

No.N/46/08

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 16th July 2009

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| 1. Sri K.P. Pandey | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Case No. OP 30/2008

Between

Sri Ugar Sugar Works Limited
317, 2 14th Cross, 9th Main, 2nd Block, Jayanagar,
BANGALORE – 560 004
(Represented by its Advocate Sri Pabhuling Navadgi)

Petitioner

And

1. The Managing Director, KPTCL, Kaveri Bhawan,
Kempegowda, Road, BANGALORE – 560 009
2. The Managing Director, HESCOM, Navanagar,
P.B. Road, HUBLI – 580 025
3. The Chief Engineer (Ele.), State Load Despatch Centre,
28, Race Course Road, BANGALORE – 560 009
(Represented by its Advocate Sri Sriranga)

Respondents

1. The petitioner has filed this petition claiming payments towards the unscheduled energy supplied by it as per UI mechanism or in the alternative to consider the energy imported by them at an agreed price and refund the difference of amount.

2. It is an admitted fact that the petitioner is a generating company and has a cogeneration plant and had a PPA with 1st & 2nd Respondents till 23.5.2008. It is also undisputed that the petitioner supplied power during the subsistence of the agreement period and also thereafter from 11.10.08 to 26.10.08 (as per the interim order of the Commission). It is also undisputed that the petitioner utilized

the power of the respondents during the period from November 2006 to September 2007.

3. The dispute has arisen regarding the rate at which power utilized by both the parties had to be paid.

4. As per the petitioner, the power supplied from 18.10.2007 to 20.10.2007; 01.12.2007 to 11.12.2007 and 11.10.2008 to 26.10.2008 has to be paid as per the UI rates prevailing if it is charged for the power utilized by it between November 2006 to September 2007 at the temporary tariff schedule of the Respondents. Otherwise all power supplied and drawn shall be as per the PPA.

5. In support of the claim for UI rate, the petitioner has relied upon the observations made by CERC on 16.10.2007 in its petition No.114/07 which is as below :

"Since cogeneration is very efficient and renewable form of generation, it must be encouraged. We would therefore urge the concerned Karnataka utilities to formulize and accounting its absorption into the state grid as an agreed purchase by a State utility or on scheduled basis under open access. In case neither of these happens the injected energy should be accounted and paid for an unscheduled interchange (UI). We reiterate this once again."

6. In reply the respondents have contended that for the energy supplied by the petitioner during the subsistence of the agreement the payment has to be regulated as per terms of PPA. So far as the power imported by the petitioner is concerned it has to be charged as per the KERC (Terms and Conditions for Open Access (1st Amendment) Regulations, 2000 i.e., at HT(2)(a) Tariff Schedule as per clause 5.3 of PPA which read as under :

"The Company shall be permitted to use equivalent energy of 10 % of the installed capacity for startup, after inspection by the concerned officers of the Corporation and 115 % of such energy provided by the Corporation for startup purposes shall be deducted from the energy pumped into the Grid by the company for determining the amount to be paid by the Corporation to the company. If energy over and above the above requirement is drawn from the Grid, the same will be billed under the tariff applicable to HT industries (presently HT-21) of the Corporation".

7. We have considered the questions raised in the light of respective pleadings and submission.

8. Admittedly the petitioner was having an agreement with agreed rate for supply of power to the Respondents 1 & 2 up to 23.5.2008. Therefore any power supplied during this period has to be paid as per the rates agreed to in the PPA and not at UI rate as claimed by the petitioner. The observations of CERC on which reliance has been placed by the petitioner does not support the contention of the petitioner. As pointed out earlier there was an agreement for supply of power during the relevant period and hence power supplied by the petitioner has to be paid as per the terms of the agreement.

