

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

**Dated : 22<sup>nd</sup> November, 2018**

**Present:**

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

**RP No. 10/2017**

**BETWEEN :**

Nirani Sugar Limited,  
No.904, World Trade Centre,  
9<sup>th</sup> floor, Brigade Gateway Campus,  
Dr.Rajkumar Road,  
Bengaluru - 560 055.

.. **PETITIONER**

*[Represented by Navayana Law offices, Advocates]*

**AND :**

- 1) Bangalore Electricity Supply Company Limited,  
Corporate Office,  
K.R Circle,  
Bengaluru - 560 001.
- 2) Chamundeshwari Electricity Supply Corporation Limited,  
Kaveri Grameena Bank Road,  
Vijayanagar 2<sup>nd</sup> Stage, Hinkal,  
Mysuru – 570 017.
- 3) Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi - 585 101.
- 4) Hubli Electricity Supply Company Limited,  
Navanagar,  
Hubballi – 580 025.

- 5) Mangalore Electricity Supply Company Limited,  
MESCOM Bhavana,  
Kavoor Cross Road,  
Bejai,  
Mangaluru – 575 004.

.. **RESPONDENTS**

[Respondents 1,2,4 &5 represented by Just Law, Advocates,  
Respondent 3 represented by Sri G S Kannur, Advocate]

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### **ORDERS**

- 1) This Review Petition is filed, seeking the following reliefs:
- (a) Review / recall, the Order dated 11.04.2017, and consequently to,
  - (b) Apply the tariff, determined under the Generic Tariff Order dated 11.12.2009, to the 30 MW (27 MW exportable capacity in season) Power Project of the Petitioner, under the PPA dated 02.01.2017;
  - (c) Pass such other Order(s), to meet the ends of justice and equity.
- 2) The facts of the case, as stated in the Petition, may be summed up, as follows:
- (a) The Petitioner is the owner of two units of co-generation based Power Projects at Mudhol, Bagalkot District. The Petitioner had filed, OP No.63/2016 (disposed of by Order dated 11.04.2017), praying for determination of tariff for supply of power from two of its cogeneration based Power Projects, namely, -

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- (i) Unit-I, with installed capacity of 16 MW (exportable capacity of 14 MW), commissioned on 05.03.2010; and,
  - (ii) Unit-II, with installed capacity of 30 MW (exportable capacity of 27 MW), commissioned on 18.6.2011.
- (b) The Petitioner, in the connected matter, viz., OP No.38/2016, had filed a Memo dated 31.01.2017 wherein, the Commercial Operation Dates (CODs) of all the Projects in the batch matter, were furnished along with all the pertinent details, like the status of the Power Purchase Agreement (PPA), capacity in MW, etc. In the Memo dated 31.01.2017, it was clearly mentioned that, 16 MW unit of the Petitioner was commissioned on 05.03.2010 and 30 MW unit was commissioned on 18.06.2011.
- (c) The Petitioner executed a PPA, with the Respondents on 02.01.2017, in respect of its 30 MW (27 MW exportable capacity) unit, which was commissioned on 18.06.2011. The Petitioner has, so far, not executed the PPA for the 16 MW capacity Project.
- (d) As per the Order dated 11.04.2017, the tariff applicable for the Petitioner's Project, commissioned on 18.96.2011 should be as per the Generic Tariff Order dated 11.12.2009.
- (e) However, some confusion is crept in, in view of the noting of the COD of Petitioner's Project as, 05.03.2010 in the Order dated 11.04.2017.

Eventhough, the Petitioner had clearly mentioned the COD of the two units separately, in the Memo filed on 31.01.2017, the Commission considered the COD of the 1<sup>st</sup> unit and applied the Generic Tariff Order dated 18.01.2005, to both the units.

- (f) The Commission ought to have noted that the commissioning date of the 2<sup>nd</sup> unit was on 18.06.2011 and consequently, should have applied the tariff, as per the Generic Tariff Order dated 11.12.2009 (wrongly mentioned by the Petitioner as 01.12.2004, in the Petition) to the Unit-II.
  - (g) The Petitioner has approached this Commission, seeking a review of the Order dated 11.04.2017, in respect of the tariff applicable to its 30 MW (27 MW exportable capacity in season) Power Project.
- 3) The grounds urged, by the Petitioner, may be summarised, as follows:
- (a) In Paragraph-11(d) of the Order dated 11.04.2017, the COD of Unit-I is mentioned as 05.03.2010. The Commission did not factor in the existence of Unit II of 30 MW (27 MW exportable capacity in season). Thus, for both the units, the tariff was applied, based on the Generic Tariff Order dated 18.01.2005.
  - (b) The Unit II was commissioned on 18.06.2011 and this was mentioned in the Memo dated 31.01.2017.

- 4) Upon Notice, the Respondents appeared through their counsel and filed the Statements of objections. The objections filed by the Respondents No.1,2 & 3 are, as follows:
- (a) The Commission, in Paragraph-11(d) of the Order dated 11.04.2017, has considered the COD of the 16 MW unit as 5.3.2010 and has held that the Petitioner shall be governed by the tariff, determined in the Generic Tariff Order dated 18.01.2005. Instead of seeking payments, as per the Order dated 11.12.2009, only for the 30 MW unit, the Petitioner is seeking tariff, determined in the 2009 Order, for both the units of 16 MW and 30 MW.
- (b) The 16 MW unit would be governed by the Generic Tariff Order dated 18.01.2005, as clarified by the Commission, keeping in view the period, when the unit was set up and the expenditure towards the same was incurred. However, the tariff determined by this Commission, in its Generic Tariff Order dated 11.12.2009, would be applicable for the 30 MW unit, as the same was commissioned on 18.06.2011.
- (c) Contrary to this, the Petitioner has been raising the invoices, at the tariff of Rs.4.89 per unit, for the entire quantum of energy injected from both of its units, instead of separate tariffs. Even the tariff of Rs.4.89, is not what is stipulated in the Order. The Petitioner is arbitrarily raising invoices, at tariffs, which are at variance from the tariff, determined by the Commission.

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- (d) The Commission, in the Order dated 11.12.2009, has determined the tariff for the Petitioner and other Co-gen Plants, by considering the Control Period, during which, the Project Developer has incurred the whole or the substantial part of the Project Cost. The Petitioner has commissioned its 16 MW unit in March, 2010, that is within year of operation of the Tariff Order dated 11.12.2009. Therefore, the Petitioner's 16 MW unit is entitled for the Tariff payable for the units, commissioned during the Control Period of the 18.01.2005 Order, and not as per the 11.12.2009 Order, as contended.
- (e) The Commission, vide letter dated 12.02.2018, has clarified that, the energy output computed for the oldest unit, shall be first deducted from the total energy exported from the Plant and the balance exported energy shall be segregated amongst the remaining generating units, in the chronological order of their commissioning date(s).
- (f) The averment that, the Petitioner has not executed the PPA for its 16 MW unit, is untenable. The Petitioner has executed the PPA for both the units, as is clear from the definition of Project, under Article 1.1 of the PPA.
- 5) In addition to the above, the Respondent-3 has submitted, as follows:

The Project is commissioned on 18.06.2011 and the tariff applicable is Rs.4.71 per unit, for the year 2017, but the Respondent-3 has made payments, as per the PPA dated 02.01.2017 at Rs.3.47 per Kwh, at the

interim tariff, fixed by the Commission in the order dated 05.12.2016. It is impossible for the Respondent-3 to purchase this high cost energy, as energy is available at a cheaper price.

- 6) We have perused the material placed on record and heard the learned counsel for both the parties.
  
- 7) The following Issues would arise, for our consideration:
  - (1) Whether the Petitioner has made out a case for review of the Order dated 11.04.2017, passed by this Commission in OP No.38/2016 and other connected cases?
  
  - (2) Whether the Petitioner has established that, the PPA dated 02.01.2017, pertains to only Unit-II of 30 MW capacity of the Co-generation Plant?
  
  - (3) If the answer to the Issue No.(2) is in the negative, what should be the methodology of accounting, for the energy supplied under the PPA, from the Petitioner's Co-generation Plant with multiple units?
  
  - (4) What Order?
  
- 8) After considering the submissions made by the learned counsel for the parties and the pleadings and other material placed on record, our findings on the above issues are as follows:

- 9) **ISSUE No.(1):** *Whether the Petitioner has made out a case for review of the Order dated 11.04.2017, passed by this Commission in OP No.38/2016 and other connected cases?*
- (a) The sum and substance of the averments made in the Review Petition may be stated, thus: that, in the previous proceedings in OP No.63/2016, the Petitioner had clearly stated that the 16 MW installed capacity Power Project was commissioned on 05.03.2010 and the 30 MW installed capacity Power Project was commissioned on 18.06.2011, and inspite of it, in the final Order dated 11.04.2017 in OP No.38/2016 and other connected cases, this Commission, in Paragraph-11(d), at Page-21, has taken into consideration the commissioning date of 05.03.2010 of the 16 MW installed capacity Power Project alone, which led to an inference that, for both the Power Projects, the tariff to be applied should be based on the Generic Tariff Order dated 18.01.2005 and the Respondents are making payment of invoices, accordingly.
- (b) It may be noted that, OP No.63/2016 and other connected cases were clubbed with OP No.38/2016 and the final Order was passed by this Commission on 11.04.2017. The above Petitions had been filed by various Bagasse-based Cogeneration Plants, requesting this Commission to determine a just and reasonable tariff for their Power Plants, as per the applicable norms and Regulations and to direct the Electricity Supply Companies (ESCOMs) for executing PPAs, for a period of five years, commencing from FY 17. After hearing the parties, this Commission has fixed the tariff payable, per unit, for the energy supplied from the



Cogeneration Plants, at different rates, as shown in the Table at Page-27 of the said Order, based on the year of commissioning of the Cogeneration Plants during the Control Periods of the Generic Tariff Orders dated 18.01.2005 and 11.12.2009. The Commission has fixed the fuel cost per unit and also determined the average fixed cost per unit, from FY 17 to FY 21, at different rates, depending upon the year of commissioning of the respective Cogeneration Plants. While fixing the average fixed cost per unit, this Commission has taken into consideration the norms set in the Generic Tariff Order dated 18.01.2005 and the Generic Tariff Order dated 11.12.2009. The final Order also directs that the Cogeneration Plants, commissioned within one year after the commencement of the Effective Date of the Generic Tariff Order dated 11.12.2009, shall be treated as having been commissioned during the year 2009, for the purpose of applicability of the tariff. The Generic Tariff Order dated 11.12.2009 had come into force from 01.01.2010, for a period of five years. It may be noted that the Petitioner's 16 MW installed capacity Power Project was commissioned on 05.03.2010. Therefore, this Project should be treated as having been commissioned during the year 2009, for the purpose of applicability of the tariff. Paragraph-11(d), at Page-21 of the Order dated 11.04.2017, clarifies this stand. There is no ambiguity in the said paragraph. The Petitioner is trying to misread the said Order, in order to assume that, because of this, for both of its Units, the Respondents applied the same tariff, as if both the Plants were commissioned in the year 2009. We note that, the contents in Paragraph-11(d) of the Order dated 11.04.2017, do not lead to such an inference. Therefore, there is no error, much less an

error apparent on the face of record, in the Commission's Order dated 11.04.2017. The Respondents themselves have admitted that the Petitioner's 16 MW installed capacity Power Project should be governed by the tariff applicable for the Projects commissioned during the year 2009 and the 30 MW installed capacity Power Project should be governed by the tariff applicable for the Projects commissioned during the year 2010. The final Order dated 11.04.2017 leads to the same inference, as stated by the Respondents. Therefore, we hold that, the Petitioner has failed to make out a case for review of the Commission's Order dated 11.04.2017.

- (c) For the above reasons, we answer Issue No.(1), in the negative.
- 10) **ISSUE No.(2):** *Whether the Petitioner has established that, the PPA dated 02.01.2017, pertains to only Unit-II of 30 MW capacity of the Co-generation Plant?*
- (a) The Petitioner, in substance, has contended that, the PPA dated 02.01.2017 pertains to only 30 MW installed capacity of the Power Project commissioned on 18.06.2011. Such a contention of the Petitioner is based on the definition of 'Exportable Capacity' contained in the PPA. The PPA defines the 'Exportable Capacity' as "*The surplus available electricity generated by the Project after providing for captive electricity consumption by the Seller, which shall be upto 27 MW.*" It is not in dispute that the Petitioner has two Cogeneration Plants, viz., one consisting of 16 MW installed capacity (14 MW Exportable Capacity) and the other consisting of 30 MW installed capacity (27 MW Exportable Capacity in off season). The Respondents have contended that the PPA pertains to

16 MW installed capacity, as well as 30 MW installed capacity, and have denied the contention of the Petitioner that it relates to only 30 MW installed capacity. Therefore, we have to decide, whether the PPA pertains to only one Unit or both the Units, though this question cannot be raised by the Petitioner in the present Review Petition.

- (b) We note that the PPA also contains the definition of 'Project' and 'Installed Capacity'. The definition of 'Project' makes it clear that it comprises of both the Units of 16 MW and 30 MW, of total installed capacity of 46 MW. The definition of 'Installed Capacity' further makes it clear that the Installed Capacity means, *'the capacity of the Project at the generating terminals and shall be equal to 46 MW'*. Article 4.1 of the PPA provides that, the procurer shall pay for the Delivered Energy for the term of the PPA, as per the final Order to be passed, by this Commission, on the Petition filed by the seller, for determination of tariff. The billing shall be on monthly basis, at the agreed rate, as per Article 4.1 of the PPA, on the invoice to be raised as per the joint meter reading at the Delivery Point. The PPA does not make any provision, allowing the seller to opt for open access, for any capacity of power or quantum of energy. It can also be noted that the Petitioner itself has filed OP No.63/2016, requesting for determination of the tariff for its 16 MW as well as 30 MW installed capacity of Cogeneration Units, for sale of power to the Respondents, for a period of five years, commencing from FY 17 to FY 21. Therefore, from the above facts, it is clear that the PPA dated 02.01.2017 pertains to both the Cogeneration Units of the Petitioner. At best, it can be said that the

Exportable Capacity, stated in the PPA, is incorrect and it should have been more than 27 MW. In the previous proceedings, in OP No.38/2016 and other connected cases, the description of the two Cogeneration Units of the Petitioner are stated thus: (i) Both the Units are not covered under any PPA; (ii) The installed capacity of the Units are 16 MW and 30 MW; and, (iii) The Exportable Capacity during season is 11 MW and 20 MW and during off season is 14 MW and 27 MW, respectively. Therefore, it can be said that, either during season or during off season, the Exportable Capacity of both the Units should be more than 27 MW. Correction may be required, to this extent, in the definition of the Installed Capacity, in the PPA. In view of the above, we hold that, the Petitioner has failed to establish that the PPA dated 02.01.2017 pertains only to 30 MW Installed Capacity of Cogeneration.

(c) Therefore, we answer Issue No.(2), in the negative.

11) **ISSUE No.(3):** *If the answer to the Issue No.(2) is in the negative, what should be the methodology of accounting, for the energy supplied under the PPA, from the Petitioner's Co-generation Plant with multiple units?*

(a) There is no dispute between the parties that the 16 MW Installed Capacity Cogeneration Unit was commissioned on 05.03.2010 and should be governed by the tariff payable for the Cogeneration Plants commissioned during the year 2009, and the 30 MW Installed Capacity Cogeneration unit was commissioned on 18.06.2011 and should be governed by the tariff

payable for the Cogeneration Plants commissioned during the year 2011, as per the Order dated 11.04.2017.

- (b) The Respondents have contended that, they have been admitting the invoices of the Petitioner, for payment for the energy supplied from the Cogeneration Plants of the Petitioner, as per the Clarification dated 12.02.2018, issued by this Commission (produced at ANNEXURE-R2). The Commission notes that, the said Clarification has been issued by the Commission, when the energy is being injected to a Single Interface Point by different Cogeneration Plants, which are situated in the same premises. It appears, though the Petitioner has two different Cogeneration Plants, it must have injected the power to a Single Interface Point of the KPTCL Sub-station. The Petitioner does not specifically claim that, it has been injecting the energy into the Grid, through different Interface Points. If the Petitioner has any grievance regarding the guidelines given in the said Clarification, it should have challenged the applicability of the said guidelines. The Petitioner has not raised any objection to the guidelines issued in the Clarification dated 12.02.2018. Therefore, we hold that, the procedure adopted by the Respondents, for payment of the invoices of the Petitioner, is in accordance with the above-mentioned guidelines issued in the Clarification dated 12.02.2018.

- (c) For the above reasons, we answer Issue No.(3), as above.

12) **ISSUE No.(4):** *What Order?*

For the foregoing reasons, we pass the following:

**ORDER**

The Review Petition stands dismissed.

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

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

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