

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 26th June, 2018

Present:

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

OP No.59/2016

BETWEEN:

Indian Cane Power Limited,
No. 677, Shri Kalleshwara Rice Mill Compound,
RMC Road, Ankola,
Davanagere- 577 001

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PETITIONER

[Represented by Navayana Law Offices, Advocates]

AND:

- 1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 2) Chamundershwari Electricity Supply Corporation Limited,
No.29, Kaveri Grameena Bank Road,
Vijayanagar, 2nd Stage,
Mysuru – 570 019.
- 3) Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi – 585 102.
- 4) Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 025.

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

.. **RESPONDENTS**

[Respondents-1, 2 and 3 represented by JustLaw, Advocates,
Respondent-4 represented by Sri Shahbaaz Hussain, Advocate]

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ORDERS

- 1) The Commission had passed an Order dated 11.4.2017 in OP Nos. 38/2016 and connected cases, determining the tariff payable for the energy supplied by the co-generation plants for a period of 5 years. The Order also specified as follows:

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(b) *The Cogen Plants commissioned within one year after the commencement of the generic Tariff Order dated 1.1.2015 shall be treated as having been commissioned during the year 2014 for the applicability of the tariff;*

(c) *The Cogen 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 applicability of the tariff;*

(d) *If any of the Cogen Plants referred to in (b) and (c) above could produce evidence to establish that, the whole or a substantial part of the Project Cost was incurred by it in the year 2015 or 2010, as the case may be, the Commission would then revise the tariff suitably in such cases;*

(e) *The owners of the Cogen Plants shall produce the Commissioning Certificates in proof of the date of commissioning of the Cogen Plants/ any of its Units, before entering into a PPA with the ESCOM concerned;.....”*

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- 2) Pursuant to the said Order, the Petitioner in OP No. 59/2016, had addressed a letter dated 1.5.2017 to the Commission, stating that its co-generation unit of 55 MW capacity was commissioned on 12.8.2015 with a total investment of Rs.284,34,98,641/- which works out to be Rs.5,16,99,972/- per MW and had requested for an appropriate higher tariff for the power exported. A Certificate dated 17.4.2017 of the Chartered Accountant, a statement showing the details of investments made for the co-gen plant of 55 MW, Minutes of the meeting dated 12.8.2015 to show synchronization of the plant on 12.8.2015, PPA dated 17.2.2017 with the Electricity Supply Companies (ESCOMs), a portion of the Government Order dated 15.7.2015 and Annual Reports of the Company for 2015-16 and 2008-09 were appended to the letter.
- 3) Upon receipt of the letter and enclosures, Notices were issued to the Respondents. The Respondents, except Respondent-5, have entered appearance through their counsel and filed Statement of Objections. Respondent No.5 remained unrepresented.
- 4) Respondents 1, 2 and 3, in the Objections, have stated as follows:
- (a) The averment that the entire 55 MW plant had been commissioned on 12.08.2015, cannot be accepted. From the records, it is seen that 23 MW is commissioned on 12.8.2015 and 32 MW was commissioned in 2008-09 and the power from 32 MW unit was supplied through Open Access without entering

into a PPA with any of the ESCOMs. Therefore, the tariff, as per the generic tariff Order dated 11.12.2009, is applicable for 32 MW unit.

- (b) The Petitioner has not quantified the tariff, which it is presently requesting for. The Petitioner has not indicated the parameters which have undergone upward revision after the Control Period of the Order dated 11.12.2009. By merely producing a certificate issued by its Chartered Accountant and the Company's Annual Reports for 2008-09 and 2015-16, the request for revision cannot be granted. This Commission while considering the power of the Commission to amend tariff has clearly held that, such a revision is not permissible when the request is bereft of details. The process of tariff fixation involves examination of several parameters and cogent material is required to be produced. The Petitioner has not produced any such material nor quantified the extent of increase in tariff sought. Therefore, the Petition is liable to be rejected.
- (c) The Petitioner has commissioned its 23 MW unit on 12.08.2015, within one year after the commencement of the Control Period of the Generic Tariff Order dated 1.1.2015. Therefore, the Petitioner is governed by the Generic Tariff Order dated 11.12.2009, as held in the Order dated 11.04.2017. The Petitioner has commissioned its 32 MW unit, in the year 2008-09 and hence, the Generic Tariff Order dated 11.12.2009 is applicable to 32 MW unit, also. Therefore, the entire 55 MW plant is governed by the Generic Tariff Order dated 11.12.2009.

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- (d) The Petitioner has stopped generating power from its 28 MW unit, which was commissioned in the year 2008-2009 and is generating power only from its new plant since 2015, to claim higher tariff. A copy of the Form-B for the 28 MW unit is produced as evidence of non-production of energy from the 28 MW unit.
- (e) During the year 2016, the Petitioner is stated to have incurred expenses of Rs.63,042,01,158/- and realized revenue of Rs.64,140,54,787/-. During the year 2015, the Petitioner is stated to have incurred expenses of Rs.432,72,47,214/- and realized revenue of Rs.438,52,51,309/-. During the year 2009, the Petitioner has incurred expenses of Rs.76.02 crore and realized revenue of Rs.86.55 crore. The Annual Reports for the year 2008-2009 and 2015-2016, reveal that the Petitioner is making substantial profit. Therefore, the Petitioner is not entitled to any higher tariff.
- 5) The Respondent No.4, in the Objections, has stated as follows:
- (a) The Commission, vide Order dated 11.04.2017, had laid out the applicable tariff for co-generation plants that get commissioned in a particular year up to 2014. The varied tariff, depending on the year of commissioning of plant, was stipulated in the said Order and it was stated that the Commission would revise the tariff of plants commissioned in the year 2009 or 2015, if whole or substantial part of the project cost was incurred in the year 2010 or 2015, as the case may be.

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- (b) The Petitioner has established a 55 MW of Co-generation unit and the same is said to have been commissioned on 12th August, 2015 with the purported investment of Rs.284,34,98,641/-. As per the said Order, any plant commissioned within one year from the commencement of the generic tariff Order dated 1.1.2015, shall be treated as having been commissioned during the year 2014 and the tariff as stipulated for a plant commissioned in the year 2014 would be applicable.
- (c) The Petitioner, vide its letter dated 01.05.2017, has requested the Commission to revise the tariff for the power generated by it suitably. According to the Order dated 11.04.2017, the tariff for the Petitioner's plant can only be revised, if the whole or substantial part of investment was made in the year 2015 and not otherwise. The Petitioner has not claimed that the whole or substantial part of its investment was made in 2015 to seek revision of tariff. Further, the Petitioner has not produced any document evidencing such investment in the year 2015. Therefore, the prayer of the Petitioner seeking revision of tariff is liable to be dismissed *in limine*.
- (d) The Petitioner has produced a Certificate of the Chartered Accountant, showing the purported investment along with the annual reports. Such documents do not conclusively prove the investment on the cogeneration plant as nowhere in the annual reports, investments pertaining to the co-generation plants have been earmarked or demarcated.

- (e) The Petitioner has submitted a memo dated 28.06.2017 with another Certificate issued by its Chartered Accountant (CA) to show the investment made in different years on the co-generation plant. Such Certificate cannot be accepted at its face value and is subject to verification and corroborative evidence, which has not been produced by the Petitioner. There is discrepancy in the figures submitted by the Petitioner in the investment for 2015-16, as per the CA Certificate produced along with the memo, as compared to the investment in co-gen plant mentioned in the statement of fixed assets submitted by the independent auditor for the Petitioner Company for 2015-16. While the investment in the plant and factory for co-gen plant are shown as Rs.205,43,02,483/- and Rs.62,78,56,289/-, respectively in the former, the corresponding figures in the latter are Rs.142,15,57,430/- and Rs.20,60,26,254/-, respectively. Thus, the numerical figures in the CA Certificate, submitted along with the memo, appear to be inflated and the Petitioner is put to strict proof of the same. In view of the contradictory figures, the revision of tariff is not warranted and the tariff applicable to the plants commissioned in 2014 has to be applicable for the 55 MW project.
- (f) Even if the figures reflected in the CA Certificate are assumed to be true, it can be seen that the substantial investment in the cogeneration has not occurred in 2015-16. Not even 70% of the investment has occurred in 2015, thus, not constituting substantial investment much less, whole investment. Therefore, the petition is liable to be dismissed.

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- 6) We have perused the records and heard the counsel for both parties.
- 7) The following Issues arise for our consideration:
- (1) Whether the Petitioner has established that the whole or substantial part of the project cost in respect of its 55 MW unit of the co-generation plant was incurred in the year 2015, for it to be entitled to the tariff as per generic tariff Order dated 1.1.2015?
- (2) What Order?
- 8) **ISSUE No.(1):** *Whether the Petitioner has established that the whole or substantial part of the project cost in respect of its 55 MW unit of the co-generation plant was incurred in the year 2015, for it to be entitled to the tariff as per generic tariff Order dated 1.1.2015?*
- (a) It is the contention of the Petitioner that the 55 MW unit of its co-gen plant was commissioned on 12.8.2015 and therefore, it is entitled to a higher tariff. Though a specific tariff is not prayed for by the Petitioner, it can be inferred that the prayer is to fix tariff as per the Generic Tariff Order dated 1.1.2015.
- (b) We note that, the PPA dated 17.2.2017 defines the project as comprising of 2 units of individual capacity of 28 MW (Unit-1) and 55 MW (Unit-2) and the total installed capacity of 83 MW. The 'exportable capacity' mentioned in the definition is upto 54 MW, after captive consumption.

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- (c) The Unit-1 of 28 MW was commissioned in 2008-09, as per the Annual Report of 2008-09 (page 29) produced by the Petitioner. Unit -2 of 55 MW is stated to be commissioned on 12.8.2015. The Commissioning Certificate is not produced by either parties. From the Minutes of the meeting held between the KPTCL, the HESCOM and the Petitioner, with regard to synchronization of the unit on 12.8.2015, it can be made out that a unit was synchronized on 12.8.2015, but the capacity of such unit is not mentioned. It is only stated: "Advancement in energy imported to the tune of 23 MW was observed in high resolution mode of L&T make Tariff ETVMs installed in ICPL Uttur Co-gen 110 kV Terminal Bay @ 110 kV sub station, KPTCL, Uttur". This does not imply that the capacity of the plant synchronized on 12.8.2015 was 23 MW. Therefore, we are unable to accept the contention of the Respondents that the Petitioner has commissioned only 23 MW on 12.8.2015.
- (d) It may be true that the 55 MW unit was commissioned on 12.8.2015. The Order dated 11.4.2017 states that, in Order to claim a higher tariff for any plant or unit, evidence has to be produced to establish that the whole or substantial part of the project cost was incurred in the year 2015. From the records produced, it cannot be made out that substantial investment for the 55 MW unit was made in 2015 or during the period of one year prior to the date of commissioning. From the Statement of expenditure produced by the Petitioner, it can be made out that investment on the 55 MW unit is made during the period from 2009-10 to 2015-16. Out of the amount of

Rs.284,34,98,461/- stated to be spent on the 55 MW unit, Rs.191,16,235/-, Rs.176,14,532/-, Rs.379,18,399/-, Rs.190,97,463/-, Rs.43,71,280/-, Rs.612,82,258/- and Rs.268,51,87,725/-, are invested in different years from 2009-10 to 2015-16. But for the statement of the CA and the Annual reports, no other evidence is produced to corroborate the expenditure incurred. The Petitioner has not produced any document evidencing the investments made in the year 2015. The Respondents have submitted that the investments are not demarcated. We also see that the amount spent exclusively on the 55 MW unit cannot be made out as other heads of expenditure are also included in the Statement of investments produced with the Memo dated 28.6.2017, filed on 11.7.2017. The expenditure under the heads- vehicle, staff quarters, computer, furniture, etc., have been included, which cannot be considered as the Capital Cost for the Unit of 55 MW. As submitted by the Respondent-4, we find that there are discrepancies in the numerical figures mentioned in the Statement of investments produced by the Petitioner along with the Memo dated 28.6.2017 and the Statement of fixed assets and depreciation in the Annual Report of 2015-16. These submissions of the Respondent-4 are not countered by the Petitioner. Therefore, we feel that the Petitioner has failed to produce material to establish the claim for higher tariff for the Unit-2 of 55 MW. Therefore, the claim for higher tariff cannot be accepted.

- (e) It is also contended by the Respondents that the Unit-1 of 28 MW has been stopped and power is supplied only from Unit-2 of 55 MW, to claim higher tariff. We note that the exportable capacity mentioned in the PPA from the

two units is upto 54 MW, after captive consumption. As we have held that the Unit-2 is not entitled to any higher tariff, the tariff for the supply of upto 54 MW will be the same. Hence, it does not matter whether the energy generated by Unit -1 or Unit-2 is supplied under the PPA dated 17.2.2017.

(f) Therefore, Issue No.(1) is answered, in the negative.

9) **ISSUE No.(2):** *What Order?*

(a) As Issue No.1, is held in the negative, the Petitioner is not entitled to the tariff determined in the Generic Tariff Order dated 1.1.2015.

(b) For the foregoing reasons, we pass the following:

ORDER

The claim of the Petitioner is dismissed, and the Unit-2 of 55 MW of its Co-generation Plant is not entitled to the tariff determined in the Generic Tariff Order dated 1.1.2015.

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

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

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