9. As regards period from 11.10.2008 to 26.10.2008 the supply by the petitioner to the respondents was pursuant to an interim order of this Commission. This period is also covered by the agreement though agreed tariff was not in force. Therefore in our opinion the petitioner for this period has to be paid at a reasonable price as per the principles enunciated in section 70 of the Indian Contract Act, 1872. Section 70 of the Indian Contract Act read as under :

“Where a person lawfully does anything for another or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof the later is bound to make compensation to the former in respect of or to restore the thing so done or delivered”.

What appears reasonable price to us in the circumstances of this case is to order payment to the petitioner for the energy supplied by the respondents also as per the PPA rates, as PPA rates were negotiated and cover generation costs.

10. Coming to the rate at which power utilized by the petitioner during November 2006 to September 2007 has to be paid to the respondents, it is contended by the petitioner that the said power has also to be charged at the PPA rate as the petitioner has been paid by the respondents as per PPA rates not

at the rate prescribed in Clause 5.3 of PPA. In our view, this contention cannot be accepted. Clause 5.3 of PPA reads as under :-

“The Company shall be permitted to use equivalent energy of 10 % of the installed capacity for startup, after inspection by the concerned officers of the Corporation and 115 % of such energy provided by the Corporation for startup purposes shall be deducted from the energy pumped into the Grid by the company for determining the amount to be paid by the Corporation to the company. If energy over and above the above requirement is drawn from the Grid, the same will be billed under the tariff applicable to HT industries (presently HT-2(A) of the Corporation”.

Therefore Clause 5.3 provides for payment at HT(2)(a) for the energy drawn over and above that drawn for start-up purposes. It was not the case of the petitioner that it has drawn the power between November 2006 and September 2007 for start up purpose when the present petition was filed. Now in the memo it is tried to state that the power was drawn for start up purpose. This cannot be accepted without any proof for the same.

11. Then only question remains to be considered is at what rate the petitioner has to be charged by the respondents for the energy utilized by it.

12. The petitioner along with the memo dated 29.06.2009 has produced invoices endorsed by Director (Procurement), State Power Procurement Coordination Centre, KPTCL and of PCKL and based on them has contended that prior to Open Access regime, KPTCL was adjusting the imported power against exported power and on the same basis the power drawn by them which now charged at Temporary Tariff at least be adjusted. Per contra which are contended by the respondents that the demand of temporary charges for the period November 2006 to September 2007 is In accordance with the Open Access Regulations and is therefore valid. It is further contended that the contention of the petitioner that imported power has to be charged at Rs.3.65 per KWh is not tenable.

13. In our considered opinion, it is not correct on the part of the respondents to contend that the power availed by the petitioner is liable to be charged at

temporary rates as per the Open Access Regulations. Clause 11(8) of Open Access Regulations on which reliance has been placed by the respondents is not applicable to the present case. The said regulation states that "*Charges for arranging back-up supply from the credit shall be by the open access customers in the event of failure of contract supply. In the cases of outages of generators supplying to a consumer of open access, stand by arrangement should be provided by the licensee on payment of tariff for temporary connection to that consumer as specified by the Commission*". It is not the case of the respondent that the power availed by the petitioner was on account of its plant outage and it has made standby arrangement to the open access consumer.

14. According to us, neither petitioner's contention is acceptable nor that of the respondent's. Both the claims are not properly based. However, the reasonable and equitable resolution will be to direct HESCOM to charge the power drawn by the petitioner at the HT 2(a) rates as there is a power supply agreement between HESCOM and the petitioner dated 28.01.2006.

15. The petition is therefore allowed in part and the respondents are directed as follows:

(1) For the power supplied from 18.10.2007 to 20.10.2007; 01.12.2007 to 11.12.2007 and 11.10.2008 to 26.10.2008, respondents shall pay at the rates provided in the PPA and applicable during the relevant period.

(2) For the power availed by the petitioner between November 2006 and September 2007, the respondents shall collect the charges at HT 2(a) tariff schedule then applicable.

Sd/-
(K.P. PANDEY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER