

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION
Petition. No. 30 of 2022

In the Matter of:

Miscellaneous Application filed by Shri Chandrakant Singh Rawat (Innovative Solutions) seeking deemed generation claims due to late connectivity of its 500 kW Solar Power Plant with the grid and loss of generation due to outages/interruptions of more than 50 hours in a year.

And

In the Matter of:

Mr. Chandrakant Singh Rawat
(Innovative Solutions),
188/1 Vasant Vihar, opp. Electricity Office,
Dehradun.

...Petitioner

&

In the Matter of:

1. Managing Director, UPCL, Victoria Cross Vijeta Gabar Singh Bhawan,
Kanwali Road, Dehradun.
2. Executive Engineer, Electricity Distribution Division,
Bhagwanpur, UPCL, Haridwar.

..... Respondents

Coram

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

Shri M.K. Jain Member (Technical)

Date of Hearing: January 03, 2023

Date of Order: February 20, 2023

ORDER

This Order relates to Petition filed by Shri Chandrakant Singh Rawat (hereinafter referred to as “the Petitioner”) seeking deemed generation claims in the matter of late connectivity of the 500 kW Solar Power Plant with the grid and in the matter of loss of generation because of outages/interruptions of more than 50 hours in a year attributable

to non-availability of evacuation system of Uttarakhand Power Corporation Limited (hereinafter referred to as “UPCL” or “the Respondent” or “Distribution Licensee”).

2. Background

- 2.1 The Petitioner has a 500 kW Grid Interactive Roof Top and small Solar PV Plant located at Kishanpur Jamalpur (near Neelkanth Dhaba) Dheel Majra ByPass Road, Bhagwanpur. Petitioner’s Plant was allotted the said capacity of 500 KW by Uttarakhand Renewable Energy Development Agency (UREDA) vide letter dated 26.09.2019. Thereafter, Petitioner entered into a Power Purchase Agreement with Distribution Licensee on 08.03.2021 for selling surplus generation, after self-consumption, with Distribution Licensee at the rate determined by the Commission. For this, the Petitioner Plant had to be connected to the grid by the Distribution Licensee however, there is an alleged delay of approximately 05 months which has triggered financial agony to the Petitioner due to loss of generation of Power and also loss of generation due to outages/interruption of more than 50 hours in a year.
- 2.2 In the above grievance, Petitioner filed the instant Petition vide letter dated 26.08.2022 seeking deemed generation claims. Thereafter, the Commission vide letter dated 07.09.2022 directed the parties to submit their comments on admissibility of the Petition by 26.09.2022 and vide letter dated 12.09.2022 informed the parties to appear for hearing before it for admissibility on 27.09.2022. Accordingly, Respondent submitted its comments on admissibility on 24.09.2022 and 26.09.2022.
- 2.3 Consequently, the Commission heard the parties on admissibility on 27.09.2022 and vide Order dated 27.09.2022 decided to admit the matter.
- 2.4 Pursuant to this, the Commission decided to hear the parties on merits and vide letter dated 22.12.2022 communicated the date of hearing to the parties scheduled on 03.01.2023. During the hearing, the Commission heard the parties in detail and later, decided to reserve its judgment. However, all the arguments raised from each side during the hearing and all submissions, oral

and written have been examined and are addressed in the subsequent paras of this Order.

3. The Petitioner has submitted that:

- 3.1 Petitioner vide letter dated 16.08.2021 had requested Respondent for providing connectivity to the 11 kV Transmission Line for its Plant. Subsequently, Petitioner vide letters dated 31.08.2021, 01.11.2021, 28.12.2021 wrote letters to UPCL requesting connectivity to the grid. Meanwhile, Electrical Safety Report was granted to Petitioner on 28.08.2021 and connectivity to the grid was made by UPCL on 22.01.2022. This delay in providing connectivity to Petitioner's Plant is the grievance Petitioner has put forth before the Commission thereby, seeking deemed generation claims arising out of late connectivity of its 500 kW Solar Power Plant and also due to loss of generation because of outages/interruption of more than 50 hours in a year.
- 3.2 Petitioner's Plant was to be commissioned by 31.03.2022 on account of extension granted by the Commission for commissioning of the Plant however, the Plant was ready to be connected to the grid by 16.08.2021. Regarding this, several correspondences were made to the Respondent by Petitioner. That Petitioner even requested UREDA for its intervention in providing connectivity.
- 3.3 As per UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2018 (hereinafter referred to as "RE Regulations, 2018"), outage beyond 50 hours in a year will count towards deemed generation. That as per availability of voltage/current data, it is found that a total outage of 51.5 hours was computed due to "No Grid" condition within 15 days of commissioning of the plant (considering 0 frequency as No Grid). A total outage of 50 hrs. was crossed on 05.02.2022 since the date of commissioning. Therefore, any outage for whatsoever reason after the date of 05.02.2022 till filing of this Petition shall

count towards deemed generation and accordingly should be awarded to the Petitioner as per the Regulation.

- 3.4 Regulation 5.2 (u) of the Indian Electricity Grid Code Regulations 2010 (IEGC) notified by the CERC and Regulation 6.3 of the State Grid Code mandates Solar Power Plant as “Must Run”, hence non commissioning of Solar Power Plant is violation of the Regulation.
- 3.5 MNRE through its letter dated 04.04.2020 directed all the State to ensure “Must Run” status of RE based generating stations and allowed curtailment only for grid safety reasons.
- 3.6 The Appellate Tribunal for electricity at NEW DELHI in Appeal No. 197 of 2016 in Para no. 133 stated that *“the investments made in establishing solar projects, and the solar tariffs so determined, was premised on Must Run status as contemplated in the regulations framed under Act and the provisions in energy purchase agreement. If must run status is not adhered to by the Respondent TANGEDCO and SLDC in violation of law, the members of the Appellant association would be deprived of recovery of legitimate tariff. As solar power tariff is single part and it is predominantly fixed cost in nature, unauthorized curtailment will ultimately result in solar generators failing to repay their loans. If such actions are not penalized, the unauthorized curtailment will go unabated jeopardizing the whole objective and intent of the Act.”*
- 3.7 Section 73 of the Indian Contract Act, 1872, provides compensation for loss or damage caused by breach of contract. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.
- 3.8 The distribution licensee reserves their right to not only recover liquidated damages but also decrease the tariff if plant is not commissioned within a time limit fixed by the PPA. Hence, following the same line of logic backed by the

legal principles fostering equity, it is an unassailable right of the Solar Developer to get compensated for damages when the delay is on the end of the distribution licensee. It cannot be the case that distribution licensee can impose a penalty if the commissioning is delayed by the developer and turn a cold shoulder towards Developer's damages when commissioning is delayed by distribution licensees themselves.

- 3.9 The deemed generation for the period starting from 01.10.2021 till 22.01.2022 is derived by the formula of calculating "Capacity Utilization Factor (CUF)" given in Regulation 3 (f) of RE Regulations, 2018. Hence, a total compensation for not evacuating power from generating point stands to Rs. 11,43,258/-.
- 3.10 The Petitioner had to pay regular installments for the period of 01.10.2021 to 22.01.2022 as interest against the loan availed from the bank for setting up the solar power plant. The Petitioner has paid a total sum of Rs. 4,88,000/- as interest for the said period. Due to inaction and non-commissioning of the plant on Respondent's part the Petitioner could not generate any income to cover his installments let alone making the profit. The Petitioner has incurred huge losses during the said period due to payment of interest against the bank loan taken to setup the solar power plant. Loss due to operation and management of plants in absence of generation due to non-evacuation of power amounting to Rs. 4,85,260/- for the period starting from 01.10.2021 to 22.01.2022 may also be awarded.
- 3.11 The bank loan taken by the Developer to set-up the Solar Plant is taken into account for calculation of yearly tariff, thus clearly indicating this Commission's concern related to payment of installments by the Developer for the said loan from the generation of the Solar Plant itself. In the case in hand, the Commission using its inherent power captured under Regulation 50 of RE Regulations, 2018, which authorizes Commission to exercise power under the Act for which no regulation has been framed, grant the Petitioner deemed generation for the period before the commissioning and thus ensure the 'Must Run' status as mandated by the Regulations. The Commission also has power

under Regulation 51 of RE Regulations, 2018 to vary from Regulation 49 which only enables the benefit of deemed generation after the COD of the plant.

3.12 For the month of February 2022 deemed generation is calculated as 51,984 Units whereas, the actual energy sent out by Petitioner's Plant in the month was 45,364 Units causing a deficit of 6,620 Units. In the month of March 2022, the generation should have been 67,146 units but plant generated 52,516 units hence causing a deficit of 14,630 units; in the month April 2022 the generation should have been 64,980 units but plant only generated 39,904 units and there was a loss/deficit of 25,076 units. In the month of May 2022 the standard deemed generation should have been 67,146 units but the plant only produced 20,944 units due to outages and interruptions and caused a loss/deficit of 46,202 units; In the month of June 2022 the deemed generation should have been 64,980 units but plant only generated 7,992 units and there was a loss/deficit of 56,988 units; Finally in the month of July 2022 the deemed generation should have been 67,146 units but the plant only produced 36,836 units causing a deficit of 30,310 units.

4. The Respondent has submitted that:

4.1 The petitioner is asking for deemed generation compensation for period from 01.09.2021 till 22.01.2022. The date of Commercial Operation (COD) of the petitioner's Solar plant is 22.01.2022. This is to submit, that no provisions exist in UERC (Tariff and Other terms for supply of Electricity from Renewable Energy Source and Non-fossil fuel based Co-generating stations) Regulations, 2018 for compensation claim in lieu of deemed generation prior to COD. Moreover, the interconnection point to the concerned Solar plant was provided within a reasonable time period considering the realistic time taken in procurement of material and tendering activities for HT line work.

The contention of the Petitioner, that UPCL delayed the interconnection point by more than 4 months is denied. Petitioner got the safety approval certification for its Solar Plant from Electrical Inspector on 28.08.2021. This is to submit that a letter by M/s Innovative Solution was received at Division

office on dated 17.08.2021 for providing interconnection to their 500 kW, solar plant. S.D.O, Bhagwanpur was instructed to prepare the estimate for required work vide EE, EDD, Bhagwanpur letter dated 24.08.2021. When the concerned Junior Engineer visited the site to inspect and prepare the estimate, the representative of M/s Innovative solution requested him to prepare the estimate for independent feeder from 33/11 kV S/s Bhagwanpur. In the initial Technical Feasibility Report, the interconnecting feeder was 11 KV Dariyapur feeder from 33/11 kV Dadajalpur S/s. Moreover, the representative of M/s Innovative Solution requested several times to prepare estimate for independent feeder and the owner of M/s Innovative Solution, Sh. Chandrakant Singh Rawat approached EE, personally and requested to construct the independent feeder from 33/11 KV Bhagwanpur S/s although no written submissions were made in this regard by the Petitioner. This created a state of confusion and delayed the process of finalization of estimate. Since, it was already getting delayed, finally demand note for interconnection from 11 KV Dariyapur feeder was sent to the Petitioner vide letter dated 28.12.2021 amounting to Rs. 1,58,223.00 for construction of 150 Mtr. 11 kV line to connect the solar plant to the grid. The Petitioner deposited the required amount on 30.12.2021. Thereafter, UPCL within a reasonable and realistic time period provided necessary interconnection point to the petitioner's solar plant on 22.01.2022. In light of above facts, it is clear that interconnection point was done within a reasonable timeframe.. The delay on part of UPCL as claimed by the Petitioner as per his own whims and fancies is not tenable especially in absence of any stipulated time frame for providing interconnection to plant, mentioned either in UERC RE Regulations or PPA. Furthermore, it is to be emphasized that in cases where DISCOM's power evacuation infrastructure is laid but Commissioning/Commercial operation of the Generator's plant is delayed, there is no provision for compensation to the DISCOM by Generator. So, as such provisions of above mentioned RE Regulations 2018 specifically in this regard is evenly balanced towards both the DISCOM and Generator. The

contention of the petitioner in light of above-mentioned facts for deemed generation compensation prior to COD is not admissible.

- 4.2 The reliefs claimed are not legally tenable, further it is evident from the reliefs claimed that Petitioner is fully aware about the non-maintainability of the petition and has therefore claimed alternative reliefs. That even the alternative relief cannot be granted as there is no provision in the Regulations for the same. Moreover, scope of Regulations and provisions of Electricity Act, 2003 with respect to the jurisdiction of the Hon'ble Commission is well defined. The contention of the Petitioner for compensation of deemed generation for the period starting from 05.02.2022 till 31.07.2022 after factoring the permissible limit of 50 hours in a year as per Regulation 49 (1) of RE, Regulations, 2018 cannot be entertained as the compensation for deemed generation loss is applicable only in case of Small Hydro Generating Plants & Solar PV & Solar Thermal Projects as per the Regulation 49 of the aforementioned Regulations while the petitioner's plant does not fall in these categories of plants / projects.
- 4.3 The UERC (Tariff and Other terms for supply of Electricity from Renewable Energy Source and Non-fossil fuel based Co-generating stations) Regulations, 2018 has aptly and judiciously provisioned for deemed generation loss compensation only to Small Hydro Generating Plants & Solar PV & Solar Thermal Projects as these are the very plants / projects that are connected on dedicated electricity lines. Rest of the categories of the RE plants viz. Canal Bank Solar PV Projects, Canal Top Solar PV Projects, Grid Interactive Solar Rooftop and small Solar PV plant, Biomass based power plants, Biogas based power plants, Wind energy based Power Plants etc. are generally connected to the Mixed and Rural Electricity Feeder lines. This is a known fact that manageability and availability of dedicated lines are better in comparison to a mixed and rural feeder. This kind of feeders (Mixed & Rural) are very long in length with multiple branches and sections that cater to multiple types of consumers especially in rural and semi urban areas and involve various constraints related to maintenance, release of new connections on the feeders, fault management and restoration on account of high probability of fault

occurrences due to long length and multiple branches. So, as such, maintaining the stipulated availability hours on these feeders is not practically feasible for any DISCOM.

- 4.4 The Petitioner's solar plant is a "Grid Interactive Solar Rooftop and small Solar PV Plant" and is connected through a rural feeder named 11 kV Dariyapur feeder under Electricity Distribution Division, Bhagwanpur having a total length of around 110 Km including main line and its branches. This is to submit that the Solar Plant of the petitioner is connected at approximately 12 Km from the Substation feeding end of the 11 kV Dariyapur feeder. Further the feeder passes through high density long tree areas where villagers have grown poplar trees that lead to frequent breakdowns due to tree branches falling on the line. Further, the line staff has to face stiff resistance from villagers for lopping and chopping of trees. These factors along with other inherent constraints with lengthy rural feeder results in such forced outages that are beyond the reasonable control of the concerned Division. In light of the above-mentioned submissions, the petition is not legally maintainable and does not have any merits for the remedies sought through it.

5. Commission Observations, View & Decision

- 5.1 The instant Petition filed before us entails a dispute between Petitioner and Respondent regarding compensation for the alleged loss of generation due to the inaction of the Respondent for delay in providing evacuation facility/connectivity to the grid when sought for by Petitioner vide letter dated 16.08.2021. The Petitioner has alleged a delay of 05 months and 06 days to be precise, however, claim for compensation is being sought for preceding 04 months from the date of commissioning i.e. 22.01.2022. Besides this, compensation based on deemed generation for power interruptions and repayment of loan is also sought by Petitioner. In this regard, following relief has been requested vide the instant Petition:

- I. Allow compensation of Rs.11,43,258/- on account of loss suffered due to non-evacuation of generation on account of delay in providing

connectivity for the period 01.09.2021 to 22.01.2022 alongwith late payment surcharge.

- II. If the above relief is not allowed, then the alternate relief be allowed by granting compensation of Rs. 4,88,000/- on account of loss suffered due to payment of bank instalments alongwith operation and management cost of Rs.4,85,260 for the period starting from 01.10.2021 to 22.01.2022 with interest @15% from 01.10.2021 till the realization of the said award.
- III. Compensation based on deemed generation of Rs. 8,32,594/- on account of loss of generation due to outage and interruptions during post commissioning period starting from 05.02.2022 till 31.07.2022.

With regard to the above request of Petitioner, Respondent has argued that on the first issue of delay in connectivity, Respondent was in regular touch with Petitioner for the alleged months, resorting ways to ensure interruption free connectivity to the plant, it was within the knowledge of Petitioner that rural feeder to which it is connected now is prone to voltage fluctuations and power interruptions, despite this, Petitioner was eager to seek connectivity to the 11 kV rural feeder. It was also known to Petitioner that creating a dedicated line for its plant would take longer time as there are many problems relating RoW issues. As alleged by Respondent, both the above options and other possible ways were discussed with Petitioner and hence finally it was decided that connectivity from the 11 kV rural feeder is a better option. This conundrum resulted in the alleged delay for which the Respondent alone cannot be held responsible as it has tried its best to provide best connectivity option available with the knowledge to both parties.

It is observed that arguments here made by Respondent are not corroborated with any documentary evidence for us to ascertain that Respondent was regularly corresponding with Petitioner finding out possible ways to provide connectivity to the plant as asserted by it. Also, submission regarding laying a separate dedicated line and RoW issues thereof is a theory without any solid backing. Though, due to lack of any documentary evidence,

submission of Respondent appears bleak, however, if for a moment we slightly drift ourselves away from the necessity of documentary proof and examine the flip side of the case, then we observe that private developers before going in for large investment in a project are less likely to be completely oblivious/unaware of the challenges/hardships that they may encounter on installation of these plants, such as technical constraints in the network. This being said is only with the objective to throw light on the aspects of preparedness of generating company/developers when they set foot in such business. This is being highlighted to also understand if there is any sanctity to the submission of Respondent vis-s-vis delay in providing connectivity. It is observed that while establishing such plant, the developers are generally in touch with the officers of the distribution company, these meetings may not be documented always, however, such practice is inevitable in normal course of business and therefore, behaviorally, such practices prevail in every business which renders some kind of service. Considering this, we cannot completely rule out the sense of truth from the ordeal of the Executive Engineer of UPCL made during the hearing since he is the responsible officer for releasing connection and maintaining the network of UPCL in the area where plant is located.

- 5.2 Moving ahead, we are now desiring to throw light on the stance of the Regulations, in relation to the reasons that has led to this loss and claim accruing thereof. Admittedly, the RE Regulations 2018 does not speak of treatment of cases where delay is occurred in providing connectivity by the Distribution Licensee or with regard to the cases of power interruption and outages. For understanding this and for reference's sake, we are taking refuge of Regulation 3.4.3 of the UERC (The Electricity Supply Code, Release of New Connection & Related Matters), Regulations, 2020 which elaborates upon the processing of application of new HT/EHT connections and execution of works by Distribution Licensee. Relevant paras of the said Regulations are reproduced hereunder:

- (5) Distribution Licensee shall, within one month from date of receipt of application, study the feasibility of providing such connection including route survey for line and associated works and sanction the load. In case, works related to transmission Licensee at 132 kV or 220 kV are required to be executed, the distribution Licensee shall immediately intimate the transmission Licensee for carrying out such study and take the estimate of works charges from it. The distribution Licensee shall ensure that it informs the applicant, the estimated amount that is required to be deposited, in accordance with Table 3.10, and the date by which the said amount is to be deposited within the said period of one month. The distribution Licensee shall also indicate in the above communication, the approximate time frame for providing such connection, which shall not be more than that specified in these Clause (10) and Clause (11) below or tentative date indicated by consumer in his application, whichever is later.
- (6) All EHT works at 132 kV and 220 kV shall be executed by transmission Licensee. Prior intimation, along with amount of estimated works charges deposited by applicant for such works, to the transmission Licensee would be required to be given by the distribution Licensee sufficiently in advance so as to meet the overall time frame laid down in these Regulations, failing which both the Licensee shall be held responsible for the non-compliance of the Regulations and shall be liable for punitive action. For feeders emanating from its 132 kV/220 kV substations, the distribution Licensee shall provide an appropriate metering cubicle at such 132 kV/220 kV substation. Transmission Licensee's responsibility shall be limited up to line side isolator of the feeder.
- (7) Within one month after sanction of the load, the applicant shall be required to deposit requisite estimated amount towards works charges depending upon the type and quantum of works required, as per Table 3.10 below:
- ...
- (9) On receipt of estimated amount of works charges, the distribution Licensee shall initiate execution of the works.
- (10) In cases, where supply of electricity to premises applied for does not require commissioning of new substation /bay, the distribution/transmission Licensee shall ensure completion of HT/EHT works within the time specified in Table 3.11 below for different voltage levels from the date of deposition of amount of work charges by the applicant:

Table 3.11: Time-frame for release of New HT/EHT connection

Sl. No.	Description	No. of days
(i)	11 kV works including line	
(a)	not involving independent feeder	60 days
(b)	<i>involving independent feeder</i>	90 days
(ii)	33 kV works including line	180 days
(iii)	132 kV and above works including line	300 days

“

[Emphasis Added]

As evident from the above, one month time period is provided to Distribution Licensee to conduct route survey of line and sanction the load to an applicant seeking new HT/EHT connection. Thereafter, post sanctioning of load, one month time is given to the applicant to deposit requisite estimated amount prepared by Distribution Licensee. Subsequent to deposition of the said amount, minimum 60 days are given to Distribution Licensee to complete the works for providing connectivity. 04 months period from the day of applying for connectivity to the 11 kV network is anyway required and allowed as per the procedure given in the above Regulations. In the instant case, Petitioner had requested for connectivity on 16.08.2021 and received an estimate on 28.12.2021, thereafter Petitioner deposited the required amount on 30.12.2021 and within 22 days from deposition of amount by Petitioner connectivity was ensured. Approximately, within a period of 05 months 06 days connectivity was ensured. Therefore, applying the above Regulations, alleged delay in totality has occurred only for 01 month and 06 days. This alleged delay as we know has occurred in providing the estimate for works by Distribution Licensee. Connectivity post deposition of the estimated amount was ensured within 22 days, here, we do not see any delay in release of connection. We must not miss to acknowledge prompt execution of works by Respondent post deposition of the amount, hence, in this scenario, we redirect ourselves to the submission of Respondent that delay in providing work estimate was due to the ongoing discussion and confusion in providing connectivity. Connecting all the dots together makes it a strong assertion that the alleged delay had occurred only due to the uncertainty with respect to ensuring the mode/modalities of connectivity amongst the Respondent and Petitioner. Therefore, observing this, we are of the view that for this delay of 01 month and 06 days, punishing Respondent alone does not seem to be a fair call.

Notwithstanding the above, in this array of arguments and observations, we also cannot allow Respondent to wriggle out of its responsibilities. We are highly perturbed to see how neglectful Respondent is in its working. Knowing

that regular correspondences were being made to it by Petitioner, Respondent was inattentive to the clicking clock and continued proceeding on verbal terms in a commercial organization of high financial stakes. Respondent and the officer responsible in the matter should be embarrassed for lacking basic understanding/literacy of official correspondences and not sensing the implication they carry to cause financial dents to the organization. We are saddened and we hope that Respondent learn something meaningful out of this experience.

- 5.3 We now proceed to analyze the stance of Regulations specified by this Commission regarding claim of deemed generation on each of the prayer provided at point no. 1 to 3 referred at para 5.1 above. The relief sought at Point No. 1 & Point No. 3 above, demands/requests for deemed generation claims, however, the difference in the two is, claim requested at Point No. 1 is for the period prior to date of commissioning of the Power Plant and is due to alleged delay in providing connectivity by UPCL, whereas, requests for compensation raised at Point No. 3 is due to alleged interruption and outages occurred post commissioning of the Power Plant. Interestingly, both claims originates from Deemed Generation under Regulation 49 of the RE, Regulations, 2018, the relief/compensation sought in the said two points are being examined in light of Regulations 49 which is provided below:

"49. Deemed Generation

(Applicable only in case of Small Hydro Generating Plants & Solar PV & Solar Thermal Projects)

(1) After the COD...

(1) After the COD of the Project, loss of generation at the Station on account of reasons attributed to the following, or any one of the following, shall count towards Deemed Generation:

- Non availability of evacuation system beyond the Interconnection Point; and*
- Receipt of backing down instruction from the SLDC."*

From the above, we observed that the very first few lines of Regulation 49 provides a disclaimer of sorts, i.e., it renders benefit of Deemed Generation

only to three RE Power Generating Technologies; namely, Small Hydro Generating Power Plant, Solar PV and Solar Thermal Projects, leaving out the other RE Technologies provided in the said Regulations. Thus, the Regulations are clear with regard to extending benefits of deemed generation. The doubt for us to defuse is on the question of applicability of Regulation 49 on Petitioner's Solar Power Plant as mentioned in the Petition. For this we have relied upon the Power Purchase Agreement dated 8th March 2021, signed between Petitioner and Respondent that states Petitioner's Plant as a 'Grid Interactive Rooftop and Small Solar PV Plant'. Noting this, attention is now drawn to Chapter 5 of the RE Regulations 2018, wherein, from Regulation 28 to Regulation 37, different types of RE Technologies are listed out for generation of RE Power. Such Technologies include generation of power from a Small Hydro Generating Plant, Biomass Power Project, Biogas based Power Project, Grid Interactive Rooftop, Small Solar PV Plant etc. Out of all the Renewable Energy Technologies provided in the RE Regulations, only three power generating Technologies have been identified to attract deemed generation claims as clarified supra that certainly does not include power generated from Grid Interactive Rooftop and Small Solar PV Plant as that of Petitioner. When the Regulations has deliberately ousted Grid Interactive Rooftop and Small Solar PV Plant from the purview of Regulation 49, therefore, the Commission cannot extend benefits of Deemed Generation to Petitioner which are granted exclusively to only three RE Generating Technologies given supra.

Supplementing above, we would like to draw the attention to clause 8 and clause 9 of Annexure-1 of the RE Regulations, 2018 that provides tariff rates for Grid Interactive Rooftop and small Solar PV Plant and Solar PV Plants which are reproduced hereunder:

8. Levelised rate of Fixed Charges (RFC) for Solar PV and Solar thermal Power Projects:

Particulars	Solar PV Projects	Solar Thermal Projects
	(Rs./kWh)	
Gross Tariff	4.73	14.04
Less: Acc. Dep. Benefit	0.25	0.79
Net Tariff	4.48	13.26

9. Levelised rate of Fixed Charges (RFC) for Grid-interactive rooftop and small Solar PV Power Projects:

A. For Projects having capacity upto 10 kW

Level of Subsidy	0%	30%	70%	90%
Particulars	Rate of fixed Charges (Rs./kWh)			
Gross Tariff	5.93	5.18	4.18	3.76
Less: Acc. Dep. Benefit	0.28	0.26	0.18	0.13
Net Tariff	5.62	4.92	4.00	3.63

B. For Projects having capacity above 10 kW upto 100 kW

Level of Subsidy	0%	30%	70%	90%
Particulars	Rate of fixed Charges (Rs./kWh)			
Gross Tariff	5.73	4.62	3.64	3.29
Less: Acc. Dep. Benefit	0.28	0.23	0.16	0.10
Net Tariff	5.09	4.39	3.48	3.19

C. For Projects having capacity above 100 kW upto 500 kW

Level of Subsidy	0%	30%	70%	90%
Particulars	Rate of fixed Charges (Rs./kWh)			
Gross Tariff	4.99	4.35	3.49	3.13
Less: Acc. Dep. Benefit	0.27	0.22	0.16	0.11
Net Tariff	4.72	4.12	3.33	3.01

D. For Projects having capacity above 500 kW upto 1 MW

Level of Subsidy	0%	30%	70%	90%
Particulars	Rate of fixed Charges (Rs./kWh)			
Gross Tariff	4.77	4.15	3.32	2.97
Less: Acc. Dep. Benefit	0.26	0.22	0.15	0.11
Net Tariff	4.51	3.93	3.17	2.86

It is clear from the above that tariff has been separately specified for both the above projects. The above indicates that the two projects are treated differently even for the purpose of tariff determination.

- 5.4 Coming to the relief sought at point no. 2 above, the Petitioner has not clarified the law under which it has sought compensation of Rs. 4,88,000/-. The Commission cannot accede to the prayer of Petitioner to grant compensation

which is not backed by any Regulations or provisions of the Electricity Act, 2003.

- 5.5 There is another crucial aspect we wish to throw light upon is regarding the concept of 'Net Metering' and 'Gross Metering' in relation to grant of deemed generation. In a Net Metering concept, electricity is primarily generated for self-consumption, it is only when extra energy is generated it is sold off in the market. Connection holders of such plants are called prosumers. Since, these plants do not run purely with commercial expectation, their presumed purpose is to fulfil their own need, therefore, loss of generation in such plants is not allowed to be compensated. Hence, deemed generation is not provided to such category of consumers. Whereas, a Gross Metering plant is established only for commercial purpose, i.e., to sell electricity to the market, such plants are purely into the business of generating and selling electricity, hence, deemed generation is allowed to compensate them for any loss of generation due to the reasons attributable to the distribution company. In the instant case, Petitioner's Plant runs on Net Metering concept, therefore, it is not entitled for deemed generation even though Petitioner has submitted that it sells most of its electricity generated to Respondent, however, that fact alone cannot change the reality of it being a prosumer.
- 5.6 Coming to the arguments on contractual obligations and compensation for breach, we have also perused the Power Purchase Agreement dated 08.03.2021 executed between Petitioner and Respondent wherein we do not see any clause that indemnifies Petitioner for liquidated damages against Respondent in case of default in providing timely/efficient connectivity. Clause 10 of the PPA that talks about the 'Events of Default and Termination', does not speak anything regarding compensation in cases of default. The Petitioner at the time of execution of PPA did not raise its concern regarding clause for compensation, it either willfully or out of ignorance choose not to include a clause for compensation in the PPA and is now expecting from this Commission to provide remedy by invoking its inherent powers. When the agreement does not allow you compensation and the Regulations too does not

provide you this remedy, we cannot go out of our way to create a right which you have not adorned upon yourself. This Commission is obligated to enforce the law and protect agreements/contracts made thereunder.

- 5.7 Further we observe that, interpretation of the Petitioner with regard to 'must run' status, of the solar power plants is misplaced. Rule 3 of the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021 stipulates that:

"3. Must-run power plant. – (1) A wind, solar, wind-solar hybrid or hydro power plant (in case of excess water leading to spillage) or a power plant from any other sources, as may be notified by the Appropriate Government, which has entered into an agreement to sell the electricity to any person, shall be treated as a must-run power plant.

(2) A must-run power plant shall not be subjected to curtailment or regulation of generation or supply of electricity on account of merit order dispatch or any other commercial consideration:

Provided that electricity generated from a must-run power plant may be curtailed or regulated in the event of any technical constraint in the electricity grid or for reasons of security of the electricity grid:

Provided further that for curtailment or regulation of power, the provisions of the Indian Electricity Grid Code shall be followed."

From the above, it is evident **that once the RE plant is commissioned** its generation cannot be curtailed for factors other than on account of grid safety or safety of equipments or personnel. 'Curtailment' means stoppage or reduction of generation from a RE power plant by the system operator, however, this cannot be construed to be the case of Petitioner.

- 5.8 In light of the above, we are convinced beyond doubt that claims raised by the Petitioner cannot be allowed for the reasons stated in the above paras. Moreover, the Regulation referred by Petitioner does not grant it access for the benefit he seeks from this Commission which too is bound to deliver relief within the four corners of law. Therefore, the Commission is of the view that though, while dealing in a matter like this, promotion of RE Generation is crucial concern, however, sanctity of Regulations is our paramount

consideration, more than anything else. We ascribe great importance to the way things have been sorted out in the Regulations and hence, **we cannot allow this Petition for lacking *locus standi*.**

In this continuity, as we ascribe importance to Regulations, we cannot overlook the issue of interruptions raised by Petitioner in the alleged line.

Also, with respect to the issue of delay in connectivity, this Commission is of the view that though, the said delay could not be established in the instant case in strict sense and Regulations too does not grant the relief sought, however, in general, this grievance is common amongst the generators in the State, Respondent company either leaves the matter to the vagaries of time or sits over it till it brews-up into a litigation. We are highly agitated with this attitude seeping into the functioning of Respondent company which at times become cause of despair for developers, therefore, **in view of this, following is directed:-**

- i. **Respondent to take immediate steps to ensure interruption free line and efficient evacuation of the Petitioner's Plants.**
- ii. **Respondent to ensure timely connectivity to the power developers in the State with full sincerity and prime consideration, delaying the same shall be taken as serious violation of the provisions of The Electricity Act, 2003 and shall attract stringent penal action.**
- iii. **Respondent shall ensure that these directions are communicated to all of its officers for effective compliance.**

The matter is hereby disposed.

Ordered accordingly.

(M.K. Jain)
Member (Technical)

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