

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

Dated : 18TH September, 2013

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

OP No.12/2013

BETWEEN :

Shree Renuka Sugars Limited
BC 10-5, Havelock Road
Cantonment
BELGAUM – 590 001 .. **PETITIONER**
[Represented by M/s. Shridhar Prabhu Associates, Advocates]

AND

Hubli Electricity Supply Company Limited
Navanagar, P.B. Road
Hubli - 580 025 .. **RESPONDENT**
[Represented by M/s. Induslaw, Advocates]

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1) This Petition has been filed by the Petitioner, which is a generating company, praying for payment for the energy received by the Respondent-Hubli Electricity Supply Company Limited (HESCOM) as per Annexure-P4 enclosed to the Petition.

2) On Notice, the Respondent has appeared through its counsel and has filed its Statement of Objections on 18.7.2013.

3) The Petitioner, in support of its prayer for payment for the electricity supplied to the Respondent, has submitted as follows :

(a) The Petitioner had a Power Purchase Agreement (PPA) dated 10.2.1999 with the Respondent and the same came to an end by efflux of time, with effect from 9.2.2009.

(b) On expiry of the PPA, the Petitioner filed a Petition in OP No.13/2010 before this Commission for determination of tariff, both for season and off-season periods, and impleaded all the ESCOMs as parties. This Commission, pending hearing of the Petition on merits, passed an Interim Order on 8.12.2010 as follows :

“Case called. Counsel for both parties present. Counsel for HESCOM confirms that HESCOM will receive supply of energy to be supplied from the petitioner's units as an interim measure at rates fixed by the Commission's Order for cogen units dt.11.12.2009 till the Commission disposes of the present petition. Ordered accordingly. Call on 30.12.2010.”

(c) On 2.6.2011, it was brought to the notice of the Commission by the learned counsel for the Petitioner that the Petitioner is entitled to be paid Rs.4.14 per Unit for the electricity supplied, whereas the Respondent was paying Rs.3.59 per Unit. This Commission, after hearing the parties, ordered that, “pending the issue being settled, payments offered shall be accepted,” i.e., at Rs.3.59 per Unit.

d) The Petitioner filed one more Interim application on 28.6.2011 seeking a direction to the Respondents-HESCOM and GESCOM to purchase electricity generated by the Petitioner. However, no order on this came to be passed.

(e) When the dispute, including the Interim Application filed by the Petitioner was pending, the Petitioner on 3.1.2013 filed a Memo seeking leave of this Commission to withdraw the Petition.

4) It is not in dispute that during the pendency of the Petition, OP No.13/2010, the Petitioner supplied electricity to the Respondent-HESCOM and the Respondent-HESCOM paid for the same at the rate of Rs.3.59 per Unit as per the Interim Order referred to above.

5) It is the case of the Petitioner that payments made by the Respondent-HESCOM at Rs.3.59 per Unit were not according to the Commission's Order dated 11.12.2009 and as per the said Order, it was entitled to be paid at the rate of Rs.4.44 per Unit, having completed 10 years.

6) The Respondent-HESCOM, per contra, has contended that the Petitioner was not entitled to the 10th year tariff of Rs.4.44 per Unit for the electricity supplied during the pendency OP No.13/2010, as the 10th year tariff prescribed by the Commission in its Order dated 11.12.2009 applied only to those cases where the PPA was for 20 (twenty) years and the Plant had completed 10 (ten) years. According to it, there is no dispute that the Petitioner's PPA was only for 10 (ten)

years, and not for 20 (twenty) years, and the same expired by efflux of time on 9.2.2009. Further, once the PPA ceased to exist, there was no obligation for the Respondent-HESCOM to purchase electricity under the PPA, nor was it obliged to pay at the rate of Rs.4.44 per Unit, the 10th year tariff in line with the Commission's Order dated 11.12.2009 for reasons explained supra. It is further contended by the Respondent that the Interim Order passed by this Commission in OP No.13/2010 meant only the initial tariff determined in the said Order, which was Rs.3.59 per Unit and not the 10th year tariff. It is also contended by the Respondent-HESCOM that it had made it clear that it will purchase electricity only at the rate of Rs.3.59 per Unit and the Petitioner was free to opt for open access, in case the rate of Rs.3.59 per Unit was not acceptable to it. In view of this, the claim of the Petitioner that it should be paid at the rate of Rs.4.44 per Unit is not tenable.

7) We have considered the rival submissions and the documents produced by both the parties in the case.

8) The fact that the Petitioner had filed OP No.13/2010 before this Commission, the Commission had passed an Interim Order dated 8.12.2010 is not in dispute. Further, it is not in dispute that the Petitioner withdrew the Petition before the same was decided on merits, and the payment made by Respondent-HESCOM, during the pendency of the dispute, at Rs.3.59 per Unit is also not in dispute.

9) The limited dispute between the parties is, 'Whether as per the Interim Order dated 8.12.2010 of the Commission passed in OP No.13/2010 and the Commission's Order dated 11.12.2009, the Petitioner was entitled for payment at the rate of Rs.3.59 per Unit or Rs.4.44 per Unit for all the electricity supplied to the Respondent-HESCOM during the pendency of the Petition?'

10) As the entire dispute is on the understanding of the Interim Order dated 8.12.2010 passed by this Commission in OP No.13/2010, we have looked into the Commission's records pertaining to OP No.13/2010.

11) As per the records of OP No.13/2010 maintained in the Registry of the Commission, the present Petitioner had filed OP No.13/2010 for determination of Project-specific tariff to its Plants at Rs.4.68 per Unit. The Petitioner in the said Petition had also filed an Application dated 29.11.2010 seeking an interim direction to the Respondent-HESCOM to receive the electricity at Rs.3.83 per Unit. This Commission, on 8.12.2010, passed an Interim Order, by recording the submissions of the Respondent-HESCOM that it will receive electricity from the Petitioner's Plants, as an interim measure, at the rate fixed by the Commission by its Order dated 11.12.2009 for Co-generation Units. After passing of this Interim Order, in response to the Petitioner's invoice dated 27.1.2011 raised for the electricity supplied at Rs.4.45 per Unit, the Respondent-HESCOM, by its letter dated 14.2.2011, informed the Petitioner that the rate at which the bills have been raised is not acceptable to it and that it is willing to pay only at the rate of Rs.3.59 per Unit to the Petitioner, which is the tariff applicable according to it. On

receipt of the Respondent-HESCOM's letter dated 14.2.2011, the Petitioner filed a Memo dated 24.3.2011 before this Commission seeking a suitable direction to the Respondent-HESCOM for purchase of electricity at Rs.4.45 per Unit. Further, the Petitioner filed one more Interim Application on 28.6.2011 seeking a direction to the Respondent-HESCOM to purchase electricity at Rs.4.45 per Unit, duly producing the letter dated 3.6.2011 issued by the Respondent-HESCOM to the effect that it (Respondent) will purchase electricity only at Rs.3.59 per Unit, subject to the condition that the Petitioner withdraws the Petition, OP No.13/2010. However, before the Petition was decided on merits, the Petitioner on 3.1.2013 withdrew the Petition itself with the leave of the Commission.

12) It is well-settled law that any Interim Order passed during the pendency of the Petition merges with the final Order, once the same is passed. In the present case, the Interim Order dated 8.12.2010 of this Commission passed in OP No.13/2010, to purchase electricity at the Commission-determined tariff during the pendency of the Petition, therefore, got merged with the final Order dated 3.1.2013 dismissing the Petition. In other words, this Commission did not determine any rate for the electricity supplied by the Petitioner to the Respondent-HESCOM during the pendency of the Petition. Therefore, we are of the view that the Petitioner's claim for payment at the rate of Rs.4.44 per Unit for the electricity supplied to the Respondent-HESCOM after dissolution of the Interim Order, is untenable and has to be rejected.

13) Even under the Commission's Order dated 11.12.2009, the Petitioner was not entitled to be paid at Rs.4.44 per Unit. Under this Order, payment of the 10th year tariff was applicable only to the PPAs which were for 20 (twenty) years. Admittedly the PPA dated 10.2.1999 of the Petitioner was only for 10 (ten) years and had already expired on 9.2.2009. Further, the Respondent-HESCOM was under no obligation to purchase electricity, leave alone at what rate, in the absence of a PPA.

14) As observed above, there is no agreement between the parties for supply of electricity and the rate which has to be paid for the electricity supplied. In the absence of an agreement between the parties, the principles of Contract Act enunciated under Section 70 have to be applied, as the supply of electricity was not intended to be free and the electricity supplied has been utilized by the Respondent. However, the Respondent has agreed to pay Rs.3.59 per Unit and has in fact paid at that rate. Therefore, in our view, the payment made by the Respondent to the Petitioner is in order and the claim of the Petitioner for higher rate cannot be acceded to.

15) For the foregoing discussions, the Petition is liable to be rejected and accordingly stands dismissed.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K.SRINIVASA RAO)
MEMBER