

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION**

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

**Dated : 20<sup>th</sup> August, 2019**

**Present:**

Shri Shambhu Dayal Meena	..	Chairman
Shri H.M. Manjunatha	..	Member
Shri M.D. Ravi	..	Member

**OP No.92/2018**

**BETWEEN:**

Athani Sugars Limited,  
'Shiv Pavallion', 2<sup>nd</sup> Floor,  
Near Ram Mandir,  
Sangli-Miraj Road,  
Sangli – 416 416.

.. **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, 2<sup>nd</sup> Stage, Hinkal,  
Mysuru – 570 019.
- 3) Gulbarga Electricity Supply Company Limited,  
Station Main Road,  
Kalaburagi – 585 101.
- 4) Hubli Electricity Supply Company Limited,  
P.B. Road, Navanagar,  
Hubballi – 580 025.
- 5) Mangalore Electricity Supply Company Limited,  
MESCOM Bhavana, 4<sup>th</sup> Floor,  
Kavoor Cross Road,  
Bejai,  
Mangaluru – 575 004.

- 6) Power Company of Karnataka Limited,  
Room No.501, 5<sup>th</sup> Floor,  
KPTCL Building  
Cauvery Bhavan,  
Bengaluru – 560 009.

.. **RSPONDENTS**

*[Respondents-1 & 6 - represented by Shri Shahbaaz Husain, Advocate  
Respondent-3 - represented by Just Law, Advocates]*

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### **ORDERS**

- 1) This Petition is filed under Sections 86(1)(f) of the Electricity Act, 2003, praying to:
- (a) Direct the Respondents to make payment for the delivered energy from the date of filing of the Petition in OP No.45 of 2016 up to the date of execution of Power Purchase Agreement dated 18<sup>th</sup> January, 2018 as detailed at Annexure P17 and P18;
- (b) Set aside the 6<sup>th</sup> Respondent–PCKL's letter dated 03<sup>rd</sup> May, 2018 produced at Annexure – P16;
- (c) Pass such other Order/s to meet the ends of justice and equity.
- 2) ANNEXURE-P17 provides the details of the energy delivered for the months, from November, 2016 to February, 2017 and ANNEXURE-P18 provides the details of the energy delivered for the month of November, 2017. ANNEXURE-P16 is the letter dated 03.05.2016, issued by the 6<sup>th</sup> Respondent (PCKL), addressed to the Petitioner, intimating that, the claim for payment for the energy injected into the Grid prior to the execution of the Power Purchase Agreement (PPA) dated 18.01.2018, is not maintainable.

- 3) The material facts, made out by the Petitioner in support of its Prayers, are as follows:
- (a) The Petitioner operates a Bagasse-based Co-gen Plant of 24 MW installed capacity and 16.67 MW exportable capacity, commissioned in October, 2012. The Petitioner had filed OP No.45/2016 before this Commission on 14.06.2016, against the present Respondents 1 to 5, praying for a direction to execute the PPA with the Petitioner for purchase of power from its Cogen Plant, at the tariff to be determined by this Commission. A number of other Bagasse-based Co-gen Plant owners also filed different Petitions, before this Commission, in the month of June, 2016, praying for a direction against the Respondents 1 to 5, to execute the PPAs for purchase of power from their Cogen Plants, at the tariff to be determined by this Commission. The Respondents - BESCOM, HESCOM and GESCOM expressed their willingness to purchase the power at the Average Power Purchase Cost (APPC) minus the transmission charge. The other Respondents - CESC and MESCOM did not express their willingness to purchase the power, at all. This Commission clubbed all the Petitions filed by the Bagasse-based Co-gen Plant owners, for adjudication. The proceedings continued in OP No.38/2016 - *NSL Sugars (Tungabhadra) Ltd. -Vs- BESCOM and others*.
- (b) When the above proceedings were pending before this Commission, the Government of Karnataka issued a Government Order No.EN 16 PPT 2016, Bangalore, dated 11.11.2016, according approval to purchase power by the Electricity Supply Companies (ESCOMs) from the Bagasse-based Co-

gen Units of Sugar Factories in the State, with the approval of the KERC, for a period of five years, commencing from 2016-17, at the tariff determined by the KERC, with such other conditions stated in the said Government Order. The copies of the said Government Order were marked to all the ESCOMs of the State and other Authorities in the Power Sector.

(c) Thereafter, on 18.11.2016, all the ESCOMs filed OP No.85/2016 requesting:

“(1) To approve the proposal of the Petitioners (ESCOMs) for procurement of electricity on medium term basis from the Bagasse-based Cogen Plants, who are already generating electricity and do not have PPAs with the ESCOMs, in terms of the Government Order dated 11.11.2016;

(2) To determine the tariff payable by the Petitioners (ESCOMs) herein in accordance with the Government Order No.EN 16 PPT 2016, Bangalore, dated 11.11.2016 from Bagasse-based Cogen Plants.”

This Petition, OP No.85/2016 was clubbed along with OP No.38/2016 and other connected Petitions filed by the Cogen Plants, as per the Order dated 24.11.2016.

(d) OP No.38/2016 and the other connected cases, filed by the Bagasse-based Co-gen Plant owners, along with OP No.85/2016, filed by the ESCOMs, were disposed of by this Commission, by Order dated 11.04.2017, determining the tariff for the various Co-gen Plants at different rates, as noted therein and further directing that:

*“The owners of the Co-gen Plants, who are entering into PPAs with the ESCOMs for sale of energy, as per the tariff determined in this Order, shall do so within one month from the date of this Order, failing which, they shall not have any claim for entering into a PPA with any ESCOM.”*

- (e) During the pendency of OP No.38/2016 and the other connected cases, an Interlocutory Application was filed on 01.12.2016, requesting for fixing the interim tariff, as the Sugarcane crushing season had begun and the Co-gen Plants were required to generate power. On the same day, their request was allowed by this Commission and a provisional tariff was fixed, at the APPC rate, minus the transmission charges (i.e., Rs.3.94 – Rs.0.47 = Rs.3.47) per unit.
- (f) The Petitioner claims that, this Commission had fixed the interim tariff, as the Petitioner was already injecting the energy into the Grid and thereby, the Interim Order indicates the tariff to be paid for the energy delivered, from the date of the Petition. The Petitioner further claims that, once the Interim Order was passed, the Respondents 1 to 5 were bound to pay the tariff, as per the Interim Order against the procurement of the Delivered Energy by the Petitioner, however, the Respondents, for reasons best known to them, did not choose to adhere to the Interim Order passed by this Commission.
- (g) While the Respondents started entering into PPAs with many other Co-gen Projects, for purchase of power, as per the interim tariff fixed by this Commission, the Petitioner was grossly discriminated and no PPA was

executed with the Petitioner, despite repeated requests by it. That, the Petitioner submitted a representation dated 02.01.2017 (ANNEXURE-P5), requesting the Respondents to indicate a suitable date for execution of the PPA. That, there was no response from the Respondents and moreover, the Petition filed by the Petitioner was pending for final adjudication. Therefore, the Petitioner decided to await the results of the final Order in OP No.45/2016, filed by it.

- (h) The Petitioner has stated that, soon after passing of the Order dated 11.04.2017 in OP No.38/2016 and the other connected cases, it approached the Respondents, expressing its intention to execute a PPA, but the Respondents refused to enter into a PPA with the Petitioner, and ultimately, the Petitioner had approached the Department of Energy, Government of Karnataka and got issued a letter dated 01.01.2018 (ANNEXURE-P13) to the 6<sup>th</sup> Respondent (PCKL), wherein the 6<sup>th</sup> Respondent (PCKL) was directed to arrange for the execution of the PPA by the ESCOMs with the Petitioner. Thereafter, the Respondents 1 to 5 executed the PPA dated 18.01.2018 (ANNEXURE0P14) with the Petitioner.
- (i) In the present Petition, filed on 26.10.2018, the Petitioner has prayed for payment in respect of the energy supplied, prior to the execution of the PPA, at the rate finally determined by this Commission in OP No.38/2016 and the other connected cases, i.e., Rs.4.85 per unit, for the energy supplied in FY17 and Rs.5.03 per unit for the energy supplied in FY18. According to the Petitioner, the total energy injected into the Grid in FY17 was 3,71,95,500 units and the amount payable for it was Rs.18,03,98,174/-,

and the total energy injected into the Grid in FY18 was 62,91,060 units and the amount payable for it was Rs.3,16,44,031/-.

4) Upon Notice, the Respondents have appeared through their counsel and filed the Statement of Objections, the gist of which may be stated as follows:

(a) That, the Order dated 11.04.2017 passed by this Commission in OP No.38/2016 and the other connected cases, merely directed the Petitioner and the other Bagasse-based Co-gen Plant owners to approach the ESCOMs, to execute the PPAs, but has not cast an obligation on the ESCOMs to execute the PPAs. The ESCOMs have to enter into the PPAs, based on various considerations, and in no circumstance, can they be compelled by the Petitioner and others, to execute the same.

(b) That, the claim of the Petitioner that, the Order fixing the interim tariff of Rs.3.47 per unit, mandates and obliges the ESCOMs to pay such tariff, is untenable and erroneous in law. That, the said interim tariff is applicable only for the power supplied in pursuance of a PPA and not otherwise, and that, without an agreement and consent of the ESCOMs, the Petitioner cannot supply power and the unauthorized supply of power, cannot be paid for. That, on the contrary, the unauthorized supply of power is liable to be penalized, as the same disturbs the Grid discipline. The Respondents have not specifically denied the claim of the Petitioner that, it submitted a representation dated 02.01.2017 (ANNEXURE-P5), requesting the

ESCOMs to indicate a suitable date for the execution of the PPA, subsequent to passing of the Interim Order. However, the Respondents have stated that, such averment of the Petitioner is misleading.

(c) That, the Petitioner was paid for the energy supplied, subsequent to the execution of the PPA dated 18.01.2018, as per the terms of the said PPA. The Petitioner, in the present case, had no such Agreement for the power injected into the Grid, prior to the execution of the PPA, thereby there was no question of payment for the power injected into the Grid, prior to 18.01.2018.

5) Certain relevant facts, not specifically pleaded by the parties in the present proceedings, but can be gathered from the previous proceedings in OP No.38/2016 and other connected cases, and OP No.85/2016 and the documents produced in these proceedings, may be stated as follows:

(a) In OP No.85/2016, an Interim Order dated 01.12.2016 was passed, which reads thus:

*“Case called. Petitioner is represented by the counsel. The counsel submits and prays for the fixation of interim tariff equivalent to APPC rate minus transmission charges. The prayer is allowed. The ESCOMs are permitted to procure power from the sugar factories limiting to 501 MW and at APPC rate minus the transmission charges as an interim measure. Interim Tariff will be Rs.3.94 – Rs.0.47 = Rs.3.47 per unit. Call on 12.1.2017.”*

This Interim Order was passed, based on the Interim Prayer made in OP No.85/2016, wherein it is stated thus:

*“WHEREFORE it is prayed that this Hon'ble Commission may be pleased to determine an ad-hoc interim tariff payable to bagasse based cogeneration plants for purchase of electricity in furtherance to the Government Order No.EN 16 PPT 2016, BANGALORE, dated 11.11.2016, pending determination of the final tariff payable, in the interest of justice and equity.”*

While issuing the above-said Government Order dated 11.11.2016, in the Preamble portion of the said Government Order, at Paragraph-3, one of the narrations is that:

*“As per the proposal given by the South India Sugar Mills Association, 28 sugar factories with an exportable capacity of 501 MWs are willing to enter into PPA with the ESCOMs.”*

It appears, this portion of the Preamble had prompted the learned counsel for the ESCOMs, to request this Commission, while passing the Interim Order, to limit the procurement of power from the bagasse based co-gen units to 501 MW.

- (b) In OP No.38/2016, on the same day, i.e., on 01.12.2016, on an Interlocutory Application filed by the Petitioner therein, an Interim Order was passed, which reads thus:

*“Case called. Parties are represented. IA has been filed. The prayer is for fixing of interim tariff. The prayer for interim tariff is allowed. APPC minus transmission charges is fixed as interim tariff until further orders. Interim tariff will be Rs.3.94 – Rs.0.47 = Rs.3.47 per unit. Call on 12.1.2017.”*

- (c) Subsequent to passing of the Interim Orders in OP No.38/2016 and OP No.85/2016, the PCKL, acting on behalf of the ESCOMs, wrote a letter bearing No.PCKL/A12/33/2016-17/3870-77, dated 14.12.2016 to this Commission, requesting to approve the proposed PPA Format, for

entering into a PPA, pursuant to the Interim Orders. This Commission, in its letter dated 23.12.2016, approved the PPA Format, indicating the required corrections to be made in the proposed PPA Format. It is relevant to note Articles 4.1 and 5.2 of the PPA Format, which read thus:

**“4.1 Monthly Energy Charges:**

*Procurer(s) shall pay for the Delivered Energy for the term of the PPA from the date of supply of power after signing of the PPA, to the Seller at a tariff to be determined by Commission. The Commission's Interim Tariff of Rs.3.47 per unit, approved vide Order dated 5<sup>th</sup> December, 2016 shall be payable for power procurement from Co-Generating units, till the issue of Final Orders on Tariff by KERC.”*

**“5.2** *On final determination of the tariff, the Seller shall raise the invoice for the differential amount, if any, payable by the Procurer(s), within one month from the date of Final Order.”*

- (d) As contended by the Respondents, the Government of Karnataka, vide its letter dated 05.01.2017, restricted the quantum of power to be procured from the 28 Co-gen Units, to an extent of 501 MW, as noted in the List submitted by the South India Sugar Mills Association (SISMA).
- (e) It is found that, the names of the Petitioner-Athani Sugars Limited (OP No.45/2016) and of the two Co-gen Units of Bannari Amman Sugars (OP Nos.67/2016 and 68/2016) are not appearing in the said List. It is also found that, one Sowbhagya Laxmi Sugars Limited, which was in the List, had not filed any Petition before this Commission, as done by others.

(f) In the Order dated 11.04.2017 passed in OP No.38/2016, this Commission had raised a specific issue, viz., whether the purchase of power should be restricted to only 501 MW from the Co-gen Plants, who had approached the Government of Karnataka, and on consideration of the relevant material, the said issue was answered in the negative. The said issue and the findings, thereon, are as follows:

- “14) **ISSUE No.(4)**: *Whether the purchase of power should be restricted to 501 MW from the Cogen Plants, who approached the Government of Karnataka for a direction to the ESCOMs for purchase of power from the Cogen Plants?*
- (a) *The Government Order dated 11.11.2016 according approval to purchase power from the Cogen Plants in the State of Karnataka, at the tariff determined by this Commission, was passed as per the proposal given by the South India Sugar Mills Association (SISMA). The said proposal was accompanied by a list of 28 Sugar Factories with an exportable capacity of 501 MWs of power, which were willing to enter into PPAs with the ESCOMs. On consideration of the said proposal and in the background of other facts and circumstances narrated in the Preamble of the said Government Order, the Government of Karnataka accorded its approval to purchase power from the Cogen Plants in the State, at the tariff determined by this Commission. While passing the Order dated 1.12.2016 fixing the interim tariff for supply of power from the Cogen Plants, this Commission restricted the quantum of power to 501 MW.*
- (b) *The said Government Order does not say that, the purchase of power should be restricted to only 501 MW from the 28 Sugar Factories, which have expressed willingness to enter into PPAs with the ESCOMs. From the background and the reasons stated in the Preamble stated in the said Government Order, it can clearly be inferred that, the benefit should extend to all the Cogen Plants in the State,*

which are willing to sell power at the tariff determined by this Commission.

- (c) *The difficulties being faced by the Sugar Factories in the State of Karnataka are common to all the Sugar Factories and are not restricted to 28 Sugar Factories alone. The Government of Karnataka has accorded approval for purchase of power from the Cogen Plants with a view to mitigating the difficulties and in the overall interest of the Sugarcane Farmers of the State. Therefore, we are of the considered view that, the purchase of power need not be restricted to 501 MW only. It can be seen that, the total exportable capacity of power offered by the different Cogen Plants, who are before this Commission, may just exceed 501 MW. Therefore, we answer Issue No.(4) in the negative."*

- 6) We have heard the learned counsel for the parties. The learned counsel for the Respondents has also filed the Written Arguments.
- 7) The following issues would arise, for our consideration:
- (1) Whether the filing of the Petition in OP No.45/2016 would authorize the Petitioner to inject energy, from the date of filing of the said Petition?
  - (2) Whether the Order dated 01.12.2016 passed in OP No.38/2016 and the other connected cases, fixing the interim tariff, would authorize the Petitioner to inject energy, from the date of the said Order?
  - (3) Whether the refusal by the Respondents to execute the PPA, even after passing of the Order dated 11.04.2017 in OP No.38/2016 and the other connected cases, is valid?
  - (4) Whether the Petitioner can be granted any payment for the energy injected into the Grid, prior to the execution of the PPA dated 18.01.2018? If so, from which date and at what rate?
  - (5) What Order?

- 8) After considering the oral submissions of the parties and the material on record, our findings on the above issues are as follows:
- 9) **ISSUE No.(1):** *Whether the filing of the Petition in OP No.45/2016 would authorize the Petitioner to inject energy, from the date of filing of the said Petition?*
- ISSUE No.(2):** *Whether the Order dated 01.12.2016 passed in OP No.38/2016 and the other connected cases, fixing the interim tariff, would authorize the Petitioner to inject energy, from the date of the said Order?*
- (a) The above two issues are taken up together, as the grounds urged, for and against these issues, were same.
- (b) The learned counsel for the Petitioner submitted that, the date of filing of the Petition in OP No.45/2016, or at least, the date of passing of the Order dated 01.12.2016, fixing the interim tariff in OP No.38/216, would legally enable the Petitioner to claim the price of the energy injected into the Grid. On the other hand, the learned counsel for the Respondents contended that, any energy injected into the Grid, without any commercial Agreement, for sale of energy in favour of the ESCOMs or in favour of third parties under open access, is an unauthorized injection of energy into the Grid, which attracts the Penalty provision, and such injection of energy cannot be compensated, in any manner.
- (c) The Petition in OP No.38/2016 and the other connected cases, were filed for fixing the tariff, for the sale of energy to the ESCOMs. The said Petitions did not disclose the consent given by the ESCOMs for purchase of energy. Therefore, this Commission had issued Notices to the ESCOMs, directing

them to indicate whether they were willing to purchase energy from the Co-gen Plants. In response to it, different DESCOMS responded differently, as already noted. Thereafter, a representation was given to the Government of Karnataka, by the SISMA, on behalf of 28 Sugar Plants, stating that, these Co-gen Plants were willing to sell the energy to the ESCOMs and a direction be issued to the ESCOMs to procure the power, for the reasons stated in the representation. This led to issuance of the Government Order dated 11.11.2016 by the Government of Karnataka and filing of OP No.85/2016 by the ESCOMs before this Commission, with the prayers, as already noted.

- (d) In OP No.85/2016, the first prayer made by the ESCOMs was, to approve the procurement of energy, on medium term basis, in terms of the Government Order dated 11.11.2016, and the second prayer made was, to determine the tariff payable for the energy supplied to the ESCOMs. As already noted, this Commission fixed the interim tariff on 01.12.2016 and subsequently, approved the terms of the PPA, to be entered into, in pursuance of the Interim Order. In the final Order dated 11.04.2017, this Commission fixed the tariff payable and also directed the owners of the Co-gen Plants, to enter into PPAs, within one month from the date of the said Order, failing which, they should not have any claim, thereafter, for entering into PPAs with the ESCOMs. In the light of the prayers made in OP No.38/2016 and the other connected cases and in OP No.85/2016 and the terms of the Interim Orders, as well as the final Order in OP No.38/2016 and the other connected cases, would certainly establish that, the

ESCOMs were permitted to procure the energy from the Co-gen Plants, in pursuance of the Interim Orders, as well as the final Order.

- (e) The question for determination in these two issues is, whether the owners of the Co-gen Plants could inject the power into the Grid, merely on the basis of filing the Petitions or passing of the Interim Orders, without entering into PPAs or without obtaining the consent of the ESCOMs. The learned counsel for the Respondents-ESCOMs contended that inspite of these Orders, the Petitioner and the other Co-gen Plant owners were required to enter into PPAs or obtain the consent of the ESCOMs, prior to injecting energy into the Grid. The contention of the learned counsel for the Respondents appears to be correct. The Interim Order or the final Order does not authorize injection of power into the Grid, by the Petitioner, from the dates of these Orders, without there being an agreement with the ESCOMs. There is no basis for the Petitioner to contend that, it is entitled to inject energy into the Grid, from the date of filing of the Petition. It is an established principle that, without there being a commercial Agreement, either with the ESCOMs or with a third party under open access, a Generator is not entitled to inject energy into the Grid.
- (f) After passing of the Interim Orders and the approval of the PPA Format, the Petitioner requested, on 02.01.2017, for arranging execution of the PPA by the ESCOMs with the Petitioner. However, the Respondents did not enter into the PPA with the Petitioner, as the name of the Petitioner was not found in the List furnished by the SISMA, and also this Commission had

limited the procurement of power to 501 MW only. Therefore, one cannot blame the ESCOMs for not entering into PPAs with the Petitioner.

- (g) For the above reasons, we answer Issue Nos.(1) and (2), in the negative.
- 10) **ISSUE No.(3):** *Whether the refusal by the Respondents to execute the PPA, even after passing of the Order dated 11.04.2017 in OP No.38/2016 and the other connected cases, is valid?*
- (a) The Respondents were well aware of Issue No.(4) raised in OP No.38/2016 and the other connected cases, and the findings on it, holding that, the purchase of power need not be restricted to 501 MW only and that this Order would apply to all the Co-gen Plants in the State, which had no PPAs earlier. It is not in dispute that, soon after the final Order dated 11.04.2017, the Petitioner made a representation dated 13.04.2017 (ANNEXURE-P6) to all the ESCOMs, requesting them to enter into PPAs at the earliest, as per the said final Order. The Respondents have refused to execute the PPAs with the Petitioner, till the Petitioner could bring a letter dated 01.01.2018 (ANNEXURE-P13), issued by the Government of Karnataka, addressed to the 6<sup>th</sup> Respondent (PCKL), wherein the 6<sup>th</sup> Respondent (PCKL) was directed to arrange for the execution of the PPA by the ESCOMs with the Petitioner. The Respondents approached the Government of Karnataka, to obtain a clarification, as the name of the Petitioner was not finding place in the List of 28 Co-gen Plant owners, furnished by the SISMA. In view of the specific finding on Issue No.(4), as noted above, there was no necessity for the ESCOMs to obtain any clarification from the Government, in this regard, unless the findings on this

issue was challenged before an appropriate Forum. Admittedly, the ESCOMs have not challenged the said finding on Issue No.(4) in OP No.38/2016,

(b) Therefore, we answer Issue No.(3), in the negative.

11) **ISSUE No.(4):** *Whether the Petitioner can be granted any payment for the energy injected into the Grid, prior to the execution of the PPA dated 18.01.2018? If so, from which date and at what rate?*

(a) Admittedly, the name of the Petitioner was not in the List of 28 Co-gen Plant owners, who had agreed to supply 501 MW of energy, submitted by the SISMA, vide letter dated 22.10.2016, to the Government of Karnataka. While passing the Interim Order dated 01.12.2016 in OP No.85/2016, this Commission limited the procurement of power, to the extent of 501 MW. Therefore, the Petitioner should have obtained a clarification from this Commission, as to whether it could inject energy into the Grid, pursuant to the Interim Order dated 01.12.2016, fixing the tariff in those proceedings. The Petitioner has also not brought to the notice of this Commission, the refusal of the ESCOMs to execute the PPAs, pursuant to the Interim Order dated 01.12.2016. Had this fact been brought to the notice of this Commission, at the earliest, suitable Orders would have been passed by this Commission, in this regard. At the time of passing the final Order dated 11.04.2017 in OP No.38/2016 and the other connected cases, this Commission came to know that the names of the Petitioner and some other Co-gen Plant owners were not indicated in the List furnished by the SISMA to the Government of Karnataka and that some of the Co-gen

Plant owners, indicted in the said List, had not come forward to execute PPAs with the ESCOMs, pursuant to the said Interim Order and that, one Co-gen Plant owner had not filed any Petition before this Commission, for sale of energy. Therefore, this Commission had to examine whether the Government Order dated 11.11.016 had limited the purchase of power, to an extent of 501 MW. As noted above, after considering the facts, this Commission held that, the Government Order dated 11.11.2016 had not limited the purchase of power to 501 MW. Therefore, we are of the considered view that, this finding of the Commission in the final Order dated 11.04.2017, enables the Petitioner for claiming payment for the energy injected into the Grid. However, it should be seen, from which date and at what rate, the Petitioner is entitled to claim the said payment.

(b) As noted on Issue Nos.(1) and (2) above, the Petitioner could have injected energy into the Grid, only with the consent of the ESCOMs. This Commission approved the PPA Format and communicated the same, vide letter dated 23.12.2016. Subsequently, the ESCOMs could have entered into PPAs with the Co-gen Plant owners. The Petitioner, by letter dated 02.01.2017 (ANNEXURE-P5), sought permission to execute the PPAs, pursuant to the Interim Order. Therefore, we are of the considered opinion that, the energy injected by the Petitioner into the Grid, from 02.01.2017, is to be considered for payment.

(c) The interim tariff granted would merge with the tariff determined in the final Order passed by this Commission. The interim prayer made by the ESCOMs in OP No.85/2016 was also to the same effect. The term of the

PPA, approved by this Commission, was also to the same effect. Therefore, we are of the considered view that, the Petitioner is entitled to the tariff, as finally determined by this Commission in the Order dated 11.04.2017, as applicable to it, for the different Financial Years.

- (d) It is brought to the notice of this Commission that, the ESCOMs have filed a Review Petition, requesting to reduce the tariff, finally determined by this Commission, in the Order dated 11.04.2017 passed in OP No.38/2016 and the other connected cases. Any Order that would be passed by this Commission on this Review Petition, would be binding on the Petitioner in the present Petition.
- (e) For the above reasons, we answer Issue No.(4), accordingly, holding that, the Petitioner is entitled to claim payment for the energy injected into the Grid, from 02.01.2018, at the rate applicable to the Petitioner's Co-gen Plant, as determined by this Commission for the different Financial Years.

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

For the foregoing reasons, we pass the following:

**ORDER**

- (a) The Petition is partly allowed;
- (b) The Respondents 1 to 5 are hereby directed to make payment to the Petitioner, for the energy injected into the Grid, from 02.01.2017 till the execution of the PPA dated 18.01.2018, at the applicable rates for the different Financial Years, as determined by this Commission in OP No.38/2016 and the other connected cases;

- (c) The calculation of the quantum of energy injected into the Grid, by the Petitioner, from 02.01.2017 to 31.01.2017, shall be on a pro-rata basis, taking into account the energy injected into the Grid, for the whole month of January, 2017;
- (d) The allocation of energy and the payment liability, amongst the ESCOMs, shall be as directed in the Government Order bearing No.EN 16 PPT 2016, Bangalore, dated 11<sup>th</sup> November, 2016, issued by the Government of Karnataka;
- (e) The 6<sup>th</sup> Respondent (PCKL) shall calculate the liability of each ESCOM, with regard to the payment to be made to the Petitioner, as directed at relief (d) above, and intimate the same to the Petitioner and all the ESCOMs, within 15 (fifteen) days from the date of this Order; and,
- (f) Each of the ESCOMs shall pay to the Petitioner, the amount due from it, within 6 (six) weeks from the date of receipt of intimation from the 6<sup>th</sup> Respondent (PCKL).

Sd/-

(SHAMBHU DAYAL MEENA)  
CHAIRMAN

Sd/-

(H.M. MANJUNATHA)  
MEMBER

Sd/-

(M.D. RAVI)  
MEMBER