

No.N/48/12

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

Dated : 7th March, 2013

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

OP No.26/2012

BETWEEN :

Ramgad Minerals & Mining Limited
Baldota Enclave
Abhiraj Baldota Road
HOSPET – 583 203

[Represented by M/s. Shridhar Prabu Associates, Advocates]

Petitioner

AND

BANGALORE Electricity Supply Company Limited
K.R. Circle
BANGALORE – 560 001

[Represented by M/s.Justlaw, Advocates]

Respondent

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1) In this Petition, the Petitioner has prayed for modification of the Tariff incorporated in the Power Purchase Agreement (PPA) dated 4.2.2011 from Rs.3.40 per Unit to Rs.3.70 per Unit, on the ground that the PPA has been approved after 1.1.2010 and as per the Tariff Order dated 11.12.2009 of this Commission, all the PPAs approved after 1.1.2010 shall have a Tariff of Rs.3.70 per Unit.

2) On Notice, the Respondent appeared through its Counsel and filed the Statement of Objections.

3) The facts in this case are that the Petitioner has a Wind Energy Plant of 1.25 MW capacity at Kanavihalli, Harapanahalli, which was commissioned on 27.8.2009 and it signed a Power Purchase Agreement (PPA) with the Respondent on 4.2.2011. According to Article 5 of the PPA, the Petitioner is entitled to a tariff of Rs.3.40 per Unit for the energy delivered from the Commercial Operation Date (COD). This PPA was submitted for approval of the Commission on 8.2.2011 and the Commission approved the same on 11.3.2011.

4) This Commission, vide its Order dated 11.12.2009, has determined the Tariff in respect of Renewable Sources of Energy (including Wind Mills), wherein the Tariff with respect to Wind Power was fixed at Rs.3.70 per KWH without escalation for the first ten years from the date of signing of the PPA. Further, the Commission has ordered that the new rate is applicable to all the PPAs submitted for approval on or after 1.1.2010.

5) It is submitted by the Petitioner that since the PPA signed by it has been submitted for approval of the Commission after 1.1.2010, the rate applicable to it was Rs.3.70 per Unit and not Rs.3.40 per Unit mentioned in the PPA, and therefore the PPA needs to be modified to that effect.

6) Per contra, the Respondent has contended that the COD of the Plant was achieved prior to the Tariff Order dated 11.12.2009 and therefore the PPA has

the rate of Rs.3.40 per Unit. This is the correct Tariff applicable and the PPA was signed by both the parties consciously adopting the rate applicable from the date of COD. Hence, the Petitioner cannot seek modification of the PPA to incorporate the new Tariff of Rs.3.70 per Unit.

7) We have heard the submissions made by the Counsel for the parties and also considered the Petition and Objections, the PPA signed between the parties and this Commission's Order dated 11.12.2009.

8) The issue that arises for consideration and decision is, 'Whether the Petitioner is entitled to seek modification of the PPA signed on 4.2.2011, to incorporate the rate of Rs.3.70 per KWH in place of Rs.3.40 per KWH?'

9) From the letter dated 2.12.2011 addressed to the Petitioner by the General Manager (Elec.), Power Purchase & Operations, BESCO, which is produced as Annexure-P5 by the Petitioner, the following chronology of events is observed :

Description	1.25 MW at Kanavihalli Village
Project Commissioned	27.08.2009
Application received from the firm to Process the PPA	23.09.2009
Project allocation from PCKL/GoK	17.08.2009 and Corrigendum dated 10.2.2010
Agreement with GoK	22.09.2009
Concurrence to Draft PPA	27.01.2011
Payment of RPC	03.02.2011
Undertaking to Carbon Credit, start up Power and final documents furnished on	13.01.2011
PPA signed on	04.02.2011
Submitted to KERC	08.02.2011
Approved by KERC	11.03.2011

10) From the chronology of events extracted above, it is seen that the Project was commissioned on 27.8.2009, processing of the PPA started on 23.9.2009, the PCKL allotted the Project of the Petitioner to BESCO on 17.8.2009, the Agreement with Government was entered into on 22.9.2009 (all these events took place prior to the revised Tariff Order passed by the Commission on 11.12.2009). Further, according to the PPA, the payment has to be made for the electricity supplied from the COD, i.e., 27.8.2009, which is also prior to the new Tariff Order of the Commission, dated 11.12.2009. Thus, it is clear that the Petitioner entered into the PPA with the rate of Rs.3.40 per KWH, consciously and with the knowledge that the new Tariff Order has been issued on 11.12.2009.

11) As the Petitioner has signed the PPA incorporating the rate of Rs.3.40 per KWH, which is also approved by this Commission on 11.3.2011 and the Respondent is making payments applicable to the electricity supplied from the COD, in effect, the PPA has been brought into force by the parties with retrospective effect. This is clear from Article 5.1 of the PPA dated 4.2.2011, read with the definition of 'COD' given under Article 1 - Definitions in the PPA (produced as Annexure-P12), which read as under :

“5.1 Monthly Energy Charges:

- a. *The BESCO shall for the Delivered Energy, pay for the first 10 years from the Commercial Operation Date at the rate of Rs.3.40 (Rupees Three and forty paise only) per kilowatt-hour without any escalation*

for energy delivered to the BESCO at the Metering Point.” (Emphasis supplied]

“1. DEFINITIONS

1.1 *For all purposes of this Agreement, the following words and expressions shall have the respective meanings set forth below:*

XXX

XXX

XXX

*‘**Commercial Operation Date**’ with respect to the Project shall mean the date on which the Project is available for commercial operation and such date as specified in a written notice given at least ten days in advance by the Company to BESCO and in any case, shall not be beyond the Scheduled Date of Completion. This project is commissioned on 27.08.2009. [Emphasis supplied]*

XXX

XXX

XXX”

Further, on the date when the Commercial Operation was achieved and the plant started generating electricity, the present Order of the Commission dated 11.12.2009 was not in force and the earlier Order of the Commission dated 18.1.2005, wherein the Tariff was fixed as Rs.3.40 per KWH, was holding the field. Therefore, we are of the view that the rate incorporated in the PPA is correct and valid and it does not require any modification. After consciously signing the PPA with the rate of Rs.3.40 per KWH and receiving the payments on that basis for the electricity supplied even before the PPA, the Petitioner Later cannot turn around and contend that it is entitled to the revised Tariff of Rs.3.70 per KWH,

merely on the ground that this Commission's Order dated 11.12.2009 has stated that the new rate is applicable to the PPAs submitted to the Commission after 1.1.2010.

12) The contention of the Petitioner that in the PPA signed by it with GESCO, the new Tariff of Rs.3.70 per Unit has been made applicable and therefore in the present case also the new rate of Rs.3.70 per Unit needs to be applied, is not tenable in view of the factual difference between the two cases and the marked difference in the PPAs. In Article 5.1 of the PPA dated 22.3.2010 signed by the Petitioner with GESCO, which reads as under :

“5.1 Monthly Energy Charges:

- a. *The GESCO shall for the Delivered Energy pay, for the first 10 years from the Date of signing of Power Purchase Agreement to the Company every month during the period commencing from the Date of signing of the Power Purchase Agreement at the rate of Rs.3.70 (Rupees Three and seventy paise only) per kilowatt-hour without any escalation for energy delivered to the GESCO at the Metering Point.”*
[Emphasis supplied]

13) In comparison, Article 5.1 of the PPA dated 4.2.2011 signed by the Petitioner with BESCO, it is stated that :

“5.1 Monthly Energy Charges:

- a. *The BESCO shall for the Delivered Energy, pay for the first 10 years from the Commercial Operation*

Date at the rate of Rs.3.40 (Rupees Three and forty paise only) per kilowatt-hour without any escalation for energy delivered to the BESCO at the Metering Point." (Emphasis supplied)

14) From the above, it is discernable that there is a distinct difference between the two cases. In the PPA signed by the Petitioner with BESCO, the rate incorporated therein has been made applicable from the COD (which is almost two years earlier to the signing of the PPA); whereas in the PPA signed by the Petitioner with GESCOM, the rate has been made applicable from the date of signing of the PPA, i.e., 22.3.2010, and not from the COD. Further, it is noticed that in the PPA signed with BESCO, the COD had already been achieved prior to signing of the PPA; whereas in the PPA signed with GESCOM, it was not so. Therefore, the contention of the Petitioner that on the ground of equality, it is entitled to the modified rate, is untenable and therefore has to be rejected.

15) Keeping the peculiar facts of this case, we hold that the Petitioner is not entitled to the revised Tariff of Rs.3.70 per KWH and the modification sought to the PPA. Consequently, this Petition is liable to be rejected and accordingly it is dismissed.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K.SRINIVASA RAO)
MEMBER