

No.N/02/08

**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.02/2008**

**Between**

M/s.Cepco Industries Pvt.Ltd.,  
No.9, Balaji Estates,  
Guru Ravi Dass Marg, Kalkaji  
**NEW DELHI-110019**

.. **Petitioner**

**And**

1. Karnataka Power Transmission Corporation LTd.,  
Cauvery Bhavan,  
**Bangalore-560009**

2. Bangalore Electricity Supply Company Limited,  
Corporate Office,  
K.R.Circle,  
**Bangalore-560001**

.. **Respondents**

The Petitioner has set up a Wind Energy based power plant of 8.4 MW and same was certified to be commissioned on 30.8.2001.

Thereupon, the Petitioner executed a Power Purchase Agreement with the 1<sup>st</sup> Respondent on 23.11.2001 and as per the applicable clause 5.1 under Article 5 of the Power Purchase Agreement, for the energy delivered, the Petitioner has to receive the payments from the Respondents.

The tariff as per the Power Purchase Agreement signed with the 1<sup>st</sup> Respondent translates to the following rates:

<b>Sl.No.</b>	<b>Financial Year</b>	<b>Tariff in Rs./Unit</b>
1	2001-02	3.16
2	2002-03	3.32
3	2003-04	3.49
4	2004-05	3.66
5	2005-06	3.84
6	2006-07	4.03
7	2007-08	4.23
8	2008-09	4.44
9	2009-10	4.66
10	2010-11	4.90

At no point of time, the Tariff or any other terms or conditions have been changed, altered, amended, supplemented in writing and Petitioner has at no point of time either expressly or implicitly accepted any amendment or change or alteration. Therefore, the Power Purchase Agreement is the full and final contractual understanding by and between the Petitioner and 1<sup>st</sup> Respondent.

The 1<sup>st</sup> Respondent has made the payments as per the terms and conditions contained in the Power Purchase Agreement from the date of execution of the PPA (22.11.2001) till April 2002. Thereafter in May 2002, the 1<sup>st</sup> Respondent suddenly started making part payment of the Agreement tariff and has remitted for the energy delivered at the rate of Rs.3.16/unit. This part payment continued till September 2002 and tariff came to be paid at the rate of Rs.3.16/unit.

The Petitioner protested against the same and the 1<sup>st</sup> Respondent assured that it will look into it. Thereafter the First Respondent commenced with the remittance at the rate of Rs.3.32/unit which was as per the PPA terms and it was

acknowledged and admitted that the liability was to pay at enhanced rate every year and at the rate of Rs.3.32 from April 2002 itself. Thereafter they paid the arrears for the period of May 2002 to September 2002.

From the commissioning date till the "effective date" (10<sup>th</sup> June 2005) as per the Electricity Act 2003 the First Respondent being the signatory to Power Purchase agreement was responsible for making payments. Though the 1<sup>st</sup> Respondent acknowledged its liability to pay at enhanced rate and made payment at Rs.3.32 from October 2002 to March 2003, yet again without any explanation, from April 2003 it continued to make part payment. For the entire period from April 2003 to 9<sup>th</sup> June 2005 the First Respondent has made part payments only.

Pursuant to the "effective date" the Power Purchase Agreement of the Petitioner came to be assigned to Second Respondent. Thereupon the Second Respondent too has been making part payments. The Second Respondent has neither justifiable grounds nor valid reasons to withhold the payments and make arbitrary part payments. The Petitioner continued the protest and requested the respondents to make the balance payments but the respondents have not paid.

Aggrieved by the unjustified actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Petitioner has filed the present Petition praying for the following reliefs:

1. Pass Order/s directing the First and Second Respondents to make the full payments at the rate agreed under the Power Purchase Agreement by honouring the terms of the Power Purchase Agreement by giving effect to enhancement every year.
2. Order the First and Second Respondent to remit the balance payments, which as of date amounts to Rs.55503688.45 towards principal i.e. for the energy supplied with interest charges as agreed under the Power Purchase Agreement which as on date amounts to Rs.22146758.88 in all amounting to Rs.7,76,50,447.34.

3. To Pass such other Order/s to meet the end of justice and equity.

During 1<sup>st</sup> hearing on 28.2.2008, the Respondents sought time to file the objection. Accordingly, the case was adjourned. During subsequent hearing, the Respondents have not filed the objection to this Petition but requested to allow sometime to enable them to settle the matter and file a Joint Memo of settlement. Accordingly, they have filed Joint Memo on 5.5.2008 stating the following:

**“ JOINT MEMO**

The parties have discussed and agreed to the following

1. For the period from the date of signing of agreement i.e.23.11.2001 to 31.08.2006 the tariff to be paid to the petitioner will be as per Power Purchase Agreement dated 23.11.01.
2. For the period between 01.09.2006 to 22.11.2011 the petitioner shall execute a Supplemental Agreement with the Respondent, agreeing to the following.
3. The Petitioner Company shall be paid for the electricity supplied 01.09.2006 at Rs.3.32 per unit from the base year of 2002-2003 with 2% escalation non-cumulatively every year till the 22.11.2011.
4. In view of the above understanding the tariff to be paid for the periods will be as per the table below:

<b>Period</b>	<b>Tariff in Rs./Unit</b>
23.11.2001 to 31.03.2002	3.16
01.04.2002 to 31.03.2003	3.32
01.04.2003 to 31.03.2004	3.49
01.04.2004 to 31.03.2005	3.66
01.04.2005 to 31.03.2006	3.84
01.04.2006 to 31.08.2006	4.03
01.09.2006 to 31.03.2007	3.5856
01.04.2007 to 31.03.2008	3.6520
01.04.2008 to 31.03.2009	3.7184
01.04.2009 to 31.03.2010	3.7848
01.04.2010 to 31.03.2011	3.8512
01.40.2011 to 22.11.2011	3.9176

5. The parties agree that Respondents shall pay the difference to be arrived as at the end of 29.02.2008 to the petitioner as per this Joint Memo within one month.
6. In all other aspects except the above the terms of the agreement continues to bind the parties.
7. It is most respectfully prayed before this Hon'ble Commission that the above understanding may kindly be recorded and the petition may kindly be disposed off in terms of the same.

For CEPCO Industries Pvt.Ltd  
Authorised Representative of Petitioner

Advocate for Respondents                      for Karnataka Power Transmission Corpn.Ltd.

Authorised Signatory

For Bangalore Electricity Supply Company

Authorised Signatory."

The Joint Memo has been signed by the Representatives of the Petitioner as well as the Respondents.

Accordingly, the Commission has considered the facts of the case and Joint Memo. The rates now negotiated are lesser than the PPA rates and the parties have settled the matter after mutual discussions. The Petition is disposed of in terms of the Joint Memo with directions that effect shall be given accordingly by the Respondents. The 2<sup>nd</sup> Respondent shall file the Supplementary PPA for approval of the Commission within a month from the date of receipt of this Order.

Sd/-  
(K.P.PANDEY)  
CHAIRMAN

Sd/-  
(S.D.UKKALI)  
MEMBER

