

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

**Dated : 16<sup>th</sup> January, 2015**

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

**OP No.10/2012**

**BETWEEN:**

Sree Raylaseema Alkalies & Allied Chemicals Limited,  
Gondipria,  
KURNOOL – 518 004

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**PETITIONER**

*(Represented by M/s. Link Legal India Law Services, Advocates)*

**AND**

- 1) Power Company of Karnataka Limited,  
5<sup>th</sup> Floor, KPCL Building,  
Cauvery Bhavan,  
Bengaluru – 560 009.
- 2) Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan,  
Bengaluru – 560 009
- 3) Bangalore Electricity Supply Company Limited,  
K.R. Circle,  
Bengaluru – 560 001
- 4) Mangalore Electricity Supply Company Limited,  
Paradigm Plaza,  
A.B. Shetty Circle,  
Mangaluru – 575 001

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**RESPONDENTS**

*[Respondents-1, 3 & 4 represented by M/s. ALMT Legal, Advocates  
Respondent-2 represented by M/s. Justlaw, Advocates]*

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**ORDERS**

- 1) The Petitioner has filed this Petition under Section 86(1)(f) of the Electricity Act, 2003, on 22.3.2012 and has sought for the following reliefs :
  - (a) Declaration that the letter dated 3.2.2012 issued by the Respondents-2 to 4 (Annexure P-31) and the letter dated 25.2.2012 issued by Respondent-3 (Annexure P-35) are invalid and *non est* in the eyes of law;
  - (b) Direction to the Respondent-2 (KPTCL) to refund Rs.1,10,53,000/-, paid by the Petitioner as per Article 3.3 of the Power Purchase Agreement (PPA) dated 15.12.1997, towards construction of a separate line, along with interest of Rs.2,12,36,295/- @ 18% per annum up to February, 2012 (totalling Rs.3,22,89,295/-);
  - (c) Direction to the Respondents-3 and 4 to pay a total sum of Rs.5,50,61,302/-, towards interest on belated payments of the Tariff Bills, including interest thereon, calculated up to February, 2012;
  - (d) Direction to the Respondents-3 and 4 to pay the deemed generation charges, variable charges, fixed charges and rebate on rebate, amounting to Rs.1,83,27,836/-, along with the interest of

Rs.2,39,85,637/- @ 18% per annum (totalling Rs.4,23,13,473/-), up to February, 2012;

- (e) Direction to the Respondents-3 and 4 to pay Rs.1,65,65,345/-, as per the tariff invoice dated 01.3.2012 raised for the month of February, 2012;
  - (f) Direction to the Respondents-3 and 4 to refund to the Petitioner the Net Tax liability amounting to Rs.1,22,03,454/-, payable as per Article 11.5 of the PPA, dated 15.12.1997, for the first ten years of its operation;
  - (g) Direction to the Respondents to open an ESCROW account as per Article 9.5 of the PPA; and
  - (h) Direction to Respondents to pay the cost of these proceedings.
- 2) The Petitioner had filed I.A.No.1/2012, dated 18.12.2012, for production of documents, I.A.No.1/2013 dated 16.4.2013 for modification of the prayer, I.A.No.2/2013 dated 19.9.2013 for impleading additional Respondents, and Memos dated 23.7.2013, 29.8.2013 and 19.9.2013, for production of documents. These applications and memos have been taken on record.

- 3) In the application I.A.No.1/2013 filed on 16.4.2013, the Petitioner had prayed to adjudicate the prayers at Sl. Nos.(b), (c), (d), (e), (f) and (h) of the Petition and defer the adjudication of prayer at Sl.No.(a), as the issue relating to refund of corporate tax by the Petitioner is pending before the Hon'ble Supreme Court in Civil Appeal No.1955/2013. Therefore, the prayer at Sl.No.1(a) above, pertaining to the refund of corporate tax is not considered in this Petition.
- 4) After hearing the preliminary submissions of Petitioner, Notices were issued to Respondents, pursuant to which they have put in appearance through their Counsel, and filed Objections and also certain documents. The Petitioner's Counsel has filed the Rejoinders to the objections of the Respondents.
- 5) The averments made in the Petition indicate that pursuant to the bids invited by the Government of Karnataka (GoK) on 25.11.1995, the Petitioner had established a furnace-oil based power plant of 27.8 MW capacity at Thaginabudihal village of Ballari-District. It had entered into a PPA dated 15.12.1997 (ANNEXURE-P3) with the erstwhile Karnataka Electricity Board (KEB). Thereafter, upon formation of the 2<sup>nd</sup> Respondent-Company (KPTCL), the transmission and distribution functions of the erstwhile KEB were transferred to KPTCL. The Respondents are wholly-owned GoK undertakings. The power plant was put into commercial

operation from 31.10.2000 [Commercial Operation Date (COD)]. The term of the PPA was 12 tariff periods from the COD.

6) We have perused the pleadings of the Petitioner and the Respondents and also heard the submissions by the learned counsel for the parties. We have also gone through the documents produced by the parties. We feel it appropriate to discuss the pleadings while dealing with each of the prayers of the Petitioner, treating them to be the issues involved in the Petition.

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

(a) The first prayer in the Petition is for a declaration that the letter dated 3.2.2012 issued by the Respondents-2 to 4 (Annexure P-31) and the letter dated 25.2.2012 issued by Respondent-3 (Annexure P-35) are invalid and *non est* in the eyes of law. Under these letters, the Respondents- 2 to 4 have claimed refund of arrears of certain Tax benefits, to be returned by the Petitioner under Article 11.5 of the PPA, as ordered in OP No.24/2011 by this Commission and upheld by the Hon'ble ATE in Appeal No.164/2012. The Petitioner has challenged the Order passed in Appeal No.164/2012 and in OP No.24/2011 before the Hon'ble Supreme Court in Civil Appeal No.1955/2013. As per the request made by the Petitioner, in I.A.No.1/2013 filed on 16.4.2013, the consideration of this prayer is deferred for the time being, till the decision of the Hon'ble Supreme Court in Civil

Appeal No.1955/2013. The Petitioner shall file an application before this Commission for further orders on this issue, if so advised, after disposal of the above-said Civil Appeal by the Hon'ble Supreme Court.

8) **ISSUE No.(2) :**

(a) The second prayer in the Petition is to direct the Respondent-2 (KPTCL) to refund a sum of Rs.1,10,53,000/-, along with interest of Rs.2,12,36,295/- thereon up to February, 2012 (totalling Rs.3,22,89,295/-), paid by the Petitioner towards construction of a separate line, as per Article 3.3 of the PPA.

(b) The Petitioner has pleaded that the total length of the new line was 14.4 KMs from the Petitioner's project to the injection point and as per Article- 3.3 of the PPA, the Respondent-2 (the then KEB and now the KPTCL) had to bear the cost of the new line from the Project up to 5 KMs., and the cost of the new line from 5 KMs onwards up to the nearest sub-station had to be borne by the Petitioner. As per the letter dated 14.3.2002, the Respondent-2 had recovered Rs.1,36,21,992/- from the tariff bills during the period from 4.9.2000 to 31.5.2001 (Annexure P-41 filed with I.A.No.1/2012). Further, the Petitioner has filed a copy of the letter dated 19.4.2011 addressed by the Respondent-2 (Annexure P-42 filed with I.A.No.1/2012), informing the Petitioner that no further progress had been made in the construction of the new 110 kV Single Circuit line during the

past four years, as the contractor, who was awarded the contract on 10.7.2003, was black-listed, and tendering for completion of the remaining work was in progress. The Petitioner, in the Rejoinder dated 26.6.2013, has stated that as per the PPA, the new line had to be ready before sixty days prior to the COD, and as the new line was not ready, the Petitioner was made to evacuate the Power generated through the existing feeder line, by the Respondent-2.

