

No.N/102/11

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated 24th May, 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. 52/2011

BETWEEN

M/s. Parrys Sugar Industries Limited
1/2, 3rd Floor, Venus Building
Kalyanamantapa Road
Jakkasandra
BANGALORE - 560 094
(Represented by M/s. Shridhar Prabhu Associates
Advocates)

... **Petitioner**

AND

1. Hubli Electricity Supply Company Limited
Nava agar, P.B. Road
HUBLI – 580 025
2. State Load Despatch Centre – Karnataka
Ananda Rao Circle, Palace Road
BANGALORE – 560 009
(Represented by M/s. Just Law, Advocates)

... **Respondents**

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1. In this Petition, the Petitioner has sought for: (1) a direction to the Respondents to grant Open Access; (2) a direction to the Respondents to pay Rs.5.50 per Unit for the electricity generated and fed into the grid; initiation of proceedings under Section 142 of the Electricity Act, 2003; and

(4) issuance of statutory advice to the Government of Karnataka to notify under Section 31(2) of the Electricity Act, 2003, a Government Company or any authority or corporation other than the State Transmission Utility, to operate under the 2nd Respondent-State Load Despatch Centre (SLDC).

2. In support of its Prayers, it is submitted by the Petitioner that it has a Co-generation Plant of 24 MW capacity with 20.86 MW of exportable capacity at Hullatti Village, Haliyal Taluk, Uttara Kannada District. The Petitioner's predecessor, M/s Bharath Sugar Mills Limited, had entered into a Power Purchase Agreement (PPA) with the 1st Respondent on 22.1.2007, and the same came to be terminated on 9.7.2009. The Respondents challenged the said termination in OP No.34/2009 unsuccessfully. In view of the termination of the PPA, the Petitioner has entered into a PPA on 22.9.2011 with Tata Power Trading Company Limited (TPTCL) and the said Purchaser applied for an Open Access. But, this was not granted by the 2nd Respondent. Therefore, the Petitioner continued to pump the electricity generated, and for the said electricity, he is entitled to be paid at the rate of Rs.5.50 per Unit, which the Government of Karnataka had ordered to be paid by the Electricity Supply Companies (ESCOMs) when Section 11 of the Electricity Act, 2003 was in vogue.

3. The Respondents have put in appearance through their Counsels and have filed detailed objections on 12.12.2011. In the Objection Statement, the Respondents have contended that the Petitioner has failed to furnish the change of ownership Certificate from 'GMR Industries Limited' to 'Parrys Sugar Industries Limited', even though called for, and therefore, the application for 'Standing Clearance' for Open Access was not considered. Further, it is contended that the Petitioner is not entitled to Rs.5.50 per Unit for the electricity pumped in, as the same has been

injected to the grid without a Schedule and electricity pumped in by the Petitioner is after the period during which Open Access was sought.

4. The Petitioner, on 12.1.2012, has also filed a Rejoinder, refuting the statements made in the Objection Statement.

5. We have heard the Counsels appearing for both the parties in support of their respective contentions.

6. It is not disputed that the predecessor of the Petitioner, M/s Bharath Sugar Mills Limited, had entered into a PPA with the 1st Respondent on 22.1.2007, but the same came to be terminated on 9.7.2009 for payment defaults, as well as for non-opening of Letter of Credit as per the terms of the PPA. The termination of the PPA came to be upheld by this Commission in OP No.34/2009 on 2.6.2011. Further, it is also undisputed that TPTCL on behalf of the Petitioner had applied to the 2nd Respondent for 'Standing Clearance' for Open Access and the same was not granted by the 2nd Respondent.

7. The only dispute in this Petition is with regard to non-granting of Open Access by the Respondents and payment for the electricity pumped into the grid during the period when the Open Access was not granted. Therefore, the questions that would arise for our consideration are:

- (i) Whether the Petitioner was entitled to seek 'Standing Clearance' for Open Access; and
- (ii) Whether the Petitioner is entitled to be paid at the rate of Rs.5.50 per Unit for the electricity pumped into the grid.

8. **ISSUE No.1 :**

(i) It has been vehemently argued by the Counsel for the Petitioner that the Petitioner was entitled to 'NOC' upon termination of the PPA, which is not disputed, but the same was not granted by the 2nd Respondent, even though an application to that effect was made. Therefore, as a consequence of this, the Petitioner is entitled to be paid for the energy pumped into the grid at the rate of Rs.5.50 per Unit, which was the rate fixed by the Government of Karnataka while invoking Section 11 of the Electricity Act, 2003 on 1.4.2010.

(ii) Per contra, the Counsel for the Respondents has submitted that the Petitioner was not entitled to 'Standing Clearance' for Open Access, since it failed to furnish the required information sought by the Respondents. Further, it is submitted by the Respondents' Counsel that the Petitioner cannot pump in electricity without a Schedule and demand payment for the same. It is also submitted that the Petitioner was not entitled to be paid at the rate of Rs.5.50 per Unit, at any rate.

(iii) In our view, though the Petitioner was entitled to seek 'Standing Clearance' for Open Access from the State Load Despatch Centre (SLDC), the facts of the case based on chronological events indicate that the Petitioner took time to complete the formalities for effecting the change in the records of KPTCL. In view of this, SLDC / KPTCL cannot be held entirely responsible for the delay in grant of 'Standing Clearance' for Open Access. At the same time, it is seen that the procedural formalities between KPTCL and the ESCOMs take sufficient time before the 'Standing Clearance' for Open Access is issued in terms of the provisions in Regulations. We advise the KPTCL and the ESCOMs to work out a suitable

set of Procedures to ensure grant of 'Standing Clearance' / 'NOC' for Open Access well within the time-frame prescribed in the Regulations for future transactions.

(iv) Since the period for which the application for 'Standing Clearance' for Open Access has expired, the Commission issuing a direction to the Respondents for grant of 'Standing Clearance' for Open Access does not arise. However, as explained in the previous paragraph, all future applications for 'Standing Clearance' / 'NOC' for Open Access shall be considered by the 2nd Respondent-SLDC in accordance with law and disposed of expeditiously.

9. **ISSUE No.2 :**

(i) As regards payment for the electricity pumped into the grid by the Petitioner, we are of the view that the 1st Respondent is not liable to pay for the same, as the Petitioner did not seek any 'Standing Clearance' for Open Access during the period in which electricity has been pumped into the grid. From the correspondence made by the Petitioner with the 2nd Respondent-SLDC, it is observed that the alleged power has been pumped in, without scheduling, not during the period for which 'Standing Clearance' for Open Access was sought, but during a subsequent period in time. In the instant case, the electricity has been pumped in after the period for which 'Standing Clearance' for Open Access period was sought had expired. Therefore, there cannot be a claim for payment on the ground that Open Access was sought by the Petitioner, but the same was not granted by the 2nd Respondent, and that therefore it is entitled to be paid. Accordingly, the Petitioner is not entitled to be paid at any rate, leave alone Rs.5.50 per Unit, as claimed by it.

10. For the foregoing reasons, this Petition is disposed of without any direction to the Respondents.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K.SRINIVASA RAO)
MEMBER