

No.N/30/07  
No.N/44/06

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 3<sup>rd</sup> July 2008**

- |                   |    |          |
|-------------------|----|----------|
| 1. Sri K.P.Pandey | .. | Chairman |
| 2. Sri S.D.Ukkali | .. | Member   |

**Case No.OP.17/2007  
Case No.OP.39/2006**

**Between**

M/s.Bannari Amman Sugars Limited,  
Flat NO.202, II Block,  
"Royal Residency"  
NO.8, Brunton Road,  
**BANGALORE-560025**

**Represented by its Vice Chairman**

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**Petitioner**

**And**

1. The Karnataka Power Transmission Corporation Ltd.,  
(KPTCL)  
A Company registered under the provisions of the  
Companies Act, 1956  
Represented by its Managing Director  
Cauvery Bhavan, Kempe Gowda Road,  
**BANGALORE-560009**

2. The Managing Director,  
Sri Chamundeshwari Electricity  
Supply Company  
No.927, L.J.Avenue ground floor  
New Kantharaj Urs Road, Saraswathipuram,  
**MYSORE-570009**

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**Respondent  
(OP.17/2007)**

- 1, The State of Karnataka,  
Represented by its Secretary,  
Department of Energy,  
M.S.Building,  
Dr.B.R.Ambedkar Veedhi,  
**BANGALORE-560001**

2. The Karnataka Power Transmission Corporation Ltd.,  
(KPTCL)  
A Company registered under the provisions of the  
Companies Act, 1956  
Represented by its Managing Director  
Cauvery Bhavan, Kempe Gowda Road,  
**BANGALORE-560009**
  
3. Chamundewari Electricity Supply Company Ltd.,  
No.927, L.J.Avenue, New Kantharaj Urs Road,  
Saraswathipuram,  
MYSORE-9  
Represented by its Managing Director
  
4. The General Manager (Technical)  
Karnataka Power Transmission Corporation Ltd.,  
Cauvery Bhavan, Kempe Gowda Road,  
BANGALORE-560009
  
5. The Superintending Engineer,  
Karnataka Power Transmission Corporation Ltd.,  
4<sup>th</sup> Floor, "A"Block, Cauvery Bhavan,  
Kempe Gowda Road,  
BANGALORE-560009 ..

**Respondents  
(OP.39/2006)**

The Petitioner is a Company registered under the provisions of Companies Act, 1956. The Petitioner filed a Petition OP 39/2006. While this case for fixing the tariff for additional 20 MW power was pending before the Commission, another Petition OP 17/2007 was filed by the same Petitioner for releasing the payment towards the energy supplied to the Respondent in respect of additional capacity of 20 MW. When this case (OP.17/2007) was taken up for hearing on 13.12.2007, the Counsel for the Petitioner submits that the Petition may be heard along with case OP 39/2006 and places a Memo on record. The Commission heard the cases together as the same Petitioner has filed both petitions and are interdependent. The Commission hereby decides to pass a common order.

In Case No.OP.39/2006 the Petitioner prays the Commission to fix the tariff for the energy supplied from the additional 20 MW power plant to the Respondents.

In Case No.OP.17/2007 the Petitioner prays the Commission to order the release of payment by the Respondent for energy already supplied from additional 20 MW power plant of the Petitioner.

The decision on Petition No.OP.17/2007 depends on the decision on Petition No.OP/39/2006. Hence, we decide to take up case No.OP.39/2006 first.

The Petitioner is seeking a direction to the Respondent Corporation to pay and continue to pay the tariff as per the agreed terms of Power Purchase Agreement dated 25.9.2000 as amended on 20.06.2006 for the energy exported from the additional capacity added in the same plant.

The brief facts of the case are as under:

The Petitioner is a sugar factory situated at Alaganchi Village, Nanjangud Taluk, Mysore District. The Government of Karnataka by their orders dated 12.03.1009 permitted the Petitioner factory for installation of Co-Generation of Power Plant with a Capacity of 16 MW. It is further submitted that a Power Purchase Agreement in this regard was entered into with the 1<sup>st</sup> Respondent on 25.09.2000. As per the terms of the agreement, the Respondent Corporation would purchase the exportable surplus power so generated by the Petitioner Factory on the terms and conditions mentioned therein. This Power Purchase Agreement has been approved by the Commission on 25.9.2000.

When things stood thus, the Petitioner intended to expand its capacity by another 20 MW. In this regard, the Government of Karnataka by yet another order dated 11.4.2000 permitted the Petitioner factory to expand its capacity to a total extent of 36 MW. It is submitted that the addition of 20 MW is in addition

to the then existing capacity of 16 MW in the same premises of the Petitioner under the same roof. The expanded capacity is not a new venture and is only an expansion of the existing infrastructure with addition of certain machinery equipments.

The applicant legitimately expected that the Respondent would continue to purchase power on long term basis on the same terms and conditions including the tariff as mentioned in the PPA dated 25.9.2000 when the applicant went for increasing the capacity from 16 MW to 36 MW. The Petitioner factory having completed the project by investing more than Rs.50 Crores funded by various financial institutions approached the Respondent to issue amendment to the existing PPA dated 25.9.2000 through several letters. When things stood thus, the Petitioner sought approval of the Respondent Corporation for commissioning the project as the plant was ready for synchronization. The Respondent Corporation was ready for according its approval on a condition that the Petitioner should initial fresh PPA at a purchase price of Rs.2.80 per unit with a price escalation of 2% per annum on the base price. This was strongly protested by the Petitioner. At this point of time, if the Respondent had not synchronized the unit, the result would have been the complete financial breakdown of the Petitioner factory and hence the Petitioner was in a helpless position.

The Respondent intimated the Petitioner factory that they would in principle agree to purchase energy even from the additional capacity of 20 MW setup by the Petitioner but they would pay the tentative rate of Rs.2.80 per unit subject to final decision by the Commission. Based upon the assurance given by the Respondent, the Petitioner Company initialed the PPA subject to the approval of final price by this Hon. Commission. The rates that were agreed when the PPA was signed for 16 MW capacity were much higher than the rates proposed by the Respondent for the additional 20 MW. The draft PPA with a tentative rates of Rs.2.80 per unit was sent to the Commission for approval and it is alleged that the Petitioner Company has not received the payments from the Respondents since from the date of synchronization. In these extraordinary circumstances, the

Petitioner is before the Hon.Commission seeking its intervention for fixing the tariff in the light of the facts narrated above. The Petitioner prays to:

- a) Issue direction to the Respondent Corporation to pay the rate per unit as was agreed between the parties under the supplemental agreement dated 19.6.2006 for every unit exported in respect of the additional capacity of 20 MW.
- b) In the alternative be pleased to review its order approving the Draft Power Purchase Agreement dated 11.3.2004 and grant the relief as claimed above.
- c) Issue such other directions, pass such other orders as deemed fit by this Hon.Commission in the facts and circumstances of the case, in the ends of justice.

Notices were issued to both the Petitioner as well as the Respondents. The Respondents have filed their objections to the Petition. It is pleaded by the Respondent that Petitioner has set up a co-generation plant of 16 MW at Alaganchi Village, Nanjangud Taluk and had entered into a PPA with the Respondent Corporation for purchase of 16 MW power. Subsequently, the Petitioner intended to put up an additional capacity of 20 MW in the same premises. In view of additional capacity to the grid, a fresh PPA was made and it was initialed on 11.3.2004. The same was submitted before the Commission for approval. The Commission was pleased to consider the draft PPA and accorded its approval on 7.9.2004. Subsequent to the approval granted, the Petitioner did not come forward to sign the PPA. In view of the failure of the Petitioner to do so, the Respondents had intimated the Petitioner on 5.9.2006 that in the absence of the PPA, the 3<sup>rd</sup> Respondent would not be receiving power.

After having negotiated the terms of the separate PPA, after having initialed the same and obtaining the approval of the Commission, the Petitioner

has filed the present Petition seeking certain reliefs which are contrary to the agreement between the parties. The Petition is wholly unsustainable and is liable to be rejected. It is further submitted by the Respondents that the PPA dated 25.9.2000 is not of any relevance as it does not cover the additional capacity of 20 MW. At no stretch of imagination, it can be construed that the expanded capacity will be governed by the earlier PPA.

It is further submitted by the Respondents that the rates specified by the Respondents is not low. This is in consonance with the Order passed by the Commission on 18.1.2005. Similar rate has been determined by the Commission in respect of co-generation projects. The averment that the PPA was initialed subject to approval of final price by the Commission is false and denied by the Respondent.

The rate agreed is Rs.2.80 per unit with 2% escalation and not the rate stated by the Petitioner. The averment that PPA placed before the Commission was only a draft and the rates were tentative and that Petitioner had not agreed for a rate of Rs.2.80 mentioned in Article 5.1 of the Agreement is false. No such dispute was raised when the Commission considered the PPA or when the tariff in respect of co-generation plants was determined by the Commission by its Order dated 18.1.2005. It is further submitted that the Commission in OP Nos 1 to 4 of 2006 filed regarding fixation of tariff of Mini Hydel project was pleased to dismiss the petitions on the ground that the determination of tariff without having consensus of the licensee is impermissible. It is submitted that in the facts of the present case, the 3<sup>rd</sup> Respondent is not willing to purchase any energy at a price other than the tariff agreed in the PPA initialed on 11.3.2004. Therefore, the Petition is liable to be dismissed on this ground also. The contention that the PPA initialed on 7.3.2004 is a supplemental agreement is false. The agreement is a separate PPA and not a supplemental agreement. The document itself makes the position clear that the Petitioner is not entitled to reliefs claimed. The Respondents have prayed the Commission to dismiss the petition with exemplary costs in the interests of justice.

The Commission has considered the facts of the case and the arguments traversed by Counsels for the Petitioner as well as for the Respondents. It is true that the PPA has been approved for 16 MW capacity by the Commission to the co-generation plant of the Petitioner situated at Alaganchi Village, Nanjangud Taluk, Mysore District. Article of 5.1 of the agreement relates to monthly energy charges. Article 5.1 reads as under:

**“Monthly Energy Charges:** Corporation shall for the Delivered Energy pay, for the first years from the date of signing of Agreement, to the Company every month during the period commencing from the Commercial Operation Date on the basis of the base price applicable for the year 1994-95 at the rate of Rs.2.25 (Rupees Two and Twenty five paise) per kilowatt-hour (the tariff) for energy delivered to the Corporation at the Metering Point with an escalation at a rate of 5% per annum over the tariff applicable for the previous year as per guidelines issued by the Ministry of Non-Conventional Energy Sources of the GOI.

Subsequently, the Petitioner Company after having approval from the Government of Karnataka has expanded the project and installed 20 MW plant making the total capacity 36 MW. The argument advanced by the Counsel for the Petitioner is that 20 MW of power is added to include the same terms and conditions as were agreed for 16 MW of power and, therefore, the Petitioner Company insists that this additional 20 MW power also should have the terms and conditions agreed for the 16 MW of power.

It is relevant to note here that the Petitioner Company has initialed the draft PPA for this additional 20 MW power at a tariff of Rs.2.80 per unit with a 2% annual escalation over the base tariff every year and this PPA has been approved by this Commission on 7.9.2004 but the Petitioner Company did not come forward to sign the PPA. In the meanwhile, when the case was being heard, a Memo was filed by the Petitioner stating that the Petitioner Company is exploring the possibility of having a negotiated settlement in the matter. The Petitioner in this regard have approached the Respondents by way of a written proposal to sell the energy at the rate of Rs.3.10 per unit subject to final approval

by the Commission and expressed that the Petitioner Company was hopeful of reaching an agreement on or before 20.12.2007 and has stated that these subsequent developments are brought to the notice of the Commission for taking the facts on record in the ends of justice. Finally, after much efforts, the Petitioner Company was not successful in negotiating the settlement with the Respondents and have succeeded in selling the power to a 3<sup>rd</sup> party by Open Access. Hence, they have filed another Memo dated 3.6.2008 stating that pending this Petition, the Petitioner has entered into a Power Purchase Agreement with M/s.Tata Power Trading Company Ltd., for supply of energy. Therefore, the dispute raised in this application does not survive to that extent. But the dispute raised will survive to the extent of energy already supplied to the Respondents and has requested this Hon.Commission to decide on the tariff for this enhanced additional 20 MW capacity. It is noticed here that the 16 MW of power is exported to the grid and is supplied to the Respondents as per the PPA dated 25.9.2000. The additional enhanced capacity of 20 MW energy is now being sold to M/s.Tata Power Trading Company Limited by Open Access. During the pendency of this Petition, the Petitioner Company has supplied energy to the Respondents and is requesting through this Memo to determine the tariff to that extent. It is on record that the Commission has already approved the draft PPA on 7.9.2004 wherein the tariff agreed by both the parties was Rs.2.80 per unit with 2% annual escalation on the base tariff. This has also been the rate determined by the Commission vide its Order dated 18.1.2005. Hence on this ground the contention of the Petitioner that the rate which was applicable to the 16 MW is also applicable to the 20 MW is not acceptable. The Memo filed on 30.11.2007 that they are negotiating a settlement with the Respondents has not materialized. Therefore, this rate also cannot be agreed upon.

It is hereby ordered that the Respondent shall take the approved draft PPA by the Commission as the valid PPA and pay the Petitioner the tariff at the rate of Rs.2.80 per unit with 2% annual escalation on the base rate for the energy pumped into the grid from the additional 20 MW power plant of the Petitioner.



## **Case No.OP.17/2007**

The brief facts of the case are as enumerated above in case No.OP.39/2006.

In addition to the above facts, the Petitioner submits that the Petitioner Company after synchronization of the plant continued to generate and supply energy and the said arrangement continued till date. During the period from March 2004-March 2005 the Petitioner Company had exported 10,15,900 units of electricity and after deducting the energy imported and after calculating the exported units @ 2.86 per unit (except for the month of March 2004, which has been calculated @ 2.80), the Respondents were owing a sum of Rs.2,67,78,180/- to the Petitioner Company till March 2005. The Petitioner Company as per the terms of initialed agreement raised the invoices periodically and also demanded the payment. However, the Respondent Corporation never responded to the requests.

During the period from April 2005 – June 2005 the Petitioner Company had exported 27,000 units of electricity and after deducting the energy imported and after calculating the exported units @ 2.92 per unit, the Respondent No.1 was owing a of Rs.78,840/- to the Petitioner Company.

When things stood thus, the 1<sup>st</sup> Respondent with effect from 10.06.2008 assigned all its rights and obligations under the power purchase agreement to CHESCOM (Sri Chamundeshwari Electricity Supply Company) the 2<sup>nd</sup> Respondent herein. Thereafter the 1<sup>st</sup> Respondent Corporation directed the Petitioner Company to supply the energy to the 2<sup>nd</sup> Respondent.

However, the grievance of the Petitioner Company did not come to a halt. On the other hand the 2<sup>nd</sup> Respondent went on consuming the power without making any payment to the Petitioner Company. From June 2005-March

2006 the Petitioner Company had exported 3,23,62,500 units of electricity. After deducting the energy imported and after calculating the exported units @ 2.92 per unit, the Respondent No.2 was owing a sum of Rs.9,40,47,360/- to the Petitioner Company.

It is submitted that during the period from April 2006-March 2007 the Petitioner Company had exported 5,84,23,500 units of electricity to the 2<sup>nd</sup> Respondent. After deducting the energy imported and after calculating the exported units @ 2.98 per unit, the Respondents were owing a sum of Rs.17,36,59,500/- to the Petitioner Company.

Similarly during the period from April 2007-August 2007 the Petitioner Company had exported 1,73,44,500 units of electricity and after deducting the energy imported and after calculating the exported units @ 3.04 per unit the Respondents are owing a sum of Rs.5,19,24,720/- to the Petitioner Company.

In total the Respondents owe a sum of Rs.34,77,61,200/- to the Petitioner Company. The Petitioner herein thereafter made several oral and written representation to the Respondents for release of payment. However all such representation went unheeded).

Petitioner herein has also filed a Petition in OP NO.39/2006 for a direction to pay the tariff as per terms of the Power Purchase Agreement dated 25.09.2000 and Supplemental Agreement dated 20.06.2006 for the energy exported in respect of the additional capacity of 20 MW which is pending consideration. It is submitted that during the pendency of the said petition, on 05.09.2006 the State Power Procurement Co-ordination Centre issued a letter to the petitioner where it intimated the petitioner that the initial PPA between the petitioner and the respondent has been approved by the Commission on 18.05.2005, and further in view of the new format approved by the Commission the petitioner was requested to enter into a fresh agreement.

The petitioner replied to the letter saying that since a petition is pending before the Commission, the Respondent may wait till the outcome of the verdict.

The Petitioner left with no other remedies to receive the payments, the Petitioner is before the Commission with the prayer as under:

- a) Direct the 1<sup>st</sup> Respondent to release a sum of Rs.2,81,29,620/- (Rupees Two Crores Eight one lakhs Twenty Nine Thousand Six Hundred and Twenty only) towards the energy consumed during March 2004 to 09.06.2005, in respect of the additional capacity of 20 MW.
- b) Direct the 2<sup>nd</sup> Respondent Corporation to release a sum of Rs.31,96,31,580/- (Rupees Thirty One Crore Ninety Six Lakhs Thirty One Thousand Five Hundred and Eighty Only) towards the energy consumed during 10.06.2005 to August 2007, in respect of the additional capacity of 20 MW.
- c) Issue such other directions, pass such other orders as deemed fit by the Commission in the facts and circumstances of the case, in the ends of justice.

Notices were issued to both Petitioner and the Respondent. Both have put in their appearance through their Counsels.

On 29.5.2008, when the case was called, the following Order was passed.

“Case called. The Counsel for the Petitioner submits that CESCO has sought the permission of the Commission for making the payment separately and in view of this he is not pressing for the Petition for the time being. The Counsel is requested to file a Memo accordingly. Office is directed to process the proposal of CESCO and put up the Commission for approval quickly.”

Accordingly, the proposal of the CESC was processed. The CESC requested the Commission to communicate the approval for releasing the interim payments to the firm at the rate of Rs.2.80 per unit without escalation as an interim measure through its letter No.CESC/EGMC/EERC/C1-2067/07-08/33981-82 dated 25.3.2008.

Approval from the Commission to make payments to the Petitioner was communicated to CESC vide letter No.S/0313/U538 dated 20.06.2008 as requested by it till the case OP 17/2007 was disposed of by the Commission.

The decision in the case No.OP 39/2006 dealt above is the basis for the decision in this case. The tariff rate of Rs.2.80 per unit with 2% annual escalation on the base rate is to be paid to the Petitioner by the Respondent.

The Respondent ought to have released this payment much earlier soon after the receipt of the draft approved PPA. It has not done so inconveniencing the Petitioner.

It is hereby ordered that Respondent shall release the payment of Rs.2.80 as approved by the Commission vide letter S/0313/U538 dated 20.06.2008 to the Petitioner immediately and to release the 2% escalation also within one month's period from the date of receipt of this Order for the energy already received by the Respondent from Petitioner's power plant from additional 20 MW project.

Sd/-  
(K.P.PANDEY)  
CHAIRMAN

Sd/-  
(S.D.UKKALI)  
MEMBER