

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION, BENGALURU

Dated : 8th August 2017

Present:

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|----------------------------------|----------|
| 1) Shri M.K. Shankaralinge Gowda | Chairman |
| 2) Shri H.D. Arun Kumar | Member |
| 3) Shri D.B. Manival Raju | Member |

Complaint No. 6/2016

BETWEEN:

Koppal Green Power Limited,
102, Shanti Vanam,
Kavuri Hills Extension,
HYDERABAD – 500 081.

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COMPLAINANT

[Represented by Metro Lawyers, Advocates]

AND:

Gulbarga Electricity Supply Company Limited,
Opp: Hotel Parivar,
Railway Station Road,
KALABURAGI – 585 101.

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RESPONDENT

[Represented by Indus Law, Advocates]

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ORDER

- 1) The Complainant has filed this Petition under Section 142 of the Electricity Act, 2003, seeking the following reliefs:

- (a) To invoke penal action against the Respondent for non-compliance of the Order dated 16.6.2016 in OP No. 20/2015;
 - (b) To direct the Respondent-GESCOM to comply with the Order passed by this Commission in OP No.20/2015 on 16.6.2016; and
 - (c) To pass such further or other orders as this Commission may deem fit and proper in the circumstances of the case.
- 2) The material facts required for the disposal of the present Petition may be stated as follows:

- (a) The Complainant is a Biomass based Power Generating Company supplying energy to the Respondent-Gulbarga Electricity Supply Company Limited (GESCOM) under the Power Purchase Agreement (PPA).
- (b) The Complainant had filed OP No.8/2013 against the Respondent-GESCOM and other formal parties, praying for enhancement of the tariff mainly on the ground that there was enormous hike in the fuel cost. This Commission considered the request of the Complainant and granted the following reliefs, by Order dated 22.1.2015 :

“The tariff applicable to the Complainants’ units with effect from 1.1.2015 shall be as below:

Year	Tariff (Rs./kW)
2014-15	4.63
2015-16	4.79
2016-17	4.97
2017-18	5.15

The fuel cost after 31.3.2018 will be as may be determined by the Commission after taking into account the relevant factors."

- (c) As the Respondent failed to pay the enhanced tariff for the energy supplied from 1.1.2015 and has not come forward to modify the relevant clause of the PPA governing the tariff as ordered in OP No.8/2013, the Complainant filed another petition before the Commission in OP No. 20/2015. This petition was disposed of on 16.6.2016, with the following direction:

"The Respondent is directed to execute the Supplemental Agreements with the Complainants to implement the revised tariff ordered in OP No.8/2013 on 22.1.2015 and to make payment accordingly, within 2 (two) months from the date of this Order."

- 3) The allegation of the complainant is that, despite several correspondences, the Respondent failed to execute the Supplemental Power Purchase Agreement (SPPA) and make payments at the revised tariff.
- 4) Upon admission of the Petition and issuance of Notice, the Respondent appeared through its counsel and went on praying for time to execute the SPPA and to make payments. No Statement of Objections has been filed

by the Respondent. After granting sufficient time, the Commission decided to proceed for Orders on 4.7.2017.

5) The following issues would arise for our consideration:

(1) Whether the Respondent has acted in violation of the Order of the Commission dated 16.6.2016 in OP No. 20/2015 and thereby is liable for penal action under Section 142 of the Electricity Act,2003?

(2) What Order?

6) After considering the material placed on record, our findings on the above issues are as follows:

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

(a) It is the allegation of the Complainant that there is an inordinate delay by the Respondent in executing the SPPA and in making payments, pursuant to the order in OP No. 20/2015. In the course of the proceedings, on 3.11.2016, the Counsel for the Respondent submitted that the SPPA has been executed on 28.10.2016. Thereafter, all on the dates on which the case was posted, the Counsel for the Respondent sought time to settle the dues and report compliance.

(b) We have verified the records relating to the said SPPA. The SPPA signed by the parties on 28.10.2016 was sent to the Commission for approval vide letter dated 16.11.2016, and the same was received in this office on

24.11.2016. Upon processing the said SPPA, the Commission returned the same to the Respondent on 5.12.2016 with directions to modify/delete certain clauses and to comply with certain other procedural requirements. The said SPPA was again signed by the parties on 13.1.2017 and resubmitted to the Commission on 28.1.2017. This SPPA was also returned to the Respondent on 21.2.2017, as it was not in proper form and required certain modifications. After effecting the corrections suggested, the Respondent sent the SPPA dated 22.3.2017 for approval of the Commission on 21.4.2017. The Commission approved the same, vide letter dated 2.5.2017. From the dates mentioned above, we feel that there is some delay by the parties in execution of the SPPA from the date of the Order in OP No.20/2015 (from 16.6.2016 to 28.10.2016). The Complainant has enclosed letters dated 20.6.2016, 5.7.2016, 22.7.2016 and 5.8.2016, wherein it had requested the Respondent to provide the draft SPPA and confirm a date for execution of the SPPA. These letters indicate the readiness of the Complainant to execute the SPPA. We note that the Respondent has not filed any pleadings explaining the delay of about 4 months from 16.6.2016 to 28.10.2016 in executing the SPPA. However, since this is not a very long period, we do not wish to invoke penal action against the Respondent for such lapse, under Section 142 of the Electricity Act, 2003.

- (c) In the letters dated 20.6.2016, 5.7.2016, 22.7.2016 and 5.8.2016 addressed to the Respondent, the Complainant had sought payment of Rs. 1,89,86,209/- towards the differential tariff payable from 1.1.2015 to 31.5.2016, as per the

calculation sheet attached to the letter dated 20.6.2016. The Respondent, in its letter dated 24.7.2017, addressed to the Secretary of the Commission has submitted that Rs. 1,42,00,000/- has been paid on 7.7.2017 and Rs. 1,00,29,661/- on 13.7.2017. Since the payment of dues has been made, although with delay, apparently because of non-execution of the SPPA in time, we do not wish to initiate any penal action under section 142 of the Electricity Act, 2003, in this case. However, we deem it appropriate to direct the Respondent to make timely payments in future.

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

For the foregoing reasons, we pass the following:

ORDER

The Complaint petition is dismissed.

Sd/-

(M.K. SHANKARALINGE GOWDA)

CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)

MEMBER

Sd/-

(D.B. MANIVAL RAJU)

MEMBER