

No.N/62/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 6th January 2011

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

Case No. OP 36/2010

Between

Bangalore Electricity Supply Company Limited
K.R. Circle
BANGALORE – 560 01
(Represented by Assistant Law Officer, BESCO)

... Petitioner

And

M/s. Nuziveedu Seeds Ltd.,
No.60/1, Residency Road, II Cross
BANGALORE – 560 025
(Represented by its Advocate Sri Prabhuling Navadgi)

... Respondent

1. Bangalore Electricity Supply Company Limited (BESCO) had addressed a letter to the Commission on 16.7.2010 seeking a clarification from the Commission on the rates to be adopted in the PPA to be entered by it with M/s. Nuziveedu Seeds Limited for the additional 25.5 MW windmill set up as per the permission granted by Government of Karnataka dated 29.8.2007.

2. According to BESCO, since M/s. Nuziveedu Seeds Limited has an existing PPA dated 2.1.2009 for 25.5 MW wind project and the capacity of another 25.5 MW which has been sanctioned by the Government is only an additional capacity, a supplemental agreement only has to be signed by the generator with same rate of Rs.3.40 per unit and not a new PPA with Rs.3.70 per unit.

3. As against this, M/s. Nuziveedu Seeds Ltd., has contended that a new PPA with Rs.3.70 rate as per the Commission's Order dated 11.12.2009 has to be signed on the ground that the new capacity has come independently of the earlier one and present PPA is being signed after 1.1.2010.

4. As there is a dispute between the parties on the rate to be adopted in the PPA for the additional capacity of 25.5 MW, a notice was issued to M/s. Nuziveedu Seeds Limited on 4.8.2010 to appear and make their submissions. Accordingly Sri Prabhuling Navadgi, Advocate has appeared for M/s. Nuziveedu Seeds Limited and has also filed a written submission dated 26.8.2010.

5. We have heard the Assistant Legal Officer for BESCO and Sri Prabhuling Navadgi for M/s. Nuziveedu Seeds Ltd., and considered their respective submissions. We have also perused the documents produced by both the parties in support of their respective contentions and the relevant orders of this Commission.

6. The point of dispute is whether the additional windmill installed by M/s. Nuziveedu Seeds Limited of 25.5 MW has to be treated as a new project or as part of the existing plant for which PPA has already been executed on 2.1.2009.

7. There is no dispute between the parties that M/s. Nuziveedu Seeds Limited has set up a windmill project of 25.5 MW and has entered into a PPA for supply of electricity generated by it with BESCO on 2.1.2009. There is also no dispute that the tariff agreed to between the parties in this PPA is Rs.3.40 per unit without any escalation for the entire period of ten (10) years of the agreement. Further, it is seen that M/s. Nuziveedu Seeds Limited has set up an additional capacity of 25.5 MW duly obtaining the permission from the Government for enhancement on 29.8.2007.

8. It is the contention of BESCO that since the additional capacity is adjacent to the existing project and the G.O. sanctioning the additional capacity states that it is an addition to the existing capacity, therefore the additional capacity has to be treated as part and parcel of the existing project

and shall be governed by the same terms and conditions including the tariff contained in the PPA already executed on 2.1.2009. Otherwise BESCO will suffer commercial loss.

9. Per contra it is contended on behalf of M/s. Nuziveedu Seeds Limited that though the additional plant is in the vicinity of the existing plant it is independent and separate as separate infrastructure has been developed for the same and there is a separate metering arrangement for this additional capacity. Therefore a new and separate PPA has to be signed for this additional plant with the rate determined by the Commission in its order dated 11.12.2009, which is Rs.3.70 per unit.

10. In our considered opinion, the stand taken by the generator deserves to be accepted. Admittedly the additional capacity has come up subsequent to the earlier one and the PPA that has been executed on 2.1.2009 between the parties covers only 25.5 MW sanctioned in the earlier G.O. dated 16.12.2002 and does not contemplate the additional capacity of another 25.5 MW. Merely because the Government Order states that the capacity is enhanced from 25.5 MW to 51 MW, it cannot be said that the new capacity created becomes part of the earlier plant and only a supplementary PPA has to be signed. Further, as per the Commission's Order, all those PPAs which will be submitted after 1.1.2010 will have a tariff of Rs.3.70 per unit. Admittedly no PPA is signed for the additional 25.5 MW capacity as of now. Therefore the PPA, which is to be signed, will have to have Rs.3.70 per unit as the rate.

11. In the light of the above discussion, we direct BESCO to enter into a PPA incorporating the new tariff determined by the Commission vide its Order dated 11.12.2009 and submit the same for approval.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER