

**OP 28/2010**

**No.N/49/10**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 16<sup>th</sup> September 2010**

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

**Case No. OP 28/2010**

**Between**

M/s Konark Power Project Ltd.  
Ballapura Village Bugudanahalli Panchayat  
Tumkiur Taluk and District  
(Represented by its Advocate Sri Prabhuling Navadgi)

.... **Petitioner**

**And**

Bangalore Electricity Supply Company Limited  
K.R. Circle  
Bangalore – 560 001  
(Represented by its Law Officer)

.... **Respondents**

1. M/s Konark Power Project Limited has filed this petition under Section 86(1)(f) read with Section 62 of the Electricity Act, 2003 seeking amendment to the PPA dated 4.4.2002 and the Supplemental Power Purchase Agreement dated 27.2.2006 and has prayed for fixing the tariff at Rs.5.60 for every unit of electricity generated by it.
2. The respondent BESCOM has filed its statement of objections on 22.7.2010.
3. We have heard the counsel for the petitioner Sri Prabhuling Navadgi and the Law Officer, BESCOM. We have also perused the entire pleadings placed before the Commission.

4. The undisputed facts are that the petitioner company had established a 6 MW biomass based power generating plant at Ballapura village of Tumkur taluk and district and had entered into PPA with KPTCL on 4.4.2002 with rates fixed on the basis of MNES Guidelines. Thereafter the capacity of the plant was increased to 7.5 MW and the PPA came to be altered on 27.2.2006 modifying the tariff as Rs.3.10 per unit up to 5.4 MW and Rs.2.85 per Kwh for the energy delivered over and above 5.4 MW with 2 % escalation, against the earlier tariff of Rs.3.10 with 5% cumulative escalation from the base year of 2001-02 for only 6 MW. The petitioner since then is supplying power at these rates.

4. In the present petition, Counsel for petitioner Sri Navadgi has contended that the rate negotiated by the petitioner with the respondent which now works out to Rs.3.348 for 6 MW and Rs.3.07 for the remaining 1.5 MW has become unworkable and uneconomical in view of the steep increase in the cost of production of electricity. According to him the cost of biomass has gone up abnormally because of the scarcity of the material and competition among the biomass power plants. He has also pleaded that other similarly situated biomass generators are paid at a higher tariff in other ESCOMs. It is also contended by him that the neighbouring State of Maharashtra has increased the tariff of Biomass units considerably taking into account the increase in the cost of fuel, limited availability of biomass and the high cost incurred in procuring the same. He therefore prays for increase of tariff for the petitioner plant to be fixed at Rs.5.60. According to him under the provisions of Electricity Act, 2003 the Commission has ample power to modify and increase the tariff. In support of this he has relied upon two judgments of the Hon'ble Supreme Court, one in the case of the Transmission Corporation of Andhra Pradesh Vs. Sai Renewable Power Private Limited (Civil Appeal No.2976/2006) and the second in the case of M/s PTC India Limited Vs. CERC (2010 4 SCC 603).

5. In reply the Law Officer appearing for the respondent BESCO has contended that the petition has no merit and is liable to be dismissed. According to him once there is a PPA which is valid and subsisting, there is no right for either of the parties to seek modification of the same including the rates

unless mutually agreed upon and approved by the Commission. Further he contends that the submissions made in support of the increase in tariff cannot also be considered, as the PPA doesn't contemplate such an increase for any reason whatsoever. He further contends that similar plants getting higher rates cannot be a ground for the petitioner to seek increase in the rates for his plant, as in each case the sale and purchase of electricity and the rate for the same depend upon the terms of the PPA and one PPA cannot be compared with another.

6. In the circumstances, the questions that arise for consideration are –
  - (i) Whether the Commission has the power to modify the tariff contained in a subsisting PPA; and
  - (ii) Whether the petitioner has made out a case for modification of the tariff contained in the PPA.

7. Under Section 86 of the Electricity Act, 2003 read with sections 62 & 64, the Commission has the power to determine the tariff of the generating companies including NCE projects who supply electricity to the Distribution Licensees. In exercise of its powers under these provisions, the Commission has passed two orders, one during 2005 and another on 11.12.2009, and has also approved the PPAs. Once this Commission has powers to fix and approve the tariff, in our considered view, the same includes the power to modify the same in case there are circumstances warranting such modification.

8. We have gone through the material placed before us and the reasons urged in support of the revision by the petitioner. The main reason pleaded by the petitioner in support of its prayer for increase in tariff is that the rate of fuel has gone up abnormally and the tariff paid under the PPA is too low affecting the very viability of the plant. The petitioner in support of its contention has produced certain invoices of purchase of biomass. In our view, mere production of some invoices will not be enough to justify the increase in rates. The petitioner has not produced details of its actual costs supported by material evidence to substantiate the effect of the present tariff on the viability of the unit. Therefore,

we hold that the petitioner has not made out a case for revision of the tariff contained in the PPA. Accordingly this petition is liable to be rejected and hence dismissed.

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

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd/-  
(K. SRINIVASA RAO)  
MEMBER