

CHAPTER - 2

2.0 BACKGROUND TO THE PRESENT FILING AND PUBLIC HEARINGS

2.1 ERC for FY04

1. The Commission had approved the ERCs of the KPTCL and the ESCOMs for FY04 in the Tariff Order dated 10.03.2003 and also had approved revised BST, transmission tariff and retail consumer tariff in the said Order. In the ERC for FY04, the KPTCL had requested for approval of the Power Purchase Adjustment Formula or Mix Change Adjustment Amount Formula to offset the difference between anticipated and actual Hydro availability. After examining the request of the KPTCL on the adjustment formula, the Commission had ordered that the KPTCL may approach the Commission during the 1st week of October 2003, when the Hydro inflow position would be largely known, with details of extra requirements of funds for power purchase.
2. Subsequently the following applications were filed by the KPTCL /the ESCOMs:

Application dated	Subject
24.05.2003	Approval of Special Incentive Scheme to the HT industrial consumers at Rs. 3.80 per unit
11.07.2003	Approval of Power Purchase and Other Cost Adjustment (POCA) formula.
04.08.2003	Approval of the additional gap of the KPTCL and the ESCOMs worked out based on actual details of Income and Expenditure for FY03.
07.08.2003	Approval for enhancement of Bulk Supply Tariff (BST) and retail supply tariff consequent on allowing US \$ 0.04 per kwh towards fixed charges payable to Tanir Bavi Power Company Ltd (TBPCL) as per the Arbitration Award.

3. After considering all the above applications together, the Commission had issued the Tariff Amendment Order on 15.12.2003. In the said order the above applications were disposed of as under:
 - a. Special Incentive Scheme to HT industrial consumers at Rs.3.80 per unit approved with certain terms & conditions.
 - b. While the Commission approved additional power purchase cost of Rs.444 Crs. for FY04 arising out of change in Hydro - thermal mix, subject to actuals at the end of the year, it indicated that the proposed POCA formula could be examined while specifying fuel surcharge formula under section 62(4) of the EA 2003.
 - c. On the revenue gap for FY03 claimed by the KPTCL/ESCOMs, the Commission had observed that there is no gap for FY03 to be passed on to the consumers.
 - d. On the additional fixed charge payable to Tanir Bavi Company as sought by the KPTCL, the Commission did not consider it prudent to pass on the burden to the consumers as a pass through in tariff.
4. Arising out of the above, the Commission approved revision of BST and also retail consumer tariff in respect of LT 2(b), LT3, LT5, HT2(a) and HT2(b) categories in the said Order.

2.2 ERC for FY05

1. Filing of the KPTCL for FY 05

- i) The KPTCL had filed its ERC for FY05 during January 2004 showing a revenue gap of Rs.732.35 Crs. and had proposed revision of BST and Transmission Charges to cover this gap. The Commission had communicated the preliminary observations on the ERC to the

KPTCL during January 2004 and reply thereon was provided by the KPTCL in March 2004. However, since the replies were not complete, a rejoinder was issued by the Commission to the KPTCL during April 2004, which was not complied with by the KPTCL. The KPTCL informed the Commission in June 2004 that they have challenged the decisions of the Commission on the earlier ERCs in the Hon'ble High Court of Karnataka and that action on the ERC (for FY05) may be taken after the disposal of the appeals before the Hon'ble High Court. Thereafter, the Commission could not proceed further in the matter of the ERC for FY05.

- ii) The KPTCL filed the revised ERC for FY05 on 10.12.2004, duly proposing revision of BST and transmission tariff indicating a combined gap (for FY03 to FY05) of Rs.250 Crs. and had requested the Commission to approve the same. Since the KPTCL had earlier requested the Commission to await the decision of the Hon'ble High Court on the pending appeals, the Commission informed the KPTCL in its letter dated 16.12.2004 as to why it should not await the Orders of the Hon'ble High Court before proceeding on the revised ERC for FY05. Since the KPTCL did not furnish any reply on this, the revised ERC for FY05 was returned during February 2005. In response, the KPTCL stated that the revised ERC filing for FY05 was without prejudice to their right to revise the application based on the Orders of the Hon'ble High Court and requested the Commission to approve the ERC. The Commission accepted the request of the KPTCL and treated the ERC application as a petition along with ERC for FY06 and informed the KPTCL vide its letter dated 28.02.2005 to publish a summary of their applications in the Newspapers calling for objections as required under the KERC (Tariff) Regulations.

2. Filing of ESCOMs for FY 05

- i. All the four ESCOMs had filed their ERCs for FY05 on 16.01.2004 indicating revenue gap as follows:

BESCOM:	Rs. 1502.22 Crs.
MESCOM:	Rs. 402.36 Crs.
HESCOM:	Rs. 939.81 Crs.
GESCOM:	Rs. 623.57 Crs.
Total:	Rs. 3467.96 Crs.

The ESCOMs had not indicated in their filing as to how the above gap would be met. They had also not proposed any tariff revision to meet the gap. Instead, the ESCOMs stated that the Commission in its order dated 15.12.2003 has not considered/disallowed certain expenses, which has been challenged by them before the Hon'ble High Court of Karnataka in the appeal in MFA No. 3456-3457/2003 and MFA No. 481/2004 and that the ERC for FY05 being filed is without prejudice to their rights and contentions in the said appeal. It was further submitted by the ESCOMs that tariff filing to bridge the gap will be made by the ESCOMs based on the outcome of the order that may be passed or by reason of any subsequent development. Hence the ESCOMs had requested only to approve the ERC for FY05 and allow them to amend the ERC and also to file application for tariff revision based on the above submission.

- ii. The Commission noted that the ESCOMs had not complied with the provisions of the KERC Tariff (Amendment) Regulations, 2002 regarding filling the gap and hence vide its letter dated 28.01.2004, returned the ERCs of the ESCOMs stating that, in no situation should ERC be filed without proposing measures

adequate to cover the deficit and that where the ERC filing does not satisfy this situation, it will be liable to be rejected out right.

- iii. The KPTCL & the ESCOMs vide their letters dated 25.02.2004 submitted that it is not possible to propose any plan for bridging the gap as required under the KERC Tariff (Amendment) Regulations, 2002 and the Commission may either accept the ERC as filed or otherwise await the decision of the Hon'ble High Court.

- iv. The Commission vide its letter dated 21.06.2004 stated that "in the light of categorical provisions in the Tariff Regulations, it is impermissible either for the ESCOMs or the KPTCL to state that the Commission would have either to accept the ERC as filed or otherwise to await the decision of the Hon'ble High Court especially in the absence of any interim orders by the Hon'ble High Court in this regard. In the interest of justice, the ESCOMs were provided with another opportunity to file the ERCs, complete in all respects, as contemplated under the Tariff Regulations within 10.07.2004. Further, it was also informed vide the Commission's letter dated 21.06.2004, that in case of default, the ERCs filed on 16.01.2004 are liable to be rejected as already intimated.

- v. In response, the KPTCL on behalf of the ESCOMs, informed vide its letter dated 30.06.2004, that the matter was placed before the Hon'ble High Court of Karnataka and that in the course of hearing, the Hon'ble High Court has observed that the KPTCL may request the Commission not to pass Orders on the ERC of FY05 till final disposal of the appeals. Accordingly, the KPTCL submitted to the Commission to await the orders of the Hon'ble High Court in this regard.

- vi. Subsequently, the KPTCL & the ESCOMs filed the revised ERC for FY05 on 10.12.2004 stating that the filing was without prejudice to the rights and contentions in the appeal filed before the Hon'ble High Court and that the KPTCL/ESCOMs reserve the right to amend the application, if need be, based on the orders of the Hon'ble High Court. As per this filing, the ESCOMs indicated the revenue gap for FY05 as follows:

BESCOM: Rs. 136.15 Crs.

MESCOM: Rs. 324.75 Crs.

HESCOM; Rs. 839.77 Crs.

GESCOM; Rs. 572.32 Crs.

Total: Rs.1872.99 Crs.

This entire revenue gap was shown by the ESCOMs as subsidy receivable from the GoK.

- vii. The Commission vide its letter dated 16.12.2004 informed the ESCOMs that the ERC was incomplete as they had not furnished any commitment letter from the GoK for release of subsidy as required under the Tariff Regulations. The KPTCL/ESCOMs vide letter dated 28.12.2004 requested time to submit the commitment letter from the GoK and as such, the Commission vide its letter dated 19.01.2005 allowed one-week's time to file the revised ERCs in a complete manner. Further, it was informed that filing incomplete ERC would amount to breach of the KERC (Licensing) Regulations, 2004, attracting penal provisions stipulated in the conditions of licence/ Electricity Act and as such the Commission would be constrained to reject the ERCs for FY05 and initiate action against the ESCOMs, if the response was not received within a week's time. **Since the ESCOMs failed to either submit the**

commitment letter from the GoK or to propose measures to meet the deficit within the stipulated time, the Commission vide its letter dated 17.02.2005 rejected the ERCs of the ESCOMs for FY05. Further, in the said letter, the Commission made it clear that any revenue gap of the ESCOMs for FY05 would not be passed on to the consumers through tariff, without prejudice to any other action being initiated on the ESCOMs by the Commission for breach of Licensing Regulations.

- viii. The GoK vide its letter dated 01.04.2005 addressed to the Commission indicated the subsidy allocation for FY05 as Rs.1650 Crs.
- ix. Subsequently, the ESCOMs requested the Commission in April/May 2005 to reconsider their ERCs for FY05, which were earlier rejected by the Commission. Since the ERCs filed for FY05 were incomplete as discussed above and that FY05 was already over, the Commission did not consider it prudent to reconsider their ERCs.
- x. The Commission notes from the Provisional Accounts furnished by the ESCOMs for FY05, the status of income and expenditure for that year as follows:

Table-2.1

ESCOM's Income & Expenditure for FY05 as per Provisional Accounts

Rs. Crs.

Particulars	BESCOM	MESCOM	HESCOM	GESCOM	Total
Energy available (MU)	14670.00	5993.58	6214.94	4656.58	31535.10
Energy sales (MU)	11309.00	4704.98	4505.84	2927.83	23447.65
Loss (%)	22.91	21.50	27.50	37.12	25.65
Receipts					
Revenue from Sale of Power	3673.00	1440.02	941.31	686.47	6740.80
Total Receipts	3673.00	1440.02	941.31	686.47	6740.80
Expenditure					
Power purchase	3343.22	1366.59	1417.13	1061.87	7188.81

Particulars	BESCOM	MESCOM	HESCOM	GESCOM	Total
Repairs & Maintenance	32.51	16.88	17.39	12.02	78.80
Employee cost (incl pension)	250.99	180.47	151.57	91.98	675.01
Adm & Gen expenses	39.31	25.92	27.94	16.75	109.92
Depreciation	98.98	72.78	82.20	33.48	287.44
Interest and Finance charges	34.44	30.53	41.78	18.09	124.84
Less: Expenses capitalised	0.00			-2.27	-2.27
Other Debits	99.80	6.12	17.08	3.89	126.89
Extraordinary items	0.00		0.00	0.00	0.00
Income Tax	2.00	1.54	1.90	0.00	5.44
Net prior period debits/ - credits	-103.29	-1.66	-2.84	0.53	-107.26
Total Expenses	3797.96	1699.17	1754.15	1236.34	8487.62
Less Other Income	11.94	6.25	7.04	4.80	30.03
Annual Revenue Requirement	3786.02	1692.92	1747.11	1231.54	8457.59
Surplus / Gap (-)	-113.02	-252.90	-805.80	-545.07	-1716.79
RE Subsidy	132.94	270.60	825.47	561.00	1790.01
Surplus /-Gap after subsidy	19.92	17.70	19.67	15.93	73.22

The Commission observes that the subsidy accounted by the ESCOMs in FY05 is Rs.1790.01 Crs. as against subsidy of Rs.1650 Crs. indicated by the GoK to the Commission. The Commission notes that in FY05 there is an overall surplus of Rs.73.22 Crs. after considering subsidy of Rs.1790.01 Crs. and that there is no revenue gap as per the accounts.

2.3 ERC for FY06

1. KPTCL ERC for FY 06

- i) The ERC filing for FY06 was due on 30.11.2004. But the KPTCL sought time for filing the ERC stating that the KPTCL & ESCOMs have addressed the GoK, to indicate the amount of subsidy available for FY06. After grant of extension of time twice, (up to 31st January 2005), the KPTCL filed the ERC for FY06 on 16.02.2005. The same was considered along with ERC for FY05 and the Commission informed the KPTCL vide letter dated 28.02.2005 to publish a summary of their applications for FY05 and FY06 in the newspapers

by 10.03.2005 calling for objections as required under the KERC (Tariff) Regulations.

- ii) The KPTCL however did not publish the applications but sought time for filing an amended ERC for FY06 for the reasons that the ESCOMs have modified the power purchase figures after the KPTCL filed the ERC. Meanwhile the Commission took up the preliminary verification of the ERC and communicated the preliminary observations on 07.03.2005. The KPTCL filed an amended ERC for FY06 on 28.03.2005, without complying with the observations made by the Commission on the earlier filing. The amended ERC was returned by the Commission vide its letter dated 04.04.2005, with directions to file the same duly complying with the observations made by the Commission.
- iii) The KPTCL furnished the replies to the observations on 12.04.2005 along with the amended ERC for FY06. The Commission considered the same and directed the KPTCL vide its letter dated 20.04.2005 to publish the summary of applications for FY05 and FY06 in the newspapers latest by 30.04.2005.
- iv) Accordingly the KPTCL published the notices in the following newspapers calling for objections within 30 days from the date of the first publication:

Times of India	-	30.04.2005 and 01.05.2005
Vijaya Karnataka	-	30.04.2005 and 01.05.2005
Hindu	-	30.04.2005 and 01.05.2005
Udaya Vani	-	30.04.2005 and 01.05.2005

2. ESCOMs ERC for FY 06

- i) The ERC filing for FY06 was due on 30th November 2004. But the ESCOMs sought time for filing the ERC stating that the KPTCL & the ESCOMs have addressed the GoK, to indicate the amount of subsidy available for FY06. After grant of extension of time twice, (up to 31st January 2005), the KPTCL/ESCOMs vide their letter dated 28.01.2005 again requested time upto 15.02.2005 for filing the ERCs. **The Commission vide its letter dated 17.02.2005, informed the ESCOMs that any deficit arising out of delay in ERC filing for FY06 would not be passed on to the consumers through tariff and that the same has to be borne by the ESCOMs.**
- ii) The GoK informed the Commission vide its letter dated 21.02.2005, indicating the subsidy allocation for FY06 as Rs.1750 Crs.
- iii) All the four ESCOMs filed their ERC for FY06 along with tariff applications to bridge the revenue gap on 31.05.2005. The same were considered as petitions by the Commission and the ESCOMs were informed vide letter dated 01.06.2005 to publish a summary of their ERCs for FY06 & tariff applications, in the newspapers latest by 10.06.2005 calling for objections as required under the KERC (Tariff) Regulations.
- iv) Accordingly the ESCOMs published the notices in the following news papers calling for objections within 30 days from the date of first publication:

BESCOM

Deccan Herald	-	08.06.2005 & 09.06.2005
Indian Express	-	07.06.2005 & 08.06.2005
Vijaya Karnataka	-	08.06.2005 & 09.06.2005
Samyuktha Karnataka	-	08.06.2005 & 09.06.2005

MESCOM

Indian Express	-	09.06.2005 & 10.06.2005
The Hindu	-	09.06.2005 & 10.06.2005
Udaya Vani	-	10.06.2005 & 11.06.2005
Vijaya Karnataka	-	10.06.2005 & 11.06.2005

HESCOM

Indian Express	-	09.06.2005 & 10.06.2005
Deccan Herald	-	09.06.2005 & 10.06.2005
Vijaya Karnataka	-	09.06.2005 & 10.06.2005
Samyuktha Karnataka	-	09.06.2005 & 10.06.2005

GESCOM

Indian Express	-	09.06.2005 & 10.06.2005
The Hindu	-	09.06.2005 & 10.06.2005
Vijaya Karnataka	-	09.06.2005 & 10.06.2005
Samyuktha Karnataka	-	09.06.2005 & 10.06.2005

2.4 Objections

1. The last date for receiving objections was 10.06.2005 in respect of the KPTCL and it was 20.07.2005 in respect of the ESCOMs on completion of 30 working days from the date of the first publication of advertisement.
2. The KERC (Tariff) Regulations provide for the interested persons to file their objections supported by affidavits in six sets, and such documents which they wish to rely upon and also to indicate if they would like to be heard in person. The Commission has received a large number of objections which are in proper form and many objections and representations which are not in conformity with the procedure

specified. Details of the number of objections received in respect of the ERC /Tariff filing of the KPTCL/ ESCOMs are given below:

Table-2.2
Abstract of Objections received

Objections in respect of the ERC/Tariff filing of :	In proper format	Others	Total
KPTCL	7	-	7
BESCOM	20	7	27
MESCOM	5001	138	5139
HESCOM	124	6	130
GESCOM	18	3	21
Total	5170	154	5324

3. Details of objections received, district wise are given below:

Table-2.3
District wise objections received

District wise Details	In proper format	Others	Total
BESCOM			
Bangalore Urban	16	2	18
Bangalore Rural	-	-	-
Kolar	1	1	2
Tumkur	1	3	4
Davanagere	1	1	2
Chitradurga	-	-	-
Hubli	1	-	1
TOTAL	20	7	27
GESCOM			
Bidar	-	-	-
Gulbarga	-	2	2
Raichur	8	-	8
Koppal	-	-	-
Bellary	3	1	4

District wise Details	In proper format	Others	Total
Bangalore	5	-	5
Hubli	1	-	1
Bijapur	1	-	1
TOTAL	18	3	21
HESCOM			
Bijapur	2	1	3
Bagalkot	1	1	2
Belgaum	5	1	6
Dharwad	6	1	7
Gadag	1	-	1
Haveri	-	1	1
Uttara Kannada	102	1	103
Bangalore	7	-	7
TOTAL	124	6	130
MESCOM			
Udupi	3566	5	3571
Shimoga	579	120	699
Dakshina Kannada	432	12	444
Hassan	246	-	246
Chickmagalur	155	-	155
Mysore	9	-	9
Mandya	-	-	-
Kodagu	3	1	4
Chamarajanagar	-	-	-
Bangalore	10	-	10
Hubli	1	-	1
TOTAL	5001	138	5139
KPTCL			
Bangalore Urban	3	-	3
Bellary	1	-	1
Bijapur	1	-	1
Uttara Kannada	1	-	1
Belgaum	1	-	1
TOTAL	7	-	7
GRAND TOTAL	5170	154	5324

4. The Commission forwarded copies of the objections received in proper form to the respective licensees to send their response to the objectors with copies of the same to the Commission. The KPTCL/ESCOMs have responded to the objectors individually and in the case of the MESCOM a consolidated reply has been provided for a group of objections and copies of the replies have been provided to the Commission.

2.5 Public Hearing

1. The Commission decided to hold public hearing at various locations to hear the objectors. In view of the large number of objections, the Commission considered it appropriate to issue a notice by publication in the newspapers, as on the previous occasions, calling upon the interested objectors to attend the hearings at the respective places. Accordingly, the Commission issued notices in the newspapers indicating the schedule of hearing as follows:

Table-2.4
Public Notices on the Commission's Hearings

Date & Time of Hearing	Venue	Objections relating to
12.08.2005 11 AM	Zilla Panchayat Office, Mysore	MESCOM & CHESCOP
16.08.2005 11 AM	KERC Court hall, Bangalore	KPTCL & BESCO
29.08.2005 & 30.08.2005	DC's office, Dharwad	HESCO
02.09.2005	DC's office, Gulbarga	GESCO
12.09.2005 & 13.09.2005	DC's office, Mangalore	MESCO

2. The Commission published notices indicating the above schedule of hearing in the following News papers on 03.08.2005

Vijaya Karnataka
Prajavani
Kannada Prabha
Udayavani - Mangalore Edition
Samyuktha Karnataka - Hubli & Gulbarga edition
Deccan Herald
Times of India

3. The Commission also indicated in the notice that it would hear the public representatives like Members of Parliament, Members of Legislature and thereafter Consumers Groups/ Associations / Institutions/ Companies and the individual objectors at the end on a representative basis.
4. The Commission conducted hearings at all the above places, as notified. In respect of hearing at Bangalore, since all the objectors present could not be heard on 16.08.2005, the hearing was further adjourned to 17.08.2005 and the same was completed on 17.08.2005 including the responses of the KPTCL/BESCOM. A list of objectors who participated in the public hearings is given in **Annexe-1**
5. Many objectors have presented elaborate objections after detailed analysis of the filings in their written objections as well during the oral hearings. The Commission wishes to appreciate the Objectors for their active participation in the tariff process and also the licensees for their response.
6. The Commission has examined all the objections received in writing as also during the public hearings and also the responses of the licensees thereto. Details of the objections raised and response of the licensees there to are given in **Annexe-2**. Some of the objections and responses have also been discussed in the appropriate portions of this Order and the decisions of the Commission thereon are indicated.

7. Some of the objectors have raised some important preliminary issues on the admissibility of the ERC/tariff filings which are discussed here under:

(i) Some objectors have stated that the KPTCL/ESCOMs have filed their ERC/Tariff filings before the Commission under the provisions of KER Act 1999 as stated in the filings. With the EA 2003 coming into force from 10.06.2003, the Applications should have been filed under the provisions of EA 2003 and therefore, the present applications are not maintainable.

The Commission points out that according to section 185(3) of the EA 2003, the provisions of KER Act 1999, not inconsistent with the provisions of EA 2003, shall apply. Therefore, there is no legal infirmity in the ERC/Tariff applications filed by KPTCL/ESCOMs.

(ii) The ERCs/Tariff applications have not been filed by KPTCL/ESCOMs in time as required under KERC(Tariff) Regulations and therefore the applications are liable to be rejected. KPTCL/ESCOMs in their response have stated that they sought extension of time to file the ERCs from the Commission and the ERCs could be filed only after getting comfort letter from GoK on the subsidy committed.

The Commission has already rejected the ERCs of the ESCOMs for FY05 since those ERCs were not filed by the ESCOMs in a complete manner as required under the KERC (Tariff) Regulations. Further, the Commission has informed the ESCOMs regarding ERC for FY06 that revenue gap if any for FY06 would not be allowed to be passed on to the consumers to the extent of delay in filing the ERCs. With these measures, it is hoped that the ESCOMs will file the ERCs in time, in future. ESCOMs should have taken timely action in this regard. However, the Commission would allow the application for FY06 **with the stipulation that it would not pass on the revenue gap for the period of delay to the consumers through tariff.**

(iii) A few consumers have taken objection for not filing the audited accounts for FY04 and FY05 along with the ERCs by KPTCL/ESCOMs and have also stated that full information as required under the KERC (Tariff) Regulations like Cost of Service etc have not been filed and hence the ERCs should be rejected,

The Commission notes that audited accounts for FY04 have been provided by the KPTCL/ESCOMs to the Commission subsequently and audited accounts have been provided for FY05 by the KPTCL and provisional accounts by the ESCOMs. CoS has not been filed by any of the ESCOMs and these matters are discussed subsequently in this Order. The Commission notes the deficiency in the filing as pointed out by the objectors, but decides to allow the applications since these reasons do not warrant total rejection of the application. The Commission directs the ESCOMs to fully comply with the requirement of the KERC (Tariff) Regulations in future ERCs, and also urge them to get their accounts finalised and audited, in time.

(iv) Many objectors have stated that the ESCOMs have not fully complied with the directives issued by the Commission in the earlier Tariff Orders, as admitted by the ESCOMs themselves in their filings. In this regard, the Commission itself had indicated vide para 4.4.6 of the Tariff Order 2003 that "the Commission wishes to put the ESCOMs on notice at this stage itself that if non-compliance with the directives continues and it is not proven to be for reasons beyond the control of the licensees, the Commission would be constrained to summarily reject any future tariff revision proposals."

The Commission has elaborately discussed the compliance to the directives in **Annexe-3** to this Order. The Commission while agreeing to the views expressed by the objectors that implementation of many

of the directives by the ESCOMs are not to the desired level, considering the request of the ESCOMs, the Commission would like to give six month's time to implement the directives by the ESCOMs as many of the directives are continuing in nature.

2.6 Commission Advisory Committee

The ERC and tariff filings were placed before the Commission Advisory Committee at a special meeting convened for this purpose on 16.09.2005. The points raised in the meeting are discussed in the appropriate portions of this Order and minutes of that meeting are placed at **Annexe-4**.