

No. N/15/2020

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**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,**  
**No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052**

**Dated: 05.08.2021**

**Present**

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

**O.P. No.03/2020**

**BETWEEN:**

VRL Logistics Limited,  
Corporate office,  
Giriraj Annex,  
Circuit House Road,  
Hubballi –580 029.

(Represented by its Managing Director  
Sri. Anand Sankeshwar)

**....PETITIONER.**

(Represented by Sri Vishwanth. R. Hegde, Advocate)

**AND**

Hubli Electricity Supply Company Limited,  
(Wholly owned Government of Karnataka undertaking)  
A Company Registered under the provisions  
of the Indian Companies Act,1956 having  
its Corporate office  
Navanagar, P.B. Road,  
Hubli – 580 025.

Represented by its Managing Director.

**... RESPONDENT.**

(Represented by Sri Shahbaaz Hussain, Advocate)

**ORDERS**

1. This petition has been filed under Section 86 (1)(f) of Electricity Act, 2003 read with Regulation 21 (1) of KERC (General and Conduct of Proceedings) Regulations, 2000 and prayed for the following reliefs to;
  - (i) Call for the entire records from the Respondent;
  - (ii) Direct the Respondent to pay to the Petitioner a sum of Rs.88,17,540 towards the interest on delayed payments released by the Respondent for the period from January 2017 to December 2017;
  - (iii) Direct the Respondent to make prompt payments of the future invoices from time to time.
  - (iv) Direct the Respondent to include the interest on the delayed payments if any, in releasing the payments;
  - (v) Direct the Respondent to pay compensation/damages for breach of contract;
  - (vi) Pass such other orders, as the Commission deems fit to pass in the circumstances of the case, including awarding cost of this petition.
  
2. The brief facts set out in this petition are as under:
  - a) The petitioner Company has entered into a PPA with the respondent and the power generated is being sold by the petitioner Company to the respondent in terms of PPA dated 15.02.2007. A copy of the PPA is produced as Annexure-A.

- b) The Article 6 of the PPA provides for billing and payment of invoice amount in respect of the energy purchased by the respondent Company in terms of PPA. As per Clause 6.2 of the PPA, the respondent has to make payment of the energy bills within 15 days from the date of receipt of the Tariff Invoice. Clause 6.3 specify that if the payments is not made within the due date, the respondent Company is liable to pay interest at the rate of State Bank of India Minimum Term Lending Rate per annum for the period of delay in making such payment.
- c) The petitioner has regularly raised monthly invoices for the energy supplied to the respondent (HESCOM) during January 2017 onwards upto December 2017. The respondent has continuously defaulted in making the payments within the 15 days' period specified in Article 6.2 and consequently, the respondent (HESCOM) is liable to pay interest as specified in Article 6.3 of the PPA. The petitioner has raised demand towards interest claiming a sum of Rs.88,17,540 vide letter dated 08.09.2018 from January to December 2017. A copy of the letter is produced collectively as Annexure-B. Another reminder letter dated 14.03.2019 was issued and copy produced as Annexure-C.
- d) The petitioner issued a legal notice dated 12.08.2019 demanding a sum of Rs.88,17,540 due towards interest on delayed payments from January to December 2017, the copy of the legal notice produced as Annexure-D. As the respondent failed to respond to the legal notice,

the petitioner was compelled to file this petition under clause 10.5 of the PPA.

- e) The petitioner has continued to supply the power generated by it to the respondent and the respondent has failed to adhere to the relevant condition of the PPA regarding terms of payment. The respondent cannot put the petitioner to the detriment and the conduct of the respondent has resulted in clear breach of terms of the contract. Hence, filing this petition.

2. Upon issuance of notice, the respondent appeared through its counsel and submitted Statement of Objections as follows:

- a) The respondent has been making payment of invoice amount within the due date as can be made out from the financial statement furnished by the petitioner. However, the respondent (HESCOM) took some time in making payment of some invoices of the petitioner as the respondent had to arrange for the requisite funds.
- b) The respondent predominantly supplying electricity to the agricultural sectors within its jurisdiction and agricultural sectors are highly subsidized by the Government of Karnataka (GoK). The cash flow of the respondent is highly dependent on the release of subsidies by the GoK.
- c) The respondent had to meet the other periodical financial commitments like payment of: (a) Transmission charges of KPTCL and PGCIL; (b) pay monthly scheduled repayment of long terms and short-

term loans and interest thereon; (c) the payment towards establishment expenses, Operation & Maintenance expenses, administrative & general expenses, retirement benefits to the retired employees of the Company etc. HESCOM needs to mobilise funds of about Rs.500 to 600 crores monthly to discharge all its monthly periodical commitments.

- d) However, the release of subsidy from Government and collection from other consumers are not evenly spread to ensure timely discharge of its liabilities and, hence, there will be some delay in arranging payment of power purchase cost to the petitioner. The delay in payment was for the said bona-fide reasons and was not deliberate.
- e) The averments of the petitioner on the delay in payment of invoices being intentional and the respondent making profits at the cost of petitioner are denied as false.
- f) The prayer for compensation is denied by the respondent as there is no enabling provision in the PPA for such compensation. The invoices of the petitioner have been paid as on the date and interest towards the delay in payment will be paid as per the PPA.
- g) The respondent submits that as per the statement of accounts maintained by it, the respondent is due to pay Rs.79, 00,419, which has been arrived at as per the provisions of PPA and based on the invoices. The statement of accounts containing the details of interest towards delayed payment of invoices with respect to the petitioner is produced as Annexure-R1 and the petitioner's claim of Rs.88,17,540 is denied.

h) The respondent, subject to reconciliation of accounts, undertakes to pay Rs.79,00,419 to the petitioner as interest towards the delayed payment as per the provisions of PPA as per Annexure-R1.

4. We have heard the learned counsels for the parties. The petitioner counsel has filed a memo on 03.07.2021 along with their legal advisor's letter dated 24.06.2021 and in the memo, the petitioner has stated that the respondent has admitted the liability of Rs.87,78,243 (less 10% TDS) and the petitioner has accepted amount of Rs.87,78,243 (less 10% TDS). The aforesaid memo filed by the counsel for petitioner has agreed to accept Rs.79,00,419 after deduction of 10% TDS made on the gross amount stated as above and acceptance is in full and final settlement of the disputed claims and the petitioner requested this Commission to dispose of the petition as per the memo filed with a direction to respondent to pay the aforesaid amount within two weeks' time in the interest of justice.
5. Keeping in view of the above facts, reasons mentioned in para 4 above, we proceed to pass the following:

**ORDER**

(a) The petition is disposed of accordingly in terms of the Memo dated 03.07.2021 filed by the petitioner.

(b) The respondent is directed to pay of Rs.79,00,419 to petitioner as interest on delayed payment within one-month period.

sd/-  
(SHAMBHU DAYAL MEENA)  
Chairman

sd/-  
(H.M.MANJUNATHA)  
Member

sd/-  
(M.D.RAVI)  
Member