



Petition No. 1706 of 2021
BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Date of Order 20.07.2021

PRESENT:

1. Hon'ble Sh. Raj Pratap Singh, Chairman
2. Hon'ble Sh. Kaushal Kishore Sharma, Member
3. Hon'ble Sh. Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF: Petition under Section 86(1)(c) and 86(1)(k) of the Electricity Act, 2003 seeking directions to the Respondents and appropriate order(s) for grant of prayers sought by the present Petitioner.

1. AMPSolar Evolution Private Limited (AEPL)
309, 3rd Floor, Rectangle One, Behind Sheraton Hotel,
Saket, New Delhi – 110017

----- **Petitioner**

Versus

1. Uttar Pradesh State Load Despatch Centre (UPSLDC)
Phase II, Vibhuti Khand, Lucknow, Uttar Pradesh – 226 010
2. Uttar Pradesh Power Corporation Limited (UPPCL)
Shakti Bhawan, 14, Ashok Marg, Civil Lines,
Lucknow, Uttar Pradesh – 226 001
3. Uttar Pradesh Power Transmission Company Limited (UPPTCL)
Shakti Bhawan, 14, Ashok Marg,
Lucknow, Uttar Pradesh – 226010

-----**Respondents**

The following were present:

1. Sh. Deepak Raizada, C.E (PPA), UPPCL
2. Sh. Rajiv Srivastava, Counsel, UPSLDC
3. Sh. Piyush Sukla, UPSLDC
4. Sh. Puneet Chandra, UPPTCL
5. Sh. Aniket Prasoon, Counsel, AEPL
6. Sh. Akansha Tanvi, Advocate, AEPL
7. Sh. Amol Gokhale, AEPL

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8. Sh. Pankaj Saxena
 9. Sh. Soumya Maite
 10. Sh. Anirban Mondal
 11. Sh. Arijit Banerjee
 12. Ms. Rashika Kaul, AEPL

ORDER
(Date of hearing: 29.06.2021)

1. The Petitioner is a company registered under the Companies Act 2013 and is inter alia engaged in the business of generation and sale of solar energy. The Petitioner and its affiliates have proceeded to set up solar power of around 200 MW for supply of power to Captive Users in Uttar Pradesh and have executed/ proposes to execute PPA with various Captive User(s) for supply of Solar energy for a period of twenty-five years.

Prayers:

2. The prayers of the Petitioner are as below:
 - a) *Admit the Petition,*
 - b) *Issue appropriate directions to the Respondent No.1 for allowing declaration of COD for part capacity, as and when demonstrated, of all the solar projects established by the Petitioner in the state of Uttar Pradesh,*
 - c) *Hold and declare that the order dated 24.02.2021 passed by this Ld. Commission in AMPSolar's case shall be made applicable universally to all solar projects in Uttar Pradesh, and*
 - d) *Pass any other order as this Hon'ble Commission may deem fit in the facts and circumstances of the present case and in the interest of justice.*

Brief facts as stated in Petition:

3. The Solar Project is in the State of UP and the entire power generated shall be consumed by Captive User through the intra-state transmission and distribution network of UPPTCL. The Petitioner and its affiliates have executed/proposes to execute Share Subscription Agreements with its Captive User(s) for the purpose of subscription and transfer of shares in the SPV. In terms of Rule 3 of the Electricity Rules, 2005, the Petitioner will be maintaining annual compliance as follows:



i) at least 26% of the ownership of the Captive Project is held by the Captive Users; and

ii) at least 51% of the aggregate electricity generated will be consumed by the Captive Users.

4. The grounds for seeking allowing declaration of COD for part capacity:

(i) Infirm and seasonal nature of Renewable Energy generation:

The electricity generated by the Solar Project is dependent on solar irradiation which is not uniform throughout the year. In summer, the solar irradiation is at its peak, and tends to gradually decrease in monsoon and winter. Due to the infirm nature of energy, variable nature of solar irradiations and inconsistent climatic pattern, the UPERC must issue appropriate directions to UPSLDC to allow part-commissioning of Solar Projects established by the Petitioner or any of its solar projects, in the state of Uttar Pradesh.

(ii) Universal Applicability of AMP Solar's Order:

The procedure stipulated under the AMP plus Order has been made applicable to all the developers till the Commission frames specific guidelines or procedure in respect of commissioning and declaration of COD by Solar Project by UPPTCL/ UPSLDC. The Commission vide order (AMP Solar's Order) dated 24.02.2021 in Petition No.1662/2020 and 1644/2020 allowed declaration of COD for part capacity of its solar project. The AMP Solar's Order should be universally applicable to the developers of solar projects with respect to part commissioning till specific guidelines are notified.

(iii) Part-Commissioning is allowed for SECI Projects:

The MNRE has appointed Solar Energy Corporation of India ("SECI") as the Nodal Agency/ Implementing Agency for setting up renewable energy projects across the country. The Standard Model PPA for procurement of solar power between the Solar Project developer(s) and SECI provides that the minimum DC arrays capacity installed must be in the ratio of 1:1 with the maximum AC capacity at the delivery point. Accordingly, the solar project will be declared commissioned when all the equipment has been successfully installed as per the rated project capacity, and post



verification by the Committee/ Agency about the flow of energy into the Grid.

(iv) Part-Commissioning is allowed for UPNEDA Projects:

The Clause 2.28.3 of the standard Request for Proposal issued by UPNEDA for procurement of solar power under Tariff Based Competitive Bidding route, allows part-commissioning of Solar Project. Further, the Connectivity Intimation specifically provides that the Petitioner and UPPTCL are required to ensure compliance with the applicable Regulations issued by this Commission and CERC.

SECI, being a Central Agency and UPNEDA, being a State Agency, follow a standard procedure for developing solar projects across the country/ state of Uttar Pradesh, which allows part-commissioning of solar projects. Moreover, in case of development of solar projects in the state by government instrumentalities, part-commissioning is allowed whereas, in case of other private players, there is neither any detailed procedure for declaration of COD nor allowing part-commissioning of solar projects. Therefore, this Commission must issue appropriate directions to the UPSLDC for allowing declaration of COD for part capacity, as and when demonstrated by the Petitioner in accordance with the aforesaid procedure issued by UPNEDA/ SECI.

5. This Commission have been bestowed with adequate regulatory powers under the Electricity Act 2003 to adjudicate the present matter between the instant Petitioner and the Respondents. Further, the Commission have the exclusive inherent powers, provided under Regulation 57 of UPERC (Conduct of Business) Regulations 2019, which can be exercised in special circumstances, like in the present petition, for which no regulations have been framed.

6. The Petitioner vide its additional affidavit dated 03.06.2021 has submitted details of solar projects set up / in the process of being set up by the Petitioner and its sister/group companies as under:

Sl. No.	Project SPV Name	Installed Capacity (AC/DC)	Project Location	LTOA	Connection Agreement	Commissioning Certificate (if any)
1.	Amp Solar Clean	20 MW / 28 MWp	Payagpur, Dist.- Baharaich	11.2.2020	31.01.2019	31.10.2020 (Bay1) 21.07.2020 (Bay2)



	Power Pvt. Ltd.					
2.	Amp Solar Evolution	10 MW / 14 MWp	Tilhar, Dist.- Shahjahanpur	22.8.2020	09.01.2019	26.11.2020
3.	Amp Solar Evolution	10 MW / 14 MWp	Begumpur, Dist.- Bharaich	Applied	09.01.2019	Under Commissioning
4.	Amp Solar Urja	20 MW / 30 MWp	Nawabganj, Dist.- Bareilly	NA	09.01.2019	Under Commissioning
5.	Amp Solar Urja	20 MW / 30 MWp	Mishrikh, Dist.- Sitapur.	NA	09.01.2019	Under Commissioning
6.	Amp Energy Green Thirteen Pvt Ltd.	50 MW / 75 MWp	Haldharpur, Dist.- Mau	NA	01.12.2020	Under Commissioning
7.	Amp Energy Green One Pvt. Limited	70 MW / 105MWp	Rasra, Dist.- Balia	NA	01.12.2020	Under Commissioning

- a) In absence of any set procedure/standard for declaring COD of solar projects like that of the Petitioner under Open Access, this Commission vide its order dated 27.07.2020 in Petition No. 1517 of 2019 ("Amplus Order"), stipulated that the generating plant needs to demonstrate at least maintaining the peak corresponding to the installed capacity over one time block of 15 minutes for at least three days within a continuous period of two weeks, being applicable to all other solar generators in the State of Uttar Pradesh, till the time this Commission frames specific guidelines/procedure in respect of commissioning and declaration of COD by solar projects. Effectively at present, all solar generating developers are required to comply with the requirements as specified in the aforesaid Amplus Order.
- b) However, given the infirm and seasonal nature of renewable/solar energy generation, which is entirely dependent on vagaries of nature, the electricity generated by the solar projects is dependent on solar irradiation which is not uniform throughout the year. Consequently, the Petitioner as well as its sister/associate companies facing significant problem in demonstrating COD for their solar projects, filed Petition No. 1644 and 1662 of 2020, which were disposed of by the Commission vide order dated 24.02.2021.



- c) In view of the Commission's order in Petition No. 1644 & 1662 of 2020, the present Petition was filed seeking inter alia directions for allowing declaration of COD for part capacity, as and when such capacity is demonstrated, **for all the solar projects being established by Petitioner/its sister concerns under its group company.** That at the time of filing of the said Petition, the Petitioner's 10 MW "Tilhar Solar Project", had already achieved commissioning on 26.11.2020, however, even after achieving highest generation of 9.919 MW, 9.558 MW and 9.111 MW on 06.02.2021, 07.02.2021 and 14.02.2021 respectively, it was unable to achieve COD in terms of the new generic requirements stipulated by this Commission in its order dated 27.07.2020 (Amplus Order).
- d) The Petitioner has in total incurred Rs. 2,08,80,635/- (Rupees Two Crore Eight Lakhs Eighty Thousand Six Hundred and Thirty-Five Only) towards generation loss for the period December 2020 till achieving of COD, i.e., 10 May 2021, for its Tilhar Project.

Records of Proceedings:

7. The Commission heard the matter on 08.06.2021 and 29.06.2021. During the hearing, the Commission asked the counsel of the Petitioner to explain the difficulties being faced by the Petitioner in implementation of procedure in declaring the COD of its projects. The counsel of the Petitioner responded that due to varied irradiation owing to weather conditions, it is not able to comply with the procedure laid out by the Commission vide order dated 27.07.2020 in Petition no. 1517/2019 and has incurred business losses in one of the Project. The Commission observed that the Regulatory process, as defined through its Orders, shall be followed whereas the Petitioner is frivolously attempting to circumvent the Regulatory process through adjudication process.

Reply of the Respondents:

8. The Respondent, UPSLDC vide its affidavit dated 17.06.2021 has submitted as under:
- a) The Petitioner is in the process of setting up solar generation capacity to the tune of 200 MWs but is unable to show any immediate difficulty faced by it and. As such no commissioning request of the Petitioner's plant is pending before UPSLDC. Therefore, present petition looks probably premature.

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- b) That in some of the PPAs of UPPCL with Solar Generators available with UPSLDC, the provision of part commissioning of Solar Generating Stations is available.
- c) UPPCL has also framed a commissioning procedure of Solar Power Project and appointed UPNEDA as identified agency under Article 5 of PPA for declaration of COD of Solar Power Projects.
9. The Respondent, UPPCL in its reply dated 17.06.2021 has mainly submitted as under:
- a) UPPCL has established a Standard Operating Procedure for signing of Banking Agreement with Captive and Renewable Energy Generation plants, under which declaration of COD by LTOAC/ MTOAC to UPSLDC for verification/ approval is one of the primary steps.
- b) The protocol of COD as suggested by UPSLDC to UPERC in the matter of M/s Amplus, which now is being enforced on all Solar Power Developers having third party sale where there is no PPA, does not capture the seasonality of the Commissioning period which affects solar irradiance at that time of year.
- c) In the matter of M/s Ampsolar, this Commission made observation vide its order dated 27.07.2020 in Petition no. 1517/2019 that "In case of PPA with DISCOM, such demonstration must be as per terms of PPA with DISCOM as provided in CRE Regulations, 6(i)(d)". UPPCL for its PPAs with various Solar Power Developers has identified certification of solar projects by the following agencies:
- i) Prior to synchronisation, the Solar Power Plant (SPP) shall be required to get certifications reflecting compliance of relevant provisions of CEA (Measures relating to Safety and Electric supply) Regulation 2010 from Directorate of Electrical Safety, GoUP or Central Electricity Authority, New Delhi.
- ii) Prior a to synchronization, the SPP shall be required to get certifications reflecting compliance of relevant provisions of Indian Electricity Rules, 1956 w.r.t associated power evacuation system from Directorate of Electrical Safety, GoUP or Central Electricity Authority, New Delhi.
- d) Further, UPPCL has designated UPNEDA as Identified Agency against the provisions of PPA w.r.t Acceptance and Performance Test of the Solar

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Power Plants. Also, there is the provision of Part Commissioning in PPAs signed between Solar Power Developers and UPPCL.

Rejoinder of the Petitioner:

10. The Petitioner vide rejoinder affidavit dated 25.6.2021 to the reply of UPSLDC has mainly submitted as under:
- a) To achieve peak generation capacity and thereby declaring COD of the entire installed capacity will be difficult due to relatively lower solar irradiation in monsoon and during the winters. The submission of UPSLDC in its Counter Affidavit in a way supports the plea of the present Petitioner vis a vis permission to declare part commissioning as the same provision is available in PPAs executed between UPPCL and solar power generators. UPPCL has also submitted that the protocol of declaring COD as set out in Amplus Order does not capture the seasonality of the commissioning period which affects solar irradiance at the time of year.
 - b) The Petitioner is seeking a very specific and limited relief, that too within the contours of the regulatory procedure laid down under the Amplus Order, i.e., of allowing declaration of part-COD with an unambiguous and unequivocal undertaking that in so far as demonstration of part-capacity is concerned, the Petitioner will comply with the procedure laid down under Amplus Order.
 - c) The Prayer (b) as sought by the Petitioner refers to the universal applicability of the directions of this Commission only to the Petitioner's projects in the State of UP and not to all solar projects existing in the State of UP. The directions sought vide Prayer (b) of the Petition are with respect to the remaining 5 (five) solar projects of the Petitioner/its sister concerns.
 - d) The Petitioner is not approaching this Commission without having faced any difficulties, rather after having suffered huge generation losses with respect to two (2) projects, the Petitioner is approaching this Commission seeking dispensation with respect to its upcoming Projects which are at various stage of commissioning and, are likely to achieve commissioning in near future.
 - e) The Petitioner through the present Petition is not challenging the interim procedure outlined under the Amplus Order but only seeking a relief, within the contours of the said procedure, on the limited aspect of allowing part-COD of its solar projects, whilst undertaking that in so far

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as demonstration of part-capacity is concerned, the Petitioner will comply with the existing procedure laid down under Amplus Order.

- f) The PPAs executed may or may not contain such provisions relating to part-commissioning. In any case, even if such provisions for part-commissioning are present in the PPAs, the same can only be enforced and/or are always subject to the regulatory procedure laid down by this Commission. As such, in absence of Commission's order, allowing declaration of part-commissioning / part-COD, the said provisions in the PPA are not going to yield any effective result. Therefore, the Petitioner, by way of the present Petition is seeking part-commissioning approval under the existing interim procedure.

Analysis & Decision:

11. This Petition has been filed by "Amp Solar Evolution Pvt. Ltd." having two projects at Tilhar and Begumpur, each of 10 MW AC capacity. The Petitioner has been granted LTOA for Tilhar Project and has applied for LTOA for Begumpur Project though connection agreements for both the Projects have been signed.
12. While looking at the proceedings in Petition No. 1662 and 1644 of 2020. The Petitioner, Amp Solar Clean Power Ltd., has stated that Prayagpur project having capacity of 20 MW, Bay 1(10 MW) and Bay 2(10 MW), was commissioned on 21.07.2020 and 31.10.2020. The Petitioner has approached the Commission on 16.12.2020 for allowing part capacity COD declaration. **The Petitioner, in this matter, has achieved highest generation of 14.52 MW on 8th Jan 21, during peak winter. The Commission vide its order dated 24.02.2021, keeping in view the difficulty faced by the Petitioner and verification of MRI data from UPSLDC has allowed part capacity declaration of 14 MW w.e.f. 08.01.2021 i.e. the date when maximum generation capacity was demonstrated. The balance capacity of 4 MW and 2 MW was also declared under commercial operation subsequently.**
13. The Commission has observed that Tilhar Project of the Petitioner has been commissioned on 26.11.2020 and has achieved highest generation of 9.919 MW, 9.558 MW and 9.111 MW on 06.02.2021, 07.02.2021 and 14.02.2021 respectively. The Petitioner has reiterated that the Commission has allowed part capacity COD declaration to one of its affiliates company named "AMP Solar Clean Power Ltd' in Petition No. 1662 and 1644 of 2020 vide order



dated 24.02.2021, and therefore, should allow such relief to not only all affiliates' companies of the Petitioner but also to all Solar Project developers in the state of U.P. Later on, the Petitioner vide its rejoinder dated 25.06.2021 has restricted its Prayer to all affiliates companies of the Petitioner setting up total 200 MW capacity in the state.

14. In the present case of Tilhar Project, of AMP Solar Evolution Pvt. Ltd., though the 10 MW project has been commissioned on 26.11.2020 and achieved highest generation of 9.92 MW on 06.02.21, 9.56 MW on 07.02.21 and 9.1 MW on 14.02.21, during winter season. However, the Petitioner could demonstrate installed capacity of 10 MW only on 10.05.2021 stated to be on account of bad weather conditions and poor solar irradiation.

15. **The Petitioner**, rather than submitting maximum generation capacity data to UPSLDC and approaching the Commission in beginning of February 21 for allowing part capacity declaration, **has chosen to approach the Commission in late March 21 seeking relief for all its affiliates Solar Project in advance, despite being aware that relief provided to AMP Solar clean Power Pvt Ltd is a specific relief till the Commission frames specific guidelines / procedure in respect of declaration of COD of Solar Projects.**

16. The Petitioner has only applied for LTOA of its Begumpur Solar project, which is yet to be granted. Therefore, the Commission is not inclined to grant any of the dispensation being sought by the Petitioner in respect of its Begumpur Project.

17. Further, the Petitioner has pleaded that SECI's model PPA have provision of part commissioning of the Project as also the UPPCL signing PPAs with Solar Project developers through nodal agency UPNEDA. The Petitioner need to appreciate that long term PPA of SECI or UPNEDA, Centre / State nodal agency for development of Solar Projects are the ones under Ministry of Power / State guidelines of long- term competitive bidding.

Commission's View

18. We have considered the submissions of the Petitioner, the Respondent, and the documents place on record and are of the view that "Universal" prayer of the Petitioner for all projects of its affiliates can't be accepted, the relief being based upon specific order of AMP Solar Clean Power Ltd.



19. Further, the Petitioner has no case of any dispensation to be allowed for part capacity for either of its two projects namely, Tilhar and Begumpur, for Tilhar Project is already declared under COD, therefore prayer related to this project is infructuous. On the other hand, Begumpur Project is still to be granted LTOA and therefore, it is pre-mature for the petitioner to seek any relief for this project.

20. The Commission further reiterates that till the Commission frames specific Guidelines / Procedure/Regulations in respect of commissioning and declaration of COD of Solar Projects, the procedure issued vide order dated 27.07.2020 in Petition No. 1517/2020 shall hold good. The order dated 24.02.21 of the Commission in Petition No. 1662 and 1644 of 2020, as specific relief to AMP Solar Clean Power Ltd, cannot be extended and made applicable in perpetuity for the Petitioner's affiliates' Companies projects which are yet to be commissioned, as these will render the forthcoming Guidelines/Procedures/Regulations on Commissioning and COD declaration, ineffective, as those projects of petitioner's affiliates' Companies would be subjected to forthcoming Guidelines / Procedures/ Regulations.

However, in case of any difficulty being faced by the Petitioner / Petitioner's affiliates' Companies, they may approach the Commission with relevant details and justifications and the matter would be decided as per applicable Orders/Procedures/Guidelines/Regulations on the date of such petition.

Accordingly, the Petition is disposed of in terms of the above.

(Vinod Kumar Srivastava)
Member

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow

Date: 20.07.2021