31st DAY, THE MONDAY OF AUGUST
TWO THOUSAND AND TWENTY

: Present :
Justice C.V. Nagarjuna Reddy, Chairman
Sri P. Rajagopal Reddy, Member
Sri Thakur Rama Singh, Member

O.P.No.10 of 2020

Between:
Garrison Engineer, Navy Kalinga, Vizag ...Petitioner

A N D

Chairman & Managing Director, APEPDCL
Chief General Manager, Energy Conservation, APEPDCL
Superintending Engineer, Operation Circle, APEPDCL ...Respondents

The Original Petition has come up for hearing through web hearing finally on 12-08-2020 in the presence of Sri Challa Gunaranjan, learned counsel for the Petitioner and Sri P. Shiva Rao, learned Standing Counsel for the Respondents. After carefully considering the material available on record, hearing the arguments of the learned counsel for both parties and the written submissions filed by the parties, the Commission passed the following:
ORDER

1. The Petitioner, the Garrison Engineer in this original petition, prayed for approval for its 2 MW solar photovoltaic power plant at VIZAG under net metering basis with bi-directional Meter in terms of Solar Roof Top (SRT) guidelines approved by Andhra Pradesh Electricity Regulatory Commission’s order dated 25.05.2019.

The averments of the Petitioner are briefly as under:

i. That the Petitioner is a HT-IIA consumer and is procuring power from APEPDCL through its HT Service Connection No.VSP179 with a Contracted Maximum Demand (CMD) of 2000 kVA, connected to 33/11KV INS Kalinga SS.

ii. That the Petitioner is establishing a 2 MW solar photovoltaic power project in pursuance of implementation scheme for setting up over 300 MW of Grid-Connected & Off-grid Solar PV Power Projects by Defence Establishments under Ministry of Defence and Para-military Forces (under MHA) with Viability Gap Funding (VGF) of Rs.750 Cr. under Phase-II/III of Jawaharlal Nehru National Solar Mission (JNNSM) during 2014-15 and onwards sanctioned by MNRE vide its letter dated 07.01.2015. The power generated from the plant is to be used for captive purpose and any excess power is to be sold to the DISCOMs. Being desirous of implementing the said scheme of MNRE, the project was taken up under Engineering Procurement Construction (EPC) mode.

iii. That taking cognizance of the delay in approvals with regard to connectivity and evacuation of excess power under the Scheme as
communicated by Ministry of Defence, MNRE had issued a Memo dated 11.12.2017 requesting the State Governments to take up the issues with the State regulators for provision of surplus power beyond 1 MW capacity on net metering basis, and that necessary directions may be given to the respective DISCOMs for providing the required support and approvals for grid connectivity in a timely manner.

iv. That the Petitioner's project was registered by the New and Renewable Energy Development Corporation of Andhra Pradesh Ltd. (NREDCAP) vide its letter dated 09.08.2019 with Registration Number APSPP 2018-30, subject to the provisions of the AP Solar Power Policy, 2018.

v. That the Petitioner has requested approval from the Respondents to evacuate the power from his 2 MW solar project under net-metering basis through bi-directional meter, however its request was rejected by the Respondents, stating that the Solar Power Policy, 2018 permits projects upto 1 MW under net metering at a single location.

vi. That Government of Andhra Pradesh (GoAP) had issued Andhra Pradesh Solar Power Policy 2018 vide its G.O.Ms. No. 1 dated 03.01.2019 for encouraging establishment of solar power plants in the State. APEPDCL has framed modalities/guidelines dated 04.02.2019 for implementation of solar rooftop program in accordance with the directions in the policy, and submitted a letter to the Commission for its approval. The erstwhile Commission had approved the guidelines vide its order dated 25.05.2019. According to the Solar Policy 2018 & guidelines approved by the Commission, the maximum capacity of solar rooftop projects under net metering is 1 MW at a single location.
The erstwhile Commission, except approving the guidelines, had not framed any regulations for solar rooftop projects. The Guidelines nowhere prohibit setting up of a solar power plant of more than 1 MW at a single location.

