

No.: N/87/14

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

Dated : 18th February, 2016

Present:

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

OP No.37 / 2014

BETWEEN:

Trishul Power Private Limited,
No.111, Krishnappa Layout,
Lalbagh Road,
Bengaluru - 560 027.

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PETITIONER

[Represented by Smt. Poonam S. Patil, Advocate]

AND:

- 1) Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
K.G. Road,
Bengaluru -560 009.
- 2) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 3) Mangalore Electricity Supply Company Limited,
Paradigm Plaza, 3rd Floor,
A.R. Shetty Circle,
Mangaluru – 575 001.

- 4) Chamundershwari Electricity Supply Corporation Limited,
No.927, L.J. Avenue,
New Kantharaja Road,
Saraswathiuram,
Mysuru – 570 009.
- 5) Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 025.
- 6) Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi – 585 101.

.. **RESPONDENTS**

[Represented by Indus Law, Advocates]

ORDERS

- 1) In this Petition, the Petitioner has prayed for determination of tariff specific to its Mini Hydel Power Project at Rs.4.90 per unit with 5% escalation per annum from the 11th year onwards towards supply of power for the next ten years, as per the Power Purchase Agreement (PPA) dated 5.11.2004, duly considering the business loss, actual generation details of the plant, outstanding loans and other parameters.
- 2) The material facts relevant for the disposal of this Petition as made out in the petition and the oral and written arguments are stated as follows :
- (a) The Government of Karnataka, vide Government Order (G.O.) dated 1.4.2000, accorded permission to the Petitioner to install a 1 Mega Watt

- (MW) capacity mini Hydro Project at Hemagiri Anicut, near Bandihole Village, K.R. Pet Taluk, Mandya District (Project), with the conditions that the Petitioner should achieve financial closure within six months from the date of technical clearance for the Detailed Project Report (DPR) by Karnataka Renewable Energy Development Limited (KREDL) and complete the Project implementation within 24 months from the date of achieving the Financial Closure, apart from stipulating other related conditions (ANNEXURE - B). In the subsequent G.O. dated 17.12.2003, the Government accorded approval for enhancement of the capacity of the Project from 1 MW to 4 MW and extended the time limit for implementing the Project by three years from the date of issue of the Order, subject to the condition that sufficient water to Hemagiri left bank irrigation canal be allowed and the additional water thereafter be utilized for power generation (ANNEXURE - C).
- (b) The Petitioner entered into a PPA on 5.11.2004 (ANNEXURE – D) with the Respondent-1. The PPA was later assigned to the Respondent-4. The tariff agreed under the PPA was Rs.2.90 per KWhr (unit) with an escalation of 2% per annum over the Base Tariff every year (Rs.0.058 per unit) for the first ten years from the Commercial Operation Date (COD), and the rate had to be renegotiated between the parties with the approval of the Commission for the period from the eleventh year onwards from the Commercial Operation Date. The total term of the PPA is 20 years. The Project of 2x1.75 MW was synchronized with the grid

- on 20.6.2005 (ANNEXURE - F). The Project has completed the ten-year term. The tariff agreed at the end of the 10th year for the Project is Rs.3.422 per unit.
- c) The Petitioner addressed a letter dated 23.3.2005 (ANNEXURE - H) to the authority concerned, requesting for approval to raise the crest level of Hemagiri Anicut by 500 mm, based on the DPR, to enable the Project to reach the proposed capacity of 4 MW. The Government, vide letter dated 4.7.2007 (ANNEXURE - J), permitted the Petitioner to raise the crest level, as requested by the Petitioner, on certain conditions. It is, however, stated that the Petitioner did not raise the crest level, as permitted, due to its poor financial condition.
- (d) It is stated by the Petitioner that Unit-2 of the Project was damaged due to short circuit on 20.10.2012, resulting in loss of Rs.9 lakhs. Besides, there was loss of generation of power as a result of fire, from 26.7.2013 to 10.8.2013, resulting in loss of Rs.12,87,053/-. Further, the canal had breached in the year 2011, causing reduction in generation and Rs.29,97,750/- was spent for restoration of the same. It is also stated that the Plant has completed 10 years and it needs to be refurbished at a cost of Rs.270.56 lakhs. The Petitioner has further stated that significant reduction in the out flow to the Hemavathi river course has led to reduction in power generation.

- (e) The Petitioner had entered into a Tripartite Agreement on 25.5.2005 with ICL Sugars Limited and KPTCL, for evacuating power from the Project through 66 kV line, constructed by ICL Sugars Ltd (ANNEXURE - V). At the request of the Petitioner on 31.12.2007 (ANNEXURE - W), for alleged trippings, line losses, etc., a change in evacuation arrangement was made and synchronization approval was granted on 22.8.2009 (ANNEXURE - Y), as per the revised scheme of evacuation. It is stated that a cost of Rs.51,38,094.50 was incurred for this change in evacuation. For all these reasons, it is stated that the tariff needs an upward revision.
- (f) In the meanwhile, the management of the Petitioner-Company changed hands in the year 2014, when Aparimitha Power Ventures Pvt. Ltd., took over from the previous owner, as per the MoU dated 25.6.2014 (ANNEXURE - A).
- (g) The Petitioner has contended that, as per the DPR, the Project was feasible at Rs.2.90 per unit with an escalation of Rs.0.058 per unit, but as per actuals, the Project suffered losses of Rs.2.7 crores, with unabsorbed depreciation of Rs.1.6 crores and total debts of Rs.10.5 crores at the end of 10th year. The current tariff (tariff at the end of 10th year of the PPA) of Rs.3.422 per unit is not viable. The tariff at Rs.4.90 per unit would be required, as per the DPR prepared at the end of the 10th year in 2014, in order to have 16% return on equity.

- 3) Upon Notice, the Respondents appeared through their learned counsel and filed the Statement of Objections. The gist of the contentions of the Respondents may be stated as below:
- (a) The tariff of Rs.3.422 per unit being paid to the Petitioner is higher than the tariff being paid to other generating Companies (Mini Hydel Projects) as per the Tariff Order dated 18.1.2005 of the Commission, wherein a tariff of Rs.2.80 per unit was fixed for Mini Hydel Projects without any escalation for the first ten years of the PPA, whereas in the case of the Petitioner, it was Rs.2.90 per unit with an escalation of Rs.0.058 per unit every year till the 10th year.
- (b) In the generic Tariff Order dated 11.12.2009, the Commission after consideration of various factors, has stipulated that the tariff at the end of the tenth year would be applicable for the next ten years without escalation for all renewable energy projects, and therefore, the Petitioner is entitled to Rs.3.422 per unit, which is the tariff at the end of tenth year. There is no scope for re- determination of the tariff in view of the generic Tariff Oder dated 11.12.2009.
- (c) The enhancement of the capacity of the Project from 1 MW to 4 MW was a voluntary and commercial decision of the Petitioner, so also the decision to increase the crest height by 0.50 m. The Respondents cannot be made liable to pay a higher tariff for the loss suffered by the

- Petitioner because of its own wrong decisions. The Respondents are nowhere at fault for the loss of generation and it is only due to improper assessment of the generation by the Petitioner that the capacity was enhanced to 4 MW. Hence, the Respondents should not be made to pay a higher tariff.
- (d) The Respondents have denied the other allegations of the Petitioner stating that they are self-serving statements and have prayed for dismissal of the Petition.
- 4) We have perused the records and heard the submissions made by the learned counsel for both the parties. They have generally reiterated what they have stated in their respective pleadings. The Respondents have relied on the decision of the Hon'ble Supreme Court of India, rendered on 28.4.2015 in Civil Appeal No. 5612/2012, in the case of *Bangalore Electricity Supply Company Limited -Vs- Konark Power Projects Ltd. and another*, to contend that the tariff of concluded PPAs cannot be revisited by the Commission. The learned counsel for the Petitioner submitted that the Commission is statutorily empowered to fix the tariff from the 11th year of the PPA and that the Commission should consider the commercial viability of a Generating Company while fixing tariff, as per Section 61 of the Electricity Act, 2003. The learned counsel prayed that, considering the fact that the Project is not generating power to its full capacity, the Commission should fix a reasonable tariff. The learned

counsel for the Petitioner in her written arguments has also contended that the Commission cannot compel the Petitioner to supply power to the Respondent-Distribution Licensee for the remaining term of 10 years of the PPA, if the parties do not arrive at a mutually agreed tariff for the period from the 11th year. It is contended that the true and correct interpretation of clause 5.2 read with clauses 5.1 and 9.1 of the PPA and the provisions of the Electricity Act, 2003 support this stand. The Petitioner has stated that the generic Tariff Order dated 11.12.2009 does not alter the terms of the PPA and the said Order providing for continuation of the tariff at the end of the tenth year for the remaining 10 years, cannot be made applicable to the Petitioner's Project, as there is no obligation under the PPA to supply power to the Respondent after 10 years. It is further contended by the Petitioner that the Commission's decision regarding the tariff applicable from 11th year onwards in its Tariff Order dated 11.12.2009 cannot be applied, as the affected parties have not been heard.

- 5) The following issues arise for our consideration :
- (1) Whether the PPA in this case gets terminated if the parties do not arrive at a mutually agreed tariff from the 11th year onwards ?
 - (2) Whether the Petitioner has made out any grounds in support of the prayer seeking re-determination of the tariff for the remaining ten-year term of the PPA at the rates prayed for ?

- (3) What Order?
- 6) After considering the submissions of the learned counsel for both the parties and the material placed on record by them, our findings on the above issues are as follows:

7) **ISSUE No.(1)** :

- (a) Clauses 5.1, 5.2 and 9.1 of the PPA relied on by the petitioner read as follows:

“ 5.1 Monthly Energy Charges: Corporation shall for the Delivered Energy pay, for the first 10 years from the Commercial Operation date, to the Company every month during the period commencing from the Commercial Operation date at the rate of Rs.2.90 [Rupees Two and ninety paise only] per Kilowatt-hour [“the base tariff] for energy delivered to the Corporation at the Metering Point with an escalation at a rate of 2% per annum over “the base tariff” every year. This shall mean that the annual escalation will be at the rate of Rs.0.058 per Kwhr.

5.2a) From the 11th year onwards, from the date of Commercial Operation date, till the validity of PPA the rate would be renegotiated between the Corporation and Company considering various factors, with due approval of the Commission.

b) In case the Corporation refuses or fails to purchase the power after the 11th year the company could be permitted to sell energy to third parties and enter into a Wheeling and Banking Agreement with Corporation to sell power through the Corporation grid for which it shall pay wheeling charges to corporation at the rates applicable from time to time in

addition to banking charges at the rates applicable from time to time and as approved by the Commission.

9.1 Term of the Agreement: This Agreement shall become effective upon the execution and delivery thereof by the Parties hereto and unless terminated pursuant to other provisions of the Agreement, shall continue to be in force for such time until the completion of a period of twenty (20) years from the Scheduled date of Completion and may be renewed for such further period of ten (10) years and on such terms and conditions as may be mutually agreed upon between the Parties, ninety (90) days prior to the expiry of the said period of twenty (20) years."

- (b) It is the contention of the Petitioner that if the parties do not arrive at a mutually negotiated tariff, the Petitioner is entitled to third party sale from the 11th year onwards and cannot be compelled to sell power to the distribution licensee at the tariff fixed by the Commission. According to the Petitioner, Clause 9.1 is subject to Clause 5.2 and although the term of the PPA is 20 years, it is subject to agreement on the tariff by both parties from the 11th year onwards.
- (c) We note that with the introduction of the Electricity Act, 2003, the Commission has to fix the tariff for supply of power by a generating company to a distribution licensee in the State. Clause 5.2 (a) of the PPA, after the introduction of the Electricity Act, 2003, therefore has to be read to mean that from the 11th year onwards the power shall be supplied to the Respondent-Distribution Licensee at the rate to be determined by the Commission and not at the rate renegotiated

between the parties, as contemplated in the PPA entered into prior to the introduction of the Electricity Act, 2003. Therefore, the contentions of the Petitioner are not maintainable.

(d) The term of the PPA is 20 years, as per Clause 9.1 and the tariff for the first ten years is fixed in the PPA as per Clause 5.1. The Commission, has in the generic tariff order dated 11.12.2009 fixed the tariff payable at the end of the 10th year for the remaining 10-year term of the PPA. Thus, it cannot be said that the PPA is deemed to have been terminated, if the parties do not arrive at a mutually agreeable tariff after the 10-year period.

(e) The learned counsel for the Respondents have relied upon the decision in Civil Appeal No.5612/2012 (*BESCOM -Vs- Konark Power Projects Ltd and another*) decided by the Hon'ble Supreme Court on 28.4.2015, to contend that the tariff cannot be re-determined in respect of concluded PPAs. The learned counsel for the Petitioner submitted that the case law applies to the tariff agreed for the 10-year period in the PPA, and does not apply to the case on hand, as the prayer is to fix the tariff after the 10-year period. We note that a careful reading of the said decision reveals that the decision lays down that the Commission cannot re-determine tariff in respect of PPAs where the parties have agreed upon a tariff for a certain term (10-year period). The decision does not curtail the powers of the Commission to determine tariff after the 10-year

period, for which no tariff is agreed between the parties. This is expressly stated in the order as follows:

*“ While reading Regulation 5.1 of the 2004 Regulations along with Regulation 9 of the 2011 Regulations and its provisos, what emerges is, whatever terms agreed between the parties should continue to remain in force without any alteration at least for a period of ten years as provided under Paragraph 5.1 of the original agreement dated 04.04.2002 at the rate at which it was agreed and as modified, insofar as it related to the rate alone, under the amended Paragraph 5.1 of the Supplemental Agreement dated 29.10.2005. **Only other scope for Respondent No.1 to work out any higher tariff can be as provided under Paragraph 5.2 of the original Agreement as well as the Supplemental agreement.** Beyond that, there is no scope for the Commission to vary the tariff, thus, what has been agreed between the parties under the above referred Agreements having regard to the specific provisions contained in Regulation 5.1 of the 2004 Regulations and Regulation 9(1) of the 2011 Regulations.”* (Emphasis supplied).

- (f) We feel it relevant to refer to the Judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal No.198/2014 (*Gujarat Urja Vikas Nigam Ltd -Vs- Green Infra Corporate Wind Power Ltd.*) dated 28.9.2015, wherein the Hon'ble Tribunal, after considering several case laws on the power of the Commission to modify the tariff in a concluded PPA, has held as follows:

“71. Even otherwise, keeping the facts of this case aside, we find no fetters in law on the power of the Appropriate Commission to undertake such exercise. We have already referred to the provisions of the Electricity Act which permit the Appropriate Commission to amend the tariff order. These statutory provisions have a purpose. They are meant to

give certain amount of flexibility to the Appropriate Commissions. They have been empowered to amend or revoke the tariff because exigencies of a situation may demand such an exercise. In the circumstances, we hold that there is no bar on the Appropriate Commission preventing it from entertaining a petition for modification of tariff after execution of a PPA. In other words, the Appropriate Commission has the power to reopen a PPA and modify tariff by an order....."

(g) In the light of the above decisions, we hold that the Commission alone has powers to fix the tariff for supply of power by a generating company to a distribution licensee.

(h) In view of the above discussions, we answer Issue No. (1) in the negative.

8) **ISSUE No.2:**

(a) It is the case of the Petitioner that the Project has not generated power to its full capacity from the date of commissioning and has been able to achieve generation of 2.5 MW only as against the capacity of 4 MW, due to reduction in the outflow to the river course owing to development in the command areas of the river. It is submitted by the Petitioner that, as per the DPR, the annual generation of power was estimated to be 15.5 Million Units (MUs) but the Plant had achieved a maximum generation of 8.64 MUs only in the year 2011 and, as against the desired monthly generation of 2.40 MUs, the Plant had achieved a maximum generation of 1.55 MUs in a month in the year 2007. Hence, the Plant

has not been able to realize the expected revenue and has suffered losses to the tune of Rs.2.7 crores and unabsorbed depreciation of Rs.1.6 crores and has debts of Rs.10.5 crores. It is stated that, at the tariff of Rs.3.422 per unit, the gross revenue would be Rs.1.40 crores and after deductions towards routine expenses, the Petitioner-Company would be left with Rs.1.10 crores, which is insufficient even to service the bank loan. Thus, the outstanding loans at the end of the 10th year and the lower rate of the PLF than estimated in the DPR, has entitled the Petitioner to seek re-determination of the tariff. On the other hand, the Respondents have opposed the revision of the tariff, stating that the Petitioner alone is responsible for the losses incurred due to its improper planning in enhancing the capacity, and in such circumstances, the Respondents cannot be made liable to pay a higher tariff than Rs.3.422 per unit, which is the tariff at the end of the 10th year of the PPA.

- (b) We note that the Project was accorded sanction to its proposed capacity of 1 MW in the year 2000 and later, was enhanced to 4 MW in December, 2003. The petitioner has stated in para 6 of the Petition that at its request, the capacity of the plant was enhanced. It is the case of the Petitioner that the inflow of water had decreased, resulting in low generation. We note that, in paragraph-3 of the G.O. (Annexure C) permitting enhancement of capacity, it is specifically mentioned that the Government is not responsible for any loss of generation due to less availability of water. It was also specified that sufficient water had to be

allowed for irrigation and only excess water had to be used for power generation.

(c) (i) In the DPR of November, 2003 (Annexure - AB), prepared on the basis of daily flow data at Akkihebbal (downstream of Hemagiri Anicut) from the year 1995-96 to 2001-02, it is stated that the estimated power potential exceeds 10 MW for 15 days in a year, 4 MW for 51 days and 2 MW for 150 days. It is stated that the cost of generation would be Rs.2.03 per unit and that the loan could be repaid within 11 years from the date of commissioning of the Project. The average annual generation for 4 MW was taken as 15.53 MUs. Therefore, from the DPR of the Project of November, 2003, it can be said that the estimated potential was less than 2 MW for most part of the year, but the Petitioner went ahead to set up a Plant of 4 MW capacity.

(ii) In the DPR prepared in 2014, produced at Annexure - AC, it is stated that the average generation of power for 9 years from 2005 to 2014 was 6.5 MUs annually. It is also mentioned that the discrepancy in generation as projected in the earlier DPR and the actual generation is due to the factors like inadequate maintenance, disruptions in transmission lines, silting of tail race canal and loss of head in the power canal.

(d) Looking at the generation pattern right from the inception, we feel that the Petitioner took a hasty decision in enhancing the capacity of the

- Project and incurred losses due to such wrong business decision, which was compounded by other factors as well, some of which were totally under its control. There is no allegation by the Petitioner, at any point of time, that it was misled by any act or omissions on the part of the Respondents or that the Respondents were responsible for the incorrect estimation of the PLF in the DPR. The DPR of November 2003 was prepared for the Petitioner by a Consultant chosen by itself.
- (e) The Petitioner has sought for re-determination of tariff contending that it had to incur additional expenditure on evacuation scheme after commissioning of the Project. The original evacuation scheme of the project was later changed, as requested by the Petitioner. As per the DPR of 2003, the Petitioner was required to draw the evacuation line from the Project to the Sub-station of KPTCL for 10 kms. Instead of drawing the evacuation line, the Petitioner made use of the evacuation line of ICL Sugars Ltd. The Petitioner requested for change in the evacuation arrangement on which it claims to have incurred an expenditure of Rs.51,38,094.50. The Petitioner had to incur this cost of evacuation line at the initial stage of the Project itself. Therefore, this amount cannot be considered as additional expenditure that needs to be reckoned for re-determination of tariff from the 11th year onwards.
- (f) The Petitioner has quantified the loss of generation due to fire from 26.7.2013 to 10.8.2013 at Rs.12,87,053/- and the loss due to short circuit

on 20.10.2012 at Rs.9 lakhs. It has claimed that Rs.29,99,750/- was the cost of repair of breached canal in 2011. We feel that these losses should have been covered by Insurance and it appears the Petitioner had also made Insurance claims. Hence, these amounts cannot be considered as having resulted in lower revenue during the first ten years of the Project. The Petitioner has further claimed that an amount of Rs.270.56 lakhs needs to be spent towards refurbishing the plant as per estimate at Annexure-T. The DPR of 2014 at Annexure-AC blames the previous management for lack of maintenance of the plant. Any cost that the Petitioner has to incur to refurbish the plant cannot be a ground for re-determination of tariff for the period from the 11th year onwards.

- (g) In the case of *Eacom's Controls (India) Ltd. -Vs- Bailey Controls, Co.*, reported in **AIR (1998) Del.365**, decided by the Delhi High Court, it is stated as follows:

"25. A contracting party cannot be relieved from the performance of his part of the contract, if the frustration of contract is self-generated or the disability is self-induced."

Accordingly, if the performance of the contract becomes onerous or impossible due to the act or omission of the contracting party, the contract is not discharged on the ground of frustration.

- (h) The learned counsel for the Respondents submitted that the terms regarding the tariff agreed to in the PPA between the parties cannot be reopened and that the outstanding loans and increase in cost of the Project are self-serving statements of the Petitioner. The learned counsel has further contended that the achievement of the lower rate of the PLF was attributable to Petitioner itself and they are self-induced, and for that reason, the Petitioner cannot seek re-determination of the tariff.
- (i) It is the Petitioner's contention that the tariff for the 11th year onwards, as determined in the generic Tariff Order dated 11.12.2009 is not applicable to its case as the debt servicing has not been fully met and there has been substantial increase in O & M expenses. We note that in the generic Tariff Order dated 11.12.2009, the tariff for the 11th year onwards was fixed at the tariff payable at the end of the 10th year, considering that after completion of 10 years, debt servicing would have been fully met and only the increase (marginal) would be O & M expenses, but, at the same time, the opportunity cost of power has gone up. We feel that if really these grounds are not met, the tariff can be re-determined. However, in this case, the debt could not be serviced due to negligent and imprudent management of the Project by the Petitioner. We note that the reason for accrual of the loans relating to the Project is poor performance, which is due to mismanagement and lack of maintenance of the plant by the previous management as per the DPR

at Annexure-AC. Hence, it cannot be said that ground for redetermination of tariff has been made out.

- (j) We also note that the Petitioner (Purchaser), before deciding to take over the Project, must have exercised due diligence and made an analysis of the present status of the plant, particularly the financial liabilities and inadequate generation due to lack of management initiative and improper maintenance of the project by the previous management, apart from the reduction in water flow. The Purchaser cannot claim revision of tariff on the ground that the debts were not serviced within the 10 year period at the rate prevailing as per the PPA. We note that the rate in the PPA was higher than the Commission determined rates during the relevant period, as pointed out by the Respondent and the reasons for being not able to service the debts, as discussed in the preceding paragraph are attributable to the Petitioner. The Respondent and its consumers cannot be made to bear the cost of inaccurate assessment of water flow leading to ill-advised decision to increase the capacity of the Project and lack of management initiative and overall maintenance of the plant by the previous management of the Project, through upward revision in the tariff, as sought by the Petitioner.
- (k) In the Table in paragraph-22 of the Petition, the Petitioner has stated that, as per the DPR, the PLF was estimated at 44%. As against this, the

actual PLF achieved by the Petitioner during the first 10-year period was 18%. The Respondents have not denied this fact. In the generic Tariff Orders dated 18.1.2005 and 11.12.2009 in which, for Mini Hydel Projects, the tariff was determined at Rs.2.80 per unit and Rs.3.40 per unit, respectively, without any escalation for first ten years by taking the PLF for Mini Hydel Projects as 30%. It may, therefore, be concluded that the actual PLF achieved is less than the PLF adopted in the Commission's generic Tariff Orders referred to above. However, as noted earlier, this fact of achievement of lower PLF was not due to any fault on the part of the Respondents, and the Petitioner itself is responsible for this, due to over estimation of generation and increase in capacity from 1 MW to 4 MW, mismanagement and improper maintenance of the plant, as made out in the DPR of 2014. Thus, the low level of PLF achieved cannot be a reason for upward revision of tariff in the Petitioner's case.

- (l) The Commission, while determining tariff, has to consider various factors specified in the Electricity Act, 2003 and has to also safeguard the Consumers' interest and strike a balance between the interest of Generating Company and the Distribution Licensee in determining the tariff. We feel that, therefore, in the facts of this case, the tariff of Rs.3.422 per unit is comparatively higher than that fixed in respect of many similar Plants established almost during the same time. The tariff for the Petitioner's plant, which entered into PPA on 5.11.2004, was fixed at Rs.2.90 per unit with escalation at 2% p.a., and is higher than the tariff of

Rs.2.80 per unit without escalation, determined in the generic Tariff Order dated 18.1.2005. Thus, we note that the Petitioner is situated in a better position with a tariff of Rs.3.422 per unit at the end of 10th year. We also note that, in the recent generic Tariff Order dated 1.1.2015, the tariff for Mini Hydel Plants to be commissioned during the period from 1.1.2015 to 31.3.2018 is fixed at Rs.4.16 per unit, taking the capital cost at Rs.6.20 crores per MW, as compared to much lower capital cost of the Petitioner's plant. In the circumstances, the claim of the Petitioner for the tariff of Rs.4.90 per unit is not sustainable in any manner. We find no reason to increase the tariff for the Petitioner's Project and hold that the tariff of Rs.3.422 per unit shall continue for the next 10 year term of the PPA.

m) We, therefore, answer Issue No.(2), in the negative.

9) **ISSUE No.(3)** :

For the foregoing reasons, we pass the following :

ORDER

The Petition is dismissed.

Sd/-	Sd/-	Sd/-
(M.K. SHANKARALINGE GOWDA) CHAIRMAN	(H.D. ARUN KUMAR) MEMBER	(D.B. MANIVAL RAJU) MEMBER