

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 06 of 2019

In the matter of:

Petition seeking permission to set up Solar Power Plant of capacity 50 MW at Village Adhar Mafi, Kujyadi, Dehli in District Almora, Uttarakhand, for sale of electricity by Van Panchayat Adhar Mafi/Adhar Mafi Prabandhan Samiti, Government of Uttarakhand.

In the matter of:

Sh. Nayan Pant, Sarpanch, Van Panchayat Adhar Mafi/
Adhar Mafi Prabandhan Samiti, Almora

... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd.

Uttarakhand Renewable Energy Development Agency (UREDA)

... Respondents

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: April 02, 2019

Date of Order: April 08, 2019

This Order relates to the application filed by Van Panchayat, Adhar Mafi/Adhar Mafi Prabandhan Samiti, GoUK (hereinafter referred to as "Petitioner") under Regulation 11, 49 and 50 of UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2013 (hereinafter referred to as "RE Regulations, 2013") seeking permission to setup Solar Power plant of cumulative capacity of 50 MW at village Adhar Mafi, village Kujyadi, village Dehli in District Almora, Uttarakhand on Net-metering basis for captive use.

1. Background & Petitioner's submissions

- 1.1. The Petitioner submitted that it is a society of Government of Uttarakhand and is a consumer of electricity for the purposes of consumption of electricity in the villages of gram sabha Adhar

Mafi, Kujyadi, Dehli and Jyoli, District Almora, Uttarakhand.

1.2. The Petitioner submitted that GoUK vide its notification no. 1044/I/2013-5/14/2009 dated 27.06.2013 had issued Uttarakhand Solar Power Policy-2013 with a target to install 100 GW Solar Power Projects by year 2022. The Solar Power Projects proposed to be setup under the aforesaid solar policy are categorized in four types as under:-

- The first type is reserved for UPCL for meeting their Renewable Purchase Obligation (RPO) targets and the projects will be selected through the tariff based competitive bidding process.
- The second type relates to 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 shall provide maximum free power per MW to the Government of Uttarakhand.
- Solar projects under Jawaharlal Nehru National Solar Mission, GoI will be setup under type four of solar policy.

1.3. The Petitioner submitted that it is willing to set up Solar Power Plant of 50 MW under third type category of the Solar Power Policy, 2013 to fulfil its requirement for consumption of electricity. The Petitioner submitted that it has possession of 55 hectare land at village Adhar Mafi, 30.50 hectare of land at village Kujyadi, 40.70 hectare land at village Dehli and 30 hectare land at village Jyoli in District Almora. The Petitioner also submitted that it is willing to make available its aforesaid land to a qualified and eligible developer selected through a tender process for the installation/commissioning and maintenance of the Solar Power Plants. The developer shall bear the entire cost of the Solar Project and shall supply the electricity to it at a settled rate. Further, it shall be agreed between the Petitioner and eligible developer by way of an agreement which shall come into force at a later date to operate the Solar Power Plant for a period of 25 years. The ownership of the Solar Power Plant shall be transferred by the eligible developer to the Petitioner after the said period of 25 years.

1.4. The Petitioner also submitted that the electricity generated from Solar Power Plant shall be transmitted into the grid maintained and operated by UPCL. All electricity Bills raised by UPCL shall be adjusted in accordance to the units of electricity generated from the proposed

Solar Power Plant fed into the UPCL system.

- 1.5. The Petitioner submitted that it had approached UREDA and the Hon'ble Power Secretary, GoUK in the matter. In progression of the same, UREDA by the instruction of Hon'ble Power Secretary questioned regarding the status of the Van Panchayat which had been answered in due course. The Petitioner submitted that it is a Government society and is setting up a project on government land by pooling the nearby waste land for development of the rural area, a consensus was arrived in the meeting held on 30.11.2018 by the members present in the meeting that due permission from the Commission shall be taken to setup a Solar Power Plant of capacity 50 MW. Consequently, it was also agreed that permission from Government of Uttarakhand shall be sought in the matter and a petition will be submitted before the Commission requesting to set up 50 MW power plants in Type 3 of Solar Power Policy, 2013.
- 1.6. The Petitioner also submitted that there is no opportunity of industrialization and employment generation in the area proposed for the project. This has lead the area to be a heavily migration prone zone. For the proper illustration even gram sabha Adhar Mafi was 100% migration prone gram sabha till 2015 until some revolutionary initiatives were started by it.
- 1.7. The Petitioner also submitted that the technical opinion and recommendation of UPCL in respect to the proposed Solar Power Plant is still pending. Further, UREDA suggested it to get the approval of the Commission and UPCL for setting up 50 MW Solar Power Plant and to avoid any complications that may arise at the time of seeking grid connectivity and purchase of electricity.
- 1.8. The Petitioner further submitted that the generation of Solar Energy in the State of Uttarakhand is deficient in as much as the RPO (Renewable Power Obligation) target is not achieved annually and therefore UPCL requires electricity from Solar Energy to be transmitted into the Grid from the proposed Solar Plant of the Petitioner. Further, the need of the hour is shifting from conventional sources of generation of power to more sustainable means such as renewable energy sources. Generating electricity from renewable energy offers significant public health benefits and is in interest of the protection of the environment. Setting up of 40 MW Solar Plant by the Petitioner is in the interest of the State of Uttarakhand and the Country overall keeping in view India's international commitments.
- 1.9. The Petitioner submitted that the Commission vide its Order dated 29.08.2018 in Misc. Application no. 57 of 2018 and previously in 2015 had considered the similar Petitions of UJVN

Ltd. and Irrigation Department, GoUK to utilise government land for the purpose of setting up of solar power plants under Type 3 of the Solar Power Policy, 2013 and the electricity generated from Solar Power Plant would be for captive use of the Petitioner and will be transmitted to the grid of UPCL on net metering basis.

- 1.10. The Petitioner submitted that a Project Feasibility Report for Rs. 275 Crore has been prepared to set up the proposed solar power plants and 91.60 MUs of electricity would be generated. The electricity so generated from the proposed power plants shall be used for captive consumption and will be transmitted to the grid of UPCL on net metering basis.

2. Respondents' submissions

- 2.1. UREDA vide its letter dated 19.03.2019 submitted that the Commission should take cognizance of the fact that whether the Petitioner was a recognized government organisation and whether the permission from the revenue department, GoUK has been taken for utilisation of land to develop the proposed Solar Power Plant. UREDA also submitted that the Petitioner should ensure that the utilisation of the revenue from sale of electricity from such proposed plant shall be in accordance with the Van Panchayat Rules, 2005 (amendment 2012).
- 2.2. UPCL submitted that the Petition has been filed under Regulation 11, 49 & 50 of RE Regulations, 2013 which pertains to removal of any difficulty and power to relax the provisions in the Regulations, however, no such relief has been claimed. Further, the Petition has been filed under Regulation 9, 10 & 54 of UERC (Conduct of Business) Regulations, 2014 wherein Regulation 54 pertains to review, however, in the present Petition no grounds for review have been provided. UPCL also submitted that the Petitioner has requested to set up Solar Power Plant of 50 MW capacity under Type-III of Solar Power Policy, 2013 which does not include the RPO requirement of UPCL. UPCL also submitted that the Petitioner has stated that technical opinion and recommendations of UPCL are still awaited in respect to the proposed Solar Power Plant, however, no communication so far has been done by the Petitioner with UPCL. UPCL submitted that the Petitioner has stated to generate power for captive consumption on net metering basis. In this regard, the Petitioner neither explained any such status nor such net metering is permissible.

3. Commission's Analysis and view

- 3.1. The present Petition has been filed by Van Panchayat, Adhar Mafi/Adhar Mafi Prabandhan

Samiti, Government of Uttarakhand under Regulation 11, 49 & 50 of RE Regulations, 2013 seeking permission of the Commission to set up Solar Power Plants at village Adhar Mafi, village Kujyadi, village Dehli and village Jyoli in District Almora having cumulative capacity of 50 MW. The Commission has gone through all the submission made by the Petitioner as well as the Respondents. The Commission has dealt with the submission of the parties in the subsequent paras.

In the matter, the Commission would like to mention that the Commission has notified UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2018 (hereinafter referred to as "RE Regulations, 2018") for the RE plants to be commissioned on or after 01.04.2018 whereas RE Regulations 2013 were applicable upto 31.03.2018. Accordingly, if the proposed Solar Power plant is developed, the same shall be governed by the provisions of RE Regulations, 2018.

- 3.2. The Commission has gone through the submissions of the Petitioner and observed that the Petitioner vide Para 3.7 read with Para 3.9 of the Petition has requested the Commission to allow the development of proposed Solar Power Plant under Type-III with the adjustment of the bills raised by UPCL with electricity generated from the proposed Solar Power Plant fed into the grid.

Here it is to be noted that as per the Solar Policy, 2013 notified by the State Government, the Solar Power Plants proposed to be setup under the Policy are categorized in four types which are as follows:

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

Further, with regard to Type-III, Solar Power Policy, 2013 specifies that Government of Uttarakhand/UREDA shall invite proposal from the prospective developers who are willing to setup Solar Power Plant on Government Land in the State of Uttarakhand and offer maximum free power to the Government and remaining power shall be used for captive use or sale to 3rd party or for REC purpose.

In this regard, it is worth mentioning that the Petitioner's proposed Solar Power plant does not fall under the Type-III category of the Solar Power Policy, 2013 as the Solar Power Policy, 2013 does not refer to the net metering mechanism under Type-III projects and the said policy states about the sale of power to the third party and not to the Discom, i.e. UPCL whereas the Petitioner is willing to sell energy generated from the proposed Solar Power plant to UPCL under net metering arrangement.

3.3. Further, with regard to net metering, Regulation 36(2) of RE Regulations, 2018 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 that the maximum Rooftop Solar PV and Small Solar PV plants installed capacity at any Eligible Consumer's premises shall be upto a maximum of 80% of consumer's sanctioned load/contract demand;

Provided that in case of Domestic Consumer, such installed capacity of Roof Top and Small Solar PV Plant shall be irrespective of consumer's sanctioned load/contract demand;

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 1 MW."

In accordance with the aforesaid Regulation, Solar PV plant having installed capacity upto 1 MW can be installed under net metering arrangement. Accordingly, Petitioner's request to adjust the units of electricity generated from the proposed Solar Power Plant having capacity of 50 MW against the electricity bills raised by UPCL cannot be accepted.

3.4. The Petitioner has stated that the Commission has considered the similar matters of UJVN Ltd.

and Irrigation department to utilise government land for purpose of setting up solar power plant under category Type-III of Solar Power Policy, 2013.

As far as approval to UJVN Ltd. for development of solar power plant is concerned, the Commission would like to mention that first proviso of Regulation (2)(3) of RE Regulations, 2013 specifies as follows:

“Provided, implementation of Canal Bank and Canal Top Solar PV Plants by the eligible government organisation (as specified by MNRE) may also be done through tariff based bidding process. In such cases PPA for sale of power from these plants, implemented through tariff based bidding process, shall be signed with distribution licensee at a tariff which shall be 10% higher than the tariff quoted by L-1 bidder.”

Here it is pertinent to mention that UJVN Ltd. was allowed to develop Canal Bank & Canal Top Solar PV Plants in accordance with the provisions of RE Regulations, 2013. Further, entire solar power generated from such plants is being sold to UPCL without any net metering arrangement.

Further, with regard to the Commission’s Order dated 29.08.2018 in the matter of Irrigation Department for development of Solar Power plants, it is to be noted that Irrigation Department approached the Commission requesting for the relaxation of ceiling limit specified in the RE Regulations for net metering. The Commission vide its Order dated 29.08.2018 had rejected the application made filed by Irrigation Department and advised it to enter into a PPA with UPCL for sale of the entire power generated from proposed Solar Power Plant without any arrangement of net metering. Relevant extract of the Order dated 29.08.2018 is as follows:

“3.5 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 Petition in light of the provisions of the Act/Regulations, 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. However, as discussed above, the Petitioner may consider commissioning a solar PV plant and sign a PPA with UPCL for injection of power generated from such generating plants into the grid”

3.5. The Petitioner vide Para 3.7 and Para 3.8 of the Petition has submitted that it is willing to make available the land to a qualified and eligible developer selected through a tender process for

the installation and maintenance of the Solar PV plants who will sell power generated from such plant to the Petitioner at settled rates to fulfil Petitioner's requirement for consumption of electricity. Further, vide Para 3.9 of the Petition, the Petitioner submitted that all the electricity bills raised by UPCL shall be adjusted against the units of electricity generated and supplied to UPCL. Furthermore, the Petitioner has also submitted that the production of Solar Energy in the State of Uttarakhand is deficient in as much as the RPO targets is not achieved annually and therefore, UPCL requires electricity from Solar Energy to be transmitted into the Grid from the proposed Solar Plants of the Petitioner. Accordingly, it requested the Commission to permit the development of proposed plants on net metering basis.

The Commission observed that there is contradiction/ambiguity in the statements of the Petitioner in the present Petition. It appears from Para 3.7 and Para 3.8 of the Petition that the Petitioner is willing to develop Solar Power plant under category of Type-III of the Solar Power Policy, 2013 wherein entire power will be purchased at a settled rate from the eligible developer selected through a tender process for development of proposed Solar Power plant on the land available with the Petitioner to fulfil its requirements for consumption of electricity whereas vide Para 3.9 of the Petition, the Petitioner stated that all the electricity bills raised by UPCL shall be adjusted in accordance to the units of electricity generated from the proposed Solar Power plant. In this regard, the Commission is of the view that the proposal made by the Petitioner before the Commission is ambiguous and not in accordance with the provisions of Solar Power Policy, 2013 as well as RE Regulations, 2018.

Further, the Commission appreciates the concern of the Petitioner regarding RPO targets of the licensee and utilisation of the vacant land under the possession of the Petitioner for development of Solar PV plant. However, as discussed above, the RE Regulations have put a ceiling on maximum installed capacity for Grid interactive rooftop and Small solar PV plants under net metering model. Therefore, Solar Power plant having capacity more than 1 MW cannot be allowed to be developed under net metering arrangement.

Notwithstanding the net metering model, taking cognizance of the concerns raised by UREDA regarding applicability of provision and rules specified by various authorities w.r.t. utilisation of land & revenue generated from use of such land, the Commission is of the view that the Petitioner may get the solar PV plant developed in accordance with the Solar Power Policy, 2013 as amended from time to time and in accordance with the provisions of the RE

Regulations, 2018 provided that the Petitioner is not barred by any authority for commercial utilisation of land. Further, the Petitioner may approach UREDA for technical as well as administrative support for the development of the proposed Solar Power plant and subsequently the Petitioner may approach UPCL for entering into a Power Purchase Agreement with UPCL for the supply of entire solar power to be generated from such plant, in case UPCL intends to purchase such power, provided that in no case, PPA for purchase of power by UPCL shall be executed at the tariff exceeding the ceiling tariff as specified by the Commission from time to time in accordance with the prevailing Regulations.

- 3.6. On examining the Petition and on the basis of above discussions, it is observed that since the Petitioner has failed to establish the merits of the Petition in light of the provisions of the Act/Regulations, the question of hardship & injustice to the party, relevant for considering relaxation in regulations, is immaterial and hence, the intention 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. However, as discussed above, the Petitioner may consider commissioning a solar PV plant and sign a PPA with UPCL for injection of the entire power generated from such solar Power plants into the grid.
- 3.7. Ordered accordingly.

(Subhash Kumar)
Chairman