

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

Dated : 12th September, 2014

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri H.D. Arun Kumar | Member |
| 3. Sri D.B. Manival Raju | Member |

OP No.4/2012

BETWEEN:

Davanagere Sugar Company Limited,
No.73/1, P.B.No.312, Shamanur Road,
DAVANAGERE - 577 304,
(Represented by Prabhuling K. Navadgi, Advocate

Petitioner

AND

- 1) Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
BANGALORE - 560 009.
- 2) The Chief Engineer,
State Load Despatch Centre,
28, Race Course Road,
BANGALORE - 560 001.
- 3) Bangalore Electricity Supply Company Limited (BESCOM),
K.R. Circle,
BANGALORE- 560 001. ..
*[R1 and R2 represented by M/s. Justlaw, Advocates &
R3 represented by Shri V.Y. Kumar, Advocate]*

Respondents

ORDER ON
I.A.No.1/2014 IN OP No.4/2012

1) In this case, Respondents 1 and 2 have filed I.A.No.1/2014 on 7.7.2013, praying for reduction of compensation awarded in OP No.4/2012, vide Order dated 14.2.2013, from Rs.3.90 per Unit to Rs.3.59 per Unit, payable to the Petitioner for the electricity injected into the State grid. They had prayed for the same relief in RP No.8/2014 in Appeal No.86/2013 in the case of *KPTCL-Vs-KERC and others* before the Hon'ble Appellate Tribunal for Electricity (ATE), wherein the Hon'ble ATE had directed this Commission, by Order dated 28.5.2014, to decide this issue and pass orders after hearing the parties.

2) The facts leading to the filing of the present I.A.No.1/2014 for reduction of the compensation may be stated as follows :

(a) The Petitioner had filed OP No.4/2012 for payment of compensation at the rate of Rs.5.00 per Unit for the electricity supplied by it during the period between 17.12.2010 and 11.1.2011 to the State grid and utilized by the State distribution licensees. It was alleged by the Petitioner that it had filed an application for open access on 10.12.2010 and that its request for open access during the above period was not granted, without any valid reason, by the second Respondent, and that during the said period, the Petitioner had injected energy into the State grid, without there being any other alternative.

- (b) After contest, this Commission, by its majority by Order dated 14.2.2013, held as follows :

"Accordingly, Respondent No.2 is directed to arrange to pay to the Petitioner for the electricity supplied between 17.12.2010 to 11.1.2011, within 4 (four) weeks from the date of communication of this Order, at the rate of Rs.3.90 per Unit. Respondent No.2, in turn, is entitled to recover the said amount from the Distribution Licensees to whom the said power was allocated / supplied in proportion to the allocation."

- (c) In the above case, the compensation for the electricity supplied was quantified, taking into consideration the rate of generic tariff prevailing for Co-generation Plants during the period when energy was injected into the State grid.
- (d) This Commission had determined generic tariff for Co-generation Plants, by its Order dated 11.12.2009 in case No.S/09/1, fixing the base rate at Rs.3.59 per Unit. This Order was challenged by the South Indian Sugar Mills Association (SISMA), Bangalore, before the Hon'ble ATE in Appeal No.148/2010. The Hon'ble ATE remanded the matter to this Commission for fresh consideration, with certain directions. Thereafter, by giving fresh opportunity to the parties and conducting a public hearing in the matter, the base rate of the generic tariff for Bagasse-based Co-generation Plants was revised to Rs.3.90 per Unit, vide Order dated 29.3.2012, and also

directed the ESCOMs to adopt the same while executing Power Purchase Agreements (PPA) "hereafter."

(e) The word, "hereafter" appearing in the Commission's generic Tariff Order dated 29.3.2012, has led Respondent Nos.1 and 2 to contend that the said Order revising the rate to Rs.3.90 per Unit was 'prospective' in operation and it did not relate back to the original generic Tariff Order dated 11.12.2009.

3) The Petitioner appeared through its counsel and filed its Statement of Objections, opposing the prayer made in I.A.No.1/2014.

4) We have heard the learned counsel for the parties on I.A.No.1/2014.

5) After considering the rival submissions of the parties and the material placed on record, we hold that I.A.No.1/2014 is liable to be rejected for the following reasons :

(a) The very same contention, viz., whether generic Tariff Order dated 29.3.2012 revising the rate to Rs.3.90 per Unit was prospective in operation or not, was raised in OP No.46/2012 in the case of *Parry's Sugar Industries Limited -Vs- Hubli Electricity Supply Company Limited*. In the said case, this Commission, by Order dated 7.2.2013, has held that the revised rate of tariff relates to the original generic Tariff Order dated 11.12.2009, for the

reasons stated therein. A plain reading of the Order dated 29.3.2012 revising the generic tariff in respect of Co-generation Plants shows that the said Order was not intended to be 'prospective' in operation, but it was meant to take effect from the date of the original Order dated 11.12.2009. The Hon'ble ATE had remanded the matter to re-examine the capital cost of Projects, upon consideration of the relevant material as would be placed before the Commission by the parties. The Commission, after considering the material produced by the parties, re-fixed the capital cost of Projects at Rs.430 Lakhs per Mega Watt (MW), in place of Rs.365 Lakhs per MW that was fixed earlier. This enhanced capital cost of Projects of Rs.430 Lakhs per MW translated into the revised tariff of Rs.3.90 per Unit. Therefore, the revised tariff should be given effect from 11.12.2009, i.e., from the date of the original generic Tariff Order.

- (b) As already noted above, by Order dated 7.2.2013 in OP No.46/2012, in the case of *Parry's Sugar Industries Limited -Vs- Hubli Electricity Supply Company Limited*, this Commission had clarified that the Order dated 29.3.2012 revising the tariff for Co-generation Plants should be given effect to from 1.1.2010, the date on which the rates determined in the generic Tariff Order of 11.12.2009 came into effect. Therefore, when the Order in OP No.4/2012 was passed on 14.2.2013, this Commission had ordered compensation at the rate of Rs.3.90 per Unit for the supply of energy during the period between 17.12.2010 and 11.1.2011, which was the rate

of generic tariff for Co-generation Plants applicable at the relevant point of time.

(c) The same question again came up before this Commission in I.A.No.1/2013 in OP No.12/2012 in the case of *Ugar Sugar Works Ltd. –Vs- Karnataka Power Transmission Corporation Limited and others*, wherein this Commission had taken the view that the rate of Rs.3.90 per Unit was applicable from 1.1.2010, the date on which the rates determined in the generic Tariff Order of 11.12.2009 came into effect.

(d) The Applicants / Respondent Nos.1 and 2 in the present case could not advance any acceptable reasons to differ from the views already expressed by this Commission in the above-cited cases, as to why the revised rate of Rs.3.90 per Unit was made applicable from 11.12.2009.

6) It is noticed that the Order dated 7.2.2013 passed in OP No.46/2012 in the case of *Parry's Sugar Industries Limited –Vs- Hubli Electricity Supply Company Limited*, is challenged in Appeal No.309/2013 before the Hon'ble ATE, and the same is pending consideration. To avoid multiplicity of Appeals, we feel it is necessary to pass a conditional Order in this case, subject to the outcome of the said Appeal pending before the Hon'ble ATE.

I.A.No.1/2014 in OP No.4/2012

7) For the foregoing reasons, we hold that the prayer made by Respondent Nos.1 and 2 in I.A.No.1/2014 cannot be granted. Therefore, we pass the following :

ORDER

- (a) I.A.No.1/2014 filed by Respondent Nos.1 and 2 in the above case is rejected; and
- (b) The Respondents shall, however, be entitled to restitution of any excess amount paid by them to the Petitioner, subject to the outcome of Appeal No.309/2013, which is pending before the Hon'ble ATE.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER