

No.: N/38/14

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

Dated : 25th February, 2016

Present:

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

OP No.17 / 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, 2nd Stage,
Mysuru – 570 019

.. **RESPONDENTS**

[Represented by ALMT Legal, Advocates]

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 18.12.2010.
- 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 Bellary Thermal Power Station (BTPS) Unit-1 of 500 Mega Watts (MW) capacity, which has been commissioned on 6.3.2009. The power generated from the BTPS Unit-1 is being sold to the Respondents / Distribution Licensees in the

- State of Karnataka. The Petitioner and the Respondents have entered into a PPA dated 18.12.2010 for a term of 25 years from the Commercial Operation Date (COD), for supply of power as per the terms and conditions stated therein.
- (b) The Karnataka Power Transmission Corporation Limited (KPTCL), the predecessor of the Respondents, vide its letter dated 28.5.2004, had submitted a PPA to this Commission for approval, duly signed by it and the Petitioner (initialed PPA), for purchase of power from the first Unit of 500 MW capacity of BTPS, to be established at Kudathini Village of Bellary District.
- (c) On examination of this initialed PPA, the Commission, vide its letter dated 2.7.2004, sought certain clarifications / additional information in respect of certain clauses and terms and conditions of the initialed PPA from the KPTCL. While doing so, the Commission intimated the KPTCL that it would consider the initialed PPA, guided generally by the CERC (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as the 'CERC Tariff Regulations, 2004'), as at that time, the Commission had not yet issued its Regulations on the Terms and Conditions of Tariff for Generating Companies.
- (d) With effect from 10.6.2005, the KPTCL came to be barred from engaging in any trading of electricity under Section 39 of the Electricity Act, 2003

- (Act) and five Distribution Companies, viz., Electricity Supply Companies (ESCOMs) were formed, in place of KPTCL, for carrying on the function of distribution and supply off electricity. Therefore, the Government of Karnataka, on 10.5.2005, assigned all the existing PPAs of KPTCL with the Generating Companies, to the five ESCOMS, with effect from 10.6.2005.
- (e) In view of the assignment of the PPAs to the ESCOMs, the Commission vide letter dated 21.1.2009, informed the ESCOMs to furnish the information sought earlier from the KPTCL on the initialed PPA of the BTPS Unit-1, so that it could proceed to consider approval of the initialled PPA. In response, the 1st Respondent-Bangalore Electricity Supply Company Limited (BESCOM), vide its letter Dated 12.3.2009, submitted a fresh PPA (revised PPA), duly signed by all the ESCOMs and the Petitioner on 3.2.2009, in place of the earlier initialled PPA, for approval of the Commission.
- (f) The Petitioner, vide its letter dated 11.6.2009, submitted a statement of material changes between the revised PPA and the earlier initialed PPA, and requested the Commission to approve the revised PPA as per the norms of the CERC Tariff Regulations, 2004, considering the fact that the BTPS Unit-1 had pumped 1200 Million Units (MUs) of energy into the grid by March, 2009 and that the Unit had been commissioned before 31.3.2009.

- (g) The Commission conducted a public hearing to elicit views / suggestions of the stakeholders. On appreciation of the facts, the Commission accepted the COD as 6.3.2009. Accordingly, the Commission approved the revised PPA dated 3.2.2009, subject to the terms and conditions and the modifications / corrections stated in its Order dated 30.11.2010. In compliance of the said Order of the Commission, the Petitioner and the Respondents have executed the PPA dated 18.12.2010.
- (h) In the present Petition, the Petitioner has requested to fix the SHR at actuals and to increase the O&M expenses as per actuals, instead of the existing ones, as agreed in the PPA.
- (j) Article 1 of the PPA defines the 'Gross Station Heat Rate' thus :

"'Gross Station Heat Rate' means the heat energy input in Kcal required to generate 1 Kwh of electrical energy at generator terminals and shall be equal to 2450 Kcal/Kwh at all times."

The Petitioner has contended that the actual SHR ranges between 2666 to 2845 Kcal/Kwh, for the years from 2009-10 to 2013-14, as per the SHR Chart produced at ANNEXURE – D to the Petition and consequently, there was short-recovery of energy charges, amounting to Rs.295.95 Crores during the above-said period. Therefore, the Petitioner has requested to allow the actual Gross SHR for the said period.

(k) In respect of the O&M expenses, the Petitioner has contended that there was a sudden and unforeseen increase in the O&M expenses, as there was an upward revision of 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 for the Base Year 2008-09 or for the subsequent years. Article 4.3(b)(iv) of the PPA relating to the O&M charges reads thus :

"The Operation and Maintenance expenses is at Rs.10.95 lakhs per MW for the Base Year i.e. 2008-09. For each subsequent year, the base O&M rate shall be escalated at 4% per annum."

Further that the escalation of 4% per annum on the O&M expenses allowed at Rs.10.95 Lakhs per MW, 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.75.10 Crores on account of pay revision. Therefore, the Petitioner has prayed for increase in the O&M expenses as per actuals, for the said period. (The Petitioner, in paragraph-6 of the Petition, has stated that, in support of the short-recovery of the O&M expenses amounting to Rs.75.10 Crores, it has produced the document, ANNEXURE - E, along with the Petition. However, ANNEXURE - E does not contain the statement of short-

recovery for the years 2011-12 and 2012-13 towards the O&M expenses of BTPS Unit-1.)

- (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 18.6.2015. 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 30.11.2010, has noted that the gross SHR of 2450 Kcal/Kwh mentioned in the initialled PPA is as per the CERC Tariff Regulations, 2004 and therefore, the same was approved.
 - (b) As the BTPS Unit-1 was commissioned on 6.3.2009, which was at the fag end of the Control Period 2004-09, the normative gross SHR of 2425 Kcal/Kwh, stated in the CERC Tariff Regulations, 2009, is to be applied.

The Respondents have denied the averments made in the Petition that the actual SHR ranges between 2666 and 2845 Kcal/Kwh, and that the SHR granted by this Commission does not accurately reflect the consumption of fuel and is resulting in additional expenses to the Petitioner.

- (c) The tariff is determined based on the normative parameters, and if better norms are available, the same have to be adopted, and any extra expenditure over and above the normative parameters should be absorbed by the generator and it cannot be passed on to the Respondents or the consumers. Further, that the CERC had approved 2375 Kcal/Kwh in its Tariff Regulations, 2014, therefore, the gross SHR approved by the CERC for each Control Period should be applied to the BTPS Unit-1.
- (d) The increase in gross SHR ranging between 2666 and 2845 Kcal/Kwh, as stated by the Petitioner, is due to usage of poor quality of coal, having low Gross Calorific Value (GSV). It is pointed out that, as per the Fuel Contract of the Petitioner with KEMPTA, the coal supplied should be of 4500 Kcal, but however the actual coal supplied and used by the Petitioner is below 4000 Kcal. Therefore, the Respondents have contended that there is no reason to increase the SHR as per actuals.

- (e) 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 at the time of approving the initialled PPA.
- (f) The Petitioner has to file an application for Annual True-Up of tariff, including all components of tariff, like interest on Working Capital and on RoE, Tax, Depreciation and O&M cost, etc., but the Petitioner has not filed any such application, therefore the present Petition is pre-mature and is not maintainable.
- (g) The Petitioner has filed the present Petition nearly after a lapse of four years, and as such, the Petition is not maintainable. Therefore, the Respondents have prayed for dismissal of the Petition.
- 5) We have heard the learned counsel for the parties in the case.
- 6) The following issues would arise for our consideration :
- (1) Whether the present Petition is not maintainable, as the Petitioner has not filed an application for truing up of the Capital Expenditure and Tariff for each year?
- (2) Whether the Station Heat Rate (SHR) requires any modification, as per actuals; if so, from what date?

- (3) Whether the Operation & Maintenance (O&M) expenses require any modification, as per actuals; if so, from what date?
- (4) 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 present Petition is not maintainable, as the Petitioner has not filed an application for truing up of the Capital Expenditure and Tariff for each year?*
- (a) The Respondents have contended that, as per Clause 6 of the CERC Tariff Regulations, 2009, the Petitioner had to file an application for truing up of the Capital Expenditure and Tariff, and without there being such an application, the Petitioner cannot seek any increase in the SHR or the O&M expenses, as per actuals, without considering the other components of the tariff paid on the normative basis. The Commission notes that the truing up exercise, as stated in Clause 6 of the said Regulations, relates to truing up of the Capital Expenditure. As to which items of expenses should be included in the Capital or Capital Cost is detailed in Clause 7(1)(a) to (c) of the said Regulations.
- (b) The relevant portion of Article 4.1 of the PPA relating to the Capital Expenditure reads thus :

"4.1 Capital Expenditure

(a) *Capital expenditure of the Unit shall be as detailed below:*

The actual expenditure incurred on completion of the project shall form the basis for determination of final tariff. The final tariff shall be determined based on the admitted capital expenditure actually incurred up to the date of commercial operation of the generating station duly deducting the liquidated damages collected from M/s BHEL and the revenue earned by the Sale of Infirm Power and shall include capitalised initial spares subject to a maximum of 2.50% of the original project cost as on the cut off date.

(b) *Additional Capital Expenditure:*

1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut off date may be admitted subject to approval of the Commission and subject to prudence check: ..."

(c) The Commission notes that the SHR and the O&M expenses, as agreed in the PPA, are not subject to any truing up exercise, because these two components are not made part of the Capital Expenditure under Clause 7 of the CERC Tariff Regulations, 2009. The Order dated 30.10.2010 of this Commission or the terms of the PPA do not specifically provide for filing any application for truing up of the Capital Expenditure or any other tariff norms. Therefore, to consider the request of the Petitioner made in this Petition, filing of an application for truing up of the Capital Expenditure by the Petitioner is not necessary. We, therefore, answer Issue No.(1) in the negative.

- 9) **ISSUE No.(2)** : *Whether the Station Heat Rate (SHR) requires any modification, as per actuals; if so, from what date?*
- (a) We have already noted the rival contentions of the parties made on this issue in the previous paragraphs.
- (b) The Commission had noted, in its Order dated 30.10.2010, that the gross SHR of 2450 Kcal/Kwh incorporated in the initialed PPA was as per the CERC Tariff Regulations, 2004 and thereby approved the said gross SHR. It may be noted that the Petitioner had not raised any objection to approve the gross SHR of 2450 Kcal/Kwh, during the previous proceedings.
- (c) During the course of arguments, the Petitioner has not denied the contention of the Respondents regarding the usage of inferior quality coal, but has stated certain practical difficulties in getting good quality coal. The contention of the Respondents that, due to usage of inferior quality and low Gross Calorific Value coal, the gross SHR at actuals is high, is to be accepted. The variation of gross SHR between 2666 and 2845 Kcal/Kwh for different years itself shows that there was a problem in the quality of coal used or in the efficient functioning of the Boiler in BTPS Unit-1.

(d) Regulation 3 of the CERC Tariff Regulations, 2004, reads thus :

*“3. **Norms of operation to be ceiling norms** : For removal of doubts, it is clarified that the norms of operation specified under these regulations are the ceiling norms and this shall not preclude the generating company or the transmission licensee, as the case may be, and the beneficiaries from agreeing to improved norms of operation and in case the improved norms are agreed to, such improved norms shall be applicable for determination of tariff.”*

Regulation 16 of the said Regulations relating to Norms of Operation specifies that, in case of coal-based new Thermal Power Generating Stations of 500 MW capacity, the gross SHR is 2450 Kcal/Kwh. This norm is the 'ceiling norm' for gross SHR and therefore, the generator cannot claim a norm higher than 2450 Kcal/Kwh towards gross SHR for any reason whatsoever. For the above reasons, we answer Issue No(2) in the negative.

10) **ISSUE No.(3)** : *Whether the Operation & Maintenance (O&M) expenses require any modification, as per actuals; if so, from what date?*

(a) While approving the initialed PPA, in respect of the O&M expenses, the Commission noted that the O&M expenses agreed between the parties was as per the provisions of the CERC Tariff Regulations, 2004, therefore the same was approved. Regarding the O&M expenses, Article 4.3(b)(iv) of the PPA reads thus :

"The Operation and Maintenance expenses is at Rs.10.95 lakhs per MW for the Base Year i.e. 2008-09. For each subsequent year, the base O&M rate shall be escalated at 4% per annum."

- (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 4% per annum on the Base Year does not factor the variation due to the pay revision. The rate of escalation of 4% per annum represents the increase in the actual price index.
- (c) 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.
- (d) 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.*

- (e) 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.
- (f) As per Article 4.3(b)(iv) of the PPA relating to the O&M expenses, the permitted O&M expenses for FY 2014-15 would be the approved O&M expenses for 2008-09 with an escalation at the rate of 4% 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 4% per annum. For the above reasons, we answer Issue No.(3) partly in the affirmative.

11) **ISSUE No.(4)** :

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 Unit-1 of the Bellary Thermal Power Station for FY 2014-15 and for the subsequent period is allowed, as detailed in Paragraphs 10(e) and (f) 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 4% per annum; and,
- (c) For the purpose of clarity, it is made clear that the increase in the O&M expenses allowed at Paragraph-11(b) above is in addition to the O&M expenses already allowed in the PPA dated 18.12.2010.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER