

No.: N/43/14

**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.19 / 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 norm relating to the Operation & Maintenance (O&M) expenses, as per actuals, instead of the existing one, 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 is operating several Hydro-Electric Power Projects established in the State of Karnataka. The Hydro-Electric Power Projects concerned in the present case have been commissioned on different dates between 1962 and 2001. The power generated from these Hydro-Electric Power Projects is 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 the Petitioner's Hydro-Electric Power Projects. That draft PPA was submitted to the Commission by KPTCL for approval, vide letter dated 7.3.2002.
- (c) After following the due procedure, the Commission approved the said PPA, vide Order dated 10.4.2003, with certain modifications.
- (d) The Petitioner challenged the Order dated 10.4.2003 before the Hon'ble High Court of Karnataka in M.F.A.No.4256/2003 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.89/2008 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 10.4.2003.
- (g) The Commission, after hearing the parties and the stakeholders, passed the Order dated 3.8.2009, approving the draft 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 in respect of the Hydro-Electric Power Projects stated in the said PPA (hereinafter referred to as the 'Hydel Projects').
- (h) The Commission had taken the view that, for consideration of the draft PPA, the norms / rules / Government Orders, as were applicable when the draft 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) Article 4.4(c)(ii) of the PPA relates to the O&M expenses. It states that, for the Hydel Projects, 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.294.79 Crores on account of pay revision.
- (k) The Petitioner has stated that it requested the Respondents, seeking their consent for modification of 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 4.6.2014.

- 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) 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.
 - (b) 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 Operation & Maintenance (O&M) expenses require any modification, as per actuals; if so, from what date?

(2) 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 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 Page-17 of the said Order as follows :

“(b) Operation and Maintenance Expenses (O&M):

“(i) The operation and maintenance expenses (O&M) including Insurance has been provided in the draft PPA as that equal to actual O&M for Financial Year 2001 in the first tariff year and shall be increased by 6% in each subsequent year.

(ii) *In their written submission dated 30.04.2009, KPCL has requested to consider the actual O&M expenses for the year 2007-08 as the base year with an annual escalation of 5.72%.*

Since the actual expenditure for the year 2008-09 is available, the Commission approves the O&M expenses in respect of all the hydro stations covered under this Order with reference to the actual O&M expenses for the year 2008-09 with an escalation of 6% per annum on the base year. While arriving at the base expenses, the arrears of wage revision, major repairs, etc., included in the base expenses shall be excluded."

(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 4.6.2014, 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 4.4(c)(ii) of the PPA relating to the O&M expenses, stipulates thus:

“Operation and Maintenance expenses

“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.(1) partly in the affirmative.

9) **ISSUE No.(2)** :

For the foregoing reasons, we pass the following :

ORDER

- (a) In respect of the Hydro-Electric Power Projects covered in the PPA dated 25.4.2010, the increase in the Operation and Maintenance (O&M) expenses for FY 2014-15 and for the subsequent period, is allowed as detailed in Paragraphs 8(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,

- (b) For the purpose of clarity, it is made clear that the increase in the O&M expenses allowed at Paragraph-9(a) 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