

No. N/105/2020

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

Dated: 11.06.2021

Present

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

COMPLAINT No.07/2020

BETWEEN:

Walwhan Renewable Energy Limited.,
(Previously known as Welspun Renewables Energy Limited)
C/o Tata Power Company Limited
Cor, Centre, B-344,
Sant Tukaram Road, Carnac Bunder,
Mumbai-400 009.
(Represented by its Authorised Signatory)

....COMPLAINANT

[Complainant represented by Sri Deepak Khuran &
Sri P.N. Rajeswara, Advocates.]

AND:

1. Bengaluru Electricity Supply Company Limited,
K.R. Circle,
Bengaluru-560 001.
(Represented by its Managing Director)

2. The Managing Director,
Bengaluru Electricity Supply Company Limited,
K.R. Circle,
Bengaluru-560 001.

.....RESPONDENTS

[Respondent No.1 & 2 represented by
Sri S. Sriranga, Advocate for M/s Just Law Advocates]

ORDERS

1. This is a complaint petition filed by Walwhan Renewal Energy Limited under Section 142 of the Electricity Act, 2003 against the Respondent i.e., Bangalore Electricity Supply Company Limited, for non-compliance of the Commission's Order dated 29.05.2020 in Complaint No.5 of 2020 passed by the Commission.

2. The Complainant has prayed for the following relief to;

a) Initiate appropriate proceedings against the Respondent under section 142 of the Electricity Act, 2003 or any other appropriate provision/s of the Electricity Act, 2003 for contravention and wilful disobedience of the directions of this Hon'ble Commission dated 29.05. 2020 in Complaint No. 05 of 2020.

b) Pass such other order/s as this Hon'ble Commission may deems fit and proper under the facts and circumstances of the present case, in the interest of justice.

3. The brief facts of the Complaint:

The present complaint has been filed for seeking a direction to the respondent to comply with the directions issued by the Commission vide order dated 29.05.2020 passed in Complaint No.05/2019 directed the Respondent to purchase additional energy, if any, injected from the Complainant's project from 07.08.2019 at Rs.4.11 per unit as directed in the order dated 02.02.2017 in OP. No. 78/2016 and further ordered execution of Supplemental Power Purchase Agreements within four weeks from

29.05.2020, incorporating the additional terms regarding the purchase of additional energy, injected into the grid from 07.08.2019, at Rs.4.11 per unit, for terms of the Power Purchase Agreements and sent to the Commission for approval.

4. Complainant further submits that, despite specific and unequivocal directions of the Commission, Respondent No.1 is not executing the Supplemental Power Purchase Agreements with the Complainant, thereby constraining the complainant to approach this Commission.
5. The complainant has entered into two Power Purchase Agreements (PPAs) dated 14.01.2015, with the Respondent No.1 and for sale of Solar Photo-Voltaic (PV) Plants of 50 Mega Watts each, as described in the respective PPAs.
6. The complainant while implementing the project installed certain additional advanced modules of the Solar PV Plants over and above the contracted capacity of 50 MW under each PPA. Therefore, the Complainant was expecting additional energy generation over and above the contracted energy of 91.980 MUs from its Projects. Accordingly, the Complainant requested the Respondent No.1 to make suitable provisions in the PPA's for purchase of the additional energy generated by its Solar Plants beyond the contracted energy.
7. The complainant submitted that the Respondent took a stand that the purchase of additional energy at a higher rate would be a financial burden on it and the Respondent No.1 replied to the Complainant expressing its unwillingness to purchase the additional energy from the Complainant. For

this, the Complainant has filed OP No. 78/2016 before the Commission seeking directions to the Respondents

8. The complainant submits that the Respondents have filed their Statement of Objections to petition, Respondent No.1 offered, as a last resort, to purchase the additional energy from the petitioner/Complainant at the Average Power Purchase Cost of Rs.4.11 per unit, as approved by the Commissions Tariff Order of 2016.
9. Further the complainant submitted that upon consideration of the entire matter, the Commission disposed the said OP No. 78/2016 by an order dated 02.02.2017 and allowed the petition partly.
10. The complainant further submits that the Complaint No.05/2019 has been filed on account of non-implementation of the Order dated 02.02.2017 in OP. No. 78/2016. Upon consideration of the complaint, the Commission had disposed the same vide Order dated 29.05.2020 and Ordered that:
 - (i) for the additional energy, if any, injected from the petitioner's project from 07.08.2019 the respondent shall make payment of Rs.4.11 per unit as directed in the order dated 02.02.2017 in OP. No. 78/2016.
 - (ii) the SPPAs shall be executed by the parties within four weeks from the date of the order, to incorporate a term regarding purchase of additional energy, injected into the grid from 07.08.2019 at Rs.4.11 per unit, for the terms of PPA and sent to the Commission for approval.

11. Further the complainant's contentions that payment for the entire additional energy injected should be made at Rs.4.11 and the SPPAs for the same should have executed with reference to the start of such injection as directed by the Commission's Order, for the additional energy injected into the grid from 07.09.2019 (Annexure P-3). The Complainant contends that the said Order has not been challenged and thus has achieved finality.
12. Pursuant to the Commission's Order, the Complainant addressed a letter dated 30.05.2020 to the Respondent No.2, the Managing Director of the Respondent No.1 requesting to execute the Supplemental PPAs in line with the aforesaid direction of the Commission (Annexure P-4).
13. The Complainant submits that it had followed up with the concerned authorities to sign a SPPA as per order/directions of the Commission, vide letters dated 30.05.2020; 04.06.2020; 16.6.2020; 25.6.2020; 13.7.2020 and 12.8.2020 enclosing the documents sought by the respondent (Annexures- 4 to 8) but no proper response received from the respondent to carry out the directions issued by the Commission in OP No.78/2016 and Order dated 29.05.2020 in Complaint No.05/2019.
14. The Complainant further submits that it had received a letter dated 19.08.2020 from the Respondent i.e., BESCO stating that the subject of execution of SPPA was placed before the Board of BESCO in its meeting held on 15.07.2020, wherein, Board directed to negotiate the rate per unit and sought for consent of the Complainant for a Tariff of Rs.2.36 per unit for taking forward and executing the SPPA Annexure- P-9 & P-9 (a) collectively).

15. The complainant submits that the communication of the Respondent No.1 and the contents thereof are in violation and in utter contempt of the Commission's Order dated 29.05.2020. It is further submitted that the Orders have already attained finality which are required to be implemented in letter of spirit. The Respondent No.1, cannot seek to negotiate the Tariff which has been approved by the Commission.
16. The complainant further submitted that the conduct on the part of respondent of having not executed the Supplementary PPA within requisite time and wanting to negotiate the price is highly contemptuous and amounts to overreaching the Orders passed by the Commission.
17. Upon issuance of notice, the learned counsel for Respondent appeared before the Commission and filed a memo on 08.04.2021 stating that;
- i) In keeping with the direction issued in the order dated 02.02.2017 in OP. No. 78/2016 and order dated 29.05.2020 in Complaint No. 05/2019, the Respondent and the Complainant have executed Supplemental PPAs for purchase of additional energy from 07.08.2019 onwards at a Tariff of Rs.4.11 per unit and produced PPAs as Annexure R-1 (Collectively).
 - ii) The SPPAs have been submitted to the Commission for approval on 07.04.2021 and immediately after receipt of the approval they will pay for the additional energy supplied from 07.08.2016.
 - iii) Further, it has drawn the attention of the Commission to the communication letter dated 10.03.2021 issued by the Complainant to the Respondent undertaking to withdraw

the present Complaint on execution of supplemental PPA's as Annexure R-1 and produced the letter as Annexure R-2.

18. The Memo dated 08.09.2021 filed by the Respondent i.e., BESCOM is taken on record. On the perusal of Supplementary Power Purchase Agreements dated 31.03.2021 (Annexure R-1), the Commission notes that the Respondent No.1 i.e., BESCOM has complied the Order dated 29.05.2020 in Complaint No.5/2019. Therefore, we proceed to pass the following:

ORDER

The Complaint No.07/2020 is dismissed.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member