

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 5th April, 2018

Present:

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

OP No. 105/2016

BETWEEN:

International Power Corporation (P) Limited,
#319, Shivashankar Plaza,
3rd Floor, Lalbagh Road,
Bengaluru – 560 027.

..

PETITIONER

[Represented by Smt. Poonam Patil, Advocate]

AND:

1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.

2) The State of Karnataka,
Department of Energy,
Represented by the Chief Secretary,
Vikas Soudha,
Bengaluru – 560 001

..

RESPONDENTS

[Respondent-1 is represented by Justlaw, Advocates]

ORDERS

- 1) In essence, the Petitioner has prayed for the applicability of the tariff of `4.16 per unit, determined in the Generic Tariff Order dated 01.01.2015, relating to the Mini Hydel Power Projects, for the energy to be supplied from the Project of the Petitioner to the 1st Respondent – Bangalore Electricity Supply Company Limited (BESCOM) and to direct the 1st Respondent (BESCOM) to enter into a Power Purchase Agreement (PPA), to that effect.

- 2) The Petitioner is a Company, incorporated under the provisions of the Companies Act, 1956, having its Registered Office at the address mentioned in the Cause Title above. Two other Companies, viz. Prasanna Power Private Limited and Trinethra Energy Conversions Private Limited, have been amalgamated with the Petitioner-Company and the scheme of amalgamation has been sanctioned by the Hon'ble High Court of Karnataka, vide Order Dated 04.04.2014 in Company Petition Nos.274 to 276 of 2013.

- 3) The material facts stated by the Petitioner, in support of its prayers, may be stated thus:
 - (a) The erstwhile Prasanna Power Private Limited was permitted by the Government of Karnataka to install a 3 MW capacity Mini Hydel Power

Project, vide its Order dated 03.11.2010 (ANNEXURE-C). After amalgamation, the Petitioner requested for extension of time to commission the 3 MW capacity Mini Hydel Power Project and the same was granted by the Government of Karnataka, vide its Order dated 08.09.2016 (ANNEXUE-D), extending the time for commissioning the 3 MW capacity Mini Hydel Power Project till 02.11.2017.

- (b) The Petitioner obtained a Feasibility Report dated 29.06.2016 (ANNEXURE-F) for evacuation of the 3 MW capacity power from the Mangalore Electricity Supply Company Limited (MESCOM). The Petitioner also obtained the Evacuation approval dated 09.11.2016 (ANNEXURE-G) from the Karnataka Power Transmission Corporation Limited (KPTCL), for the 3 MW capacity power from its Plant. The Petitioner entered into contracts dated 23.11.2016 (ANNEXURES – H and J), for supply and installation of the electro-mechanical equipment, for installation of its 3 MW capacity Power Plant, with a Private Company.
- (c) The Generic Tariff Order dated 01.01.2015 relating to the Renewable Energy Sources, passed by this Commission, in respect of the Hydro-Electric Projects, makes the same applicable to the Projects which are commissioned during the period, from 01.01.2015 to 31.03.2018. The Petitioner's Plant was due for commissioning in June, 2017, therefore, the tariff determined in the Generic Tariff Order dated 01.01.2015 is applicable. The Petitioner has addressed a letter dated 07.11.2016

(ANNEXURE-M) to the 1st Respondent (BESCOM) requesting it to execute a PPA with a tariff of `4.16 per unit, but no response has been received from it. Therefore, the Petitioner has filed the present Petition on 29.12.2016.

(d) The Petitioner has produced extracts of the Balance Sheet relating to the Prasanna Power Private Limited, for the year 2012-13, stating that it supports the cost incurred for establishing the present 3 MW capacity Mini Hydel Power Project.

4) Upon Notice, the 2nd Respondent has remained absent and the 1st Respondent (BESCOM) has appeared through its learned counsel and filed the Statement of Objections, the gist of which may be stated thus:

(a) That, the erstwhile Prasanna Power Private Limited had developed a 6 MW capacity Mini Hydel Power Plant across Aniyur Station at Aniyur Village of Belthangadi Taluk in Dakshina Kannada District, after obtaining the Government Order and other clearances. That, the said Prasanna Power Private Limited had executed a PPA dated 12.12.2006 with this Respondent, for sale of electricity from the Mini Hydel Power Plant and that Project had been successfully completed in the year 2009.

(b) That, the Petitioner had obtained the approval of the Government of Karnataka for setting up an additional 3 MW capacity Mini Hydel Power

Plant, by utilizing the existing infrastructure put up for the already constructed 6 MW Mini Hydel Power Project. That, as per the admission of the Petitioner itself, it had utilized the existing infrastructures and additionally carried out only the electro-mechanical works by spending a sum of `3.90 Crores and further carried out the balance civil works by spending a sum of `18,00,000/-.

- (c) That, the fixation of tariff for any Project had been done by this Commission, considering mainly the Capital Cost incurred for setting up of the Project. In the Generic Tariff Order dated 01.01.2015 for the Mini Hydel Power Projects, this Commission had considered the Capital Cost of `6.20 Crores per MW, for fixation of a tariff of `4.16 per unit, however, the Petitioner had incurred only 30% of the Capital Cost considered in the Generic Tariff Order dated 01.01.2015.
- (d) By way of additional Statement of Objections, the 1st Respondent (BESCOM) has contended that, as per the Government Order dated 08.09.2016, extending the time for commissioning the additional 3 MW Mini Hydel Power Project, the Government had permitted the extension of time for completion of the Project, on furnishing certain Performance Guarantee and further stated that the power to be generated from this 3 MW capacity Mini Hydel Power Project should be sold as per the PPA tariff applicable in respect of the earlier 6 MW Plant. Therefore, the

1st Respondent (BESCOM) has further contended that the tariff of `2.80 per unit, as made applicable in the earlier PPA dated 12.12.2006, should apply to the power to be sold from this 3 MW capacity Mini Hydel Power Project. Therefore, the 1st Respondent has requested to reject the Petition.

5) We have heard the learned counsel for the contesting parties. The following issues would arise for our consideration:

(1) Whether the Petitioner is entitled to the tariff of `4.16 per unit, as per the Generic Tariff Order dated 01.01.2015?

(2) If not, what should be the tariff applicable for the additional 3 MW capacity Mini Hydel Power Project of the Petitioner?

(3) What Order?

6) After considering the oral submissions of the contesting parties and the material placed on record, our findings on the above issues are as follows:

7) **ISSUE No.(1):** *Whether the Petitioner is entitled to the tariff of `4.16 per unit, as per the Generic Tariff Order dated 01.01.2015?*

(a) The case of the Petitioner is that, the Generic Tariff Order dated 01.01.2015 passed by this Commission in respect of the Hydo Projects makes the same applicable to the Projects which are commissioned

during the period between 01.01.2015 and 31.03.2015, as per the relevant extract of the said Order, given below:

“Date of Effect of this Order:

- i) *The tariff as determined by the Commission in the present Order shall be applicable to all the Mini-Hydel, Bagasse based co-generation and Rankine cycle based Biomass Power Projects with water cooled condenser that get commissioned during the period between 01.01.2015 and 31.03.2018 for which PPAs have not been entered into prior to the date of this Order. This tariff shall be applicable for the term of the PPA. ...”*

- (b) The 1st Respondent (BESCOM) has contended that the Generic Tariff Order dated 01.01.2015 applies to the Renewable Energy Projects which are established during the Control period, from 01.01.2015 to 31.03.2018, by making investments at the prevailing rates and signing PPAs during this period; but, in the present case, the Petitioner had obtained the approval of the Government of Karnataka for setting up an additional 3 MW capacity Mini Hydel Power Project, by utilizing the existing infrastructure put up for the already constructed 6 MW capacity Mini Hydel Power Project. Further that, as per the admission of the Petitioner itself, it had utilized the existing infrastructures and additionally carried out only the electro-mechanical works by spending a sum of `3.90 Crores and further carried out the balance civil works by spending a sum of `18,00,000/-, therefore, the 1st Respondent (HESCOM) has contended that the Generic Tariff Order dated 01.01.2015 is not applicable for the

purchase of power from the additional 3 MW capacity Mini Hydel Power Project.

- (c) It is not disputed that the Petitioner has set up an additional 3 MW capacity Mini Hydel Power Project by utilizing the existing infrastructure already put up for the 6 MW capacity Mini Hydel Power Project, though the said fact is not specifically stated in the Petition. Further, it is also not in dispute that the amounts spent for carrying out the different electro-mechanical works was `3.90 Crores and for the civil works the amount spent was `18,00,000/-. Therefore, one can say that the present 3 MW capacity Mini Hydel Power Project is only an extension or addition to the existing 6 MW capacity Mini Hydel Power Project. During the pendency of the proceedings, it was reported that the 3 MW capacity Mini Hydel Power Project was commissioned on 04.10.2017.
- (d) The generic tariff in respect of any Renewable Energy Project is determined, considering the normative economical and technical parameters relating to the Project concerned. This generic tariff is determined for different Control Periods and it is made applicable to a Project that has entered into a PPA and commissioned during such Control Period. The generic tariff is reviewed during the next Control Period, taking into consideration the then prevailing normative economical and technical parameters. Therefore, the generic tariff determined for a Control Period is applicable to a Project entering into a

PPA and getting commissioned during that Control Period. Such generic tariff is in the nature of a standing offer to a person, who is interested to commission a new Project during that Control Period. The Capital Cost is the main factor in determining the quantum of tariff for any Renewable Energy Project. Therefore, any addition or extension of an existing Project, mainly utilizing the existing infrastructures, cannot be treated as a new Project, for which the generic tariff cannot be made applicable. In the Generic Tariff Order dated 01.01.2015 for the Mini Hydel Power Projects, the Capital Cost adopted is `6.20 Crores per MW. This Capital Cost is considered for establishing a new Project, which does not utilize any existing infrastructure.

- (e) The Generic Tariff Order dated 01.01.2015 has considered the applicability of this Order in Paragraph-I, under the heading "A. Common Issues" at Pages-4 and 5 of the said Order. The conclusion reached therein reads thus:

"The Commission decides that the norms and tariff determined in this Order shall be applicable to Mini-hydel Power Plants, Bagasse based Co-generation Power Plants and Rankine cycle based Biomass Projects with water cooled condensers, that get commissioned during the period 01.01.2015 to 31.03.2018 for which PPAs have not been entered into, prior to the date of this Order. For Projects commissioned prior to the date of this Order, the generic tariff determined by the Commission as on the date of commissioning of the Projects shall be applicable. Further, in respect of Projects for which Power Purchase Agreements have been entered into prior to the date of this Order, the tariff as per the said Agreement shall be applicable even if the Projects are commissioned

subsequently. The tariff determined in this Order shall be applicable for the term of the Power Purchase Agreements."

During the hearing of the Generic Tariff determination proceedings, some of the Biomass Projects and Co-generation Projects had requested to apply the tariff and also the norms determined in the said Order to the existing Plants under operation. In that connection, the Commission observed that, applying the norms and also the tariff determined in the said Order to the existing Plants is not appropriate, as the Project Costs incurred are different at different points of time and also the existing Plants would have already serviced their debt, partly or fully. Normally, a new Project is commenced after executing a PPA with the generic tariff applicable for that Control Period and is commissioned within that Control Period.

- (f) For the above reasons, the Commission is of the considered view that the Generic Tariff Order dated 01.01.2015 cannot be made applicable to the additional 3 MW capacity Mini Hydel Power Project of the Petitioner. Therefore, we answer Issue No.(1) in the negative.

8) **ISSUE No.(2):** *If not, what should be the tariff applicable for the additional 3 MW capacity Mini Hydel Power Project of the Petitioner?*

- (a) The 6 MW capacity Mini Hydel Power Project of the Petitioner was commissioned on 13.08.2009. The PPA in respect of this Project was

executed on 12.12.2008, with a tariff of `2.80 per unit for the Delivered Energy. The present additional 3 MW capacity Mini Hydel Power Project is the continuation of the existing 6 MW capacity Mini Hydel Power Project. Therefore, we are of the considered view that it is just and reasonable to fix the tariff of `2.80 per unit for the energy supplied from the additional 3 MW capacity Mini Hydel Power Project.

- (b) If the Petitioner had established this additional 3 MW capacity Mini Hydel Power Project during the previous term itself, the Petitioner would have been entitled to a tariff of `2.80 per unit, irrespective of the Capital Cost incurred on this additional 3 MW capacity Mini Hydel Power Project. It appears, in the previous Detailed Project Report (DPR), the estimated capacity of the Mini Hydel Power Project was on the lower side, considering the volume of infrastructure proposed therein. By establishing the present additional 3 MW capacity Mini Hydel Power Project, mainly utilizing the existing infrastructure, it amounted to rectifying the defect in the previous DPR. Therefore, we are of the considered view that the tariff for the additional 3 MW capacity Mini Hydel Power Project cannot be based on the Capital Cost now incurred by the Petitioner. It appears, for this reason, the Government of Karnataka had indicated to the Petitioner to sell the power generated at the tariff agreed upon in the earlier PPA. Therefore, on Issue No.(2), we hold that the tariff applicable for the additional 3 MW capacity Mini

Hydel Power Project of the Petitioner should be `2.80 (Rupees Two and Paise Eighty) only per unit for the Delivered Energy.

9) **ISSUE No.(3):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (1) The Petitioner is not entitled to the tariff of `4.16 (Rupees Four and Paise Sixteen) only per unit, as per the Generic Tariff Order dated 01.01.2015;
- (2) The tariff for the additional 3 MW capacity Mini Hydel Power Project of the Petitioner shall be `2.80 (Rupees Two and Paise Eighty) only per unit for the Delivered Energy, if any; and,
- (3) The 1st Respondent (BESCOM) shall enter into a PPA with the Petitioner for the additional 3 MW capacity Mini Hydel Power Project of the Petitioner, at the tariff of `2.80 (Rupees Two and Paise Eighty) only per unit for the Delivered energy, from the date of commissioning of the said additional 3 MW capacity Mini Hydel Power Project. Consequently, the parties shall adjust their rights and liabilities, accordingly.

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

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

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