

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 25th April, 2019

Present:

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

RP Nos. 02, 03 and 04 of 2018

BETWEEN:

Karnataka Power Corporation Limited(KPCL),
Shakthi Bhavan,
Race Course Road,
Bengaluru 560 001

.. **PETITIONER**
(Petitioner is common in all the RPs)

[Petitioner is represented by Pragati Law Chambers, Advocates, in all the RPs]

AND:

- 1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 2) Mangalore Electricity Supply Company Limited,
MESCOM Bhavana,
Kavoor Cross Road,
Bejai,
Mangaluru – 575 004.
- 3) Chamundershwari Electricity Supply Corporation Limited,
No.29, Kaveri Grameena Bank Road,
Vijayanagar, 2nd Stage, Hinkal,
Mysuru – 570 019.

- 4) Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 025.
- 5) Gulbarga Electricity Supply Company Limited,
Station Main Road,
Kalaburagi – 585 101.

.. **RESPONDENTS**

(Respondents are common in all the RPs)

[Respondents are represented by Justlaw, Advocates, in all the RPs]

COMMON ORDER
ON THE APPLICATIONS FILED BY THE PETITIONER
UNDER SECTION 5 OF THE LIMITATION ACT, 1963,
FOR CONDONATION OF DELAY.

- 1) The Petitioner – Karnataka Power Corporation Limited (KPCL) has filed the above Review Petitions, viz., RP Nos.02, 03 and 04 of 2018, for review of this Commission's Orders dated 25.02.2015, passed in OP nos.34/2014, 36/2014 and 35/2014, respectively.
- 2) In each of the above Review Petitions, the Petitioner (KPCL) has filed an Application under Section 5 of the Limitation Act, 1963, praying for condonation of delay of 1018 days in filing the Review Petitions. In these Applications for condonation of delay, the grounds urged, in support of the prayer, are similar and, therefore, this common Order is being passed.
- 3) This Commission, vide Orders dated 25.02.2015, has determined the tariff in respect of the following Projects of the Petitioner (KPCL):

- (i) 1 X 250 MW RTPS (Unit-8) [In OP no.34/2014];
- (ii) BTPS Unit-2 [In OP No.35/2014]; and,
- (iii) MGHE, Munirabad and Shiva & Shimsha Power Houses
[In OP No36/2014].

In all these cases, the following directions are given to the Petitioner (KPCL):

“Truing up:

Based on the tariff determined by the Commission in this Order, the Petitioner shall file an application, before the Commission, for truing up of the actual costs incurred, at the end of each tariff period. Further, the Commission directs the Petitioner to file an application for truing up for the tariff period FY09-14 within the next 6 months.

PPA status:

The Commission directs the Petitioner to resubmit the initialled PPA duly incorporating the decisions of the Commission, as approved in this Order. The approval of the PPA would be taken up by the Commission separately.”

- 4) Pursuant to the above directions, in OP Nos.34, 35 and 36 of 2014, the Petitioner filed Applications, seeking extension of time for filing Applications for truing up of the actual cost, on the ground that finalization of the audit of the accounts for the year 2014-15 was under progress. On the said request, the Commission has extended the time limit till 30.11.2015 for filing the truing up application. Thereafter, the Petitioner, through its letter dated 28.10.2016, requested for truing up of the accounts under various heads, by narrating the relevant facts. The request made in the said letter reads thus:

"5. Keeping in view of the above facts, KERC is requested for the following:

- a. to kindly consider the Liquidated Damages at Rs.26.66 Crores as against Rs.74.87 Crores considered by KERC in its Determination of Tariff Order dated 25.02.2015 in respect of 1 X 250 MW RTPS (Unit-8), so as to increase the approved project to Rs.1046.80 Crores as against the approved project cost of Rs.998.59 Crores in the Order dated 25.02.2015 of KERC;
- b. to kindly approve the trued up tariff computation in respect of the following stations for the tariff period upto FY 2014:
 - a. 1 X 240 MW RTPS (Unit-8) as per values noted in Annexure 4(a)(3);
 - b. BTPS Unit-2, as per values noted in Annexure 4(b)(2);
 - c. MGHE, Munirabad and Shiva & Shimsha Power Houses, as per values noted in Annexure (i) 4(c)(2), (ii) (4)(d)(2) and (iii) (4)(e)(2), respectively.
- c. to kindly issue necessary amendment to the Orders for revision in the computation of tariff in respect of all the above stations duly incorporating the deviations noted in Annexure-1;
- d. to kindly approve the revised PPAs of above Projects, which are in line with the approved norms of KERC in its Orders dated 25.02.2015 [(except for incorporating the change in the Liquidated Damages amount in respect of 1 X 250 MW RTPS (Unit-8)].

Kindly review and issue necessary directions on the above issues."

- 5) In continuation of the letter dated 28.10.2016, the Petitioner wrote another letter dated 23.12.2016 to the Commission, requesting to consider the following facts while doing the truing up exercise:

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- (a) the actual weighted average cost of the secondary fuel during the years 2010-11 to 2013-14, as furnished in the said letter; and,
- (b) the month-wise details of the actual variable charges claimed on the Electricity Supply Companies (ESCOMs), as indicated in the ANNEXURES 2 to 7 to the said letter.
- 6) In response to the said letters, the Commission, through its letter dated 30.01.2017, directed the Petitioner to file appropriate Review Petitions before the Commission, for consideration of its request, by making all the ESCOMs as Respondents, by paying the necessary fees, as per the KERC (Fees) Regulations, 2016 and justifying the delay in filing the Review Petitions.
- 7) In view of the above facts, the Petitioner has filed the present Review Petitions, RP Nos.2, 3 and 4 of 2018 before this Commission on 14.03.2018, along with an Application under Section 5 of the Limitation Act, 1963, praying for condonation of the delay of 1018 days in filing the Review Petitions.
- 8) Upon Notice, the Respondents – Distribution Licensees in Karnataka – have opposed the Applications for condonation of the delay in filing the Review Petitions.
- 9) We have heard the learned counsel for the parties on the Applications filed under Section 5 of the Limitation Act, 1963.
- 10) Regulation 8 of the KERC (General and Conduct of Proceedings) Regulations, 2000, dealing with the powers of review, stipulates that, an Application for

review should be filed within 90 (ninety) days of the making or issuing any decision or Order, etc. Section 94 of the Electricity Act, 2003, provides that, the power to review its decision, direction or Order, the Commission shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure. Order XLVII Rule 1 of the Code of Civil procedure provides for the grounds on which a Review Petition can be filed.

11) The grievances raised by the Petitioner in the Review Petitions may be summarized as follows:

(a) Regarding RTPS Unit-8 and BTPS Unit-2 :

(i) The Minimum Alternate Tax (MAT) is claimed at 20.0775%, instead of 19.9305%, as allowed in the Orders.

(ii) The Secondary Fuel Oil Cost is claimed on the weighted average cost of each tariff period, i.e., every year, instead of for the entire tenure of the Plant of 25 years, as allowed in the Orders.

(iii) In respect of RTPS Unit-8, the Liquidated Damages are requested to be considered at Rs.26.66 Crores, as against Rs.74.86 Crores considered in the concerned Order.

(b) Regarding MGHE, Munirabad, shiva and Shimsha Hydro Power Generating Stations :

(i) Taxes : While computing the Taxes, in the primary energy charges, the norms applicable are not followed by the Commission.

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- (ii) *Royalty Charges* : The Royalty Charges payable to the State Government should have been on the actual energy generated and sold to the PPA Holders, instead of four paise per unit fixed by the Commission on the design energy.
- (iii) *Depreciation* : While fixing the Depreciation, the applicable Regulation of the KERC (Generation Tariff) Regulations, 2009 is not followed.
- 12) The above grievances, made by the Petitioner, are in the nature of a truing up exercise. The Commission has specifically asked the learned counsel for the Respondents, as to why the same should not be considered as a truing up exercise. The learned counsel for the parties did not reply to this question. In our considered view, the examination of these grievance is nothing but a truing up exercise.
- 13) A truing up exercise is not governed by any period of limitation. The Orders of this Commission state that, truing up applications should be filed within six months from 25.02.2015. i.e., the date of the Orders. If the truing up Petitions are not filed within that time, the Commission has to compel the Petitioner to file the truing up applications, in order to arrive at the actual tariff. The earlier communication dated 30.01.2017 of the Commission addressed to the Petitioner, directing to file Review Petitions, explaining the delay, was issued without proper appreciation of the facts.

14) For the foregoing reasons, we pass the following:

ORDER

- (a) The question of condoning the delay in the present Review Petitions does not arise, as the present Review Petitions should be treated as 'Truing up Applications' of the actual cost incurred at the end of each Tariff Period. The Petitioner shall file all the required documents for this purpose. The Respondents shall file their objections, if any, for the Truing up Applications.
- (b) The original Order be kept in RP No.2/2018 and copies thereof in the other two connected cases.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER