

No.: N/64/2013

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BANGALORE**

Dated : 19th June, 2014

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|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri H.D. Arun Kumar | Member |
| 3. Sri D.B. Manival Raju | Member |

OP No.20/2013

BETWEEN :

Global Energy Pvt.Limited
1st Floor

Hotel Shangri La's, Eros Corporate Plaza
19, Ashoka Road
Connaught Place

NEW DELHI – 110 001

[Represented by Shri Rajiv Yadav of M/s.Adlaw Partners, Advocate]

.. **PETITIONER**

AND:

- 1) State of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
BANGALORE -560 001

- 2) Hubli Electricity Supply Company Limited (HESCOM)
Navanagar
HUBLI – 580 025

- 3) Karnataka Power Transmission Corporation Limited
Cauvery Bhavan, K.G. Road
Bangalore – 560 009

.. **RESPONDENTS**
[Respondents 2 and 3 represented by M/s. Justlaw. Advocates]

ORDERS

- 1) The Petitioner has filed the above Petition praying for an order:
 - (a) directing the 2nd Respondent-HESCOM to pay a sum of Rs.56,76,000/- for supply of power to the Petitioner in the month of June, 2010;
 - (b) directing the Respondent to pay a sum of Rs.22,85,154/- towards offsetting the adverse financial impact suffered by the Petitioner on account of the orders of the Government of Karnataka issued under Section 11(1) of the Electricity Act, 2003;
 - (c) directing the Respondents to pay the interest at 18% per annum on the principal amount under (a) and (b) above, for the period commencing from the due date of payment till the actual payment thereof; and
 - (d) pass such other orders as the Commission may deem fit and proper in the facts and circumstances of the case.

- 2) The Petitioner has a 5 Mega Watts (MW) Biomass-based Power Plant located at Belgundi Village, Belgaum District. The Petitioner was selling the power, by availing the inter-State open access to sell to third parties. In the meanwhile, the State of Karnataka issued directions under Section 11 of the Electricity Act, 2003 (Act), and made it mandatory for all generating companies operating within the State to sell the entire surplus output, after

meeting their captive requirements, to the State-owned distribution companies, and fixed a provisional tariff of Rs.5/- per Unit for Biomass Projects without having a Power Purchase Agreement (PPA), subject to approval of this Commission.

- 3) The Petitioner supplied electricity to the 2nd Respondent from 1.4.2010 to 30.6.2010. It is alleged that the Petitioner received the payment for the electricity supplied for the months of April and May, 2010, at the rate of Rs.5/- per Unit, and it did not receive any amount towards the electricity supplied for the month of June, 2010.
- 4) The Petitioner has contended that it was supplying the electricity to M/s.Reliance Infrastructure Limited, a distribution licensee in the city of Mumbai, at a mutual agreed tariff of Rs.5.79 per Unit, and due to the invocation of Section 11 by the Government of Karnataka, the Petitioner was forced to supply the electricity to the 2nd Respondent during the period mentioned above, and has prayed for offsetting the adverse financial impact by allowing the price of electricity at Rs.5.79 per Unit.
- 5) The 2nd Respondent appeared through its counsel and filed its Statement of Objections, contending that Rs.5/- per Unit provisionally fixed by the Government of Karnataka was the reasonable and proper tariff for the electricity supplied by the Petitioner during the period in question, and that there were no reasons for payment of Rs.5.79 per Unit or any other rate to

the Petitioner. It also contended that certain payments were due from the Petitioner towards the energy imported by the 2nd Respondent to the generating station of the Petitioner from February, 2009 to February, 2012, and the said amounts had been set-off against the payment due to the Petitioner for the electricity supplied during the month of June, 2010. However, the 2nd Respondent has not quantified the exact amount that was due to it from the Petitioner in respect of the electricity imported to the generating station of the Petitioner during the above-said period.

- 6) The Petitioner has disputed the right of the 2nd Respondent to claim set-off, contending that the liability to pay for the electricity supplied as per Section 11 of Act, is a joint liability of the 2nd Respondent and the 3rd Respondent, and the liability if any, of the Petitioner to pay towards the imported energy is only against the Petitioner. Further, the Petitioner has also denied its liability to pay the amount claimed under the set-off.

- 7) The Commission has noticed that in similar other matters, viz., in OP No.40/2010 and OP No.41/2010, decided on 14.2.2013, this Commission had awarded Rs.5.72 per Unit, as against the provisional rate of Rs.5/- per Unit fixed by the Government of Karnataka, and that this decision has become final, as the Appeal preferred by the Respondents therein was dismissed by the Hon'ble Appellate Tribunal for Electricity (ATE) on the ground of delay in filing the Appeal. In the present Petition, the main question that would arise for consideration is fixing of rate for the energy supplied under Section 11 of

the Act. As already noted, this issue has been finally settled. Therefore, this Commission suggested the parties concerned in the case that let the 2nd Respondent prefer separate proceedings in regard to the set-off amount claimed by it and that the Petitioner to accept the rate of Rs.5.72 already fixed by this Commission. The learned counsel for the 2nd Respondent submitted that an Application has been filed before the Hon'ble ATE for recalling the Order dismissing the Appeal on the ground of delay. He submitted that subject to the outcome of the Application and the Appeal before the Hon'ble ATE, the 2nd Respondent has no objection for fixing the rate at Rs.5.72 per Unit.

8) For the above reasons, we pass the following :

ORDER

- (a) The 2nd Respondent (HESCOM) shall pay Rs.5.72 (Rupees Five and Paise Seventy Two only) per Unit for the energy supplied by the Petitioner to the 2nd Respondent, for the period from 1.4.2010 to 30.6.2010, as per the directions issued under Section 11 of the Electricity Act, 2003, after adjusting the amount already paid towards the same;
- (b) The 2nd Respondent (HESCOM) shall pay simple interest at the present base lending rate of the State Bank of India :
- (i) on the amount due to the Petitioner towards the electricity supplied by the Petitioner during the month of June, 2010, calculated at the

rate of Rs.5/- per Unit, from the due date of payment till the actual date of payment; and,

- (ii) on the difference amounts due to the Petitioner towards the electricity supplied by the Petitioner for the months of April, 2010, May, 2010 and June, 2010 from the date of the Petition till the actual date of payment;
- (c) The 2nd Respondent (HESCOM) is at liberty to file separate proceedings against the Petitioner in respect of the amount claimed by way of set-off towards the energy imported to the generating station of the Petitioner;
- (d) The rate fixed at Rs.5.72 per Unit in this case is subject to the final outcome of the Appeal before the Hon'ble ATE against the Order dated 14.2.2013 in OP No.40/2010 and OP No.41/2010. The rights and liabilities of the parties shall be accordingly adjusted after disposal of the said Appeal;
- (e) The amounts that become due to the Petitioner, as per the reliefs given at (a) and (b) above, shall be paid by the 2nd Respondent (HESCOM) to the Petitioner within two months from the date of this Order.

Sd/-
(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER