

No.N/106/11

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated : 29<sup>th</sup> March, 2012**

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

**OP No. 53/2011**

**BETWEEN**

Master Power  
(A Division of Master Marine Services Pvt.Ltd.)  
Formerly known as Kalson Power Tech.Pvt.Ltd.  
No.46 (1032), 1<sup>st</sup> Cross  
Geethanjali Layout  
HAL III Stage  
BANGALORE – 560 075  
(Represented by M/s. Holla & Holla, Advocates)

... **Petitioner**

**AND**

1. Karnataka Power Transmission Corporation Ltd.  
Cauvery Bhawan, Kempegowda Road  
BANGALORE - 560 009
2. Mangalore Electricity Supply Company Limited  
1<sup>st</sup> Floor, Paradigm Plaza  
A.B. Shetty Circle  
MANGALORE – 575 101

(Represented by M/s. Just Law, Advocates, for R1  
and Sri Prashant T. Pandit, Advocate, for R2)

... **Respondents**

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1. The Petitioner has filed this Petition on 9.12.2011, praying for a direction to the 2<sup>nd</sup> Respondent- Mangalore Electricity Supply Company Ltd. (MESCOM) to pay the Petitioner, with effect from 16.5.2011, the tariff at the rate of Rs.3.9176 per Kilowatt hour and for such other reliefs.

2. The Petition averments, in brief, are as follows :

(a) The Petitioner is a Generating Company with a 3 MW Mini Hydel Plant at H.D. Kote Taluk. The Plant was commissioned on 30.12.2002 and started supplying power to Respondent No.1-Karnataka Power Transmission Corporation Limited (KPTCL), under a Power Purchase Agreement (PPA) dated 16.5.2001 at Rs.2.25 per Unit, with escalation at 5% per annum.

(b) A Supplemental Agreement was entered into on 31.5.2006 by the Petitioner with Respondent No.2-MESCOM, according to which the rate payable for the 10<sup>th</sup> year (1.4.2011 to 15.5.2011) would be Rs.3.9176 per Unit.

(c) Considering the Order passed by this Commission on 11.12.2009 in determining the tariff in respect of the Renewable Sources of Energy delivered from the 11<sup>th</sup> year, the Petitioner wrote a letter dated 12/21.4.2011 to Respondent No.2, requesting for approval of tariff at Rs.3.9176 per Unit for the next 10 years, without escalation, as the same is the tariff of the 10<sup>th</sup> year. However, Respondent No.2-MESCOM replied, through its letter dated 26.5.2011 that since the Commission has fixed a tariff of Rs.3.40 per Unit for new Projects, the question of paying a higher tariff, as claimed, does not arise.

(d) It is further contended by the Petitioner that though the payment made at Rs.3.40 per Unit for the energy supplied from October, 2011 by Respondent No.2, was specifically subject to finalization of tariff from the 11<sup>th</sup> year by the Commission, the Respondent has taken the present stand and has stated that the payments made at Rs.3.40 per Unit are towards full and final settlement of the Petitioner's claim. The Petitioner, therefore, has accepted the payments under protest and has approached the Commission for resolution of the dispute.

4. Respondent No.1-KPTCL has been represented by M/s. Just Law Advocates. Respondent No.2-MESCOM has put in appearance through its Advocate, Shri Prashant T. Pandit. However, no Statement of Objections has been filed on behalf of the Respondents, probably realizing that the stand taken by it is contrary to the Commission's Orders dated 11.12.2009 and 19.5.2011.

5. We have considered the averments made in the Petition and have also heard the oral arguments of both the Counsels.

6. The short point that arises for consideration is, "whether the stand of the Respondent No.2-MESCOM, reflected in its letter, produced as Annexure-F, is correct or not."

7. In Annexure-F, Respondent No.2 has taken a stand that as per Clause 5.2 of the PPA dated 16.5.2001, the parties have to negotiate on the tariff to be payable from the 11<sup>th</sup> year onwards and therefore, the Petitioner has to furnish the details for fixation of the 11<sup>th</sup> year tariff.

8. This Commission, in its Order dated 11.12.2009 in the matter of Fixation of Tariff in respect of Renewable Sources of Energy, has held as follows :

***“Tariff for the existing plants which have completed 10 years of PPA period:***

*The Commission, during the course of public hearing, had directed the existing plants, which have completed the initial period of 10 years, to file proposals for fixation of tariff after the completion of 10 years.*

*IWPA had filed a proposal requesting the Commission to fix a tariff of Rs.3.70 per Unit in respect of wind power projects. Konark Power Projects Ltd., had proposed a tariff of Rs.6.82 per Unit. Both IWPA & Konark Power have adopted different parameters as compared to the Commission approved parameters.*

***In view of the fact that, after completion of 10 years debt servicing will have been fully met and the only increase would be in respect of O&M expenses, but at the same time the opportunity cost of the power has gone up, the Commission decides to allow the rate equal to the rate at the end of the tenth year, without escalation for the next ten years for all renewable projects. This tariff is also applicable to such PPAs in which ten years period is already completed but no tariff has been determined.”***

9. Further, this Commission, in the case of O.P.No.2/2011 decided on 19.5.2011, while examining the PPA, which is similar to the one in the present case, has held that the tariff determined by the Commission for the Projects from 11<sup>th</sup> year onwards overrides the Clause in the PPA, viz., Clause 5.2, and the parties have to be governed by the Order of the Commission dated 11.12.2009.

10 In view of the Orders passed by this Commission on 11.12.2009 and 19.5.2011 in O.P.No.2/2011, it has to be held that the stand taken by the

Respondents is not tenable and the Petitioner is entitled to be paid for the next ten years from 16.5.2011 at the rate of Rs.3.91 per Unit for all the energy supplied from its Project, without any escalation.

Accordingly, this Petition is allowed in terms of the above.

Sd/-	Sd/-	Sd/-
(M.R.SREENIVASA MURTHY)	(VISHVANATH HIREMATH)	(K.SRINIVASA RAO)
CHAIRMAN	MEMBER	MEMBER