BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,

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

Dated: 16.02.2021

Present:

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

Reference: Order of the Hon'ble High Court of Karnataka dated, 29.01.2020 in the Writ Petition Nos. 36427-36428 of 2018

BETWEEN:

1. M/s KARE Power Resources Private Limited,
   # 103, Eden Park, No. 20,
   Vittal Mallya Road,
   Bengaluru-560 001.

2. Mr. Raghuraj Gujjar,
   S/o. Thippanna Gujjar,
   (Share holder of 1st Petitioner)
   # 103, Eden Park, No. 20,
   Vittal Mallya Road,
   Bengaluru-560 001. …. **PETITIONERS**

   [Petitioners represented by Sri Shridhar Prabhu
   & Others of Navayana Law Office, Bengaluru]

AND:

1. South Indian Sugar Mills Association -Karnataka (SISMA, Karnataka).
   1st Floor, 'Farah Winsford',
   No. 133/6, Infantry Road,
   (Near Medinova Diagnostic Center),
   Bengaluru – 560 001.

   [Respondent-1, represented by Sri Shridhar Prabhu
   & Others of Navayana Law Office, Bengaluru]

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

3. The Managing Director,
   Mangalore Electricity Supply Company,
   MESCOM Bhavan, Corporate Office,
   Kavoor Cross Road, Bejai,
   Mangaluru–575 004.
4. The Managing Director,
   Chamundeshwari Electricity Supply Corporation Limited,
   Corporate Office, CESC No. 29,
   Vijayanagar 2nd Stage, Hinkal,
   Mysuru-570 017.
5. The Managing Director,
   Hubli Electricity Supply Company,
   Navanagar, P.B Road,
   Hubballi-580 025.
6. The Managing Director,
   Gulbarga Electricity Supply Company,
   Corporate Office, Station Road,
   Kalaburagi–585 102.
7. Renewable Energy Development
   Association of Karnataka (REDAK)
   No. 48, Lavelle Road,
   Bengaluru- 560 001.
8. Indian Wind Power Association Karnataka State Council,
   C/o Enerfra Projects (India) Pvt. Ltd.,
   7, Raj Classic, 2nd Floor, 1st Block,
   Dr. Rajkumar Road, Rajajinagar,
   Bengaluru–560 010.
9. Indian Wind Energy Association (InWEA),
   2nd Floor, All India Federation for the Deaf (AIFD) Building,
   12-13, Special Institutional Area,
   Shaheed Jeet Singh Marg,
   New Delhi–110 067.
10. Association of Power Producers (AAP)
    5th Floor, Mohan Dev Building
    13 – Tolstoy Marg,
    New Delhi–110 001. …. **RESPONDENTS**

[Respondents 2, 3, 5 and 6 represented by
Sri Shahbaaz Husain, Advocate, Precinct Legal]

[Respondents 4 and 7 to 10 did not appear in
the proceedings in spite of issue of notices]

O R D E R

1. After the remand from the Hon'ble High Court of Karnataka, in Writ Petition Nos. 36427-36428 of 2018, disposed of vide Order dated 29.01.2020, the matter is taken up by the Commission for final hearing/disposal in the matter.

2. Brief Facts of the Case:

1. The Petitioner-1 namely, M/s KARE Power Resources Private Limited, is a generating company having its registered office in Bengaluru and has established 24.75 MW hydroelectric project at Raichur District of Karnataka and has entered into a wheeling & Banking Agreement (WBA)on 3rd July, 2015 with Karnataka Power Transmission Corporation Limited (KPTCL), Gulbarga Electricity Supply Company Limited (GESCOM) and Bangalore Electricity Supply Company Limited (BESCOM). The Petitioner – 2 namely, Sri Mr. Raghuraj Gujjar, is the shareholder of the 1st Petitioner.

2. As per Clause 5.1 of the WBA executed by the Petitioners with the Respondents 2 and 6, the Petitioners are obligated to pay charges to the above Respondents for using the network of the above Respondents, as per the applicable KERC Regulations / Orders issued from time to time, which among other things include transmission charges, wheeling charges, Cross Subsidy Surcharge (CSS), additional surcharge etc.,

3. The Karnataka Electricity Regulatory Commission (hereinafter referred to as 'the Commission'), in terms of the KERC (Tariff) Regulations 2000 (as Amended from time to time) and KERC (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity) Regulations, 2006 (as Amended from time to time), read with KERC (General & Conduct of Proceedings) Regulations, 2000, is determining the retail supply tariff applicable to various category of consumers served by the ESCOMs . Further, in terms of the above Regulations consumers seeking open access are liable to pay transmission / wheeling charges, CSS and additional surcharge as determined by the Commission from time to time.

3. The Commission, in terms of the above Regulations has determined the CSS in its Tariff Order 2018, dated 14.05.2018 as indicated below:

Paise / Unit

Particulars	66kV & above	HT level-11 kV/33kV
HT-1 Water Supply	114	104
HT-2a (i) Industries	157	157
HT-2a (ii) Industries	169	169
HT-2a (i) Industries	201	201
HT-2b (i) Commercial	204	204
HT-2(c) (i)	154	154
HT-2(c) (ii)	174	174
HT-3(a) (i) Irrigation	0	0
HT-3(a) (ii) Lift irrigation	0	0
HT-3(a) (iii) Lift irrigation	0	0
HT-3(b) Irrigation and Agricultural Farms	26	0
HT-4 Residential Apartments	137	137
HT-5 Temporary	307	307

4. The above charges were made applicable to all open access / wheeling transactions except for captive generating plants carrying electricity to the destination of its own use and for those RE generators who were exempted from CSS by the specific Orders of the Commission.

5. In view of the above order, the petitioner was liable to pay the CSS as determined by the Commission in the tariff order mentioned above. Aggrieved by the above order of the Commission pertaining to CSS, the petitioners filed writ petitions bearing Nos. 36427-36428/2018, before the Hon'ble High Court of Karnataka, mainly on the ground that the petitioner is denied the benefit / exemption of levy of CSS extended to solar generators by resorting to unintelligible and irrational sub- categorization and therefore, is ultra-vires to the Act and Regulations. Further, the petitioner also contended that they had no occasion to make any representation or make reasonable guess work that the Commission would exempt or apply CSS selectively and that exempting one RE source from payment of charges is violation of fundamental rights guaranteed under Article – 14 of the Constitution of India. In view of the above, the petitioner made the following prayer before the Hon'ble High Court of the Karnataka:

"a. Call for records;

b. Issue a writ in the nature of Certiorari or any other writ of like nature, quashing the Impugned Order dated 14th May, 2018, in the matter of "Application of BESCOM in respect of the Annual Performance Review for FY17, Revision of Annual Revenue Requirement for FY 19 and Revision of Retail Supply Tariff for FY 19, under Multi Year Tariff framework" produced herein as Annexure–A in so far as the levy of cross subsidy surcharge from the Petitioners' project;

c. Issue a writ in the nature of Certiorari or any other writ of like nature, quashing the Order dated 14th May, 2018 passed by 1st Respondent Karnataka Electricity Regulatory Commission (KERC) "In the matter of revision of wheeling and banking charges for Renewable Power Projects" produced herein as ANNEXURE- B in so far as the levy of cross subsidy surcharge from the Petitioners' project;

d. Issue a Writ of Prohibition or any other Writ, order to direction to the Respondents not to collect any cross subsidy from the Petitioners' project by extending the benefits at par with solar power projects established on or before 31st March, 2017 as contemplated in the Orders at Annexure A and Annexure–B; and

e. Issue a Writ or Mandamus of any other Writ or Order of the likes nature directing the Respondents to refund the cross subsidy collected for the open access transactions from 1st April, 2018 up to this date, including the pendente lite, in in terms of the Impugned Orders at Annexure A and Annexure B. . . . ……"

6. After hearing the parties in the matter, the Hon'ble High Court of Karnataka passed order dated 29.01.2020. The main gist of the Hon'ble High Court of Karnataka's order is as follows:

(i) Regarding the contention of the petitioners that, in the scheme of the Act, there does not exist any power to discriminate between renewable energy projects interse, they being a homogenous

clause, the Hon'ble High Court held that it is bit difficult to countenance. Section 42 of the Act, prohibits levying CSS on Captive Generating Plants, but there is no such interdiction against providing exemptions from the levy of the kind in favour of non-captive projects. In fact, Section 86 (1) (e) of the Act, enables the Commission to take measures for promotion of RE Sources depending upon the availability and cost power generation from such sources. Thus, the Hon'ble Court held that it cannot be gainsaid that no such power avails in the scheme of the Act for making classification amongst the NCE produces and that accepting the contention of the petitioner as to non-existence of power for making classification runs repugnant to the object and scheme of the Act and therefore, as of necessity, such power needs to be conceded to the Commissions. Further, the Hon'ble Court observed that the existence of power regardless of its scope, does not justify its exercise in the absence of conditions precedent contemplated under the scheme of the Act. It is the specific case of the petitioners that this power being quasi-judicial, they ought to have been given a reasonable opportunity before they are singled out for discriminatory treatment in the matter of availing the benefit / exemption as are bestowed upon the solar energy producers. It was also noted that there was no material placed on record to prima facie show that the petitioners had an opportunity of hearing before they were excluded by the classification from claiming benefits that avail to only solar producers. The Hon'ble Court observed that the impugned action of the Commission did not give indication to the petitioners as to petitioners being excluded from the benefits that are otherwise made available to the other member of the class; this apart the factors on which the classifications is founded were acted upon by the Commission unilaterally without having the say of other stakeholders. The contention that the Commission could not have discriminated the other renewable energy producers qua the solar energy generators when all they constituted one homogenous class, needs deeper examination at the hands of Commission itself because it happens to be statutorily designated authority having

expertise in the matter; the Commission has to take an informed decision with the participation of all stakeholders; true it is that the Commission in its order dated 18.08.2014 to its Statement of Objections has explained as to why only the solar power projects need to be promoted in the State by granting incentives. However, the Court observed that what disadvantage the respondent Commission would have been put to, had the petitioners too were given an opportunity to come out with their versions, is not forthcoming.

(ii*) The reasons assigned for singling out the solar energy producers for preferential treatment qua all other RE generators, merits examinations at the hands of the Commission itself and such an exercise can be de novo undertaken by the Commission, which lacked judicial member earlier. Therefore, the court decided that instead of the impugned order being quashed, the same has to be reviewed by the Commission itself.*

In view of the above, the Hon'ble High Court allowed the writ petition partly, with the following reliefs:

"*1) A Writ of Mandamus issues to the first respondent – Commission to review paragraph No. 6.8 of the impugned order dated 14.05.2018 at Annexure –A, to the extent the same denies benefits/incentives to the non-solar renewable energy produces after hearing all the stakeholders, within a reasonable period;*

2) A Writ of Mandamus issues to the respondents not to take coercive action against the petitioners under the impugned order till after the review thereof, as directed above, is accomplished; and,

3) The respondents are directed to hold in trust all and whatever amount of money paid by the petitioners under the impugned order, subject to result of the review; if the review fails, the petitioners shall be liable to pay the levies in question as if the impugned order is continued intact."

7. Consequent to matter being remanded to the Commission, Notices were issued on 24.06.2020 to the Petitioners, BESCOM & GESCOM, intimating that the date of hearing through video conference would be intimated shortly. On 01.07.2020 another notice was served requesting for e-mail ID for sending the link for video conferencing. Subsequently, on 08.07.2020, Notice was served to twelve stakeholders including all ESCOMs, as per the list annexed with the order, requesting for e-mail ID for sending the link for video conferencing. The intimation of hearing scheduled on 17.11.2020, was conveyed to the above stakeholders vide Intimation dated 09.11.2020. On 17.11.2020 the Advocate for the Petitioners and Respondents appeared and sought time. The Commission, as per the request, scheduled the next hearing on 09.12.2020. Again on 09.12.2020 Advocate for petitioner sought 7-days' time for making additional submissions and the Advocate for Respondents (No. *2, 3, 5 and 6)* also sought 7-days' time to file additional statement of objections. The Commission scheduled the next hearing on 18.12.2020 and also directed the office to re-issue notices to other stakeholders who did not appear on 09.12.2020. On 18.12.2020, Advocate for South Indian Sugar Mills Association -Karnataka (SISMA, Karnataka) made submission for having filed written submissions and that written submissions for KARE Power Resources Private Limited & another would be made. The Advocate for Respondents (Nos. *2, 3, 5 and 6)* sought a week's time to file objections. The Commission also noted that the other stakeholders were not present despite serving notices and decided to give a final opportunity. Accordingly, notices were re-issued on 22.12.2020 to REDAK, IWPA (Karnataka State Council), InWEA and Association of Power Producers, intimating them that the next hearing would be held on 05.01.2021. On 05.01.2021 the Advocate for SISMA/KARE made submission for having filed written submissions on 21.12.2020. Advocate for Respondents (Nos. 2, 3, 5 and 6) once again sought a week's time to file objections. The other stakeholders did not appear despite service of notices. The Commission decided to hear the final arguments on 12.01.2021. On 12.01.2021 arguments by the parties were completed and the Commission reserved the matter for passing Orders.

8. The gist of submissions made by the Advocate representing SISMA & KARE Power Resources Private Limited, are as follows:

(i) The Commission has exempted Solar Projects achieving COD between 01.04.2013 and 31.04.2018 and selling power to consumers within the State under Open Access/Wheeling, from payment of wheeling & Banking charges and CSS for a period of 10 years from the date of Commissioning. The averments in Tariff Order, 2018, dated 14.05.2018 indicate that Solar Power Projects are exempted from CSS through Orders passed from time to time, but the same is levied on other RE Sources. There is no explanation in the Tariff Order for prescribing the specified period for exemption of CSS to solar projects.

(ii) The above discrimination was challenged before the Hon'ble High Court of Karnataka by KARE Power Resources Private Limited, and the Court has remanded the matter to the Commission to review Para No. 6.8 of the impugned Order pertaining to CSS, to the extent the same denies benefits/incentives to the Non-Solar Renewable Energy producers.

(iii) The above discrimination is continued even in Tariff Order 2020, issued by the Commission on 04.11.2020, even after the judgement of the Hon'ble High Court stated Supra.

(iv) The levy of CSS is a huge hindrance for sustenance of projects (mini hydel and co-generation).

(v) Under the Electricity Act, 2003, all the RE sources have been classified as one category and there is no provision to exempt wheeling & banking charges and CSS. There is no power to promote consumption, whether from solar or non-solar. Even if there is power, the benefit extended to solar projects had to be extended to all consumers sourcing power from all renewables. Further, as per Regulation 2 (i) of KERC Regulations Mini Hydel Projects and Co-generation Projects come under the definition of Renewable Sources of Energy and therefore, as per Act, as well as Regulation the obligation is uniform. Hence, the objector cannot be discriminated.

(vi) Every Unit of power sourced by Non-exclusive consumer/Co-generation power plants under open access/wheeling is levied with CSS. As per Act, the CSS is to be levied on consumers, whereas the WBA approved by the Commission passes this burden to the generators.

(vii) Exempting CSS to a class of consumers implies that the Commission has fixed lower Tariff for a class of consumers sourcing power from a particular source, which is not envisaged in the Act. In other words, it amounts to granting subsidy which under Section 65 of the Act, has to be given by the State Government and not the Petitioners/ Respondent-1. The subsidy extended by the Commission to the Solar Projects will have long ranging impact, whereas the Petitioners selling power to the same consumers has to pay CSS, which is discriminatory and ultra vires the Act. Exempting solar projects from CSS would result in loss to DISCOMs which has to be passed on to the consumers. The Petitioners/ Respondent-1 is cross subsidising the above loss and no power is vested with the Commission to make the Petitioners/ Respondent-1 bear the loss due to such consumption. The CSS adds to the cost of power sale to the Petitioners. Further, the Commission has not mentioned in any of its Orders the reason for exempting few solar power projects from payments of CSS. Such exemption should have been extended to the Petitioners/ Respondent-1 also.

(viii) CSS is aimed at compensating the DISCOMs. The formula for computing the CSS does not include the project cost of either solar projects or the Petitioners/Respondent-1 and therefore cannot be a criterion to levy CSS. The ESCOMs have not objected to the exemption of CSS to solar projects and therefore, they may not have objection for exempting CSS to the Petitioners/Respondent1. The Petitioners/Respondent-1 has to face a lot of competitive disadvantage in comparison to solar projects due to the payment of all charges. If the Petitioners/Respondent-1 is exempted from CSS, the project would be more competitive. The mandate under Section 86 is for promotion of RE Source and not the consumers.

(ix) Co-generation projects are connected to the transmission voltage and therefore, there is no need to pay CSS to DISCOMs when there is no wheeling charge applicable. Co-generation projects mainly import power for operational maintenance purposes. If co-generation projects are exempted by CSS, the projects will become competitive and would promote such sources

In view of the above, the Petitioners/ Respondent-1 requested the Commission to review the Tariff Order, 2018, and all earlier Orders and to direct that the benefits / incentives available to solar power projects be extended to the KARE Power Resources Private Limited & Member of SISMA also.

9. The gist of submissions made by the Advocate representing the Respondents (Nos. 2, 3, 5 and 6) is as follows:

(i) The Hon'ble High Court has held that determining CSS is quasi-judicial in nature and is amenable to the principles of natural justice such as right to be heard. The direction of the Hon'ble High Court to the Commission to review para-No.6.8 of the Order dated, 14.05.2018 is to afford all NCE generators an opportunity to make a case for exemption from CSS.

(ii) CSS is a statutory provision provided under Section 42 of the Electricity Act, 2003, and the Policies and the Regulations being framed thereunder. Thus, levying CSS is as per law. The Commission has the right to levy such CSS as it deems fit in the given circumstances.

(iii) Cross subsidising agricultural consumers and domestic consumers to a certain extent is a statutory requirement. Thus, requirement of cross subsidisation to these categories equally vests with consumers of ESCOMs and the OA consumers. Eliminating such charges to OA consumers availing power from NCE Sources and requiring other consumers of ESCOMs to bear the burden of CSS is against the principles of competition and natural justice.

(iv) Section 42 not only provides for reduction in surcharge but also reduction in cross subsidies. Reduction in surcharge without reducing

cross subsidies, defies the logic behind cross-subsidisation and results in ESCOMs selling energy at higher rates compared to rates offered under OA, which defeats competition. The CSS is required to meet cross subsidy and in absence of same would cost financial burden to ESCOMs. Elimination of CSS is not advocated by any of the applicable legal provisions as on date.

(v) The ESCOMs Acts as guarantors for continuous power supply, in the event of backing down of the generator supplying power to the consumer under open access. Hence, the generators cannot demand exploit and abuse their position as private generators, by claiming elimination of CSS.

(vi) The issue before the Commission is whether the exemption of CSS should be extended to other NCE sources, in the same manner as extended to solar generator. It is submitted that solar generators and other NCE generators are distinct from each other and face different challenges and also attract different Tariffs.

(vii) The capital cost and the O&M expenditure of solar projects were initially much higher than other NCE projects, resulting in higher Tariff for solar projects. The solar Tariff in FY17 was much higher than the Tariff for the wind and mini hydel projects. In the light of high Tariff and low quantity of solar energy being produced in the State, the Commission was justified in exempting solar projects from CSS.

(viii) There is no level playing field for solar and other NCE projects giving rise to competition, as competition is usually between the products having similar cost of production and similar tariffs. Out of the total energy supplied under open access, the energy supplied from solar sources was relatively negligible till FY18, which reiterates the inequality.

(ix) The Hon'ble High Court has noted that the Commission has powers to classify NCE sources for the purposes of levying CSS or giving exemption thereof.

(x) The contention of the Petitioners/ Respondent-1 that they are losing out to solar generators in competition due to levy of CSS is misleading and

has no legal rights/basis whatsoever in terms of general principles of competition.

(xi) One of the primary objectives of the Act, is supply of electricity to all. Keeping the above objective and the factual circumstances, incentives have been provided to solar generators, with intention of procuring more electricity from solar sources. Such classification is in furtherance of objective of the Act and is in compliance with the Article 14 of the Constitution of India. Further, under the Constitution of India, equality is not treating un-equals equally but it is the other way round. Hence, the Petitioners/ Respondent-1 has no basis to demand the concessions available to solar energy generators to its own mini-hydel projects. On the other hand, discontinuing the CSS will defeat the objective of competition and put ESCOMs in a position of weakness. Cross subsidy being imposed while suppling energy to HT consumers, the same has to be imposed on the energy supplied by way of cross subsidy surcharge in order to ensure competition.

In view of the above, the Respondents (Nos. 2, 3, 5 and 6) have requested to dispose of the petition by holding that except for solar energy, all other renewable sources of energy shall attract CSS when supplied under open access.

10. Considering the directions given by the Hon'ble High Court of Karnataka and the submissions made by the parties, the Commission proceeds to examine and decide on the various issues, as follows:

i) The Petitioners/Respondent-1 has contended that, under the Electricity Act, 2003, all RE sources have been classified as one category and there is no provision to exempt wheeling & banking charges and also contended that as per regulation 2 (i) of KERC regulations, mini-hydel projects and co-generation projects come under the definition of renewable sources of energy and therefore, the obligation should have been uniform for all RE sources and cannot be discriminated against.

The Respondents (Nos. 2, 3, 5 and 6) have submitted that, the solar generators and other NCE generators are distinct from each other and face different challenges and due to various reasons attract different Tariff, and the cost of solar projects were initially very high as compared to the other RE sources. In view of the very high Tariffs and very low production of Solar energy in the State, the Commission was justified in exempting solar power project from CSS while passing the relevant Order.

The Commission notes that, the above issue of discrimination was raised by the Petitioners before the Hon'ble High Court and the Court has held as under:

"Para 5 (VI) As to whether the Act enables classification of renewable energy producers, inter se:

> The next contention of the petitioners that, in the scheme of the Act, there does not exist any power to discriminate between the renewable energy projects *inter se*, they being a homogeneous class, again is bit difficult to countenance; true it may be, that Section 42 of the Act prohibits levying cross subsidy surcharge on captive generating plants; but there is no such interdiction against providing exemptions from the levy of the kind in favour of non-captive renewable energy projects; in fact, section 86 (1) (e) of the Act enables the Commission to take measures for promotion of renewable energy sources depending upon the availability and cost of power generation from such sources; thus, it cannot be gainsaid that no such power avails in the Scheme of the Act for making classification amongst the non-conventional energy producers; accepting the contention of the petitioner as to non-existence of power for making classification runs repugnant to the object and scheme of the Act and therefore, as of necessity, such power needs to be conceded to the Commissions."

In view of the above decision of the Hon'ble High Court, the Commission depending upon the availability and cost of generation, can make classification amongst the non-conventional energy producers. Accordingly, the contention of the Petitioners/ Respondent-1 is untenable.

ii) The Hon'ble High Court at page 17 in para VII) (c), referring to sub-paragraphs a, b and c of the Commission's Order dated, 18.08.2014, has observed that the Commission in the above Order has explained as to why only the solar power projects need to be promoted in the State by granting incentives. However, the Hon'ble High Court has noted that, 'what disadvantage the respondent Commission would have been put to, had the petitioners too were given an opportunity to come out with their versions, is not forthcoming;'. In view of the above, the Hon'ble High Court observed that the Commission before acting upon the aforementioned factor should have taken the version of the non-solar energy producers to make the decision-making process fair and reasonable.

Accordingly, the Hon'ble High Court directed this Commission to review the paragraph No: 6.8 of the impugned Order dated, 14.05.2018 to the extent the same denies benefits to the non-solar energy producers, after hearing all the stakeholders.

As pointed out by the Respondents (Nos. 2, 3, 5 and 6), the review referred to the Commission is to afford NCE generators to make a case for exemption from CSS.

In this regard, it is to be noted that all the proceedings before this Commission are being carried out in a transparent manner. While passing the impugned Tariff Order dated 14.05.2018, the Commission has followed the due procedure of 'public consultation' as stipulated in Section 64 of the Act, the KERC (Tariff) Regulations and KERC (General & Conduct of Proceedings) Regulations, 2000. The Commission has, from time to time considered the suggestions and objections received from the public while passing all the previous Orders. The abridged versions of the Tariff Petitions filed by the ESCOMs, were published in newspapers by ESCOMs and hosted in web-site of the KERC and ESCOMs so as to provide opportunity to the public to offer their suggestions/ objections. Similarly, while passing the Order dated, 18.08.2014 exempting solar power projects from CSS & other Charges, the Commission has followed the public

consultation process before passing the said Order by issuing a discussion paper and subsequently conducting public hearing on 31.07.2014. However, despite the opportunity having been given, the Petitioners had not participated in the above public consultation process or did not participate in the public hearing also. Nevertheless, as directed by the Hon'ble High Court of Karnataka, one more opportunity has been given to the petitioners in the current proceedings to substantiate their stand, to exempt other RE sources from payment of CSS.

iii) The Commission notes that, in the current proceedings, though the Petitioners/Respondent-1 have stated that, the levy of CSS is a huge hindrance for sustenance of mini-hydel and co-generation power projects, the Petitioners/ Respondent-1 have not substantiated the same in terms of facts and figures relating to their generation and the costs incurred from time to time. The Petitioners/Respondent-1 have only relied on the contention that, under the Electricity Act, all RE sources are classified as one category and that there is no provision in the Act to exempt any RE source from payment of wheeling and banking charges and CSS. This contention has not been accepted by the Hon'ble High Court.

iv) Regarding, the CSS and the exemption extended to the solar power projects the Commission's views are as follows:

a) Section 42 of the Electricity Act, 2003 specifically prohibits levying Cross Subsidy Surcharge (CSS) on captive generating plants. However, there is no restriction for providing exemption of CSS to non-captive Renewable sources of energy (RE Sources), as a measure of promotion, as the Commission is mandated under Section 86 (1) (e) of the Act, to promote RE Sources depending upon the availability and the cost of generation from such sources. The Power of the Commission to differentiate RE sources based on availability and cost of generation has been up held by the Hon'ble High Court of Karnataka also, in the writ petition filed by the Petitioners.

b) The contention of the Petitioners / Respondent-1 that the Cross subsidy is an element of Tariff and exempting the same implies that the Commission has fixed lower Tariff for a class of consumers sourcing power from a particular source and such reduction has to be compensated by providing subsidy by the Government, is incorrect.

As per Section 62 (1) of the Act, the Commission has to determine the Tariff for supply of Electricity by generating company to a distribution licensee, transmission of Electricity, wheeling of electricity and retail sale of electricity and does not include CSS. Thus, CSS which is separately dealt in Section 42 of the Act, is a surcharge and not a Tariff, as contended by the Petitioners / Respondent-1. Further, depending upon the paying capacity, certain consumers pay tariff above the average cost of supply, cross subsidising other consumers like agricultural pump sets, who have lower paying capacity. The cross-subsidy level depends upon the Tariff determined for a particular category of consumer and the Commission has not waived cross subsidy to any cross-subsidising consumer. On the other hand, the cross-subsidy surcharge as envisaged in the Act, has to be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee, which is determined based on the formula specified in the Tariff Policy. Thus, the cross subsidy in the retail supply tariff and the CSS for open access consumers are calculated differently and are not the same. The CSS partly compensate the distribution licensee for the loss of cross subsidy on account of consumers seeking open access / wheeling. Thus, the above contention is answered accordingly.

c) The contention of the Petitioners / Respondent-1 that, the Commission has not mentioned in any of its Orders the reason for exempting few solar power projects from payments of CSS and for prescribing specified period for exemption, is not correct.

The Hon'ble High Court itself has observed at page 17 under para VII) (c), referring to sub-paragraphs a, b and c of the Commission's

Order dated, 18.08.2014, that the Commission in the above Order has explained as to why only the solar power projects need to be promoted in the State by granting incentives. Thus, the above contention is answered accordingly.

d) The Petitioners/Respondent-1 have contended that the CSS has to be levied on consumers, whereas in the WBA the Commission passes the burden to generators.

The Commission notes that, as per the Article 5.1 of the WBA (2nd Para), only in case of default by consumers, the generator is liable to pay the open access charges like CSS etc. Generally, if such charges are paid by the generators, the generators would include the same in the Tariff charged by them to their consumers to whom they wheel energy. Thus, the above contention is answered accordingly.

e) The Petitioners / Respondent-1 have contended that the formula for computing the CSS does not include the project cost of either solar projects or the Petitioners' / Respondent-1's projects and therefore, cannot be a criterion to levy CSS.

The Commission in its Regulations has adopted the following formula specified in the Tariff policy:

S=T-[C/(1-L/100) + D + R]

Where

S is the Surcharge

T is the tariff Payable by the relevant category of consumers, including reflecting the Renewable Purchase Obligation

C is the per unit weighted average cost of power purchase by the Licensee, including meeting the Renewable Purchase Obligation

D is the aggregate of transmission, distribution and wheeling charge applicable to the relevant voltage level

L is the aggregate of transmission, distribution and commercial losses, expressed as a percentage applicable to the relevant voltage level

R is the per unit cost of carrying regulatory assets.

The formula on CSS and its interpretation has been a matter of contention before the Hon'ble ATE in several cases (Appeal No. 181/2015, Appeal No. 178/2011 to name a few) and the Commission has also passed Orders in Case No. 76/15, 27/16 and 98/16 consequent direction issued by the Hon'ble ATE in Appeal Nos. 259/16, 270/15 and 386/17, wherein the CSS formula is upheld. Thus, the contention raised by the Petitioners / Respondent-1 regarding the CSS formula, which is a settled issue, is not tenable.

f) The contention of the Petitioners / Respondent-1 that, when generation plants are connected to the transmission system and there is no need to pay CSS as there are no wheeling charges involved, is also not true.

The Commission notes that the Hon'ble Supreme Court of India in CIVIL APPEAL NO. 5479 of 2013 (M/s. Sesa Sterlite Ltd..... Appellant(s) Vs. Orissa Electricity Regulatory Commission and Others. …Respondent(s) in Order dated, 25.04.2014) has held as follows in the Paras mentioned below:

"20. From the aforesaid narration of events as well as arguments of the counsel for the parties, it has become manifest the primary dispute relates to the CSS which the Appellant is called upon to pay to WESCO. As per the Appellant no such CSS is payable and the PPA which was submitted by the Appellant to the State Commission for approval, should have been accorded due approval by the State Commission.

(1) Special Feature of the 2003 Act

21. Before adverting to this central issue, it would be apt to understand conceptually the rationale of payment of such CSS to the Distribution Company, under the scheme of the Electricity Act. The first enactment to govern electricity supply in India was

passed in the year 1910 viz. the Electricity Act, 1910. This Act envisaged growth of electricity industry through private licences. It created the legal framework for laying down of wires and other works relating to the supply of electricity. Thereafter, the Electricity (Supply) Act, 1948 mandated the creation of a State Electricity Board. The Board assigned the responsibility of arranging the supply of electricity in the State. It was experienced that over a period of time the performance of State Electricity Boards had deteriorated on account of various factors. Main failure on the part of these Electricity Boards was to take decision on tariffs in independent manner and cross subsidies had reached untenable levels. To address this issue and also to distance governance from determination of tariffs, the Electricity Regulation Commission Act was enacted in the year 1998. This Act created regulatory mechanism. Within few years, it was felt that the three Acts of 1910, 1948 and 1998 which were operating in the field needed to be brought in a new self-contained comprehensive legislation with the policy of encouraging private sector participation in generation, transmission and distribution and also the objectives of distancing the regulatory responsibilities from the Government and giving it to the Regulatory Commissions. With these objectives in mind the Electricity Act, 2003 has been enacted. Significant addition is the provisions for newer concepts like power trading and open access. Various features of the 2003 Act which are outlined in the statement of objects and reasons to this Act. Notably, generation is being delicensed and captive generation is being freely permitted. The Act makes provision for private transmission licensees. It now provides open access in transmission from the outset.

(2) Open Access and CSS

22. Open access implies freedom to procure power from any source. Open access in transmission means freedom to the licensees to procure power from any source. The expression "open access" has been defined in the Act to mean "the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission". The Act mandates that it shall be the duty of the transmission utility/licensee to provide non-discriminatory open access to its transmission system to every licensee and generating company. Open access in transmission thus enables the licensees (distribution licensees and traders) and generating companies the right to use the transmission systems without any discrimination. This would facilitate sale of electricity directly to the distribution companies. This would generate competition amongst the sellers and help reduce, gradually, the cost of generation/procurement.

23. While open access in transmission implies freedom to the licensee to procure power from any source of his choice, open access in distribution with which we are concerned here, means freedom to the consumer to get supply from any source of his choice. The provision of open access to consumers, ensures right of the consumer to get supply from a person other than the distribution licensee of his area of supply by using the distribution system of such distribution licensee. Unlike in transmission, open access in distribution has not been allowed from the outset primarily because of considerations of cross-subsidies. The law provides that open access in distribution would be allowed by the State Commissions in phases. For this purpose, the State Commissions are required to specify the phases and conditions of introduction of open access.

24. However open access can be allowed on payment of a surcharge, to be determined by the State Commission, to take care of the requirements of current level of cross-subsidy and the fixed cost arising out of the licensee's obligation to supply. Consequent to the enactment of the Electricity (Amendment) Act, 2003, it has been mandated that the State Commission shall within five years necessarily allow open access to consumers having demand exceeding one megawatt.

(3) CSS: Its Rationale

25. The issue of open access surcharge is very crucial and implementation of the provision of open access depends on judicious determination of surcharge by the State Commissions. There are two aspects to the concept of surcharge – one, the cross-subsidy surcharge i.e. the surcharge meant to take care of the requirements of current levels of cross-subsidy, and the other, the additional surcharge to meet the fixed cost of the distribution licensee arising out of his obligation to supply. The presumption, normally is that generally the bulk consumers would avail of open access, who also pay at relatively higher rates. As such, their exit would necessarily have adverse effect on the finances of the existing licensee, primarily on two counts – one, on its ability to cross-subsidise the vulnerable sections of society and the other, in terms of recovery of the fixed cost such licensee might have incurred as part of his obligation to supply electricity to that consumer on demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects.

26. Through this provision of open access, the law thus balances the right of the consumers to procure power from a source of his choice and the legitimate claims/interests of the existing licensees. Apart from ensuring freedom to the consumers, the provision of open access is expected to encourage competition amongst the suppliers and also to put pressure on the existing utilities to improve their performance in terms of quality and price of supply so as to ensure that the consumers do not go out of their fold to get supply from some other source.

27. With this open access policy, the consumer is given a choice to take electricity from any Distribution Licensee. However, at the same time the Act makes provision of surcharge for taking care of current level of cross subsidy. Thus, the State Electricity Regulatory Commissions are authorized to frame open access in distribution in phases with surcharge for:

(a) Current level of cross subsidy to be gradually phased out along with cross subsidies; and

(b) obligation to supply.

28. Therefore, in the aforesaid circumstances though CSS is payable by the Consumer to the Distribution Licensee of the area in question when it decides not to take supply from that company but to avail it from another distribution licensee. In nutshell, CSS is a compensation to the distribution licensee irrespective of the fact whether its line is used or not, in view of the fact that, but for the open access the consumer would pay tariff applicable for supply which would include an element of cross subsidy surcharge on certain other categories of consumers. What is important is that a consumer situated in an area is bound to contribute to subsidizing a low-end consumer if he falls in the category of subsidizing consumer. Once a cross subsidy surcharge is fixed for an area it is liable to be paid and such payment will be used for meeting the current levels of cross subsidy within the area. A fortiorari, even a licensee which purchases electricity for its own consumption either through a "dedicated transmission line" or through "open access" would be liable to pay Cross Subsidy Surcharge under the Act. Thus, Cross Subsidy Surcharge, broadly speaking, is the charge payable by a consumer who opt to avail power supply through open access from someone other than such Distribution licensee in whose area it is situated. Such surcharge is meant to compensate such Distribution licensee from the loss of cross subsidy that such Distribution licensee would suffer by reason of

the consumer taking supply from someone other than such Distribution licensee."

In view of the above said Order of the Hon'ble Supreme Court of India, the Commission is of the view that the CSS has to be paid by the consumers to the area distribution licensee to compensate such licensee for the loss of cross subsidy an account of consumer opting for open access and procuring power from source other than the area distribution licensee, even if such licensees' network is not used. Therefore, the contention raised by the Petitioners / Respondent-1 regarding the CSS does not hold water.

g. The Commission notes that the Petitioners / Respondent-1 except raising legal issues which are discussed in the previous paragraphs, have not furnished any analysis with facts and figures to substantiate their claim that payment of CSS is a hindrance for sustenance of Petitioners'/Respondent-1's projects and to show that the Petitioners/Respondent-1 are facing competitive disadvantage. In the absence of such data, question of extending the benefits to the Petitioners'/Respondent-1's projects does not arise.

h. Meanwhile, as noted by the Hon'ble High Court of Karnataka in its Order dated, 29.01.2020, whether solar and other RE sources are on the same pedestal or not needs to be established in terms of availability and cost of generation, as equality enshrined in Article-14 of the Constitution of India, is not treating un-equals equally but it is the other way round. There are several Supreme Court rulings on the issue. The Hon'ble Supreme Court in UP Power Corporation Ltd., Vs. Ayodya Prasad Mishra (in Civil Appeal No. 670 of 2008, Order dated 11.09.2008) has held as follows:

"Para 34. It is well settled that Article 14 is designed to prevent discrimination. It seeks to prohibit a person or class of persons from being singled out from others similarly situated or circumstanced for the purpose of being specially subjected to discrimination by hostile legislation. It, however, does not prohibit classification,

if such classification is based on legal and relevant considerations.

Para 35. Every classification, to be legal, valid and permissible, must fulfil the twin- test, namely,

(i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group;

and

(ii) such differentia must have a rational relation to the object sought to be achieved by the statute or legislation in question. . . . .

Para 37. It is well-settled that equals cannot be treated unequally. But it is equally well settled that unequals cannot be treated equally. Treating of unequals as equals would as well offend the doctrine of equality enshrined in Articles 14 and 16 of the Constitution. The High Court was, therefore, right in holding that Executive Engineers placed in Category I must get priority and preference for promotion to the post of Superintendent Engineer over Executive Engineers found in Category-II.. . . ."

Thus, the Hon'ble Supreme Court has held that treating of un-equals as equals would as well offend the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

In view of the above, whether, solar power projects stand on a different pedestal vis-à-vis other RE power projects for exempting them from payment of CSS, has to be established in terms of availability and cost of generation considering the circumstances and facts prevailing at the point of time of passing the order dated, 18.08.2014, which is elaborated in the following paragraphs:

i) The Commission by exercising powers under Clauses 4.1 of the Multi Year Tariff (MYT) Regulations and 11(iv) of KERC (Open Access) Regulations, is determining the Cross Subsidy Surcharge (CSS) from time to time. The MYT Regulations and the Open Access Regulations have been issued under the provisions of the Electricity Act, 2003.

Under the provisions of Section 42 of the Electricity Act, levy of both CSS and Additional surcharge is permissible. While the CSS is envisaged to meet the requirements of current level of Cross Subsidy within the area of supply of the ESCOM, the Additional Surcharge is envisaged to meet the fixed cost obligation of the ESCOMs arising out of their obligation to supply power under section 42 of the Act. Thus, levy of CSS and Additional Surcharge are provided for in the Act, for two different purposes and both are leviable, as determined by the Commission.

ii) The Commission, in its Order dated 18.08.2014, has explained the reasons for exemption of CSS and other charges to solar power projects, as explained below:

"Para IV. Issues for consideration:

a) *Promotion of Solar Power: The Commission notes that, even though the State has potential of several thousands of Megawatt of solar power generation, the present installed capacity is not adequate to even meet the solar RPO of 0.25 percent of the power procured by the Distribution Licensees. The Solar Policy of Government of Karnataka dated 22.05.2014 has targeted a capacity addition of 1600 MW of solar power generation by 2021. As of now, only 41 MW of solar power generation capacity is available in the State and about 250 MW is in the pipeline. While most of this solar power generated is being sold to the ESCOMs, solar power generation for use by captive and third parties is yet to come up on a large scale. Hence there is a need to promote solar power for achieving the desired objective of capacity addition to develop the State's potential for generation of solar energy.*

b) High Cost of Solar Power projects: The solar power developers/ generators have represented that the solar power projects need huge investments and they have to be financed substantially through borrowings. They have pointed out that greater clarity on the wheeling and banking charges and cross subsidy surcharge beyond 31st March, 2018 will enable them to obtain project finance

and hence have requested the Commission to provide clarity on these charges at least for the period of debt repayment of say 10 to 15 years. The Commission has recently issued Orders on 4th July 2014, extending the concessional wheeling charges and banking charges of 5% and 2% respectively for renewable sources of energy for a period of ten years effective from the date of COD of such projects commissioned before 31.03.2018.

c) Competitive rates of Solar Power: The capital cost of solar PV projects which presently ranges between Rs.7 Crores / MW and Rs.8 Crores / MW is expected to come down in future owing to new technologies, competition and economy of scale. The capital cost of other renewable sources as also their cost of generation is considerably lower, for the present, compared to solar power. It is likely that the declining trend in the capital cost of solar power projects will result in the cost of generation of solar power becoming comparable to other renewables in a period of 3 – 4 years. The exemption from wheeling and banking charges etc. is relevant only in the context of the comparatively high capital investment on the projects likely to be commissioned in the next few years in view of the higher finance charges, etc. which need to be covered by their revenues for several years.

Para V - Commission's Analysis & decisions:

On the suggestion that the benefit of exemption from charges could be extended over a period of 25 years (i.e. life of the plant), the Commission is of the view that promoters of solar power projects who seek to sell power in the market need to be provided with clarity on the charges to be paid only for the period of debt repayment of about 10 – 12 years after which they are in a better position to face any market fluctuations. However, those who seek certainty of revenue for the entire life of a project have the option of planning their projects on the basis of long term PPAs with the distribution licensees. As regards the suggestion to consider extending these exemptions till a date by which a capacity addition of 1000 MW Solar power (under

wheeling arrangement) is achieved in the State or till 31.3.2018, whichever is later, the Commission is of the view that as of now, only 41 MW of solar power generation capacity is available in the State and it is difficult to foresee as to how much of the capacity would be added in future. Hence extending a benefit for an uncertain period may not be justified particularly in view of the declining trend of the capital cost of solar power projects. The contention that, allowing banking to solar power generators would burden the utilities is not accepted by the Commission as the quantum of energy that is likely to be generated from solar power plants is likely to be a small proportion of the total procurement of power by the utilities and as such the burden on the network, if any, will be marginal. Considering the above factors, and in the interest of promoting the generation of solar energy as mandated under Section 86(1) of the Electricity Act, 2003, the Commission passes the following:

O R D E R

11. In exercise of the powers conferred under clause 11 of the KERC (Terms and conditions of open access) Regulations, 2004 as amended from time to time and all other powers enabling in this behalf, the Commission hereby orders as follows:

(i) All solar power generators in the State achieving commercial operation date (CoD) between 1st April 2013 and 31st March 2018 and selling power to consumers within the State on open access or wheeling shall be exempted from payment of wheeling and banking charges and cross subsidy surcharge for a period of ten years from the date of commissioning. This is also applicable for captive solar power plants for self-consumption within the State.

(ii) Captive solar power plants opting for Renewable Energy Certificates shall pay the normal wheeling, banking and other charges as specified in the Commission's Order dated 9th October 2013.

(iii) Regarding, the availability of solar power, the Commission in the order dated, 18.08.2014, had noted that the installed capacity as

on that date was only 41MW, which was far below the target of 1600 MW envisaged in the Karnataka Solar Policy 2014 to 2021 dated 22.05.2014 of GOK and was not sufficient to meet even the solar RPO target of 0.25% to be procured by the distribution licensees. The Commission had also noted that most of the solar capacity installed were under PPA route selling power to ESCOMs and solar power generation for use by captive and third parties is yet to come up on a large scale, necessitating the need for promoting solar projects. It is worthwhile here to note that, even though the Ministry of Power set the Solar RPO target on 22nd July, 2016 at 2.75% for FY17, 4.75% for FY18 and 6.75% for FY19, the Commission specified a lower target of 0.75% for FY 17, 2.75% for FY 18 and 6.00% for FY 19, keeping in view the difficultly faced by the ESCOMs in meeting the solar RPO due to non-availability of solar energy and high cost of solar generation. All the ESCOMs were able to meet 0.25% solar RPO target only in FY16. In FY 17, HESCOM was unable to meet the 0.75% solar RPO target, marginally. Thus, all the ESCOMs were able to meet the specified solar RPO targets only from FY18 and onwards. Further, the State, in its Solar Policy 2014-2021 dated, 22.05.2014 (Amendments as per Notification No EN 49 VSC 2016 dated 12.01.2017) revised the target of solar capacity to 6000 MW to be installed by 31.03.2021 and the current installed capacity of solar is 7369MW which is higher than the set target of 6000 MW by 1369 MW. The installed capacity of solar (after rounding off decimals), year-wise, from the year-2015 onwards is as indicated below:

Year	Solar - MW	Total RE-MW	Solar as percentage of total RE
2015	84	4832	1.74
2016	134	5272	2.54
2017	1059	7222	14.66
2018	5034	12319	40.86
2019	6129	13627	44.98
2020	7299	14892	49.01
2021 (as on 08.02.2021	7369	15041	48.99

Source: KERC Annual Report/KREDL

Also, the solar WBA signed in year 2015 was for a capacity of only 1.00- MW, whereas at present the total capacity under WBA is 1655.11 MW, as per the information available with the Commission. The year-wise capacity for which WBA were signed as per the information furnished by SLDC is as follows:

Year	Solar-MW under WBA
2015	1.00
2016	62.00
2017	425.68
2018	1143.33
2019	18.60
2020	1.50
2021 (as on 08.02.2021)	3.00
Total	1656.11

This achievement would not have been possible without providing concessions to the solar projects. In view of the above, in terms of availability prevailing during the year 2014, the concession extended to the solar projects at that point of time is fully justified.

(iv) Regarding, the cost of generation the Commission, in its order, dated 18.08.2014 had observed that the capital cost of solar PV projects is in the range of Rs.7.00 Crores to Rs.8.00 Crores / MW which is considerably higher as compared to the capital cost of other renewables sources. It is worthwhile to note here that the Tariff determined by the Commission to RE sources other than solar, which was applicable when the order dated 10.10.2013 and 18.08.2014 were issued on solar projects providing exemption of CSS & other charges, are as follows:

RE source	Tariff in Rs./kWh	Order dated
Mini-Hydel	Rs.3.40	11.12.2009
Wind	Rs.4.20	10.10.2013
Co-Generation	Rs.3.90 in first year going up to Rs.4.37 in tenth year	29.03.2012
Bio-Mass Water Cooled	Rs.3.66/Unit in the first year to Rs.4.13/unit in the 10th year	11.12.2009
Bio-mass air cooled	Rs.5.15/Unit in the first year to Rs.6.04/unit in the 10th year	10.07.2014

On the other hand, the tariff to solar projects as determined vide order dated 10.10.2013 is as follows:

Type of solar	Tariff-Rs./Kwh
Solar PV Power Plants	8.40
Solar Thermal Power Plants	10.92
Roof top & small solar PV plants	9.56
Roof top & small solar PV plants with 30% capital subsidy	7.20

It is evident from the above that, when the Commission passed orders exempting solar RE Projects from CSS and other charges, the cost of generation from solar power projects were considerably higher as compared to other RE sources, which necessitated extension of concessions by way of exemption of Wheeling & Banking charges and Cross Subsidy Surcharges. Thus, the decision of the Commission to extend the concession to the solar projects considering the cost of solar generation is also fully justified.

(v) Therefore, solar power projects cannot be treated as equals with other RE power projects and treating solar projects differently from other RE Sources for the purpose of levying CSS is a well-reasoned decision in order to promote the solar power generation and the same cannot be termed as discriminatory. It is worthwhile to note that the Government of India has waived Inter-State transmission charges for wheeling of power from solar and wind power projects as a promotional measure, which can't be termed as discriminatory. Further, the Tariff Policy-2016 dated, 28.01.2016, specifies a solar specific RPO vis-à-vis other RE Sources. The target installed capacity by the year FY22, envisaged by Government of India for solar is 100 GW, whereas for all other RE sources put together is 75 GW. Thus, even at the National Level, the solar projects are being treated differently in comparison with the other RE Sources, which, is a reasonable classification. The classification is an intelligible differentia which distinguishes solar power projects from other RE power projects in terms of availability and costs and also serves the objective of meeting the target of 100 GW of solar

power pan India basis, in terms of the International commitment made by India for protection of environment.

In view of the above, the concession extended to the solar power projects by the Commission, vide Commission's order dated, 10.10.203/18.08.2014, keeping in view the availability and cost of generation is totally justified.

(vi) The Commission also notes that, the Petitioners, having agreed to pay the charges determined by the Commission from time to time as per Article 5.1 of the wheeling & banking agreement dated 03.07.2015, by entering into Wheeling & Banking Agreement, now can't go back on the agreement, on the pretext of discrimination.

In view of the above, the contention of the Petitioners/Respondent-1 that, the exemption of CSS on consumers sourcing power from solar based power projects but levying cross subsidy on Mini Hydro Projects, is highly discriminatory, is hereby rejected.

Hence, the following Order:

O R D E R

In view of the discussions supra, the exemption of Cross Subsidy Surcharge (CSS) and other charges, granted to consumers sourcing power from solar based power projects as extended by the order dated 18.08.2014 is upheld by the Commission and the contention of the Petitioners/ Respondent-1 that levying cross subsidy surcharge on Mini-Hydel and other RE sources, is discriminatory, is dismissed. Accordingly, Para-6.8 of the impugned Tariff Order dated 14.05.2018 is up held.

Accordingly, the Petition is disposed of.

sd/-	sd/-	sd/-
(SHAMBHU DAYAL MEENA)	(H.M. MANJUNATHA)	(M.D. RAVI)
Chairman	Member	Member

ANNEXURE

1) M/s Kare Resources Private Limited,
Eden Park No.20,
Vittal Mallya Road,
Bengaluru-560 001.

2) Sri Raghuraj Gujjar,
S/o Thippanna Gujjar
(Shareholder 1st Petition)
Eden Park No.20,
Vittal Mallya Road,
Bengaluru-560 001.

3) The Managing Director,
Bangalore Electricity Supply Company Limited,
Corporate Office, K.R. Circle,
Bengaluru-560 001.

4) The Managing Director,
Gulbarga Electricity Supply Company Limited,
Corporate Office, Station Road,
Kalaburagi-585 102.

5) The Managing Director,
Mangalore Electricity Supply Company Limited,
Corporate Office, Kavoor Cross Road, Bejai,
Mangaluru-575 004.

6) The Managing Director,
Chamundeshwari Electricity Supply Company Limited,
Corporate Office, CESC No.29,
Vijayanagar 2nd Stage, Hinkal,
Mysuru-570 017.

7) The Managing Director,
Hubli Electricity Supply Company Limited,
PB Road, Navanagar,
Hubballi-580 025.

8) Renewable Energy Development
Association of Karnataka (REDAK),
No.48, Levelle Road,
Bengaluru-560 001.

…..2.

- 2 –

9) South Indian Sugar Mills Association – Karnataka,
1st Floor, 'Farah Winsford'
No.133/6, Infantry Road
(Near Medinova Diagnostic Center),
Bengaluru-560 001.

10) Indian Wind Power Association
Karnataka State Council,
C/o Enerfra Projects (India) Private Limited,
7, Raj Classic, 2nd Floor, 1st Block,
Dr. Rajkumar Road, Rajajinagar,
Bengaluru-560 010.

11) Indian Wind Energy Association,
2nd Floor, All India Federation for the
Deaf (AIFD) Building,
12-13, Special Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 067.

12) Association of Power Producers (AAP),
5th Floor, Mohan Dev Building,
13-Tolstoy Marg,
New Delhi-110 001.

- - -