vii. That in view of the Memo dated 11.12.2017 of the MNRE and the Scheme, permission is being sought in order to enable the Petitioner to install a 2 MW rooftop solar power plant under EPC Mode on net metering basis at the Petitioner's premises. As the Petitioner already has an HT-IIA connection with CMD 2 MW, permitting the installing of a solar photovoltaic project with 2 MW capacity would not require the DISCOMs to incur additional costs for the evacuation mechanism. Further, the Petitioner is a vital Defence establishment of the Indian Navy under the Ministry of Defence and is under the target of 300 MW set by the Central Government as per the Scheme, which is a flagship program. Further, as stated above, the MNRE had also requested the State Governments and DISCOMs to enable the provision of power projects of over 1 MW capacity and provide support to the Defence establishments seeking to establish rooftop solar projects under the Scheme.

viii. That the Policy issued by the Government of Andhra Pradesh is to encourage the Solar Rooftop projects and the same cannot be looked in as regressive step and the right to install projects above 1 MW at a single place cannot be restricted and it is well within the powers of this Commission to grant approval for projects exceeding 1 MW,
having regard to the legislative mandate contained U/s.86(l)(e) of the Electricity Act, 2003 (for short the Act).

ix. That the Petitioner stated that another similarly situated establishment under the Ministry of Defence, Hindustan Aeronautics Ltd., had sought a similar relief in the states of Uttar Pradesh and Telangana, where Regulations were framed pursuant to the respective Solar Policies of the State Government. The UPERC vide its Orders dated 18.12.2017 & 23.01.2018 and TSERC vide its Order dated 19.12.2018 have accorded permission for setting up of rooftop solar power projects of 4 MW, 2.9 MW and 2 MW respectively, relaxing the upper limit of 1 MW specified in their respective regulations for rooftop solar power projects.

2. In response to the Petitioner’s contentions, the Respondents in their counter stated:

   i. That the Petitioner has initially submitted an application to APEPDCL for setting up of 2.0 MW Solar power Plant along with project registration issued by NREDCAP duly paying required application fees. Accordingly, APEPDCL has accorded the technical feasibility for evacuation of Power from the Petitioner’s plant and requested him to enter into MOU with it. But, the Petitioner has not entered into MoU.

   ii. That the Petitioner again made a revised request to APEPDCL to accord approval for installation of 2 MW capacity Rooftop Solar Plant under Net metering basis through by-directional metering, enclosing MNRE Office Memorandum Dated 11.12.2017 and UPERC Orders

iii. That only the Projects with capacity upto 1000 kWp (1 MW) at a single location will be permitted for Solar Rooftop Projects as per the Solar Power Policy 2018 issued by Govt of Andhra Pradesh vide its G.O.Ms No.1 Dt 03.01.2019 & APERC approved modalities (Guidelines) in its Order dated 25.05.2019. Accordingly, the Petitioner’s proposed 2 MW Solar Plant under Rooftop category with net metering has not been accepted.

iv. That the Respondents addressed a letter to GoAP later, requesting it for directions on the representation of Petitioner, to accord approval for installation of 2 MWp Rooftop Solar Plant under Net metering Basis. In response to the letter of Respondents, GoAP has advised the Petitioner to establish the proposed 2 MW solar plant under captive mode.

v. That the Petitioner meanwhile has applied for registration of 1 MW under net metering guidelines and the Respondents have given all necessary approvals for the same and all works are completed accordingly.

vi. That the present installed capacity of Solar and Wind generation in the State of Andhra pradesh is around 8,500 MW. The smooth integration of this capacity of Solar and Wind power sources is a difficult task in view of the variable nature of these power sources in a system having a demand range of 9,000 to 10,000 MW.
vii. That in case of net metering, the developer would inject the excess power during off peak time i.e., day time and draw the power from DISCOM at peak load hours when the DISCOM is purchasing power at high prices. Thus it causes financial burden to DISCOM which ultimately needs to be borne by end consumers of the State. As such public interest is involved. In the Rooftop installations, the DISCOM is bound to purchase the excess power injected into the grid after net off at the applicable tariff as determined by the Commission.

3. In response to the the Respondents’ counter averments, the Petitioner in his rejoinder stated:

i. That while technical feasibility was accorded by the Respondents for 2 MW captive use, the work was sanctioned by the HQ Eastern Naval Command under the Ministry of Defence for a 2 MW solar rooftop plant with net metering in pursuance of MNRE Memo dated 11.12.2017. As such, it was not open to the Petitioner to enter into an MoU with the Respondents for captive use.

ii. That a significant part of the power consumed by the Petitioner is due to AC plants of various hangers whose peak load requirement is at the time of noon which coincides with the generation of solar power. The Recorded Maximum Demand (RMD) is 2,479 kVA & the minimum RMD is 2,155 kVA during April, 2019 till date as per the billing of Petitioner’s service, which is more than the total 2000 kVA capacity of the rooftop solar power plant for which approval is being sought. Further, in view of coming up with new installations in its premises which require air conditioning, the Petitioner had applied for an
enhancement of present CMD by 500 kVA for which approval is still pending with the Respondents.

iii. That the Petitioner is being levied with penal demand charges and energy charges whenever its RMD exceeds CMD. This is one of the reasons for setting up the present project. It is also expected that its connected load will be over 2,800 kVA due to the new additional air conditioning loads to be added by the end of 2020. As such, the power injected into the grid by the Petitioner's power plant will be rare, and even if power is injected into the grid, the same will be very meager, and will cause barely any burden to the Respondents.

iv. That with regard to Respondents' averment that the Petitioner will inject power during the day and draw power during the night, when the Respondent is purchasing power at high prices, it does not hold any water. It is reiterated that the Petitioner is being levied additional charges by the Respondent for units consumed in peak hours. And there will be barely any injection of power into the grid during the day, and the Petitioner's demand will remain the same at night with or without the solar rooftop project. The Petitioner's project will in fact ease the load of the Respondent in a day during the first peak from 6 AM to 10 AM and will not inject any power during the off-peak from 10 PM to 6 AM.

v. That since the restriction of setting up a solar rooftop project of 1 MW at a single location is there in the Guidelines approved by the Commission, it is open for this Commission to specifically exempt the Petitioner’s power plant from the said condition. Further the
Petitioner's Project is within the CMD as per the approved guidelines. Further, the Petitioner is seeking approval only up to its present CMD and not beyond it. As such there is no issue whatsoever with the technical feasibility of the Project. Further the DISCOMs in Uttar Pradesh and Telangana have faced no technical problems with the setting up of even 5 MW solar rooftop projects with net-metering by various Defence establishments.

vi. That it is trite law that the exercise of Commission's statutory powers under S.86(l)(e) of the Electricity Act, 2003 and the legislative mandate thereof cannot be restricted by way of a policy directive, so long as the exercise of such powers do not put any party at a disadvantage.

vii. That the Forum of Regulators in their Report on “Metering Regulation and Accounting Framework for Grid Connected Rooftop Solar PV in India” in April, 2019 have noted the fact that various State Regulatory Commissions have allowed setting up of rooftop solar systems of over 1 MW and upto the CMD of the consumers.

4. We have heard Mr.Challa Gunaranjan, Learned counsel for the Petitioner and Mr.P.Shiva Rao, Standing Counsel for the Respondents. The Learned Counsel for the Petitioner submitted that though the Government policy and the DISCOMS’ guidelines as approved by this Commission, place a cap on the capacity of Solar Rooftop plant at a single location on net metering basis, this Commission is empowered to remove such a cap for the purpose of encouraging generation of renewable energy, as envisaged under Sec.86(1)(e) of the Act. In support of his submission he relied upon the judgment dated
21.01.2014 of the Appellate Tribunal for Electricity in Appeal No. 92 of 2013 in the matter of “Tamil Nadu Electricity Consumers Association Vs Tamil Nadu Electricity Regulatory Commission”. The learned counsel also relied upon the orders of UPERC and TSERC to buttress his submissions.

5. Opposing the above submissions Mr.P.Shiva Rao submitted that as there is already surplus renewable energy in the State, there is no need for this Commission to grant relief to the Petitioner beyond what is provided in the Government policy and the guidelines approved by this Commission. He also reiterated the stand taken by the Respondents in their counter on other aspects.

6. In view of the rival contentions of both parties as discussed above, the point for consideration before this Commission is whether the Petitioner is entitled to the relief as prayed for?

7. The analysis and decision of the Commission is as follows:

   i. Before dealing with the merits of the present case, it would be apt to refer to the legal position with regard to the scope of powers of this Commission vis-a-vis., the directions issued by the State government. In APTRANSCO Vs Sai Renewable Energy Pvt. Ltd, the Hon’ble Supreme Court while dealing with the question whether a policy directive issued under the Andhra Pradesh Electricity Reform Act, 1998 curtails the power of the State Electricity Regulatory
Commission to fix tariffs independent of such policy directive inter-alia held as under:

“27. The Reform Act, 1998 was enacted, primarily, with the object of constituting two separate corporations; one for generation and other for transmission and distribution of electrical energy. The essence was restructuring, so as to achieve the balance required to be maintained in regard to competitiveness and efficiency on the one part and the social objective of ensuring a fair deal to the consumer on the other. This Act is also intended for creation of a statutory regulatory authority. Section 3 of the Act requires the State Govt. to establish by notification a Commission to be known as Andhra Pradesh Electricity Regulatory Commission. This was done by notification dated 3rd April, 1999. As already noticed, Section 11 detailed the functions of the Regulatory Commission and primarily it had advisory as well as regulatory functions. In terms of Section 11(1)(c) it was required to issue licenses in accordance with the provisions of the Act and determine the conditions to be included in the license. However, 11(1)(e) gave it much wider power and duty to regulate the purchase, distribution, supply and utilization of electricity, the quality of service, the tariff and charges payable keeping in view both the interest of the consumer as well as the consideration that the supply and distribution cannot be maintained unless the charges for the electricity supplied are adequately levied and duly collected. In terms of Section 11(1)(l) it was to undertake all incidental or ancillary things to the functions assigned to it under the provisions of the Act. Section 12 of the Act vests the State Govt. with the power to issue policy directions on matters concerning electricity in the State including the overall planning and co-ordination. All policy directions shall be issued by the State Govt. consistent with the objects sought to be achieved by this Act and, accordingly, shall not adversely affect or interfere with the functions and powers of the Regulatory Commission including, but not limited to, determination of the
structure of tariffs for supply of electricity to various classes of consumers. The State Govt. is further expected to consult the Regulatory Commission in regard to the proposed legislation or rules concerning any policy direction and shall duly take into account the recommendation by the Regulatory Commission on all such matters. Thus the scheme of these provisions is to grant supremacy to the Regulatory Commission and the State is not expected to take any policy decision or planning which would adversely affect the functioning of the Regulatory Commission or interfere with its functions. This provision also clearly implies that fixation of tariff is the function of the Regulatory Commission and the State Govt. has a minimum role in that regard. ……

The Hon’ble APTEL in Appeal Nos. 41, 42 and 43 of 2010 in Polyplex Corporation vs Uttarakhand Electricity Regulatory Commission, held as under:

“The State Commission is independent statutory body. Therefore the policy directions issued by the State Government are not binding on the State Commission, as those directions cannot curtail the power of the State Government (sic Commission) in the matter of determination of tariff. The State Government may have given any such policy direction in order to cater to the popular demand made by the public but while determining tariff the State Commission may take those directions or suggestions for consideration but it is for the State Commission which has statutory duty to perform either to accept the suggestion or reject those directions taking note of the various circumstances. It is purely discretionary on the part of the State Commission on acceptability of the directions issued by the State Government in the matter of determination of tariff. ”
In its Judgement dated: 21.01.2014 in Appeal No.92 of 2013 and 109 of 2013, the Hon’ble APTEL following the ratio in APTRANSCO Vs Sai Renewable Energy Pvt. Ltd. and Polypex Corporation vs Uttarakhand held as follows:

“34. .... Thus, the State Commission in discharge of its functions under the Act has to be guided by the directions of the State Government but the same are not mandatory and the State Commission being an independent statutory authority is not bound by any policy directions which hampers (sic) with its statutory functions.”

The above judgments crystallized legal position to the effect that in discharge of its statutory functions, this Commission is only guided, but not bound by the policy directions of the State and that the powers of this Commission are not hampered or in any manner cut-down by such policy directions. We therefore to this extent agree with the submission of the learned counsel for the Petitioner. However, the question in the instant case is whether the facts of this case warrant this Commission going beyond the policy decision of the State Government?

ii. The Government of Andhra Pradesh (GoAP) had issued Andhra Pradesh Solar Power Policy 2018 vide its G.O.Ms. No. 1 dated 03.01.2019 for encouraging establishment of solar power plants in the state. The policy is applicable for 5 years from the date of issuance of order and/or shall remain in force till a new policy is issued.

The relevant portion of the government policy reads as under:

D. Solar Rooftop Projects
The Government will promote solar rooftop systems on public buildings, domestic, commercial and industrial establishments on gross and or net meter basis. The consumer(s) are free to choose either net or gross meter option for sale of power to Discom under this policy. The applicable tariff for either of the cases shall be equal to the average pooled power purchase cost which will be determined by APERC for the year during which the project is synchronized with the Grid and the applicable tariff at the time of CoD will be paid for 25 years, in case of projects executed under both net metering and gross metering basis. The above tariffs shall be applicable for a period of 25 years for Eligible Developers who set up solar rooftop projects within the Operating Period of this policy.

The Obligated Entities as per the RPPO Regulations of APERC, are eligible for adjusting the power generated from rooftop projects towards their obligation to meet RPPO provided necessary metering is arranged for measuring the solar power as per the Regulations of APERC.

The metering facility will be extended for all Eligible Developers who intend to setup solar photovoltaic plants at their premises. Eligible Developers who wish to avail the metering facility will have to apply through online mode to the DISCOMs - either on their websites and / or through designated meeseva / customer service centers. All approvals/clearances shall be disposed by the respective Discom within 14 days from the date of application. The projects of capacity upto 1000 KWp at a single location will be permitted.

On behalf of the DISCOMs, APEPDCL has framed modalities/guidelines dated 04.02.2019 for implementation of solar rooftop program in accordance with the directions in the policy, and submitted a letter to the Commission for its approval. The Commission had approved the guidelines in toto vide its order dated
25.05.2019, after hearing all the stakeholders' views. According to the solar policy 2018 & the guidelines approved by the Commission, the maximum capacity under solar rooftop under net/gross metering is 1 MW at single location. Therefore, it is crystal clear that the Petitioner's project is not eligible to be granted under net metering for more than 1MW capacity.

iii. In support of the Petitioner's case, the learned counsel has referred to and relied upon the MNRE Memo dated 11.12.2017 requesting the State Governments to take up the issues with the State regulators for provision of surplus power beyond 1 MW capacity on net metering basis. The Commission however has not received any communication from GoAP in that regard. On the contrary, from the record it appears that a letter addressed by APEPDCL to consider the Petitioner's case has not been responded to by the State Government. It needs to be noted that under Sec. 61 of the Act this Commission shall be guided inter-alia by the National Electricity Policy and Tariff Policy. The ratio discussed in the foregoing on the interpretation of Sec.108 of the Act, equally applies for interpretation of Sec.61. Significantly both the provisions use the words “shall be guided.” As held in APTRANSCO Vs Sai Renewable Energy Pvt. Ltd (Supra), the policies be them of the Central Government or State Government are only guiding principles and not binding principles for this Commission while discharging its Statutory functions. While the National Electricity policy and Tariff policy are silent on the issue on hand, even if there is one, this Commission still has discretion whether to follow the same or not. The
MNRE proceedings addressed to the Government is therefore of no help to the Petitioner.

iv. The learned counsel for the Petitioner also relied on the Orders passed by the UPERC & TSERC permitting the solar rooftop projects of more than 1 MW capacity under net metering mechanism. In the case of UPERC, it has made separate regulations governing net metering for solar rooftop projects. The said regulations contain a clause which reserved the power to relax in appropriate cases in the State Commission. While exercising such power, UPERC in the case of Hindustan Aeronautics Limited, Kanpur in order dated 18.12.2017, permitted establishment of more than 1 MW solar plant on net metering basis. It is significant to note that as evident from the order passed by UPERC, the licensees, far from opposing the request of the Petitioner therein, supported the same.