- (c) The learned counsel for the Respondent-2, in his Objections dated 13.6.2013, submitted that the cost of new transmission line was in-built in the tariff under the PPA and had already been recovered by the Petitioner, and that refunding of the money to the Petitioner would mean double recovery of the costs incurred. In the Statement of Objections filed by the 2<sup>nd</sup> Respondent, it is contended that the construction of the transmission line was assigned to one M/s. Samala Mareppa & Sons, Ballari, through tender process, on 10.7.2003 and that the value of the contract was Rs.1,35,57,876/-, but the said Contractor did not complete the above work and had furnished a fake Bank Guarantee, and that the said Contractor was black-listed and its services were terminated. Further, it is contended that the payment made to the Contractor was to the tune of Rs.1,19,77,003/-, and that 75% of the work was completed. In the document (ANNEXURE - P-76) furnished on 2.11.2010 to the Petitioner by the Accounts Department of the 2<sup>nd</sup> Respondent, it is stated that the total expenditure up to 30.9.2010 was Rs.131.54 Lakhs. However, the learned

- counsel for the Respondent-2, in the Memo dated 29.8.2013, has stated that the total length of the line to be constructed was 14.4 KMs and that 75% of the work had been completed at a cost of Rs.94,51,818/-.
- (d) The Petitioner, in the Rejoinder dated 26.6.2013, has refuted the statement of the Respondent-2, that the cost of construction of new transmission line was built into the tariff, and has submitted that, due to technical faults in the existing line, it had to change the fuel of its plant from furnace oil to diesel and incur huge cost for this purpose; however, it did not intend to claim this difference in fuel cost from the Respondent-2. The petitioner has also stated that there existed a line, which could evacuate the power and if according to the Respondent-2, it was not suitable for evacuation, the new line had to be constructed within the period prescribed in the PPA, i.e., sixty days prior to COD. As this has not been complied with, the Petitioner is entitled to refund of the amount.
- (e) We have heard the learned counsel for the Petitioner and the Respondent-2, and perused the material on record. The Respondent-2, in its letters dated 20.12.2001, 19-9-2006, 17.5.2007 (Annexures P-68, P-70 and P-71 filed by the petitioner with memo dated 23.7.2013) had intimated the Petitioner about the progress achieved in construction of the new line and resistance by farmers for stringing work of the said line due to standing paddy-crop. In lieu of the new line, the Respondent-2 (KPTCL) had evacuated the power through an alternate existing 110 kV line



between Ballari North Sub-station and Old Panyam Group Calcium Carbide Plant.

(f) It is relevant to quote Article 3.3(a) of the PPA, which reads thus :

*“(a) The Board shall be responsible for the design, engineering and construction of the Transmission Facilities. The Board shall make financing arrangements for the construction of the Transmission Facilities upto Project Site from the nearest substation. If the Project site is situated at distance beyond 5 kilometre from the nearest sub-station the Company shall pay the Board for construction of Transmission Facilities for such additional distance beyond 5 kilometre. The amount shall be paid to the Board within 30 Days of Effective Date. The construction of the Transmission Facilities shall be completed 60 Days prior to the Scheduled Commercial Operation Date.”*

(g) We would like to observe that in this case, the cost of construction of a new line is built into the tariff discovered through the competitive bid process, as contended by the 2<sup>nd</sup> Respondent. This fact is clear from the contents of the Notification dated 25.11.1995 issued by the KEB, inviting proposals for setting up of Multi-fuel Power Plants in the Private / Public Sector in Karnataka. This Notification proposed the various locations where Power Projects should be established, and further stated that the KEB should make all necessary arrangements, at its cost, for the design, engineering, financing and construction of the interconnection facilities

up to a 5 KM distance from the nearest Sub-Station or transmission line. The Petitioner had chosen a particular location for establishing his Project, as described in Schedule-10 of the PPA, and the Petitioner must have known the distance between its Project Site and the nearest Sub-Station or the transmission line, and the amount to be incurred by it for the construction of transmission line for evacuation of power, after a 5 KM distance from the nearest Sub-Station or transmission line. Therefore, we hold that the cost of construction of a new line was built into the Petitioner's Tariff discovered through a competitive bid process.

- (h) However, the Petitioner, having accepted the alternative arrangement for evacuation of power generated by it all through the term of the PPA, cannot now plead that the new line was not completed by the Respondent-2, as agreed, and the usage of the alternative line had resulted in losses due to improper evacuation. The Petitioner has not contended in his Petition that the alternative line had resulted in losses due to improper evacuation and the said contention has been pleaded only at the fag end of the proceedings. If the Petitioner had any grievances on this count, the same should have been raised when the PPA was valid and within a reasonable period from the COD. But no such grievance was made by the Petitioner. The explanation given by the Petitioner is that it was always assured by the Respondents that the line would be completed. As can be seen from the records, the Respondent-2 could not complete the work of construction of the line due to

unforeseen circumstances, but has spent a substantial portion of the amount on the construction of the line. It seems, it had no intention to cause difficulty to the Petitioner and had immediately provided an alternative means of evacuation. The amount was collected from the Petitioner for construction of the transmission line for evacuation of power from the Project, as agreed in Article 3.3(a) of the PPA, and substantial portion of the amount was spent for construction of the transmission line, and alternative means of evacuation was arranged by the 2<sup>nd</sup> Respondent and the Petitioner availed of that alternative means throughout the PPA period. Therefore, we hold that the Petitioner is not entitled to refund of the amount. For the above reasons, we answer this issue in the negative and against the Petitioner.

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

- (a) The third prayer is to direct the Respondents-3 and 4 to pay a total sum of Rs.5,50,61,302/-, towards interest on belated payments of the Tariff Bills, including interest thereon, calculated up to February, 2012.
- (b) The last paragraph of Article 9.4(e) of the PPA, dealing with the payment of interest on delayed payment, states that, "*Any payment made beyond the Due Date of Payment shall carry interest at Default Rate.*" The PPA provides that tariff invoices and supplementary invoices shall be paid within the 'Due Date of Payment', failing which interest shall be paid on such amounts at the 'Default Rate', beyond the 'Due Date of Payment'.

- (c) The Petition, or any of its Annexures, does not contain any material particulars pertaining to the calculation of interest on delayed payments. The Petitioner has filed certain documents along with I.A.No.1/2012 on 18.12.2012. Out of these documents, ANNEXURE – P-43 relates to the calculation of interest on delayed payments, furnishing the required particulars. This document indicates that there were delays on a number occasions in respect of payment of invoices beyond the 'Due Date of Payment' from 2000 till March, 2005.
- (d) ANNEXURE – P-47 contains the calculation sheet of interest on delayed payments from 2000 to July, 2004. ANNEXURE – P-49 contains the calculation sheet of interest on delayed payments from 2000 to June, 2010 and it also contains the calculations pertaining to the rebate claimed by the Respondents during the said period.
- (e) The Respondents have filed their Statement of Objections subsequent to the production of documents under I.A.No.1/2012. In their Statement of Objections, they have not denied the liability to pay interest on the delayed payments. It was required of the Respondents to specifically traverse the contents of the different calculations produced by the Petitioner. The Respondents would be having the records in their custody, and hence the entries in the calculation sheets produced by the Petitioner could have been cross-checked for their correctness.

- (f) A perusal of the calculation sheets pertaining to interest on delayed payments, which are produced by the Petitioner at different points of time, shows that the Petitioner claimed interest on interest for the delayed payments. However, the PPA does not provide for payment of interest on interest for the delayed payments, in the event the interest for delayed payments is not paid, as and when it becomes due. The claim of Rs.5,50,61,302/- made by the Petitioner as on the date of filing of the Petition towards interest on delayed payments included the interest on delayed payments and also the interest on such interest. As already noted above, the Petitioner is not entitled to interest on such interest, as there is no specific term in the PPA to that effect.
- (g) The only ground urged by the Respondents is that the claim towards interest is barred by limitation. The Petitioner has contended that the Limitation Act is not applicable to the proceedings before this Commission. However, we note that, now it is established that though the Limitation Act is not applicable for the claims made before the Commission, the principles of delay and laches are applicable. On the question as to what is 'reasonable time' to file a claim before any Forum, for which the Limitation Act is not applicable, the principles stated in the decision reported in **(2000) 2 SCC 628**, between *Corporation Bank and another –Vs- Navin J. Shah*, read thus:

*"...What is reasonable time to lay a claim depends upon the facts of each case. In the legislative wisdom, three years' period has been prescribed as the reasonable time under the Limitation Act to lay a claim for money. We think that period should be appropriate standard adopted for computing reasonable time to raise a claim in a matter of this nature. For this reason also we find that the claim made by the respondent ought to have been rejected by the Commission."*

In the decision reported in **(2013) 10 SCC 627** in the case of *Londhe Prakash Bhagwan -Vs- Dattatraya Eknath Mane and others*, at paragraph-9 of its Judgment, the Hon'ble Supreme Court has held thus:

*"..... If no time limit has been prescribed in the statute to apply before the appropriate forum, in that case, he has to come before the Court within a reasonable time. This Court on a number of occasions, while dealing with the matter of similar nature held that where even no limitation has been prescribed, the petition must be filed within a reasonable time. ...."*

- (h) As regards the claim of the Petitioner towards interest on delayed payments, it has written the letters dated 3.8.2001, 1.10.2002, 14.2.2003, 20.10.2003, 2.6.2004 and 31.5.2005 to the 2<sup>nd</sup> Respondent, attaching therewith the calculations of interest for different periods, claiming the arrears thereof. The 2<sup>nd</sup> Respondent had not replied to the above letters, denying its liability to pay interest.

- (j) Respondents-3 and 4, in their Statement of Objections dated 13.6.2013, have stated that the claim for interest is for the period up to June, 2004, during which period the PPA was not assigned to them. They have stated that the Petitioner had written to the Respondent-3 on 02-7-2010, claiming interest for the alleged delayed payments up to June, 2004, but failed to demonstrate that the bills raised by it were paid belatedly. Further, the Respondents have stated that they had claimed rebate for making prompt payment of the Petitioner's tariff bills. The Respondents have enclosed statements demonstrating the prompt payments made to the Petitioner by Cheques. The Respondents have also added that the claims pertaining to the period from 2001 to 2009 would be barred by limitation.
- (k) The Petitioner has filed Rejoinder to the objections of the Respondents-3 and 4, stating that the law of the limitation does not apply to this issue, as the Petitioner had, time and again, reminded the Respondents in this behalf and that the dues were admitted by the Respondents. We notice that in the letter dated 5.9.2006 (ANNEXURE – P47), the State Power Procurement Co-ordination Centre – GoK, Bengaluru, had directed to issue a Cheque for Rs.1,39,57,780/- towards the interest payable to the Petitioner from September, 2002 to June, 2004. In this regard, the letter dated 12.9.2011 (ANNEXURE – P-50) issued by the 1<sup>st</sup> Respondent (PCKL) to the Petitioner may also be noted. In this letter, the 1<sup>st</sup> Respondent, as the Nodal Agency of the Electricity Supply

Companies (ESCOMs), has stated that certain amounts towards the principal and interest were due from KPTCL and the ESCOMs. ANNEXURES- P-47, P-50 and P-53 are in the nature of acknowledgment of debts by the Respondents. We have also noticed that the Petitioner, time and again, had made several requests to the Respondents and also to the GoK for payment of arrears of interest. In view of the above facts and circumstances of the case, it can be held that the claims of the Petitioner towards the interest on the delayed payments of the tariff invoices, were not hit by delay and laches.

- (I) The exact amount of interest due to the Petitioner from the Respondents on the delayed payments of the Tariff Invoices, cannot be ascertained from the documents placed on record. The reconciliation of the arrears of interest could easily be made by the parties concerned based on the records maintained by them. We are therefore of the view that the parties may be directed to reconcile, amongst themselves, the arrears of interest, to be paid to the Petitioner. Hence, Issue No.(3) is answered accordingly.

10) **ISSUE No.(4) :**

- (a) The fourth prayer is to direct the Respondents-3 and 4 to pay the deemed generation charges, variable charges, fixed charges and rebate on rebate, amounting to Rs.1,83,27,836/-, along with the interest of



Rs.2,39,85,637/- @ 18% per annum (totaling Rs.4,23,13,473/-), up to February, 2012.

- (b) Article 7 of the PPA relates to Tariff. The Monthly Fixed Charges (Article 7.2), Variable Charges (Article 7.3) and Incentive Payments (Article 7.8) are the components of the Tariff. In addition, the Tariff includes payments pursuant to Supplementary Invoices relating to 'Deemed Generation' (Article 7.6) and recovery of Fixed Charges as per Article 7.10 of the PPA. Article 9 of the PPA provides for Billing and Payment. The procedure specified states that the Company shall present Tariff invoice or Supplementary Invoice and the Board (KEB) shall give acknowledgment of receipt of such Invoices, with date, and the payment should be made within the 'Due Date', unless the Board (KEB) disputes not exceeding 50% of the amount attributable to 'Deemed Generation'. Further, it states that in respect of any other portion of the amount claimed under the Tariff Invoice or Supplementary Invoice, the Board (KEB) has to make the payment first and thereafter it can raise a dispute, and the parties have to adjust their claims subject to results of the final adjudication of the dispute. Further, it also provides that in case of non-payment within the 'Due Date', the Company can invoke the 'Letter of Credit'.
- (c) The provisions regarding 'Billing and Payment' contained in Article-9 of the PPA indicate that only in respect of a claim regarding 'Deemed Generation', the Board (KEB) can raise a dispute, not exceeding 50% of

- the amount claimed, and in respect of the other claims, the Board (KEB) has to make the payment first and then raise dispute.
- (d) The claim of the Petitioner in the present case, pertaining to 'Deemed Generation', should have been the claim disallowed by the 2<sup>nd</sup> Respondent (KPTCL) previously.
- (e) The Petitioner has not stated any facts in its Petition in support of this prayer. However, the Petitioner has produced certain documents along with I.A.No.1/2012 on 18.12.2012. ANNEXURES – P-57, P-58 and P-59 relate to 'Deemed Generation'. These documents do not make out the grounds on which the claim of the Petitioner is based towards 'Deemed Generation'. These claims relate to the years 2001, 2002 and 2006, as shown in ANNEXURE – P-85. The Petitioner should have pleaded the material facts in the Petition itself towards this claim. Then only, the Respondents could have had the opportunity to respond on this claim. The document, ANNEXURE – P-57, shows that a portion of the 'Deemed Generation' charges for different periods was disallowed. The Respondents have not admitted, at any time, the claim of the Petitioner pertaining to 'Deemed Generation'. In the above circumstances, we hold that the claim of the Petitioner pertaining to 'Deemed Generation' suffers from delay and laches and hence the same cannot be allowed.

- (f) ANNEXURES – P-52 and P-54, viz., the letters written by the Petitioner to the 2<sup>nd</sup> Respondent, would show that the claim regarding the Variable Charges relates to the year 2001. There is no pleading in the Petition to support this claim. The Respondents have not admitted any portion of this claim, at any time. Therefore we reject the claim of the Petitioner pertaining to the Variable Charges for inadequate pleadings and also for delay and laches.
- (g) In respect of 'Fixed Charges', we note again that there is no pleading in the Petition supporting this claim, nor could the learned counsel for the Petitioner draw our attention to any document on record in support of this claim.
- (h) As regards 'Rebate on Rebate', the assertion of the Petitioner is that the Respondents could not claim Rebate on the amount of Rebate, but the Respondents have claimed the 'Rebate on Rebate'. The letter dated 26.11.2008 (ANNEXURE – P-60), written by the Petitioner to the 1<sup>st</sup> Respondent (PCKL), contains the particulars of the alleged wrong claim regarding 'Rebate on Rebate'. Upon verification, we note that the Respondent has adjusted the 'Rebate' due in a month as a part-payment for the subsequent month, and has claimed 'Rebate' on such part-payment (Rebate). The Rebate found due in a month was not claimed in that month. This procedure was carried on during every successive

month. Therefore, this does not amount to claiming 'Rebate on Rebate'.  
Therefore, Issue No.(4) is answered in the negative.

11) **ISSUE No.(5) :**

- (a) The fifth prayer is to direct to the Respondents-3 and 4 to pay Rs.1,65,65,345/-, as per the tariff invoice dated 01.3.2012 raised for the month of February, 2012.
- (b) The Petitioner has contended in its Petition that Respondents- 3 and 4 had not paid the amount due under the Tariff Invoice dated 1.3.2012, for the month of February, 2012. In reply, the Respondents- 3 and 4 have contended that out of the amount to be paid towards energy bills for the months from February, 2012 to August, 2012, the arrears of tax benefit to be returned by the Petitioner had been adjusted, as ordered in OP No.24/2011. Further, it is contended that the arrears of tax benefit to be refunded had been calculated at Rs.5 Crores. According to Respondents- 3 and 4, no dues are payable by them towards the energy supplied for the months of February, 2012 to August, 2012. Here, we are not concerned with the correctness of the calculation of the amount of tax benefit to be refunded by the Petitioner, as ordered in OP No.24/2011. Hence, the Petitioner is not entitled to the relief sought for under this issue.

12) **ISSUE No.(6)** :

- (a) The sixth prayer is to direct the Respondents- 3 and 4 to refund to the Petitioner the Net Tax liability amounting to Rs.1,22,03,454/-, payable as per Article 11.5 of the PPA, dated 15.12.1997, for the first ten years of its operation.
- (b) The Petitioner has contended that subsequent to tariff finalization, Minimum Alternate Tax (MAT) was introduced, and therefore, it was an increase in Tax liability to the Petitioner than the Tax liability assumed under Article 11.5 of the PPA, and this MAT liability should be passed on to the Board (the then KEB and the present Respondents). Article 11.5 of the PPA reads thus :

***“11.5 Change in Corporate Tax:***

*An increase or reduction in tax liability of the Company in respect of the income related to Project operation on account of the changes in the tax rate and the assumptions stated in this Section 11.5, would be passed on to the Board through Supplementary Bills within 90 Days of the end of each financial year during the term of this Agreement.*

- *100% tax holiday for initial 5 financial years of operations.*
- *30% tax holiday for the next 5 financial years of operations.*
- *Indian Corporate Tax Rate = 46% (40% + 15% surcharge).”*

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- (c) The interpretation of Article 11.5 of the PPA is pending before the Hon'ble Supreme Court in Civil Appeal No.1955/2013. The claim made by the Petitioner for reimbursement of the MAT and the claim of the Respondents for refund of the Tax benefit from the Petitioner, are interconnected. Any Order regarding reimbursement of the MAT liability requires to be passed after the decision of the Hon'ble Supreme Court in the above Civil Appeal. Hence, the consideration of this prayer is deferred for the time being, till the decision of the Hon'ble Supreme Court in Civil Appeal No.1955/2013. Issue No.(6) is answered accordingly.

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

The seventh prayer is to direct the Respondents to open an ESCROW account as per Article 9.5 of the PPA. Admittedly, the term of the PPA has expired and hence this prayer does not survive for consideration.

14) **ISSUE No.(8):** *Whether I.A.No.2/2013, filed on 19.9.2013, for impleading certain ESCOM, is to be allowed or not?*

- (a) The Petitioner has filed I.A.No.2/2013 for impleading the other ESCOMs, viz., Chamundeshwari Electricity Supply Corporation Limited (CESC), Mysuru, Hubli Electricity Supply Company Limited (HESCOM), Hubballi, and Gulbarga Electricity Supply Company Limited (GESCOM), Kalaburgi, on

the ground that the Government, vide its Order dated 23.4.2012 (ANNEXURE – P-84), has allocated different percentages of energy to be supplied by the Petitioner to different ESCOMs for the year 2012-13, and the proposed Respondents and Respondents-3 and 4 have utilized the energy so supplied by the Petitioner.

- (b) Admittedly, the Petitioner has supplied electricity up to the end of August, 2012. We note that the present Petition is filed in March, 2012 itself. The Petitioner has contended, in the further pleadings filed along with I.A.No.3/2013, filed on 19.9.2013, that the interest accrued due on the delayed payments of the Tariff Invoices for the months of May, 2012 to August, 2012, had not been paid by the proposed Respondents, viz., CESC, HESCOM and GESCOM.
- (c) This Application (I.A.No.2/2013) is opposed by the proposed Respondents, on the ground that the claim made in this Application relates to the claim arising subsequent to filing of the Petition and the Petitioner is required to file a separate Petition for claiming any relief against the proposed Respondents. It is not disputed that the Government has issued orders allocating different percentages of energy to be supplied by the Petitioner to the proposed Respondents during 2012-13, and these Respondents have utilized the energy accordingly.

- (d) The contention of the proposed Respondents may be technically correct. However, as the matter is pending for a long time, the term of the PPA has already expired and the electricity was supplied till the end of August, 2012, we deem it proper to allow the impleading Application for disposal of the dispute between the parties, once and for all, instead of driving the Petitioner to another Petition.
- (e) In the above facts and circumstances of the case, we are of the view that I.A.No.2/2013 is to be allowed and the proposed Respondents should be directed to reconcile the interest on delayed payments, if any, towards the electricity supplied to them till the end of August, 2012.
- 15) For the foregoing reasons, we pass the following Order:

### **ORDER**

- (1) On the claim of the Petitioner for interest due on the delayed payment of the Tariff Invoices, the parties concerned are directed to reconcile the arrears of interest to be paid to the Petitioner for the entire period of the PPA;

The Petitioner shall furnish to the Respondents concerned, and the proposed Respondents, its calculation of arrears of interest for delayed payment of the Tariff Invoices with all relevant particulars, without claiming any 'interest on interest', within a period of one month from the date of this Order;



The Respondents concerned and the proposed Respondents shall verify the correctness of the claim of the Petitioner towards arrears of interest and confirm the same to it. In case there is any disagreement in respect of any portion of the arrears of interest, the same shall be intimated to the Petitioner, within one month from the date of receipt of the Petitioner's claim in this regard;

In case of any differences, both the parties shall mutually discuss and try to settle such differences amicably, within a month thereon;

If no settlement could be arrived at between the parties mutually, the Petitioner may approach this Commission by filing a fresh Petition, with all particulars, for further consideration;

- (2) The consideration of Issue Nos.(1) and (6) is deferred for the time being, till the decision of the Hon'ble Supreme Court of India in Civil Appeal No.1955/2013. The Petitioner shall file an application before this Commission for further orders on these Issues, after disposal of the above-said Civil Appeal by the Hon'ble Supreme Court of India.
- (3) The remaining prayers of the Petitioner are hereby rejected.

Sd/-

(M.R. SREENIVASA MURTHY)  
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)  
MEMBER

Sd/-

(D.B. MANIVAL RAJU)  
MEMBER