

The Managing Director
 Hubli Electricity Supply Company Ltd.,
 Navanaagr, P.B.Road
 HUBLI – 580 025

The Managing Director
 Mangalore Electricity Supply Company Ltd.,
 Paradigm Plaza, A.B.Shetty Circle
 MANGALORE – 575 001.
 (Represented by M/s ALMT Legal Advocates) ...

Respondents

1. The Hon'ble Appellate Tribunal for Electricity (ATE) has directed this Commission to pass consequential orders in the light of their judgment dated 2.1.2013 in Appeal No. 108/2010 filed by the Federation of Karnataka Chamber of Commerce and Industry (FKCCI). On receipt of the orders of the Hon'ble ATE, this Commission had in its letters dated 21.1.2013 issued instructions to the State Transmission Utility namely KPTCL and the distribution companies including the Bangalore Electricity Supply Company Limited (BESCOM) asking them to henceforth draw up their annual accounts in accordance with the Companies Act, 1956 and comply with the accounting standards prescribed by the Institute of Chartered Accountants of India as directed by the Hon'ble ATE. Further, the Commission had also asked the transmission and distribution companies mentioned above to file information in respect of depreciation of assets and other related matters to facilitate issue of further orders by this Commission. In the meanwhile, FKCCI, the Appellant in the above case, in its letter dated 20.3.2013 addressed to the Secretary of this Commission has requested the Commission to conduct implementation proceedings in respect of the directions given by the Hon'ble ATE "with notice to all the distribution licensees in the State of Karnataka as well as to the FKCCI".

2. After considering the above request, the Commission issued notice to FKCCI (hereinafter referred to as the Petitioner), the state transmission utility (KPTCL) and the distribution companies namely, Bangalore Electricity Supply Company Limited, (BESCOM) Mangalore Electricity Supply Company Limited,

(MESCOM), Chamundeshwari Electricity Supply Corporation Limited, (CESC), Hubli Electricity Supply company Limited (HESCOM) and Gulbarga Electricity Supply Company Limited (GESCOM), hereinafter referred to as Respondents and took up the matter for hearing on 7.6.2013. During the course of the hearing, the petitioner submitted a memo on 8.8.2013 in which a specific prayer was made to direct the electricity supply companies to henceforth submit their Annual Accounts Statement in accordance with the Companies Act, 1956, and also to fix tariff as per the specific provisions in the MYT Regulations of this Commission dealing with return on equity and depreciation. The petitioner also prayed for implementing the directions of the Hon'ble ATE in respect of all the electricity supply companies.

3. In response, the respondents have filed their common reply on 18.9.2013 to which the petitioner has filed a counter reply on 1.10.2013. The respondents in their reply have contended that the petitioner had filed its appeal before the Hon'ble ATE only against the Tariff Order in respect of BESCOM passed by this Commission 25.11.2009 and the Tariff Orders passed in respect of other companies were not questioned in the said appeal. Therefore, the Tariff Orders in respect of the other Respondents had become final and cannot be reopened at this stage

4. In its counter reply filed on 1.10.2013, the petitioner has taken the stand that the Hon'ble ATE's order has not restricted its findings in respect of BESCOM alone and the said order is in the nature of general directions issued to this Commission. Therefore the petitioner has requested that the directions issued by the Hon'ble ATE No. 108/2010 be implemented by the Commission against all ESCOMs and consequent changes that may arise be made in the Tariff Orders of all such companies.

5. The Commission has heard the petitioner and the respondents and perused their written submissions as well as related documents.

6. The petitioner herein had filed the Appeal No. 108/2010 before the Hon'ble ATE questioning the Tariff Order dated 25.11.2009 passed by this Commission determining the retail tariff in respect of the Respondent BESCO for the financial year 2009-10. After looking into the grounds urged by the petitioner, Hon'ble ATE had identified the following six issues for decision in their Order :

- (1) Maintainability of the tariff petition before the Commission;
- (2) Accounting Standards;
- (3) Return on Equity and Depreciation;
- (4) Consumption attributed to irrigation pump sets;
- (5) Interest on consumers' deposits and
- (6) Capitalization of consumers' security deposits.

7. While partially allowing the appeal, the Hon'ble ATE has held that the tariff petition was maintainable before this Commission, and has also upheld the orders of this Commission on the issues mentioned at (4), (5) & (6) above. On the issues of accounting standards adopted by the ESCOMs, the Return on Equity and the rate of depreciation allowed in the Tariff Order, the Hon'ble ATE has passed specific directions which require consequential orders from this Commission for their compliance. The decision of the Hon'ble ATE and the consequential orders thereon are discussed in the following paragraphs :

8. Accounting Standards : Hon'ble ATE, while deciding this issue in favour of the appellant, has held that section 69 of the Electricity Supply Act of 1948 is not applicable to the companies formed after the enactment of the Electricity Act, 2003 and the restructuring of the Electricity Board under section 172 of the Electricity Act, 2003. The Hon'ble ATE has set out their findings as follows :

“... we hold that since section 69 of the 1948 Act was not applicable to the Companies those were in the business of supply of electricity prior to enactment of the Electricity Act, 2003, it

cannot be held to be applicable to the companies formed after the enactment of 2003 Act and restructuring of the Board under Section 172 of 2003 Act by virtue of 185(2)(d) of the 2003 Act. The Commission is accordingly directed to direct the 2nd Respondent to submit the Annual Accounts Statement in accordance with the Companies Act henceforth. Depreciation of Grants, consumers' contribution, etc., shall have to be treated in accordance with Accounting Standard 12 of Institute of Chartered Accountants”.

9. It is clear from the wordings of the above direction that the Respondent BESCOM is to be directed to submit its Annual Accounts Statement in accordance with the Companies Act and the Accounting Standard 12 of the Institute of Chartered Accountants prospectively with effect from the date of the Hon'ble ATE's Order. Further, in view of the decision that section 69 of the Electricity Supply Act of 1948 is not applicable to the electricity companies formed after the enactment of the Electricity Act, 2003, it is clear that the said direction will also have general application to all electricity companies and not merely to Respondent BESCOM. This Commission has already issued instructions to all the respondent companies in its letter dated 21.1.2013 directing them to henceforth submit their Annual Accounts Statement in accordance with the provisions of the Companies Act, 1956 and comply with the applicable Accounting Standards issued by the Institute of Chartered Accountants of India. The said direction is hereby confirmed for strict compliance by all the respondent companies.

10. Return on Equity and Depreciation : On the manner of determining the Return on Equity (RoE) and allowing depreciation on the assets of the electricity companies, the Hon'ble ATE has observed as follows :

“42. Bare reading of section 61 would elucidate that the State Commissions have been mandated to frame Regulations for fixing tariff under Section 62 of the Act and while doing so i.e., while

framing such regulations, State Commissions are required to be guided by the principles laid down in by the Central Commission for determination of tariff for generation companies and transmission licensees. Once the Commission has framed and notified the requisite Regulation after meeting the requirement of prior publication under Section 181(3), it is bound by such Regulations while fixing tariff under Section 62 of the Act and Central Commission's Regulations have no relevance in such cases. The Karnataka Electricity Regulatory Commission has framed MYT Regulations determination of tariff in the year 2006 and accordingly the Commission is required to fix tariff as per these Regulations. These MYT Regulations have specific provisions dealing with Return on Equity and Depreciation and the Commission is required to follow these".

"43. The issue is accordingly decided in favour of the Appellant".

11. In the Tariff Order dated 25.11.2009 relating to the retail supply tariff of BESCOM for 2009-10, this Commission had considered the Return on Equity at the rate of 15.5 % as per the CERC (Terms and Conditions of Tariff) Regulations, 2009 issued on 19.1.2009. However, the KERC (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity) Regulations, 2006 which prescribe a Multi-Year Tariff Framework and Approach, even though based on the earlier CERC Regulations, had prescribed at 3.9 of the Regulations, Return on Equity to be computed only at 14 % per annum. In view of the observations of the Hon'ble ATE cited above, the Return on Equity allowable to BESCOM for the year 2009-10 was only 14 % and not 15.5 % as considered applicable in the order of this Commission. A perusal of the Tariff Order dated 25.11.2009 as well as the Annual Performance Review of BESCOM for the year 2009-10 contained in the Tariff Order issued on 7.12.2010 shows that the Commission did not allow any RoE to BESCOM for 2009-10 as the equity position (net worth) of the company was negative. Further, this Commission also amended KERC (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity) Regulation,

2006 in its Notification dated 1.2.2012 providing for the computation of Return on Equity on the equity base at 15.5 % per annum grossed up with allowable MAT (Minimum Alternate Tax) or applicable income tax. With the coming into force of this Amendment, the RoE allowable to electricity companies for the financial years 2011-12 and thereafter was determined at 15.5 %.

12. In the matter of allowing depreciation on the capital assets of BESCOM also this Commission adopted the norms included in the CERC (Terms and Conditions of Tariff) Regulations, 2009 which were different from this Commission's MYT Regulations of 2006. The KERC's Regulations of 2006 provided for Depreciation of 90 % of the historical cost of the assets over the useful life of the assets computed category wise. The CERC Regulations on the other hand specified different specific rates of depreciation for different categories of capital assets in a schedule appended to the Regulations. Further, Regulation No.3.8.4 of KERC Regulations, 2006 stipulates that "the Commission may consider allowing advance against depreciation to the extent of difference between the amount computed and the debt repayment for the financial year" while CERC Regulations as amended in 2009 did not provide for any advance against depreciation. Thus the basis adopted for calculating the depreciation allowed in the Tariff Order dated 25.11.2009 relating to BESCOM was at variance with the KERC Regulations in force at that time. However, this Commission also amended the provision relating to depreciation in its Regulation in the Amendment issued on 1.2.2012 providing for depreciation at the rates prescribed in the CERC guidelines / notification issued from time to time.

13. In view of the above discussion, the Commission has considered the questions whether (a) the rate of RoE and Depreciation allowed in the Tariff Orders of BESCOM for the years 2009-10 and 2010-11, prior to the coming into force of the Amendments to the Regulations mentioned above should be revised, and (b) whether such revision should be made applicable to the Tariff Orders of other electricity companies in the State also as the rate of RoE and

Depreciation considered in the Tariff Orders relating to those companies for the above years was also the same as applied in the case of BESCO and was similarly different from the rates specified in the KERC Regulations prior to the above Amendments.

14. In view of the interpretation of the legal position contained in the order of the Hon'ble ATE, we consider it necessary to apply the directions of the Hon'ble ATE to the Tariff Orders in respect of BESCO for both 2009-10 and 2010-11. Also for the same reasons, we consider it appropriate to apply the same principles to the Tariff Orders for the years 2009-10 and 2010-11 relating to the other Respondents which have been determined on the same basis as in the case of the Respondent BESCO. Therefore we proceed to consider the implications of the consequential orders as follows :

15. On the basis of the information obtained from the Respondents, the following picture emerges in regard to the difference between the rate of RoE and Depreciation calculated as per KERC Regulations of 2006 and the rates actually adopted in the Tariff Orders / Annual Performance Review of BESCO for the year 2009-10 and 2010-11.

Rs. in Crs.

Particulars	2009-10			2010-11		
	Allowed in the Tariff Order	To be allowed as per the APTEL Order	Difference	Allowed in the Tariff Order	To be allowed as per the APTEL Order	Difference
RoE	0.00	0.00	0.00	12.60	9.11	-3.49
Depreciation	121.99	118.47	-3.52	161.72	124.95	-36.77
TOTAL	121.99	118.47	-3.52	174.32	134.06	-40.26

16. For the state transmission utility and the other ESCOMs, the comparative picture of the RoE allowed and calculated as per the KERC Regulations in force is as follows :

Rs. in Crs.

ESCOMs/KPTCL	2009-10			2010-11		
	Allowed in the Tariff Order	To be allowed as per the APTEL Order	Difference	Allowed in the Tariff Order	To be allowed as per the APTEL Order	Difference
MESCOM	28.35	22.70	-5.65	40.19	29.07	-11.12
CESC	0.00	0.00	0.00	0.00	0.00	0.00
HESCOM	0.00	0.00	0.00	0.00	0.00	0.00
GESCOM	0.00	0.00	0.00	37.07	26.81	-10.26
KPTCL	210.89	168.90	-41.99	210.24	189.89	-20.35
TOTAL	239.24	191.60	-47.64	287.50	245.77	-41.73

17. As could be seen from the above Tables, the total amount of RoE allowed for BESCOM and other companies over and above the 14 % specified in the KERC Regulations is Rs. 92.86 Crores.

18. A similar comparison in respect of Depreciation actually allowed for the years 2009-10 and 2010-11 in respect of State transmission utility and other ESCOMs is shown below:

Rs.in Crs.

ESCOMs/KPTCL	2009-10			2010-11		
	Allowed in the Tariff Order	To be allowed as per the APTEL Order	Difference	Allowed in the Tariff Order	To be allowed as per the APTEL Order	Difference
MESCOM	45.40	24.19	-21.21	51.13	27.92	-23.21
CESC	40.55	26.22	-14.33	46.91	31.99	-14.92
HESCOM	82.11	59.66	-22.45	89.43	64.75	-24.68
GESCOM	59.22	38.66	-20.56	68.37	44.63	-23.74
KPTCL	358.57	234.17	-124.40	406.99	268.13	-138.86
TOTAL	585.85	382.90	-202.95	662.83	437.42	-225.41

19. The above Table shows that the excess depreciation allowed on capital assets of all the Respondents for the years 2009-10 and 2010-11 is Rs.468.65 Crores. This amount together with the extra amount of RoE allowed works out to a total of Rs.254.11 Crores for 2009-10 and Rs.307.40 Crores for 2010-11.

20. Before we proceed to take a view on how to assess the tariff implications of the above difference amount, we also need to keep in view the fact that the KERC Regulations of 2006 allowed for advance against depreciation to the extent of the difference between the actual loan repayment of the electricity companies and the depreciation allowable under the Regulations. The data obtained from the Respondents shows that the loan repayment made by them during the years 2009-10 and 2010-11 amounted to Rs.2811.56 Crores against the depreciation which should have been allowed as per the APTEL Order is of Rs.1063.74 Crores. The company-wise break up is shown below:

Rs. in Crs.

ESCOMs/ KPTCL	2009-10			2010-11		
	Repayment of Principal Amount	Depreciation to be allowed as per APTEL order	Difference (AAD)	Repayment of Principal Amount	Depreciation to be allowed as per APTEL order	Difference (AAD)
BESCOM	88.37	118.47	-	67.42	124.95	-
MESCOM	99.01	24.19	74.82	69.65	27.92	41.73
CESC	102.93	26.22	76.71	105.67	31.99	73.68
HESCOM	370.93	59.66	311.27	279.64	64.75	214.89
GESCOM	161.95	38.66	123.29	253.53	44.63	208.90
KPTCL	683.23	234.17	449.06	529.23	268.13	261.10
TOTAL	1506.42	501.37	1035.15	1305.14	562.37	800.30

21. As seen from the above, as per the of KERC Regulations of 2006 this Commission has to consider allowing advance against depreciation of Rs.1835.45 Crores over and above the actual depreciation for the relevant years. The additional amount that could have been considered for being included in the ARR / APR of the Respondents was also in excess of both the RoE and Depreciation allowed in excess of the permissible amount under the 2006

Regulations. Therefore the rates of RoE and Depreciation applied in the Commission's Tariff Orders, even though different from the rates stipulated in the Regulations then in force, have not cast no undue burden on this account on the consumers of the electricity companies. The Commission therefore does not consider it necessary to effect any revision of tariff of BESCOM or other Respondents as earlier determined for the years 2009-10 and 2010-11.

However, we consider it appropriate to allow advance against depreciation of the following amounts to the Respondents for the tariff years 2009-10 and 2010-11 subject to adjustment of the said advances from the depreciation allowable to them in the APR of 2012-13 and 2013-14 respectively.

NAME OF THE UTILITIES	2009-10	2010-11
BESCOM	3.52	40.26
MESCOM	26.86	34.33
CESC	14.33	14.92
HESCOM	22.45	24.68
GESCOM	20.56	34.00
KPTCL	166.39	159.21
TOTAL	254.11	307.40

Ordered accordingly.

Sd/-

Sd/-

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

(VISHVANATH HIREMATH)
MEMBER

(K.SRINIVASA RAO)
MEMBER