

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION NO. 141/ MP/2012

Coram:

Dr. Pramod Deo, Chairperson

Shri S. Jayaraman, Member

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 28.8.2012

Date of Order : 13.12.2012

In the matter of

Petition under Section 79 (1) (f) of Electricity Act 2003

And in the matter of:

Grant of consent by State Load Despatch Centre (Karnataka) for inter-State transmission of electricity

And in the matter of:

AMR Power Private Ltd

Petitioner

Vs

1. State Load Despatch Centre, Karnataka, Bangalore
2. Karnataka Power Transmission Corporation Ltd, Bangalore
3. Mangalore Electricity Supply Co Ltd, Mangalore

Respondents

Parties Present

- 1) Shri V. Adhimoolam, Advocate AMRPPL
- 2) Shri S.P. Dhingra, MPRL
- 3) Shri Venkata Subhramaniyam, MESCL

ORDER

This petition has been filed by AMR Power Private Ltd for the following reliefs,
namely:

- “(a) *Set aside the order dated 17.5.2012 in NO.CEE/EE/ AEE-3/SLOC/95-96 issued by SLDC;*

- (b) :direct SLDC to issue concurrence/ NoC/ prior standing clearance to the petitioner pursuant to its application dated 3.5.2012 in a time bound manner;
- (c) award cost of this petition;
- (d) pass such other further orders as this Hon'ble Commission may deem appropriate to meet the ends of justice including awarding cost to the petitioner."

2. The petitioner has established a Mini Hydel Power Project (the Project) across the river Netravathi in the State of Karnataka with total capacity of 24.75 MW. The Project was commissioned on 6.9.2009. The petitioner has stated that the project cost was initially estimated at ₹97 crore. However, because of the delay in completion of the Project, the project cost increased to ₹157 crore on the date of commissioning.

3. Prior to commissioning of the Project, the third respondent had entered into a Power Purchase Agreement dated 2.8.2006 (the PPA) with the petitioner to purchase entire power to be generated from the Project @ ₹2.80/kWh flat, applicable for a period of ten years. The petitioner has stated that the tariff of ₹2.80/kWh was based on the project cost of ₹93 crore computed in accordance with the tariff order of 2005 passed by Karnataka Electricity Regulatory Commission(KERC), considering the cost prevailing prior to 2005. In view of the increase in the project cost, the petitioner felt that the tariff of ₹2.80/kWh was lower and inadequate to meet its financial commitments for the enhanced cost, thereby adversely affecting the economic viability of the Project.

4. The petitioner approached KERC by filing O.P. No. 28/2009 and prayed *inter alia* for a declaration that the PPA stood automatically terminated. KERC by its order

dated 23.10.2010 upheld the PPA and granted liberty to the petitioner to approach the third respondent for revision of tariff. The petition filed by the petitioner before KERC seeking review of the order dated 23.10.2010 was also dismissed. Meanwhile, the petitioner is stated to have approached the third respondent for revision of tariff and supplied all relevant information justifying increase in the project cost and consequently the imperative need for revision in tariff. However, the third respondent has not considered the request of the petitioner. The petitioner continued to supply power to the third respondent under the PPA.

5. Under the PPA, the third respondent was required to open non-revolving LC in favour of the petitioner at least 30 days before the date of commercial operation of the Project. Further, the third respondent was also required to make payment of the billed amount within 15 days of receipt of the bill. The petitioner has alleged that the third respondent neither opened LC in its favour nor did it make the payments within 15 days of the receipt of the bill and thus defaulted on both the counts. The petitioner has further alleged that the third respondent committed another default as it did not pay interest on the arrears of the tariff for the period of delay.

6. The petitioner has submitted that Article 9 of the PPA dealing with "Term, Termination and Default" entitles it to sell the electricity to third parties after the third respondent committed default for a continuous period of three months, by availing open access. In view of the alleged payment default committed by the third respondent, the petitioner served a default notice dated 26.5.2011 calling upon the third respondent to remedy the default and arrange for the payment with interest on the delayed payments. In addition, the petitioner also called upon the third

respondent to open LC within 30 days. According to the petitioner, despite the default notice, the third respondent failed to rectify the defects within 30 days. Therefore, by another notice dated 22.7.2011 the petitioner terminated the PPA as envisaged under Article 9.3.1 of the PPA, the petitioner has averred.

7. Consequent to notice of termination of the PPA, the petitioner on 16.9.2011 approached the third respondent to grant consent for entering into wheeling and banking agreement to enable the petitioner to supply electricity to third parties at an appropriate later stage. However, the third respondent declined the consent on the ground of subsistence of the PPA. Meanwhile, power generated continued to be supplied to the State grid. Therefore, the petitioner raised a provisional Invoice for damages and alternatively also requested that the power supplied be banked for wheeling at an appropriate time. On receipt the fresh notice, the third respondent made payment of ₹33.6 crore calculated at the rate prescribed under the PPA, which payment the petitioner accepted provisionally. The third respondent by its letter dated 10.11.2011 further informed the petitioner of opening of revolving LC for ₹138.09 lakh. The petitioner has alleged that as per the PPA non-revolving LC was to be opened and the petitioner was not consulted as required under the PPA.

8. By letter dated 20.12.2011, the third respondent informed the petitioner that though the PPA was subsisting, it had not received the Invoices from 11.10.2011 onwards. In the said letter, the third respondent disowned any liability for late payment. At this stage, the petitioner filed a petition before KERC for a declaration that the PPA stood terminated and sought direction to the third respondent and other concerned to grant open access to petitioner to supply electricity to third parties by

entering into a wheeling and banking agreement. The petitioner also claimed interest and damages for alleged forced supply of power to the State grid. KERC as an interim measure directed the third respondent to make payment for the power supplied at the rate stipulated in the PPA.

9. During pendency of the petition before KERC, the petitioner on 30.1.2012 entered into a Member-Client Agreement with PTC India Ltd (PTC) with intention to sell electricity on the power exchange through PTC. Accordingly, the petitioner on 3.5.2012 made an application to the first respondent to grant No Objection for sale of the power through PTC. PTC vide letter dated 7.5.2012 also requested the first respondent to grant No Objection. However, the third respondent by its communication dated 17.5.2012 which has been impugned in the present petition declined 'No Objection' on the ground that the petitioner was having a valid PPA with the third respondent and as per Government of Karnataka's Order No. EN 540 NeE 2008 dated 1.9.2009, all private generators having valid PPA with the State utilities were mandated to supply power to these utilities. Thereafter, the petitioner withdrew the petition filed before KERC and has filed the present petition.

10. The respondents have filed their detailed statements of objection. It is not necessary to notice all the grounds pleaded by the respondents as the facts being taken note of below are considered sufficient for disposal of the present petition.

11. The respondents have *inter alia* pleaded that the third respondent has filed a petition before KERC (OP No 37/2012) for a declaration that the PPA was still valid

and subsisting. KERC by its interim order dated 23.8.2012 has directed the parties to maintain *status quo* in the matter.

12. We considered the matter in the light of the above facts placed on record by the respondents. The undisputed facts are that aggrieved by the notice of termination dated 22.7.2011, the third respondent has filed a petition before KERC. The said petition is pending. KERC in its interim order dated 23.8.2012 while taking notice of the fact that the petitioner was pumping electricity to the grid even after termination of the PPA directed the parties to maintain *status quo*. The operative part of the order is extracted below:

“16. Considering the facts and circumstances of this case, this Commission deems it appropriate to direct both the parties to maintain the status quo as existing, pending final disposal of the main Petition.”

13. The petitioner is supplying entire power from the Project to the third respondent by virtue of the above order of KERC. Further, KERC is in *seisin* of the question of validity of termination of the PPA by the petitioner, an intra-State entity. Under these circumstances, at the stage the respondents cannot be directed to grant No objection to the petitioner for sale of power tied up under the PPA through the power exchange. The petitioner shall be required to work out its legal remedies after disposal of the petition pending before KERC. The present petition is accordingly dismissed, but without any order as to costs.

sd/-
(M DEENA DAYALAN)
MEMBER

sd/-
(V.S.VERMA)
MEMBER

sd/-
(S. JAYARAMAN)
MEMBER

sd/-
(DR.PRAMOD DEO)
CHAIRPERSON