

**No.N/73/10**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 3<sup>rd</sup> March 2011**

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

**Case No. OP 44/2010**

**Between**

M/s Paschim Hydro Energy Private Limited  
25, 1<sup>st</sup> Floor, 2<sup>nd</sup> Cross, CSI Compound  
BANGALORE – 560 027  
(Represented by M/s. Crest Law Partners)

... Petitioner

**And**

Bangalore Electricity Supply Company Limited  
K.R. Circle  
BANGALORE – 560 001  
(Represented Assistant Law Officer, BESCOM)

... Respondent

1. In this petition the petitioner has sought the Commission's direction to BESCOM for making payment for the power generated and supplied but not paid for on the ground that the same is in excess of the PPA.

2. The respondents have put in appearance and have contended that they are not liable to pay for the energy generated and supplied in excess of the contracted capacity. If at all they are liable to pay, it cannot be at the contracted rates.

3. We have considered the submissions of both the parties and facts and perused the documents produced.

4. In our view, the facts and contentions raised in this petition are similar to those raised in OP 19/2008 dated 12.3.2009. In the said case, this Commission after considering the terms of the PPA has taken the view that the purchasing licensee has to pay to the generator for all the energy delivered at the rate provided in the PPA.

5. Duly following the reasoning adopted in OP 19/2008, we have to hold that the respondent has to pay the generator for the so called excess energy at the very rate provided in the PPA.

6. The counsel for the petitioner has also contended that the respondent is also liable to pay interest as provided in the PPA for the delayed payment at least from the date this Commission has taken a view that all energy delivered shall be paid at the PPA rates.

7. Per contra it is contended by the Assistant Law Officer, BESCO that no interest is payable to the petitioner as there was a dispute regarding the rate at which the excess energy had to be paid which is to be resolved by the orders of the Commission in the present case. Any amount payable as a result becomes due only on such orders being passed.

8. We do not appreciate the stand of BESCO that it was not liable to pay for the excess energy even though in its own earlier case this Commission had taken a view that all energy delivered under a PPA has to be paid for at the rate provided in the PPA. The respondent, being a Government Company, should be well advised that this Commission need not keep passing the same orders in

every case and it is duty bound to follow the view taken by this Commission in a similar case unless the same is modified or reversed by any appellate / higher forum. At least in future we hope that the respondent BESCO will keep this in mind and avoid unnecessary litigation.

9. As regards the interest claimed by the petitioner, we do not think that interest should be ordered to be paid for the period earlier to the filing of the present petition, as the petitioner has not raised any claims in this regard earlier as is evident from the correspondence produced at P-7 to 11. Therefore, interest shall be payable on the amount not paid only from the date of filing of this petition.

10. This petition consequently stands allowed in terms of the above. The respondent shall release the payments with interest as provided in the PPA effective from the date of filing of this petition within a period of two months from the date of this order.

Sd/-

(M.R. SREENIVASA MURTHY)  
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)  
MEMBER

Sd/-

(K. SRINIVASA RAO)  
MEMBER