

No.N/278/2018

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.**

Dated: 29.12.2020

Present

Shri Shambhu Dayal Meena	: Chairman
Shri H.M. Manjunatha	: Member
Shri M.D. Ravi	: Member

RP No.17/2018

BETWEEN:

Bangalore Electricity Supply Company Limited (BESCOM), A Company Registered under the provisions of Companies Act, 1956 having its Registered Office at K.R. Circle, Bengaluru-560 001.
(Represented by its Managing Director)

... Review Petitioner

[Represented by Sri H. Shanthi Bhushan, Advocate]

AND:

Sri Chandranandan N.
S/o G.N. Narayana Swamy,
R/o Kamala Poultry Breeding Farm,
Maralakunta Village & Post,
Chikkaballapur District-562 101.

... Respondent

(Represented by Smt. Poonam Patil, Advocate]

ORDERS

1. This Review Petition is filed under Section 94 (1) (f) of the Electricity Act, 2003 read with Order XLVII, Rule 1 of the Civil Procedure Code, 1908, by the Review Petitioner (BESCOM) [hereinafter referred as BESCOM] praying to

review the Order dated 25.09.2018 passed in OP No.169/2017 on the file of this Commission and to hold that the SRTPV System of the Respondent (hereinafter referred as SRTPV Owner) was commissioned belatedly and consequently is entitled to a tariff of Rs.5.67 per unit instead of Rs.9.56 per unit.

2. The SRTPV Owner filed OP No.169/2017 praying for a direction against the BESCO to pay for the energy supplied from his SRTPV Plant @ Rs.9.56 per unit as per the terms of the PPA dated 31.12.2015 and for such other reliefs. The BESCO contested that OP No.169/2017 on the ground that there was delay in commissioning of the project, thereby the energy supplied from the SRTPV System would be governed by the tariff of Rs.5.67 per unit. After trial, this Commission by order dated 25.09.2018 held that the SRTPV Owner was entitled to a tariff of Rs.9.56 per unit and to settle the accounts after adjusting the payments already made, if any, within two months from the date of the said order.
3. In OP No.169/2017, the question for determination was whether the 180 days' period would end on 27.06.2016 or on 28.06.2016. The SRTPV System was commissioned on 28.06.2016. The SRTPV System owner contended that 180 days' period allowed for commissioning the project from the approval given in Format-5 dated 31.12.2015 would expire on 28.06.2016. On the other hand, the BESCO contended that 180 days' period would expire on 27.06.2016. The Commission held that the approval for installation was granted on 31.12.2015 and that day should be excluded while computing

the 180 days' period. Therefore, it was found that 180 days' from 31.12.2015 would expire on 28.06.2016 and the commissioning of the SRTPV System on 28.06.2016 would be within the time allowed. There was no other contention raised by BESCO in support of its contention that there was delay in commissioning the project beyond 180 days' from 31.12.2015.

4. The BESCO, being aggrieved against the said order dated 25.09.2018 filed the present Review Petition on 19.12.2018 on the ground that the SRTPV System did not in fact commence injection of energy from 28.06.2016, the date of commissioning of the project but the injection of energy began only on 01.07.2016 and this fact was discovered upon receipt of information pertaining to the inverters installed at the location of the SRTPV System. It is stated in the Review Petition that on 23.10.2018, an inspection was conducted by the BESCO officials and it was discovered that the inverters have been installed only on 01.07.2016 and the photographs of inverters showing the date of installation were taken and were produced at Annexure-B1 to B5. Further, it is stated that this was the discovery of new and important matter or evidence which after the exercise of due diligences, was not within the knowledge or could not be produced by BESCO at the time when the final order dated 25.09.2018 was passed in OP No.169/2017. The BESCO collected certain other documents in support of the contention that the inverters were installed on 01.07.2016, thereafter filed the present Review Petition.

5. After hearing the parties by order dated 12.03.2020, the Review Petition was dismissed holding that the BESCO has failed to establish that the alleged discovery of new and important matter or evidence now intended to be relied upon were not within its knowledge or could not be produced by it at the time when the final order was passed on 25.09.2018, even after exercise of due diligences.
6. Against the order dated 12.03.2020 passed in RP No.17/2018, the BESCO preferred WP No.9646/2020 on the file of the Hon'ble High Court of Karnataka. Ultimately, the said Writ Petition was partly allowed by order dated 29.09.2020 setting aside the order dated 12.03.2020 passed in RP No.17/2018 and remitting the matter back to this Commission directing that the documents produced by the BESCO in the Review Petition proceedings should be taken on file and to pass appropriate orders after providing further opportunity to the parties.
7. On receipt of the copy of the order in WP No.9646/2020, this Commission reconsidered the Review Petition and issued notices to the parties to participate in the re-hearing the matter through Video Conferencing on 24.11.2020 at 11.00 a.m. Both the parties appeared through their Advocates and participated in the Video Conferencing and submitted their arguments on the next two adjourned dates, (through Video Conferencing) and the learned Counsel for the Petitioner also submitted the written arguments. We have also secured the file in OP No.169/2017.

8. It is not disputed before us that the Annexure-D1 documents produced in WP No.9646/2020 were the very same documents produced at Annexure-B1 to B5, C, D, E, F & G along with the Review Petition.

9. The operative portion of the order in WP No.9646/20020 reads as follows:

“In view of the above discussion, the writ petition is partly allowed. The order dated 12.03.2020 passed in R.P. No.17/2018 is set aside. The matter is remitted back to Karnataka Electricity Regulatory Commission and the Commission shall reconsider the R.P. No.17/2018 in the light of the observations made herein above and by providing further opportunity as may be desired by the parties.”

10. The BESCOM in the Review Petition, relying upon the documents marked at Annexure-B1 to B5 & C to G contended that the energy from the SRTPV System in question was injected into the State Grid only on 01.07.2016 but not from 28.06.2016, the alleged date of commissioning. Therefore, the BESCOM contended that in reality, the commissioning of the SRTPV System had taken place only on 01.07.2016 and not on 28.06.2016, thereby the SRTPV Owner was not entitled to a tariff of Rs.9.56 per unit but only to the tariff of Rs.5.67 per unit as per the Generic Tariff Order dated 02.05.2016. The SRTPV Owner filed the objection to the Review Petition denying the averments of the BESCOM that the energy from the SRTPV System was injected only from 01.07.2016. It is contended that the SRTPV System was commissioned on 28.06.2016 and the energy was being injected from 28.06.2016 itself. In support of it, the SRTPV Owner relied upon the Annexure

R1 to R4 produced in Review Petition. The details of the evidence of both the parties would be referred at appropriate places while discussing and deciding the relevant Issues arising from the rival contentions.

11. From the rival contentions, the following Issues arise for our consideration in OP No.169/2017:

Issue No.1: Whether injection of power began from 01.07.2016 as contended by the BESCO or from 28.06.2016 as contended by the SRTPV Owner?

Issue No.2: To which the reliefs the SRTPV Owner is entitled to?

Issue No.3: What Order?

12. After considering the rival contentions and the pleadings and the documents produced by the parties, our findings on the above Issues are as follows:

13. Issue No.1: Whether injection of power began from 01.07.2016 as contended by the BESCO or from 28.06.2016 as contended by the SRTPV Owner?

a) The BESCO, in support of its contention that the energy began to flow from the SRTPV System to the State Grid only from 01.07.2016 has relied upon the following facts and circumstances:

(i) The date of installation of the inverters was on 01.07.2016.

In support of it Annexure-B1 to B5 & Annexure-C were relied upon;

(ii) The main meter reading and the check meter reading were zero when these meters are calibrated on

28.06.2016 at 17:08 hours and 17:14 hours respectively. In support of it Annexure-D, the copy of the pre-commissioning report was relied upon;

(iii) The main meter and the check meter were installed after removing the existing meter on 01.07.2016. In support of it Annexure-E was relied upon; and

(iv) The BESCO has issued power consumption bill to the SRTPV Owner for the entire month of June 2016 from 01.06.2016 to 30.06.2016, which would improbably commissioning of the SRTPV System on 28.06.2016. In support of it, Annexure-F said to be the consumption bill for the month of June 2016, was relied upon apart from Annexure-G, the consumption bill for the month of July 2016.

b) The SRTPV Owner, in support of his contention that the energy began to flow from the SRTPV System to the State Grid from 28.06.2016 itself, has relied upon the documents Annexure-R1 to R4 produced by him in the Review Petition No.17/2018 apart from the documents produced in OP No.169/2017. Further he denied of the facts and circumstances relied upon by the BESCO.

c) The BESCO filed the Rejoinder denying the grounds urged by the SRTPV Owner as false and untenable.

14. Regarding: Whether the date of installation of the inverters was on 01.07.2016 or 28.06.2016?

- a) The BESCO has contended that on 23.10.2018 an inspection of the SRTPV was conducted by its officer and it was found that the inverters have been installed only on 01.07.2016. It has produced Annexure-B1 to B5, the photographs said to have been taken of the five inverters on the spot on the date of inspection i.e., on 23.10.2018. It is not disputed by both the parties that the inverters connected to the SRTPV System are activated at the moment, the injection of energy from the SRTPV System to the State Grid takes place. BESCO has produced Annexure-C, a Certificate issued by M/s Delta Power Solutions India Private Limited confirming that the installation date setting in the RPI series Grid Tied Solar String Inverters cannot be changed unless the inverters are returned to default mode which will completely re-set/erase the old date/settings and the default mode needs to be done with prior permission from the Delta support authority. The correctness of the contents of this Certificate is also not disputed by the SRTPV Owner.
- b) The eight inverters are connected to the SRTPV System. All the eight inverters are supplied by M/s Delta Power Solutions India Private Limited. The BESCO has produced Annexure-B1 to B5, the photographs of the five inverters which disclose that the date of installation of these inverters was on 01.07.2016. Therefore, it is contended that the flow of

energy from the SRTPV System to the Grid must have taken place on 01.07.2016, and not on any earlier date.

c) As against this, the SRTPV Owner has produced eight photographs of all the eight inverters disclosing that these inverters were installed on 28.06.2016 itself. These eight photographs are marked at Annexure R3(a) to R3(h). The SRTPV Owner has also produced three other photographs at Annexure-R1(a) to R1(c) of the three inverters which disclose the installation dates as 06.10.2018, 28.07.2011 and 21.09.2018. He contended that these inverters were also connected to the SRTPV System apart from the five inverters at Annexure-B1 to B5 relied upon by the BESCO. The SRTPV Owner has further contended that all the eight inverters were displaying the exact date of installation i.e., 28.06.2016. He has produced the eight photographs at Annexure-R3(a) to R3(h). Subsequently, the alarm light in all the eight inverters kept blinking, indicating certain parts in the inverters. A Technician from the manufacturer namely; M/s Delta Power Solutions India Private Limited, appeared on 18.02.2017 and addressed the issue. Two inverters viz., Inverter No.1 & 3 were replaced and in respect of all the remaining six inverters software were up-dated. Therefore, the date of installation in all the inverters were changed from the initial date which was reflected before the replacement and up-dating the software. The BESCO was well aware that all the inverters initially reflected the exact date of the installation, which however, disclose varied dates subsequent to their

re-setting. The SRTPV Owner has produced the Service Report dated 18.02.2017 at Annexure-R2. Therefore, according to the SRTPV Owner at the time of servicing of the inverters on 18.02.2017, the installed dates of the inverters were changed from the original installed date of 28.06.2016, to some other dates.

- d) In view of the above conflicting evidence regarding the installation dates of the inverters as depicted in different set of photographs, we think the opinion of the expert was necessary to establish as to whether the SRTPV Owner had meddled with the inverters subsequent to 23.10.2018, the date on which the BESCO has conducted the inspection. In the absence of such expert opinion, it is not possible to hold that the documents produced at Annexure-R3(a) to R3(h), photographs were depicting the false installation dates of the inverters.
- e) In the earlier OP No.169/2017, the SRTPV Owner has produced Annexure-F, the Certificate of Synchronization and Annexure-G, the Report of Commissioning and Synchronization of SRTPV System issued by the Executive Engineer (Ele.), BESCO, Chickballapur, who was the Authority to issue such Certificate and Report. These documents show that the SRTPV System was successfully synchronized with the BESCO, Grid on 28.06.2016. The BESCO has not come with the plea that these Certificate/Report were issued fraudulently by the concerned Executive Engineer. In the absence of such plea by the BESCO, these Certificate and Report support the case of the SRTPV Owner.

Annexure-R4 dated 03.08.2017, the letter issued by the Executive Engineer (Ele.), MT BRAZ, BESCOM and addressed to the General Manager (Ele.), DSM, BESCOM, Corporate Office, Bengaluru, also re-affirms that the synchronization with BESCOM Grid had taken place on 28.06.2016.

- f) In the Rejoinder filed by the BESCOM, it is stated that from the perusal of the Service Report produced as Annexure-R2, it is evident that the said Report pertains to three inverters bearing ID Nos.5, 4 & 8 and further the said Report states those new firmware was installed with regard to three inverters only. Therefore, the contention of BESCOM that firmware was updated with regard to all inverters is bereft of merits. We have perused the Annexure-R2 which refers to three inverters bearing ID Nos.5, 4 & 8 in certain columns. The issue regarding fault description is mentioned as "SPD fail". In the remarks/observation column also it is noted as "AC SPD fail". In the column relating to details of work carried out, it is stated that:

“ * checked SPD as fine, but still showing SPD fail;

* firmware updated but problem is not solved. So we done factory reset and installed new firmware now working fine”.

It may be noted that according to the SRTPV Owner, the alarm light in all the eight inverters were kept blinking, indicating certain fault in all the eight inverters. The Inverters Service Report dated 18.02.2017 at Annexure-R2 states that after doing factory re-set and installation of

new firmware the working of the inverters was fine. Therefore, it is not possible to infer that only three inverters were meddled with as contended by the BESCO. As already noted, the proper answer could have been furnished only by an expert even regarding the correctness of the contents in Annexure-R2, the Inverters Service Report.

g) From the above documentary evidence, we hold that the date of synchronization of the SRTPV System should be considered as 28.06.2016, but not as 01.07.2016. Admittedly, the Petitioner's Plant was commissioned within the stipulated time as per PPA i.e., 180th day (28.06.2016). There is no violation as contended by the Petitioner herein.

15. Regarding other facts: The other facts relied upon by the BESCO are in the nature of circumstantial evidences.

a) Firstly, it is contended that the Main Meter and the Check Meter Reading were zero when these meters are calibrated on 28.06.2016 at 17:08 hours and 17:14 hours respectively. This fact is disclosed in Annexure-D, the copy of the Pre-Commissioning Report dated 28.06.2016. However, there is no evidence that after 17:14 hours, there would be no generation of Solar energy, in case the Main Meter and Check Meter were installed at 17:14 hours. It may be noted that in the last week of June, the duration of the day time is longer and the Sun-set would be at 18.30 hours or so. Therefore, it is quite possible that there would be generation of solar energy even after 17:14 hours on 28.06.2016.

- b) The other circumstance relied upon by the BESCO is that the Main Meter and the Check Meter were installed after removing the existing meter on 01.07.2016. This is inferred on the basis of entries made on 01.07.2016, in Annexure-E, a Register maintained by the BESCO regarding Removal and Re-Installation of Meters. In this Register, the entry made on 01.07.2016 would disclose that the existing meter was removed, but there is no entry regarding the particulars of re-installation of the Main Meter and the Check Meter. Further, it may also be noted that *'there is no specific column in this Register showing the date of removal of the existing meter'*. Therefore, the date referred as 01.07.2016 may also refer to the date on which the entries were made in this Register. Therefore, this circumstance also does not improve the case of BESCO.
- b) The last circumstance relied by the BESCO is power consumption bill said to be relating to the SRTPV Owner for the month of June 2016. It is stated that Annexure-F produced by the BESCO in this Review Petition is the consumption bill for the month of June 2016. The perusal of Annexure-F shows that it is not the consumption bill for the month of June 2016 or for any other month. The BESCO has produced the consumption bill for the month of July 2016 at Annexure-G. The consumption bill for the month of June 2016, in the required format is not produced. The Annexure-F relates to the entries made in some register maintained by the BESCO. The prescribed format of monthly consumption bill of a consumer installing net-metered SRTPV System

contains a column showing "energy imported and energy exported". The BESCO has contended that the consumption bill for the month of June 2016 issued to the SRTPV Owner does not contain the said two columns regarding "energy imported and energy exported". However, as already noted the BESCO has not produced the monthly consumption bill for the month of June 2016 in the required format. Therefore, this circumstance also does not improve the case of the BESCO.

16. For the above reasons, we hold on Issue No.1 that the injection of power began from 28.06.2016 as contended by the SRTPV Owner. Hence, the Issue No.1 is held in favour of the SRTPV Owner.

17. Issue No.2: To which the reliefs the SRTPV Owner is entitled to?

In view of the findings on Issue No.1, the earlier Order dated 25.09.2018 passed in OP No.169/2017 is to be re-affirmed. Hence, Issue No.2 is held accordingly.

18. Issue No.3: What Order?

For the foregoing reasons, we pass the following:

ORDER

a) The Order dated 25.09.2018 passed in OP No.169/2017 is hereby re-affirmed and this Review Petition is disposed of accordingly.

b) A copy of this Order be kept in OP No.169/2017.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member