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dispensation put in place by this Commission. In the instant case the Petitioner is admittedly installing its plant under RESCO model. It cannot, therefore, be categorized as a 'captive plant', because the ownership of the plant would be with a third party. In this view of the matter it is submitted that prayer to declare the three Solar PV Generating Systems ("SPGS") being developed under RESCO model as Captive Generating Plant of the Petitioner does not survive.

- j) It is submitted that the Petitioner cannot seek a consequential relief as a matter of course. The Petitioner is required to set up a case as to why and how it is eligible for the net-metering facility. It cannot be an automatic consequence after declaration as a captive generating plant. The Petitioner is required to establish its eligibility as per the sanctioned load, total installed capacity, threshold limit, etc. as per the prevalent law. The Petitioner has failed to satisfy, by way of its pleadings and the documents placed on record, that it satisfies the criterion as laid down in principal Renewable Regulations as modified by the Renewable Regulations First Amendment.
- k) As per the Renewable Regulations First Amendment, net metering is allowed for all agriculture consumers and all other eligible consumers having sanctioned load up to 5 kW and net billing / gross metering to eligible consumers having sanctioned load above 5 kW. The Petitioner's project, post the First Amendment, by Petitioner's own admission is much in excess of the threshold limit for net metering (i.e. up to 5 kW) as prescribed by this Commission. Hence, Petitioner's SPGS would not be eligible for net metering arrangement.
- l) This Commission vide order dated 19.03.2021, by utilizing its inherent powers, extended the benefit of net metering to all those consumers who will install their solar PV system and notify the same to the concerned licensee within 30.06.2021 ("Order dated 19.03.2021"). However, the relaxation extended by this Commission vide its Order dated 19.03.2021 would not accrue benefit of the Petitioner because Petitioner is setting up its rooftop solar PV plant



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through the RESCO model, which is impermissible under the Regulations.

- m) It is submitted that the RESCO model is not recognized under the Principal Renewable Regulations, 2013 or under the First Amendment thereto. It is stated that as per the regulations framed by this Commission, rooftop solar PV generating plant under net metering arrangement is allowed for self-owned system only.
- n) With respect to roof top solar PV plants, Electricity (Rights of Consumers) Rules, 2020 ("Consumer Rules, 2020") notified by the Central Government allows for net metering for loads up to 10 kw and gross metering for load above 10 kW. The Petitioner's project's sanctioned load being way above 10 kW, would not be eligible for net metering even under the Consumer Rules, 2020.
- o) The Petitioner has specifically averred that it does not come within the definition of "consumer" as defined in Section 2(15) of the Act. As per the Petitioner, it is a "generating company" as defined in Section 2(28) of the Act. On this basis, the Petitioner has contended that the remedy of the Petitioner lies before this Commission in terms of Section 86 of the Act and not before Consumer Grievance Redressal Forum ("CGRF"). It is submitted that while the Petitioner on one hand is submitting that it is not a consumer, but a generating company under Section 2(28) of the Electricity Act, 2003, on the other hand the Petitioner is seeking to establish its case that it is eligible for net metering which option, under the West Bengal Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2013 ("Renewable Regulations 2013") and the amendment ("Renewable Regulations First Amendment") thereof., is only available to 'eligible consumers'. Hence, the Petitioner is trying to set up a new case by claiming itself to be generating company and hence amendable to the adjudicatory jurisdiction of this Hon'ble Commission under Section 86 (1) (f) of the Act. Such a conduct of the Petitioner is improper and amounts to misuse of process of law. It is submitted that the Petitioner is trying to blow hot and cold in the same breath. The Petitioner cannot be allowed to approbate and



reprobate to suit its convenience. The same is impermissible under the law.

- p) To claim any benefit under the net metering arrangement, the Petitioner is required to be an 'eligible consumer under Regulation 2.1 (xi) (A) of the Renewable Regulations First Amendment. If the Petitioner is claiming to be a generating company, then the benefit of net metering and net billing cannot be extended to it under the law.
- q) Even otherwise, being an 'eligible consumer' under the Renewable Regulations First Amendment, the Petitioner is not eligible for net metering arrangement as it does not qualify the threshold criteria for the same.
- r) It is submitted that the averment that the Petitioner has made investment for the solar energy project based on Notification No. 50/WBERC dated March 22, 2013 is false, and misconceived. The Petitioner cannot make bald statements without any documentary proof thereof. It must be put on record that it is not an admitted fact that the Petitioner made investment under the Renewable Regulations, 2013 and the First Amendment came into effect subsequently. While the Renewable Regulations First Amendment were issued on 21.12.2020, it is important to note that this Commission had invited objections/ suggestions/ comments on the 'Draft WBERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (First Amendment) Regulations, 2020' on 15.09.2020 well before the present petition filed on 09.12.2020. Thus, the Petitioner was well-aware that the Renewable Regulations are in the process of being amended and an amendment is likely to be issued to the Renewable Regulations. The Petitioner, therefore, filed the instant petition immediately before the notification of Renewable Regulations First Amendment so as to circumvent the rigors of amended regulations. This shows the malafide conduct of the Petitioner.
- s) It is for the aforementioned reasons that it is the case of the respondent, that the present petition deserves to be dismissed, both on the issue of maintainability as well as on merits.



OBSERVATIONS OF THE COMMISSION

11.0 The Commission observes that –

- a) The contention of the petitioner as to the compliance of sub-rule 3 of the Electricity Rules, 2005 is not maintainable. The petitioner is confirming in writing that they are owning more than 26% of equity of the projects and that the petitioner's annual consumption of the electricity to be generated will be more than 50%, But is evident from the petitioner's submission that the petitioner will become owner of the entire project after expiry of the service period.
- b) From the submissions made by the respondent and the documents placed before the Commission, it revealed that all the three units of the petitioner, in question, where the solar plants are contemplated to be installed, the petitioner is the consumer of the respondent. In fact, the contention of the petitioner claiming to be generating unit is not established from the submissions made by the petitioner as well as the documents submitted therewith.
- c) The Electricity Act, 2003 does not provide any net metering facility whereas the Regulations framed by the Commission contains net metering facilities for which certain criteria is required to be fulfilled for eligibility. Under the circumstances, the petitioner was asked to clarify as to under which regulation of the Commission's extant Regulations, the petitioner is eligible for net metering facility for implementation of the project, in question, under RESCO model. The petitioner failed to bring to the notice of the Commission to any such regulation by dint of which the petitioner can claim for net metering. Rather, it is evident that the petitioner is not eligible for net metering arrangement as it does not qualify the threshold criteria required to be fulfilled for claiming net metering.

ORDER

12.0 The contentions made in the petition are conflicting. In one point the petitioner claimed itself to be a generator to attract jurisdiction of the Commission on the other it suggested itself to be a consumer so as to get the benefit of net metering. The petition



is also not maintainable in view of the other reason that the generation capacity of the petitioner is beyond the threshold limit for net metering. The disagreement in the averments of the petition makes the same unsustainable in law and liable to be rejected with cost.

13.0 With the above observations of the Commission, the prayer of BCL for declaring BCL as a generating unit in terms of section 86(1)(f) of the Electricity Act, 2003 and adjudicate the dispute of net metering considering the fact that the dispute is between a generating unit and a licensee is dismissed. The petition of this kind is found to have been filed by the petitioner for the first time and as such the Commission is restrained itself from inflicting any cost.

14.0 Let a copy of the order be posted in the website of the Commission.

15.0 BCL, CESC and concerned entities shall download the copy of the order from the website of the Commission and shall act on it. Certified copy of this order, if applied for, be given to the parties on completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 08.12.2021

Sd/-
SECRETARY