

No. N/49/18

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560052

Dated: 21st June 2018

Present:

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

OP No.17/2018

BETWEEN:

Engineered Power Resources India Pvt Ltd.,
No. 44, 2nd Cross, Parvathi Nagar,
Ballari – 583 103
(Represented by Just Law, Advocates)

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PETITIONER

AND:

N I L

...

RESPONDENT

O R D E R

1. The Commission had passed an Order in open Court on 12.6.2018 permitting the petitioner to sell the power to the third parties and not to the ESCOMs, and had further stated that detailed Orders would follow. Hence, the following reasoned Order is passed:

2. This is a petition filed under Section 86 (1) (a), (b) & (e) read with Sections 62 & 64 of the Electricity Act, 2003. Based on the several parameters mentioned in the petition, the Petitioner has prayed to: –

(i) determine the tariff at Rs.4.59 per unit payable by the ESCOMs to the petitioner for sale of power from the four mini hydel units located at Mallapur, Sirwar, Ganekal and Kalmala;

Or in the alternative,

(ii) to clarify that the Petitioner is entitled to sell the power generated by the project to third parties through Open Access; and

(iii) pass such other orders as the Commission deems fit on the facts and in the circumstances of the case.

3. The material facts of the case as submitted by the Petitioner may be stated as follows:

a) The Petitioner, a Company incorporated under the provisions of the Companies Act, 1956 is a generating company which has been engaged in the business of generation of electricity since 2012. Pursuant to competitive bidding undertaken by the Karnataka Power Corporation Limited (KPCL), a Government of Karnataka undertaking, the Petitioner has been awarded a contract for renovation, operation and maintenance of 10.75 MW mini hydel projects comprising of four plants located at Mallapur, Sirwar, Ganekal and Kalmala (the project, in short).

b) The KPCL had established the said four mini hydel generating plants between the years 1990 and 1994 along the left bank of the

Tungabhadra canal as a pilot project. Although the said plants were operational briefly, due to innumerable problems, KPCL was unable to operate the project effectively and over the time, the project became defunct. As KPCL had incurred significant cost at the time of the establishment of the project and due to the ever increasing demand for electricity in the State, a decision was taken by the KPCL to revive the project by calling for tenders for renovation, operation and maintenance of the said four plants.

- c) The KPCL called for tenders on 16.7.2015. As per the terms of the tender document (Clause 1.13), the successful bidder was required to sell the power generated in the four mini hydel plants to the ESCOMs after duly executing the Power Purchase Agreements (PPAs) for the same.
- d) The Petitioner participated in the said tender process and was declared the successful bidder. Prior to participating in the tendering process, the Petitioner had commissioned a study conducted by Tata Consulting Engineers Limited, a CERC empaneled consultant to estimate the approximate viable bid amount, based on the cost of refurbishment and estimated generation of power and other relevant parameters for determination of tariff. As per the said report, taking into account the cost to be incurred in renovating, operating and maintaining the project, the minimum bid amount/reserve price and all relevant KERC parameters for tariff determination, tariff for the project was calculated at Rs.4.05 per unit.
- e) The Petitioner quoted lease rent of Rs.271.00 lakhs per year plus GST for the lease period of 25 years and also undertook to pay Rs.319.32 lakhs as onetime payment to KPCL.

- f) The bid of the Petitioner having been found to be highest on 30.8.2017, a Letter of Award was issued by the KPCL to the Petitioner calling upon to execute a Lease Agreement for renovation, operation and maintenance of the project for 25 years.
- g) On 7.9.2017, a Lease Agreement was executed by the Petitioner with the KPCL. As per clause 1.01.08 of the said Lease Agreement in section 1, General Conditions of Contract, the period of lease is 25 years, which is to be reckoned from the date of completion of renovation works or eight months from the Letter of Award, whichever is earlier.
- h) On 13.9.2017, the KPCL handed over the project to the Petitioner w.e.f. 1.10.2017. Based on thorough assessment of actual/existing condition and generating capacity of the project, the Petitioner obtained one more report through the Consultant, wherein it was discovered that as the actual generating capacity of the project is lesser, having regard to the expenses to be incurred for the renovation (based on quotes received from the OEMs/vendors), annual generation, operation and maintenance of the project including the lease rental and onetime payment to the KPCL, the tariff works out to Rs.4.59 per unit.
- i) On 8.2.2018, the Energy Department, Government of Karnataka, has replied to the Petitioner's letter dated 13.9.2017 directing the Petitioner to approach the Commission with regard to the tariff to be paid for the energy generated at the project.

- j) Therefore, this petition is filed by the Petitioner seeking to determine tariff for the energy generated at the project, or to permit the petitioner to sell the power to third parties.

4. When the petition was listed for admission, the Commission asked the Counsel for the Petitioner, if any ESCOM was willing to buy the power generated from the project, so as to proceed with the exercise of determination of tariff. In response to this, on 5.6.2018, the Counsel for the Petitioner filed a Memo as follows:

“ 1. The Petitioner has filed the present petition seeking this Hon'ble Commission to determine tariff at Rs.4.59 for sale of power from four mini hydel units located at Mallapur, Sirwar, Ganekal and Kalmala to ESCOMs of Karnataka or in alternative allow the Petitioner to sell power generated at the project to the parties through open access.

2. Petitioner sought determination of tariff as aforesaid because Notice Inviting Tender No. LOT/CEED/EE4/MH4/1305 dated 16.7.2015 issued by Karnataka Power Corporation Limited, based on which the Petitioner is awarded the above project, vide clause 1.13 of Special Terms and Conditions requires the Petitioner to sell the power to ESCOMs, Karnataka and enter into PPA for selling power as per rules in force.

3. On 24.4.2018, present petition was listed before this Hon'ble Commission for admission. The Hon'ble Commission after hearing the Advocate for the Petitioner, directed the Petitioner herein to clarify whether it is willing to sell power to third parties through open access as prayed in the present petition as it looked unlikely that any ESCOM would be able to

buy power from the Petitioner at the tariff proposed by the Petitioner.

4. *It is therefore clarified that in the event ESCOMs are not willing / able to buy power from the Petitioner at the tariff proposed by the Petitioner and/or this Hon'ble Commission is not inclined to determine the tariff payable by the ESCOM to the Petitioner as sought for, the Petitioner would be willing to sell power from the four mini hydel plants to third parties under open access, in accordance with law.*

5. *WHEREFORE it is prayed that this Hon'ble Commission may be pleased to take the present Memo on record and issue orders/directions as this Hon'ble Commission may deem fit, in the interest of justice."*

5. We have perused the records and heard the Counsel. The relevant clause in the bid document dated 16.7.2015 and the Lease agreement dated 7.9.2017 between the Petitioner and the KPCL states: "The Lessee shall sell the power to ESCOMs, Karnataka and enter into PPA for selling power as per rules in force". We note that the tariff for supply of energy by new mini hydel projects as determined in the generic tariff order dated 14.5.2018 is Rs.3.95 per unit. The Petitioner has got prepared the DPR according to which the tariff prayed is Rs. 4.59 per unit. The project was established and maintained by KPCL and is stated to be defunct since about 10 years. As per the DPR, to make the project functional, the capital cost per MW required/estimated is more than the capital cost considered in the recent generic tariff order dated 14.5.2018 for new mini hydel projects. Therefore, the Commission would have to initiate proceedings for

determination of project specific tariff for this project. The question of determination of project specific tariff would arise only if any of the ESCOMs agree to purchase the power from a generating company. It is not stated whether any ESCOM has agreed to buy the power from the project. It is submitted by the Counsel that the alternative prayer made by the Petitioner may be allowed and the Petitioner may be permitted to sell the power generated to third parties on open access.

6. We note that the project is a renewable energy project and that the ESCOMs in the State have complied with the non-solar RPO fixed by the Commission and that there is no pressing need for them to procure power from the project. We consider that the tariff sought by the Petitioner at Rs. 4.59 per unit is too high, as compared to Rs. 3.95 per unit fixed in the Commission's recent generic tariff order and would be burdensome on the consumers, even if the ESCOMs were to agree to purchase the power from the project. Further, from the material produced, *prima facie*, we feel that even if project specific tariff were to be determined, it might not work out to be less than Rs. 3.95 per unit, being the tariff determined in the recent generic tariff order dated 14.5.2018. Hence, we do not find any ground to undertake such exercise of determination of tariff, as prayed by the petitioner.

7. Therefore, we pass the following:

ORDER

The petitioner is permitted to sell the power generated from the project to third parties.

The petition is disposed of accordingly.

**Sd/-
(M.K. Shankaralinge Gowda)
Chairman**

**Sd/-
(H.D.Arun Kumar)
Member**

**Sd/-
(D.B.Manival Raju)
Member**