

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 26th February, 2015

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri H.D. Arun Kumar | Member |
| 3. Sri D.B. Manival Raju | Member |

OP No.25/2013

BETWEEN:

GEM Sugars Limited
Hoodi Apartments, III Floor,
20, Cunningham Road,
Bengaluru- 560 052

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PETITIONER

[Petitioner represented by M/s. Prabhuling K. Navadgi Associates, Advocates]

AND:

- 1) The Karnataka Power Transmission Corporation Limited,
Cauveri Bhavan,
Bengaluru - 560 001
- 2) Hubli Electricity Supply Company Limited,
P.B. Road,
Navanagar,
Hubballi – 580 029

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RESPONDENTS

[Respondents represented by M/s. Justlaw, Advocates]

ORDERS

- 1) The Petitioner has filed this Petition under Section 86(1)(f) of the Electricity Act, 2003, praying for:

- (a) a direction against Respondent-1 to pay a sum of Rs.19,82,703/- being the arrears of interest on delayed payments on regular tariff invoices at the rate of 6.5% per annum, from April, 2003 to 09.06.2005; and
- (b) a direction against Respondent-2 to pay a sum of Rs.84,53,080/- being the arrears of interest on delayed payments on regular tariff invoices at the rate of 6.5% per annum, from 10.06.2005 to 31.03.2010.

2) The material facts as stated in the Petition are as follows :

- (a) The Petitioner has installed a co-generation power plant of 22.5 MW capacity at Kundargi village, Bilgi Taluk, Bagalkot District and has entered into a Power Purchase Agreement (PPA) dated 30.03.2001 (ANNEXURE - A) with the first respondent for a period of twenty years. The monthly energy charges payable is stated in Article 5.1 of the PPA which reads thus :

“Monthly Energy Charges :

Corporation shall for the Delivered Energy pay, for the first ten years from the date of signing of Agreement, to the Company every month during the period commencing from the Commercial Operation Date on the basis of the Base Price applicable for the year 1994-95 at the rate of Rs.2.25 (Rupees Two and Twenty Five Paise) per KWhr (the tariff) for energy delivered to the Corporation at the Metering Point with an escalation at a rate of 5% per annum over the tariff applicable for the previous year as per guidelines issued by the Ministry of Non-Conventional energy Sources of the Gol.”

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- (b) Pursuant to the terms of the PPA, the Petitioner was supplying energy to the first Respondent up to 09.06.2005, and thereafter to the second Respondent. as the PPA was assigned by first Respondent to the second Respondent with effect from 10.06.2005.
- (c) The Petitioner had filed OP No.18 of 2008 before this Commission seeking for a direction against the first respondent herein to pay a sum of Rs.1,90,06,094/- towards arrears, along with interest at 18% per annum, till the date of realization, and for a direction against the second Respondent herein to pay a sum of Rs.15,68,01,662 towards arrears, along with interest at 18% per annum, till the date of realization.
- (d) The above said OP No.18 of 2008 was disposed of on 16.04.2009 in terms of the settlement arrived at between the parties. The material part of the said Order reads thus :

"2. On 2.4.2009 the counsel appearing for both the parties submitted that they have come to a settlement in the following terms and the petition may be disposed of in these terms:

- (i) *The Respondents will abide by the PPA in force and will pay for the electricity supplied at the rate fixed in Clause 5.1 of the PPA which reads as under :*

"Monthly Energy Charges :

Corporation shall for the Delivered Energy pay, for the first ten years from the date of signing of Agreement,

to the Company every month during the period commencing from the Commercial Operation Date on the basis of the Base Price applicable for the year 1994-95 at the rate of Rs.2.25 (Rupees Two and Twenty Five Paise) per KWhr (the tariff) for energy delivered to the Corporation at the Metering Point with an escalation at a rate of 5% per annum over the tariff applicable for the previous year as per guidelines issued by the Ministry of Non-Conventional energy Sources of the Gol."

(ii) For the amounts not paid on account non-grant of escalation as provided in Clause 5.1, the respondents will pay an interest of 6.5% per annum.

3. Recording the above submissions this petition is disposed of."

(e) The Petitioner has contended that the Respondents are bound by terms of the PPA for payment of interest on delayed payments and escalation of the rates as provided in Article 5.1 of the PPA. The Petitioner has further contended that the Respondents have not paid the arrears of interest in terms of the PPA and in terms of the order in OP No.18 of 2008. Therefore, the Petitioner has filed the present Petition.

3) The Respondents have filed Memo dated 13.02.2014, stating that they have made payments in compliance with the Orders in OP No.18 of 2008 dated 16.04.2009 and that no amounts are due to the Petitioner as claimed by it.

- 4) The Petitioner has filed, on 10.04.2014, its reply to the Memo dated 13.02.2014 of the respondents stating that OP No.18 of 2008 was filed with respect to the arrears due to non-grant of escalation of rate as provided in the PPA and the interest on the said differential amount, and that the present Petition is filed for payment of interest on delayed payments on the regular monthly bills, at the rate frozen by them without escalation.
- 5) On 13.11.2014, the learned counsel for the Petitioner submitted that the claims against Respondent-1 have been settled. The said fact has been recorded in the Order Sheet of that day.
- 6) On the same day i.e.13.11.2014, the Respondent-2 has filed its objections, mainly contending as follows :
 - (a) That the claim in the present Petition suffers from unexplained inordinate delay and latches and the claim of the Petitioner against this Respondent pertains to the period between 2005-06 and 2009-10, wherein the petitioner has claimed interest up to March, 2010, and the Petition has been filed on 25.09.2013, and thereby the claim made in this Petition is barred on the principles of delay and latches.
 - (b) That as per the 44th meeting of the Board of Directors of the Respondent-1, instead of the tariff for NCE Projects at Rs.3.32 per unit from 01.04.2003, which had been signed as per MNES Guidelines, a base price of Rs.3.10,

- with an escalation of 2% per annum was offered, but the Petitioner had not agreed to the said offer.
- (c) In the previous proceedings in OP No.18 of 2008, the amounts, which were liable to be paid by the Respondents, were arrived at in the meeting with the concurrence of the Petitioner, and the said amounts have already been paid, and therefore the Petitioner is barred from raising the same claim in a fresh Petition. The second Respondent has denied the other averments made in the Petition.
- 7) The Petitioner has filed the Rejoinder to the statement of objections on 22.01.2015, stating that the claim made in OP No.18 of 2008 was in respect of the entire claim of the Petitioner, viz., (i) interest on delayed payments in respect of regular tariff bills paid at the frozen rate of Rs.3.32 per KWhr; (ii) the amount due towards the difference between the escalated rate as per the terms of the PPA and the frozen rate; and (iii) the interest accrued on the amount due towards the difference between the escalated rate as per the terms of the PPA and the frozen rate. It is further stated that the Respondents have not paid the entire claim as agreed in the Meeting dated 24.01.2009 and the subsequent Order passed in OP No.18 of 2008, and that the Respondents denied their liability to pay accordingly.

- 8) We have heard the learned counsel for both the parties and have perused the records.

- 9) The learned counsel for the Petitioner has contended that in OP No.18 of 2008, the claim for interest on delayed payments of regular bills was also made, and thereafter the Petitioner followed up for the said interest, and it was rejected in 2013, and therefore, the present Petition has been filed. On the other hand, the learned Counsel for the second Respondent contended that the claim for interest on delayed payments of regular bills has been made only in the present Petition, in the year 2013, and it is highly belated and barred by delay and laches. Further, he contended that, if the present claim was part of the claim made in OP No.18 of 2008, then the claim cannot be sustained now, as the Commission did not grant the interest on delayed payments of regular bills in that Petition.

- 10) We have perused the original file in OP No.18 of 2008 to ascertain the nature of claims made in that Petition. We have found that the claim in the said case consisted of: (i) interest on delayed payments in respect of regular tariff bills paid at the frozen rate of Rs.3.32 per KWhr; (ii) the amount due towards the difference between the escalated rate as per the terms of the PPA and the frozen rate; and (iii) the interest accrued on the amount due towards the difference between the escalated rate as per the terms of the PPA and the frozen rate.

- 11) On perusal of the Order dated 16.04.2009 in OP No.18 of 2008, we are of the view that the all the three claims, mentioned in paragraph-10 above, have been granted by this Commission. The reading of the said Order, as a whole, does not indicate that any part of the claim made in the said Petition had been rejected, either expressly or impliedly.
- 12) (a) It is stated in the said Order that, the counsel appearing for both the parties submitted that, "they have come to a settlement in the following terms and the Petition may be disposed of in these terms," and thereafter the Order enumerates the terms of settlement as noted in paragraph 2(d) above. In the Preamble of the Order, the reliefs sought in the Petition have been noted. In the second paragraph of the said Order, the two terms agreed between the parties have been noted. They are as follows

"(i) The Respondents will abide by the PPA in force and will pay for the electricity supplied at the rate fixed in Clause 5.1 of the PPA which reads as under :

"Monthly Energy Charges :

Corporation shall for the Delivered Energy pay, for the first ten years from the date of signing of Agreement, to the Company every month during the period commencing from the Commercial Operation Date on the basis of the Base Price applicable for the year 1994-95 at the rate of Rs.2.25 (Rupees Two and Twenty Five Paise) per KWhr (the tariff) for energy delivered to the Corporation at the Metering Point with an escalation at a rate of 5% per annum over the tariff applicable for the previous year as per guidelines

issued by the Ministry of Non-Conventional energy Sources of the Gol."

- (i) *For the amounts not paid on account non-grant of escalation as provided in Clause 5.1, the respondents will pay an interest of 6.5% per annum."*

(b) The first term agreed between the parties was that the Respondents in that case would abide by the PPA in force and would pay for the electricity supplied at the rate fixed in Article 5.1 of the PPA entered into between them. Before this settlement, the Respondents had frozen the tariff and had reduced the rate of escalation contrary to the terms already agreed in the PPA. Therefore, when the Respondents have agreed to abide by the terms of the PPA, it would establish the fact that the Respondents had withdrawn the freezing of the tariff and the reduction in the escalation of the tariff. Further, it would establish that the Respondents had agreed to pay the interest on the delayed payments of Tariff Invoices as per the terms of the PPA. Therefore, we are of the considered opinion that in OP No.18 of 2008, all the prayers were accepted, except reducing the rate of interest at 6.5% per annum on the amount not paid on account of non-grant of escalation.

(c) The contention of the second Respondent that, if the claim made in the present Petition was part of the claim made in OP No.18 of 2008, the said claim cannot be sustained now, as this Commission did not grant the prayer in the earlier Petition, is not maintainable. That is so, because in

OP No.18 of 2008, the substantial claim made in the present Petition was included and it was allowed. In the present Petition, the Petitioner has claimed the interest on the delayed payments of the regular Tariff Invoices, from 10.6.2005 to 31.3.2010 as against the second Respondent. In the previous case, the interest on the delayed payments on the regular Tariff Invoices was claimed till September, 2007. Therefore, the present Petition could have been limited to the claim towards interest on delayed payments from September, 2007 to March, 2010. It is true that, it appears, the Petitioner itself was not sure whether the claim in the present Petition was already made in the previous Petition and whether it was allowed. Therefore, the Petitioner has made conflicting averments in its reply dated 10.4.2014 and the Rejoinder dated 22.1.2015. However, in our considered view, the previous Petition (OP No.18 of 2008) included all the claims, mentioned in paragraph-10 above, and this Commission had not rejected any of the said claims, but awarded interest at the rate of 6.5% per annum on the amounts not paid on account of non-grant of escalation. However, the Petitioner in the present Petition has claimed interest at 6.5% per annum even on the interest payable on delayed payments in respect of regular tariff bills paid at the frozen rate of Rs.3.32 per KWhr.

- 13) In view of our above findings that the interest payable on delayed payments in respect of regular tariff bills paid at the frozen rate of Rs.3.32 per KWhr has already been granted in OP No.18 of 2008, it was not at all necessary for the Petitioner to file the present Petition seeking the same

relief. The Respondents were bound by the earlier Order dated 16.04.2009 passed in OP No.18 of 2008. If there was any non-compliance of the said Order, the Petitioner could have filed appropriate proceedings for its remedy.

- 14) The question of delay and laches does not arise, as the claim made in the present Petition has already been decided by this Commission in OP No.18 of 2008.
- 15) For the foregoing reasons, we pass the following :

ORDER

- (i) The second Respondent (HESCOM) shall pay interest at the rate of 6.5% (six point five percent) per annum on the delayed payments made in respect of the regular Tariff Invoices, for the period from 10.06.2005 to 31.03.2010;
- (ii) Accordingly, the Petitioner and the second Respondent (HESCOM) shall arrive at the actual amount due towards interest payable on delayed payments of the Tariff Invoices, as stated above, after reconciliation of the accounts.

Sd/-	Sd/-	Sd/-
(M.R. SREENIVASA MURTHY) CHAIRMAN	(H.D. ARUN KUMAR) MEMBER	(D.B. MANIVAL RAJU) MEMBER