

No.N/11/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 6th January 2011

- | | |
|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Case No. OP 09/2007

Between

M/s. Enercon Wind Farms (Karnataka) Limited
Kolsite House, Plot No.31
Shan Industrial Estate, Veera Desai Road
Andheri West
MUMBAI – 400 053
(Represented by Indus Law Advocates)

... Petitioner

Vs.

B E S C O M
Corporate Office, K.R. Circle
BANGALORE – 560 001
(Represented by its Advocates Just Law)

... Respondent

1. This petition is filed by M/s. Enercon Wind Farms (Karnataka) Limited seeking refund of the amount deducted by BESCO towards the excess payment alleged to have been made for the power purchased from the petitioner.

2. This Commission vide its Order dated 10.7.2008 had allowed the petition holding that the commercial operation date of the petitioner is 14.5.2003 and the year of escalation is the next fiscal year as per the definition of 'contract year' provided in the PPA. The Commission had also directed BESCO to refund the difference of the amount deducted out of the bills within one month's time.

3. Aggrieved by the above orders of the Commission, the respondent BESCO had filed an appeal before the Hon'ble Appellate Tribunal for Electricity

(ATE) in Appeal No.69/2009. The Hon'ble ATE on 10.11.2009 allowed the appeal in part and issued a direction as below :

“State Commission is directed to recalculate the refund amount admissible to the 1st Respondent in the light of our decision regarding the date of commercial operation in two phases i.e., 7.2MW on 14.5.2003 and 13.8 MW on 26.8.2003 and pass the appropriate order in accordance with law after hearing both the parties”.

4. The respondent BESCO further filed an appeal to the Hon'ble Supreme Court against the orders of the Hon'ble ATE in Civil Appeal No. 6507/2010 as regards the year of escalation. Hon'ble Supreme Court has admitted the appeal and passed the following order on 20.8.2010:

“The civil appeal is admitted.

Superseding our order dated 6th August, 2010, we make it clear that the competent Authority will proceed to quantify the amount, which is sought to be deducted by the appellant. Liberty is also given to Respondent No. 1 herein to move an Interlocutory Application after the quantification for further orders.

Till further orders, Respondent No. 1 will not claim adjustment for the time being”.

5. Pursuant to the orders of the Hon'ble Supreme Court, we have heard both the parties on quantification of the amount deducted by BESCO out of the bills of M/s Enercon Wind Farms (Karnataka) Ltd. Both the parties have also filed detailed calculations.

6. We have considered the orders of this Commission and the Hon'ble ATE and the calculations submitted by both the parties.

7. As per the Commission's / ATE Order, the petitioner's plant has been commissioned on two dates, that is, 7.2 MW plant on 14.5.2003 and 13.8 MW plant on 26.8.2003. As per the definition of financial year provided in the PPA, the succeeding financial year in the present case starts from 1st April 2004 for both the plants and as per the orders referred to above, escalation in tariff has to be allowed from the 1st April every year. However, while making payments (and deducting from payments made earlier), BESCOM had not taken 1.4.2004 as the beginning of the next financial year for the purpose of providing escalation. Instead, it had adopted 21.7.2004 as the beginning of the next year for the purpose of allowing escalation in the tariff. In the subsequent years also, 21st July is taken as the date of commencement of the next year. Consequently BESCOM has paid an amount of Rs.1,29,38,70,858/- as against Rs.1,30,21,55,884.77 for the period up to March 2010. Accordingly we hold that BESCOM has to pay Rs.82,85,026.77 to M/s. Enercon Wind Farms (Karnataka) Limited. The yearwise payments due from BESCOM up to the end of March 2010 are as shown in the statement enclosed.

8. This determination however is subject to further orders of the Hon'ble Supreme Court in the pending appeal.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER