

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated : 19th July, 2018

Present:

Shri M.K. Shankaralinge Gowda ..	Chairman
Shri H.D. Arun Kumar ..	Member
Shri D.B. Manival Raju ..	Member

O.P. No.92 of 2017

BETWEEN:

Smt. A. Shushmashree,
W/o A.V. Anjaneya Prasad,
Registered Office at Flat No. 42,
Ganesh Nagar, West Marredpally,
Secunderabad – 500 026.

..

PETITIONER

[Represented by Navayana Law Offices, Advocates]

AND:

Gulbarga Electricity Supply Company Limited,
Station Road,
KALABURAGI- 585102

..

RESPONDENT

[Represented by ALMT legal, Advocates]

ORDERS

- 1) In this Petition filed under Section 86(1)(f) of the Electricity Act, 2003, the Petitioner in effect, has prayed for:
 - (a) Direction, declaring that the Petitioner is entitled to the tariff, as per the PPA at the rate of Rs.9.56 per unit, for the term of the PPA;

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- (b) Direction to the Respondent, to make payment for the invoices raised by the Petitioner at the rate of Rs.9.56 per unit, along with interest at the rate of 1%, as agreed under the PPA; and,
- (c) Pass such other Orders, including an Order as to costs, in the interest of justice.
- 2) The material facts of the case, stated by the Petitioner in the Petition, may be summarized, as follows:
- (a) The Petitioner has installed a SRTPV System of 495 Kwp, on the roof top of godowns situated at Koilur, in Yadgir District.
- (b) The Petitioner entered into a Power Purchase Agreement (PPA) dated 01.07.2015 with the Respondent for sale of Solar power from the SRTPV Plant. The Respondent, by letter dated 02.02.2016, accorded approval to the Petitioner for installing 495 Kwp Solar RPTV System on rooftop of the godown and mentioned that the SRTPV System has to be commissioned within 180 days from 02.02.2016.
- (c) On 23.06.2016, the Executive Engineer, O & M Division, Yadgir addressed a letter to the CEIG to arrange for inspection and safety approvals, as required, for commissioning of the project.
- (d) The CEIG, by letter dated 19.07.2016, informed the Petitioner that the installation was not fully in conformity with Central Electricity Authority

(Measures Relating to Safety and Electric Supply) Regulations 2010 and informed the Petitioner to attend to the defects and to forward the Compliance Report within 15 days.

- (e) The Respondent, on 27.07.2016 issued an Official Memorandum, granting Approval of pre-commissioning and synchronization of the 495 Kwp SRTPV Project. The plant was synchronized on 29.07.2016.
 - (f) As the Respondent had failed to pay for the energy supplied, the Petitioner, by letter dated 12.04.2017, requested the Respondent to make payment immediately, along with 1% interest per month, within seven days from the receipt of the letter, failing which the Petitioner would be constrained to approach the appropriate legal authority, in accordance with law.
 - (g) The Respondent, by an internal communication / letter dated 09.05.2017, had proposed to make payments, in respect of the bills, issued for the months, from August, 2016 to March, 2017 at Rs.5.67 per unit.
 - (h) Hence, this Petition is filed.
- 3) The grounds urged by the Petitioner, in support of her prayers, may be stated, as follows:

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- (a) The Respondent had agreed to pay for the net-metered energy at Rs.9.56 per unit, as determined by the KERC, for the term of the PPA. Hence, this tariff is payable by the Respondent, as per law and the contract between the parties.
- (b) The Petitioner has not defaulted in commissioning of the Project and has adhered to the timelines. Further, the PPA was signed before 01.09.2015 and there was no extension of time granted to the Project. Hence, the Generic Tariff Order dated 10.10.2013 is applicable to the Petitioner.
- 4) Upon Notice, the Respondent appeared through its learned counsel, and filed the Statement of Objections, which may be stated, as follows:
- (a) On 01.07.2015, the Petitioner entered into a PPA with the Respondent, under which, the Petitioner proposed to connect and operate the Solar SRTPV System with Respondent's HT Distribution System, for sale of the Solar Power to the Respondent, in terms of the Order dated 10.10.2013 or as amended from time to time, and also the tariff was fixed at Rs.9.56 per unit with the condition that, the installation must be commissioned within the stipulated period as fixed by the Commission.
- (b) As per the PPA, the SRTPV System ought to have been commissioned by the Petitioner on or before 30.06.2016 (one year from the date of PPA). However, the Petitioner installed and synchronized the Solar Power Unit with the grid on 29.07.2016, after a delay of one month.

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- (c) The Commission's Order dated 02.05.2016 states that, if the extension in the time period for commissioning the plant is granted to the Petitioner after the Effective Date of the said Order, i.e., after 02.05.2016, such plant shall be eligible for the revised tariff of Rs.5.67 per unit. Since the commissioning of the plant has taken place on 29.07.2016, the tariff determined by the Commission, in the Order dated 02.05.2016, is applicable.
- (d) The Official Memorandum dated 27.07.2016 (ANNEXURE – P7), filed by the Petitioner, indicates that, the unit was synchronized with the grid on 29.07.2016 and that, the solar side generation meter was not yet installed by the Petitioner, as on 27.07.2016.
- (e) As per the PPA, the SRTPV System ought to have been commissioned by the Petitioner on or before 31.12.2015. However, the Petitioner installed and synchronized the Solar Power Unit with the GESCOM Grid on 29.07.2016, after a delay of one month. Therefore, the Petitioner is not entitled to any relief and the Petition requires dismissal. Here, itself, we may note that, the Respondent states at one place in the objection that, the time available to the Petitioner for commissioning the SRTPV plant was six months, whereas at other places states it to be one year.
- 5) We have perused the records and heard the oral submissions made by the learned counsel for the parties. The following issues arise for our consideration:

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- (1) Whether in the absence of a clause in the PPA specifying the time available for commissioning of the Petitioner's project, the time specified in the Respondent's Guidelines relating to the SRTPV Scheme, is binding on the Petitioner?
- (2) Whether the Respondent is correct in granting 180 days' time to the Petitioner, for commissioning the project, in Format-6[6(i)] dated 2.2.2016, after the execution of the PPA?
- (3) Whether the Petitioner, has made out a case for its plant being eligible for the tariff agreed to in the PPA?
- (4) What Order?
- 6) After considering the submissions made by the parties and perusing the pleadings and documents placed on record, our findings on the above issues are as follows:
- 7) **ISSUE No.(1):** *Whether in the absence of a clause in the PPA specifying the time available for commissioning of the Petitioner's project, the time specified in the Respondent's Guidelines relating to the SRTPV Scheme, is binding on the Petitioner?*
- ISSUE No.(2):** *Whether the Respondent is correct in granting 180 days' time to the Petitioner, for commissioning the project, in Format-6[6(i)] dated 2.2.2016, after the execution of the PPA?*
- ISSUE No.(3):** *Whether the Petitioner, has made out a case for its plant being eligible for the tariff agreed to in the PPA?*

We proceed to deal with Issue Nos.(1), (2) and (3) together, as they are interconnected.

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- (a) It is the case of the Petitioner that, it had a time of 180 days from 02.02.2016 (the date of Respondent's approval letter) to commission its SRTPV plant and it commissioned it on 29.07.2016, well before the end of such 180 days period. On the other hand, the Respondent contends that, the commissioning period provided, counts from the date of the PPA, i.e., 01.07.2015, and the Petitioner, which had one year to commission the plant, failed to do so. As noted earlier, the Respondent in its objections has also contended that, the time for commissioning was six months.
- (b) It is not in dispute that, as a part of the State Government's Solar Policy, which among other things proposed to promote the Grid-connected Roof Top Photo Voltaic Generation Projects, the Respondent had called for applications from its consumers, interested in availing of the Solar Roof Top Photo voltaic (SRTPV) Scheme, the details of which were given on its Website. The interested consumers had to download the application from the Respondent's website and the duly filled in application form had to be submitted to the jurisdictional officer, with the prescribed fee for further processing. As per the Respondent's Consumer Guidelines for availing of the SRTPV Scheme, which is made available to all the consumers and is in public domain, the time prescribed for commissioning of the plants, to be installed on existing buildings, is 180 days, which is found to be adequate. Further, as per the SRTPV Scheme, after accepting the consumer's application, approval of installation had to be issued in Form-6 and after the plant is ready for commissioning, the PPA had to be executed. But, in the present case, the approval in Form 6(i) has been

wrongly issued, much after the execution of the PPA, and it was not necessary, as the PPA signed by the Respondent approves the installation at the SRTPV plant by the Petitioner. Thus, the time made available for the Petitioner to commission its plant starts from the date of signing of the PPA by the parties, as correctly claimed by the Respondent and further, as per the Respondent's SRTPV Scheme Guidelines, such time is six months, as admitted by Petitioner. The significance of the condition of commissioning of the Solar Power Plant, within the stipulated time has been explained by us, while dealing with similar issues raised in other petitions.

- (c) In the Commission's Order in RP Nos.18 and 19/2016, the relevant portion dealing with this issue, reads thus:

"9. (a)

(g) At this juncture, we deem it relevant to briefly note the link between the commissioning date of a plant and the applicable tariff. This Commission periodically determines generic tariff for supply of electricity, generated from various sources, to the Distribution Licensees based on several parameters, with capital cost of generation plant being the major component. With the advancement in technology and production efficiency, the capital cost of the power plants varies quite frequently, especially in solar power plants. Among various sources of renewable energy, the tariff for solar power is on a downward trend in the recent years owing to rapid decline in its cost of generation and consequently, the Commission has been revising the tariff, whenever found necessary. Thus, the generic tariff of the SRTPV plants determined at Rs. 9.56 per unit in the Commission's Order dated 10.10.2013 has been revised in the Commission's Order dated 02.05.2016, which is applicable to all new SRTPV plants entering into PPA and commissioned during the period from 02.05.2016 to 31.03.2018 and also to such plants for which PPAs were entered into at the tariff specified in the Commission's

Order dated 10.10.2013 that are not commissioned within the time period stipulated by the distribution licensee concerned or the Commission.

(h) We may point out that, any agreement for power procurement from a new Project has a clause, either in the PPA or in other relevant document, stipulating the time within which the power supply should commence so that the distribution licensee can plan further supply to its consumers. The time stipulated for completion of the Project takes into account the time ordinarily required to complete various pre-commissioning activities, which vary depending on the type and capacity of the power plant. Any delay or failure in commencement of power supply within the agreed date would disrupt the operations of the distribution licensees like that of the Respondent, which could result in their power procurement from alternative expensive source, translating into higher retail tariff to the consumers or short supply leading to revenue loss to them or imposition of penalties on them for not meeting the Renewable Purchase Obligation (RPO) fixed by the Commission, if the source is a renewable energy.

(j) It is not in dispute that, as a part of the State Government's Solar Policy, which among other things proposed to promote grid connected Roof Top Photo Voltaic Generation Projects, the Respondent had called for applications from its consumers interested in availing the Solar Roof Top Photo Voltaic (SRTPV) scheme, the details of which were given on its website. The interested consumers had to download the application form from the Respondent's Website and the duly filled application form had to be submitted to the Field Officer concerned, with the prescribed fee for further processing. The Respondent has contended that, as per guidelines, relating to the SRTPV scheme made available to all the consumers, for the SRTPV applicants having existing buildings, the time prescribed for commissioning of the project is 180 days and this is not denied by the Petitioners. We may note here that, the Commission in its Order dated 10.10.2013, introduced net metering facility to SRTPV plants, allowing the consumers installing them to consume the power generated and to inject any surplus power generated into the distribution system of the Distribution Licensee concerned who would pay such consumers tariff, for the surplus power, as

determined by the Commission. It was envisaged that, the consumers would install the SRTPV plants of reasonable capacity on their readily available existing rooftops within a short period and generate power mainly for self-consumption, while injecting a reasonable quantity of surplus power into the distribution system, for consumption in the immediate vicinity."

- (d) Thus, in respect of a SRTPV plant, there would be a reduction of tariff, as a consequence of delay in the commissioning of the plant beyond the stipulated time, if in the meanwhile, there is a revision of generic tariff by the Commission. Admittedly, in the present case, the generic tariff fixed for the SRTPV plants that was agreed in the PPA, was revised much before the plant was ready for commissioning.
- (e) As noted by us earlier, as per the 'Consumer Guidelines' issued by the Respondent, approval for installation, in Format 6(i), should have been issued before the start of the installation work and prior to the execution of the PPA. If for some reason, such a Format 6(i) is not issued, but the PPA is signed and the installation work has progressed, thereafter, the Format- 6(i) cannot be issued by the Respondent, so as to enlarge the time limit for installation. The issuance of Format 6(i) at a later date would lead to a suspicion against the conduct of both the parties. We hold that, the concerned officer of the Respondent - Electricity Supply Company (ESCOM) is not justified in issuing the Format-6(i), dated 02.02.2016, granting 180 days' time for commissioning of the plant, much after the date of execution of the PPA.

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- (f) Hence, the issuance of the Format 6(i) on 02.02.2016, is irregular and not valid. Such an act of a field officer is not binding on the Respondent and the Petitioner cannot take advantage of it. Granting of additional time for commissioning the Solar Power Plant has bearing on the tariff payable as explained earlier. The consumer, though not a formal party, ultimately, pays for the supply of electricity and hence, is the most affected party. The Commission is required to safeguard such consumers' interest. While upholding the role of the Commission as a regulator and custodian of the interest of consumers, the Hon'ble Supreme Court, in the case of *All India Power Engineers Federation Ltd. vs. Sasan Power Ltd*, reported in (2017) 1 SCC 487, has held that, even if parties to a contract (generating company – seller of energy and distribution licensee - buyer of energy) waive off a certain term affecting the tariff, the Commission, as a custodian of consumers' interest has to intervene and exercise its regulatory powers.
- (g) It is the case of the Petitioner that, it has commissioned the SRTPV plant within the time stipulated, and that the PPA was signed prior to 01.09.2015 and hence, the Tariff Order dated 30.7.2015, is not applicable. We note that, the Order dated 30.07.2015 is not applicable to the SRTPV plants and is not sought to be made applicable to the Petitioner.
- (h) We note that, the Petitioner's plant was commissioned on 29.07.2016, much after the lapse of 180 days, from the date of the PPA, available for

its commissioning and thus, is not entitled for the tariff of Rs.9.56 per unit. The Tariff Order dated 02.05.2016, issued in respect of SRTPV plants, would be applicable to the cases similar to that of the Petitioner, where the plants are not commissioned within the stipulated time. The relevant portion of paragraph-5 of the Order dated 02.05.2016, reads thus:

"In respect of plants for which PPAs that have been entered into prior to 1st May, 2016 and are commissioned within the period of time as stipulated by the ESCOMs concerned or the Commission prior to the date of issue of this Order, the tariff as per the Commission's Order dated 10th October, 2013 shall be applicable. Such plants shall be eligible for the revised tariff as per this Order if they are not commissioned within the stipulated time period and there shall be no extension in time period for commissioning them after the effective date of this Order."

(j) Thus, we hold that Petitioner's plant is entitled for the tariff, as per the Commission's Order dated 02.05.2016.

(k) We, therefore, answer Issues Nos.(1), (2) and (3), as above.

8) **ISSUE No.(4):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) It is declared that the Petitioner is not entitled for any of the reliefs, sought for in this petition;
- (b) The Petitioner is entitled to a tariff of Rs.5.67 (Rupees Five and Paise Sixty Seven) only per unit for the term of the PPA; and,
- (c) The Petitioner is also entitled for payment of interest, as per the terms of the PPA.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER