

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 Nos. 142/2017

BETWEEN:

Mrs. Lalitha Prakash,
W/o Late Mr. Prakash Carjige,
Budhihal Village,
Kasaba 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.

.. **RESPONDENT**

[Represented by Justlaw, Advocates]

OP Nos. 143/2017

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COMMON ORDER

- 1) These almost identical Petitions are filed under Section 86 read with Section 129 of the Electricity Act, 2003, with a common Petitioner and a Respondent, in effect praying to:
 - a) Pass an Order holding that, the Petitioner is entitled to a tariff of Rs.9.56 per unit, as per the Tariff Order dated 10.10.2013, in respect of installations bearing RR Nos. NP 6090 (in OP No.142/2017) and 6080 (in OP No.143/2017) and consequently, direct the Respondent to pay accordingly;
 - b) Award costs of the Petitions to the Petitioner; and,
 - c) Pass such other Order / directions / guidelines, in the circumstances of the cases.
- 2) The facts in both cases are similar and hence, the cases are taken up together for disposal.

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- 3) The facts of the cases, as submitted by the Petitioner, may be summed up, as follows:
- (a) In the Solar Policy 2014, a scheme for promotion of large scale grid-connected roof top solar PV projects in the State was announced by the State of Karnataka, according to which a capacity of 400 MW of Rooftop Solar energy was proposed to be installed between 2014-2018. The Commission had passed the Generic Tariff Order dated 10.10.2013, determining the tariff for Roof top solar Projects at Rs.9.56 per unit. The Petitioner intended to develop Solar Rooftop Projects on the buildings, under construction, in the lands in Sy.Nos.49/2, 48/1A & 48/1B, Budhihal Village, Kasaba Hobli, Nelamangala Taluk, Bengaluru Rural District, belonging to her.
- (b) The Petitioner's premises is serviced by the Respondent with installations, R.R.Nos.NP 6090 and 6080. The Petitioner entered into two separate Power Purchase Agreements (PPAs), dated 11.03.2016, with the Respondent for establishing the SRTPV Projects of 1 MW capacity each as per the 'Under Construction Scheme'. The term of the PPAs was 25 years each, from the date of commissioning and the tariff was Rs. 9.56 per unit, as per the Commission's order dated 10.10.2013.
- (c) The PPAs sent to the Commission were approved by its letter dated 16.05.2016. The approval was subject to incorporation of the following:

“The SRTPV system shall be designed, engineered constructed, commissioned and operated by the seller or any other person on his behalf within 10.03.2017.”

- (d) The Petitioner addressed a letter dated 08.02.2017 to the Respondent, stating that she had registered 2 numbers of SRTPV applications for 1,000 kWp each and that the Commission's approval letter had fixed the time of one year for commissioning both the plants, i.e., 10.03.2017. The letter further stated that, the buildings were completed and despite seeking Format – 6 and MT letter for testing of Meter cubicle, the EEE Nelamangala, had not issued the same and hence, sought for the co-operation in commissioning of the SRTPV plants, at the earliest. The letter was submitted to the Respondent on 13.02.2017. As the Petitioner was not well versed with the procedures, there was some delay in the construction and the Respondent had apparently terminated the PPAs on 03.08.2016 (we note that, this date should have been mentioned as '30.08.2016' and not '03.08.2016'). The Petitioner requested to synchronize the SRTPV plants to the grid and the Executive Engineer, along with AEE visited the Petitioner's premises on 02.03.2017. The Engineers, in the report dated 02.03.2017, enclosed photographs and the Petitioner's request to commission the SRPV plants, after finding that the Petitioner had completed the buildings and fixed solar panels.
- (e) The Chief Electrical Inspector to Government (CEIG), after inspection of the SRTPV plants of the Petitioner, vide letter dated 06.03.2017, granted safety approval, subject to usual conditions.

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- (f) The Respondent issued a letter dated 07.03.2017 to the Petitioner, sanctioning Grid connection to the SRTPV plants, under 'self-execution' basis and sought certain charges. In Clause 8 of the said letter, it was mentioned that the SRTPV consumer had to install and commission the plant on or before 10.03.2017. However, in Clause 9 of the letter, it was stated that the SRTPV Plants of the Petitioner were not commissioned within 6 months from the date of the PPA and hence the Petitioner would be entitled to the tariff, as per the Order dated 02.05.2016. It was also mentioned that, the Petitioner had protested against the said tariff.
- (g) Thereafter, the Respondent synchronized the Petitioner's plants on 08.03.2017 and the Certificate of Synchronization dated 10.03.2017 was issued. The Certificate, at Reference Nos. 4 & 5, referred to two Orders of the Commission passed in cases pertaining to some other parties with 'Existing rooftop', for whom the time limit was six months to commission their plants and not for 'Under Construction Scheme' consumers, such as the Petitioner, for whom the time limit is one year.
- (h) The Petitioner's plants had to be synchronized on or before 10.03.2017. The Petitioner's plants were synchronized on 08.03.2017, well within the said cutoff date.
- (i) As per the Net-Metering Scheme and the Commission's Order dated 10.10.2013, a preferential tariff of Rs.9.56 per unit had to be paid to the

Petitioner, but the Respondent is contending that, the Petitioner is eligible to be paid a tariff of Rs. 5.20 per unit. The Petitioner, in her letter dated 16.08.2017 addressed to the Respondent, stated that she intended to approach the Commission for adjudication regarding the tariff, and without prejudice to her rights and contentions, had agreed to receive payments at the rate of Rs. 5.20 per unit.

- (k) Though the Petitioner's representatives were called by the Respondent, time and again, the Respondent has not sorted out the issue. All efforts for resolution of the issue have failed and in such matters the Commission has the power to adjudicate, in accordance with law and hence, the Petitioner has filed these Petitions.
- 4) The grounds urged by the Petitioner, in support of her prayers, may be summarized, as follows:
- (a) The Respondent has violated the Rules, Regulations and the Tariff Order passed by the Commission, necessitating interference of the Commission.
- (b) As per the Order dated 02.05.2016, 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. In the instant cases, the Commission and the Respondent have stipulated a cut-off date for synchronization of the

Petitioner's plants, which is 10.03.2017, and the Petitioner has synchronized the plants on 08.03.2017, prior to the cut-off date. Hence, the tariff as per the Order dated 10.10.2013 at Rs. 9.56 per unit, has to be applied.

- (c) The Respondent is estopped from contending that, the revised tariff would be applicable, as the Petitioner's plants have been commissioned well within the cut-off date and do not fall under the category, to which the revised Tariff Order applies.
- (d) The Respondent is acting contrary to its own Circular dated 23.12.2015, which clearly states that, one year is the time granted for commissioning SRTPV plant in the 'Under Construction Scheme'. The Circular, the Commission's approval letters and the Respondent's communications stipulate the same. However, the Respondent is trying to apply reduced tariff, referring to cases pertaining to Existing Buildings and not 'Under Construction' buildings. The Respondent cannot wriggle away from contractual obligations, by referring to the unconnected cases.
- (e) The Respondent, to suit its convenience, is erroneously banking on the Approval letter dated 06.03.2017 and suggesting the applicability of the tariff at Rs.5.20 per unit. The Format-6 is only a procedural requirement and cannot substitute the main document.

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- (f) The Petitioner has pumped in its own money, borrowed money and set-up this plant, only because of the viability factor of the tariff being at Rs.9.56 per unit. However, unilaterally and illegally, the Respondent is applying the revised tariff on the Petitioner, in gross violation of the Rules and by misinterpreting the revised Tariff Order.
- 5) Upon issuance of Notice, the Respondent, appeared through its learned counsel and filed Statements of Objections. The submissions made, therein, may be stated, as follows:
- (a) On 30.08.2016, the Respondent terminated the PPAs dated 11.03.2016 of the Petitioner, as the norms for installation of SRTPV plants were not complied with.
- (b) On 08.02.2017, the Petitioner addressed a letter to the Executive Engineer of the Respondent, requesting that the SRTPV plants be commissioned. On 02.03.2017 an inspection was also carried out by the concerned officer and a report was filed. On 06.03.2017, the Chief Electrical Inspectorate, granted approval to the Petitioner's plant. On 08.03.2017, the Petitioner's plant was synchronized with the grid.
- (c) The Respondent, vide Circular dated 23.12.2015, had issued certain guidelines for SRTPV plants, to be established on the 'under construction' premises. As per the same, the time-frame for completion of SRTPV plant was twelve months, from the date of signing of the PPA and not 180 days, as was

the case for completed buildings. However, as the approval for granting permission for the installation of the 1,000 kwp plants was issued to the Petitioner by the Respondent on 06.03.2017, the Respondent addressed a letter dated 17.07.2017 to the Commission, seeking guidance in the matter relating to the tariff that would be applicable for the plants. In response to the letter of the Respondent, the Commission, vide letter dated 02.08.2017, clarified that, as the approval for establishment of the SRTPV plants was issued on 06.03.2017, i.e., when the Order dated 02.05.2016 was in effect, the tariff payable would also be as per the Order dated 02.05.2016. Therefore, the Respondent has been making payments to the Petitioner at the rate of Rs.5.20 per unit, in terms of the clarification issued by the Commission. Aggrieved by the receipt of payments at Rs.5.20 per unit, instead of Rs.9.56 per unit, the Petitioner has preferred the present Petitions.

- (d) The averment of the Petitioner that, the PPA did not specify a cut-off date within which the plant was to be commissioned, is denied. The Commission, in the letter dated 12.05.2016, while approving the PPA, has specifically directed the parties to include Article 1(1.6), which states the date of the commercial operation.
- (e) The Respondent has therefore, prayed for dismissal of the Petitions.

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- 6) 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 and commissioned the SRTPV plants, as per the applicable norms and thereby, eligible for the tariff agreed in the PPA?
 - (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?
- 7) 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:
- 8) **ISSUE No.(1):** *Whether the Petitioner has installed and commissioned the SRTPV plants, as per the applicable norms and thereby, eligible for the tariff agreed in the PPA?*
- (a) Admittedly, the Petitioner had applied for installing the SRTPV plants, on the rooftops of the premises belonging to her, pursuant to applications invited by the Respondent under the Solar Policy of the State and as per the Consumer Guidelines issued by the Respondent, in this behalf. The Guidelines provided that, the applicant had to download the application from the Website of the Respondent and submit the duly filled-in application, attaching therewith the

necessary documents, after paying the registration fee prescribed. On scrutinising the application, the concerned Engineer of the Respondent would conduct the Feasibility Test and if found feasible, issue the approval, to go ahead with the work, in format 6 and instruct the Project Proponent to enter into a PPA. However, we note that, the Petitioner has entered into PPAs with the Respondent on 11.03.2016, even before issuance of any approval in Format-6. Thereafter, the Format-6 to commence work was given on 06.03.2017, only two days prior to the date of commissioning.

- (b) As per the 'Consumers Guidelines', issued by the Respondent, approval for installation. in Format-6. 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 is not issued, but the PPA is signed and the installation work has progressed, even after cancellation of the PPAs, thereafter the Format-6 cannot be issued by the Respondent, so as to make the SRTPV plants installed eligible for the Net-Metering Scheme. The issuance of Format-6, at a later date, after the termination of the PPAs, would lead to a suspicion against the conduct of both the parties.
- (c) The PPAs with respect to the SRTPV plants of 1 MW capacity each, pertaining to RR Nos.6080 and 6090 of the Petitioner, were executed on 11.30.2016, on 'Under Construction' basis. The tariff, agreed to in the PPAs, was Rs.9.56 per unit. While approving the PPAs, the Commission granted time up to 10.03.2017, to commission the plants. In the meanwhile, on 30.8.2016, the

PPAs were terminated, based on the inspection conducted on 25.08.2016 by the concerned officer of the Respondent, as mentioned in Document No.4, produced by the Petitioner. The Petitioner, in Paragraph-6 of the Petitions, admits that, there was some delay in the construction (of the buildings) and the PPAs were terminated on 30.08.2016. Similarly, the Respondent, in Paragraph-3 of the Statements of Objections filed, has reiterated that the PPAs were terminated, as the Petitioner had not complied with the norms of installation of the SRTPV plants. Admittedly, without challenging the termination of the PPAs, the Petitioner continued with the construction of the building and installed the Solar Panels. The termination of the PPAs has not been set aside by any Authority. Therefore, it can be concluded that, the Petitioner proceeded with the work of installing the SRTPV plants, with an intention to sell power to third parties, through open access.

- (d) The synchronization of the SRTPV plants with the grid can be allowed, only when there is a valid commercial transaction between the Solar Plant Developer / Consumer, either with the ESCOM or with a third party, for sale on open access. It appears that, the Petitioner, without intending to sell power on open access, now intends to sell power to the Respondent.
- (e) It appears that, the parties have not disclosed the correct facts in these proceedings, because, unless there was an agreement to sell power, there could not have been synchronization of the SRTPV plants with the grid. Even while seeking clarification of the Commission, vide letter dated 17.07.2017,

the Respondent had not disclosed the termination of the PPAs and had requested to clarify the applicability of the tariff to the SRTPV plants, with incorrect facts. As noted earlier, the conduct of the parties, in these cases, is suspicious. Thus, we are of the considered opinion that, the Petitioner cannot be taken as having installed SRTPV plants, pursuant to the PPAs signed on 11.03.2016. Thereby, the Petitioner is not entitled to the tariff, agreed to in the PPAs, towards the power generated and injected in the Respondent's distribution network.

- (f) Therefore, we answer Issue No.(1), in the negative.
- 9) **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 allowed synchronization of the Petitioner's SRTPV plants and thereby permitted injection of power into its grid, at a revised tariff though, which the Petitioner has accepted under protest. We note that, the Petitioner's plants, without a valid approval and PPAs, would not be covered under the SRTPV Scheme envisaged pursuant to the Generic Tariff Order dated 10.10.2013. Further, it is also not an eligible Project under the later Generic Tariff Order dated 02.05.2016, which modified the norms and procedure of the earlier SRTPV Scheme. We, however, note that, the SRTPV plants installed by the Petitioner, with considerable investment, have 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 petition to allow her SRTPV plants under net-metering, subject to certain terms, for balancing the interest of the Petitioner as well as the consumers.

- (b) The construction of the buildings and installation of the Solar Panels have taken place after 25.08.2016, as evidenced in Document No.4 dated 02.03.2017, filed by the Petitioner, which reads as follows:

"i. The SRTPV applicant has applied SRTPV for 1 MW in under construction scheme. The PPA was made on 11/3/2016 and Honourable KERC has approved the PPA on 12/5/2016 vide letter No.KERC/S/F-31/VOL-1030/16-17/686/16.5.2016 and instructed to commission the SRTPV on or before 10/3/2017. As the SRTPV installation was approved in under construction scheme and as per BESCO corporate office circular no. BESCO/BC31/ 2560/2014-15/389/23.8.2016, inspection from the AEE Nelamangala sub-division on 25/8/2016 and consumer has not constructed the building nor informed this office regarding construction of building/erection of solar panels, the said PPA was terminated vide TO letter EEE/NEL/AEE(O)/2016-17/6396 (B)/30.8.2016. Meanwhile consumer Smt. K. Lalitha Prakash submitted a requisition letter on 13/2/2017 to synchronise their SRTPV to the grid. I visited the spot along with the AEE Nelamangala on 2/3/2017 and found that consumer has completed the building and solar panels have been fixed. The photographs enclosed for kind needful. The said consumer has requested this office to commission the SRTPV, as per the PPA conditions. This is for your kind information and needful."

- (c) It can be safely taken that, there was no building as on the date of inspection on 25.08.2016, so as to indicate that the Petitioner was serious in implementing

the Projects and the PPAs were terminated on 30.8.2016, for that reason. Despite termination of the PPAs, the Petitioner took up the construction work of the building, after the date of termination of PPAs. By this time, the Generic Tariff Order dated 02.05.2016 was in force. The Respondent has approved the installation of the SRTPV plants by the Petitioner, vide letter dated 06.03.2017, without referring to or revoking the termination of the PPAs, signed earlier. The SRTPV plants were not only commissioned on 08.03.2017 during the Control Period of the Tariff Order dated 02.05.2016, but also admittedly, the construction work of the buildings and the installation of the Solar Panels have taken place during the Control Period of the Order dated 02.05.2016, which commenced from 02.05.2016, indicating that the capital investment, for the installation of SRTPV plants, was made during this Control Period. Thus, we deem it fit to give an option to the Petitioner, to enter into PPA at the tariff of Rs.5.20 per unit, under net-metering, for the Petitioner's two SRTPV plants, instead of directing the Petitioner to immediately discontinue injection of power into the Respondent's distribution network.

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

10) **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 her Petitions;
- (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 surplus electricity generated and injected from her SRTPV Plants, for a period of 25 (twenty five) years from the date of commissioning of the plants, on entering into appropriate fresh PPAs with the Respondent, within 4 (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 her SRTPV plants to third parties, as per law, if she fails to execute the PPAs, as mentioned above.

The original of this Order shall be kept in OP No.142/2017 and copy, thereof, in OP No.143/2017.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER