

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BANGALORE**

Dated : 29th May, 2014

- | | |
|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri H.D. Arun Kumar | Member |
| 3. Sri D.B. Manival Raju | Member |

**I.A.No.1/2013
IN
OP No.12/2012**

BETWEEN :

Ugar Sugar Works Ltd.
Mahaveernagar
SANGLI – 416 416 ..
[Represented by Shri Prabhuling K. Navadgi, Advocate]

PETITIONER

AND:

- 1) Karnataka Power Transmission Corporation Limited
K.R. Circle
Cauvery Bhavan
BANGALORE – 560 009
- 2) The Chief Engineer
State Load Despatch Centre
Ananda Rao Circle
BANGALORE – 560 009
- 3) Gulbarga Electricity Supply Company Limited
Station Road
GULBARGA – 585 101
- 4) Bangalore Electricity Supply Company Ltd.
K.R. Circle
BANGALORE – 560 001
- 5) Mangalore Electricity Supply Company Limited
Paradigm Plaza, 4th Floor
A.B. Shetty Circle
MANGALORE – 575 101

- 6) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
HUBLI – 597 117
- 7) Chamundeshwari Electricity Supply Corporation Limited
No.927, L.J. Avenue
New Kantharaj Urs Road
Saraswathipuram
Mysore – 570 009 ..

RESPONDENTS

[Respondents represented by M/s. Justlaw, Advocates]

1) The Applicants / Respondents 3 to 7 (ESCOs) have filed I.A.No.1/2013 in OP No.12/2012 for rectification of the final Order dated 17.10.2013 passed by this Commission in the above case.

2) The Order dated 17.10.2013 passed by this Commission in the above case is as follows :

“Case called. Counsel for both parties present. Counsel for Respondents files statement confirming that 18,86,000 KWhr of energy has been injected during the period when NOC was delayed and admits that as per earlier orders of this Commission in similar cases, generic tariff of Rs.3.59 and Rs.3.90 is payable for the energy. Respondents shall have the payments made within two months.

Disposed of accordingly.”

3) Applicants / Respondents 3 to 7 had filed a Memo on 17.10.2013 giving the details of the unscheduled energy injected into the State Grid during the period between 1.12.2009 and 18.11.2011, at different stretches, as shown below:

Sl.No.	Period of Pumping	No.of Units
1.	01.12.2009 to 03.12.2009	1,71,000
2.	01.02.2010 to 06.02.2010	5,26,000
3.	05.05.2011 to 08.05.2011	4,45,000
4.	11.11.2011 to 18.11.2011	7,44,000
	Total	18,86,000

4) Applicants / Respondents 3 to 7 had also filed another Memo on 17.10.2013 stating that they intended to place on record copies of the following orders :

- (a) Order dated 29.3.2012 in OP No.4/2011 passed by this Commission;
- (b) Order dated 27.9.2012 in Appeal No.140/2012 passed by the Hon'ble Appellate Tribunal for Electricity (ATE) in the case of *Parrys Sugar Industries Limited -Vs- KERC and others*;
- (c) Order dated 24.1.2013 in Appeal No.172/2012 passed by the Hon'ble ATE in the case of *M/s. BESCO -Vs- M/s.Reliance Infrastructure Ltd., and another*;

5) The Petitioner - Ugar Sugar Works Ltd., had filed the above case, viz., OP No.12/2012 seeking payments towards the energy injected into the State Grid at

different periods, and utilized by the ESCOMs, without there being any schedule by the State Load Despatch Centre (SLDC).

6) In similar cases, after contest, this Commission had allowed compensation at minimum generic tariff applicable for the relevant period. In view of this settled position of law, the Applicants claim that this Commission suggested to the ESCOMs to make payments for the unscheduled power that was injected into the State Grid by the Petitioner and utilized by the individual ESCOMs. Further, they also claim that in view of the settled position of law, as decided in different cases, they agreed with the suggestion made by this Commission and filed the two Memos referred to above.

7) It is pleaded by the Applicants that in the Order dated 17.10.2013 passed by this Commission in the above case, an error has crept in, inasmuch as the tariff payable should have been mentioned as Rs.2.80 per unit for the energy injected into the State Grid during the period between 1.12.2009 and 3.12.2009, and as Rs.3.59 per Unit for the energy injected into the State Grid during the periods between 1.2.2010 and 6.2.2010, 5.5.2011 and 8.5.2011, and 11.11.2011 and 18.11.2011, instead of Rs.3.59 per Unit and Rs.3.90 per Unit, respectively. Therefore, the Applicants claim that the rate of tariff mentioned in the said Order does not reflect the true intention of the parties or the Commission in the matter.

8) Opposing the contentions raised by the Applicants in I.A.No.1/2013, the Petitioner contended that the suggested modification of the Order goes into the

merits of the case and the same is impermissible and that the Order in question was passed after hearing both the parties and the Applicants had admitted that they are liable to pay the tariff at the rate mentioned in the said Order, and that the Applicants having chosen not to appeal against the said Order, the present Application is not maintainable, and this Commission has become *functus officio* and therefore lacks jurisdiction to entertain the present Application.

9) We have heard the submissions made by counsel for both the parties, who have reiterated their respective contentions made in the pleadings.

10) The following points would arise for our consideration :

(1) Whether the present Application, viz., I.A.No.1/2013, is maintainable in law?

(2) If so, what Order?

11) After considering the submissions of the parties and the records, our findings on the above points are as follows :

Point No.1 :

12) The Application filed on 10.12.2013 is within the time stipulated for filing a Review Petition, as required under Regulation 8 of the KERC (General and Conduct of Proceedings) Regulations, 2000 (hereinafter referred to as the 'G&C

Regulations'). The scope of review is wider than the scope of an Application under Section 152 of the Code of Civil Procedure. The reliefs that could be granted under Section 152 of the Code of Civil Procedure can be granted in a Review Proceedings, if proper grounds are made out for the same. An application for review is to be filed within a period of ninety days from the date of passing of the Order, but there is no time limit for seeking the relief under Section 152 of the Code of Civil Procedure. Hence, in the case on hand, the Application filed by the Applicants is maintainable. Accordingly, Point No.1 is answered in the affirmative.

Point No.2 :

13) Now, we have to examine whether the Applicants have made out a case for rectification of the Order dated 17.10.2013 passed by this Commission in the above case. It is not in dispute that OP No.12/2012 was filed by the Petitioner claiming compensation for the electricity injected into the State Grid, and utilized by the ESCOMs, without there being any schedule for such injection. The said claim was contested by SLDC and KPTCL, who were Respondents 1 & 2 in the case. The Petitioner has not disputed the claim of the Applicants, that the Commission was of the view that the matter did not merit adjudication in light of several Judgments of this Commission and the Hon'ble ATE with respect to the same controversy, and thereby suggested the Applicants to make payments for the unscheduled power at the rate as allowed in similar earlier matters. The Petitioner has also not disputed filing of the Memos by the Applicants indicating

the total quantity of the power injected and utilized, and filing of copies of certain decisions of this Commission and the Hon'ble ATE with respect to the quantum of compensation payable for the relevant period.

14) This Commission, by Order dated 18.1.2005, determined the generic tariff for Co-generation Projects as Rs.2.80 per Unit for the base year of the Control Period, with certain escalations for subsequent years. The tariff period was ten years from Commercial Operation Date (COD) and the control period for revision of the tariff was five years. This Order was made applicable to all the Power Purchase Agreements (PPAs) filed before this Commission on or after 10.6.2004.

15) Subsequently, this Commission, by Order dated 11.12.2009, determined the generic tariff for Co-generation Projects as Rs.3.59 per Unit for the base year of the Control Period, with certain escalations for the subsequent years. The tariff period was ten years from the date of signing of the PPA and the control period for revision of the tariff was five years. This Order was made applicable to all the PPAs submitted on or after 1.1.2010.

16) The generic tariff for Co-generation Projects determined by this Commission at Rs.3.59 per Unit, as per the Order dated 11.12.2009, was revised to Rs.3.90 per Unit, as per the Order dated 29.3.2012 of this Commission, pursuant to the directions issued by the Hon'ble ATE in Appeal No.148/2010. In paragraph-26 of the Order dated 29.3.2012 of this Commission, it is stated as follows :

“Adopting a capital cost of Rs..4.30 Crores / MW, the tariff for electricity generated by co-generation plants is re-fixed as below and ESCOMs shall adopt the same while executing the PPAs, hereafter.”

Below the above-mentioned paragraph-26, the revised tariff rates have been given. The tariff so determined for the base year is Rs.3.90 per Unit. Subsequently, in OP No.46/2012, in the case of *Parrys Sugar Industries Ltd. –Vs- Hubli Electricity Supply Company Ltd.*, by majority Order dated 7.12.2013, this Commission has made it clear that the revised tariff of Rs.3.90 per Unit for the base year for Co-generation Projects was made applicable to the PPAs submitted for approval as per the Commission's earlier Order dated 11.12.2009. From the above developments, it can be said that the rates of generic tariff determined by this Commission for Co-generation Projects by its Order dated 11.12.2009 are deemed to have been revised at the rates stated in the Commission's subsequent Order dated 29.3.2012, the other terms of the Order dated 11.12.2009 being unaltered.

17) It is not in dispute that the Petitioner had injected unscheduled power into the State Grid for the periods from 1.12.2009 to 3.12.2009, 1.2.2010 to 6.2.2010, 5.5.2011 to 8.5.2011 and 11.11.2011 to 18.11.2011. The generic tariff as determined by this Commission for Co-generation Projects for the period between 1.12.2009 and 3.12.2009 was Rs.2.80 per Unit, and for subsequent periods between 1.2.2010 and 6.2.2010, 5.5.2011 and 8.5.2011, and 11.11.2011

and 18.11.2011 was Rs.3.90 per Unit, as observed in the previous paragraphs. The Applicants-ESCOs have contended that for the period between 1.2.2010 and 18.11.2011, the minimum generic tariff applicable was Rs.3.59 per Unit, as per the Commission's Order dated 11.12.2009. This contention cannot be accepted, as the Order dated 11.12.2009 was revised in respect of generic tariff for Co-generation Projects, by this Commission's Order dated 29.3.2012 and these revised rates are deemed to have been substituted in place of the previous rates.

18) In the earlier similar cases, this Commission had allowed compensation for the electricity injected into the State Grid without any schedule, and utilized by the ESCOs, at the rates of minimum generic tariff determined by this Commission for Co-generation Projects and prevailing at the relevant point of time. Therefore, obviously this would have been the intention of the Commission, as well as the parties in the present case, with regard to rate of compensation to be awarded for the electricity injected into the State Grid without schedule.

19) On perusal of the Order dated 17.10.2013 of this Commission in the above case, it is clear that the Order does not reflect the correct rates of generic tariff for Co-generation Projects, for payment of compensation for the different periods in question.

20) In view of the above-mentioned facts and circumstances, we are of the opinion that Order dated 17.10.2013 of this Commission needs to be modified to

reflect the above correct position with regard to payment of compensation.

Accordingly, we order as follows :

ORDER

In modification of the Order dated 17.10.2013 passed in the above case, it is hereby ordered that the Petitioner shall be paid compensation for the electricity injected into the State Grid, at the minimum generic tariff of Rs.2.80 (Rupees Two and Paise Eighty only) per Unit for the period between 1.12.2009 and 3.12.2009, and at the minimum generic tariff of Rs.3.90 (Rupees Three and Paise Ninety only) per Unit for the subsequent periods between 1.2.2010 and 6.2.2010, 5.5.2011 and 8.5.2011, and 11.11.2011 and 18.11.2011, by the ESCOMs, in proportion to the electricity received and utilized by them during the above periods.

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

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER