

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION**

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

**Dated : 9<sup>th</sup> August, 2018**

**Present:**

Shri M.K. Shankaralinge Gowda .. Chairman  
Shri H.D. Arun Kumar .. Member  
Shri D.B. Manival Raju .. Member

**OP No.3/2017**

**BETWEEN:**

Sri Indra Power Energies Limited,  
Flat No. 301, Sri Mukta Residency,  
Srinagar Colony,  
HYDERABAD – 500 073.

.. **PETITIONER**

*[Represented by Navayana law Offices, Advocates]*

**AND:**

Gulbarga Electricity Supply Company Limited,  
Station Road,  
KALABURAGI – 585 102.

.. **RESPONDENT**

*[Represented by Indus Law, Advocates]*

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**ORDERS**

- 1) In this Petition, filed under Section 86(1)(f) of the Electricity Act, 2003, the Petitioner has prayed to apply the tariff determined for other similarly situated Projects, viz., M/s.Koppal Green Power Limited and M/s.Poweronicks Limited

in OP No. 8/2013, to its 6 MW Biomass based Renewable Energy Power Plant at Chikkajanthakal Village, Gangavathi Taluk, Koppal District from 01.01.2015 for the remaining term of the PPA, and pass such other Orders, in the interest of justice.

- 2) The facts of the case and grounds in support of its prayer, as submitted by the Petitioner, may be summed up, as follows:
  - (a) The Petitioner is a generating company, which owns and operates a 6 MW Biomass based Renewable Energy Power Plant at Chikkajanthakal Village, Gangavathi Taluk of Koppal District.
  - (b) The Petitioner had executed a Power Purchase Agreement (PPA) with the Karnataka Power Transmission Corporation Limited (KPTCL), the predecessor-in-interest of the Respondent-Company, on 27.11.2001. The tariff contained, therein, was based on the guidelines issued by the then Ministry of Non-Conventional Energy Sources (MNES).
  - (c) The PPA was assigned to the Respondent on 31.08.2005. Thereafter, the PPA was unilaterally terminated by the Respondent. The same was challenged by the Petitioner, before this Commission, in OP No.36/2006. During the pendency of the Petition, the parties held negotiations and executed a Supplemental PPA (SPPA) on 17.10.2007, modifying the tariff as follows:

<u>Period</u>	<u>Tariff (Rs./unit)</u>
06.07.2004 to 31.03.2005	3.66
01.04.2005 to 31.03.2006	3.84
01.04.2006 to 31.03.2007	4.03
01.04.2007 to 31.03.2008	4.1106
01.04.2008 to 31.03.2009	4.1912
01.04.2009 to 31.03.2010	4.2718
01.04.2010 to 31.03.2011	4.3524
01.04.2011 to 31.03.2012	4.4333

(d) The tariff, which is currently applicable to the Petitioner, was determined by mutual agreement at Rs.4.3524 per kWh, without escalation, for ten years. Even after 26.11.2011, the same tariff has continued.

(e) The Commission, in the Order dated 22.01.2015, has revised the tariff for the Biomass Projects 'with PPAs', as under:

<u>Year</u>	<u>Biomass plants (with PPAs Signed, as per 2005 Order and earlier)</u>	<u>Biomass plants (with PPAs signed, as per 2009 Order)</u>
2014-15	4.32	4.63
2015-16	4.48	4.79
2016-17	3.66	4.97
2017-18	4.84	5.15

(f) M/s.Koppal Green Power Limited and M/s.Poweronicks Limited had filed the Petition in OP No.8/2013, with similar grounds and got favourable Orders, from the Commission. The cost and Project parameters of the Petitioner are identical to that of the PPAs, signed in the year 2009 and other similarly situated Projects, namely, M/s.Koppal Green Power Limited and

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M/s.Poweronicks Limited and hence, the said Order should be made applicable to the Petitioner, in this Petition.

- 3) Upon issuance of Notice, the Respondent appeared through its learned counsel and filed the Statement of Objections, which may be summarized as follows:
- (a) The present Petition is not maintainable in law or on facts, in view of the fact that this Commission, in OP No.51/2011, has already determined the tariff at Rs.4.333/kWh for the remainder of the term of the PPA in respect of the Petitioner's Project and thereafter, the parties have executed a legally binding contract, namely, the Renewal Agreement dated 21.05.2012, adopting the said tariff.
- (b) The Petitioner has mischievously and deliberately suppressed the facts, with a view to obtaining the relief sought for, before this Commission, by portraying a picture which is far from the truth. The Petitioner has not disclosed the fact that, it has already approached this Commission in OP No.51/2011, for fixation of tariff, to be applicable from the eleventh year onwards. The Petitioner has also suppressed the fact that, a Renewal Agreement dated 21.05.2012 was executed between the parties, wherein it was agreed that the tariff would be at Rs.4.333 per kWh for the next ten years, with effect from 27.11.2011. The Petitioner has not approached this Commission with clean hands and on this ground alone, the Petition is liable to be dismissed, with exemplary costs.

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- (c) The Petition is barred by limitation, in view of the fact that, the Petitioner has approached this Commission nearly eight years after the Generic Tariff Order dated 11.12.2009 was passed, and nearly five years after the Order in OP No.51/2011 and the Renewal Agreement was executed between the parties. The Petitioner has slept-over its rights and towards the end of 2016, has chosen to file the present Petition. Hence, the present Petition is barred by limitation and ought to be rejected.
- (d) The Petitioner has not challenged the Renewal Agreement dated 21.05.2012, which is a legally binding contract, that has been entered into voluntarily by the Petitioner and the Respondent. The Petitioner has also not challenged the Order dated 29.03.2012 passed by this Commission in OP No.51/2011. The Petitioner has suppressed these facts and has deliberately filed this Petition, attempting to portray that this is a case, where the tariff that is being paid, as per the Generic Tariff Order dated 11.12.2009, without disclosing that this Commission has itself fixed the tariff in OP No. 51/2011. In the absence of a challenge to the Order of the Commission dated 29.03.2012 or the Renewal Agreement dated 21.05.2012, the present Petition is not maintainable and ought to be dismissed.
- (e) As per the PPA and the SPPA, which had been executed between the parties, the initial ten-year period was to come to an end on 26.11.2011. However, in the meanwhile, this Commission had passed a Generic Tariff Order on 11.12.2009, determining the tariff in respect of Renewable sources

of Energy, whereby it has fixed the generic tariff, applicable to the Biomass Projects, as well. As per the said Order, the tariff for the Projects, which had completed ten years of the PPA period, was fixed at a rate equal to the rate at the end of the tenth year without escalation, for the next ten years of the PPA. Accordingly, the Respondent, in the letter dated 25.04.2011 addressed to the Petitioner, had sought to enter into a Renewal Agreement, renewing the PPA at the rate of Rs.4.3524 per unit, without escalation, for a further period of ten years, from the eleventh year to the twentieth year. Aggrieved by the rate sought to be offered by the Respondent, the Petitioner approached this Commission in OP No.51/2011. This Commission disposed of OP 51/2011 by fixing the tariff at Rs.4.333 per unit for the remaining ten years of the PPA. Pursuant to the said Order dated 29.03.2012, the Petitioner and the Respondent executed the Renewal Agreement dated 21.05.2012, in order to modify Article 5 of the PPA and fixing the tariff at Rs.4.433 [*which had been inadvertently mentioned as Rs.4.333 in the Order dated 29.03.2012 in OP No.51/2011*] per kWh, without escalation, for a period of ten years, from 27.11.2011. The Petitioner is seeking the benefit of the Order of this Commission, passed in OP 8/2013, without being a party to the said Petition and hence, the said Order passed in OP 8/2013, cannot be made applicable to the Petitioner and the facts of the two cases are not similar. In OP 8/2013, the tariff being applied to the Petitioner had not been specifically determined by this Commission and reduced into a binding contract, as was done in the present case. The tariff at which the Petitioners in OP No.8/2013 were being paid was as per the Generic Tariff Order dated 11.12.2009. If the

Petitioner was aggrieved by the tariff fixed by this Commission, vide Order 29.03.2012 in OP 51/2011, it ought to have challenged the said Order before the Hon'ble Appellate Tribunal for Electricity (ATE). Merely because this Commission has subsequently granted a higher tariff, in OP No.8/2013, it would not entitle the Petitioner to the benefit of the said Order.

