

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION BANGALORE

Dated 9th August 2012

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

RP No. 3/2012

BETWEEN

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| 1. Chamundeswari Electricity Supply Corporation Ltd.,
No.927, L.J.Avenue, New Kantharaj Urs Road
MYSORE – 570 009.
<i>[Represented by M/s. Just Law, Advocates]</i> | ... | Petitioner |
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AND

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| Nil | ... | Respondent |
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1. This Review Petition has been filed by the Chamundeswari Electricity Supply Corporation Limited (hereinafter referred to as 'CESC') seeking review of the Order dated 28.10.2011 of this Commission, wherein retail tariff has been fixed for supply of electricity to various categories of consumers in the jurisdiction of the petitioners.

2. In the Review Petition, the Petitioner has submitted that under the Electricity Act, 2003, read along with the National Electricity Policy, 2005 and the Tariff Policy, 2006, the Open Access Consumers have to pay to the Distribution Licensee a Cross-Subsidy Surcharge in addition to Wheeling Charges as determined by this Commission, but this Commission has exempted Consumers in the State from payment of Cross-Subsidy Surcharge. It is further submitted that under Section 42(4) of the Electricity Act, 2003, the Open Access Consumers are required to pay an additional Surcharge along with Wheeling Charges, but this Commission has not ordered payment of any additional Surcharge. It is also submitted by the Petitioner that the grant of concessional Wheeling and Banking Charges given to RE Generators needs to be re-looked into, as it will not

compensate the cost the petitioner incurs to provide Wheeling and Banking facility.

3. The Commission held a public hearing on the petition on 29.3.2012. Sri Shridhar Prabhu, Advocate for FKCCI and Kaleeuwari Refinery Private Limited, Sri Mahesh Vipradas representing the Indian Wind Energy Association and Sri Raja Rao representing the Consumer Care Society, appeared before the Commission and made their submissions.

4. We have considered the averments made in the Review Petition and also the oral submissions made during the hearing by the Review Petitioner's Counsel, Sri Sriranga and the Counsels appearing for the FKCCI and others.

5. The Review Petitioner had filed an Application on 15.6.2011 for approval of its Annual Revenue Requirement & Expected Revenue from Charges and Tariff Petition for FY-12. In the said Application, the Petitioner had made the following submissions as regards the Wheeling Charges and Cross-Subsidy Surcharge.

"The Commission in its earlier tariff orders, withdrew the cross subsidy surcharge for open access customers. Owing to the increase on cost of power purchase and CESC has to purchase high cost energy during the period between January and May due to shortage in demand and supply. Service to the open access customers without surcharge is not justifiable. Most of the NCE projects will not function to the required level from December to May. The banking of energy is being done when the cost of energy is low. The realization of such banked energy will take place when the distribution utility is undergoing turmoil in meeting the energy and demand. To mitigate the prevailing crises the GoK had invoked section 11 of the Electricity Act 2003 and ordered the State owned generators to supply power to the State under this difficult scenario. During which time the GoK has revised the rate of such IPPs (Cogeneration and Biomass) for short duration to meet the cost of alternate fuel to be used for power generation,

in this context it is submitted before this Hon'ble Commission to pas order as follows:

1. Section 11 is to be extended to the open access customers and allow the utility to use the banked energy of the IPP and pay the base rate prevailing as per the latest Commission's order.
2. Allow surcharge for the energy used from January to the end of wind / water year as the difference between the highest rates at which energy is paid during these months on short term basis and the average cost of HT supply.

Allow surcharge at all time on the basis as was done in the previous Commission's Orders"

6. This Commission, after conducting a public hearing passed a detailed Tariff Order on 28.10.2011. While passing the Tariff Order dated 28.10.2011, the Commission has considered every issue raised in the application and the material placed in support of it.

7. As regards Wheeling Charges, this Commission, has held in its Order dated 11.7.2008, as follows :

"We are of the view that the concessional wheeling charges provided for NCE generators for transmission of power within the State needs to be continued and will be in the interest of the State in general. This will also not affect KPTCL adversely, as income generated by collecting the transmission charges from NCE generators, will have to be deducted while calculating the net ARR of KPTCL. As pointed out above, even now KPTCL is collecting transmission charges for carrying NCE power, from ESCOMs, not directly but indirectly.

The contention of KPTCL that it is incurring loss due to non payment of transmission charge is not tenable. KPTCL, having not incurred

any additional expenditure on account of transferring NCE power to ESCOMs or captive generators there is no justification for the KPTCL to complain about losses incurred by it. If KPTCL has incurred any special expenditure, it may bring up a separate claim. Till then, in our opinion, fixing of 5% wheeling charge does not require any modification."

8. As regards the cross subsidy surcharge the Commission has held as follows:

"In order to encourage open access and to incentivise the State consumers to purchase power from outside the state at reasonable rates, thereby relieving the state of extra burden of high cost energy, the Commission has decided to retain the cross subsidy surcharge at zero. The State is facing shortage of power in FY12 also and hence the Commission has decided to continue the same policy until further orders".

9. Under Section 94(f) of the Electricity Act, 2003, this Commission has power to review its orders in the same manner as a Civil Court under the Code of Civil Procedure and review its orders. Therefore, in order to maintain a Review Petition under Order XLVII Rule (1) of CPC, the Review Petitioner has to establish that he has discovered a new and important matter or evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the Order sought to be reviewed was passed, or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, he desires a review of the Order passed.

10. On consideration of the entire Review Petition, we do not find any material in support of the prayers made regarding cross subsidy surcharge and the wheeling and banking charges for Renewable Energy. Further, the Review Petitioner had not made any submission regarding the additional Surcharge.

11. It is well-settled law that the Review Jurisdiction of the Courts cannot be used for re-arguing a case or making out a new case. Therefore, in our view, this Review Petition has to be rejected as not maintainable.

Accordingly, the Review Petition stands rejected.

Sd/-
(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER