

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 38 of 2017

In the matter of:

Petition to extend the benchmark capital cost & generic tariff as decided by the Commission vide Order dated 16.06.2016 upto 31.01.2018 for Grid Interactive Rooftop and Small Solar Power Plants.

In the matter of:

Uttarakhand Renewable Energy Development Agency ...Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd. ...Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing : Sept. 15, 2017

Date of Order : November 22, 2017

The Order relates to the Petition filed by Uttarakhand Renewable Energy Development Agency (hereinafter referred to as "the Petitioner" or "UREDA" or "State Nodal Agency") seeking approval of the Commission to extend the benchmark capital cost and generic tariff as determined by the Commission vide its Order dated June 16, 2016 upto 31.01.2018 for Grid Interactive Rooftop and Small Solar Power Plants.

1. Background & Submissions

- 1.1 The Petitioner filed a Petition dated 28.08.2017 seeking further extension of the benchmark capital cost & generic tariff as determined by the Commission vide its Order dated 16.06.2016 upto 31.01.2018 which was earlier extended upto 30.09.2017 by the Commission vide its Order dated 16.05.2017 in respect of the Grid Interactive Rooftop and Small Solar Power Plants to be implemented under "Suryodaya Swarozgar Yozna" in the State of Uttarakhand.
- 1.2 The Petitioner is the implementing agency of "Scheme for Development of Grid Interactive

Rooftop and Small Solar PV Power Plant (upto 5 kW capacity) called as “Suryodaya Swarozgar Yozna” (hereinafter referred to as “Scheme”) with 90% subsidy (70% subsidy from MNRE and 20% subsidy from GoUK) in the State of Uttarakhand. The Scheme was announced in the month of March 2016, specifically for hilly regions of Uttarakhand having total capacity of 10 MW.

- 1.3 The Petitioner submitted that Govt. of Uttarakhand vide its Order no. 229/I/2016-03/02/2016 dated 14.03.2016 sanctioned the Scheme and selection of applicants was started by UREDA through vide publicity in newspaper. Under the Scheme 2000 applicants for projects having 4/5 kW capacity have been selected by UREDA on First Come First Serve Basis to create opportunities for income generation for financially weaker section of the society. Further, 30% of the target nos. was reserved for people who were below poverty line.
- 1.4 The Petitioner submitted that a MoU was signed with Punjab National Bank to provide loan to the beneficiaries of the scheme with 10% share of beneficiary. Thereafter, Ministry of New & Renewable Energy (MNRE), GoI sanctioned 70% CFA for “Suryodaya Swarozgar Yozna” vide no. 03/106/2015-16/GCRT dated 09.08.2016 in the month of August, 2016.
- 1.5 The Petitioner submitted that the empanelment of the Channel Partner & New Entrepreneur of MNRE for “Design, manufacture, supply, erection, testing and commissioning of Grid Interactive Rooftop and Small Solar PV Power Plants (up to 5 kWp capacity) including warranty & maintenance for 5 years” was done in the month of Sep-Oct, 2016 and 6 firms were empanelled through national level competitive bidding process. In the month of Oct, 2016 work orders were issued to the empanelled firms for installation of these plants by 15.02.2017.
- 1.6 The Petitioner submitted that the proposed installation of these plants were scattered in 11 hilly districts of Uttarakhand creating a challenge for approach to sites, material supply and early installation at these scattered sites.
- 1.7 The Petitioner submitted that UPCL has taken excessive time for meter procurement and testing of electrical meters. Further, there was shortage of meters in testing lab of UPCL which was resolved in the month of July, 2017 and testing in most of the districts have been completed. Further, due to imposition of GST in the month of July, 2017, the supply and procurement of material by the firms stopped for almost one month and under GST the

percentage of tax to be imposed on Solar Projects was not clear, due to which procurement of material got delayed by almost one to two months.

1.8 The Petitioner also submitted that due to heavy rain in the State especially in Pithoragarh and Chamoli district supply and installation of system stopped completely and connecting roads to major parts of the districts were blocked due to landslides. Some of the roads were open but were not safe for transport of the heavy panels and structures. The Petitioner submitted that the installation of remaining meters in the plants under the Scheme may take additional four months.

1.9 The Petitioner submitted that in view of the above circumstances the commissioning of these plants may take additional four months. The Petitioner submitted the status of the scheme as follows:

| S. N. | Task (target of 2000 nos.) | Status |
|-------|-------------------------------------|-----------|
| 1 | Registration of 2000 nos. applicant | 2000 nos. |
| 2 | Site Found Feasible | 1932 nos. |
| 3 | Grid Feasibility by UPCL | 1932 nos. |
| 4 | Signing of PPA with beneficiary | 1932 nos. |
| 5 | Installation of Solar Power Plant | 1221 nos. |
| 6 | Meter installation & sealing | 659 nos. |

1.10 UREDA submitted that the prevailing benchmark capital cost and levelised tariff of Rs. 3.95/kWh for excess energy fed into the grid for the plants under the Scheme was admissible till 30.09.2017 as per the Commission's Order dated 16.05.2017, however, the complete installation of plants under this scheme would take additional four months time beyond the deadline, i.e. 30.09.2017. The Petitioner also submitted that if the prevailing benchmark cost and levelised tariff of Rs. 3.95/kWh for excess energy fed into the grid for the remaining plants will not be admissible, the basic objective of the scheme to provide employment and generate earnings to the people living below poverty line in hilly region of the State will get affected and reduced.

1.11 The Petitioner submitted that the Scheme was being implemented as a pilot project for the first time and various new challenges, shortcomings and requirements arose at various intervals. Hence, the implementation of the programme was taking additional time to sort out the various hurdles. Accordingly, the Petitioner requested the Commission to allow the extension of applicability of the benchmark capital cost & generic tariff as determined by the Commission vide its Order dated 16.06.2016 upto 31.01.2018 which was earlier

extended upto 30.09.2017 by the Commission vide its Order dated 16.05.2017, as delay was not on the part of the beneficiary and was beyond the control of UREDA and efforts are being made to install all the systems as soon as possible.

1.12 The Respondent vide its letter dated 14.09.2017 submitted that Regulation 54 of CBR, 2014, under which the said Petition has been filed, pertains to review of certain Order but the same regulation allows the same to be filed within 60 days from the date of Order. Further, there are no grounds of review given in the Petition and hence, present petition under the aforesaid stated Regulation is not maintainable both on lack of ground and also lapse of defined time limits. Further that the relief sought by the Petitioner in Order dated 16.06.2016 is only for a special category and this cannot be permitted as the Order can be modified wholly and not partially.

1.13 The Respondent further submitted that the reasons for delay in implementation of the project as mentioned by the Petitioner in the Petition are mere reproduction of the grounds taken by the Petitioner in its earlier Petition which were foreseen at the time of allotment of the project like snowfall, elections and it is best if the projects would be allotted taking all the aspects in consideration for implementation. Further, with regard to installation of the meter and imposition of GST, the Respondent submitted that installation of meters is one of the last activity to be carried out and does not in any way contribute to delay in erection of plant, moreover there is no delay in installing the meter and imposition of GST can hardly be considered for causing delay in the procurement of material as the same should have been done well before the GST came into operation, the order of extending the benchmark capital cost was passed on 16.05.2017 and only four months time was given for commissioning of the projects. The Respondent has contended that the Petition is not maintainable since the reliefs sought by the Petitioner cannot be legally granted.

1.14 The Petition was heard on 15.09.2017 and during the hearing, the Petitioner reiterated its submissions and also submitted that total 1420 solar power projects have been installed and 902 plants have been connected to grid and metering is being done manually till the date of hearing. The Petitioner further submitted that all the projects under the Scheme would be commissioned by January, 2018 and requested the Commission for allowing applicability of tariff for such projects as determined by the Commission's order dated 16.06.2017. Subsequently, the Commission vide Order dated 15.09.2017 directed the

Petitioner to provide the complete list of the solar power projects covered under the said Scheme which have been installed with a copy to the Respondent and directed the Respondent to ensure timely installation of meters and sealing thereof of the completed projects based on the list provided by UREDA and also declare commissioning of such projects in accordance with the Regulations and report compliance to the Commission. The Petitioner vide its letter dated 18.09.2017 submitted district wise details of the solar plants completed under the Scheme till the date of submission. Further, the Respondent, in reply to the Commission directions, vide letter dated 27.10.2017 submitted that UREDA has provided 1929 nos. of Main meters to UPCL for testing and after testing, 1809 nos. of meters were found ok and returned to UREDA along with 1838 nos. of Check Meter. Further, with regard to installation of meters and sealing thereof of the completed projects based on the list provided by the Petitioner, the Respondent submitted that approx. 1431 nos. of plants have been commissioned and every possible effort are being made for commissioning of the projects. Further, the Respondent requested the Commission to allow one additional month for installation of meters and commissioning of the rest of the solar projects under the Scheme.

2. Commission's View and Decisions

2.1 Regulation 11 of the RE Regulations, 2013 specifies as under:

"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 2013-14.

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 (Useful life of the plant) as specified under Regulation 3(1)(nn). "

(Emphasis added)

2.2 In view of the above provision of the Regulations, benchmark capital cost of Solar based projects had been reviewed by the Commission vide its Order dated 16.06.2016 and the

generic tariff was determined based on the benchmark capital cost applicable for projects commissioned till 31.03.2017. Tariffs for Grid Interactive Small Solar PV Rooftop Plants with 90% level of subsidy had also been specified vide the aforesaid order. Accordingly, tariff for the projects under the Scheme was applicable for projects to be commissioned in FY 2016-17, i.e. upto 31.03.2017 and will remain applicable till further reviewed by the Commission in accordance with the Regulations.

2.3 Subsequently, the Petitioner vide its Petition dated 09.03.2017 sought extension of benchmark capital cost and generic tariff as determined by the Commission vide its Order dated 16.06.2016 upto 31.07.2017 for the projects to be installed under the Scheme based on the reasons that demonetization, Snowfall in winters, elections in the State delayed the commissioning of the projects. The Commission vide its Order dated 16.05.2017 had dealt with the reasons submitted by the Petitioner and allowed the extension of applicability of benchmark capital cost and generic tariff as determined in aforesaid Order up to 30.09.2017 with a directive to the Petitioner to ensure the completion of all the projects in future within the stipulated timeframe. The relevant extract of aforesaid Order is as under:

“2.7 Notwithstanding the failure to comprehend the provisions of the Regulations as well as specific directions of the Commission w.r.t. empanelment of the vendors, the Commission is of the view that the repercussions of misdeed of the Petitioner should not be passed on to the small project owner under the Scheme. In addition to promotion of solar plants in the State, one of the objective of the Scheme is to provide employment and in turn financial benefits to the residents of hilly region residing at rural far flung area of the State. Moreover, the Scheme is intended to benefit weaker section of the State. Hence, to allow benefits to the intended beneficiaries under the Scheme as discussed above, the Commission in exercise of its powers to relax and remove difficulties as specified in RE Regulations, 2013, hereby allows completion of all the projects latest by September, 2017 for applicability of tariffs as specified by the Commission’s Order dated 16.06.2016. Further, in accordance with the RE Regulations, 2013 proceedings for review of benchmark capital for FY 2017-18 is likely to be completed before the September, 2017. In this regard, it is hereby clarified that tariff approved vide the Commission’s Order dated 16.06.2016 shall continue to remain applicable for all such projects under the Scheme “Suryodaya Swarozgar Yozna” commissioned on or before 30.09.2017. However, in case of failure to achieve commissioning of the projects by September, 2017 the tariff for such projects shall be as determined by the Commission for FY 2017-18 based on the revised benchmark capital cost. Accordingly, the Petitioner is required to ensure necessary corrections in the respective PPA for projects likely to get commissioned after September, 2017 with

the intimation to the Commission

2.8 The Petitioner is cautioned to ensure completion of all the projects in future within the stipulated timeframe. Any delay beyond the specified timeline shall not be considered by the Commission and tariffs for such projects shall be based on the applicable tariff orders."

- 2.4 In the current Petition, the Petitioner has submitted that due to imposition of GST in the month of July and non-clarity regarding percentage of GST, there was delay of one to two months in procurement of material. In this regard, the Commission agrees with the contention of the Respondent that procurement of meters should have been done well in advance before the implementation of GST. Further, as far as the ambiguity regarding percentage of GST on the solar plant is concerned, it is to be noted that the GST council had fixed the rates to be applied on the Renewable energy devices in the GST council meeting held on 18.05.2017 which is prior to the implementation of GST. In view of the above, the contention of the Petitioner is not tenable.
- 2.5 The Petitioner has also submitted that the delay in installation of solar system was because of heavy rain in the State especially in Pithoragarh and Chamoli district due to which connecting roads to major parts of the districts were blocked. In support to the claim, the Petitioner has submitted newspaper cuttings. However, it is to be noted that the newspaper articles appear to be general weather condition of the State and not particularly regarding disaster in the Chamoli or Pithoragarh district. Further, UREDA vide submission dated 01.11.2017 submitted the status of installation of Solar Power Plant under the Scheme as on 10.10.2017 and as on 31.10.2017, i.e. period after the monsoon season. It is to be noted that there was no change in the status of installed solar power plants between aforementioned dates in the Chamoli and Pithoragarh district. It shows that the reason submitted by the Petitioner does not support its request for further extension of the benchmark capital cost and generic tariff determined by the Commission vide Order dated 16.06.2016 till 31.01.2018.
- 2.6 Further, the Petitioner in compliance to the Commission's Order dated 15.09.2017, submitted district wise list of 1420 nos. of Solar Power Plants completed by it vide its submission dated 18.09.2017. Subsequently, UPCL, vide its letter dated 27.10.2017 submitted that approximately 1431 nos. of Solar Power Plants have been commissioned under the Scheme. UPCL also submitted that UREDA had provided 1929 nos. of meters to

UPCL for testing and after testing 1809 nos. of meters were found ok and given back to UREDA along with 1838 nos. of check meters by UPCL. The Petitioner vide its submission dated 01.11.2017 submitted that only 1563 nos. of solar power plants have been installed till 31.10.2017.

2.7 In this regard, it is to be noted that UREDA is continuously pleading that they were not able to complete all the projects sanctioned under the Scheme within the timeframe allowed by the Commission vide its Order dated 16.05.2017 as procurement and testing of electrical meters by UPCL have taken excessive time and there was shortage of meters of UPCL in testing labs. However, as mentioned in aforesaid Para, UREDA has installed only 1563 nos. of Solar Power Plants against the tested/correct meters, i.e. 1809 sent back by UPCL. With regard to UREDA's plea that Solar Power Plants could not be erected within the timeframe allowed by the Commission due to non availability of meters with UPCL, it is pertinent to mention that erection/completion of Solar Power Plant and 'installation & sealing' of meter are different activities and non-availability of meters does not justify the delay in erection of Solar Plants. Non-availability would have been a reason only if the Petitioner had erected Solar Power Plants more that the number of meters tested and found ok by UPCL. However, UREDA has completed only 1563 nos. of Solar Power Plants till 31.10.2017 that shows the lackadaisical approach of the Petitioner towards the implementation of the Scheme.

2.8 It is pertinent to analyse the district wise list of solar plants installed and yet to be installed as submitted by UREDA and the same is reproduced hereunder:

Status of Implementation of solar power plant under Suryodaya Swarozgar Yozna as on 10.10.2017

| S. No. | District | Target | Installed | Remaining for Installation |
|--------------|-------------|-------------|-------------|----------------------------|
| 1. | Rudraprayag | 139 | 126 | 13 |
| 2. | Tehri | 250 | 236 | 14 |
| 3. | Dehradun | 113 | 113 | 0 |
| 4. | Uttarkashi | 132 | 84 | 48 |
| 5. | Champawat | 97 | 97 | 0 |
| 6. | Pithoragarh | 201 | 196 | 5 |
| 7. | Pauri | 223 | 213 | 10 |
| 8. | Nainital | 118 | 100 | 18 |
| 9. | Almora | 361 | 240 | 121 |
| 10. | Chamoli | 177 | 69 | 108 |
| 11. | Bageshwar | 120 | 57 | 63 |
| Total | | 1931 | 1531 | 400 |

Thus, as is evident from the above Table, the reasons submitted by UREDA that due to heavy rains in the State, especially in Pithoragarh and Chamoli district, supply and installation of solar plants stopped completely due to blockage of connecting roads to these districts does not hold good as in Pithoragarh district only 5 projects were incomplete and in Chamoli district 69 projects were already installed. When 196 projects could be installed in Pithoragarh, there is no reason why balance 5 could not have been installed. Further, no reason has been forwarded in respect of delayed projects in Almora and Bageshwar district. The grounds on which relief is sought namely GST and demonetisation etc., were equally applicable to other projects also which were installed within the stipulated time. The Petitioner had adequate time to get the materials on the site and erect all the remaining projects within the stipulated date, i.e. 30.09.2017 as the gestation period of solar PV rooftop projects is very less.

2.9 Moreover, Hon'ble Supreme Court in its Judgment dated October 25, 2017 in Civil Appeal No. 6399 of 2016 has held as under:

"However, the Commission is enjoined with powers to issue appropriate orders in the interest of justice and for preventing abuse of process of the Commission, to the extent not otherwise provided for under the Act or Rules. In other words, the inherent power of the Commission is available to it for exercise only in those areas where the Act or Rules are silent.

33. Under Regulation 81, the Commission is competent to adopt a procedure which is at variance with any of the other provisions of the Regulations in case the Commission is of the view that such an exercise is warranted in view of the special circumstances and such special circumstances are to be recorded in writing. However, it is specifically provided under Section 181 that there cannot be a Regulation which is not in conformity with the provisions of the Act or Rules.

34. Under Regulation 82, the Commission has powers to deal with any matter or exercise any power under the Act for which no Regulations are framed meaning thereby where something is expressly provided in the Act, the Commission has to deal with it only in accordance with the manner prescribed in the Act. The only leeway available to the Commission is only when the Regulations on proceedings are silent on a specific issue. In other words, in case a specific subject or exercise of power by the Commission on a specific issue is otherwise provided under the Act or Rules, the same has to be exercised by the Commission only taking recourse to that power and in no other manner. To illustrate further, there cannot be any exercise of the

inherent power for dealing with any matter which is otherwise specifically provided under the Act. 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 Regulations 80 to 82. In other words there cannot be any exercise of inherent power by the Commission on an issue which is otherwise dealt with or provided for in the Act or Rules...

37. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act.

38. Extension of control period has been specifically held to be outside the purview of the power of the Commission as per EMCO (supra). This appeal is hence, allowed..."

Thus, the plain reading of the Judgment of the Hon'ble Supreme Court clearly illustrates that when something is already specified in the Act or Regulations or Orders of the Commission, the Commission cannot exercise any inherent power. As per RE Regulations, 2013 the tariffs for solar projects are to be reviewed every year and once the Commission has through an Order laid down tariffs for projects to be commissioned during a financial year, the Commission cannot exercise its inherent powers and extend the tariffs if the commissioning of the projects get delayed.

2.10 Further, the Commission had already extended the generic tariff, i.e. Rs. 3.95/kWh applicable for FY 2016-17 till 30.09.2017 vide its Order dated 16.05.2017 for the projects to be established under the Scheme with a clear direction that in case of failure of UREDA to achieve commissioning of the projects by September 2017, the tariff for such projects shall be as determined by the Commission for FY 2017-18 based on the revised benchmark capital cost. Relevant extract of the Order dated 16.05.2017 is as follows:

"2.7 Hence, to allow benefits to the intended beneficiaries under the Scheme as discussed above, the Commission in exercise of its powers to relax and remove difficulties as specified in RE Regulations, 2013, hereby allows completion of all the projects latest by September, 2017 for applicability of tariffs as specified by the Commission's Order dated 16.06.2016. Further, in accordance with the RE Regulations, 2013 proceedings for review of benchmark capital for FY 2017-18. is likely to be completed before the September, 2017. In this regard, it is hereby clarified that tariff approved vide the Commission's Order dated 16.06.2016 shall continue to remain applicable for all such projects under the Scheme "Suryodaya Swarozgar Yozna" commissioned on or before

30.09.2017. However, in case of failure to achieve commissioning of the projects by September, 2017 the tariff for such projects shall be as determined by the Commission for FY 2017-18 based on the revised benchmark capital cost. Accordingly, the Petitioner is required to ensure necessary corrections in the respective PPA for projects likely to get commissioned after September, 2017 with the intimation to the Commission."

2.11 Subsequently, the Commission vide its Order dated 03.08.2017 has determined the revised benchmark capital cost and generic tariff thereof for the FY 2017-18 wherein Rs. 3.10/kWh is the tariff applicable for Grid Interactive Rooftop & Small Solar PV Plants. Further, as mentioned above, the Commission has clearly mentioned in its earlier Order dated 16.05.2017 that in case of failure to achieve commissioning of the projects under the Scheme by September 2017, the tariff for such projects shall be based on the generic tariff determined by the Commission for FY 2017-18 vide its Order dated 03.08.2017. Accordingly, based on the above, instant Petition filed by the Petitioner is hereby dismissed and rejected.

2.12 The Respondent is directed to ensure incorporation of necessary amendment in the respective PPAs for the projects which have either commissioned or will be commissioned after 30.09.2017 with regard to applicability of benchmark capital cost and generic tariff thereof applicable for FY 2017-18 as per Commission's Order dated 03.08.2017.

2.13 Further, Respondent (UPCL) has requested the Commission to allow one-month additional time for complying with Commission's directives issued vide Order dated 15.09.2017. In this regard, the Commission directs the Respondent to ensure installation of meters and sealing thereof within 2 weeks from the date of intimation regarding completion of the Solar Power Plant by UREDA and also declare commissioning of such projects in accordance with the Regulations. Also the Respondent is directed to submit fortnightly compliance reports to the Commission in the matter.

2.14 Ordered accordingly.

(Subhash Kumar)
Chairman