution Licensee shall accept all the power made available to UPCL system from the Small Solar PV Plant @ 4.38/kWh as determined by the Commission for FY 2019-20. Moreover, this rate of sale of Power shall be applicable only if, plants get commissioned during FY 2019-20 otherwise the tariff determined for the year of commissioning will be applicable.”

- 3.7. Further, the Commission has observed that the respective PPAs were approved by the Commission in accordance with the provisions of RE Regulations, 2013. However, the same regulations have been superseded by the RE Regulations, 2018 w.e.f. 01.04.2018 onwards, therefore, necessary amendments are required to be made in the existing PPA's as per above discussion and in accordance with the provisions of RE Regulations, 2018.
- 3.8. UREDA is directed to issue revised LOA's for 70% to nil CFA & revised tariff to all the twelve applicants within 07 working days of the issue of this Order and UPCL to submit a copy of duly signed revised PPAs of all the twelve applicants within 10 working days of the issue of the revised LOA's by UREDA.
- 3.9. Ordered accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)