As regards TSERC, it has permitted higher than 1 MW capacity in one case relying on some provisions in its net metering regulations framed by it and also by relying on the orders passed by UPERC.

In the instant case, the Commission has not issued net metering regulations except approving the guidelines framed by APEPDCL in accordance with the policy of the GoAP in its order dated 25.05.2019. While passing the said order, all stakeholders have been given opportunity to submit their views. The Petitioner being a stakeholder has not utilized the opportunity. Unlike the regulations of the two referred ERCs, this Commission has not created any provision for relaxation while approving guidelines framed by the licensees. As the
orders of UPERC and TSERC are based on the set of their respective Regulations and facts peculiar to those cases, as explained above, we do not feel persuaded to follow them.

v. The learned counsel for the Petitioner has also relied on the Forum of Regulators’ (FOR) “Report on Metering Regulation and Accounting Framework for Grid Connected Rooftop Solar PV in India” April, 2019. It is true that the FOR has opined that it is technically feasible to permit more than 1 MW capacity plant at a single location not exceeding the contracted maximum demand under net metering. The objective of the report is to bring out new model net metering regulation in the place of earlier net metering regulation issued in 2013. The report of FOR being mere recommendatory, the same ipso facto does not bind the Commissions.

vi. The above discussion would eventually lead to the question whether the facts of this case warrant this Commission to take a decision in deviation of the Government’s policy decision and the guidelines approved by the Commission? On a careful consideration of the pros and cons, the answer to this question must be in the negative for the following reasons:

a. The main objective of permitting solar rooftop plants is to encourage generation of renewable energy. While this Commission has fixed renewable power obligation (RPO) at 15% for FY 2020-21, the installed capacity of the renewable power is presently 8,500 MW (Solar and Wind together), and the RPO being achieved is about 24%. Thus it is clear that the existing RPO
achieved in the State of Andhra Pradesh is far in excess of the prescribed RPO obligation. Therefore, in the existing situation, this Commission does not find the necessity of taking a decision, against the policy decision of the State government, the essence of which was approved by this Commission in the form of approval of DISCOM's guidelines.

b. The Respondent's pleaded that in the net metering system, they need to incur high expenditure in purchase of surplus power supplied by the solar rooftop generators and that the Renewable Energy in the State being in far too excess, such expenditure imposes additional burden on the end consumers. The Petitioner however pleaded that the power that is supplied to the Respondent is very meagre and that therefore there will not be much additional burden. This Commission is of the opinion that in either situation it is not desirable to accept the Petitioner's request. If the Respondent's plea is correct, it imposes additional burden on the Respondent. If we accept the Petitioner's plea, there is no need for following the net metering system as the Petitioner would not stand to gain by supplying meagre power. In such an event the Commission does not see any reason why the Petitioner shall not establish a captive plant as suggested by the Respondent, instead of seeking to thrust its surplus power on the Respondent and create additional burden on the end consumer.

c. Except orally requesting the Commission to grant relief not only against the Government policy but also against the guidelines
approved by this Commission, the Petitioner neither questioned the Government policy, nor made any specific request to review/revisit the guidelines approved by this Commission. Unless the guidelines are revisited after placing it in public domain, the Commission does not find it appropriate to grant relief to the Petitioner contrary to the policy and guidelines.

d. The plea that the Petitioner being a Defense establishment deserves special consideration does not on the facts of the case commend merit, in that having regard to the facts as discussed above, rejection of relief does not in any manner cause harm to the Defense establishment. The only consequence of rejection of the relief claimed in the petition is that instead of establishing a solar plant on a net metering basis in excess of 1 MW, the Petitioner will be constrained to treat the capacity beyond 1 MW as a captive plant. Indeed the Petitioner was already permitted establishment of the plant upto 1 MW on net metering basis. Therefore no harm is caused by rejecting the relief.

8. For the aforementioned reasons the OP is devoid of merit and the same is accordingly dismissed. No costs.

Sd/-
Thakur Rama Singh
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
P. Rajagopal Reddy
Member