4) We have heard the learned counsel for both parties and perused the records.

The following Issues would arise for our consideration:

(1) Whether the Petitioner is entitled to the tariff, fixed in the Commission's Order dated 22.01.2015 in OP No.8/2013?

(2) What Order?

5) After considering the submissions made by the parties and perusing the pleadings and documents placed on record, our findings on the above issues are, as follows:

6) **ISSUE No.(1):** *Whether the Petitioner is entitled to the tariff, fixed in the Commission's Order dated 22.01.2015 in OP No.8/2013?*

(a) In OP No. 8/2013, the Commission had passed an Order dated 22.01.2015, modifying the tariff for the Biomass based Power Plants of Koppal Green Power Ltd and Poweronicks Ltd., for the remaining term of the PPAs, from 01.01.2015, as follows:

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

- (b) The Petitioner has pleaded that, it is a similarly situated Biomass Power Plant and hence, the Order in OP No. 8/2013 has to be made applicable to it. Per contra, it is the contention of the Respondent that, in the Petitioner's case, an Order dated 29.03.2012 was passed in OP No.51/2011, pursuant to which, a Renewal Agreement dated 21.05.2012 was executed between the parties and the tariff of Rs.4.433 per unit without escalation, was agreed for ten years from 27.11.2011 upto 26.11.2021. Therefore, the Respondent submits that, the Order dated 22.01.2015, passed in OP No. 8/2013, cannot be applied to the Petitioner's case.
- (c) The Commission had passed the Generic Tariff Order dated 22.01.2015, revising the tariff for existing Biomass Plants, categorizing the Plants as '*with PPAs signed, as per 2005 Order or earlier*' and '*with PPAs signed, as per 2009 Order*'. On the very same day, an Order was passed in OP No.8/2013. We need to examine, if the Plants in OP No.8/2013 and the present case are similarly situated. In OP No.8/2013 and in the present case, the PPAs with the KPTCL were entered into in 2001 and the term of the PPAs is twenty years.



After ten years, the Projects in both cases continued to supply at the tariff prevalent at the end of the tenth year. In both cases, the parties had earlier agreed to certain revised rates and entered into SPPAs, by way of settlement. The tariff at the end of tenth year was Rs.4.433 per unit in both cases. Therefore, we find that, the facts in both cases are similar.

- (d) The other ground urged by the Respondent is that, the Order in OP No.51/2011 has attained finality and the Petitioner has accepted the same. The Commission has passed the Generic Tariff Order dated 22.01.2015, revising the tariff for all existing Biomass Power Projects. Even if the Order in OP No.51/2011 was not challenged, the revision of tariff would apply to the Petitioner also, as it would fall under '*existing Biomass Power Projects*'. Hence, despite the fact that, the Commission had held in OP No.51/2011, that the tariff at the end of tenth year would continue for the remaining term of the PPA, the revision of tariff for the existing biomass plants, as per the Order dated 22.01.2015, would be applicable to the Petitioner.
- (e) The other ground urged by the Respondent is that, the petition is barred by limitation. The Order dated 22.01.2015, in OP No. 8/2013, is sought by the Petitioner to be applied to the present case. The present Petition is filed on 26.12.2016 and therefore, cannot be held to be barred by limitation, as contended by the Respondent.

(f) As we have held that, the facts of the case is similar to the facts in OP No.8/2013, the tariff fixed for the Projects in OP No.8/2013, should be made applicable to the Petitioner.

(g) For the reasons stated above, we answer Issue No.(1), in the affirmative.

7) **ISSUE No. (2):** *What order?*

For the foregoing reasons, we pass the following:

**ORDER**

(a) The tariff for the biomass based power plant of the Petitioner for the remaining term of the PPA, from 01.01.2015, shall be as follows:

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

(b) From FY 2018-19, for the remaining term of the PPA, the tariff shall be as per the Commission's Generic Tariff Order dated 14.05.2018; and,

(c) The terms of the PPA between the Petitioner and the Respondent shall be modified, accordingly.

Sd/-  
(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-  
(H.D. ARUN KUMAR)  
MEMBER

Sd/-  
(D.B. MANIVAL RAJU)  
MEMBER