

No. N/51/11

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

Dated 15th November, 2012

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

OP No.22/2011

BETWEEN

Shamanur Sugars Ltd.,
No.374,
4th Main, P.J. Extension,
DAVANAGERE – 577 002

(Represented by Shri Shridhar Prabhu, Advocate) ...

Petitioner

AND

1. Karnataka Power Transmission Corporation Ltd.,
Kaveri Bhavan,
BANGALORE-560 009

2. State Load Despatch Centre - Karnataka,
Ananda Rao Circle, Off Race Course Road,
BANGALORE-560 009

3. Bangalore Electricity Supply Company Limited
K.R. Circle,
Bangalore-560 001

4. State of Karnataka,
Department of Energy,
II Floor, Vikasa Soudha,
BANGALORE-560 001

5. Power Company of Karnataka Limited,
Kaveri Bhavan,
BANGALORE-560 009

(Represented by M/s. Justlaw, Advocates) ...

Respondents

ORDER

PER SHRI M.R. SREENIVASA MURTHY, CHAIRMAN, KERC AND

SHRI VISHVANATH HIREMATH, MEMBER, KERC :

1. This Petition is filed by the Petitioner, seeking a direction to the Respondents to pay a sum of Rs.1.60,72,380/- together with interest, towards the electricity supplied to the Respondents for the months of September and October, 2010 at the rate of Rs.3.7848 per Unit, which was the rate payable under the Power Purchase Agreement (PPA) dated 7.3.1998, which was in force between the parties up to 20th September, 2009.

2. The Respondents have entered appearance and have filed Statement of objections dated 25.8.2011. .

3. We have heard the Counsels for both the parties and also considered the averments made in the Petition, the documents produced in support of the same and the averments made in the Statement of Objections.

4. It is the case of the Petitioner that LANCO Power Trading made an application for grant of NOC for Open Access to the 2nd Respondent for the months of September and October, 2010, on 16.8.2010 on its behalf, to sell electricity generated by it. This was not considered by the 2nd Respondent, and instead, it was indicated that the State needed the said power and therefore it has to supply the electricity to the State's own Distribution Utilities. Therefore,

having not granted the NOC for Open Access and utilized the electricity for the State's own Distribution Utilities, the Respondents are liable to pay for the same at the rate of Rs.3.78 per Unit, which was the agreed rate in the PPA dated 7.3.1998 it had with the Respondents.

5. Per contra, it is contended by the Respondents that the Petitioner is not entitled to any payment, as the Petitioner had no right to pump electricity to the Grid on its own and without its consent, merely on the ground that NOC for Open Access was not granted by the 2nd Respondent.

6. The only question that arises is, 'Whether the Petitioner is entitled to be paid for the electricity supplied by the Petitioner, and utilized by the Respondents, during the period in which NOC for Open Access was not granted by the 2nd Respondent?'

7. There is no dispute that the Petitioner has made applications for grant of 'NOC' for Open Access under the Open Access Regulations through its Trader and the 2nd Respondent had received the said applications. Further, there is no dispute that the 2nd Respondent did not consider the applications of the Petitioner and kept them pending, without informing the Petitioner about the status of its applications, on the ground that the State is in need of power. The records produced by the Petitioner, obtained from the 1st Respondent clearly indicate that the applications of the Petitioner were kept pending by the 1st Respondent on the ground that the State was in need of electricity.

8) On 19.12.2011, a Memo has been filed by Respondent No.3. In the said Memo, it was submitted that as per the Order dated 2.11.2011 of the Government of Karnataka, Respondent No.3 is agreeable to make payments to the Petitioner at the rate of Rs.3.59 per Unit for the power allocated to it, which was 49.62% of the total power pumped by the Petitioner into the Grid during September, 2010 and October, 2010.

9) From the above Memo, it is clear that the Petitioner had applied to Respondent No.2 for grant of 'NOC' for Open Access and Respondent No.2 did not grant the 'NOC' (nor reject the same), on the ground that the electricity was required for the State's consumers. Thus, the Petitioner was allowed to pump the electricity to the State Grid. Further, as per the Memo, it appears that the Respondents have also sought and obtained approval of the Government of Karnataka for payment for the electricity thus pumped into the State Grid by the Petitioner, at the rate of Rs.3.59 per Unit, which was then the generic tariff fixed by this Commission for energy generated by Co-generation Units. Therefore, the conclusion is inescapable that the generation of energy by the Petitioner, and its acceptance and use by the Distribution Utilities, including Respondent No.3, during the period in question, was done with mutual knowledge and concurrence. That being the case, it is only fair that the Respondent – Electricity Supply Companies (ESCOs) pay for the same at a reasonable rate, having consciously received the electricity from the Petitioner and supplied the same to the State Consumers.

10) It is the Commission's concern that the interests of both the Generating Companies and the Consumers of electricity are balanced in a fair and equitable manner. Therefore, the requirements of justice and equity in this case demand that the energy, which has been consciously received by the Distribution Licensees for supply to their Consumers, should be paid for. There can be no free supply of power from a Generator, who has incurred costs in the generation of power, particularly when such supply is consciously received and used in the course of the distribution business.

11) Having reached the above conclusion, what remains to be decided is the rate at which the Petitioner should be compensated for the power supplied to the State Grid. It is true that the PPA that the Petitioner had with Respondent-ESCOM provided for payment of Rs.3.7848 per Unit, but the said Agreement had lapsed by 20.9.2009. Therefore, during the period of September-October, 2010, when there was no Agreement as to the rate between the parties, it is appropriate to fall back upon the generic tariff of Rs.3.59 per Unit fixed by this Commission, which was then applicable to the power generated by the Co-generation Units.

12) In view of the submission made by Respondent No.3 that according to the allocation of power from the State Grid during that period, they are liable to pay only for 49.62% of the energy received, we direct that for the balance power, payment shall be made by Respondent No.2 – State Load Despatch Centre

(SLDC) after realizing the same from different Distribution Licensees in proportion to the power allocated to them out of the Petitioner's supply during the relevant period. The payments to the Petitioner from the respective ESCOMs, in accordance with the share of energy allocated to them, shall be made within 6 (six) weeks from the date of this Order.

13) Accordingly, the Petition is allowed in part, in the above terms.

Sd/-
(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

ORDER

PER SHRI K. SRINIVASA RAO, MEMBER, KERC :

1. Being not in agreement with the views expressed by my colleague-Members in the order, I am detailing my points in respect of this order as under.

2. It is my considered opinion that the Petitioner is not entitled to any payment for the energy injected into the Grid between 30.9.2010 to 24.10.2010. However, for reasons explained hereunder the ESCOMs are allowed liberty to release payments to the petitioner – as a one time measure – on their own account:

(a) M/s. LANCO Power Trading, a trading Company, on behalf of the Petitioner, M/s. Shamanur Sugars Ltd., submitted an application for injection of 14 MW at IEX for the period between 1.9.2010 and 30.9.2010 on RTC basis, vide its application dated 16.8.2010 presented to the Chief Engineer (Electricity), State Load Despatch Centre (SLDC).

(b) The Petitioner has produced a copy of the material obtained by it from KPTCL on RTI application, and as per Page No.12 of the Affidavit for production of Additional Documents by the counsel for

the Petitioner dated 3.11.2011, the Managing Director, Karnataka Power Transmission Corporation Limited (KPTCL), has recorded at paragraph-84 on 24-08-2010 *that power was required in the State from September, 2010 and has advised that the Petitioner should meet her.*

- (c) Further, as per the correspondence produced by the Petitioner in its Petition, M/s. Shamanur Sugars Ltd., have addressed a communication to the Managing Director, KPTCL, as late as 21st February, 2011, wherein it has been stated that Mr. H.C. Venkatesh, Liaison Officer of the Petitioner had approached the Managing Director, KPTCL and that, "*as we observed, there is an inordinate delay in according STOA against our application for September, 2010. But, unfortunately, you delayed to accord Open Access approval and verbally requested us to supply power and you would consider a price at a reasonable rate per KWH and extend your co-operation in the matter. Accordingly, we have given 42,76,800 KWH from 30.9.20910 to 24.10.2010.*"
- (d) Seeing from the date of the correspondence and the dates of injection of electricity into the Grid, the following are note-worthy :
- (i) The application dated 16.8.2010 was made requesting for Open Access injection for the period 1.9.2010 to 30.9.2010;

- (ii) Electricity has been injected into the Grid, however, has been between 30.9.2010 and 24.10.2010.

This shows casualness of approach and lack of seriousness on the part of petitioner as regards its application for open access. Although mention is made about the Liaison Officer of the Petitioner meeting the Managing Director, KPTCL and also the intention expressed by the Managing Director, KPTCL, was to avail the electricity from the Petitioner, which facts are not in dispute, it is not stated on which date the Liaison Officer of the Petitioner met the Managing Director, KPTCL and also why the Petitioner, instead of injecting electricity to the Grid, during the period for which Open Access was sought, viz., 1.9.2010 to 30.9.2010, strangely chose to inject electricity during an odd period between 30.9.2010 and 24.10.2010 after the expiry of sought Open Access period, in the application dated 16.8.2010. In such a case, the only option available to the petitioner was to avail day-ahead schedule from SLDC. But the petitioner failed to do so. As per the provisions of the Act only SLDC is empowered to regulate injections to the grid. Sources of firm power like that of the petitioner, have to schedule their injections in advance, so that SLDC would be able to ensure grid security. Only infirm sources of power like Wind, Minihydel etc., have been permitted to inject without a prior schedule. The

petitioner's action has been that energy has been injected, at will, without any authority, presumably to suit petitioner's convenience to generate and not during the period for which OA was sought. As mentioned already, no entity or stakeholder is authorized to use the Grid System as a dumping ground for power without proper agreement or schedule, which may jeopardize grid security. The word dumping ground has been consciously used here because the possible adverse effects of unauthorized injection of power on the security of the grid are well known. This has been aptly brought out by the Hon'ble ATE in its Order dated 16th May, 2011 in Appeal No.123 of 2010 of M/s. Indo Rama Synthetics (I) Ltd., Vs. MERC and Others.

- (e) Further, though the Petitioner requested for Open Access between 1.9.2010 and 30.9.2010 for 14 / 18 MW injection, it is seen from Form-B that hardly 72,000 KWH have been injected into the Grid in the month of September, 2010, vis-à-vis 1,29,60,000 KWH that should have been pumped into the Grid on RTC basis if the Petitioner had injected 18 MW RTC.

- (g) It is also seen that when the Chief Engineer, SLDC, vide his letter dated 13.10.2010 pointed out that the Petitioner was pumping energy to the State Grid since 1.10.2010 and the Government was yet to decide on the purchase of electricity from Co-generation

Units without a Power Purchase Agreement (PPA), and the Petitioner was requested either to avail of Open Access for selling the electricity outside or to stop pumping the electricity into the State Grid with immediate effect. The Petitioner, despite this communication, continued to inject electricity into the State Grid - without any concern of its lack of authority nor the security of the Grid - till 24.10.2010.

- (h) It is noticed that all through the period of injection between 30.9.2010 and 24.10.2010, the Petitioner could have at the least availed Day-Ahead Schedule from the SLDC, which it did not choose to do.

- (i) In case the petitioner was aggrieved by the State wanting to avail power and still not responding in time it could have taken appropriate legal recourse. Inaction does not entail the petitioner to unauthorized injection of energy. It should have, in pursuance of Clause-8 of the CERC (Open Access in Inter-State Transmission) Regulations, 2008, which is applicable to the case of the Petitioner - since the Petitioner wanted to sell electricity in IEX - acted by applying in affidavit to the nodal agency for needful action - in the context of SLDC not responding to its Open Access application in time – for scheduling its power. However, from the events, it is clear that petitioner there failed to do so and attaching no seriousness to

its Open Access application it has acted, to suit own convenience, to inject whatever electricity it was capable of generating at whatever time.

- (j) To reiterate, this lackadaisical approach of the Petitioner only drives one to conclusion about the petitioner's lack of seriousness about his Open Access application. As far as injecting electricity into the Grid without a Schedule, the action of the Petitioner is covered by the decision of the Hon'ble Appellate Tribunal for Electricity in Indorama's case, cited supra.

3. The Petitioner has urged as one of the grounds in its petition that the third Respondent (BESCOM) directed the First Respondent not to grant Open Access to any of Co-generation power Project and power generated by Co-generation project could be purchased by third respondent under short-term arrangement without PPA and 3rd respondent after considerable lapse of time directed 1st respondent not to grant open access to the petitioner and because of this it was incumbent upon the 3rd respondent to compensate the petitioner for the energy delivered into the grid.

4. The 3rd respondent has denied the same saying it was factually incorrect and also the averment that the duty of the 3rd respondent was to compensate the petitioner for the energy delivered is wholly untenable

and denied. Further respondent No. 3 has brought out the following points in its counter and denied its liability for payment to the petitioner.

- A. At the time of expiry of the PPA on 20th September 2009 petitioner expressed regret citing lack of viability for the request of 3rd respondent for extension of PPA beyond its expiry date.
 - B. Absence of valid PPA nor approved schedule for open access render no liability for payment of any sums to the petitioner and the same has been reiterated by the Hon'ble ATE.
 - C. SLDC has advised vide its communication dated 13th October 2010 the petitioner either to avail open access or stop pumping energy into the grid without a proper schedule, which was not heeded to by the petitioner.
 - D. Injection of power without a proper schedule or a PPA was in violation of direction issued by SLDC. Accordingly injection was illegal and no payment was due on an illegal action.
5. I am in agreement with the above contention of the 3rd respondent.
6. However, vide its memo dated 19th December 2011, 3rd respondent submitted that as per the order of Government of Karnataka dated 2nd November 2011, BESCOM (R3), was agreeable make payments to the petitioner at the rate of Rs. 3.59/- Kwh for 49.62% of the total power

pumped by the petitioner into the grid during September 2010 and October 2010.

7. Seen from the order of GOK, it has been ordered that the ESCOMs will make payments to sugar Co-gen plants who have injected power during September-November 2010, irrespective of whether open Access has been accorded to them or not. No provisions of law supports the issue of such an order by the Government. However, Since the Government has accepted the liability, the ESCOMs are at liberty, as a one time measure, to release payments to the petitioner. Notwithstanding the allowed liberty, in the context of the details of the case, it is ordered that the payments shall not be allowed as a part of the ARR of the ESCOMs. This order in the context of the present petition is specific to the case on hand and will not set a precedent.

8. Ordered accordingly.

Sd/-

(K. SRINIVASA RAO)
MEMBER