

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 24th July, 2018

Present:

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

OP No. 119/2017

BETWEEN:

Abhimaanni Publications Ltd.,
Sy.No.9, Avarehalli Village,
Sompura Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

.. **PETITIONER**

[Represented by Shri M.S. Raghavendra Prasad, Advocate]

AND:

Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R Circle,
Bengaluru - 560 001.

.. **RESPONDENT**

[Represented by Justlaw, Advocates]

ORDERS

1) This Petition is filed under Section 86 read with Section 129 of the Electricity Act, 2003 praying to:

- (i) Pass an Order, holding that the Petitioner is entitled to a tariff of Rs.9.56 per unit, as per the Tariff Order dated 10th October, 2013 and consequently, direct the Respondent to pay, accordingly;

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- (ii) Award costs of this Petition to the Petitioner; and,
 - (iii) Pass such other Order / directions / guidelines, in the circumstances of the case.
- 2) The facts of the case, as submitted by the Petitioner, may be summed up, as follows:
- (a) The Petitioner, a Company registered under the Companies Act, 1956, has its factory and large buildings with rooftops, ideal for installing Solar Rooftop Photo Voltaic (SRTPV) Projects. According to the Solar Policy of the State, a capacity of 400 MW of Rooftop Solar power was required to be installed between 2014-18. The Commission had passed an Order dated 10.10.2013, fixing a tariff of Rs.9.56 per unit for SRTPV plants. Taking this into consideration, the Petitioner intended to develop a Solar Rooftop Project in its premises.
 - (b) The Petitioner's premises is serviced by the Respondent with the installation bearing R.R. No. RNHT226. The Petitioner entered into a Power Purchase Agreement (PPA) dated 22.12.2015 with the Respondent, for establishing a 1 MW SRTPV Project on the roof top of its premises, with a term of 25 years from the date of commissioning and the tariff was Rs.9.56 per unit, as per the Commission's Order dated 10.10.2013. The PPA did not stipulate any cut-off date, within which the SRTPV plant had to be commissioned.

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- (c) The PPA was sent to the Commission for approval and the Commission, vide letter dated 30.12.2015, had sought from the Respondent clarification about the availability of a shadow-free rooftop area of 11,150 square meters, i.e., 1,21,423.50 Square Feet, in the Petitioner's premises, as no proof of the same was furnished.
- (d) After an inspection on 14.01.2016, the AEE and the JE of the Respondent submitted a report along with photographs, stating that the Petitioner's premises had a shadow-free rooftop area of 15,400 Square Meters, which is much larger than what was required to install a 1 MW SRTPV plant. Subsequently, the Commission, vide its letter dated 01.02.2016, communicated approval of the PPA dated 22.12.2015.
- (e) The Respondent, vide letter dated 23.03.2016, gave approval for installing a 1000 kW SRTPV plant and mentioned a time frame of 180 days for commissioning the SRTPV plant, in default of which the approval would be treated as cancelled. Subsequently, the Respondent issued another letter dated 06.09.2016, stating that, as the PPA has been signed on 22.12.2015, the Petitioner should synchronise the plant before 21.12.2016, failing which, no extension of time would be allowed and the PPA would stand cancelled immediately.
- (f) The Chief Electrical Inspector to Government (CEIG), after inspection of the SRTPV Project of the Petitioner, vide letter dated 18.11.2016, approved the safety of the Project, subject to the usual conditions. After the CEIG's

approval, the Petitioner wrote to the Respondent on 18.11.2016, seeking synchronization of the plant. As no response was received, the Petitioner addressed another letter dated 24.11.2016 to the Managing Director of the Respondent. The Respondent synchronised the Petitioner's plant with the grid on 29.11.2016 and this was communicated to the Petitioner, vide Certificate of Synchronisation dated 06.12.2016, issued by the Respondent.

- (g) The Petitioner issued a letter dated 23.01.2017 to the Respondent detailing the chronological events, the effort it had put in, fees and charges paid, and completion of the Project well before its deadline, and sought for issuance of the bill, as per the PPA at the rate of Rs.9.56 per unit. There was no written response, but the Respondent orally informed that the revised tariff of Rs.5.20 per unit, as per the Commission's Order dated 02.05.2016, would be applicable. The Petitioner has not accepted this tariff and has filed the present Petition.
- 3) The grounds urged by the Petitioner, in support of its prayers, may be summarised, as follows:
- (a) From the date of execution of the PPA till the synchronization, the Respondent has not indicated applying the revised tariff, as per the Order dated 02.05.2016 and in the bill for the energy injected in the month of January, 2017, the tariff at the rate of Rs.5.20 per unit is raised. The

Respondent cannot unilaterally and arbitrarily pay the tariff, in flagrant violation of the rules, regulations and tariff orders.

- (b) The Order dated 02.05.2016 mentions that the tariff as per the Commission's Order dated 10.10.2013 at Rs.9.56, would be applicable, if the Projects are commissioned within the date fixed by the Electricity Supply Companies (ESCOMs) or the Commission. The Respondent had stipulated the date for synchronization of the Petitioner's plant as 21.12.2016 and the Petitioner has synchronized its plant on 29.11.2016, almost a month prior to the cut-off date. Hence, the tariff at Rs.9.56 has to be applied.
- (c) Because the Petitioner has commissioned its plant well within the cut-off date, the Respondent is estopped from contending that, the revised tariff would be applicable and the Petitioner does not fall under the category, to which the revised tariff order applies.
- (d) The Petitioner has invested its own money and also the money borrowed from others and set up the plant, because of the viability factor of the tariff being at Rs. 9.56 per unit. The Respondent is unilaterally and illegally applying the revised Tariff Order on the Petitioner, in gross violation of the Rules and misinterpretation of the revised Tariff Order.

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- 4) Upon Issuance of Notice, the Respondent appeared through its learned counsel and filed the Statement of objections, which may be stated, as follows:
- (a) On 01.02.2016, the Commission had approved the PPA executed by the Petitioner. The Respondent, vide letter dated 23.03.2016, accorded approval to the Petitioner, for installing the SRTPV Plant, on the condition that the Petitioner should commission the plant within 180 days from the date of the said letter. Therefore, the Petitioner was required to commission the plant on or before 22.09.2016.
- (b) On 06.09.2016, the Respondent communicated to the Petitioner that, it was required to commission the plant on or before 21.12.2016. However, immediately upon realizing the error in stating the date for commissioning of the unit, the Respondent issued a Corrigendum dated 07.09.2016 bearing number EE/AEE/(o)/AET/NEL/16-17/677, clarifying that the plant is required to be synchronized no later than 22.09.2016. The plant was synchronized on 29.11.2016.
- (c) The Respondent has acted in accordance with the Orders issued by the Commission, from time to time. As per the letter of approval dated 23.03.2016 issued by the Respondent, the Petitioner was supposed to commission the project within 180 days from the date of issuance of the letter. Even as per the Guidelines of the Respondent for the SRTPV

applicants having existing buildings, the time prescribed is 180 days, i.e., six months, which is found to be adequate.

- (d) Further, the Petitioner was informed, vide Corrigendum dated 07.09.2016, about the error in mentioning the last date of synchronization. Hence, the contention that, the Petitioner has synchronized its plant before the date mentioned in the letter dated 06.09.2016 (i.e. 22.12.2016), is untenable.
- (e) The purport of the SRTPV Scheme is to propagate generation of the Solar Power on the existing roof tops. In the present case, the Petitioner was granted approval to establish the SRTPV plant, on the existing roof of its factory, which was shown to the officers of the Respondent when the initial inspection was carried out. However, when the officers of the Respondent inspected the premises at a later date, it was found that the SRTPV plant was actually set up on a new roof and not on the roof of the previously existing building. The Petitioner has misled the Respondent. As its unit does not conform to the SRTPV guidelines, the permission granted to the Petitioner, for establishing the SRTPV unit, ought to be cancelled.
- (f) The Commission, in RP No.18/2016, has held that the SRTPV plants on the existing buildings will be entitled to the tariff, as per the Tariff Order dated 10.10.2013, only if they have been commissioned within six months and for those plants that have been commissioned beyond six months, the Tariff Order dated 02.05.2016, is applicable.

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- (g) Further, the Commission, in its Order dated 02.05.2016 and communications issued thereafter, has directed the Respondents to ensure that, the PPAs executed at the tariff fixed in the Order dated 10.10.2013, are commissioned within 180 days. It has been clarified that, no extensions are to be given to generators, who are unable to commission their plants within 180 days. The Commission has categorically directed that, in the event such generators are not able to commission their plants within 180 days, they will be entitled to the tariff determined in the Order dated 02.05.2016. The delay in commissioning the plant is attributable to the Petitioner. The Petitioner having failed to commission the plant before 22.09.2016, is not entitled to the tariff determined in the Tariff Order dated 10.10.2013, but can only be paid the tariff, determined by the Commission in the Order dated 02.05.2016.
- (h) The Respondent has, therefore, prayed for dismissal of the Petition.
- 5) The submissions made in the Rejoinder to the Objections of the Respondent, filed by the Petitioner on 09.11.2017, may be stated, as follows:
- (a) The Respondent's contention that, it issued a Corrigendum dated 07.09.2016, clarifying that the Petitioner's plant is required to be synchronized no later than 22.09.2016, is not tenable, as the said Corrigendum has been created by the Respondent only to defeat the just

claim of the Petitioner and which being not in existence, was neither issued nor served on the Petitioner.

- (b) The Respondent in its letter dated 03.07.2017 had sought clarification from the Commission on the change of location within the premises and the tariff applicability, while mentioning and enclosing several documents, but not the letter / Corrigendum dated 07.09.2016.
- (c) Notwithstanding the document dated 07.09.2016, the Petitioner falls under the category of 'Under Construction' SRTPV Projects and hence, twelve months, from the date of the PPA till synchronization is the prescribed period, as per the Circular dated 23.12.2015 issued by the Respondent.
- (d) The Circular dated 23.12.2015 was not available to the Petitioner's PPA signed on 22.12.2015 and the timeframe of 180 days, specified in the letter dated 23.03.2016, is inapplicable.
- (e) The Petitioner always intended to take up an 'Under Construction' SRTPV Project and the Commission approved the PPA, after seeking clarification regarding the rooftop area.
- (f) Only when the Petitioner sought for a tariff of Rs.9.56 per unit, the Respondent has approached the Commission, seeking its views on the change of location and the tariff, and the Commission, vide the letter

dated 12.07.2017, has not taken any adverse view of the same and further observed that, there is no case for any clarification in the matter.

6) On 03.04.2018, the Petitioner filed a Memo, producing a copy of the Order dated 14.12.2017 of the Hon'ble High Court of Karnataka, in Writ Appeal No.4719/2017 and the Government Circular dated 10.12.2015.

7) We have perused the records and heard the learned counsel for both the parties. The following Issues would arise for our consideration:

(1) Whether the Petitioner has installed the SRTPV plant, as per the applicable norms and commissioned it, within the time stipulated?

(2) If the answer to Issue No.(1) is in the negative, whether the Petitioner can be allowed to operate the SRTPV plants, under net-metering basis and if so, what should be the tariff applicable?

(3) What Order?

8) 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:

9) **ISSUE No (1):** *Whether the Petitioner has installed the SRTPV plant, as per the applicable norms and commissioned it, within the time stipulated?*

(a) It is the case of the Petitioner that, the SRTPV Plant has been installed on the building under construction and within one year's time from the date

of the PPA, as stipulated for such installation and communicated to it in the Respondent's letter dated 06.09.2016, as against the approval letter dated 23.03.2016 informing it to be 180 days from 23.03.2016.

- (b) On the other hand, the Respondent contends that, the Petitioner was given approval for installing the SRTPV plant on the existing roof of the Petitioner's factory building, but was found to have installed it on the roof of a new building, in violation of the Respondent's Guidelines, issued to the consumers for installing the SRTPV plants. Further, the Petitioner was entitled only for 180 days, time for installation of the SRTPV plants, from the date of its approval letter, as stipulated in the Respondent's Guidelines and the error in communicating it to be one year, in the letter dated 06.09.2016, was corrected by the Corrigendum dated 07.09.2016.
- (c) We note that, the Petitioner has not denied that it installed the SRTPV plant, on the roof of the building constructed, after signing the PPA, in the same plot where the earlier buildings existed and continue to exist. The Petitioner only pleads that, it always intended to install the SRTPV plant on a building under construction. The learned counsel for the Petitioner, in his oral submissions pleaded that the variation in the contract should be recognised and that the Respondent has not challenged the change of location of the Project. We also note from the records that, the Petitioner's claim that it had sufficient existing roof area to install 1 MW capacity SRTPV plants, was confirmed by the Respondent, on inspection of the Petitioner's premises on 14.01.2016 by the Executive Engineer, Elecl.,

O&M Division, Nelamangala ('EE' for short) and that based on such confirmation, which was supported by photographs, the Commission approved the PPA signed on 22.12.2015. Admittedly, on the date i.e., on 07.12.2015, on which the Petitioner applied for permission to install the SRTPV plant and subsequently signed the PPA i.e., on 22.12.2015, the Respondent had not called for applications from the consumers, who intended to install the SRTPV plants, on the buildings 'under construction'.

- (d) We may note that, the installation of the SRTPV plants under net-metering was introduced, allowing the consumers installing them to consume the power generated and inject any surplus power generated into the distribution system of the Distribution Licensee concerned, who would pay such consumer for the surplus power, the tariff as determined by the Commission. It was envisaged that, the consumers would install the SRTPV plants of reasonable capacity on their readily available existing roof top, 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. The Respondent had issued the 'Consumer Guidelines' for effective implementation of the SRTPV Scheme, keeping in view the main objectives of the Scheme. As the Petitioner has not installed SRTPV plant on the roof of its existing building, as undertaken at the time of its application, there is non-adherence to the norms and guidelines of the SRTPV Scheme. Further, the Petitioner, as per the PPA, had undertaken to install the SRTPV plant on the rooftop of the existing buildings, but has committed breach

of such term. Therefore, we are of the considered opinion that the Respondent's contention that, the permission granted to the Petitioner for installing SRTPV Plant ought to be cancelled, is tenable.

- (e) The other dispute between the parties is, with regard to the time allowed for commissioning of the SRTPV plant by the Petitioner. It is the case of the Petitioner that, it was entitled to one year's time for commissioning its SRTPV plant as it was installed on the building 'under construction', as rightly informed in the Respondent's letter dated 06.09.2016, and not 180 days' time, as informed in the Respondent's approval letter dated 23.03.2016. The Respondent, on the other hand, contends that the Petitioner was required, under the applicable Guidelines, to install the SRTPV plant on the existing building within 180 days, as informed in the approval letter dated 23.03.2016 and the error in communicating it to be one year, in the letter dated 06.09.2016, was rectified in the Corrigendum dated 07.09.2016.
- (f) 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 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 application form had to be submitted to the Field Officer concerned, with the prescribed fee for

further processing. The Consumer Guidelines, issued by the Respondent, provided for various activities to be performed by both the parties, with certain timelines prescribed for each activity. The Respondent has contended that, as per the Guidelines, relating to the SRTPV scheme made available to all the consumers, for the SRTPV applicants having the existing buildings, the time prescribed for commissioning of the Project is 180 days and this is not denied by the Petitioner. We note that, as per the Guidelines / Policy of the Respondent for the SRTPV applicants having the existing buildings, the time prescribed is 180 days i.e., six months (from the date of execution of the PPA), which is found to be adequate and the said Policy is in public domain. The Petitioner was also informed of the requirement of having to commission the plant within 180 days in the approval letter dated 23.03.2016 of the EE(EI.) C, O&M Division, BESCOM, Nelamangala, (though it wrongly indicated that, the 180 days commenced from 23.03.2016 and not 22.12.2015, the date of signing of the PPA) and we hold that the Petitioner cannot to be permitted to take advantage of the error of being informed it to be one year in the EE's earlier letter dated 06.09.2016.

- (g) We note that, the Guidelines provide that the Respondent has to grant approval, in the Format-6, for installing the SRTPV plant. The Format 6 dated 23.03.2016, issued by the Respondent, provides for a timeframe of 180 days to commission the SRTPV plant. The letter dated 06.09.2016 relates to sanction for replacement of the metering cubicle and the conductor for installing the SRTPV plant. It was not at all necessary for the

Respondent to mention any time line for installing the SRTPV plant in this communication. Therefore, this letter dated 06.09.2016 is not significant or relevant at all. Hence, the correctness or otherwise of the Corrigendum dated 07.09.2016, to the letter dated 06.09.2016, is not necessary for the purpose of deciding this case.

- (h) The Petitioner has not produced any material to refute the assertion that, a timeframe of six months (180 days) was given to all consumers for commissioning the SRTPV plants intended to be installed on the existing roof tops. The PPA approved by the Commission in the Petitioner's case does not have any clause specifying the time granted to commission the Petitioner's SRTPV plants and such a term is a part of the Scheme under which the Petitioner had applied. The time for commissioning is indicated in the approval letter issued on 23.03.2016 (though it wrongly indicates the time to commence from 23.03.2016). Any act of giving one-year time, contrary to the Guidelines, is *ultra vires* and it is not binding on the Respondent and the Petitioner cannot take advantage of it
- (j) Thus, we answer Issue No.(1), in the negative, on both counts.
- 10) **ISSUE No.(2):** *If the answer to Issue No.(1) is in the negative, whether the Petitioner can be allowed to operate the SRTPV plants, under net-metering basis and if so, what should be the tariff applicable?*
- (a) The Respondent has urged that as the Petitioner's plant does not conform to the SRTPV Guidelines, the permission granted to the Petitioner for establishing its SRTPV unit, ought to be cancelled. The Respondent also

contends that, the Petitioner is not entitled to the tariff of Rs.9.56 per unit as per the Order dated 10.10.2013, as agreed in the PPA, but to a tariff of Rs.5.20 per unit as per the Order dated 02.05.2016, for having commissioned the SRTPV plant, beyond the stipulated time limit. We have held that, the Petitioner has not installed SRTPV plants on its existing buildings, as required under the Scheme, under which it applied for permission to install and has also commissioned the plant, beyond the stipulated time period. Thus, as per Article 9 of the PPA, the Respondent would be justified in terminating the PPA.

- (b) We, however, note that the SRTPV plant installed by the Petitioner, with the considerable investment, has already been commissioned and the electricity generated is being injected to the Respondent's distribution network. Thus, it would be in the larger public interest to allow the Petitioner to operate its solar power plant under net-metering, subject to certain terms for balancing the interest of the Petitioner as well as the consumers.
- (c) Subsequent to the Generic Tariff Order dated 10.10.2013, the Commission, in the Order dated 02.05.2016, has determined the revised tariff for Solar Rooftop and Small Photovoltaic Power plants, considering the substantial reduction in the Capital Cost of such Projects and made it applicable to new Projects entering into PPAs and commissioned during the period, from 02.05.2016 to 31.03.2018. Admittedly, the investment in the Petitioner's Project was made after 02.05.2016. The Respondent submits that, the SRTPV installation work had not started on 25.08.2016 and the Petitioner

has not denied it. Thus, we deem it fit to determine a tariff of Rs.5.20 per unit, under net metering, for the Solar Power Plant of the Petitioner, instead of directing the termination of the PPA.

(d) Therefore, we answer Issue No.(2), as above.

11) **ISSUE No.(3):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) It is declared that, the Petitioner is not entitled to any of the reliefs, sought for, in its petition;
- (b) The Petitioner shall be paid a tariff of Rs.5.20 (Rupees Five and Paise Twenty) only per unit, under net-metering, for the electricity generated and injected from its Solar Power Plant, for a period of twenty-five years from 29.11.2016, the date of commissioning of the plant, on entering into appropriate fresh Power Purchase Agreement with the Respondent within four weeks from the date of this Order. In default, the Petitioner shall not be entitled to inject energy into the grid; and,
- (c) The Petitioner shall be at liberty to sell the electricity generated from its Solar Power Plant to third parties, as per law, if it fails to execute the PPA as mentioned above.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER