

No.: N/224/17

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

Dated : 8th February, 2018

Present:

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

OP No.116/2017

BETWEEN:

Mr. Balaji Naik. A,
S/o Gopal Nayak,
Survey No. 134 A/1,
Kudaligi Road,
Mariyammanahalli – 583 222,
Hosapete Taluk,
Ballari District

..

PETITIONER

[Represented by Navayana Law Offices, Advocates]

AND:

Gulbarga Electricity Supply Company Limited,
Corporate Office,
Station Main Road,
Kalaburagi – 585 102.

..

RESPONDENT

[Represented by M. Raghavendrachar & Associates, Advocates]

ORDERS

- 1) This petition is filed under Section 86 (1) (f) of the Electricity Act, 2003, in effect, praying to:
 - (a) Declare that the Petitioner is entitled to a tariff of Rs.9.56 per unit for the power delivered to the Respondent as per the Power Purchase Agreement (PPA) dated 16.12.2015, from the Commercial Operation Date of the project (21.01.2017), for the entire term of the PPA;
 - (b) Direct the respondent to revise the bills and make payment at the tariff of Rs.9.56 per unit for the power delivered from the Petitioner's project as per the PPA dated 16.12.2015 from 21.01.2017, along with 1% interest per month as agreed under PPA, from the date of short payment up to the date of correct payment.

- 2) The facts of the case necessary for disposal of the petition may be summed up as follows:
 - (a) The Petitioner, with an intent to establish a 499 kW solar roof top power project (SRTPV) on the roof top of his Poultry Farm at Sy.No.134 A/1, Kudligi Road, Mariyammanahalli, Hosapete Taluk, Ballari District, executed a PPA with the Respondent on 16.12.2015. The tariff agreed in the PPA was Rs.9.56 per unit. The Respondent after verifying the technical details of the proposed project granted approval in Format-6 on 26.07.2016 for installing

the project, with the condition that the approval was valid for 180 days from the date of its issuance, failing which the approval would stand cancelled.

- (b) The Respondent issued a certificate on 26.12.2016 for carrying out the work under self-execution basis for the laying of evacuation of 11/415 KWP line for the project. The Petitioner completed the entire project work on 30.12.2016 and submitted the work completion report vide letter dated 30.12.2016. Thereafter, the Chief Electrical Inspectorate (CEIG) conducted the Electrical Safety Approval Test and granted the Electrical Safety Approval to the Petitioner's project vide letter dated 11.01.2017.
- (c) The Petitioner in his letter dated 13.01.2017 to the Respondent requested for inspection, testing and synchronizing of the project with the grid system. The Respondent inspected the Petitioner's project and accorded approval on 19.01.2017 for conducting the pre-commissioning tests and based on the satisfactory results, for the provisional interconnection for synchronizing of the Petitioner's project. The project was commissioned on 21.01.2017, i.e., 179 days from the date of issuance of the approval letter dated 26.07.2016.
- (d) The Respondent honoured its contractual obligations by paying for the power delivered from the Petitioner's project at Rs.9.56 per unit from January to April, 2017. Thereafter the Respondent issued revised bills for the

very same period and started to pay at Rs.5.67 per unit. The Petitioner has therefore filed the Petition seeking above reliefs.

3) After issuance of notice, the Respondent entered appearance through its Counsel and filed objections contending that:

(a) The Commission, in the Order dated 02.05.2016, has declared that the SRTPV projects entering into PPA under the Commission's Order dated 10.10.2013 are eligible for the tariff [Rs.9.56 per unit] as per the said Order dated 10.10.2013, provided the plants are commissioned within the stipulated time and those commissioned after the stipulated time are entitled only for the revised tariff as per the Order dated 02.05.2016. That the Petitioner has commissioned the plant after the expiry of 180 days and, therefore, the applicable tariff is Rs.5.67(per unit). That the Petitioner is not entitled to the benefit of extension of time in view of the Commission's Order dated 02.05.2016 (Here itself, we may note that no such extension of time is granted in the present case). The Petitioner has taken more than one year for commissioning the project and hence, is not entitled to the tariff of Rs.9.56 per unit, as clarified by the Commission in its Orders in RP Nos.18 and 19 of 2016.

(b) As required under Clause 10 of the PPA, the Petitioner has not exhausted the remedy of mutual negotiations and has approached the Commission by way of a petition, which is not maintainable.

- 4) We have heard the Counsel for both sides and considered the respective pleadings and documents produced by the parties. The following issues arise for consideration:
- (1) Whether in the absence of a clause in the PPA specifying the date of commissioning of the project, such date can be specified in the guidelines relating to the SRTPV Scheme of the Respondent and the Petitioner is bound by it?
 - (2) Whether the Respondent is correct in granting 180 days' time to Petitioner, for commissioning the project in Format-6 [6(i)] dated 26.7.2016 after 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?
- 5) 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:
- 6) **ISSUE No. (1):** *Whether in the absence of a clause in the PPA specifying the date of commissioning of the project, such date can be specified in the guidelines relating to the SRTPV Scheme of the Respondent and the Petitioner is bound by it?*

- (a) The Petitioner submits that the timeline for the implementation of the project, tariff to be paid and all other contractual obligations should be within the framework of the PPA or other applicable regulations. That, hence the timeline of 180 days for the commissioning of the project, stipulated in the letter dated 26.07.2016 of the Respondent is neither valid nor binding on the Petitioner. That, as the period of commissioning of his plant has not been specified in the PPA, the Respondent cannot later specify it and the tariff agreed cannot also be revised, irrespective of the date of the commissioning of the plant. Further that, even if the validity period given in the Respondent's approval letter has expired, there cannot be a revision of tariff. The Respondent, has relied on the Commission's Order in RP Nos.18 and 19 of 2016 to refute the Petitioner's averment.
- (b) We note that as per the Guidelines relating to the SRTPV Scheme, made available to all the consumers, for the SRTPV applicants having existing buildings, the time stipulated for commissioning of the Projects is 180 days, which would also be intimated to the applicants in Format 6(i). Admittedly, the Petitioner had made application for installation of a SRTPV plant under the said Scheme.
- (c) In the Commission's Order in RP Nos.18 and 19 of 2016 cited by the Respondent, 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) In view of the excerpts of the above Order, which explain the rationale / justification behind the condition requiring the commissioning of any solar power plant referred to in a PPA, we do not find any merit in the Petitioner's contention that there was no requirement of commissioning of its SRTPV

plant within a specified time. When the PPA has been entered into under a particular Scheme at the option of the Petitioner, all the terms and conditions of such Scheme shall apply to the installation and commissioning of the SRTPV plant.

(e) Thus, we answer Issue No.(1) in the affirmative.

7) **ISSUE No. (2):** *Whether the Respondent is correct in granting 180 days' time to Petitioner for commissioning the project in Format-6 [6(i)] dated 26.7.2016 after 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.(2) and (3) together, as they are interconnected.

(a) It is not in dispute that as a part of the State Government's Solar Policy dated 22.05.2014 which among other things proposed to promote grid connected Roof Top Photo Voltaic Generation Projects, the Respondent had called for applications from 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 processing. As per the Guidelines relating to the SRTPV Scheme made

available to all the consumers, for the SRTPV applicants having existing buildings, the time prescribed for commissioning the project is 180 days and there was no provision for extending such time prescribed. The Commission in its Order dated 10.10.2013 introduced net metering facility to SRTPV plants, allowing the consumers installing such plants to consume the power generated and inject any surplus power into the distribution system of the Distribution Licensee concerned who would pay such consumers tariff, for such surplus power injected, as determined by the Commission. It was envisaged that the consumers would install SRTPV plants of reasonable capacity on their readily available existing rooftop 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.

- (b) As elaborated by us in our earlier Order cited supra, 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 SRTPV plants that was agreed in the PPA, was revised much before the plant was ready for commissioning. The Solar Policy dated 22.05.2014 provides that the Government of Karnataka shall promote grid connected Solar Roof Top projects based on tariff Orders issued by KERC from time to time. The Preamble of the PPA mentions that

the SRTPV plant will be operated in terms of the KERC Order No. S/03/01/2013 dated 10.10.2013 or as amended from time to time. As the Petitioner has failed to install the SRTPV plant as per the terms of the Respondent's SRTPV Scheme which was governed by the tariff and other norms of the Commission's Order dated 10.10.2013, the amended or later Order governing the implementation and operation including the tariff of SRTPV plants would be applicable to his plant as specified in the preamble of the PPA which reads as follows:

*"a. The Seller intends to connect and operate the Solar Roof Top Photo Voltaic (SRTPV) system with GESCOM's HT distribution system for sale of Solar Power to GESCOM in terms of the Karnataka Electricity Regulatory Commission (KERC) Order No. S/03/01/2013 dated:10.10.2013 **or as amended from time to time.**"(emphasis supplied)*

- (c) We also note that as per the 'Consumer Guidelines' issued by the Respondent, approval for installation in Format 6(i) should have been issued before the start of installation work and prior to the execution of the PPA. If for some reason such Format 6(i) is not issued before the start of work and the installation work has progressed, thereafter the Format 6(i) cannot be issued so as to enlarge the time limit for installation of the project. The issuance of Format 6(i) at a later date would lead to suspicion against the conduct of both parties. We may note here that during his oral submissions the counsel for the Respondent contended that extension of time given in Annexure – P2 [Format 6 / 6(i)] is without authority by an officer who was

temporarily holding charge of the office issuing it. We hold that the Respondent is not justified in issuing the Format 6(i) dated 26.07.2016 granting 180 days' time for commissioning of the plant much after the date of execution of the PPA, especially, by which time, the generic tariff fixed for SRTPV plants in the Commission's Order dated 10.10.2013 was revised by the Commission's Order dated 02.05.2016, considering the substantial reduction in the Capital cost of setting up SRTPV plants. Hence, the issuance of the Format 6(i) on 26.7.2016, in the present case, is irregular and not valid. The Petitioner was entitled for 180 days' time to commission the plant from the date of the PPA. Whenever an event/action affects the quantum of tariff applicable for supply of energy to the Distribution Licensees, we are of the considered opinion that the same should be scrutinized and approved by the Commission. It is settled law that this Commission has the exclusive jurisdiction to determine the tariff for supply of electricity by a Generating Company to a Distribution Licensee and the Commission has to regulate the electricity purchase and the procurement process of the Distribution Licensees, including the price at which electricity shall be procured from different agencies through PPAs. The irregular act of the Respondent in the present case making the Petitioner to claim a higher tariff in violation of the terms of its own scheme cannot be allowed as it adversely affects the interest of consumers and thereby public interest.

- (d) It is the case of the Petitioner that even if the validity period for the commissioning of the SRTPV plant was 180 days as given in the Respondent's approval letter dated 26.7.2016 has expired, there cannot be any revision in the tariff agreed in the PPA when the plant is commissioned after such period. The Petitioner further contends that the entire project work was completed on 30.12.2016 and after receipt of Safety approval from CEIG on 11.1.2017, the plant was commissioned on 20.1.2017. The Respondent, in its letter dated 19.1.2017, has informed the Petitioner that, due to delay in completion of the SRTPV plant, the revised tariff of Rs.5.67 per unit was applicable, as per the Commission's Order dated 02.05.2016. The bills produced as Annexure P-8 reveal that the bills were prepared by the Respondent at the rate of Rs.9.56 per unit. However, these bills contain a 'Note' that tariff of Rs.9.56 was considered to prepare the bills and applicable tariff had to be clarified before passing the bill. As per the bill dated 15.4.2017 produced as Annexure P-9, payment for energy supplied from 21.1.2017 is made by the Respondent at Rs.5.67 per unit, after revising the tariff.
- (e) The Respondent has contended that the PPA was executed on 16.12.2015 and the plant was not commissioned within 180 days from the date of execution of the PPA and therefore, the Petitioner is entitled for the revised tariff, as per the Commission's Order dated 02.05.2016. The Respondent

relies on the Commission's Order in RP Nos.18 and 19 of 2016, in support of its contention.

- (f) We have held in the earlier part of this Order that, the Petitioner's contention that it was not obligated to commission the SRTPV plant within a specified time, in the absence of such clause in the PPA, has no merit. We have also held that the Petitioner was required to commission the SRTPV plant within 180 days.
- (g) The Petitioner contends that, even if the plant is commissioned beyond 180 days, there can be no revision of tariff agreed in the PPA, which was determined in the Commission's Order dated 10.10.2013. The Petitioner also contends that the Commission's Order dated 02.05.2016 is not applicable to the Petitioner's plant, because the Commission has made such Order applicable to all new grid connected Solar Rooftop and small Solar Photovoltaic Power Plants, entering into PPAs and commissioned on or after 02.05.2016 and up to 31.03.2018, as per paragraph-5 of the said Order, whereas, the Petitioner has entered into PPA on 16.12.2015. We note that Petitioner has failed to mention the later part of paragraph-5 of the said Order dated 02.05.2016, which 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."

Thus, Petitioner's plant which is not commissioned within the stipulated time is not eligible for the tariff as per the Commission's Order dated 10.10.2013 as agreed to in the PPA and, as it is commissioned on 20.01.2017 it is eligible only for the revised tariff, as per the Commission's Order dated 02.05.2016.

(h) We, therefore, answer Issue Nos.(2) and (3) in the negative.

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

For the foregoing reasons, we pass the following:

ORDER

(a) The Petition is dismissed and the Petitioner is not entitled to any of the reliefs sought for; and,

(b) The Petitioner is entitled to the tariff of Rs.5.67 (Rupees Five and Paise Sixty Seven) only per unit on entering into a suitable Supplemental PPA with the Respondent for a term of 25 (Twenty five) years.

Sd/-
(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER