

No.: N/29/16

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

Dated : 10th October, 2017

Present:

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

OP No. 21/2016

BETWEEN:

Chamundershwari Electricity Supply Corporation Limited,
No.29, Kaveri Grammeena Bank Road,
Vijayanagar, 2nd Stage,
Mysuru – 570 019.

..

PETITIONER

[Represented by Justlaw, Advocates]

AND:

- 1) Bhoruka Power Corporation Ltd.,
No.48, Lavelle Road,
Bengaluru - 560 001.
- 2) Atria Brindavan Power Ltd.,
Kannmbadi Village,
Srirangapattana Taluk,
Mandya Distict,
Karnataka.
- 3) Hemavathy Power & Light Pvt. Ltd.,
Hemavathy LBC Power House,
Gorur,
Arkalgudu Taluk,
Hassan District.
- 4) Nagarjuna Hydro Energy Pvt. Ltd.,
Kadamane Mini-Hydel Scheme-2
Near Meranahalli Village,
Sakleshpur Taluk,
Hassan District.

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- 5) Trishul Power Pvt. Ltd.,
Hemagiri Anecut,
Bandiholi (Villagse & Post),
K.R. Pet (Taluk),
Mandya District.
- 6) Vijayalakshmi Hydro Power Pvt. Ltd.,
Sabbannahalli Village,
Yadaganahalli Post,
Maddur Taluk
Mandya District.
- 7) Coromandal Sugars Ltd.,
Makavalli,
K.R. Pet Taluk,
Mandya District.

.. **RESPONDENTS**

*[Respondents- 1, 2 and 6 represented by Navayana Law Offices, Advocates,
Respondent- 3 represented by Shri M.S. Raghavendra Prasad, Advocate,
Respondents- 4, 5 and 7 remained absent.]*

ORDERS

- 1) The Petitioner – Chamundeshwari Electricity Supply Corporation Limited
(CESC) has sought for the following reliefs in the above Petition :
 - (a) *To Modify the standard format of the PPAs dated 30.03.2001, 28.04.2001, 12.01.2004, 28.02.2004, 20.01.2005, 19.06.2006, 08.01.2004, 08.01.2004, 09.06.2005, 05.11.2004, 30.03.2001, 23.12.1998 approved by this Commission vide Order dated 18.08.2005, by inserting Article 5.5 into the same;*
 - (b) *To direct the Respondents herein to make payments for energy drawn in excess of 10% of its installed capacity at the industrial HT tariff determined by this Commission from time to time;*
 - (c) *To direct the Respondents to commence generation and supply of electricity to the Petitioner as contemplated under the PPAs entered into by the Respondents with the Petitioner (ANNEXURE – C series);*
 - (d) *To pass such other order as this Commission may deem fit in the facts and circumstances of the case.*

2) The following are the main grounds urged by the Petitioner in support of the reliefs claimed by it :

(a) Earlier, the purchase, transmission and distribution of electricity functions were being carried out by the erstwhile Karnataka Electricity Board (KEB), and thereafter, by the Karnataka Power Transmission Corporation Limited (KPTCL). After coming into force of the Electricity Act, 2003, the KPTCL was entrusted with the transmission of electricity and the different Distribution Licensees were entrusted with the task of distribution of the electricity to the consumers, with effect from 10.6.2005. The Power Purchase Agreements (PPAs) pertaining to various Renewable Energy Sources entered into between the KPTCL and the different generators were assigned to different Distribution Licensees as per the Government Order. The present Petitioner is one of the Distribution Licensees in the State. Some of the PPAs of the Renewable Energy Sources have been assigned to the Petitioner, in terms of the Government Order.

(b) This Commission has passed the generic Tariff Order dated 18.1.2005 (produced at ANNEXURE-A to the Petition) in respect of the Renewable Sources of Energy and thereafter has approved the standard format for entering into PPAs (hereinafter referred to as the 'Standard PPA') between the Distribution Licensees and the

Renewable Energy generators by Order dated 18.8.2005 (produced at ANNEXURE-B to the Petition). Article 5.5 of the Standard PPA reads thus :

“Company shall be permitted to draw upto 10% of the installed capacity for startup, after the inspection by the concerned officers of the ...ESCOM and 105% of such energy provided by the ...ESCOM for startup purposes shall be deducted from the energy pumped into the grid by the Company for determining the amount to be paid by the ...ESCOM to the Company. If energy over and above the above requirement is drawn from the Grid, the same will be billed under the tariff applicable to HT industries including demand charges.”

Subsequently, this Commission, vide letter dated 12.7.2013, clarified that, in Article 5.5 of the Standard PPA, the figures '105%' should be read as '115%', based on the findings arrived at in the Order dated 18.8.2005. Therefore, the figures '105%' appearing in Article 5.5 is to be read as '115%' from the date of the Order, viz., 18.8.2005, itself.

- (c) The Respondents are independent Power Producers (IPPs) and have executed different PPAs, either in favour of the KPTCL or in favour of the Petitioner. Copies of the PPAs are produced at ANNEXURE-C to the Petition.
- (d) None of these PPAs contains a provision similar to Article 5.5 of the Standard PPA noted above, however, they have been drawing

energy from the State Grid for start-up and other purposes, when there is no generation of electricity from the IPPs. These PPAs define the 'Delivered Energy' as "energy exported at the 'Delivery Point' in a Billing Period, after deducting therefrom the energy supplied by the Distribution Licensee to the Project, as similarly measured during such Billing Period". During many months, there would not be any export of energy from the Project, however, the Project used to import energy without making any payment. Similarly, there is no solution for a situation, viz., what should happen when the import energy exceeds the export energy . Therefore, the Petitioner states that, in the absence of a clarification, a difficulty is faced to issue the monthly bills. The Petitioner has expressed that, a large quantity of import energy for a long time, without making any payment, would lead to a monetary loss to the Distribution Licensee. Therefore, the Petitioner has prayed for introducing an Article in these PPAs, similar to article 5.5 of the Standard PPA noted above, and to facilitate issuing the energy bills for the energy drawn from the State Grid by the IPPs.

- (e) The Petitioner has also expressed its difficulty in ascertaining the correct meaning of the phrase, "*Company shall be permitted to draw upto 10% of the installed capacity for startup*", stated in Article 5.2 of the Standard PPA and whether such start-up power could be

drawn by a generator on a month-on-month basis. Therefore, the Petitioner has sought for a clarification in this regard.

- 3) The Respondents 1, 2, 3 and 6 have appeared through their counsel and opposed the proposal of the Petitioner to insert an Article similar to Article 5.5 of the Standard PPA approved in this Commission's Order dated 18.8.2005. The first and third Respondents have filed separate Statement of Objections and the Respondents 2 and 6 have not filed any Statement of Objections. The Respondents 4, 5 and 7 have remained absent, though they were served with Notices sent through Registered Post.
- 4) The material points raised by the 1st Respondent (Bhoruka Power) in its Statement of Objections are:
 - (a) That the Order dated 18.1.2005 specifically states that for those PPAs submitted for approval to this Commission and which have been approved by this Commission prior to 10.6.2004, the tariff and all the terms and conditions of those PPAs should hold good for the period specified therein. Therefore, it is contended that, in respect of the PPAs approved prior to 10.6.2004, the Petitioner cannot rely on the Order dated 18.1.2005 or the subsequent Order dated 18.8.2005, for supporting the reliefs sought for in the Petition.

- (b) That the terms and conditions stated in the PPAs, so approved previously, should govern the rights and liabilities of the parties and the claim of the Petitioner made in this Petition contrary to it, is not maintainable. The PPAs relating to the 1st Respondent (Bhoruka Power) produced in this case or the other PPAs relating to the other Respondents produced in this case (ANNEXURE-C to the Petition) do not contain a provision, like Article 5.5 of the Standard PPA approved by this Commission by Order dated 18.8.2005. The terms and conditions stated in the old PPAs were agreed upon between the parties, keeping in view the promotional measures extended for Non-Conventional Energy (NCE) Projects. Therefore a provision similar to the said Article 5.5 cannot be introduced in the old PPAs.
- (c) That the Petitioner is not entitled to call upon the Respondents to enter into Supplemental PPAs, to include a provision like Article 5.5 of the Standard PPA.
- (d) That the issue raised by the Petitioner relates to all NCE Projects, therefore, a public hearing to pass a generic Order is required.
- 5) The 3rd Respondent (Hemavathy Power), in its Statement of Objections, has raised the following further points, apart from the points raised by the 1st Respondent (Bhoruka Power) :

- (a) That the terms contained in the old PPAs have been agreed between the parties as per the established industry practice. The start-up power used by the generator and the energy consumed for other ancillary purposes are to be set off against the energy generated and exported from the Project, as per the established industry practice. Therefore, these terms cannot be altered at a subsequent stage of the term of the PPA.
 - (b) That Article 5.5 of the Standard PPA leads to different interpretations and in any event, it is prejudicial to the terms already agreed upon in the old PPAs.
- 6) For the above reasons, the 1st Respondent (Bhoruka Power) and the 3rd Respondent (Hemavathy Power) have prayed for dismissal of the Petition.
- 7) We have heard the learned counsel for the contesting parties. From the submissions pleadings and records of the case, the following issues would arise for our consideration :
- (1) Whether an Article, similar to Article 5.5 of the Standard PPA as per Order dated 18.8.2005 of this Commission, could be ordered to be inserted in the PPAs involved in the present Petition?

- (2) What should be the interpretation of Article 5.5 of the Standard PPA with regard to the clarification sought for by the parties in this case?
 - (3) Whether the terms of the PPAs involved in this Petition are silent with regard to the settlement of accounts in respect of the energy imported by the generators during a Billing Period, when there is no generation of electricity during such period?
 - (4) If Issue No.(3) is held in the affirmative, what should be the appropriate direction regarding such import energy?
 - (5) What Order?
- 8) After considering the pleadings and the documents on record and the submissions of the parties in the case, our findings on the above issues are as follows :
- 9) **ISSUE No.(1)** : *Whether an Article, similar to Article 5.5 of the Standard PPA as per Order dated 18.8.2005 of this Commission, could be ordered to be inserted in the PPAs involved in the present Petition?*
- (a) All the PPAs involved in this Petition relate to Mini Hydel Projects. The particulars of the PPAs and the Projects relating to the Respondents are as follows :

Sl. No.	Owner of Project	Date of PPA	Capacity of Project (in MW)
1	Respondent - 1 (Bhoruka)	30.03.2001 28.04.2001 12.01.2004 28.02.2004	1.50 3.00 3.50 6.25
2	Respondent – 2 (Atria)	20.01.2005 19.06.2006	12.00 4.00
3	Respondent – 3 (Hemavathy)	08.01.2004 08.01.2004	8.00 16.00
4	Respondent – 4 (Nagarjuna)	09.06.2005	15.00
5	Respondent – 5 (Trishul)	05.11.2004	4.00
6	Respondent – 6 (Vijayalakshmi)	30.03.2001	2.95
7	Respondent – 7 (Coromandal)	23.12.1998	6.40

- (b) All the above PPAs [except the PPA dated 19.06.2006 of the 2nd Respondent (Atria)] do not contain a term similar to Article 5.5 of the Standard PPA. There is no term in these PPAs for payment of any amount towards the energy imported by the Projects. These PPAs provide that in a Billing Period, the Delivered Energy is to be calculated on the basis of the actual energy exported by the Projects to the State Grid, after deducting the energy imported by the Project from the Distribution Licensee. Further, Article 6 of the PPAs provides for raising tariff invoices for each Billing Period, for the Delivered Energy, at the tariff stated in Article 5.1.

- (c) The definition of 'Delivered Energy' in all these PPAs reads thus :

*“**Delivered Energy**’ means the kilowatt hours of Electricity actually fed and measured by the energy meters at the Delivery Point in a Billing Period after deducting therefrom, the energy supplied by the CESC to the Project, as similarly measured during such Billing Period and shall be computed in accordance with Clause 6.1.”*

- The definition of 'Billing Period' in all these PPAs reads thus :

*“**Billing Period**’ means (subject to Clause 6.1 of the Agreement) the calendar month ending with the Metering Date. The first Billing Period shall commence with the Commercial Operation Date and end with the Metering Date corresponding to the month in which the Commercial Operation Date occurs.”*

- (d) The term of the PPAs is 20 (twenty) years from the Scheduled Date of Completion of the Project, with a further option to extend the same for 10 (ten) years, with such terms and conditions as might be mutually agreed upon between the parties, 90 (ninety) days prior to the expiry of the said twenty years period.
- (e) All these PPAs are either 'deemed to be approved' or 'approved' by this Commission as per the provisions of the Karnataka Electricity Reforms Act, 1999 and the Electricity Act, 2003.

- (f) The generic Tariff Order dated 18.1.2005, at Paragraph-13, provides thus:

"It is clarified that in respect of the Power Purchase Agreements already approved by the Commission in respect of PPAs received in the Commission upto 10.6.04, the tariff and all the terms and conditions so approved by the Commission in those PPAs shall hold good for the period specified therein."

None of the subsequent generic Tariff Orders relating to the Renewable Sources of Energy provide for an alteration of the terms and conditions of the PPAs approved by the Commission prior to 10.6.2004.

- (g) Both the parties in this Petition have not furnished the dates of approval of the PPAs, involved in this case, by this Commission. Such date is relevant for the purpose of ascertaining, as to whether the Order dated 18.1.2005 and the Standard Format of the PPA approved in the Order date 18.8.2005, are applicable or not. Even in the absence of furnishing such dates of approval of the PPAs, it could be said that, if a PPA is executed on or after 10.6.2004, it should have been approved only on or after 10.6.2004. In the present case, the PPAs pertaining to Respondent No.2 (Atria), Respondent No.4 (Nagarjuna) and Respondent No.5 (Trishul) are dated 20.01.2005, 09.06.2005 and 05.11.2004, respectively, must have been approved subsequent to the dates of execution of the said PPAs. In that event, for the purpose of tariff and applicability of the Standard PPA, the Orders dated 18.1.2005 and 18.8.2005 should have been made applicable. However, these PPAs show that, the tariff applied and the terms of the PPAs are not in accordance

with the Orders dated 18.1.2005 and 18.8.2005. Therefore, we are of the considered view that, in respect of these PPAs, an Article similar to Article 5.5 of the Standard PPA, could be ordered to be inserted. Respondent No.5 (Trishul) has given consent for insertion of an Article, similar to Article 5.5 of the Standard PPA, in its reply dated 10.10.2014 (ANNEXURE-H to the Petition) issued in response to the Notice sent by the Petitioner. In respect of the other PPAs involved in this Petition, since it is not shown that they were approved on or after 10.6.2004, an Article similar to Article 5.5 to the Standard PPA, referred to above, cannot be inserted.

(h) The terms and conditions agreed to between the parties in a PPA are binding on the parties, until and unless the said terms could be altered or modified, as the case may be, either by consent of parties or as provided in the contract itself or by virtue of any statutory provision. None of these requirements is fulfilled in respect of the PPAs relating to Respondent Nos.1, 3, 6 and 7. Therefore, we answer Issue No.(1) accordingly.

10) **ISSUE No.(2):** *What should be the interpretation of Article 5.5 of the Standard PPA with regard to the clarification sought for by the parties in this case?*

(a) The Petitioner (CESC) has sought for a clarification, whether the start-up power to the extent of 10% of the installed capacity of the generator should be allowed on a month-on-month basis. We would like to clarify on this query as follows :

The start-up power is the power required to start a generator. In the case of Mini Hydel Projects, the quantum of start-up power is minimal. Usually the Mini Hydel generator runs continuously, if the required source of water is available. The generator is permitted to draw upto 10% of the installed capacity for start-up purpose. The quantum of energy drawn for the start-up purpose relates to each event of start-up, but not on a month-on-month basis. However, the power can be drawn for start-up purpose, only after giving Notice to the Petitioner and inspection thereafter by the Petitioner's officers concerned. If such Notice is not issued, then there is no question of treating the drawal of that power as for the 'start-up purpose'. Considering the duration of the drawal of energy and its quantum, one can ascertain, whether the energy drawn for start-up purpose has exceeded 10% of the installed capacity or not.

- (b) The 3rd Respondent (Hemavathy Power) has stated that, there is no clarification regarding the levy of 'Demand Charge' stated in Article 5.5 of the PPA. We would like to clarify on this query as follows :

The 'Demand Charge' in a Billing Period should be based on the maximum demand recorded in the import energy meter.

- (c) Therefore, we answer Issue No.(2), accordingly.

- 11) **ISSUE No.(3):** *Whether the terms of the PPAs involved in this Petition are silent with regard to the settlement of accounts in respect of the energy imported by the generators during a Billing Period, when there is no generation of electricity during such period?*

AND

ISSUE No.(4): *If Issue No.(3) is held in the affirmative, what should be the appropriate direction regarding such import energy?*

- (a) There is no difficulty in holding that, there is a specific term in the PPAs involved in this Petition, in regard to the settlement of accounts in respect of the energy imported by the generators during a Billing Period, when there is generation of electricity during such period. This is clear from the definition of the 'Delivered Energy' stated in the said PPAs. It states that, for arriving at the quantum of Delivered Energy, import energy is to be deducted from the export energy and that, the Delivered Energy is to be paid at the tariff agreed to in Article 5.1 of the PPAs. When there is no generation of electricity, a difficulty would arise for settlement of the import energy. The Petitioner contends that, in the case of Mini Hydel Projects, though there would be no generation for a period of 7 or 8 months in a year, it has to supply electricity to the generator for auxiliary consumption of the Project, for the whole period, thereby it would incur monetary loss. The learned counsel for the contesting Respondents have submitted that, the energy imported by the Project during the whole period, when there was no generation, needs to be deducted after the Project commences generation. They have further contended that, the terms of the PPAs are to

be interpreted in the manner suggested by them. Therefore, they submitted that, the terms of the PPAs are not silent with regard to the settlement of accounts in respect of the energy imported by the generators, even during the period when there is no generation.

- (b) The Commission notes that there is no provision in the PPA for dealing with import energy during a billing period, when there is no generation. The PPAs provide that, for each Billing Period, the import energy is to be accounted for. There is no provision in the PPAs to the effect that, whenever there is no generation of electricity in a billing period or for a longer period, the import energy may also be accounted for, after the generation of electricity commences in the Project. In the case of Mini Hydel Projects, it may generate electricity only for four or five months in a year, requiring import energy for the remaining months of the year. Therefore, the Electricity Supply Company (ESCOM) concerned has to wait for 7 or 8 months for deducting the import energy, till the generation of electricity is resumed. As already noted, the PPAs provide that, for each Billing Period, a tariff invoice has to be raised for the Delivered energy at the agreed tariff. The Delivered Energy is to be arrived at by deducting the import energy out of the export energy. Therefore, whenever there is no generation during a Billing Period, the Delivered Energy would be on the negative side, for which the generator has to make payment to the ESCOM concerned at the prevailing generation tariff agreed to in the PPAs. This appears to be a just and proper

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solution to deal with the import energy, when there is no generation of electricity.

- (c) For the reasons stated above, we answer Issue Nos.(3) in the affirmative, Issue No.(4) as per the final Order below.

- 12) **ISSUE No.(5)**: *What Order?*

For the foregoing reasons, we pass the following:

ORDER

The Petition is partly allowed, holding that :

- (a) An Article, similar to Article 5.5 of the Standard PPA, as clarified in the Commission's letter dated 12.07.2013, shall be inserted in the PPAs dated 20.01.2005 and 19.06.2006 of the 2nd Respondent (Atria), PPA dated 09.06.2005 of the 4th Respondent (Nagarjuna) and PPA dated 05.11.2004 of the 5th Respondent (Trishul). In terms of the above, these Respondents shall execute a Supplemental PPA with the Petitioner (CESC). The insertion of the said Article in the above PPAs shall be deemed to have taken effect from the respective dates of execution of the PPAs. However, the claim of the Petitioner for arrears, if any, due to the insertion of an Article, similar to Article 5.5 of the Standard PPA, shall be reckoned only from the date of filing of the present Petition before this Commission;

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- (b) The interpretation of Article 5.5 of the Standard PPA, with reference to the queries raised by the parties, shall be as held in Issue No.(2) above;
- (c) In respect of the PPAs of Respondents 1, 3, 6 and 7 :
- (i) The Petitioner (CESC) is entitled to raise bills at the generation tariff applicable, as per the PPAs concerned, for the imported energy during a Billing Period when there is no generation of electricity from the Projects of the Respondents;
- (ii) Whenever the import energy is more than the export energy during a Billing Period, the Petitioner is entitled to raise bills at the generation tariff applicable for the excess energy imported; and,
- (d) Whenever bills are issued by the Petitioner (CESC), the generator concerned shall pay the amount within 15 (fifteen) days from the date of receipt of the bill, and for the delayed payment, the generator concerned shall also pay interest at the rate of 12% (twelve percent) per annum on the amount due from the due date till the date of actual payment.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER