

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Appl. No. 22 of 2022

In the Matter of:

Petition seeking grant of permission to connect 33 kV dedicated line from 15 MW Captive Solar Power Plant to the stepdown side of 132/33 kV switchyard of Kashi Vishwanath Steels Pvt. Ltd. at 33 kV level so that continuous support essentially required from the grid for reference voltage and frequency for synchronization of grid tied solar inverters be obtained.

And

In the Matter of:

M/s Kashi Vishwanath Steels Pvt. Ltd.,
Narain Nagar Industrial Estate,
Bazpur Road, Kashipur-244713

...Petitioner

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In the Matter of:

- (1) Uttarakhand Power Corporation Ltd. (UPCL),
VCV Gabar Singh Urja Bhawan, Kanwali Road, Dehradun
- (2) Power Transmission Corporation of Uttarakhand Ltd. (PTCUL),
Vidyut Bhawan, Majra, Dehradun
- (3) State Load Dispatch Centre (SLDC),
'Vidyut Bhawan', Majra, Dehradun
- (4) Uttarakhand Renewable Energy Development Agency (UREDA),
Urja Park Campus, Industrial Area, Patel Nagar, Dehradun

...Respondents

Coram

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

Shri M.K. Jain Member (Technical)

Date of Hearing: July 27, 2022

Date of Order: August 22, 2022

ORDER

This Order relates to Petition filed by M/s Kashi Vishwanath Steels Pvt. Ltd. (hereinafter referred to as "M/s KVSPL" or "the Petitioner") in the matter of grant of

connectivity of 33kV dedicated line from its proposed 15 MW Captive Solar Power Plant to the stepdown side of 132/33kV switchyard of M/s KVSPL at 33kV level in order to obtain continuous support essentially required from the grid for reference voltage and frequency for synchronization to operate grid tied solar inverters.

Background

2. M/s KVSPL is an industrial unit located in Kashipur Uttarakhand and is involved in the business of manufacturing product such as TMT bars and allied products (including angles, channels, square, beams). The Petitioner is a consumer of Uttarakhand Power Corporation Limited (hereinafter referred to as "UPCL" or "the Distribution Licensee" or "Respondent No. 1") and having a contracted load of 21,500 kVA and is accessing power from Power Transmission Corporation of Uttarakhand (hereinafter referred to as "PTCUL" or "Respondent No. 2") over the existing 132kV transmission line and having arrangement of 132/33kV Switchyard with 35 MVA power transformer at its factory. The Petitioner is also an Open Access Consumer of UPCL and is an obligated entity, i.e. it is obligated to purchase a minimum percentage of its total electricity requirement from renewable energy sources under the Uttarakhand Electricity Regulatory Commission (Compliance of Renewable Purchase Obligation) Regulations, 2010.
3. The Petitioner in its Petition has submitted that it is planning to install a 15 MW Captive Solar PV Power Plant at village Girdhaiyi, Aliganj Road, Kashipur, which has an arial distance of approx. 12 KM from the factory of the Petitioner. The Petitioner has submitted that the Solar Power Plant shall be installed under the Type-II projects defined in the Uttarakhand Solar Energy Policy 2013 and having installed the said plant will help it meet its Renewable Purchase Obligation.
4. Further, the Petitioner has requested for connectivity to evacuate the power from its proposed 15 MW Captive Solar Power Plant at 33 kV with dedicated line and connect it at existing stepdown side of 132/33 kV switchyard of Kashi Vishwanath Steels Pvt. Ltd at 33kV level in order to obtain continuous support essentially required from the grid for reference voltage and frequency for synchronization to operate grid tied solar inverters. Furthermore, the Petitioner submitted that it has already requested UPCL and PTCUL vide its letters dated 20.04.2022. In response,

PTCUL reverted by advising it to seek clarification from UPCL for connectivity as the evacuation voltage is at 33 kV, whereas, UPCL did not respond.

5. Besides above, the Petitioner has submitted that it fulfills all requirements of a Captive Generating Plant in accordance with Law and under Relief Sought has requested the Commission to :-

“ii) To grant permission to connect 33kV dedicated line from 15MW Captive Solar Power Plant to the stepdown side of 132/33kV switchyard of Kashi Vishwanath Steels Pvt. Ltd. at 33kV level so that continuous support essentially required from the grid for reference voltage and frequency synchronization to operate inverters be obtained.

iii) In view of usage of dedicated lines for carrying of electricity solely for captive consumption in the Petitioner’s existing steel factory, the transmission and wheeling charges be exempted for the petitioner.

iv) In view of the provisions of UERC Open Access Regulations, cross-subsidy surcharge and additional surcharge be exempted for the Petitioner.”

6. Accordingly, on receiving the Petition, the Commission decided to make PTCUL, SLDC and UREDA as Respondent No. 2, Respondent No. 3 and Respondent No. 4 in the matter respectively. The Commission vide its letter dated 25.06.2022 issued notices for hearing on admissibility to the Respondents, and also forwarded the copy of the Petition to the Respondents directing them to submit their reply on the same before the Commission latest by 01.07.2022 and appear during hearing on admissibility on 11.07.2022.

7. Subsequently, the Petitioner vide letter dated 07.07.2022 requested the Commission seeking adjournment in the matter. Accepting the request, the Commission decided to hear the matter on 27.07.2022 and informed the same to the Respondents vide its letter dated 08.07.2022.

8. Respondent No. 2, i.e. PTCUL vide its letter dated 05.07.2022 submitted that it has no comment on the instant Petition because generation of Solar power plant is not proposed to be connected to its system and matter mostly pertain to UPCL and UREDA.

9. Respondent No. 3, i.e. SLDC vide its letter dated 05.07.2022 submitted that it has no comment on the instant Petition.

10. Respondent No. 4, i.e. UREDA vide its letter dated 11.07.2022 submitted that:-

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1. M/s Kashi Vishwanath Steel Pvt. Ltd. द्वारा दायर याचिका के बिन्दु संख्या 3.3 के अनुसार याचिकाकर्ता द्वारा कैपटिव यूज हेतु 15 मे0वा0 का ग्रिड कनेक्टेड सोलर पी0वी0 पावर प्लान्ट उत्तराखण्ड सौर ऊर्जा नीति के Type- II category के अन्तर्गत स्थापित किये जाने हेतु, अवगत कराया गया है।
2. उत्तराखण्ड सौर ऊर्जा नीति-2013 (संशोधित-2018) Type-II category के अन्तर्गत निर्धारित प्रक्रिया के अनुसार उक्त संयंत्र की स्थापना से सम्बन्धित याचिकाकर्ता के स्तर से वर्तमान तक, उरेडा को कोई सूचना संसूचित नहीं है। उत्तराखण्ड सौर ऊर्जा नीति-2013 (संशोधित-2018) की प्रति सुलभ संदर्भ हेतु संलग्न की जा रही है।
3. याचिकाकर्ता द्वारा अपनी याचिक में कैपटिव यूज हेतु 15 मे0वा0 का ग्रिड कनेक्टेड सोलर पी0वी0 पावर प्लान्ट हेतु अंकित अन्य बिन्दु यू0पी0सी0एल0 से सम्बन्धित है। जिन पर उरेडा स्तर से टिप्पणी प्रेषित किया जाना अपेक्षित नहीं है। ”

11. Respondent No. 1, i.e. UPCL vide its letter dated 21.07.2022 submitted that:-

“

- (1) *The Petitioner has not correctly stated the provisions in the petition under which the relief as has been sought by the petitioner can be granted, moreover the provisions which have been sighted by the petitioner do not apply considering the nature of the relief sought in the matter.*
- (2) *The Petitioner has barely made the submissions regarding its desire to set up a generating plant, no authentic documents or supporting documents have been filed which could establish the firmness of their desire, the steps taken by them towards its achievements or the status at present, further the petitioner has not even filed the resolution of the board authorizing the activities to the company.*
- (3) *The rules and the regulations do not permit the relief sought by the petitioner.*
- (4) *The petition is based upon expectations and desires and it seems that the petitioner wants to fish out a mechanism in advance so that he may plan the execution accordingly. It is humbly submitted that the regulations require the petitioner to*

have a specific cause of action on which the petition can be filed. However, petitioner has no cause of action to file the petition.

(5) *That the Petition is totally based upon the concept of assumption of a captive generator which actually does not exist. Hence a question of any dispute between the generator and the distribution licensee does not arise. Neither the Petitioner has in its Petition disclosed any dispute, hence also the Petition is not maintainable.*

...

(9) *That the petition is not legally maintainable & not admissible and is liable to be dismissed."*

12. On the scheduled date of hearing, the Commission heard the Petitioner and Respondents in the matter on admissibility of the Petition which was argued vociferously by the Respondents.

13. The representative of the Petitioner during hearing reiterated its submission in the Petition and requested that if the Commission gives an approval to the Petitioner with assurance that the charges such as Cross Subsidy Surcharge, Additional Surcharge, Transmission and Wheeling charges shall not be applicable to it, the Petitioner shall then proceed with installing the plant and will file necessary permissions/approvals from the concern departments/authorities. Further, he submitted that they have already purchased a land of approx. Rs. 10 crores for the purpose of 15 MW Solar Power Plant at Kashipur.

14. During the hearing, Respondent No. 1, i.e. UPCL reiterated its submission and submitted that the Petitioner has barely made the submissions regarding its desire to set up a generating plant, no authentic documents or supporting documents have been filed which could establish the firmness of their desire, the steps taken by them towards its achievements or the status at present.

Further, UPCL submitted that the Petition is based upon expectations and desires and it seems that the Petitioner wants to fish out a mechanism in advance so that he may plan the execution accordingly. The Regulations require the Petitioner to have a specific cause of action on which the Petition can be filed. However, Petitioner has no cause of action to file the Petition.

Moreover, The Petition is totally based upon the concept and assumption of a captive generator which actually does not exist. Hence a question of any dispute between the generator and the distribution licensee does not arise. Hence, the Petition is not maintainable.

Further, UPCL submitted that its role in the sector is not to provide any consultancy/ guidance to the RE generators and so it has not responded to the letter of the Petitioner requesting it to guide in the matter of connectivity of its proposed 15 MW captive RE generator.

Furthermore, UPCL submitted that its submission is limited to admissibility only and therefore has not raised its concerns on merits of the Petition.

15. During the hearing, Respondent No. 3, i.e. SLDC submitted that it does not have any comments in the matter.
16. During the hearing, representative of Respondent No. 4, i.e. UREDA submitted that the proposed Power Plant of the Petitioner falls under Type-II category defined under Uttarakhand Solar Energy Policy, 2013 and that it does not have any information w.r.t. the plant of the Petitioner as it has not submitted any information to it in this regard. Further, he submitted that as per aforesaid Solar Policy a captive RE generator is required to take approval from GoU/UREDA once the bids are invited by the Government/UREDA.

Commission's Observation, Views & Decision

17. At the very outset, it is imperative to clarify that since the hearing conducted was on admissibility of the Petition and submissions made by the parties were also heard and examined in the same light, this order too will limit its course and scope to the question of admissibility.
18. The Petitioner vide the Petition has requested the Commission seeking permission for connecting its proposed 15 MW Captive Solar Power Plant with the network of Respondent No.1 and Respondent No. 2 for the purpose of reference voltage and frequency synchronization and for that the Petitioner had already approached the said Respondents.

19. In the same breath, Petitioner has also sought clarification and assurance that it be exempted from payment of charges such as cross subsidy surcharge, additional surcharge, wheeling charges and transmission charges post establishment of its Captive Power Plant.
20. In the first rush of read, request/arguments of the Petitioner seemed quite reasonable, however, on examining closely, it is realized that the desire of Petitioner to install the proposed plant is a future proposition which may or may not exist and therefore, renders us to think if cause of action really exists/arise in the matter, a question raised and mooted well by the counsel of Respondent No. 1.
21. To address this, let us examine the issue in the matter, Petitioner has submitted the Petition primarily on two counts; First, it needs connectivity with the network of Respondent No. 1 and Respondent No. 2 and second, it needs assurance from this Commission for non-applicability of charges mentioned supra. On its first request, it is to be clarified that question pertaining to connectivity will arise only when there are sound evidence of installation of a power plant furnished by Petitioner, that foremost includes intimation to the State's renewable nodal agency UREDA and grant of necessary approvals from the Government/UREDA as prescribed under the Uttarakhand Solar Power Policy 2013. The said Policy is the governing/guiding document for the State's upcoming solar generators.

As per Uttarakhand Solar Policy 2013, the aforesaid proposal of M/s KVSPL falls under Type-II, for which approval from GOUK/UREDA is required as per Clause 6, Clause 8 (b) & Clause 16 as stated below: -

“6. Type of Solar projects under the Policy

...

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.

...

8. Selection of Solar Power Developers

...

(b) **Type II Projects:**

*Under this type, any prospective developer can establish solar power projects (Solar PV/Solar Thermal) on Private land. GoUK/UREDA shall invite proposals from the prospective developers who want to setup Solar Power project on private land in the State of Uttarakhand. Prospective developers shall submit their proposals with all the required information/documents as per the application form available in **Annexure-I**.*

Under this type, solar power projects to be installed in the state of Uttarakhand shall be eligible for incentives.

...

16. Procedure for Allotment of Project:-

I. *For each type of projects, GoUK/UREDA shall invite proposals from interested developers through advertisement in News Papers in accordance with the Procurement Rules of the Govt. of Uttarakhand from time to time.*

*The developers interested in Type-II projects will submit the application to GoUK/UREDA in the prescribed Form as appended with the Policy at **Annexure-I** and ...*

II. *The proposals received within stipulated time frame from the prospective developers under each type of projects shall be scrutinized and shortlisted by the Technical Appraisal Committee (TAC) formulated by GoUK/UREDA based on the prescribed financial and technical qualification criteria as per **Annexure-III**.*

III. *The list of shortlisted prospective developers under each type of projects shall be published on the website of GoUK/UREDA.*

IV. *The Allotment of the project to the prospective bidders shall be done by the Project Approval Committee (PAC) as per following: -*

...

ii. **Under type-II project:**

The project will be allotted to the shortlisted prospective developers."

22. Mere procurement of land, as submitted by Petitioner during hearing, does not certify that installation of plant will necessarily occur in future. What is vivid from examining submissions of Petitioner is that it only desires to establish a power plant and needs a go-ahead from this Commission. However, we do not question the intent of Petitioner regarding its ambition to install the plant, however, we would like to specifically comment that judicial workings do not work this way.
23. On the second request of the Petitioner asking the Commission to clarify and assure it exemption from payment of charges stated supra, it is observed that the Regulations are explicit, loud and clear. It clearly defines who should pay the charges and who shall be exempted, clarification on the Regulation are necessary only when there exists any ambiguity in either interpretation or applicability of the Regulations. We do not see any such concern of Petitioner.
24. Moreover, reiterating what is stated in above paras, this Commission cannot assure something which is not legally existent. The question pertaining to exemption of charges will arise only when there will be a plant approved by appropriate authority and will have an existence. We reject request of Petitioner on this score too.
25. Besides above, it is observed that the Petitioner has filed the Petition under Section 9, Section 42 and Section 86 of the Electricity Act, where Section 9 allows any person to establish a Captive Power Plant, Section 42 provides for the duties of the distribution licensee under the Act and Section 86 lists out functions of the Commission including promotion of generation of electricity from Renewable Energy sources by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.

In this regard, as far as promotion of RE generation, connectivity, sale of electricity and RPO are concerned, the Commission has already included suitable provisions for the same in UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2018 and UERC (Compliance of Renewable Purchase Obligation)

Regulations, 2010 and amendments thereof. However, the Petitioner has not succeeded in substantiating that any infringement of the provisions/rights given in the aforesaid Regulations has taken place. Moreover, the Petitioner has failed to clarify that whether there has been curtailment of his right which compelled it to approach this Commission and filed the instant Petition. Rather, the Commission has observed that the Petitioner has directly approached the Commission without doing its homework of taking necessary approvals from GoU/UREDA and in a way is seeking a blanket approval on hypothetical grounds from the Commission.

In order to attain rights through judicial decree, there must be a cause of action in the matter. If cause of action is absent, there is no necessity for court to proceed with the matter.

26. In this regard, Hon'ble Supreme Court has explained cause of action in the Judgements 'In the case of Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust (2012) 8 SCC 706 of the Hon'ble Supreme Court', 'In A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem (1989) 2 SCC 163, the Hon'ble Supreme Court' and 'In the case of Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner (2004) 3 SCC 137 in paras 11 and 12' the Hon'ble Supreme Court had observed that for calling upon the powers of a judicial forum, party evoking the same must establish if a legal injury is incurred or there is a perceived risk/threat of injury in future, however, same has to be established on sound grounds and not illusionary apprehension. In order to attain rights through a judicial decree, there must be a 'cause of action' in the matter.
27. Further, Petitioner without exhausting its legal procedural remedy as provided in Uttarakhand Solar Policy, 2013 has approached the Commission for decision on a plant which as of now is non-existent in the eyes of nodal agencies, i.e. GoU/UREDA. The Commission do not find any good reason to evade the prevailing RE Policy in the State and give its decision in the matter by assuming that RE plant exists when the same has not even been approved by GoU/UREDA. Therefore, it would be unconscionable for us to allow this Petition particularly since, as said before, there appears no cause of action as the Petition is a result of a premature thought which has not even conceived well on papers and has landed

straight for our examination when there is nothing to examine and has been filed without exhausting/adopting the correct procedures/remedies available for the same.

28. The Petition does not qualify admission and is hereby rejected. Further, whenever a 'cause of action' would arise the Petitioner may approach appropriate forum for the same.

Ordered accordingly.

(M.K. Jain)
Member (Technical)

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