

No.N/175/2019 & N/176/2019.

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated: 11.06.2021

Present

Shri Shambhu Dayal Meena	: Chairman
Shri H.M. Manjunatha	: Member
Shri M.D. Ravi	: Member

OP. No.68/2019

BETWEEN

M/s Clean Wind Power (Piploda) Private Limited,
Having its registered office at 201,
Third Floor, Okhla Industrial Financial Estate, Phase - III,
New Delhi-110 020.
(Represented by Advocate Shri Avijeet Lala)

.....PETITIONER

And

Hubli Electricity Supply Company Limited
Navanagar, P.B. Road,
Hubli — 580 025,
Karnataka.

.....RESPONDENT

(Represented by Shri Shahbaaz Huisain &
Ms. Stephania Pinto, Advocates)

OP. No.69/2019

M/s. Clean Wind Power (Bableshtar) Private Limited,
Having its registered office at
201 Third Floor,
Okhla Industrial Financial Estate, Phase-III,
New Delhi -110 020.

.....PETITIONER

(Represented by Shri Avijeet Lala, Advocate)

And

Hubli Electricity Supply Company Limited
Navanagar, P.B. Road,
Hubli-580 025,
Karnataka.

.....RESPONDENT

(Represented by Shri Shahbaaz Huisain &
Ms. Stephania Pinto Advocates)

COMMON ORDERS

The petitions are having common issues and facts (petitioner is M/s Clean Wind Power (Piploda) Private Limited in OP No.68/2019 and M/s Clean Wind Power (Baleshwar) Private Limited in OP No.69/2019) and Respondent is Hubli Electricity Supply Company Limited in both the petitions, hence, we clubbed together,

1. The Petitioners have filed the petitions under Section 86(1)(e) and Section 86 (1)(f) of the Electricity Act, 2003 for the relief to:
 - a) Direct the Respondent to strictly comply and abide with the provisions of the various PPA entered into between the parties;
 - b) Direct the Respondent to pay the delayed outstanding Principal Amount along with Late Payment Surcharge amounting to a total of Rs. 41,41,04,579 in OP No. 68/2019 and Rs. 42,52,42,951 in OP No. 69/2019 as on August 28,2019 i.e., the Outstanding Amount for supply of wind energy as per the terms of the PPA;
 - c) Direct the Respondent to open Letter of Credit in favour of, and for the sole benefit of, the Petitioner as per the terms of the PPA.
 - d) Direct the Respondent to henceforth, remit the subsequent amounts due and payable under the Monthly Invoices on time, as per the terms of the PPA;

- e) Direct the Respondent to pay the costs of the present Petition;
- f) Condone any inadvertent omissions /errors / shortcomings and permit the Petitioner to add/change/modify/alter this filing and make further submissions as may be required at a future date;
- g) Pass such other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

2. Brief facts of the case:

The present petitions are filed by the Petitioners being aggrieved by the unlawful actions of the Respondents in wilfully neglecting to release the amounts due and payable under the Power Purchase Agreements towards sale of wind energy has the Petitioners and consequent failure to release the Late Payment Surcharge for delayed payments.

3. The petitioner in OP No.68/2019 submits that The Government of Karnataka (GoK) had accorded permission to M/s G.M. Navarra Wind Energy Private Limited for installation of 205 MW capacity wind power project in Vijayapura, Kalaburagi, Belagavi and Chitradurga Districts in the state of Karnataka, vide its Order No. EN 447 NCE 2007, Bangalore dated June 25, 2009. Subsequently, vide its Order No. EN 343 NCF 2016, Bangalore dated 28.12.2016, the GoK had given permission to transfer 24 MW capacity out of the 200MW wind power project located at Babaleshwar and Mulvad villages of Vijayapura Taluk and District from M/s G.M. Navarra Wind Energy Private Limited to the Petitioner.

4. In view of the aforesaid, the Petitioner and the Respondent accordingly entered into a Power Purchase Agreement (PPA) dated 25.02.2017 (Annexure-P-1). Under the PPA, the Respondent has agreed to purchase all the wind energy generated by the Petitioner at the Petitioner's Wind Generating Facility with an installed capacity of 24 MW and 26 MW at Tonasyal, Karajol and Kakhandaki villages of Vijayapura Taluk and District (Facility), in accordance with the terms and conditions as contained in the aforesaid PPA. The said Facility was commissioned on 28.03.2017.

5. The petitioner in OP No.69/2019 submits that the Government of Karnataka accorded permission to M/s G.M. Navarra Wind Energy Private Limited for installation of 205 MW capacity wind power project in Vijayapura, Kalaburgi, Belagavi and Chitradurga Districts of Karnataka vide its Order No. EN447 NCE2007, dated 25.6.2009. Thereafter, on 6.8.2015, the State Government had accorded permission to enhance wind power project capacity from 38.6 MW to 205 MW at Babaleshwar and Mulvad Villages of Vijayapur Taluk of Vijayapur District, out of 205 MW allocated to M/s G.M. Navarra Wind Energy Private Limited. Subsequently, vide its Order No. EN 343 NCE 2016 dated 28.12.2016, the Government of Karnataka had given permission to transfer 24 MW capacity out of 205 MW Wind Power Project located at Bableshtar and Mulvad Villages of Vijayapura Taluk from M/s G.M. Nivarra Wind Energy Private Limited to the petitioner. Accordingly, the petitioner and respondent entered into a PPA dated 25.02.2017 (Annexure-P-1). Under the provisions of PPA, the respondent has agreed

to purchase all the wind energy generated by the petitioner at the petitioner's wind generating Facility with an installed capacity of 24 MW at Karjol and Kankhandaki villages of Vijayapura Taluk and Vijayapura District (Facility), in accordance with the terms and conditions as contained in the aforesaid PPA. The said Facility was commissioned on 28.02.2017.

6. In accordance with the terms of the PPA, the Petitioners have been supplying wind energy continuously and without any interruption to the Respondents from the commercial operation date of the projects. It is pertinent to note that since commissioning of the Facility till the date of filing of this petition, the Respondents have not raised any objection/dispute in relation to any non-fulfilment of the Petitioner's obligations as per the PPA.
7. In view of its continuous supply of wind energy as per the PPA, the Petitioners have started raising its monthly invoices in accordance with Article 6.1 of the PPA from April 2017 for the power generated and supplied from March 2017. The said Monthly Invoices have been accepted by the Respondent without demur or dispute.
8. In Petition No.68/2019, the petitioner submits that the Monthly Invoices raised by the petitioner has been cleared partially by the respondent for energy supplied up to June 2018. Further it is stated that, in lieu of the Monthly Invoices raised from March 2017 to July 2017 was sought to be released partially by the respondent around 31.03.2018. The payment of the Monthly Invoices raised for the month of June 2018 was released by

the respondents as late at August 2019. As on August,2019 an amount of Rs.10,54,923 is outstanding for the Monthly Invoices raised till June 2018 and as on 28.08.2019, for the Monthly Invoices raised from March 2017 a sum of Rs. 33,40,51,098 is due and payable by the respondent.

9. In Petition No.69/2019, the petitioner submits that the Monthly Invoices raised by the petitioner has been partially cleared up to June 2018 but after a lot of delays. As on August 28, for the Monthly invoices raised from March 2017 a sum of Rs. 34,85,95,687 is due and payable the respondent (Annexure-P-2).

10. Petitioners submit that despite issuance of the Unpaid Energy Bills in accordance with the terms of the PPA and subsequent continuous discussions between the parties for release of the outstanding dues, the Respondents have failed to pay and neglected to make payments of the Principal Amount within the due date specified in Article 6.2 of the PPA. Further, they reiterate that, till date respondents have neither raised any dispute or objection in relation to the non-fulfilment of any compliances by the petitioners under the provisions of the PPA nor raised any dispute towards the Unpaid Energy Bills issued for the wind energy supplied to them by the petitioners. Article 6.3 of the PPA, the petitioners are entitled to impose the Late Payment Surcharge at the rate of 1.25% per month in the event there is any delay in payment beyond the due date, i.e. beyond thirty (30) days from the receipt of the Monthly Invoices. The Respondents have delayed payment of the Unpaid Energy Bills, as is evident in Annexure-P2 of the petition. Accordingly, the petitioner is entitled to

charge the late payment surcharge from the respondents for the delay in payment of the Unpaid Energy Bills issued by the Petitioner.

11. As on 28.08.2019, from the Unpaid Energy Bills and the due Late Payment Surcharge, a total sum of Rs.41,41,04,579 in OP No. 68/2019, Rs.42,52,42,951/- in OP. No. 69/2019 are due and payable by the Respondents to the Petitioners, till date, the Respondents have not raised any dispute regarding the supply of wind energy by the Petitioners. Therefore, the Respondents have no valid reason to withhold payment of the Outstanding Amount and produced the invoice details statement as Annexure-P3.
12. The Petitioners have stated that several reminders for payment of dues including the default notice dated 19.06.2018, issued whereby it requested the Respondents to release the dues as the lack of funds have been adversely impacting the day-to-day business Operations of the Petitioners and their debt servicing obligations and issued letters and produced the letter as Annexure P-4(Colly).
13. Though the petitioners have regularly followed up with the respondents regarding release of the Outstanding Amount, the respondents have failed and neglected to release the same, the petitioners were constrained to issue a demand notice dated 04.10.2019 to the respondent regarding release of payments of the Outstanding Amount (Annexure P5).
14. The petitioners have stated that, in terms of Article 6.5 of the PPA, the respondents are required to establish and maintain transferable, assignable, irrevocable and unconditional non-revolving Letter of Credit

in favour of, and for the sole benefit of the petitioners. Such Letter of Credit was required to be established in favour of and issued to the petitioners on the date of execution of the PPA and made operational thirty (30) days prior to the commercial operation date of the wind-based power plants. In the event a Monthly Invoice or any other amount due and payable by the respondents pursuant to the terms of the PPA was not paid in full and when due, the petitioners could call upon such Letter of Credit for payment in full of the unpaid monthly invoice or any such other unpaid amount. It is also pertinent to note that Ministry of Power (MoP) vide its Order dated 28.06.2019 has mandated DISCOMs to operate and maintain adequate Letter of Credit as a payment security mechanism under their respective power purchase Agreements.

15. The Petitioners have stated that Section 86 (1) (e) of the Electricity Act, 2003 provides for promotion of co-generation and generation of electricity from renewable sources of energy as function of State Commission under Electricity Act, 2003. The petitioners have submitted that it owns and operates wind energy facilities, which being renewable energy are to be promoted and incentivized under Section 86 (1) (e) of the Electricity Act, 2003, the Regulations framed thereunder and as per the orders passed by this Commission from time to time. Further, submits that for renewable energy projects to operate in a sustained and viable manner, it is important that timely payments are maintained by the utilities and there is no delay in the payments. The petitioners have submitted that delays in payment by the respondents has resulted in substantial cash flow

problems to the Petitioners, due to which the Petitioners are facing challenges in meeting its debt servicing obligations and operational dues.

16. The petitioner contended that, till date the respondents have failed to respond to the letters and also not taken concrete steps to pay the Outstanding Amount till date. As a result of the same, the petitioners are left with no alternative but to approach this Commission for redressal of its grievances and to seek appropriate reliefs vide the present Petition, hence these petitions.

17. Upon issuance of notice, the Respondents have appeared through their Counsel and filed their statement of objection on 10.2.2021 as are under:

- i) It is submitted that the Monthly Invoices raised by the Petitioners in both the petitions have been paid up to 23.07.2019 by the respondents (Annexure- R1) Therefore, the prayer for unpaid energy bills does not survive for consideration of this Commission and the petitions are limited only to the prayer on the Late Payment Surcharge (LPS).
- ii) The respondent, as much as practicable, have paid the invoices of the petitioner within the due date, but took some time in payment of some invoices of the petitioner as respondent had to arrange for the requisite funds. The respondent predominantly provides electricity in the agricultural sector within its jurisdiction and agricultural

sector is highly subsidised by the State Government of Karnataka. The cash flow of the respondent is highly dependent on the release of electricity subsidies by the State Government. Thus, the respondent is faced with acute shortage of funds time and again owing to circumstances beyond its control. Wherefore the delay in payment was for bonafide and genuine reasons and was not deliberate.

- iii) In the light of the lockdown imposed to arrest the spread of Covid-19 the respondent has not received payments from its HT/EHT consumers on time. This further compromised the financial ability of the respondent to make payments towards the power purchase cost and other expenditure, causing delay in effecting payment. Such delay is on account of factors beyond its control and bonafide.

18. The petitioners have filed their rejoinder on 26.2.2021 to replies filed by the respondent countering the submissions made by the respondent in its statement of objections.

19. On the perusal of relevant document (Annexure-R1) along with statement of objection submitted by respondent, which establishes that dues payable up to 23.07.2019 to the petitioner has been paid but late payment surcharge yet to be paid to the petitioner. However, during the

course of hearing on 08.04.2021, the Counsels for both the parties have orally agreed to reconcile the amount of late payment surcharge once again and sort out the issue at their end. This submission is taken on record by this Commission. In view of above, the prayer made for payment of late payment surcharge does not survive.

ORDER

For the foregoing reasons, these petitions are disposed of accordingly. The original order is kept in OP No.68/2019 and the copy of it is kept in OP No.69/2019.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member