

No.N/45/06

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 26th August 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 40/2006

Between

M/s. Davangere Sugar Company Limited
No. 73/1, PB No.312, Shamanur Road
D A V A N G E R E – 577 004

(Represented by Sri Prabhuling Navadgi, Advocate)

.... Petitioner

Vs.

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

2. The Managing Director
BESCOM, K.R. Circle
BANGALORE – 500 001

3. State Power Procurement Coordination Centre
Government of Karnataka
'A' Block, Kaveri Bhavan
BANGALORE – 560 009

(Represented by its Advocate Sri Sriranga)

... Respondents

1. This is a petition filed by petitioner company M/s. Davangere Sugar Company Limited. The petitioner has prayed for –

- (1) a direction to pay a sum of Rs.25,28,967/- with interest at 24 %;
- (2) to issue a direction to the respondent corporation to pay and continue to pay the rate per unit as agreed between the parties under the Power Purchase Agreement (PPA) dated 17.01.2002 for every unit exported in excess to 20 MW and to issue such other directions as deemed fit by this Hon'ble Commission.

2. The undisputed facts are that the petitioner has a cogeneration plant of 24 MW at Davangere. The petitioner company entered into a PPA dated 17.01.2002 to sell all surplus electricity and the respondents agreed to purchase the same. The PPA came to be modified by a Supplemental Agreement dated 19.02.2005, which modified Article 5 of the main PPA (on Rates and Charges). The main PPA however remained intact except for amendment to Article-5. It is undisputed that the petitioner was supplying the power and the respondents were receiving the same and paying for the same at the PPA rates at the relevant time.

3. It is alleged by the petitioner that when it submitted the invoice on 01.04.2006 and 01.05.2006 for the electricity supplied to the extent of 22 MW and 21 MW, the respondents unilaterally and illegally restricted the payment to 20 MW on the ground that they are required to take only 20 MW during off-season period and 16 MW during season period.

The petitioner's contention is that the respondents are bound to pay the electricity generated and supplied beyond 20 MW also at the agreed PPA rates as PPA provides for payment of all electricity supplied.

4. The respondents have filed their statement of objections dated 29.11.2006. In the objections though supply of power is not disputed, it is contended that there was no obligations on their part to either off-take

the power in excess of 20 MW or pay for the same at the tariff fixed in the PPA. If at all any payment has to be made for the power supplied in excess of 20 MW, the same has to be mutually agreed upon by the parties and not automatically at PPA rates.

The respondents have relied upon the definition of exportable capacity provided in the PPA dated 17.01.2002 in their support. The said definition reads as under :

“Exportable Capacity means the surplus available electricity generated by the project after providing for captive electricity consumed by the company which shall be normally 16 MW during the season and 20 MW during off-season”.

5. The main dispute between the parties is whether the respondents have a right to restrict the payment only to 20 MW during off-season and 16 MW during season period relying upon the definition of ‘exportable capacity’, even though they have utilized the power supplied and realized the price of the same from its consumers through tariff.

6. In our view the stand of the respondents is untenable. A similar stand of the respondents is already negatived in OP 12/2007 M/s NSL Sugar Limited (which was earlier called M/s SCM Sugars Limited) which was admittedly a similar case on facts. This Commission in the said case on 10.07.2008 has held as follows :

“In case of M/s. SCM Sugar Mills and M/s. Davangere Sugar Mills, the PPAs were entered earlier to 18.08.05. In these two cases the Director (Procurement) SPPCC has requested for removal of restriction about season and off season from pumping of energy

into the grid by the co-generation power plants vide letter No.SPPCC/A1/20/05-06/6971-72 dated 12.9.06. He has further stated that KPTCL/ESCOMs do not have any objection if the condition of season and off season is relaxed and the co-generation sugar mills are allowed to pump energy into the grid up to the maximum of their contracted capacity.

The Director, SPPCC, accordingly proposed amendments to these PPAs to bring into the conformity with the approved model PPA. He was directed by the Commission office letter No.S/03/0/1943 dated 27.12.2006 that the respective parties (ESCOMs) to the PPA may be informed to propose the amendments/modifications to the PPA for consideration by the Commission. It is clear from the amendment proposed by the SPPCC that KPTCL / ESCOMs agreed to relax the restriction of season and off season. But the proposal for amendment have not been received from the respective ESCOMs even though they have already utilized the energy pumped in by the SCM Sugar Mills. The highest exportable capacity being 24 MWs the Petitioner has exported only 15 MW well within 24 MWs. The Commission's view is that the energy pumped at 15 MWs cannot be considered here as excess as the plant's higher exportable capacity is 24 MWs and 15 MWs export is well within the capacity and hence this energy cannot be considered as surplus. The energy exported above 24 MWs shall be considered as excess as per the model PPA approved on 18.8.2005.

It is noted that the Petitioner referred to the Clause 4.2 of the Power Purchase Agreement.

Clause 4.2(iii) of the Agreement reads as follows:

“Corporation agrees–subject to system constraints to off take and purchase all the exportable capacity made available by the Company at the delivery point.”

The Petitioner’s contention is that there is a flexibility in the Clause to purchase all the exportable capacity and is seeking the Commission to issue directions to the Respondents to release the payment for the energy supplied exceeding 24 MWs during off season and more than 13 MW during the season. The Commission is of the view that the Petitioner is entitled to export up to the overall exportable capacity of 24 MWs and not exceeding 24 MWs.

Under the circumstances, the Respondents are liable to release the Petitioner all the charges as per Article 5.1 of the valid PPA for the 15 MWs of power exported to the Respondents within one month.

So, Ordered”

7. The appeal filed against the above order by 2nd Respondent has also been rejected by the Hon'ble Appellate Tribunal vide its Order dated 26.05.2009.

8. Therefore, duly following the reasonings contained in this Commission's Order dated 10.07.2008, we allow this petition also in the same terms. Consequently the respondents are directed to pay for all the electricity supplied to the respondents without imposing a restriction at the rate provided in the PPA and applicable relevant period within a period of four weeks from today.

(K.P. PANDEY)
CHAIRMAN

(VISHVANATH HIREMATH)
MEMBER

(K.SRINIVASA RAO)
MEMBER