

**KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

**PRESENT**

**Shri T.M.Manoharan, Chairman  
Shri P.Parameswaran, Member  
Sri Mathew George, Member**

**21<sup>st</sup> June, 2013**

**PETITION IN THE MATTER OF**

Approving the tariff for Co Generation Plant of Philips Carbon Black Limited under Sub Section (1)(a) of Section 62 of Electricity Act, 2003.

Petition	Dy No	Philips Carbon Black Ltd Kochi Unit, Karimugal Brahmapuram P.O., Kochi 682303	Petitioner
OP 2/2011		Kerala State Electricity Board VaidyuthiBhavanam, Trivandrum	Respondent

**ORDER**

**1. Background**

M/s Philips Carbon Black Limited had submitted an application for determination of tariff applicable for the power from their Co generation plant under Sub Section (1) (a) of Section 62 of Electricity Act, 2003. The Plant is of 10 MW capacity and the excess power shall be supplied to KSEB. The System is designed to generate electric power by utilizing the tail gases generated during the process of Carbon Black production. The power

generation process involves recovery and utilization of the thermal energy of the process waste gas (i.e. tail gas) being produced from the carbon black manufacturing process. This waste heat/gas is utilized to generate steam which in turn is used to generate electrical energy. The excess electricity available after meeting the in-house power demand of Phillips Carbon Black Limited (PCBL) plant (41.26 MU/annum) is proposed to be exported to the KSEB grid.

## **2.Prayer**

To consider all facts and the cost of power of PCBL Co Generation Plant and fix the rate at Rs 4.86/kWh

## **3.0 Hearing of petition**

The petition was admitted as OP2/2011 and in the hearing held on 25-04-11, the petitioner requested to allow an amendment in the petition for including the options available to them as per Central Electricity Regulatory Commission (CERC) Regulation No L-1/12/2010- CERC dated 14-01-2010 on Renewable Energy Certificate (REC) in fulfilment of its mandate to promote renewable sources of energy and development of market in electricity. As per the regulation

- The RE generators will have two options – either to sell the renewable energy at preferential tariff fixed by the concerned Electricity Regulatory Commission or to sell the electricity

generation and environmental attributes associated with RE generation separately.

- On choosing the second option, the environmental attributes can be exchanged in the form of REC. Price of electricity component would be equivalent to weighted average power purchase cost of the distribution company including short-term power purchase but excluding renewable power purchase cost. The hearing was adjourned allowing the petitioner to file the amended petition.

The petitioner had submitted the amended petition with the following prayers on 24-05-11

- (a) The petitioner to get a remunerative tariff consistent with the fact that the Petitioner is supplying energy from the co generation, a renewable source of energy as per the apportionment of price to be paid for such energy vis-à-vis the Carbon Black Manufacture undertaken by the petitioner being in the range of Rs 4.86/Unit The respondent should be directed to pay a remunerative price if the respondent wish to utilize the power purchase from the petitioner towards meeting the renewable purchase obligation determined by the Hon Commission to be fulfilled by the respondent.
- (b) The sale of power by the petitioner to the respondent at the pooled power purchase cost and the petitioner being entitled to the Renewable Energy Certificate.

(c) As per Open Access regulations notified by the Hon Commission the petitioner is entitled to sell the energy to third parties either within the State or outside the State. The petitioner is therefore, entitled to recover the price prevalent in the market for the sale of electricity. The ability of the petitioner to recover a remunerative price from the market should also be a consideration while deciding the price to be paid by the respondent to the Petitioner for the purchase of electricity.

In the original petition, the prayer of the petitioner was to fix the ‘ preferential tariff ‘ ie the rate at which they shall sell the energy to KSEB. In the amended prayers on 24.05.2011 they are requesting to fix the tariff considering the factors listed above.

The date for the next hearing was fixed as 30-06-11. KSEB requested to post pone the hearing by three weeks. The hearing was postponed to 25-07-11 and then to 09-08-11. In the hearing Philips Carbon Black Ltd pointed out the options available to them. KSEB stated that Philips Carbon Black Ltd is supplying electricity from 30-04-2011 at the rate Rs 2.02 /Unit provisionally. Commission directed to produce RE eligibility certificate from ANERT, the nodal Agency. Since there was dispute in the eligibility for REC for the project the petitioner requested to fix the tariff for supplying power to KSEB vide letter dated 10-04-12. Hearing was fixed for 12-06-12. Petitioner requested vide letter dated 18-05-2012 to post pone the date of hearing to the last week of June as

their counsel is out of country. Hearing was fixed for 25-07-12. In the hearing KSEB requested for more details for estimating the capital cost of the project. M/s Philips Carbon Black agreed to provide further information. M/s Philips Carbon Black requested vide letter dated 17-12-12 for alternate date since their counsel is out of station. They requested for the date 7<sup>th</sup> to 10<sup>th</sup> of January 2013. The hearing was scheduled for 24-01-2013. Since 24-01-2013 was declared a holiday hearing was posted for 19-03-2013. Again the date was postponed as 30-04-2013. Again M/s Philips Carbon Black Ltd requested to adjourn the proceedings until 30-09-2013 as they are trying to resolve the issue by pursuing open access route. The Commission found that the Petitioner had been inconsistent in their prayers and was trying to postpone the decision on the Tariff for reasons not known to the Commission. The petitioner was informed that if they are not present for the next hearing to be held on 04-06-2013, decision will be taken ex parte. Hearing was conducted on 04-06-13. In the hearing petitioner stated that they approached the respondent for providing open access to enable them to sell surplus power through IEX. The respondent had advised the petitioner to remit Rs 3.13 Crores towards up gradation of Vythila and Puthencruz substation and further to submit an undertaking to remit the balance amount, if any, upon completion of the job. The petitioner stated that up gradation job will have financial bearing on their petition and the actual impact can be assessed only after completion of up gradation work. In these circumstances, petitioner submitted that the consideration of the petition may be deferred till up gradation

of the above substations is complete. The petitioner prayed that Hon Commission be pleased to defer the hearing till 30-09-2013 or allow to withdraw the petition and reserve their right to resubmit the same at appropriate time. KSEB informed that they have no obligation on the plea for withdrawal of the Petition.

#### **4. Analysis**

As per Sec 94 of the Electricity Act, 2003, the Commission for proceedings under the Electricity Act, 2003 has the same powers as are vested in the Civil Court under Code of Civil Procedure, 1908.

Sub-rule (1) of rule 1, Order XXIII of the Code of Civil Procedure ) permits a plaintiff to abandon his suit against all or any of the defendants at any time after the institution of the suit; sub-rule (3) lays down that where the court is satisfied (a) that a suit must fall by reason of some formal defect, or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of the suit, it may grant permission to him to withdraw from such suit with liberty to institute a fresh suit, while sub-rule (4) provides that where the plaintiff abandons any suit under sub-rule (1) or withdraws from it without the permission referred to in sub-rule (3), he shall be precluded from instituting any fresh suit in respect of such subject matter. A plaintiff is at liberty to withdraw from a suit at any time (subject to any order as to costs that the Court may pass), but if he wishes to reserve his right to sue again, he must obtain permission of the Court under Order XXIII, Rule I, Civil Procedure Code. Permission can only be granted on the grounds specified in the rule. The words “other

sufficient grounds” have been interpreted to mean grounds of the same nature as the grounds specified in clause (a) of sub-rule 2 of Rule 1 of the Order. Since the petitioner has submitted sufficient grounds for allowing to institute a fresh suit for the subject matter of the suit later, Commission may grant permission to him to withdraw from such suit with liberty to institute a fresh suit. Invoking the powers of the Commission under Section 94 of the Electricity Act 2003 and Section 69 (3) of the Conduct of Business Regulations of the KSEB, the Commission decided to allow the Petitioner to withdraw the Petition.

#### **5. Orders of the Commission.**

Commission grants permission to Philips Carbon Black Ltd to withdraw the petition with liberty to institute a fresh petition on a later date, if found necessary.

Sd/-  
**Member (F)**

Sd/-  
**Member (E)**

Sd/-  
**Chairman**

Approved for issue

Sd/-  
**Secretary**