

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition no. 05 of 2018

In the matter of:

Application under Regulation 50 of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013.

In the matter of:

M/s Distributed Solar Power Association

M/s Amplus Solar Power Pvt. Ltd.

... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd.

Uttarakhand Renewable Energy Development Agency (UREDA)

... Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: January 23, 2018

Date of Order: June 27, 2018

This Order relates to the Petition filed by M/s Amplus Solar Power Pvt. Ltd. & M/s M/s Distributed Solar Power Association (hereinafter collectively referred to as "Petitioner") seeking relaxation under Regulation 50 of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 (hereinafter referred to as "RE Regulations, 2013") to permit establishment of rooftop based solar plants on net metering basis with capacity higher than 500 kW.

1. Background & Petitioner's submissions

- 1.1. M/s Distributed Solar Power Association is an association of solar power generating companies. The primary objective of the association is the development of distributed solar power generation including rooftop solar installations to ensure widespread growth of rooftop solar power in the country. M/s Amplus Solar Power Pvt. Ltd. is an independent Power Producer focussed on development of distributed solar plants across India.
- 1.2. The Petitioner submitted that National Electricity Policy dated January 2012 was issued with a special focus on creating an enabling environment for solar power generation. The Jawaharlal Nehru National Solar Mission was launched in 2010 with the target of deploying 20,000 MW of grid connected solar power by 2022. The National Electricity Policy and Jawaharlal Nehru National Solar Mission both lay down the overarching policy objective and goal of enhancing solar power generation in the country. The Petitioner also submitted that in line with the objective of promoting electricity generation through solar power the State of Uttarakhand has issued the Solar Energy Policy for Uttarakhand, 2013.
- 1.3. The Petitioner submitted that the Commission had issued RE Regulations, 2013 without capping on the size of the grid interactive rooftop & small solar PV plants. Subsequently, the Commission, based on the MNRE guidelines dated 26.06.2014, had put a ceiling of 500 kW on the capacity of grid interactive solar rooftop & small solar PV plants vide third amendment to the Principal Regulations, 2013.
- 1.4. The Petitioner submitted that MNRE had capped the maximum installed solar capacity to 500 kW for projects which wanted to avail capital subsidy due to limited funds and not on any technical ground, later MNRE all together withdrew the subsidy from commercial and industrial consumers vide notification dated 04.03.2016, therefore, the upper cap also stood removed. The imposition of an absolute restriction based on the capacity of the roof-top solar plant without any basis is arbitrary & unreasonable and such an approach would not be consistent with the principles enshrined in Article 14 of the Constitution of India.
- 1.5. The Petitioner submitted that Uttarakhand Solar Power Policy, 2013 is comprehensive and clear and simply does not contemplate any restriction of 500 kW limit in the

installed solar capacity on net metering basis. As per aforesaid policy, maximum capacity allocation will be 50 MW for each solar power developer. The policy makes it evidently clear that there is no restriction of 500 kW on the installed solar capacity on net metering basis. Hence, the limit provided for in the Regulations with respect to the capacity of the solar plants is contrary to the provisions of the said policy and such restriction needs to be relaxed so as to allow the solar power developers to install plants with capacity more than 500 kW.

- 1.6. The Petitioner submitted that in order to achieve the stated policy objective of increasing solar power generation, the regulatory framework should allow the solar power developers to establish and develop rooftop solar power plants of any size without any limits on the installed solar capacity for widespread acceptability of rooftop solar PV system across a large group of consumers. The Petitioner also submitted that any interpretation of the Regulations must be consistent with the objectives of the policy. The restriction on the size and capacity militates against the policy objective in the solar energy sector and therefore, should be relaxed.
- 1.7. The Petitioner submitted that regulations have been issued by the Commission in exercise of powers conferred under Section 61, 66, 86(1)(e) and 181 of the Electricity Act, 2003 (the Act, 2003). The manifest intention behind the regulations is the promotion of solar power generation in the State. Moreover, the powers conferred under the regulations would have to be exercised in a manner that best promotes this objective. Accordingly, consistent with the aim and object of the regulations, the power under Regulation 50 of RE Regulations, 2013 should be exercised to relax the arbitrary and irrational limit of 500 kW laid down on rooftop based solar PV plants established on net metering basis.
- 1.8. The Petitioner also submitted that UPERC in its Order dated 01.06.2017 recognised the need to grant relaxation on the limit of the installed solar capacity based in the particulars of the plant proposed to be setup and therefore, invoked its “power to relax” under RE Regulations, 2015 to relax the maximum limit of 1 MW on setting up solar plants under the Regulations and by applying the tests and the principles laid down in the said Order of UPERC, there is a strong case for granting a general relaxation in all cases where the aforementioned conditions are fulfilled.

- 1.9. The Petitioner submitted that the consistent policy of the GoI and GoUK has been to promote solar power. The National Electricity Plan emphasises the need for greater solar power and the need for incentivising generation of solar power. The Petitioner also submitted that Rooftop based solar plants form an important part of the Government's electricity policy. The plan also recognises the constraints faced in the generation of solar power due to high cost of real estate and lack of expertise amongst the owners. An important means to bridge these constraints is through promotion of the Third Party Model under which the rooftop area is leased by the operator rather than being owned by it. The imposition of a stringent 500 kW capacity limit on rooftop solar plants established under the regulations would act as a hindrance to the realisation of the full solar power potential of the State.
- 1.10. The Petitioner also submitted that MNRE has issued a Concept Note on performance based incentive scheme for Discoms for expeditious development of Grid Connected Rooftop Solar Power plants whereby the consumer should be allowed to inter-connect a rooftop solar PV system with capacity upto 100% of its contract demand/sanctioned load.
- 1.11. The Petitioner submitted that Odisha Electricity Regulatory Commission has not put any cap on the capacity of solar installation at a particular consumer level as long as it is within the limit of the connected load/ 75% of transformer capacity. Further, Delhi Electricity Regulatory Commission has not put any restriction on the limit of the installed solar capacity for net metering. The Petitioner also submitted that Tamil Nadu Electricity Regulatory Commission has issued Order dated 13.11.2013 which clearly indicates that there is no restriction on the upper limit for the installed solar capacity of rooftop plants on net metering basis.
- 1.12. The Petition was heard on 23.01.2018. The Commission admitted the Petition and directed UPCL to submit reply in the matter. Subsequently, on the submission of the reply by UPCL, the Petitioner has submitted its rejoinder. Submissions of the Petitioner, UPCL and UREDA have been dealt in the subsequent paras.

2. Respondent's submissions and Petitioner's reply

- 2.1. UREDA vide its letter dated 19.01.2018 submitted that MNRE vide guideline dated 26.06.2014 has allowed the maximum capacity of 500 kW for the grid connected rooftop

solar power plant and subsequently, vide order dated 04.03.2016 has decided the fraction of subsidy applicable for different type of consumers and under the said order, commercial & industrial establishment are not being provided subsidy from MNRE. UREDA also submitted that the GoUK vide its notification no. 591/I/2013-03/05/2013 dated 13.05.2013 has approved Uttarakhand Grid Connected Rooftop and Small Solar Power Plant Scheme under net-metering basis wherein the maximum capacity allowed for the grid connected rooftop solar power plant under the said scheme is 500 kW.

- 2.2. UPCL submitted that the Petitioner has mixed up the case of promotion of solar generation with the issue of relaxation of 500 kW limit on 'Grid interactive rooftop and small solar PV plants' while limit of 500 kW does not prohibit any generator including the Petitioner to establish its plant as normal Solar PV Power Plant. Therefore, the contention of the Petitioner that limit of 500 kW is a bottleneck for the development of solar generation is fundamentally flawed.

In reply, the Petitioner submitted that the reason for seeking relaxation of the limit of 500 kW on all rooftop solar power plants acts as a significant roadblock to setting of solar plants in the State. This limit had initially been inserted on the basis of Clause 3.2 of MNRE Guidelines dated 26.04.2014, i.e. to enable the solar generators to avail the capital subsidy from MNRE. The Commission referring the said guidelines put a ceiling cap of 500 kW on the maximum capacity of the solar power plants and the only justification for capping the limit was the subsidy under MNRE Guidelines which no longer exists. As on date, MNRE has withdrawn the subsidy and there is no capacity limit in MNRE's guidelines. Accordingly, the purpose of the capacity limit no longer exists and therefore, there is a strong case for passing a general order of relaxation in respect of the said limit.

- 2.3. UPCL submitted that the Commission in its letter has clarified that provisions of RE Regulations, 2013 and amendments thereof do not apply in the case of the Petitioner as the Act, 2003 allows the generating company or person to construct, maintain or operate a captive generating plant and dedicated transmission lines and such plants will be commissioned for captive use only. Further, any relaxation in any provision of any Regulation can be executed through due and laid down procedure and not through petition. UPCL also submitted that the Petitioner can install solar plants as per

Regulation 33 of RE Regulations, 2013 and the limit of 500 kW as provided in Regulation 35 nowhere proves to be a bottleneck in the development of solar power.

In reply, the Petitioner submitted that the stand taken by UPCL is erroneous since the Petitioner has followed due process by invoking Regulation 50 of RE Regulations, 2013 and it is praying for a general order of relaxation and are not seeking any amendment in the regulations. The Petitioner also submitted that the Commission is fully empowered to grant a relaxation under Regulation, 50 of RE Regulations, 2013 which power is distinct and different from the Commission's legislative power/function of carrying out amendments.

- 2.4. UPCL submitted in view of the existing provisions of RE Regulations, 2013 and its amendment thereof read with provisions of the Act, 2003 and Electricity Rules, 2005 the relaxation of limit of 500 kW on 'Grid interactive rooftop and small solar PV plants' as provided in Regulation 35(2) is not permissible to the Petitioner. Further, said limit nowhere prohibits the development of solar generation in the State. Solar plants can be installed under Regulation 33 of RE Regulations, 2013.

In reply, the Petitioner submitted that the restriction on the upper limit of a rooftop solar power plant acts as a hindrance to the promotion and growth of solar energy generation in the State as all IPPs seeking to establish plants of capacity higher than 500 kW will be impeded and will not be able to setup their plants. The Petitioner submitted that UPCL has completely misunderstood the issue and has wrongly stated that the contention of the Petitioner for promotion of solar generation has no linkage with the issue as to relaxation of capacity limit. The relaxation sought in the present Petition is fully justified and is directly connected with the promotion of solar power generation.

3. Commission's Analysis and view

- 3.1. The present Petition has been filed to seek relaxation under Regulation 50 of RE Regulations, 2013 to permit establishment of rooftop based solar plants on net metering basis with capacity higher than 500 kW. The Commission has gone through all submission made by the Petitioner as well as Respondents. The Commission has dealt with the submission of the parties in the subsequent paras.
- 3.2. With regards to capping of installed capacity of the rooftop based solar PV plants, Regulation 35 (2) specifies as follows:

“35. Grid interactive roof top and small solar PV plants

(1) xxx

(2)Roof-top Solar PV sources can be installed for injecting into the distribution system of a licensee by any Eligible consumer.

Provided, the maximum installed capacity of rooftop PV solar power plant & small solar PV plant at the premises of eligible consumer shall not be more than 500 kW.”

Further, Regulation 50 of RE Regulations, 2013 specifies as follows:

“50. Power to Relax

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

The Petitioner submitted that the ceiling of maximum installed capacity of rooftop solar PV power plant would be a barrier in the development of the solar renewable energy in the State of Uttarakhand, and had, therefore requested the Commission to invoke Regulation 50, i.e. Power to Relax of RE Regulations, 2013 to remove such ceiling limit on the installed capacity under net metering arrangement. The Commission has dealt with the submission of the Petitioner in the subsequent paras.

- 3.3. As mentioned earlier, the Petitioner referred Section 61, 66, 86(1)(e) and 181 of the Act, 2003 and submitted that the manifest intention behind the Regulations is the promotion of solar power generation in the State.

In this regard, it is to be noted that besides promotion of co-generation and generation of electricity from renewable sources of energy the provision of Section 61 of the Act, 2003 obligates to take into consideration the factors which would encourage competition, efficiency, and investments while specifying the terms and conditions for determination of tariff. Further, under section 86(1) of the Act, 2003, one of the function of the Commission enshrined under the said Act is to specify or enforce standards with respect to quality, continuity and reliability of service by licensees. Accordingly, apart from the promotion of co-generation and generation of electricity from renewable sources of energy, the Commission is required to encourage efficiency, enforce standards with respect to quality, continuity and reliability of service of licensees. It is also to be noted that in compliance to MYT Regulations applicable from time to time, the

licensee is required to submit power procurement plan for the business plan period. In case net metering is allowed upto the sanctioned load of a consumer, it will be difficult for licensee to project energy requirement for the ensuing years which will affect licensee's ARR. Moreover, unexpected injection of power into the licensee's grid may result in grid instability, disturbance which will affect the quality, continuity and reliability of service provided by the licensee.

- 3.4. The Petitioner submitted that a concept note had been issued by MNRE in 2017 on 'Performance based Incentive Scheme for DISCOMs for expeditious development of Grid Connected Rooftop Solar Power Plants whereby the consumer should be allowed to interconnect a rooftop solar PV system with capacity upto 100% of its contract demand/sanctioned load.

MNRE vide its letter dated 18.12.2017 issued a concept note to bring Discoms to the forefront in implementation of RTS by providing them financial support and has sought comments from stakeholders. The Commission has analysed the draft concept note dated 18.12.2017 and it appears that the same has not yet been finalised, however, the capacity of the solar roof top project has been limited to 2 MW. The Commission will take a final view in the matter once the same is finalised by MNRE.

- 3.5. The Petitioner has repeatedly referred to the Solar Energy Policy for Uttarakhand, 2013 stating that as per the said policy, maximum capacity allocation will be 50 MW for each solar power developer and the policy does not contemplate any restriction of 500 kW limit in the installed solar capacity on net metering basis. In this regard, it is to be noted that the following types of projects are covered under the said policy:

Type I: 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.

Type II: Projects set up on private land for captive use or sale of power to 3rd party within or outside the state or project setup on private land under Renewable Energy Certificate (REC) Mode.

Type III: Projects set up on Government Land for captive use or sale of power to 3rd party within or outside the state or project set up on Government land under

Renewable Energy Certificate (REC) Mode.

Type IV: Solar Power Projects established under Jawaharlal Nehru National Solar Mission Programme of MNRE, Govt. of India.

It can be observed from the aforementioned types of projects covered under the policy that projects under Type I are to be selected through competitive bidding which will sell power to Discom only for the purpose of meeting RPO Obligation whereas under Type-II and Type-III projects are to be developed on private land and government land respectively for captive use or sale of power to 3rd party and under Type-IV projects are to be set up under Jawaharlal Nehru National Solar Mission Programme of MNRE. The policy provides either to supply entire power to Discom or to supply power to 3rd party or for captive consumption. Moreover, Jawaharlal Nehru Nation Solar Mission Programme provides for solar power plants capacity development in line with the targets planned under the Mission.

However, the RE Regulations have been framed to facilitate development of Rooftop Solar Plants for supply of power to the discom under the net metering arrangement and the capacity restriction of 500 kW provided therein was so envisaged keeping in view the MNRE guidelines in this regard for rooftop solar projects and also considering the grid conditions in the State so that excess power from these rooftop solar installations is fed into the licensee's grid.

- 3.6. Further, the Petitioner has submitted that to achieve the objectives of the policy for increasing solar power generation, the regulatory framework should allow the solar power developers to establish and develop rooftop solar power plants of any size without any limits on the installed solar capacity for widespread acceptability of rooftop solar PV system across a large group of consumers.

In this regard, it is to be noted that the Commission has put a ceiling for the grid interactive rooftop and small solar PV plants in case of net metering only and reasoning for the same has already been given in above paras of this Order. However, the Commission is of the view that the cap/ceiling on the installed capacity for grid connected rooftop small solar PV plant as provided in Regulation 35 shall not be applicable in case the generation from such plant, which is either a generating plant or a captive generating plant, is entirely for captive consumption by the industry/consumer

in whose premises such solar plant is installed and no any generation whether balance/surplus/residual is fed or allowed to be fed in to the licensee's grid. Accordingly, the Commission vide its Order dated 20.06.2018, taking cognizance of the Section 10 read with Section 42 of the Act, 2003, has allowed M/s Amplus Solar Power Pvt. Ltd to supply entire power from its 3.60 MW capacity rooftop solar PV plant established on the rooftop of M/s Asahi India Glass Ltd. (Industry consumer) to be consumed by it without any injection of power into the grid.

- 3.7. The Petitioner, referring to the Regulations & Orders issued by other States, submitted that there is no such capping on the installed capacity of rooftop solar PV plants in other States. The Petitioner also submitted that the imposition of an absolute restriction based on the capacity of the roof-top solar plant without any basis is arbitrary & unreasonable and such an approach would not be consistent with the principles enshrined in Article 14 of the Constitution of India.

It is to be noted that regulations are issued by the State Electricity Regulatory Commission's based on the geographical conditions, consumer mix, policies framed at State/ Central Government level and taking cognizance of other factors within the State. Further, as far as inconsistency with Article 14 of the Constitution of India is concerned, it is to be noted that the Petitioner has failed to justify how the ceiling limit specified by the Commission for net metering is against the Article 14 of the Constitution of India. Moreover, the capping specified by the Commission under Regulation 35 for net metering arrangement is equally applicable to all the consumers of the State who propose to install Rooftop Solar either on their own or through a 3rd party irrespective of their contracted sanctioned load, nature of consumption of electricity etc.

Furthermore, with regard to the request of the Petitioner seeking relaxation under regulations 50 of the aforesaid Regulations, the Hon'ble APTEL in the matter of Ratnagiri Gas and Power Pvt. Ltd. v. CERC & Anr. (Appeal No. 130/2009) dated 25.3.2011 enunciated upon the cause and need for relaxing the regulations by the Commission. Relevant para of the said order is reproduced hereunder:

"18.1 The Regulations of the Central Commission and the decisions of the Tribunal and the Supreme Court confer the judicial discretion to the Central Commission to exercise power to relax in exceptional case. However, while exercising the power to relax there should be sufficient reason to justify the

relaxation and non-exercise of discretion would cause hardship and injustice to a party or lead to unjust result."

- 3.8. On examining the Petition and the subsequent submission made by the Petitioner and on the basis of above discussion, it is observed that since the Petitioner has failed to establish the merits of the submissions by it, the question of hardship & injustice to the party, relevant for considering relaxation in regulations, is immaterial and hence, the thought of seeking relaxation in regulations is farfetched. In view of the above discussion, the Commission does not find any merit in the submission of the Petitioner and hereby decides to reject the Petition.
- 3.9. Ordered accordingly.

(Subhash Kumar)
Chairman