

No.N/47/08

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 18th June 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 31/2008

Between

M/s Sadashiv Sugars Ltd.
No.27, Section-63A
Navanagar
B A G A L K O T – 587 102.

... Petitioner

(Represented by its Advocate Sri Prabhuling Navadgi)

And

1. The Managing Director
Karnataka Power Transmission Corpn. Ltd.
Kaveri Bhawan, Kempegowda Road
Bangalore – 560 009

2. The Managing Director
HESCOM, Navanagar, P.B.Road
HUBLI -580 025

3. The Chief Engineer (Elec.)
State Load Despatch Centre
No.28, Race Course Road
BANGALORE – 560 009

....Respondents

(Represented by its Advocate Sri Sriranga)

1. The petitioner is a company incorporated under the provisions of Indian Companies Act, 1956 and has a cogeneration plant with an installed capacity of 15.5 MW. The petitioner had initially entered into a PPA with HESCOM on 16.10.2006 but the same became a void PPA as per the 2nd respondent, viz. HESCOM, invoking Clause 2.2 of the Agreement.
2. Thereafter the petitioner has been supplying energy to M/s Tata Trading Company through Open Access, for which the 3rd respondent had granted Open Access permission vide its communication dated 16.7.2008.

3. The petitioner, pursuant to Open Access permission between dates 5.11.2008 and 12.11.2008, provided schedules to supply energy on Open Access. Further, he had filed applications for grant of Open Access on a day ahead schedule basis for the period between 13.11.2008 and 30.11.2008, under the provisions of CERC (Open Access in Inter-State Transmission) Regulations, 2008. It is contended that applications were neither entertained nor Open Access was granted. Therefore in the absence of PPA with HESCOM and on account of non granting of Open Access the petitioner injected the energy generated to the grid. This supply of energy was between 13.11.2008 and 30.11.2008 for which no payment has been received from HESCOM though HESCOM utilized the same. It is stated that the entire power supply to the respondent including excess power supply made during Open Access will be in unscheduled power, for which payment has to be released by the respondent as per UI rates prevailing during the relevant time. The petitioner has invited attention to the observations of CERC in the petition by a similarly situated sugar plant, relevant extract of which is quoted below :

“Since co-generation is very efficient and renewable we would urge the concerned Karnataka utilities to formulate and account the absorption of the petitioner's injection into the State grid as UI till its injection is taken into the grid on a scheduled basis”

4. M/s KPTCL, the 1st respondent have filed their objections and submitted the following :
- i) Petitioner has received payments for the energy supplied during the month of November 2008 and the fact has been suppressed by him.
 - ii) The petitioner, having a co-generation plant with an installed capacity of 15.5 MW, entered into a PPA with the 2nd respondent on 16.10.2006 which was subsequently terminated by the 2nd respondent on 30.1.2008 invoking Clause 2.2 of the agreement.

- iii) Between January 2008 and November 2008, the petitioner supplied energy to M/s Tata Trading Company on the basis of Open Access permission availed for STOA and the tenure concluded between 12th and 15th November 2008.
 - iv) For the energy supplied to the extent of 20,24,840 KWh during the month of November 2008, the respondents have released payment of Rs.56,69,680/- at the rate fixed by this Hon'ble Commission @ Rs.2.80 per KWh.
 - v) In view of the Hon'ble Commission's Order dated 18.1.2008 fixing tariff for NCE units @ Rs.2.80 per KWh, the question of adopting UI rates does not arise.
 - vi) CERC Order, quoted in Para 9 of the petition, has no bearing on the facts of the present case and that payments for power supplied during the month of November 2008, as per the rates determined by the Hon'ble Commission, have already been made. Averments made regarding withholding of payments to the petitioner are only inaccurate.
 - vii) The petitioner herein has no locus standi to raise the issue of non-availability of Open Access since the person who sought OA has no grievance in this regard.
5. We have heard the counsels appearing for the petitioner as well as the respondents. Counsel for the petitioner has mainly argued that for the injected energy UI rates or at least @ Rs.6.50 per KWH should be paid as per Government of Karnataka Order No. EN 65 EEB 2008 dated 27.1.2009 for the co-generation plants.
6. Counsel for the respondents Sri Sriranga argued that they have already made payments to the petitioner @ Rs.2.80 per KWh for the energy supplied during November 2008 which is the rate fixed by the Commission and petitioner is not entitled either at UI rates or at Rs.6.50.

7. During the hearing on 26.3.2009 we had directed counsel for the respondents to furnish the average cost of short-term power procured by the respondent during the month of November 2008. In response the 1st respondent furnished a Memo dated 30.04.2009 giving details of average rate paid for co-generation units, who are supplying power to ESCOMs and not the details of short term procurement rates.
8. From the rival submissions made by the petitioner as well as respondents, the following aspects arise for consideration:
 - a. What is the rate of payment for the excess energy supplied during the scheduled period of Open Access, namely between 5.11.2008 and 12.11.2008 and
 - b. What is the rate of payment for the energy supplied during the period 13.11.2008 to 30.11.2008 during which time there was neither a PPA nor Open Access was granted.
9. As regards the period of 5.11.2008 to 12.11.2008, the petitioner has produced copy of KPTCL communication dated 16.7.2008 wherein KPTCL had informed that for granting Open Access both generator as well as trader should agree and sign the undertaking (terms and conditions) enclosed to the communication. This was furnished by the petitioner. It is seen that since Open Access is granted as per the undertaking taken and given by the generator as well as the trader, the undertaking is binding on both the parties.
10. Clause 16 of the undertaking is as follows :

“M/s Sadashiva Sugars Limited, shall agree to pay the UI charges at 105 % (for over-drawas / under generation) and 95 % (for under-drawals / over generation) of the UI rate at the periphery of regional entity. This has been done to facilitate dispute free energy accounting and settlement of deviations for intra-state entities located in the State where Intra-State ABT has not yet been implemented”
11. It is clear from Clause 16 cited above that for under-drawals / over generation, the petitioner is entitled for 95 % of the UI rate applicable at

- the regional level. Accordingly, during the period of scheduled energy supply, the petitioner is entitled for 95 % of the UI rate at the periphery of the regional entity, since Intra-State ABT is yet to be implemented in the State. Therefore, the respondent No.3, viz. – CE, Load Despatch Centre shall have to provide ABT billing details, 15 minute block-wise, and the associated UI account so that the billing and payment for the excess energy injected could be accounted and paid for accordingly to the generator.
12. As regards the period of injection during the days between 13.11.2007 and 30.11.2008 (both the days inclusive), when Open Access was sought but not granted, it is contended that though the trader had requested for grant of Open Access as per CERC Regulation in force for purchasing energy from the petitioner, the same was not granted by the respondents without any reasons and therefore UI rate has to be paid. In our considered view, non granting of Open Access does not automatically entitle the petitioner to inject energy into the respondent's grid without any schedule and demand payment at UI rates for energy injected nor does the responsibility automatically fall on the respondents to pay at UI rates. On the other hand, the respondents also cannot deny payment at a rate higher than the one fixed by the Commission having used the energy. This means the petitioner has to be paid for the energy injected into the grid when Open Access was not given. The question that remains is as to at what rate payment is to be made to the petitioner for this period.
13. Though the power injected by the petitioner has been utilized by the respondents, it is seen that there was no justification for the petitioner in injecting the power into the grid without schedule citing the reason that they were not granted Open Access. Similarly, the respondents were also not justified in not granting Open Access which would have enabled the petitioner to sell their power through Open Access. In the facts and circumstances of this case, we feel it appropriate that a via-media rate

between the rate of Rs.6.50 per KWh that has been fixed by the Government of Karnataka after detailed discussions with the Sugar Factory representatives and South India Sugar Mills Association for procurement of power under special circumstances for the period of January to May 2009 with fuel composition of 1:2 (Bagasse:Coal) and the rate determined by the Commission for similar plants at Rs.2.80 has to be paid. Since there is no subsisting agreement between the parties for Rs.2.80 and that Rs.6.50 has been fixed by Government of Karnataka only for plants which use Bagasse and Coal in the ratio of 1:2 the average rate of Rs.4.65, in our opinion, is justifiable to be paid to the petitioner.

14. Accordingly we allow this petition in the following terms :
- 1) For the period between 5.11.2008 to 12.11.2008, for UI payable to petitioner @ 95 % and UI receivable by the respondent @ 105 % of the UI rates applicable at regional periphery in regard to over injection / under injection respectively, accounting would be carried out as per Regional Energy accounting principles, 15 minute block-wise. Respondent No.3 shall prepare the energy account on the above lines and payments due to the petitioner, if any, shall be released as per the account within four (4) weeks thereafter.
 - 2) For the period between 13.11.2008 to 30.11.2008, for the unscheduled power injected to the respondent's grid, the petitioner shall be paid @ Rs.4.65 per KWh within four (4) weeks from the date of this order.

Sd/-
(K.P. PANDEY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER

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