

**Before the Karnataka Electricity Regulatory Commission, Bangalore**

**Dated 25<sup>th</sup> August 2006**

Present:

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

**In the matter of Determination of Tariff in respect of Mini-hydel projects of M/s Sagar Power (Neeru Katte) Pvt. Ltd., Nirmala Power Pvt.Ltd. AMR Power Pvt.Ltd. and Bhadragiri Power Pvt.Ltd. vide O.P.1/2006, 2/2006,3/2006 and 4/2006 – Petitioners  
(Represented by M/s Holla & Holla Advocates, Bangalore)**

v/s

**Mangalore Electricity Company Ltd. (MESCOM) and  
Gulbarga Electricity Company Ltd. (GESCOM)**

**ORDER**

1. The petitioners had filed combined petitions on 8.12.2005 in connection with amendment of tariff for mini hydel stations. The petitioners have proposed to set up the following mini-hydel generation plants in Karnataka:

- |                                      |   |
|--------------------------------------|---|
| a. Sagar Power {Neerukatte} Pvt Ltd: | 12 MW at Neerukatte, Village, DK Dt.[Subsequently revised to 15 MW] |
| b. AMR Power Pvt Ltd                 | 24 MW at Perla Village DK Dt.                                       |
| c. Nirmal Power Pvt Ltd              | 4.5 MW at Siriguppa Bellary Dt.                                     |
| d. Badrigiri Power Pvt Ltd           | 3 MW at Gondi Village Shimoga Dt,                                   |

The petitioners had filed the DPRs along with their petition.

2. The petitioners had sought amendment of tariff based on the submissions made in the petition stating that the tariff determined by the Commission in its order dated 18.01.2005 is not reasonable. One of the main contentions of petitioners is that the project cost submitted by REDAK at Rs. 390 Lakhs per MW and considered by the Commission in tariff determination in its order-

dated 18.01.2005 is incorrect. The petitioners had also pleaded for extension of the tenure of the PPA to 15 years.

3. It is worthwhile here to refer to the Commission's order dated 18.01.2005 on the determination of tariff for renewable sources of energy. In the said Order the Commission has determined the tariff of Rs.2.80 per unit ( without any escalation) for mini-hydel projects based on the following parameters:

Project Cost:	Rs.390 lakhs per MW
PLF:	30%
O & M Expenses:	1.5% of the project Cost with 5% annual escalation
Interest on WC:	12.5%
Aux. Consumption:	0.5%
RoE:	16%
Depreciation:	7% under SLM
MAT:	7.5% on RoE

4. During the hearing held on 16.02.2006, the petitions were admitted subject to the petitioner's legal counsel filing a memo to the effect that the petitioners have filed the petitions for determination of tariff and not for amendment of the Tariff determined by the Commission in its order dated 18.01.2005. Accordingly the learned counsel for petitioners filed a memo on 21.03.2006 stating that the petitioners are seeking determination of tariff.
5. The Commission vide its letter dated 20.03.2006 directed the petitioners to file individual applications for determination of tariff.
6. In response to the above letter of the Commission, three petitioners namely, M/s Sagar Power (Neeru Katte) Pvt. Ltd., Nirmala Power Pvt.Ltd. and Bhadrhiri Power Pvt.Ltd filed their individual applications for determination of tariff. But M/s AMR Power Pvt. Ltd. did not file any application. In view of this the earlier petition no. No.2/2006 of AMR power filed is not dealt with in this order. In view of the commonality of the petitions, all the three applications are considered together by the Commission.
7. The individual applications of the 3 petitioners named above were processed by the Commission and they were directed vide Commission's letter dated 5.6.2006 to publish a notice in the newspapers inviting objections, as required under section 64 of the Electricity Act 2003, read with KERC (G & C Proceedings) Regulations, 2000.
8. Further M/s Sagar Power vide their letter 10.7.06 requested the Commission to consider the revision of capacity from 12 MWs to 15 MW and also the revision of project cost to Rs. 7888 lakhs from the original cost of Rs.5667 lakhs. The Commission directed the above petitioner to issue a corrigendum in the newspaper accordingly. The Corrigendum was issued by the petitioner in

Udayavani dated 14.7.2006 and in Vijay Karnataka and Vijaya Times dated 16.7.2006.

9. Accordingly notices were published by all the above petitioners in the following newspapers:

Vijay Times & Vijaya Karnataka on 18.06.2006,  
Udayavani on 17.06.2006. Further M/s Nirmala Power published its application in Samyuktha Karnataka dated 20.6.2006 also.

10. In response, 4 objectors filed their written objection on the tariff petitions before the Commission. None of the ESCOMs responded to the notice published by the petitioners.

11. The Commission decided to hold a hearing in the matter on 25.8.2006 and necessary notices were issued in Deccan Herald, Vijaya Karnataka and Udayavani on 9.8.2006.

12. During the hearing Sri Vishwanath Advocate appeared for all the three petitioners. The learned counsel for the petitioners briefly presented the highlights of their applications and stated that they have accepted the approved parameters as per the Commission's order dated 18.1.2005 except the three parameters in respect of project cost, PLF and MAT. The counsel submitted that the project cost varies depending upon the location of the project and type of the project and as such the project cost as indicated in the petitions may be considered. Further it was requested to consider the PLF as per the DPR after providing a margin of about 10% in the PLF to account for failure of monsoon, grid failure and machine failures. As regards MAT it was argued that the same shall be considered as per the recent changes in the IT rates. The petitioners requested the Commission to determine the tariff for their min-hydels as follows, as against a tariff of Rs.2.80 per unit determined by the Commission in its Order dated 18.1.2005:

i) M/S sagar Power	Rs.3.33 per unit
ii) M/s Bhadragiri Power	Rs. 3.46 per unit
iii) M/s Nirmala Power	Rs. 3.11 per unit

13. The views expressed by all the objectors are similar on many aspects. The List of objectors and the objectors who spoke during the hearing held on 25.8.2006 is enclosed. The objectors generally expressed the following views:

- a. The Commission has already determined the tariff for mini-hydel projects vide its order date 18.1.2005 in terms of the Regulations framed by the Commission and in pursuance of the said regulations the tariff has to be revised once in five years and fixation of tariff for individual projects would be diluting its own regulations. It was also argued that the said determination of tariff was after due diligence considering the reasonableness of all the parameters and after

considering the views of technical experts and stakeholders. Therefore determination of tariff for individual projects of the petitioners will not arise, as the same would be against the regulations and the order passed by the Commission. If at all, the Commission has to determine the tariff individually, the earlier order passed by the Commission needs to be cancelled/ amended.

- b. The objectors also pointed out that the proposed tariff is more than the tariff approved by the Commission and hence the consumer should not be burdened with a higher tariff in the name of promoting renewable energy. They also stated that while determining the tariff for NCE sources, the parameters considered by the Commission are already on the higher side. It is also a known fact that the mini-hydel projects are in remote places and the costs are higher and the risk of monsoon highlighted by the petitioners is also a known fact and the Commission has considered all these factors in its order-dated 18.1.2005 while determining the tariff of Rs.2.80 per unit for mini-hydel projects.
  - c. The objectors referring to Section 61 (c) & 61 (d) of EA 2003 requested the Commission not to allow the licensee to purchase electricity from expensive sources against the Consumers' interest. In case the licensee is allowed to buy power from the petitioners at a higher tariff such higher power purchase cost should not be passed on to consumers.
  - d. If at all the petitioners' applications are to be considered, the Commission should get the cost of the project validated before going ahead with determination of tariff. Further, review of tariff for generators every year is not called for.
  - e. The regulations & the order passed by the Commission earlier was after due consultation with all the stakeholders /experts. Hence, the petitioners cannot say that the rates already determined cannot be accepted.
  - f. Objectors also referred to an article in Powerline of 2005, wherein it is stated that the minimum PLF for Mini-hydel schemes considered by MNES is 45% whereas the Commission has allowed 30% PLF in its order giving sufficient cushion in PLF.
14. On the various objections raised by the objectors in writing, the petitioners have provided individual written response to them and have filed a copy of their response with the Commission. The responses provided by them are summarised below:
- i) The Hon'ble Commission has considered the various aspects applicable to the projects of the petitioners as explained in the application and admitted for determination of tariff.

- ii) The uniform tariff determined by the Commission is not workable in the present situation as the project cost has gone up substantially due to factors such as location/ nature of the project, geological factors apart from increased prices of construction materials, transport etc.,

During the public hearing, the counsel for the petitioners, while reiterating the above replies did not provide any further replies to the other points raised by the objectors.

15. Sri Vishwanath Hiremath representing ESCOMs stated that application is not maintainable as per section 62 (a) of EA 2003. He pointed out that the petitioners have neither entered into a PPA nor have obtained consent of the licensees to sell the power generated by them to the licensees. Hence the Commission has no jurisdiction for determination of tariff to the petitioners, under section 62(a). In this context he also drew the attention of the Commission to the following paras of the Orders of the Appellate Tribunal dated 02.06.2006 in the case of mini-hydel project developers Vs. APERC/Licensees:

Para 40 A , Page 31:

"The following are the common points framed relating to the jurisdiction and authority of Regulatory Commission that arise in these batch appeals preferred by Developers as well as the TRANSCO/ DISCOM:-

A. Whether the Regulatory Commission has the Power, authority and jurisdiction either under The Electricity Act, 2003 or under the A.P. Electricity Reform Act, 1998 to compel the Developers to sell the power generated by them to the State Transmission Utility or Distribution Company?"

para 74 page 49. "On a conjoint reading of the provisions of A. P. Electricity Reform Act 1998, it is clear that no license is required for Generation under the Act nor there is an enabling provision for the Commission to fix the annual revenue or tariff of Generator, who generates Power in the State. The Regulatory Commission, if at all, has a say only when a holder of a supply or transmission license enters into arrangement for the purchase of electricity from a Generator subject to Sec 21(5) and seeks for consent of the Commission. Such consent is to be obtained by the holder of Supply or transmission license for entering into arrangement for purchase. ...."

"Para 91 Page 56: "From the discussions it is clear that with respect to sale of power by a private generator to any third party the Commission has no jurisdiction to fix the tariff or regulate the arrangement. However, when the sale is to a Transmission Licensee or discom, there could either be a tariff regulation by the Commission under Section 86(1)(b) or Section 62(1)(a) which is a special provision for the particular contingency or regulation of purchase of power or procurement by Distribution Licensee from the generator. Sec.62(1)(a) reads thus:-

On para 40-A reproduced above, the Appellate Tribunal has held that the Regulatory Commission has neither the power nor the authority nor the

jurisdiction to compel the developer to sell the power generated by them to the DISCOMs.

Quoting the above references, Sri Hiremath contended that the Commission can not determine the tariff without the consent of the licensee to buy power or without a PPA with the licensees. If the Commission determines the tariff without the consent of the licensee and if the licensee does not purchase the power from such sources, the whole exercise of the Commission becomes infructuous.

16. Having regard to facts and circumstances of the case and the objections raised by the stakeholders, the Commission has examined the matter in detail. The following provisions of the EA 2003 are extracted below:

***“62. Determination of tariff – (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –***

***(a) supply of electricity by a generating company to a distribution***

***Licensee:***

*Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;”*

Further section 86-1 (b) of the Act states as follows:

*“ Regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the state”*

Further it is worthwhile to refer to the observations of the Appellate Tribunal vide para 91 of the Order dated 2.6.06, which is reproduced below:

*“91 xxxxxxx Section 62 is a general provision with a special reference to section 79(1)(a)(b) and 86(1)(a) and it has to read in that context alone. The special excludes the general provision is the well settled rule of interpretation. The provisions of the Act also open for such a stand and section 86(1)(b) stands apart and full implication has to be given.*

17. In the applications filed by the petitioners, it is stated that the petitioners are yet to enter into any PPA for the sale of power to the licensees. The licensees also reiterated this during the hearing. Hence the Commission notes that there is no agreement or consent from the licensee to purchase the power from the petitioners.

18. In view of the above provisions of the Act and the findings of the Appellate Tribunal that full implication has to be given to section 86(1)(b) , the

Commission is of the view that it can regulate the purchase of power only through agreements.

19. Considering the various contentions raised by the petitioners, objectors and the licensees, the Commission is of the view that determination of tariff in such circumstances would be infructuous.

***In the light of the above discussions, the petitions are hereby rejected with liberty to the petitioners to file fresh petitions, if necessary, after getting the consent for purchase of power from the licensee/licensees.***

This order signed and issued on 25<sup>th</sup> August 2006.

Sd/-  
**K.P.Pandey**  
Chairman

Sd/-  
**H.S.Subramanya**  
Member

Sd/-  
**S.D.Ukkali**  
Member

**a) List of the Objectors who submitted written objections.**

1. Sri. Satyanarayana Udupa,  
Secretary, Bharatiya Kisan Sangha,  
Udupi.
2. Sri Y.G. Muralidaran,  
Consultant (Consumer Advocacy),  
KERC, Bangalore
3. Sri Y.V. Aswathanarayana,  
Co-ordinator/Energy Sector,  
Consumer Care Society, Bangalore
4. Sri K.N. Venkatagiri Rao,  
Secretary, Consumer Forum (R),  
Sagar.

**b) List of the Objectors who presented their views during hearing**

<b>SL.NO.</b>	<b>Name</b>
1	Sri L.Vishwanaathan Advocate for Petitioners
2	Sri V.Hiremath, Representing ESCOMs
3	Sri Y.G.Muralidharan Consumer Advocate, KERC
4	Sri Sathyanarayana Udupa BKS, Udupi
5	Sri M.G.Prabhakar, Bangalore
6	Sri Y.V.Aswathanarayana Consumer Care Society
7	Sri R.Nagaraja Setty State Consumer Forum, Bangalore