

No.N/86/12

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

Dated : 7th February, 2013

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member (Will pronounce
Separate Order) |

OP No.46/2012

BETWEEN

Parry's Sugar Industries Ltd.
Venus Building, 3rd Floor
1/2, Kalyanamantapa Road
Jakkasandra, Koramnagala
BANGALORE – 560 034
[Represented by Shri Prabhuling K. Navadgi, Advocate]

.. **Petitioner**

AND

Hubli Electricity Supply Company Limited
P.B.Road, Navanagar
HUBLI – 580 029
[Represented by M/s.Justlaw, Advocates]

.. **Respondent**

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1) This Petition has been filed by the Petitioner, who has established a Bagasse-based Co-generation Plant by name, "Shri Dhanalakshmi Sahakari Sakkare Karkhane Niyamit" for 11 MW (gross) and 7.5 MW (exportable) capacity at Khanpet. The Petitioner-Company has entered into a Power Purchase Agreement (PPA) dated 8.10.2010 with the Respondent, which is produced as Annexure-A. Thereafter, the Petitioner has signed a Supplemental Agreement in view of its change of name to "Parry's Sugar Industries Ltd.".

2) The Petitioner in this Petition has prayed for a direction to amend Article 5.1 of the PPA dated 8.10.2010, which provides for a tariff of Rs.3.59 per Unit, and also to determine the tariff to be incorporated in the Supplemental Agreement to be signed.

3) On Notice, the Respondent has put in appearance through its Counsel, M/s.Justlaw and has filed its Statement of Objections dated 13.12.2012.

4) We have considered the respective submissions of the parties, the terms of the PPA and also the Order dated 5.4.2011 passed by the Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal No.148/2010 and this Commission's Order dated 29.3.2012 in Case No.S/09/1.

5) There is no dispute that the Petitioner-Company has established a Bagasse-based Power Plant of 12 MW (gross) and 7.5 MW (exportable) capacity at Khanpet and has signed the PPA dated 8.10.2010 with the Respondent, with a tariff of Rs.3.59 per Unit for the first 10 years of the PPA. At the time of signing the PPA, this Commission's Order dated 11.12.2009, fixing a generic Tariff for Bagasse-based Co-generation Plants at Rs.3.59 per Unit, was in operation.

6) It is also not in dispute that the South India Sugar Mills Association (Karnataka), being aggrieved by the Order of the Commission dated 11.12.2009, filed Appeal No.148/2010 before the Hon'ble ATE and the Hon'ble ATE, by its

Order dated 8.4.2011, allowed the Appeal in part and directed this Commission to re-examine the issue of Capital Cost, after re-hearing the Appellant and others, and also upon consideration of the relevant materials as may be placed before this Commission by the Appellant therein.

7) Pursuant to the above Order of the Hon'ble ATE, this Commission re-heard the matter and passed an Order on 29.3.2012. In the fresh Order, this Commission re-fixed the Tariff at Rs.3.90 per Unit, as against Rs.3.59 per Unit fixed earlier, adopting a Capital Cost of Rs.430 Lakhs per Mega Watt, as against Rs.365 Lakhs per Mega Watt. This Commission also directed the ESCOMs to adopt the new rate in the PPAs to be signed thereafter.

8) It is the submission of the Petitioner that the rate of Rs.3.59 per Unit incorporated by the Petitioner and the Respondent in their PPA dated 8.10.2010 was based on the earlier Order of this Commission dated 11.12.2009 and once the said Order undergoes a change pursuant to the Orders of the Hon'ble ATE, the Tariff fixed in the Petitioner's PPA also needs to be modified in line with the new Order.

9) Per contra, it is contended on behalf of the Respondent that once the PPA is signed by the parties and approved by this Commission, and in view of the specific Order of this Commission making the Order dated 29.3.2012 prospective, the Petitioner is not entitled to the prayers made.

10) We may observe that till this Commission's Order dated 29.3.2012, the Petitioner and the Respondent had no option, except to incorporate the Tariff specified in the said Order, i.e., Rs.3.59 per Unit. Once this rate gets re-fixed to Rs.3.90 per Unit, it shall accrue to the benefit of the Petitioner and others, who had signed the PPAs as per the earlier Order dated 11.12.2009 of this Commission.

11) In our view, therefore, the prayer of the Petitioner deserves to be accepted and Article 5.1 of the PPA needs to be modified to incorporate the re-fixed Tariff of Rs.3.90 per Unit ordered by this Commission, since the very Order of the Commission fixing the Tariff at Rs.3.59 per Unit has been modified by this Commission pursuant to the remand Order dated 8.4.2011 of the Hon'ble ATE.

12) As regards the contention of the learned Counsel for the Respondent that as the Order dated 29.3.2012 of this Commission was made applicable prospectively, it will not apply to the Petitioner's case, we are of the view that when this Commission passed the general Order, the only issue before this Commission was re-fixation of the Capital Cost pursuant to the directions of the Hon'ble ATE. None of the parties appearing before this Commission had, at any time, brought out as to what would happen to the PPAs signed prior to the re-fixation of the generic Tariff. Therefore, this Commission had directed, in its Order dated 29.3.2012, to include the re-fixed rate in the PPAs to be executed thereafter. Further, in our view, the Order of this Commission dated 29.3.2012 does not bar any of the parties, who had signed PPAs pursuant to the earlier

Order of this Commission, to get the Tariff re-fixed based on the modified Order of this Commission.

13) It was stated during the course of the hearing that the Petitioner is also a member of the South India Sugar Mills Association (SISMA) and the grievance made by the Association was also on its behalf that the Capital Cost adopted by the Commission in the impugned Order was not proper, considering the actual cost incurred by the Generating Companies. It is submitted that as a member of the Association, it is also entitled to get the modified Tariff based on the Capital Cost re-determined by the Commission. In view of this submission, we have looked into the two Orders of this Commission dated 11.12.2009 and 29.3.2012 – one which was impugned before the Hon'ble ATE and the other passed after the remand of the Order by the Hon'ble ATE. While passing the impugned Order, SISMA had produced the cost of the generators including for one of the Plants taken over by the Petitioner. However, the same was not considered, as the Commission was in the process of determining the generic Tariff, and not specific Tariff to any particular generator. When the second Order came to be passed by this Commission on remand, SISMA again produced the data of cost incurred by several other generators, including that of the Petitioner. This Commission, not satisfied with the material produced by SISMA, called upon SISMA to produce Balance Sheets for a minimum of three Projects, which they relied upon – one of them was belonging to the Petitioner. SISMA, in response, had produced the Balance Sheets of three Generating Plants, including that of the Petitioner. Only after consideration of all the material data produced by

SISMA and also the data produced by KERDL and the Commissioner Cane Development and Director (Sugar), the Commission decided to re-fix the Capital Cost adopted by it while fixing the generic Tariff in its earlier Order to Rs.430 Lakhs per MW, which translated into the revised Tariff of Rs.3.90 per Unit. When SISMA made a grievance on behalf of its members, including the Petitioner, and the Hon'ble ATE accepted the plea of SISMA and directed this Commission to re-determine the Capital Cost including that of the Petitioner, it is natural for the Petitioner to seek the benefit of the re-determined Tariff. Therefore, in our opinion, the Petitioner is also entitled to get its Tariff re-fixed in line with the Order of this Commission dated 29.3.2012, even though it had signed the PPA at the pre-revised Tariff of Rs.3.59 per Unit, from the date the revised rate is available for others, i.e., from 29.3.2012.

14) Therefore, considering the facts and circumstances of the case, we allow this Petition. We direct the parties to amend Article 5.1 of the PPA dated 8.10.2010 by signing a Supplemental Agreement and incorporate 'Rs.3.90' in place of 'Rs.3.59', to bring it in conformity with the Tariff determined by this Commission, vide Order dated 29.3.2012, and submit the same for approval of this Commission.

15) In all other respects, the PPA dated 8.10.2010 signed by the parties shall continue as it is.

16) Accordingly, the Petition is allowed in the above terms.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

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.. **Respondent**

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

2) As I am generally in agreement with the details brought out in the Order as regards the Petitioner's and the Respondent's submissions, and other details related to the case of the Petitioner are concerned, I am only bringing out the

relevant points where there is disagreement between me and the colleague-members :

- (a) In the order of this Commission dated 29.3.2012, pursuant to the Order of the Hon'ble Appellate Tribunal for Electricity (ATE) directing this Commission to reexamine the issue of Capital Cost after rehearing the Appellant and others and also upon consideration of the relevant materials as may be placed before this Commission by the Appellant therein, this Commission, while re-fixing the Tariff at Rs.3.90 per Unit as against Rs.3.59 per Unit fixed earlier, by adopting a Capital Cost of Rs.430 lakhs per MW as against Rs.365 lakhs considered earlier, directed that the ESCOMs in Karnataka shall adopt the same while executing PPAs, hereafter *[emphasis supplied]*. Here, the emphasis lies on the importance of 'hereafter'.
- (b) In the following paragraphs, I am dealing with how the decision to provide relief in Tariff for PPAs has come about, considering the issues in their chronology:
- The Hon'ble ATE, in Appeal No.148/2010 of SISMA, by its Order dated 5.4.2011, had remitted the matter to the Commission for such reconsideration and refixation of the issue of Project Cost, as was canvassed before them on the basis of material as would be

available before the Commission for rendering of a reasoned analysis.

- SISMA, vide its Memo dated 18.8.2011, had submitted the Project Cost of six Projects and from Orders of various Commissions; six Projects' cost were supported by Chartered Accountant's Certificates;
- Also, as per request of the Commission, had produced the Balance Sheets of Companies between 9.1.2012 and 23.1.2012, two of them for the year 2011 and two for the year 2008-09; though the Balance Sheets did not give the break-up of the actual Project while commissioning the Project;
- This Commission noted that NSL Sugars was yet to be commissioned and Vijayanagar Sugars was commissioned in 2010; they were not available when the Commission passed its Order on 11.12.2009;
- KERDL , as per the directions of this Commission, vide its letter dated 28.2.2012, furnished details of Capital Cost of the Projects commissioned during FY-07 to FY-12. The details of the Project Cost per MW for various Plants commissioned between 2009-10 and 2011-12 was made available by KERDL. In analyzing these, the Commission observed that the CERC had adopted two

approaches, viz., Pooled Cost / Regulatory approach and Actual Project Cost approach. It was noted that though the CERC arrived at a Capital Cost of Rs.4.18 Crores per MW, it approved Rs.4.45 Crores per MW as the norm for the Co-generation Plants for FY-10; based on indexation and averaging, the average Capital Cost for FY-11-12 worked out as Rs.4.21 Crores per MW.

- In its earlier Petition of 30.4.2009, SISMA had furnished the break-up of cost for only one Plant, viz., Baladawadi Bireswar Sugar Private Limited. This Commission had stated that the Project Cost of a single Plant cannot be considered for determining the generic Tariff.
- This Commission, while finalizing the total cost of the land, building, Plant & Machinery, has followed an approach of adopting the median out of the cost details provided by SISMA during the present proceedings for the Projects and the same along with the evacuation cost works out to Rs.447 Lakhs per MW.
- In order to ascertain the Capital Cost of more Projects, the Commissioner for Cane Development and Director (Sugar) was requested to provide DPRs of Co-generation Plants during the period 1.4.2008 to 31.3.2011. This Commission has considered the cost data of seven Projects out of nine furnished by the

Commissioner for Cane Development and Director (Sugar), for reasons outlined. The cost per MW of Co-generation Plants obtained from the data provided by the Commissioner for Cane Development and Director (Sugar) works out to Rs.429 Lakhs per MW. The Commission, after consideration of all the materials placed before it, decided to adopt Rs.430 Lakhs per MW, including the evacuation cost, as the benchmark Capital Cost for the purpose of determining the Tariff/Unit.

- Thus, adopting the Capital Cost of Rs.430 Lakhs per MW, this Commission ordered the Tariff for the electricity generated by the Co-generation Plants to be re-fixed as per the Table given in the Order and the ESCOMs were directed that they shall adopt the same while executing the PPAs thereafter.
- From the above presentation of chronological issues involved for reconsideration and re-fixation of Tariff for the Co-generation Plants, it could be seen that considering the DPRs of various Projects received from the Commissioner for Cane Development and Director (Sugar), during the period from 1.4.2008 to 31.3.2011, this Commission had decided to adopt and re-fix the Project Cost at Rs.430 Lakhs per MW, considering the DPRs of Projects after the Tariff Order of 2009 also up to 31.3.2011, pursuant to the directions of the Hon'ble ATE remitting the matter for reconsideration and re-

examination on the basis of the material as would be made available before the Commission to enable a reasoned analysis to be rendered. Here, it is clear from the chronological events brought out supra, that although the original Order of the Commission was issued on 11.12.2009, the DPRs of Projects received subsequent to that date, also up to 31.3.2011 from the Commissioner for Cane Development and Director (Sugar) were considered for re-examination and re-fixation of the Project Cost for the Co-generation Projects. It is because of this fact that this Commission ordered and directed on 29.3.2012 that the ESCOMs shall adopt the Tariff while executing the PPAs hereafter; whereas, the PPA for the Project of the Petitioner under consideration in the present Petition, was signed earlier on 8.10.2010. To reiterate, the idea of allowing this re-fixed Tariff to Projects whose PPAs are executed after 29.3.2012 (i.e., the date of the Order of this Commission) was that only such Plants can afford to get the benefits of costs of Projects whose DPRs were submitted to the Commissioner for Cane Development and Director (Sugar) up to 31.3.2011.

- Accordingly, the Plant of the Petitioner, whose PPA was signed on 8.10.2010 does not deserve to get the benefit of the re-fixed Project Cost as per the Order of this Commission dated 29.3.2012.

- (c) I beg to differ with the view that the prayer of the Petitioner deserves to be accepted and Article 5.1 of the PPA needs to be modified to incorporate the re-fixed Tariff ordered by this Commission, for the reason that the PPA of the Petitioner has been executed by the Respondent as early as 8.10.2010 and has been approved by this Commission, vide its communication dated 1.12.2011. It evident from the above that the PPA of the Petitioner has been signed on 8.10.2010, and not on a date subsequent to the date of the issued Order this Commission, viz., dated 29.3.2012, pursuant to the directions of the Hon'ble ATE, directing the ESCOMs to adopt the re-fixed tariff while executing PPA thereafter [emphasis supplied].
- (d) Considering my findings in (a), (b) and (c) above, I am not agreeable with the proposition of allowing the Petition considering the circumstances of the facts of this case and the fact that it has been contended by the Respondent also that, "once the PPA is signed by the parties and approved by this Commission, and in view of the specific Order of this Commission making the Order of this Commission dated 29.3.2012 as prospective, the petitioner is not entitled to the prayers made".
- 3) It is my view that the Petition is liable to be rejected. Accordingly, the Petition is rejected.

Sd/-
(K. SRINIVASA RAO)
MEMBER