

**No.N/36/09**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 23<sup>rd</sup> December 2010**

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

**Case No. OP 24/2009**

**Between**

M/s. Sagar Power (Neerukatte) Private Limited  
2<sup>nd</sup> Floor, Venkatadri Complex  
83, Richmond Road  
B A N G A L O R E – 560 025  
(Represented by its Advocates Indus Law)

... Petitioner

**Vs.**

1. Karnataka Power Transmission Corporation Limited  
Kaveri Bhavan, Kempegowda Road  
BANGALORE – 560 009.
2. Mangalore Electricity Supply Company Limited  
1<sup>st</sup> Floor, Paradigm Plaza, A.B. Shetty Circle  
MANGALORE – 575 101.
3. Karnataka Load Despatch Centre  
Karnataka Power Transmission Corporation Limited  
28, Race Course Road  
BANGALORE – 560 001.
4. State Power Procurement Coordination Committee  
Kaveri Bhavan  
BANGALORE – 560 009  
(Represented by its Advocate Sri Sriranga)

... Respondents

1. In this petition the petitioner has sought –
  - (i) a declaration to the effect that there is no valid or subsisting PPA between the petitioner and the 2<sup>nd</sup> respondent and the PPA executed between the petitioner and the 2<sup>nd</sup> respondent on 6.12.2006 is null and void ab initio;
  - (ii) a direction to the 1<sup>st</sup> and 2<sup>nd</sup> respondents to grant open access or in the alternate to fix a revised tariff at Rs.5/- per unit.

2. The respondents have appeared through their counsel and have filed a statement of objections dated 8.10.2009.

3. It is contended by the petitioner that the PPA dated 6.12.2006 signed by it with the 2<sup>nd</sup> respondent has been rejected by the Commission and therefore the PPA has become null and void and is no longer in force and binding on the parties. It is also contended that the obtaining of approval to the PPA from the Commission by the 2<sup>nd</sup> Respondent at a later date was behind the back of the petitioner and hence not binding on it. It is further contended that even if the 2<sup>nd</sup> respondent has validly obtained the approval for the PPA from the Commission, the PPA dated 6.12.2006 has not come into force and is not binding on the petitioner since the same was subject to certain modification of the terms of the PPA and the petitioner has not agreed to the said modifications.

4. Per contra it is contended by the respondents that the PPA has not been rejected by the Commission as contended by the petitioner and it was only returned to the 2<sup>nd</sup> Respondent by the Commission as by that time the Commission had circulated a discussion paper on increase of the upper limit of the quantum of power purchase from NCE sources by the Distribution Licensees. Further it is submitted that after the Commission completed the process of re-fixation of the purchase obligation from NCE sources, the PPA signed by both the parties was resubmitted for approval and the same was communicated vide Commission letter dated 13.5.2008. Consequently the PPA has come into force and binds the petitioner. It is further contended by the respondents that the claim for re-fixation of tariff at Rs.5.00 is unjustified and untenable.

5. Based on the averments made by the parties, the questions that arise for consideration and decision are –

- (i) Whether the PPA dated 6.12.2006 is valid and subsisting consequent to the return of PPA by the Commission on 24.4.2007;
- (ii) Whether the petitioner is entitled to re-fixation of the tariff provided in the PPA.

**Issue No.1:**

6. It is the submission of the petitioner that the PPA signed by it on 6.12.2006 has been rejected by the Commission on the ground that the Respondent No.2 has crossed the upper limit of 10 % fixed for the purchase of power from NCE sources and therefore there is no valid PPA. According to us, this submission is contrary to the factual position. Factually, the PPA was not rejected but it was only returned. The letter of MESCOM to the Commission dated 11.4.2008 (produced as R-2) clearly records the correct position that the PPA was returned and not rejected.

7. An identical question had arisen in OP No.29/2009. After considering the effect of the Commission returning the PPA, this Commission has held that –

“In our view, returning of the PPA by the Commission does not mean rejection of the same as contended by the petitioner. It is also our considered view that non-approval of the PPA by the Commission will not affect the validity of the Agreement entered into by the parties. As far as parties are concerned, the agreement continues to bind them. Further, approval of the Commission is a condition only applicable to the Distribution Licensees as it is the Licensees who have to purchase the electricity with the prior approval of the Commission as per Section 86(1)(a)(b) of the Electricity Act, 2003. So far as the petitioner, which is a generating company, is concerned, there is no such requirement and the agreement stands and binds till the Commission specifically refuses to approve it. Admittedly, in this case, the Commission has not refused approval but had only returned the PPA. Therefore we conclude that the PPA is still valid and binds the petitioner and the respondents alike. Accordingly, Issue No.(i) is answered against the petitioner”.

8. Considering the factual position that the PPA was only returned and the view taken by the Commission as above, we hold that the PPA was not rejected by this Commission.

9. In this case though the PPA initially was returned, the same has been later approved by the Commission on 13.5.2008 subject to some minor corrections to be carried out. The petitioner did not write to the Respondent No.2 at any time before the approval was communicated that it has withdrawn its consent to the PPA. Having signed the PPA, the petitioner now cannot contend that the PPA is not valid that too after sufficient lapse of time around 15 months after the same is approved by the Commission. Further, the changes directed to be carried out by the Commission in the PPA were not the one which will take away the effect of approval given by the Commission as the corrections were part of the approval.

10. Duly following the reasoning adopted in OP 29/2009 and in the light of the factual position of this case, we hold that the PPA is valid and subsisting. Accordingly Issue No. 1 is answered in the negative.

**Issue No.2:**

11. The petitioner as an alternative prayer has sought for increase in the tariff fixed in the PPA pleading that the cost of the project has gone up considerably due to flash floods in the Netravati River during the 2<sup>nd</sup> week of August 2008 as a consequence of which there was extensive damage caused to the project which has resulted in delay in the commissioning of the project.

12. In our view a mere statement that there is an increase in the cost of the project on account of floods is not enough to consider the prayer for refixation of tariff. The petitioner has not produced sufficient material and supporting documents in proof of increase in the cost. Therefore, we reject the prayer for refixation of tariff. However, liberty is reserved to the petitioner to submit its claim, for revision if any, to 2<sup>nd</sup> Respondent (MESCOM) along with all the supporting documents. The 2<sup>nd</sup> respondent MESCOM shall consider the same and take

appropriate decision in accordance with law within a reasonable time frame and communicate the same to the petitioner.

13. In the light of the above findings, the petition stands rejected.

Sd/-

(M.R. SREENIVASA MURTHY)  
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)  
MEMBER

Sd/-

(K. SRINIVASA RAO)  
MEMBER