

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 13 of 2022
&
Misc. Application No. 14 of 2022

In the matter of:

Petition under Section 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 seeking extension of time for commissioning of the Solar project of M/s Parihar Constructions.

AND

In the matter of:

Petition under Section 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 seeking extension of time for commissioning of the Solar project of Saraswati Devi.

In the matter of:

M/s Parihar Construction

Saraswati Devi

... Petitioners

AND

In the matter of:

Uttarakhand Power Corporation Ltd.

Power Transmission Corporation of Uttarakhand Ltd.

Uttarakhand New and Renewable Energy Development Agency

... Respondents

CORAM

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

Shri M.K. Jain **Member (Technical)**

Date of Hearing: April 19, 2022

Date of Order: May 05, 2022

This Order relates to the two separate Petitions filed by M/s Parihar Construction and Saraswati Devi (collectively hereinafter referred to as "Petitioners") under Section 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 seeking extension of time for commissioning of the Solar

generating projects of each Petitioner. Both the Petitions are of similar in nature; therefore, the Commission decides to club both the Petitions.

1. Background & Submission

- 1.1 The Petitioners submitted that UREDA, department of Renewable Energy, Government of Uttarakhand is a State Nodal Agency of Ministry of New and Renewable Energy (MNRE), Government of India for deployment of renewable energy and State Designated Agency (SDA) of Bureau of Energy, GoI for implementing various energy conservation activities and programmes in the State of Uttarakhand.
- 1.2 M/s Parihar Construction is in the process of establishing 4 MW solar capacity under 8 different PPAs, each of 0.50 MW capacity, executed with UPCL on 27.03.2021. Saraswati Devi submitted that solar power plant having capacity of 1 MW is under process of commissioning for which PPA was executed on 27.03.2021.
- 1.3 The Petitioners submitted that in year 2019, UREDA initiated a competitive bidding process for procurement of power from Solar PV plants to be established in the State of Uttarakhand. The bidding process was by way of reverse bidding as against the tariff determined and applicable at the relevant time.
- 1.4 The Petitioners submitted that upon being successful in the bidding process for the total capacity of 4 MW for M/s Parihar construction and 1 MW for Saraswati Devi, the LOA were issued to the respective parties on 01.11.2019. In terms of the LoA the date of commercial operation was 31.10.2020, with the condition that any delay would entail the application of the prevailing tariff as decided by the Commission.
- 1.5 The Petitioners submitted that various issues had arisen which have resulted in delay. The primary issue was the onset of the pandemic and the subsequent lockdowns and other restrictions because of which the project could not proceed further. In fact, the execution of PPA got delayed and could be executed by the parties on 27.03.2021. The Petitioners submitted that PPA was itself one of the conditions for the appraisal of the funding of the project by the lending institutions. The Petitioners submitted that they could take up the process of securing the funding for the projects only after execution of PPA.
- 1.6 The Petitioners submitted that the Commission has been considering the various issues

from time to time that are the result of force majeure events and has been extending the time for establishment of the projects. In this regard, the Commission had initially extended the benchmark capital cost as well as the tariff for the solar generating plants till 31.03.2021 vide Order dated 23.06.2020 in Petition no. 13 of 2020 (Suo-moto) and thereafter, till 31.08.2021 by way of Order dated 31.03.2021 passed in Petition no. 23 of 2021. Subsequently, the Commission vide Order dated 21.09.2021 in Petition no. 34 of 2021 (Suo-moto) extended the benchmark capital cost and generic tariff previously determined upto 31.03.2022. Further, the Petitioners also submitted that the Commission in its Order dated 21.09.2021 had also provided that bid tariff shall be applicable to the selected bidders for completion of the solar projects upto 15th November 2021. However, in case of any delay beyond 15th November 2021, the lower of the prevailing tariff for the year FY 2019-20, as extended from time to time, and that determined through competitive bidding/PPA tariff shall be applicable till 31st March, 2022 on the upcoming projects.

- 1.7 The Petitioners submitted that while the Petitioners have made their best efforts to proceed with the construction and commissioning of the project at the earliest, there has been various issues that have arisen which are beyond the control of the Petitioners and has resulted in the delay in the commissioning of respective projects beyond 31.03.2022.
- 1.8 The Petitioners submitted that third wave of COVID-19 pandemic has severely affected the construction schedule of the Petitioners. The restriction imposed and also the precautions that were required to be undertaken have resulted in the construction process at a much slower pace. Further, the land acquisition over the past 2 years had itself been a great challenge due to the fact that the land required for the project had to be at higher reaches in the State, i.e. above 650 m of the sea level. The availability, identification and thereafter, arranging for contiguous land at such higher reaches has been a great challenge for the Petitioners. The registration process for such land even after identification has itself taken substantial time. It was only in the month of March 2022, the Petitioners have been able to arrange for and take possession of the entire land for the respective projects.
- 1.9 The Petitioners submitted that they could not proceed further with the land identified at the initial stage of issuance of LoA. The said proposed location however could not fructify

due to the land not being available for acquisition subsequently. In the circumstances, the Petitioners were constrained to identify and acquire alternate land in the State, in compliance with the specifications provided in the tender documents as to the location of the land.

- 1.10 The Petitioners submitted that the distribution licensee has also been severely impacted due to the pandemic and also for other reasons. This is also evident by the fact that while the Petitioner had applied for the power evacuation for their power plant in December, 2021, UPCL has also not been in a position to proceed forward with the same and even did not give its approval till the date of filing of the Petition. Further, UPCL has also been affected due to the code of conduct implemented in the State from 15.01.2022 to 12.03.2022 due to elections for the legislative assembly due to which the power evacuation approval is yet to be issued by UPCL.
- 1.11 The Petitioners submitted that the respective project funding is being arranged by the Petitioners from SBI further subject to the assignment of the PPAs to a Special Purpose vehicle. Due to elections and the resultant code of conduct, UPCL was not in a position to take any decision including on the request of the Petitioners for assignment of the PPAs to Special Purpose Vehicle.
- 1.12 The Petitioners submitted that they have also been severely impacted by the elongated monsoons that the state has experienced in the previous year. The normal monsoon for the State of Uttarakhand is till September. However, for the year 2021, the monsoon was not only substantially more in terms of volume, but also over a substantially elongated period upto November, 2021. The Petitioners submitted that because of all these reasons, the Petitioners were not in a position to complete the construction and commissioning of the generating stations by 31.03.2022.
- 1.13 The Petitioners submitted that the reasons for the delay in the commissioning of the generating station are beyond the control of the Petitioners and amounts to force majeure event that have arisen in the present cases. The Petitioners requested the Commission to allow final extension upto 31.08.2022 for the completion of the project and its commissioning.
- 1.14 The Petitioners submitted that the PPA already provides for the lower of the tariff as

determined in the bidding process or as applicable at the time of commissioning to be applied to the Petitioners. Further, there would be no loss or prejudice whatsoever to the Respondents by the extension to be granted. The Petitioners submitted that the cost of material and construction has increased substantially over the last year. This not only includes the cost of procurement of the modules, but also for international shipping, domestic transportation, civil works etc. Despite the above, the Petitioners are not seeking any increase in the tariff as was discovered in the competitive bidding process.

1.15 Accordingly, the Petitioners requested the Commission for extension of time for commissioning of the Solar generating projects till 31.08.2022 at the same tariff as discovered through competitive bidding. The following relief has been sought by the Petitioner:

- a) Hold and declare that the Petitioners are entitled to extension of time period for commissioning of the generating stations of the Petitioners under the PPAs dated 27.03.2021 till 31.08.2022;
- b) Pass such further Order(s) as the Commission may deem just in the facts of the present case.

2. Respondent's submissions

2.1. The Commission forwarded the copy of the Petitions to UPCL and UREDA for their comments, if any, in the matter. UPCL and UREDA vide their letter dated 18.04.2022 submitted their reply to the Commission. The Commission has dealt with the reply of the Respondents in the subsequent paragraphs.

2.2. UPCL submitted that the present matter pertains to the competitive bidding process initiated by UREDA for procurement of power way back in the year 2019 and since then several extensions have been granted by the Commission. UPCL has always objected to the grant of extension because of the various reasons mentioned in the submissions made in those proceedings, the primary contention was that the absence of firm data about the plants which were in the position to get commissioned, uncertainty in the date of commissioning and also the principle of the RE Regulations that the tariff shall normally be one which is applicable for the year of the commissioning, various plants had a very higher tariff even through the projected year of commissioning clearly showed the steep

decline in the prices.

- 2.3. UPCL submitted that there is no point in continuing the scheme indefinitely unless UPCL is fully aware about the capacity and financial implications. UPCL submitted that the Commission may like to consider the fact that the final extension was granted till 31.03.2022 and the plants which have not acquired the land or obtained their financial closers till 31.03.2022 should be considered as not in a position to commission the plant and, accordingly, may like to clarify with finality that under no circumstances any further extension would be given and may also direct UREDA to cancel the allotments of such plants and also permit UPCL thereafter to cancel the PPAs of such plants.
- 2.4. UREDA submitted that based on the request of UPCL to meet its RPO requirement, UREDA invited bids for construction of Solar PV plants in the State of Uttarakhand. Total 282 nos. of developers were selected for development and sale of solar energy to UPCL from the proposed solar PV plants at the price discovered through competitive bidding. UREDA submitted that the LoAs were issued to the Petitioner on 01.11.2019 and the Petitioners were informed to establish a project company vide letter dated 08.11.2019. Subsequently, the Petitioners vide letter dated 02.07.2020 were informed regarding the eligibility of land for Solar PV plants and were requested to share the details of new location in case of change in land location due to any reason.
- 2.5. UREDA submitted that vide reminder letter dated 19.08.2020, the Petitioners were asked to submit documents related to Financial Closure by December 2020. UREDA submitted that the Petitioners had not executed PPA with UPCL till 19.08.2020. UREDA vide letter dated 14.10.2020 informed the developers regarding technical parameters and scheduled commissioning date of the proposed plants and the Petitioners were once again informed regarding formalities in case of change in location of plant.
- 2.6. UREDA submitted that the Petitioners were asked to submit project company related documents. However, no information was provided by the Petitioners due to which the verification could not be done. Subsequently, vide letter dated 20.12.2021 and reminder letter dated 05.01.2022, the Petitioners were directed to submit documents related to land. However, the information and documents submitted by the Petitioners were not in line with the RfP requirement.

2.7. UREDA submitted the details pertaining to the 283 nos. of power developers as follows:

S. No.	Particulars	Nos. of plants	Capacity (in MW)
1	Installed Plants	110	62.50
2	Developers submitted Financial Closure in time	64	61.90
3	Developers submitted incomplete Financial Closure	41	36.40
4	Developers did not submit any documents related to Financial Closure	64	41.80
5	Bank Guarantee forfeited by Banks	04	1.60
	Total	283	203.75

UREDA submitted that the Petitioners fall under fourth category in the above table who have not submitted complete details of Financial Closure.

3. Commission's Views & Decisions

- 3.1. The Commission conducted a hearing on 19.04.2022 in the matter. The Petitioners and the Respondents reiterated their submissions before the Commission. The Commission heard both the parties and carefully considered their written submissions. After examining the relevant material available on records, issues raised by the Petitioner have been dealt in the subsequent paragraphs of this Order.
- 3.2. Before going into the merits of the present Petition, it is worth mentioning that based on the Petition filed by UREDA, the Commission vide Order dated 01.02.2019, for the purpose of RfP, had allowed the extension of generic tariff determined by the Commission for FY 2018-19 upto June 2020 as ceiling tariff for the purpose of bidding for the power plants to be commissioned under 200 MW scheme. However, allotment for the cumulative capacity of 148 MW only could be issued. Accordingly, for the balance capacity of 52 MW, the Commission vide Order dated 18.09.2019, for the purpose of RfP, allowed the extension of generic tariff determined for FY 2019-20 upto October,2020 as ceiling tariff for the purpose of bidding. Both the Petitioners' were allowed Solar PV plants capacity by UREDA under 52 MW scheme.
- 3.3. Subsequently, the Commission vide its Suo-moto Order dated 23.06.2020 based on the representations received from various Solar PV plant developers seeking time extension in the scheduled commissioning date and enhancement in tariff considering disruption

on account of lockdown due to COVID-19 epidemic and letters of GoI w.r.t. extension due to COVID-19, allowed the Solar Power developers to develop and commission their respective plants by 31.03.2021 to get the tariff rates as specified in respective PPAs of the Solar Power plant developers executed with UPCL.

- 3.4. Thereafter, the Commission vide Order dated 21.09.2021 in Petition no. 34 of 2021 (Suo-moto) extended the benchmark capital cost and generic tariff previously determined upto 31.03.2022 taking cognizance of Office Memorandum of MNRE and lockdown situation. The relevant extract of the Order is as follows:

“Accordingly, taking into consideration the time extension allowed by MNRE, non-availability of data and uncertainties regarding another wave of coronavirus in the upcoming months as indicated by the concerned ministry of GoI, the Commission is of the view that the benchmark capital cost and generic tariff determined by the Commission vide Suo-moto Order dated 07.06.2019 which was extended by the Commission vide its Order dated 11.05.2020 and 30.09.2020 till September, 2020 and March, 2021 respectively, shall continue to be applicable till March, 2022 while the other terms and conditions shall remain the same in accordance with the RE Regulations, 2018.”

- 3.5. The present Petitions have been filed by the Petitioners under Section 86(1)(e) and (f) of the Electricity Act, 2003 requesting the Commission for extension of time period for commissioning of the generating stations of the Petitioners under the PPAs dated 27.03.2021 till 31.08.2022.
- 3.6. Section 86(1)(e) and Section 86(1)(f) of the Electricity Act, 2003 specifies as follows:

“Section 86. (Functions of State Commission):

(a) xxx

xxx

xxx

(e) *promote co-generation and generation of electricity from renewable sources of energy 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;*

(f) *adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration.”*

The Commission had issued the RE Regulations in exercise of the powers conferred under section 86(1)(e) read with section 61(h), 181 (z)(d) and (zp) of the Electricity Act, 2003 considering various policies of the Central and State Government, Orders, notifications, and office memorandums w.r.t. renewable energy. Further, section 86(1)(f) of the Act empowers the Commission to adjudicate upon the dispute between the licensee and generating companies.

- 3.7. As mentioned above, the present Petitions have been filed under section 86(1)(f) of the Electricity Act, 2003 which empowers the State Commission to adjudicate upon the dispute between the licensee and generating companies. However, the Petitioner failed to substantiate that there is any dispute between the licensee and the Petitioners. The Petitioners have submitted the reasons for delay in commissioning of the plant and nothing is mentioned regarding dispute with the licensee.
- 3.8. The Commission has gone through the provision of PPA w.r.t. commissioning and applicable tariff rate for the supply of power from the respective Solar PV plant. Clause 2.1 of the respective PPAs states that UPCL shall accept and purchase entire/surplus power made available to UPCL system from Solar PV Plants at bid rate intimated by UREDA after the bidding process conducted by UREDA. The said rate of the sale of power shall be applicable only if the Solar PV plant is commissioned on or before 31.03.2021 as per Commission's Order dated 23.06.2020. However, if the plant is commissioned after 31.03.2021, the rate of sale of power would be as determined by the Commission for the year of commissioning if such rates are lower than the tariff agreed in the PPA, i.e. Bid Rate otherwise tariff agreed in the PPA shall be continues.

However, the Commission vide Suo-moto Order dated 21.09.2021 in Petition no. 34 of 2021 extended the applicability of bid tariff of the respective developer till 31.03.2022.

- 3.9. In the present Petitions, the Petitioners vide their prayers requested the Commission to extend the time period for commissioning of the generating stations of the Petitioners under the PPAs dated 27.03.2021 till 31.08.2022. As per LoA issued to the Petitioners, the last date of commissioning is 31.10.2020 and in case of delay, the prevailing tariff as determined by the Commission shall be applicable. Further, PPAs deal with the applicable tariff rate and there is no provision in the PPA with respect to delay in the

scheduled commissioning date of the plants.

- 3.10. The Petitioners had submitted covid pandemic/code of conduct implemented in the State from 15.01.2022 to 12.03.2022 due to elections for the legislative assembly and also the elongated monsoons that the State experienced in the previous year as the reason for its inability to complete the construction and commissioning of the generating stations by 31.03.2022. However, it is surprising to note that it was able to arrange for and take possession of the entire land for the respective projects only in the month of March 2022. Hence, all the factors mentioned above does not have any correlation with the commissioning of the project as the Petitioners got land in March, 2022 itself.
- 3.11. Further, with regard to extension of time for commissioning of the Solar PV Plants, Hon'ble Supreme Court vide its Judgement dated 25.10.2017 in the matter of Gujarat Urja Vikas Nigam Ltd. *vs* Solar Semiconductor Power Company Pvt. Ltd. stated that 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 the Regulations. The Control Period is not something prescribed by the Commission under the Conduct of Business Regulations. The Control Period is also not an order by the Commission for doing any act. Commissioning of a project is an act to be performed in terms of the obligation under the PPA and that is between the producer and the purchaser. Hence, the Commission cannot extend the time stipulated under the PPA for doing any act contemplated under the agreement in exercise of its powers under the Regulations. Therefore, there cannot be an extension of the Control Period under the inherent power of the Commission.
- 3.12. As per aforesaid judgement of Hon'ble Supreme Court, there cannot be an extension of the Control Period as the commissioning of the project is an act to be performed in terms of obligation under the PPA and in accordance with the provisions of PPA, bid rate shall be applicable if the plant is commissioned till 31.03.2022, read with Commission's Order dated 21.09.2021 and if the plant is commissioned after 31.03.2022, lower of the tariff as determined in the bidding process and the generic tariff applicable at the time of commissioning of the project shall be applicable. The Commission has issued an Order dated 04.05.2022 specifying Benchmark Capital Cost and tariffs for Solar PV, Solar Thermal and Grid Interactive Rooftop & Small Solar PV Plants to be applicable for FY

2022-23. Hence, the Petitioners would be eligible for the bid tariff or tariff specified by the Commission for FY 2022-23, whichever is lower, in case they commission their plants by the end of FY 2022-23.

3.13. In view of the above discussions, the Petitions filed by the Petitioners for extension of time for commissioning of Solar PV plants is rejected. Accordingly, Miscellaneous Application No. 13 of 2022 and Miscellaneous Application No. 14 of 2022 stand disposed off.

3.14. Ordered accordingly.

(M.K. Jain)
Member (Technical)

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