

**No.N/36/11**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION BANGALORE**

**Dated 8<sup>th</sup> September 2011**

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

**RP No. 04/2011**

**BETWEEN**

M/s MPPL Renewable Energy Private Limited  
No.29, Maliks Building, 1<sup>st</sup> Floor, Hospital Road  
BANGALORE - 560 001  
(Represented by its Advocates M/s. Nayak & Srikumar)

... Petitioner

**AND**

1. Mangalore Electricity Supply Company Limited  
Paradigm Plaza, 4<sup>th</sup> Floor, A.B. Shetty Circle  
MANGALORE – 575 001
2. Karnataka Power Transmission Corporation Limited  
Kaveri Bhawan, Kempegowda Road  
BANGALORE – 560 009  
(Represented by Just Law Advocates)

... Respondents

1. This review petition is filed by M/s. MPPL Renewable Energy Pvt. Ltd. (hereinafter referred to as 'Petitioner') seeking review of the Commission's common order passed in OP 16/2010 and other connected petitions on 24.3.2011.

2. The respondents have put in appearance through their advocates and have filed their statement of objections on 7.7.2011.

3. We have considered the averments made in the review petition and also the supporting documents produced by the review petitioner along with the petition through an affidavit on 18.7.2011 and 2.8.2011.

4. This Commission in its common order dated 24.3.2011 ordered as follows :

"In the light of the foregoing discussion, we direct that the power supplied in compliance of the orders issued by the Government under Section 11(1) of the Act, 2003 in April 2010 by cogen power suppliers including sugarcane cogen generators and biomass based generators and also others who do not have PPA governing supplies during the said period shall be paid for at Rs.5.00 per kwh.

In the case of generators who have an existing PPA, even though the Government Orders mention the question of suspending the PPAs for the period from 29.3.2010 to 30.6.2010, no such prayer for suspension of PPAs has been made by the ESCOMs in their petitions and therefore, it is not necessary for the Commission deal with that aspect of the matter. In fact, one of the Respondents in OP 16/2010, GESCOM, has fairly submitted in reply to the Commission's queries that ... "for generators having valid and subsisting PPAs with this Respondent, legal permissibility of payment of higher rates than the rates as contained in the PPA for the very quantities of power / energy covered by the PPA, as the Government Order directs so, needs to be decided by the Commission after considering the merits of the case." The generators with existing PPAs are therefore obliged to supply power at rates specified in the agreement to the extent of the supplies committed in the PPAs and the higher rate of Rs.5.00/- per kwh shall be applicable only if the supplies are made over and above the normal PPA obligations. For determining the normal supply obligation of such generators, we direct that the utilities shall take into account the quantum of power supplied by

them during the months of April, May and June during the previous three years and any supplies made in excess of the average supply of the last three years shall be eligible for payment at Rs.5.00 per kwh determined under this order".

5. It is contended by the review petitioner's counsel that the impugned order dated 24.3.2011 suffers from lack of application of mind, arbitrariness and errors apparent on the face of record. He contended that this Commission should have considered actual costs of each of the plants covered by the Government Orders and passed separate orders based on their individual merits. Further, he contended that this Commission has no powers to set aside or sit in judgment over the orders passed by the Government under Section 11(1) as the same was not in challenge before the Commission even though the said order was subject to approval of the Commission. He also submits that but for the Government Order the review petitioner would not have generated and supplied electricity during the relevant period as generation of electricity had become economically unviable at the PPA rates. The order of the Commission to make the rates fixed by the Government applicable only to the electricity supplied over and above the normal supply under the PPA is also not justified.

6. Per contra it is contended by the respondent's counsel that the review petition itself is not maintainable as in the guise of the review, petitioner is trying to reargue the case. He further contended that the common order was passed by this Commission after taking into consideration all the relevant factors and the Commission has heard various generators including the petitioner before passing the order. The Commission has taken into consideration the additional costs

incurred by the generators during the period in issue. He has also contended that this Commission has the power under Section 11 of the Electricity Act, 2003 to determine the rates payable to a generator who has been mandated to supply electricity to the grid by the State and the interpretation the petitioner's counsel is trying to place on Section 11 is untenable in law.

7. We have considered the arguments of both the counsels.

8. We note that the present petition being only a review petition we are not required to go into the merits of the case all over again as also contended by the respondent's counsel. The review of an order is permissible only on limited grounds specified in Order XLVII Rule (1) of CPC. In our opinion, the review petitioner has not made out any ground which fits into Section 94 of the Electricity Act, 2003 read with Order XLVII of CPC. This Commission has considered the scope of the powers of this Commission under Section 11 and also interpretation laid down by the Division Bench of the Hon'ble High Court of Karnataka, the Government Orders per se, and the costs additionally incurred by different generators including that of the petitioner before passing the order. But for this, the Commission would not have ordered to pay Rs.5/- per unit to the generators. According to us, no new material has been placed by the review petitioner which was not placed before us by it before the impugned order was passed nor there is any mistake apparent on the face of the record in the order sought to be reviewed. The only fresh issue relates to the determination of the normal supplies by the generating companies with reference to the average supplies made by them is the period April to June in the preceding three years. It

is now pointed out that in the previous year of 2008-09, there were Section 11 orders in force in April and May 2009 and generators had made additional generation in these months and therefore, the average production in those months does not reflect the normal position.

9. We have considered this practical difficulty in implementing the Common Order in certain cases. Therefore, we feel that a minor modification is required in the interest of justice to the effect that the purchasing companies shall exclude the quantum of electricity generated during the months in which Section 11 orders of the Government were in force during 2009 while calculating the normal supply for the purpose of payment as per the rates determined by the Commission in its Order dated 24.3.2011.

10. The review petition stands disposed of in terms of above.

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

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd/-  
(K. SRINIVASA RAO)  
MEMBER