
**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 19th May, 2017

Present:

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

OP No.48 / 2017

BETWEEN:

Aavanti Renewable Energy Private Limited,
"Temple Steps", 3rd Floor,
Block No.A, Unit-B, 184-187,
Anna Salai, Little Mount,
Chennai – 600 015

..

PETITIONER

[Petitioner is represented by Smt. Poonam Patil, Advocate]

AND:

- 1) Bangalore Supply Company Limited,
K.R. Circle,
Bangaluru - 560 001
- 2) Karnataka Renewable Energy Development Limited,
No.39, "SHANTHIGRUHA"
Bharath Scouts & Guides Building,
Palace Road,
Bengaluru – 560 001.

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RESPONDENTS

[Respondents are represented by Shri G.S. Kannur, Advocate]

OP No.49 / 2017**BETWEEN:**

Brics Renewable Energy Private Limited,
 "Temple Steps", 3rd Floor,
 Block No.A, Unit-B, 184-187,
 Anna Salai, Little Mount,
 Chennai – 600 015

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PETITIONER

[Petitioner is represented by Smt. Poonam Patil, Advocate]

AND:

- 1) Bangalore Supply Company Limited,
 K.R. Circle,
 Bangaluru - 560 001
- 2) Karnataka Renewable Energy Development Limited,
 No.39, "SHANTHIGRUHA"
 Bharath Scouts & Guides Building,
 Palace Road,
 Bengaluru – 560 001.

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RESPONDENTS

[Respondents are represented by Shri G.S. Kannur, Advocate]

OP No.50 / 2017**BETWEEN:**

Aavanti Solar Energy Private Limited,
 "Temple Steps", 3rd Floor,
 Block No.A, Unit-B, 184-187,
 Anna Salai, Little Mount,
 Chennai – 600 015

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PETITIONER

[Petitioner is represented by Smt. Poonam Patil, Advocate]

AND:

- 1) Gulbarga Electricity Supply Company Limited,
 Station Road,
 Kalaburagi – 585 101.
- 2) Karnataka Renewable Energy Development Limited,
 No.39, "SHANTHIGRUHA"
 Bharath Scouts & Guides Building,
 Palace Road,
 Bengaluru – 560 001.

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RESPONDENTS

[Respondents are represented by Shri G.S. Kannur, Advocate]

OP No.51 / 2017**BETWEEN:**

Mayfair Renewable Energy Private Limited,
 "Temple Steps", 3rd Floor,
 Block No.A, Unit-B, 184-187,
 Anna Salai, Little Mount,
 Chennai – 600 015

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PETITIONER

[Petitioner is represented by Smt. Poonam Patil, Advocate]

AND:

- 1) Hubli Electricity Supply Company Limited,
 P.B. Road, Navanagar,
 Hubballi – 580 025.
- 2) Karnataka Renewable Energy Development Limited,
 No.39, "SHANTHIGRUHA"
 Bharath Scouts & Guides Building,
 Palace Road,
 Bengaluru – 560 001.

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RESPONDENTS

[Respondent-2 is represented by Shri G.S. Kannur, Advocate]

COMMON ORDERS

- 1) This common Order is being passed in the above-mentioned Petitions, as common questions of law and facts are involved.
- 2) In all the above Petitions, the Petitioners have requested this Commission to consider the 'Effective Date' mentioned in the Power Purchase Agreements (PPAs) executed by them, to be the date of approval of the PPA by this Commission, but not '25.5.2016' as mentioned in the Official Memorandum dated 27.5.2017 issued by the 2nd Respondent-Karnataka Renewable Energy Development Limited (KREDL).

- 3) Article 3.1 of the PPA in question provides that, the Agreement shall come into force from the 'Effective Date'; Article 8.5 provides that, the developer shall commission the Project within 12 (twelve) months from the 'Effective Date'; and Article 21.1, which defines the various terms in the PPA, provides that, the 'Scheduled Commissioning Date' shall mean 12 (twelve) months from the 'Effective Date'. The PPA provides for certain penal consequences for delay in commissioning the Solar Power Projects within the Scheduled Commissioning Date'.
- 4) The 2nd Respondent-KREDL on behalf of all the Electricity Supply Companies (ESCOs) of Karnataka, invited proposals for development of Solar PV Ground-Mounted Power Plants, as per the Request for Proposal (RFP) dated 20.11.2015 and selected certain bidders who offered competitive rates for supply of energy from the Solar Power Projects to be developed by them. The 2nd Respondent (KREDL) issued Letters of Award (LOAs) to different selected bidders requiring them to execute the PPAs with the ESCOMs concerned within 60 (sixty) days from the date of receipt of the LOAs.
- 5) A number of selected bidders requested for extension of time for execution of the PPAs beyond the time allowed in the LOAs. At that stage, the 2nd Respondent (KREDL) had issued an Official Memorandum dated 27.5.2016 extending the time by eight working days, from 25.5.2016 to 3.6.2016, for executing the PPAs with the

ESCOMs concerned, on the condition that, the Developers executing the PPAs by availing of this extension of time, should achieve the Commercial Operation Date (COD) within twelve months from 25.5.2016. The relevant part of the Official Memorandum dated 27.5.2016 reads thus :

“ ... OFFICIAL MEMORANDUM

Subject : Addendum to the Letter of Award and allotment Letter for Development of 1,200 MW (AC) Solar Power Projects in the State of Karnataka to be implemented in 60 Taluks.

Ref.: 1) LOAs issued on 23/03/16, 28/3/2016 & 31/03/16 for Development of 1,200 MW (AC) Solar Power Projects.

2) This Office Addendum No. KREDL/07/RPO/GC/1200MWs-269/2016/1480 dt. 07.04.16.

Preamble :

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XXX

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Based on the Developers request for the time extension to furnish the above documents as the formation of SPV is a lengthy process and taking more time, addendum as in reference 2 was issued extending the time to 60 days from the receipt off LOA. Further, some of the Developers are requesting for some more time extension. Considering request of Developers for the time extension favorably, the following OM is issued:

- (i) Based on the Developers request approval is accorded to extend the time for 8 working days from 25.05.2016, i.e. upto 03.06.2016 to execute the Power Purchase Agreement (PPA) with concerned Electricity Supply Company Limited (ESCOM).*
- (ii) For the developers who are signing the PPA availing this time extension, the commercial operation date ('Commercial Operation Date'/'COD') for the Project shall be achieved by the Developer within 12 (twelve) months from 25.05.2016.*

Other Terms & Conditions of the LOA shall remain unaltered. This Om shall be treated as part of LOAs issued vide reference (1). ..."

- 6) Admittedly, the Petitioners in the above cases had availed the extension of time provided in the Official Memorandum dated 27.5.2016 for execution of the PPAs. Therefore, the PPAs of the Petitioners should have contained the definition of the 'Effective Date' as '25.5.2016' instead of 'the date of approval' of the PPAs by this Commission.
- 7) While approving the PPAs submitted by the various developers of the Solar Power Plants, whenever this Commission had noticed that any developer had availed of the extension of time provided under the Official Memorandum dated 27.5.2016, it was directed to suitably amend the 'Effective Date' in the PPA executed by him as '25.5.2016'. In the present cases, for one reason or the other, the time taken for approval of the PPAs was about four months from the date of the PPAs. The PPAs were submitted to this Commission for approval within a reasonable time from the date of their execution.
- 8) In OP Nos.48/2017 and 49/2017, this Commission had directed to effect a correction in the PPA to define the 'Effective Date' as '25.5.2016', apart from suggesting to effect some other corrections. In OP No.51/2017, a similar correction in the definition of the 'Effective

Date' mentioned in the PPA was required, but by oversight it was omitted. In OP No.50/2017, the PPA submitted for approval of this Commission itself stated the 'Effective Date' as '25.5.2016'.

9) In OP Nos.48/2017 and 49/2017, it is prayed that, the existing definition of the 'Effective Date' mentioned in the PPA be retained and the direction given by this Commission to amend the 'Effective Date' as '25.5.2016' be recalled. In OP No.50/2017, it is prayed that, the definition of the 'Effective Date' in the PPA mentioned as '25.5.2016' be deleted and the definition of the 'Effective Date' in the Article concerned in the PPA be inserted to read as 'the date of approval of the PPA'. It appears, there was no necessity to file OP No.51/2017, as this Commission had not directed to amend the definition of the 'Effective Date' as '25.5.2016' in the PPA, in its letter of approval. However, it seems, as a matter of abundant caution, the Petitioner has filed this Petition to assert that, the meaning of the 'Effective Date' in the PPA of the Petitioner in this case, be 'the date of approval of the PPA'.

10) Similar controversies as in the present cases had arisen in RP No.14/2016 and two other connected cases. After considering the rival contentions in the said cases, this Commission has held, by Order dated 27.4.2017 that, the curtailment of the period allowed for achieving the COD for the Projects which have availed the extension of time for execution of the PPA, granted under the Official

Memorandum dated 27.5.2016, is invalid and not binding on the Project Developers. The Commission has also granted other consequential reliefs to them. In the present cases, the learned counsel appearing for the parties submitted that, the decision rendered in RP No.14/2016 and the two other connected cases holds good in the present cases and suitable orders may be passed in these cases also.

- 11) On perusal of the records of the present cases, we find that, the findings arrived at in RP No.14/2016 and the two other connected cases should be made applicable in the present cases also and suitable reliefs should be granted.
- 12) For the foregoing reasons, we pass the following :

ORDER

- (a) It is declared that, the latter part of the Official Memorandum dated 27.5.2016 issued by the 2nd Respondent (KREDL) to the effect that:

“(ii) For the developers who are signing the PPA availing this time extension, the commercial operation date ('Commercial Operation Date'/'COD') for the Project shall be achieved by the Developer within 12 (twelve) months from 25.05.2016”

is invalid and not binding on the Petitioners in all these cases;

- (b) Consequently, the directions given by this Commission in its communication dated 14.10.2016 in OP No.48/2017 and the communication dated 7.10.2016 in OP No.49/2017, insofar as it relates to altering the 'Effective Date' as '25.5.2016' in Articles 3.1, 8.5 and 21.1 of the PPAs, stand withdrawn and the parties are permitted to carry out the necessary corrections in the PPAs or the Supplemental PPAs concerned;
- (c) Consequently, in OP No.50/2017, in Article 21.1 of the PPA executed between the parties, the definition of the 'Effective Date' mentioned therein shall be modified to read as 'the date of approval of the PPA by the KERC' instead of the existing date '25.5.2016' mentioned under the said Article and accordingly, suitable changes shall be effected in other Articles concerned in the PPA, reflecting the above change;
- (d) Consequently, it is affirmed that, in OP No.51/2017, the definition of the 'Effective Date' mentioned under Article 21.1 of the PPA executed between the parties in this case, shall stand as it is;
- (e) The original Order be kept in OP No.48/2017 and copies, thereof, be kept in the other connected cases.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER