

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

**Dated : 1<sup>st</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.24/2013**

**BETWEEN:**

Tungabhadra Power Company Private Limited,  
No.9/1, Classic Court,  
2<sup>nd</sup> Floor, Richmond Road,  
Bengaluru – 560 025

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**PETITIONER**

*(Represented by Shri Prabhuling K. Navadgi, Advocate)*

**AND**

- 1) Karnataka Power Transmission Corporation Limited,  
Kaveri Bhavan,  
Bengaluru – 560 001.
- 2) Bangalore Electricity Supply Company Limited,  
K.R. Circle,  
Bengaluru – 560 001.
- 3) Mangalore Electricity Supply Company Limited,  
Paradigm Plaza, 3<sup>rd</sup> Floor,  
A.B Shetty Circle,  
Mangaluru – 575 001.
- 4) Chamundeshwari Electricity Supply Corporation Limited,  
No.927, L.J. Avenue,  
New Kantharaj Urs Road,  
Sraswathiupuram,  
Mysuru – 575 005.

- 5) Hubli Electricity Supply Company Limited,  
P.B. Road,  
Navanagar,  
Hubballi – 580 029.
- 6) Gulbarga Electricity Supply Company Limited,  
Gulbarga Main Road,  
Kalaburgi ..

**RESPONDENTS**

*[Respondents represented by M/s. Justlaw, Advocates]*

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1) The Petitioner has filed this Petition, praying for determination of tariff specific to its Mini Hydel Power Project from the Commercial Operation Date (COD), duly considering the actual Project Cost incurred by it at Rs.7.05 per KWhr instead of Rs.2.80 per KWhr mentioned in the Power Purchase Agreement (PPA) dated 16.8.2006 entered into between the Petitioner and the Respondent No.6.

2) The material facts relevant for the disposal of this Petition, as stated in the Petition, are as follows:

(a) The Petitioner is a Company which has established a Hydro Power Project of 18 MW capacity on the right bank of River Tungabhadra on the downstream of Singatalur Barrage, Thimmalapur Village, Hadagali Taluk, Bellary District. The Government of Karnataka (GoK) initially accorded sanction for setting up the Mini Hydel Project of 7 Mega Watts (MW) capacity, by its Order dated 23.10.2001 (ANNEXURE – A). Later, the capacity of the Project was increased to 18 MW by Government Order

- dated 25.8.2003 (ANNEXURE – B). The Petitioner prepared a Detailed Project Report (DPR), according to which the cost of the Project was estimated at Rs.70.28 Crores and the cost of generation was Rs.2.88/- per unit. The Karnataka Renewable Energy Development Limited (KREDL) issued an Official Memorandum dated 11.2.2004 (ANNEXURE – G) giving the technical clearance for the DPR submitted by the Petitioner. In the said technical clearance, the Project Cost estimated was Rs.60.59 Crores.
- (b) During the year 2004, the Petitioner obtained the necessary clearances from various authorities for construction of its Project. The Petitioner entered into a PPA with the Respondent-1 (KPTCL) on 25.10.2004 (ANNEXURE - K1). The tariff agreed under the said PPA was Rs.2.90/- per unit, with 2% escalation per year from the COD for the first ten years, and thereafter tariff as determined by the Commission for the next ten years.
- (c) This Mini-Hydel Project was linked with the construction of a Barrage by the Karnataka Neeravari Nigama Limited (KNNL), so that power could be generated from the Petitioner's Plant by utilizing the water released from the Barrage.
- (d) Subsequent to coming into force of the Electricity Act, 2003, a fresh PPA dated 16.8.2006 (ANNEXURE – V) has been executed by the Petitioner with the Respondent-6 (GESCOM). Under this PPA, the tariff fixed was Rs.2.80/-

per unit, without any escalation, for the first 10 years from the COD, and thereafter tariff as determined by the Commission for the next ten years.

(e) The construction of the Project was commenced during the beginning of 2005. The Plant was ready for commissioning by August, 2008. However, the Barrage works had not been completed. As the commissioning of the Project was dependent on completion of the Barrage, the Petitioner sought extension of time from the Government for commissioning the Plant. The time was extended by one year, vide Government Order dated 14.11.2007 (ANNEXURE - N), assuming that by that time the Barrage works would have been completed. The Petitioner had to request for further extension of time, as the Barrage works had not been completed within that one year period due to agitation by farmers. The Government of Karnataka was pleased to extend the time on 20.3.2009 (ANNEXURE – S), permitting the Petitioner to commission the Plant within six months from the date of completion of the Barrage works by Karnataka Niravari Nigama Limited.

(f) Though the Petitioner's Plant was ready for commissioning by August, 2008, the completion of the construction of the Barrage was delayed by almost four years, thereby only in the month of August, 2012, the Project was able to commence generation of electricity. This delay in the actual generation of electricity from the Petitioner's Project was beyond the control of the Petitioner.

(g) As on the date of completion of the Project, i.e., in August, 2008, the total Project Cost incurred by the Petitioner was Rs.68.98 Crores, including the balance of payment to its the suppliers. The Petitioner could not make timely repayments to its financiers due to enormous delay in generation of electricity from its Project. The lending Banks had initiated coercive steps against the Petitioner for recovery of their dues and the Petitioner had to pay a huge amount towards interest to them. Therefore, the total Project Cost escalated to Rs.88.18 Crores as on the COD, i.e., in August, 2012. The Petitioner also incurred losses due to non-receipt of CDM revenues from September, 2008 to August, 2012, amounting to Rs.10.33 Cores. The Petitioner also incurred loss of interest on MNRE subsidy, amounting to Rs.1.38 Crores. The Petitioner has estimated the loss of revenue due to loss of generation for four years at Rs.58.64 Crores. The Petitioner has produced copies of the audited Balance Sheet along with the Auditor's Report from 2002-03 to 2011-12 (ANNEXURES – Y to Y9).

(h) The Petitioner has also furnished a comparative statement to substantiate its claim for tariff of Rs.7.05 per unit, as detailed below :

<b>Parameters</b>	<b>As per KERC Order dated 11-12-2009</b>	<b>Tariff for petitioner's plant at capital cost of Rs.88.18 Crores</b>	<b>Tariff for petitioner's plant considering the investment of Rs.158.53 Crores</b>
Capital Cost/MW	Rs.4.75 Crores	Rs.4.90 Crores	Rs.8.80 Crores

Plant Load Factor	30%	34%	34%
Debt Equity Ratio	70%:30%	47%:53%	26%:74%
O&M Expenses	1.50% with annual escalation of 5%	1.50% with annual escalation of 5%	1.50% with annual escalation of 5%
Return on equity	16%	16%	16%
Interest on Term Loan	11.75%	14.75%	14.75%
Interest on Working Capital	12.80%	12%	12%
Depreciation	7%	7%	7%
Auxiliary Consumption	1%	1%	1%
First Year Tariff as per CEA norms	Rs.3.99	Rs.4.41	Rs.8.33
Average Tariff over a period of 10 years	Rs.3.40	Rs.3.74	Rs.7.05

3) Upon issuance of Notice, the Respondents have entered appearance through their counsel. The Respondent-6 (GESCOM) has filed its objections on 18.9.2014, the gist of which is given below :

(a) The tariff agreed in the concluded PPA cannot be altered by the Commission. The Petitioner has entered into the PPA dated 16.8.2006 (ANNEXURE – V) by its own volition, knowing fully well the terms of the Agreement. The PPA does not provide for re-determination of the tariff, depending upon the actual cost of the Project incurred by the Petitioner or increase in the Project Cost due to delay in completion of the

construction of the Project for any reason. This Respondent cannot be held liable for the delay in completing the construction of the Barrage by the KNNL. The tariff agreed to between the parties was as per the generic Tariff Order dated 18.1.2005 of this Commission for Renewable Sources of Energy.

(b) The details furnished by the Petitioner with regard to the Project expenses incurred for the implementation of the Project are unsubstantiated and the same are self-serving statements and no reliance can be placed on them. The Petitioner is endeavouring to unjustly enrich itself by seeking for a higher tariff, when in fact, it is not entitled to the same. Therefore, the Respondents have prayed for dismissal of the Petition.

4) We have heard the oral submissions made by the learned counsel for both the parties. They have generally reiterated what they have stated in their respective pleadings.

5) The following issues would arise for our consideration :

(1) Whether the Petitioner has made out any grounds in support of its prayer seeking re-determination of the tariff already concluded in the PPA dated 16.8.2006 (ANNEXURE – V)?

(2) If answer to issue No.(1) above is in the affirmative, what should be the tariff that could be allowed to the Petitioner?

(3) What Order?

6) After considering the submissions made by the learned counsel for both the parties and also the material placed on record by them, our findings on the above issues re as follows:

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

(a) The principles and methodologies for determination of tariff for supply of electricity by a generating company to a distribution licensee, enumerated in Section 61 of the Electricity Act, 2003, and the guidelines stated in this regard in Clause-5.0 and Clause-6.0 of the Tariff Policy, 2006, would show that the generation tariff determined should relate mainly to the Project Costs and other relevant factors. The determination of tariff is regulated by the Commission on the guidelines stated in the relevant provisions of the Electricity Act, 2003, and the Regulations framed thereunder.

(b) This Commission has determined generic tariff in respect of Renewable Sources of Energy by its Order dated 18<sup>th</sup> January, 2005. Under the said Order, for Mini Hydel Projects, the Capital Cost at Rs.3.90 Crores per MW was arrived at and accordingly the tariff was determined at Rs.2.80 per KWhr without any escalation for the first ten years from the year of Commercial Operation of the Plant. This tariff was also made applicable to the Mini Hydel Projects, for which PPAs had been submitted before the



- Commission on or after 10.6.2004. The said Order further states that the tariff determined therein would be reviewed after five years, which shall be applicable to the PPAs to be entered into after that date between a distribution licensee and a generator.
- (c) This Commission subsequently, by its Order dated 11.12.2009, determined the generic tariff in respect of Renewable Sources of Energy. Under the said Order, for Mini Hydel Projects, the Capital Cost at Rs.4.75 Crores per MW was arrived at and accordingly the tariff was determined at Rs.3.40 per KWhr without any escalation for the first ten years from the year of Commercial Operation of the Plant. The Order further states that the tariff determined shall be applicable to all PPAs submitted to the Commission on or after 1.1.2010, for a period of ten years from the date of signing of the PPA between a distribution licensee and a generator. The Order further states that the tariff determined in the said Order would be reviewed after five years, which shall be applicable to the PPAs to be entered into after that date.
- (d) The circumstances under which, the 'tariff' or 'purchase price', agreed in the PPA could be revised, is stated in the decision of the Hon'ble Supreme Court reported in **(2011) 11 SCC 34**, in the case of *Transmission Corporation of Andhra Pradesh Limited and another –Vs- Sai Renewable Power Private Limited and others*. In paragraph-63 of the said Judgment, it is held thus :

*"...The term 'purchase price' indicated in the PPAs, as such, would be a matter within the realm of contract but this is subject to the changes which are contractually and/or even statutorily permissible. ..."*

The above-said principle makes it clear that the tariff agreed in a PPA can be revised by the Commission, if the terms of the PPA or any statute provide for the same. In the present case, the PPA does not provide for revision of the tariff even if there is any considerable escalation in the Capital Cost of the Project, when compared with the Project Cost considered while determining the tariff.

- (e) The two generic Tariff Orders, referred to above in respect of the Renewable Sources of Energy, stipulate that the Projects constructed and commissioned during the review periods would be governed by the tariff determined for the respective periods under the said Orders. In the present case, the learned counsel for the Petitioner submitted that, for no fault of the Petitioner, the Project could be commissioned only during the Control Period of the generic Tariff Order dated 11.12.2009, and this delay in commissioning of the Project resulted in escalation of the Project Cost, and hence contended that the Petitioner is entitled to revision of the tariff. We are of the view that the said submission of the learned counsel for the Petitioner deserves to be accepted, provided that the Capital Cost incurred by the Petitioner corresponded to the Capital Cost considered in

the relevant generic Tariff Order relating to the Renewable Sources of Energy. Therefore, if the above requirements are met with by the Petitioner, then it is statutorily permissible to revise the tariff agreed to under the PPA dated 16.8.2006 (ANNEXURE – V).

