

**No.N/123/2019**

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

**Dated: 05.07.2022**

**Present**

<b>Shri P. Ravi Kumar</b>	<b>.. Chairman</b>
<b>Shri H.M. Manjunatha</b>	<b>.. Member</b>
<b>Shri M.D. Ravi</b>	<b>.. Member</b>

**OP No. 42/2019**

**BETWEEN:**

E.I.D. Parry (India) Limited  
A Company registered under the  
Provisions of Companies Act, 1956  
Having its Registered Office at  
Dare House, 243, N S C Road,  
Parry's Corner,  
Chennai – 600 001.

(Represented by its Authorised Signatory  
Mr. Lakkappa S Dhanapalaksha,  
Senior Manager – Legal)

**... PETITIONER**

(Represented by Sri Shridhar Prabhu,  
Advocate for M/s Navayana Law Offices)

**AND:**

1. Bangalore Electricity Supply  
Company Limited (BESCOM)  
A Company Registered under the  
provisions of Companies Act, 1956  
having its Registered Office at  
K.R. Circle,  
Bengaluru-560 001.  
(Represented by its Managing Director)

2. Chamundeshwari Electricity Supply Company Limited (CESC),  
No.29, Kaveri Grammeena Bank Road,  
Vijayanagar 2<sup>nd</sup> Stage, Hinkal,  
Mysuru-570 017.  
(Represented by its Managing Director)
3. Gulbarga Electricity Supply Company Limited (CESC),  
A Company Registered under the provisions of Companies Act, 1956 having its Registered Office at Station Main Road, Kalaburagi.  
(Represented by its Managing Director)
4. Hubli Electricity Supply Company Limited (CESC),  
A Company Registered under the provisions of Companies Act, 1956 Registered Office at Navanagar, P.B. Road, Hubballi-580 025.  
(Represented by its Managing Director)
5. Mangalore Electricity Supply Company Limited (MESCOM),  
Corporate Office, MESCOM Bhavan,  
4<sup>th</sup> Floor, Bejai Kavoov Cross Road,  
Mangaluru-570 004.  
(Represented by its Managing Director)

**...RESPONDENTS**

(Respondent No.1 & 3 represented by Sri S. Sriranga, Senior Advocate for M/s JUSTLAW Advocates.  
Respondent No.2, 4 & 5 represented by Sri Shahbaaz Husain, Advocate for M/s Precinct Legal)

### **ORDERS**

1. The petitioner has filed this petition under Section 86 (1)(e) and (f) of the Electricity Act, 2003, praying for the following reliefs to:
  - a) Call for the records;

- b) Set aside the BESCO's letter dated 1<sup>st</sup> March 2019 produced at Annexure-P6.
  - c) Direct the respondents, jointly and severally, to pay for the delivered energy from the petitioner's project for the period from 27<sup>th</sup> December 2016 to 1<sup>st</sup> January 2017 aggregating to a sum of Rs.1,12,60,081 (Rupees One crore twelve lakh sixty thousand eighty one only) along with applicable interest rate as per the PPA along with pendent lite interest;
  - d) Pass such other and incidental orders including an order as to costs in the interest of justice.
2. The dispute in the present case relates to claim made by the petitioner for the energy to the extent of 28,08,000 units exported by the petitioner from 27.12.2016 to 01.01.2017 to the State grid at the PPA rate with interest, totally amounting to Rs.1,12,60,081 apart from interest for the delayed payment.
3. The facts relevant for the disposal of the dispute involved in this case may be stated as follows:
  - a) The State of Karnataka has taken a policy decision to purchase energy from Co-gen plants situated in the State which were not having PPAs with the State Distribution Licensees vide Government Order dated 11.11.2016 and subsequently issued letter dated 18.11.2016. It was stated in the Government Order that the tariff applicable for the energy supplied from such Co-gen units, was as might be determined by the Commission. Pursuant to it, several Co-gen plants as well as the State ESCOMs filed petitions before this Commission for determination of tariff for the energy to be supplied by the Co-gen plants for a period of five years from FY-2017 to FY-2021. Those proceedings are clubbed and the

Commission determined the tariff by Order dated 11.04.2017 (Annexure-P2).

- b) During the pendency of the petitions an interlocutory application was filed on 01.12.2016 requesting for fixing a provisional tariff as the sugarcane crushing season was fast approaching and the Co-gen plants were required to generate power. On the same day, the Commission allowed the said request and passed the following:

**“INTERIM ORDER**

*Case called. Parties are represented. IA has been filed. The prayer is for fixing of interim tariff. The prayer for interim tariff is allowed. APCC minus the transmission charges is fixed as Interim tariff until further orders. Interim Tariff will be Rs.3.94-0.47=Rs.3.47 per unit. Call on 12.01.2017.*

*sd/-  
Chairman*

*sd/-  
Member*

*sd/-  
Member”*

- c) The petitioner being one of the Co-gen units having no PPA with any of the ESCOMs, was also one of the parties to the proceedings initiated for fixation of tariffs, injected energy into the grid from its Co-gen unit from 27.12.2016 onwards. It also executed PPA dated 02.01.2017 (Annexure-P3) with the respondents 1 to 5 (ESCOMs).
- d) The respondents made payments towards the energy injected from 02.01.2017 onwards in terms of Articles 4 & 5 of the PPA. However, the respondents did not honour the request of the petitioner for the payment of energy injected prior to 02.01.2017 i.e., from 27.12.2016 to 01.01.2017.

- e) The petitioner contended that the payment obligations of the respondents emanates from the terms of the interim order culminating in the final order determining the tariff.
  - f) That a combined reading of the interim order as well as the final order would reveal that the payment obligation had commenced from 01.12.2016 onwards, the date on which the interim order was passed.
  - g) The representative of respondents has signed the joint meter reading evidencing the energy injected from 27.12.2016 to 01.01.2017 and for the subsequent periods (Annexure-P4 collectively), thereby the respondents were not entitled to deny their knowledge or consent for the injection of power for the said period.
  - h) For the above reasons the petitioner has filed the present petition.
4. The respondents appeared through their counsel and filed statement of objections. The defence of the respondents being similar, it may be summarised as follows:
- a) The injection of power during 27.12.2016 to 01.01.2017 was unauthorised and without any schedule or intimation to SLDC. The respondents relied upon the decisions rendered in Appeal No.12/3/2010 in the matter of M/s Indo Rama Synthetics (India) Limited Vs. MSERC and in Appeal No.120/2016 in the matter of M/s Kamachi Sponge & Power Corporation Limited Vs. TANGEDCO and Others, wherein it is held that the energy injected without intimation is to be considered as unauthorised injection for which no payment could be made and that in the absence of

contractual agreement with the distribution licensee, the liability to pay the charges for illegal injection of energy does not arise.

b) The respondents also relied upon the decision rendered by this Commission in OP No.92/2018 between Athani Sugars Vs. PCKL & Others in the similar circumstances and rejected the claim for energy injected prior to execution of the PPA.

c) The interim order dated 01.12.2016 does not authorised injection of energy into the grid but it merely fixes the interim tariff. The contention of the petitioner that the said interim order authorises the Co-gen units to inject the power into the grid is denied as false and incorrect. It is also contended that the interim order read with final order does lead to an inference that Co-gen units were permitted to inject energy from the date of interim order.

d) For the above reasons, the respondents have prayed for the dismissal of the petition.

5. We have heard the learned counsel for the parties and perused of the records.

6. From the rival contentions, the following issues arise for our consideration:

Issue No.1: Whether the petitioner has proved that it is entitled to claim the price for the energy injected into the grid between 27.12.2016 and 01.01.2017 from the respondents in terms of the tariff determined by this Commission?

Issue No.2: Whether the petitioner is entitled to interest at 18% per annum as claimed by it?

Issue No.3: What Order?

7. After considering the records and the submissions of the parties, our findings on the above issues are as follows:

8. Issue No.1: Whether the petitioner has proved that it is entitled to claim the price for the energy injected into the grid between 27.12.2016 and 01.01.2017 from the respondents in terms of the tariff determined by this Commission?

a) The interim order dated 01.12.2016 merely shows the rate at which the tariff was fixed by the Commission, but it does not show that either expressly or impliedly it permitted the injection of power by the Co-gen units. It may be noted that even the final order passed by this Commission dated 11.04.2017 in OP No.38/2016 and connected cases (Annexure-P2), has merely fixed the tariff payable to different Co-gen units at different rates, depending upon the dates on which such units were commissioned. Therefore, the contention of the petitioner that the payment obligation of the respondents emanates from the interim order culminating in the final order passed by this Commission, is untenable and is to be rejected.

b) The Commission passed the order regarding interim tariff on 01.12.2016. Thereafter, the Commission approved on 23.12.2016 the specimen draft PPA to be entered between the Co-gen units and the ESCOMs for purchase of power in terms of the interim tariff determined by it. The specimen draft PPA also contains the specific term upon which the payment liability arises. Article 4.1 of the PPA providing for payment of

monthly energy charges states that the liability to pay as per interim tariff of Rs.3.47 per unit would arise for the delivered energy from the date of supply of power after signing of the PPA. The draft specimen PPA also provides that there should be payment of differential amounts subsequent to the fixation of the tariff in the final order. The said term in the draft specimen PPA would make it clear that the liability of ESCOMs would arise only for the delivered energy subsequent to signing of the PPA. As already noted the draft specimen PPA was approved by the Commission and communicated the approval to ESCOMs vide letter No. KERC/CT-2/28/Co-Gen PPA/2016-17/2263 dated 23.12.2016. The petitioner has entered into PPA on 02.01.2017, as per this approved draft specimen. Therefore, the petitioner cannot deny its knowledge regarding the liability of ESCOMs to pay for the supply of energy made after signing of the PPA.

- c) The above term in the PPA makes it clear that the passing of interim order does not permit the Co-gen units to inject energy before execution of PPA.
- d) It is not the case of the petitioner that there was delay of a few days in execution of the PPA due to some fault on the part of ESCOMs. In the absence of specific plea, the petitioner cannot claim the price for energy injected in between 27.12.2016 and 01.01.2017.
- e) In the similar facts and circumstances, this Commission has considered all aspects of the case where energy was injected prior to execution of



PPA in OP No.69/2018 between Shree Renuka Sugars Limited Vs. KPTCL & Others and in OP No.92/2018 between Athani Sugars Vs. PCKL & Others and held that the ESCOMs were not liable to pay for the energy supplied prior to execution of PPA. There is no reason to differ from the findings given in the above cases on similar set of facts. The learned counsel for the petitioner submitted that the Commission is not a Court of Record as that of High Court, therefore, the Commission can take a different view and is not bound to follow the earlier decisions. The said principle cannot be applied, unless, there are convincing and cogent reasons to differ from the earlier decision taken in a similar set of facts. In the present case, the facts are exactly similar and the petitioner had not made out any acceptable reasons to differ from earlier decisions. As already noted the only ground urged by the petitioner is that the passing of interim order obliges the ESCOMs to pay for the energy injected from the date of passing such order i.e., 01.12.2016. Such contention is incorrect in view of the reasons stated above.

f) For the above reasons, we hold Issue No.1 in negative.

9. Issue No.2: Whether the petitioner is entitled to interest at 18% per annum as claimed by it?

As Issue No.1 is held in negative, the question of payment of interest at 18% per annum or at any other rates, does not arise. Issue No.2 is held accordingly.

10. Issue No.3: What Order?

For the above reasons, we pass the following:

**ORDER**

The petitioner is not entitled to any of the reliefs claimed as prayed for in the petition. Hence, the petition is dismissed.

sd/-  
(P. RAVI KUMAR)  
Chairman

sd/-  
(H.M. MANJUNATHA)  
Member

sd/-  
(M.D. RAVI)  
Member