

**No.: N/39/14**

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

**Dated : 25<sup>th</sup> February, 2016**

**Present:**

Sri M.K. Shankaralinge Gowda	Chairman
Sri H.D. Arun Kumar	Member
Sri D.B. Manival Raju	Member

**OP No.16 / 2014**

**BETWEEN:**

Karnataka Power Corporation Limited,  
'Shakthi Bhavan', No.82,  
Race Course Road,  
Bengaluru – 560 001.

.. **PETITIONER**

*[Represented by Pragati Law Chmbers, Advocates]*

**AND:**

- 1) Bangalore Electricity Supply Company Limited,  
K.R. Circle,  
Bengaluru - 560 001.
- 2) Mangalore Electricity Supply Company Limited,  
Paradigm Plaza, A.B. Shetty Circle,  
Mangaluru - 575 001.
- 3) Hubli Electricity Supply Company Limited,  
P.B. Road,  
Navanagar,  
Hubballi - 580 025.
- 4) Gulbarga Electricity Supply Company Limited,  
Railway Station Main Road,  
Kalaburagi - 585 101.

- 5) Chamundeshawari Electricity Supply Corporation Limited,  
No.29, Kaveri Grammeena Bank Road,  
Vijayanagar, 2<sup>nd</sup> Stage,  
Mysuru – 570 019

.. **RESPONDENTS**

*[Represented by ALMT Legal, Advocates]*

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### **ORDERS**

- 1) In this Petition, the Petitioner has prayed for modification of the tariff norms relating to the Station Heat Rate (SHR) and the Operation & Maintenance (O&M) expenses, as per actuals, instead of the existing ones, as agreed in the Power Purchase Agreement (PPA) dated 24.5.2010.
- 2) The material facts leading to the filing of the present Petition may be stated as follows :
- (a) The Petitioner is a Government of Karnataka Undertaking, registered under the Companies Act, 1956, having its Registered Office at No.82, Shakthi Bhavan, Race Course Road, Bengaluru-560001. The Petitioner is owning and operating Hydro-Electric and Thermal Power Generating Stations in the State of Karnataka. It has established the Raichur Thermal Power Station (RTPS), having seven Units of 210 Mega Watts (MW) capacity each. Units 1 to 4 of the RTPS have been commissioned prior to 29.9.1994, on different dates. Units 5, 6 and 7 were commissioned on

- 15.6.1999, 9.9.2000 and 12.4.2003, respectively. The power generated from the RTPS Units is presently being sold to the Respondents / Distribution Licensees in the State of Karnataka. The Petitioner and the Respondents have entered into a PPA dated 24.5.2010 with effect from 1.4.2009 for sale of energy, as per the terms and conditions stated therein.
- (b) After coming into force of the Karnataka Electricity Reform Act, 1999, a Distribution Licensee was required to get the approval of the Commission for entering into a PPA with a Generating Company. For that reason, the Karnataka Power Transmission Corporation Limited (KPTCL) entered into a draft PPA with the Petitioner for purchase of electricity from Units 1 to 7 of the RTPS. That draft PPA was submitted to the Commission by KPTCL for approval, vide letter dated 11.1.2002 and that draft PPA was later revised and re-drafted after discussions / negotiations between the parties and re-submitted on 2.7.2002.
- (c) After following the due procedure, the Commission approved the said PPA, vide Order dated 25.7.2002, with certain modifications.
- (d) The Petitioner challenged the Order dated 25.7.2002 before the Hon'ble High Court of Karnataka in M.F.A.No.6225/2002 and later withdrew the said Appeal, with liberty to file an Appeal before the Hon'ble Appellate Tribunal for Electricity (ATE), after coming into force of the Electricity Act,

2003 (Act). Accordingly, the Petitioner preferred Appeal No.90/2008 before the Hon'ble ATE.

- (e) The Hon'ble ATE, vide its Order dated 18.3.2009, remanded the matter back to the Commission to pass fresh orders after affording an opportunity to the Petitioner and other stakeholders.
- (f) The Commission issued Notices to the concerned parties to make their submissions, if any, on the modifications directed by the Commission in its earlier Order dated 25.7.2002.
- (g) The Commission, after hearing the parties and the stakeholders, passed the Order dated 3.8.2009, approving the re-drafted PPA, subject to incorporating the corrections and modifications to the said PPA, stated in the said Order. Thereafter, the PPA dated 24.5.2010 has been executed by the parties.
- (h) The Commission had taken the view that, for consideration of the re-drafted PPA, the norms / rules / Government Orders, as were applicable when the re-drafted PPA was negotiated and submitted to the Commission for approval, should be the basis. The Notification dated 30.3.1992 of the Ministry of Power, Government of India, was the relevant Guidelines, issued by the Central Government prevailing at that point of time. The request of the Petitioner to consider the norms stated in

the Central Electricity Regulatory Commission (CERC) Regulations dated 19.1.2009 for fixation of tariff, was not accepted.

- (j) In Article 1.1 (bt) of the PPA, SHR is defined as, “‘Station Heat Rate’ means the amount of fuel energy required in Kilocalorie/Kilowatt hour (Kcal/Kwh) of gross generation, and for RTPS it shall be equal to 2495 Kcal/Kwh or as per actuals, whichever is lower.” It is contended that the SHR was fixed by the parties as 2495 Kcal/Kwh or as per actuals, whichever is lower, on the presumption that the SHR for RTPS Units could be lower than that prescribed for National Thermal Power Corporation (NTPC) by the Central Electricity Regulatory Commission (CERC), however the said presumption was a mistake of fact and that the Commission had also accepted the same. It is contended that the past nine years’ data for RTPS Units 1 to 7 would show that the actual gross SHR has been consistently higher than 2495 Kcal/Kwh, and in fact, it is ranging between 2529 and 2646 Kcal/Kwh. The Petitioner has produced the nine years’ data of the RTPS Units 1 to 7 in this regard, as per the Certificate obtained from the Chartered Accountant (ANNEXURE – C). It is stated that the SHR being higher was not attributable to the Petitioner. Therefore, the Petitioner has stated that it has resulted in a huge loss of Rs.512 Crores from 2009-10 to 2013. The comparative statement showing the approved SHR and the actual SHR achieved in the RTPS Units 1 to 7 is produced at ANNEXURE – D to the Petition. For these reasons, the Petitioner has requested for modification of the SHR as per actuals.

- (k) Article 4.3(b)(iv) of the PPA relates to the O&M expenses. It states that, for the RTPS Units 1 to 7, the O&M expenses for the first year shall be equal to the actual O&M expenses for the year 2008-09, with an escalation of 6% per annum on the base year. The O&M expenses are to be considered at the actual expenditure of 2008-09 as "base level expenditure", with 6% escalation per annum for the subsequent period. It is stated by the Petitioner that there was a sudden and unforeseen increase in the O&M expenses, as there was an upward revision of the pay / wages, pension and other allowances (hereinafter referred to as 'pay revision') of its employees, by its Order dated 5.11.2012, effective from 1.1.2011, and this event of pay revision was not contemplated by the parties or this Commission while fixing the O&M expenses. The escalation of 6% per annum on the actual O&M expenses for the base year 2008-09 does not cover the increase in the O&M expenses due to pay revision of its employees. It is stated that the total amount of short-recovery towards the O&M expenses for 2011-12 and 2012-13 amounts to Rs.205 Crores on account of pay revision.
- (l) The Petitioner has stated that it requested the Respondents, seeking their consent for modification of the SHR and O&M expense as per actuals, but they did not come forward to accept the proposal. Hence, the Petitioner has filed the present Petition on 22.5.2014.

- 3) The Petitioner was asked by this Commission to produce further particulars and the same were furnished by the Petitioner on 16.1.2015. Thereafter, Notices were issued to the Respondents.
- 4) The Respondents appeared and filed their Statement of Objections on 7.5.2015. The Respondents opposed the claims of the Petitioner on the following grounds :
- (a) That the Commission, while approving the gross SHR in its Order dated 3.8.2009, has stated that the gross SHR of the NTPC Units and Damodar Valley Corporation (DVC) Units, referred to by the Petitioner, were not comparable, as the NTPC and DVC Units were with capacities ranging from 60 MW to 140 MW, whereas the RTPS Units were of 210 MW capacity each, and therefore, the claim of the Petitioner for allowing the SHR of 2564.30 Kcal/Kwh being the average of the gross SHR for the past four years – FY-06 to FY-09, was not accepted.
- (b) The CERC had approved the gross SHR for 210 MW and above Plants for different Control Periods as noted below :

<b>Control Period</b>		<b>Gross SHR (Kcal/Kwh)</b>
2004-09	..	2500
2009-14	..	2500
2014-19	..	2450

Further, it is contended that the RTPS Units 1 to 7 have been in existence prior to 2004, therefore, the gross SHR may be revised to 2450 Kcal/Kwh for the next Control Period. They denied that, for the past nine years, the data for the RTPS Units 1 to 7 would show that the actual gross SHR has been consistently higher than 2495 Kcal/Kwh. It is contended that, due to usage of inferior quality and low Gross Calorific Value (GCV) coal, the gross SHR at actuals is high. Further, they contended that, as per the fuel supply Agreement, the maximum grade of coal which can be used is Grade 'F', however the Petitioner is using coal of Grade 'G8' to 'G15' & 'G9'. Therefore, the Respondents have contended that there is no basis to increase the gross SHR, as claimed by the Petitioner.

- (c) Regarding the O&M expenses, the Respondents have contended that the tariff components are on normative parameters as approved by the Commission and the actual expenditure, even if it is more than the normative figures approved by this Commission, the same cannot be considered. The Respondents have denied the Petitioner's contention that the parties or this Commission did not anticipate the pay revision of the Petitioner's employees while fixing the O&M expenses.
- (d) That the Petitioner has to file an application for Annual True-Up for tariff, including all components of tariff, like interest on Working Capital, RoE, Tax Depreciation, O&M cost, etc., but the Petitioner has not filed such



- application, and as such, the present Petition is pre-mature and is not maintainable.
- 5) We have heard the learned counsel for the parties in the case. The learned counsel for the Respondents did not point out any specific term in the PPA or provision in law which mandates to file an application for annual True-up for tariff. Hence, that contention is taken as 'not pressed'.
- 6) The following issues would arise for our consideration :
- (1) Whether the Station Heat Rate (SHR) requires any modification, as per actuals; if so, from what date?
  - (2) Whether the Operation & Maintenance (O&M) expenses require any modification, as per actuals; if so, from what date?
  - (3) What Order?
- 7) After considering the rival contentions and the pleadings and records of the case, our findings are as follows:
- 8) **ISSUE No.(1)** : *Whether the Station Heat Rate (SHR) requires any modification, as per actuals; if so, from what date?*
- (a) After re-negotiation in the re-drafted PPA, the parties had agreed that the SHR for Units 1 to 7 of the RTPS should be equal to 2495 Kcal/Kwh or

as per actuals, whichever is lower. However, after remand of the case from the Hon'ble ATE, the Petitioner requested for allowing the SHR of 2564.30 Kcal/Kwh, being the average of gross SHR for the past four years – FY-06 to FY-09. This request of the Petitioner was rejected by the Commission, by Order dated 3.8.2009, for the following reasons stated by it (at Paragraph-10(b) on Pages 4 and 5 of the said Order) :

**“(b) Gross Station Heat Rate:**

*KPCL has pleaded for allowing a Gross Station Heat Rate of 2564.30 Kcal/Kwh being the average of Gross Station Heat Rate for the past four years – FY06 to FY09. Further, in their submission vide letter dated 11th June, 2009, quoting the Station Heat Rates approved by CERC w.e.f. 1.4.2009 for various generating stations of NTPC, ranging from 2700 Kcal/Kwh to 3100 Kcal/Kwh, justified the earlier request to fix the heat rate at 2564.30 Kcal/Kwh.*

*BESCOM, one of the respondents, in their rejoinder dated 17<sup>th</sup> June, 2009, submitted that KPCL should adopt heat rate as per CERC (Terms & Conditions of Tariff) Regulations, 2009, which specifies a heat rate of 2500 Kcal/Kwh.*

*The Commission notes that the heat rates of NTPC units referred to by KPCL are for generating stations of NTPC and DVC with capacities mostly ranging from 60 MW to 140 MWs. Since KPCL generating units are of 210 MW capacity, the heat rate of KPCL units is not comparable with heat rates of NTPC / DVC generating units referred to by KPCL. Therefore, the claim of KPCL is not justifiable. Hence, the Commission approves a heat rate of 2495 Kcal/Kwh or as per actuals, whichever is lower as per the renegotiated PPA.”*

(b) The Petitioner has now raised the same ground that, RTPS Units 1 to 7 would show that the actual SHR has been consistently higher than 2495 Kcal/Kwh and in fact ranging between 2529 Kcal/Kwh and 2646 Kcal/Kwh. The Respondents have contended that, due to usage of inferior quality and low Gross Calorific Value (GCV) coal, the gross SHR at actuals is high. Further, they contended that, as per the fuel supply Agreement, the maximum grade of coal which can be used is Grade 'F', however the Petitioner is using coal of Grade 'G8' to 'G15' & 'G9'. Therefore, the Respondents have contended that there is no basis to increase the gross SHR, as claimed by the Petitioner. During the course of arguments, the Petitioner has not denied the said contention of the Respondents regarding usage of the inferior quality of coal, but has stated certain practical difficulties in getting the Grade 'F' coal. In the Order dated 3.8.2009, this Commission did not accept the contention of the Petitioner for revision of the SHR agreed to in the re-drafted PPA, though the average SHR for the previous four years was on the higher side. That finding of the Commission has not been challenged by the Petitioner. The same ground cannot be urged by the Petitioner again in this Petition. For the above reasons, we answer Issue No.(1) in the negative.

9) **ISSUE No.(2)** : *Whether the Operation & Maintenance (O&M) expenses require any modification, as per actuals; if so, from what date?*

(a) In the proceedings, relating to the approval of the PPA by Order dated 3.8.2009, regarding the O&M expenses, the Commission has noted at Paragraph-11(b) on Page-6 of the said Order as follows :

**“(b) Repairs and Maintenance Expenses:**

*As per the renegotiated PPA, the base year for determination of O&M expenses was 2000-01 with annual escalation of 6% for subsequent years. Since the actual expenditure upto the year 2008-09 is available now, the Commission approves O&M expenses considering the actual expenditure of 2008-09 as the base level expenditure instead of 2000-01, with 6% escalation for the subsequent period considering the fact that the PPA is being approved now. While arriving at the base expenditure, any extraordinary expenses like arrears of wage revision, major repairs, etc., shall be excluded from the base expenditure.”*

(b) From the above facts, which were taken into consideration by the Commission for approval of O&M expenses for the Base Year 2008-09, it is clear that the pay revision, which came into effect from 1.1.2011 as per the Standing Regulations dated 5.11.2012, were not factored in, while fixing the said Base Year O&M expenses. The fixed rate of escalation of 6% per annum on the Base Year does not factor the variation due to the pay revision. The rate of escalation of 6% per annum represents the increase in the actual price index.

- (c) The 1992 Guidelines of the Ministry of Power, Government of India have been issued under Sub-section (2) of Section 43A of the Electricity (Supply) Act, 1948. The relevant portion of the said Sub-Section (2) of Section 43A reads thus:

*“The tariff for the sale of electricity by a Generating Company to the Board shall be determined in accordance with the norms regarding operation and the Plant Load Factor as may be laid down by the Authority and in accordance with the rates of depreciation and reasonable return and such other factors as may be determined, from time to time, by the Central Government, by notification in the Official Gazette. ...”*

From the above provision it is clear that the 1992 Guidelines issued by the Ministry of Power, Government of India, remains in force till it is revised by the Authority or the Central Government, as the case may be.

- (d) After coming into force of the Electricity Act, 2003, specification of the terms and conditions for the determination of tariff vests with the Appropriate Commission, as per Section 61 of the Act. This Commission has framed the Karnataka Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2009 (hereinafter referred to as the 'KERC Tariff Regulations, 2009'), which came into force from the date of their publication in the Karnataka Gazette , i.e., from 8.10.2009. However, these Regulations are not made

applicable to the existing Generating Stations, which have achieved Commercial Operation before 1.4.2009 and for which the PPAs have also been approved by the Commission, as per Regulation 2.2.2 of the said Regulations. Therefore, we are of the considered view that, any increase in O&M expenses on account of pay revision, which compelled the Petitioner for seeking revision of tariff, should be considered by the Commission on the principles stated in Section 61 of the Act.

- (e) We are in respectful agreement with the CERC's finding that, *'The pay and allowances are mandatory expenditure and are a necessary input to determine the cost of electricity. If the impact of pay revision or wage revision is denied, it would result in under-recovery of cost of electricity by the Generating Company'*, as held in Petition No.35/MP/2011, decided on 12.10.2012, in the case of *NTPC Limited –Vs- West Bengal State Electricity Distribution Company Limited, Kolkata and others*.
- (f) In the present case, the pay revision has taken place with effect from 1.1.2011, by Standing Regulations dated 5.11.2012. However, the Petitioner has filed the present Petition on 22.5.2014, requesting to increase the O&M expenses as per actuals. Therefore, the Commission deems it appropriate to factor the increase in the O&M expenditure for FY 2014-15 and for the subsequent period, incurred by the Petitioner due to pay revision, as allowed in this Order.

- (g) Article 4.3(b)(iv) of the PPA relating to the O&M expenses, stipulates thus:

***“Operation and Maintenance expenses***

*For Unit 1-7, the O&M expenses for the first year shall be equal to the actual O&M expenses for the year 2008-09 with an escalation of 6% per annum on the base year. The O&M expenses is to be considered at actual expenditure of 2008-09 as the base level expenditure, with 6% escalation for the subsequent period.”*

Therefore, as per the above-said Article, for FY 2014-15, the permitted O&M expenses would be the actual O&M expenses of 2008-09 with an escalation at the rate of 6% per annum for the subsequent period, upto 2014-15. The increase in the O&M expenses due to pay revision for FY 2014-15 would be the difference between the actual O&M expense for FY 2014-15 due to pay revision and permitted O&M expenses for that year. For arriving at the increase in the O&M expenses due to pay revision for the subsequent period, the increase in the O&M expenses for FY 2014-15, as arrived at above, is to be escalated by 6% per annum. For the above reasons, we answer Issue No.(2) partly in the affirmative.

- 10) **ISSUE No.(3)** :

For the foregoing reasons, we pass the following :

**ORDER**

- (a) The Station Heat Rate as per actuals, sought for by the Petitioner, is rejected;

- (b) The increase in the Operation and Maintenance (O&M) expenses for the Units 1 to 7 of the Raichur Thermal Power Station for FY 2014-15 and for the subsequent period is allowed, as detailed in Paragraphs 9(f) and (g) above, to the effect that, the increase in the O&M expenses due to pay revision for FY 2014-15 would be the difference between the actual O&M expense for FY 2014-15 due to pay revision and permitted O&M expenses for that year. For arriving at the increase in the O&M expenses due to pay revision for the subsequent period, the increase in the O&M expenses for FY 2014-15, as arrived at above, is to be escalated by 6% per annum; and,
- (c) For the purpose of clarity, it is made clear that the increase in the O&M expenses allowed at Paragraph-10(b) above is in addition to the O&M expenses already allowed in the PPA dated 24.5.2010.

Sd/-

(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)  
MEMBER

Sd/-

(D.B. MANIVAL RAJU)  
MEMBER