

N/34/06

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 31st May 2007

1. Shri K.P.Pandey	..	Chairman
2. Shri H.S.Subramanya	..	Member
3. Shri S.D.Ukkali	..	Member

Case No.OP 34 / 06

Between

M/s.Bhagyanagar Solvent
Extractions Pvt.Ltd.
Having its Corporate Office at
NO.202, Chitra Avenue,
Manju Block,
Choolaimedu High Road,
Chennai-94.
Represented by its Managing Director
Sri Saghai Willians

AND

1. The State of Karnataka
Represented by its Secretary,
Department of Energy,
M.S.Buildings,
Dr.B.R.Ambedkar Veedhi,
Bangalore-560001
2. The Karnataka Power Transmission
Corporation Limited(KPTCL)
A Company registered under the
Provisions of the Companies Act, 1956
Cauvery Bhavan,
Bangalore.

3. Gulbarga Electricity Supply Company Limited,
Vidhana Soudha,
Gulbarga represented by its
Managing Director
4. The General Manager(Technical)
Karnataka Power Transmission Corporation
Limited, Cauvery Bhavan,
Bangalore.
5. The Superintendent Engineer(Electrical)
Karnataka Power Transmission Corporation
Limited, 4TH Floor, A Block
Cauvery Bhavan,Bangalore.

The Petitioner Company is aggrieved by the impugned intimation dated 05.07.2003 issued by the KPTCL terminating the Power Purchase Agreement (PPA) entered into between the Petitioner and the Respondents. Notices were issued to both the parties and their Counsels were heard. The facts of the case, as stated by the Petitioner are briefly as under:

1. The Petitioner had entered into a PPA with the KPTCL in respect of a 6 MW capacity Bio-Mass Power Project on 18.10.2001. The PPA had been approved by the Commission. The Petitioner Company had obtained necessary statutory clearances for setting up of the project and had also finished construction of the project by obtaining loan of Rs.1695 lakhs from IREDA. However, it received the impugned intimation dated 5.7.2003 from the KPTCL terminating the said PPA with immediate effect. Copy of the said intimation is filed. For the reasons stated in the said petition, the Petitioner has argued that the termination of the PPA which had been approved by the Commission is bad in law and there was no reason for terminating the PPA as the Petitioner had complied with all the terms of the contract stated in the PPA. Based on the above, it was pleaded that the PPA entered into on 18.10.2001 between the two parties be declared as valid and subsisting. It was also pleaded that appropriate directions be issued

to the Respondents to continue with the purchase of power from approved additional capacity in accordance with the terms and conditions of the PPA.

2. The Respondents had objected to all the contentions raised by the Petitioner Company and they have also filed written objections in this regard. While the appeal was being heard, the Counsels for the Petitioner and the Respondents submitted that they were trying to settle the matter and will file a joint Memo after the issue is settled between them. Accordingly, they have filed a joint Memo on 17.5.2007 stating the following;

JOINT MEMO

Both the parties have discussed and on such discussion, both the parties have agreed on the following:

1. *The payment upto March 2007 to the Petitioner Company will be as per PPA (now revived) i.e. at MNES rate and the difference if any shall be paid by the Respondent Company.*
2. *The Petitioner Company shall be paid for the electricity supplied from 1.4.2007 at Rs.3.85/per unit to be escalated thereafter at 2% per year non-cumulatively from base year 2006-07 for 6 MW of power supplied and over and above 6 MW shall be billed at Rs.2.85 from the date of COD with 2% non-cumulative escalation.*
3. *Term of the PPA shall be 10 years from COD.*
4. *Out of the pending arrears payment of arrears @ 3.32/unit shall be made immediately as done in other cases.*
5. *No LC is to be provided as payment is agreed to be made within 15 days from the date of the presentation of invoice.*
6. *Increase will be considered only if similar Biomass project is given the increase.*

With the above modification, the PPA shall stand revived from the date of termination and shall continue to be in force till 10 years from the CoD. The

parties will sign a supplementary agreement incorporating the above on approval of the Commission to the above terms.

The above may kindly be recorded and the Petition may please be disposed off in terms of the same.

ADVOCATE FOR PETITIONER

for BHAGYANAGAR SOLVENT
EXTRACTIONS PVT.LTD

ADVOCATE FOR RESPONDENT

for KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED

The joint Memo has been signed by the representatives of the Petitioner as well as the Respondents.

3. The Commission has considered the facts of the case and the joint Memo carefully. It is seen from the records that the PPA for setting up of a 6 MW Bio-Mass project was approved by the Commission. Subsequently, the capacity of the Plant was enhanced to 11 MW after getting necessary clearance from the Government of Karnataka. The Respondent, KPTCL, had sought the approval of the Commission for the draft PPA initialled with the Petitioner. The proposal was for the increased capacity of 11 MW for which there was no approval from the Commission. The Commission by its letter dated 18.11.2004 had returned the said PPA as the PPA had been received after 10.6.2004. It had been intimated earlier to the KPTCL that the draft PPAs in respect of NCE projects received in the Commission on or after 10.6.2004 will be considered only after the determination of the tariff for the NCE projects as per Electricity Act, 2003. Since the said PPA had been received after 10.6.2004, the same was returned for re-submission after the tariff in respect of NCE projects was determined by the Commission. The revised tariff for NCE projects was determined by the Commission as per Order dated 18.1.2005 wherein the tariff for Bio-Mass projects was determined at Rs.2.85

per unit with 2% annual escalation. The revised PPA is yet to be re-submitted for approval of the Commission. In the facts of the case, and in view of the Joint Memo filed by both the parties, the impugned intimation dated 05.07.2003 terminating the PPA is no longer effective and the said PPA dated 18.10.2001 will be valid and subsisting.

4. Regarding the tariff payable, it is clarified that the Petitioner Company will be paid for 6 MW power supplied upto March 2007 at the MNES rates and from 1.4.2007 @ Rs.3.85/- per unit to be escalated thereafter at 2% per annum non-cumulatively from base year 2006-07. For the remaining 5 MW power supplied, the Petitioner will be paid at Rs.2.85 per unit from the date of COD with 2% non-cumulative escalation. The parties will file a supplementary PPA for approval of the Commission on the above lines.

The Petition is accordingly disposed.

Sd/-
(K.P.Pandey)
Chairman

Sd/-
(H.S.Subramanya)
Member

Sd/-
(S.D.Ukkali)
Member