- (f) The Petitioner has stated that, as on the date of completion of the Project, i.e., in August, 2008, the total Project Cost incurred by the Petitioner was Rs.68.98 Crores, and that as on the date of commissioning of the Project, i.e., in August, 2012, the Project Cost escalated to Rs.88.18 Crores, apart from other losses stated by it. The Respondents have submitted that the Project Cost and its escalation, as claimed by the Petitioner, are self-serving statements and no reliance can be placed on them.
- (g) The consideration of the documents produced by the Petitioner in support of its case, and the other relevant circumstances, would clearly lead us to accept the incurring of the above-said Capital Costs by the Petitioner. In the generic Tariff Orders dated 18.1.2005 and 11.12.2009 of this Commission, the Capital Costs considered for the Mini Hydel Projects were Rs.3.90 Crores per MW and Rs.4.75 Crores per MW, respectively. The Petitioner has constructed a Mini Hydel Project of 18 MW and has stated that it incurred Rs.68.98 Crores towards the Capital Cost as on the date of completion of the Project, i.e., in August, 2008, and subsequently the incurred interest on the amounts borrowed from lenders, till the commissioning of the Project in August, 2012, thereby the Capital Cost

escalated to Rs.88.18 Crores. Therefore, we have no hesitation to accept the Capital Costs stated to have been incurred by the Petitioner, as on the date of completion of the Project and as on the date of commissioning of the Project. The documents produced by the Petitioner also supports its above contention.

- (h) It is not in dispute that the completion of the construction of the Barrage was delayed by more than four years and the Petitioner could not have generated electricity before completing the construction of the Barrage. The Petitioner was in no way responsible for the said delay in the completion of construction of the Barrage. For the above reasons, we answer Issue No.(1) in the affirmative.

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

- (a) The Petitioner has claimed the total Capital Cost of the Project at Rs.158.53 Crores, taking into consideration the loss of revenue due to loss of generation, the loss of interest on the MNRE subsidy and the loss due to non-receipt of CDM revenues. Therefore, the Petitioner has claimed the tariff at Rs.7.05 per KWhr. We are of the view that these losses cannot be considered for revision of the tariff. The learned counsel for the Petitioner has submitted during the arguments that the Petitioner would be satisfied, if the tariff of Rs.3.40 per KWhr determined in the generic Tariff Order dated 11.12.2009 of this Commission is ordered to be paid to it. In the

facts and circumstances of the present case, it is just and equitable to revise the tariff in respect of the Project of the Petitioner to Rs.3.40 (Rupees Three and Paise Forty only) per KWhr. The generation and supply of electricity from the Petitioner's Project was commenced in August, 2012. The Petitioner has filed the present Petition on 13.9.2013. We are, therefore, of the view that the revised tariff of Rs.3.40 (Rupees Three and Paise Forty only) per KWhr should be made applicable only from the date filing of the Petition. We answer Issue No.(2) accordingly.

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

For the foregoing reasons, we pass the following :

**ORDER**

- (1) The Petitioner shall be entitled to the tariff of Rs.3.40 (Rupees Three and Paise Forty only) per KWhr from the date of filing of the Petition, viz., 13.9.2013, for the first ten years from the Commercial Operation Date, instead of the tariff indicated in Article 5.1 of the PPA dated 16.8.2006 (ANNEXURE – V); and
- (2) The parties concerned shall effect the necessary amendment to the PPA dated 16.8.2006 (ANNEXURE – V), in the above terms.

Sd/-

(M.R. SREENIVASA MURTHY)  
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)  
MEMBER

Sd/-

(D.B. MANIVAL RAJU)  
MEMBER