

Nos.: N/39/12, N/64/12 and N/84/12,

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

Dated : 4th April, 2013

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

1] OP No.19/2012

BETWEEN :

Indian Wind Energy Association
PHD House, 3rd Floor,
Aisan GamesVillage
August Kranti Marg
New Delhi – 110 016
[Represented by Shri Shridhar Prabhu , Advocate]

... **Petitioner**

AND

- 1) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 2) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029
- 3) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101
- 4) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001

- 5) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
- 6) Karnataka Renewable Energy Development Limited (KREDL)
No.39, "Shanthigruha"
Bharath Scouts and Guides Buildings
Palace Road
Bangalore – 560 001
- 7) Hukkeri Rural Electric Co-operative Society Ltd.
Hukkeri – 591 309 ... **Respondents**
*[R1, R2, R4 and R5 represented by M/s.Justlaw, Advocates
and R6 represented by Shri G.S. Kannur, Advocate]*

2] OP No.36/2012

BETWEEN :

Indian Wind Turbine Manufacturers' Association (IWTMA)
Suite No.A2, OPG Towers
No.74 (Old No.133)
Santhome High Road
CHENNAI – 600 004 ... **Petitioner**
[Represented by its Director, Shri V. Raghu]

AND

- 1) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 2) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
- 3) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009

- 4) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029
- 5) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101
- 6) Karnataka Renewable Energy Development Limited (KREDL)
No.39, “Shanthigruha”
Bharath Scouts and Guides Buildings
Palace Road
Bangalore – 560 001
*[R3 and R5 represented by M/s.Justlaw, Advocates
and R6 represented by Shri G.S. Kannur, Advocate]*

...

Respondents

3]

OP No.43/2012

BETWEEN :

- 7) Indian Wind Power Association
'SHAKTHI TOWERS', Tower-1, Door No.E, 6th Floor
No.766, Anna Salai
CHENNAI – 600 002
[Represented by its Vice President, Shri C. R. Srinivas]
- 2) M/s. Mytrah Energy (India) Limited
No.8001, 8th Floor, Q City, Nanakramgudea
Gachibowli
Hyderabad – 500 032
*[Represented by its Head-Projects & Authorized Signatory,
Shri C. R. Srinivas]*

...

Petitioners

AND

- 7) The Principal Secretary
Department of Energy
Government of Karnataka
M.S. Building
Bangalore-560 001

- 2) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 3) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029
- 4) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
- 5) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101
- 6) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
- 7) Karnataka Renewable Energy Development Limited (KREDL)
No.39, "Shanthigruha"
Bharath Scouts and Guides Buildings
Palace Road
Bangalore – 560 001
*[R5 and R6 represented by M/s.Justlaw, Advocates
and R7 represented by Shri G.S. Kannur, Advocate ... Respondents*

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COMMON ORDER

The above Petitions have been filed for modification / revision of the generic Tariff Order dated 11.12.2009 issued by this Commission by curtailing the control period to 31.3.2012, in view of the change in market conditions, increase in capital cost, long term interest rate, variation in CUF, statutory charges, etc.

2) On Notice, Respondents have appeared before the Commission through their Counsel.

3) As all the above Petitions involve more or less the same issues, they have been clubbed together for hearing.

4) The Respondents have raised in all the Petitions a preliminary objection questioning the maintainability of the Petitions by the Petitioners, who are Associations. Therefore, with the consent of the Counsel appearing for both the parties, the question of maintainability is taken up for consideration and decision.

5) On behalf of the Respondent-ESCOMs, it is contended that the Petitions filed by the Petitioner-Associations are not maintainable on the following grounds:

(a) The Petitioners have participated in the public hearing and they have been heard before passing of the Tariff Order dated 11.12.2009 by the Commission;

(b) The Petitions are filed by an Association representing Wind Energy Generators, which is not an affected party with respect to the Tariff Order;

(c) The Petitioners have filed the Petitions seeking review of the Tariff Order dated 11.12.2009, after the expiry of the time limit prescribed under

- Regulation 8 of the KERC (General and Conduct of Proceedings) Regulations, 2000. The Petitioners have not given any reasons / explanations in the Petitioners for the delay in filing the Petitions;
- (d) Under Regulation 9 of the KERC (Power Procurement from Renewable Sources by distribution Licensee and Renewable Energy Certificate Framework) Regulations, 2011, the Commission can determine the tariff for renewable sources either *suo motu* or on an application either by the generator or by the distribution licensee. However, the present Petitions have been filed by an Association and not by a generator or distribution company;
- (e) The Commission has determined the Control Period upto December, 2014 in the Commission's Tariff Order of 11.12.2009, after taking into account all the factors involved and the same has attained finality. Hence, the question of redoing the exercise, at this juncture, would not arise.
- (f) The prayer made by the Petitioners for limiting the control period from December 2014 to March 2012 is untenable and cannot be sustained.
- 6) The Petitioners in OP No.43/2012, vide reply dated 24.1.2013 to the Preliminary Objections of the Respondents on maintainability of the Petition, have prayed for rejecting the preliminary objections on maintainability of the Petition, for the following reasons :

- (a) The Petitioners are seeking for determination of tariff by this Commission considering the changed circumstances, including increase in project cost, etc., and as such the Petition is not filed for review of the Tariff Order dated 11.12.2009 from retrospective effect;
- (b) CDM benefits should be allowed by the Commission in favour of the developer considering the subsequent developments;
- (c) The 2nd Petitioner is an independent power producer, registered under the Companies Act and having around 300 MW of operating wind power assets across the country, and intends to develop wind power projects in the State of Karnataka. Hence, the 2nd Petitioner has *locus standii* to file this Petition;
- (d) The 1st Petitioner–Association is formed to represent the interests of its members and seek redressal of common grievances. The 1st Petitioner being registered under the Co-operative Societies Act, is a juristic person in the eyes of law, being competent to sue and be sued. Hence, the Petition filed the 1st Petitioner-Association is maintainable in law, as held by the Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal No.148/2011 in the matter of *South India Sugar Mills Association –Vs- KPTCL and others*. The Hon'ble High Court of Madras (Madurai Bench) in W.P.Nos.12650,

- 12749, 12750, 12885/2012 and W.P.No.14813/2012 has considered the Petition filed by the Association and passed orders on the said Petition;
- (e) The tariff fixed in Tariff Order dated 11.12.2009 was justified at that point of time. Now, after a lapse of three years, the economics of the wind power industry has drastically changed and consequently there are major changes in the parameters, such as capital cost, CUF, Interest on Term Loan, Return on Equity, Operation and Maintenance, etc. These changes have made it difficult for the wind energy developers to sustain their business in the present tariff regime prevailing in the State. An increase in tariff for wind power projects would bring in more investment to the State of Karnataka. Hence, the Respondents' contention that there is a delay in filing the Petition is not sustainable;
- (f) Regulation 11 of the KERC (General & Conduct Proceedings) Regulations, 2000, enables the Commission to entertain the Petition considering the special circumstances narrated in the Petition.
- 7) The Petitioners in OP No.43/2012 have relied upon the following citations in support of the submissions made on the maintainability of the Petition filed on behalf of the Association :
- (a) **CDJ 2011 MHC 2791** passed by the Madurai Bench of Hon'ble High Court of Madras in the matter of *Virudhunar District Bus Owners Association*,

represented by its Secretary and another –Vs- Government of Tamil Nadu, represented by its Secretary and another;

(b) **CDJ 2006 SC 658 [2006 (8) SCC 399]** passed by the Hon'ble Supreme Court in the matter of *Confederation of Ex-Servicemen Associations and others – Vs- Union of India and others.*

8) We have considered the preliminary objections raised by the Respondents and the reply filed by the Petitioners.

9) While admittedly the Petitioners are not the sellers of electricity to the distribution licensees in the strict sense, it cannot be disputed that they are stakeholders in the establishment of Wind Power Generating Plants in the State. It cannot be said that the rates fixed by this Commission should not be reviewed by it, even if there are material changes in the field which make the rates unviable. Therefore, in our opinion, this Commission need not go only on technical grounds and refuse to address substantive issues which in the ultimate analysis are important to the electricity sector and the consumers.

10) In our view, this point on maintainability also can be considered along with the other points raised in the Petitions.

11) Accordingly, we order that the Petitions may be posted for hearing on merits and the issue on maintainability will also be considered at that time.

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|--------------------------|-----------------------|-------------------|
| Sd/- | Sd/- | Sd/- |
| (M.R. SREENIVASA MURTHY) | (VISHVANATH HIREMATH) | (K.SRINIVASA RAO) |
| CHAIRMAN | MEMBER | MEMBER |