

No.: N/176/16

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**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BENGALURU**

**Dated : 9<sup>th</sup> March, 2017**

**Present:**

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

**RP No. 17 / 2016**

**BETWEEN:**

- 1) Bangalore Electricity Supply Company Limited,  
K.R. Circle,  
Bengaluru – 560 001
- 2) Chamundershwari Electricity Supply Corporation Limited,  
No.29, Kaveri Grameena Bank Road,  
Vijayanagar, 2<sup>nd</sup> Stage,  
Mysuru – 570 019.
- 3) Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi – 585 101.
- 4) Hubli Electricity Supply Company Limited,  
P.B. Road, Navanagar,  
Hubballi – 580 025.
- 5) Mangalore Electricity Supply Company Limited,  
MESCOM Bhavana,  
Kavoor Cross Road,  
Bejai, Near KSRTC  
Mangaluru – 575 004. ..

**PETITIONERS**

*[Petitioners are represented by Just Law, Advocates]*

**AND:**

Nil ..

**RESPONDENT**

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**ORDERS**

1) The Petitioners – the Electricity Supply Companies (ESCOMs) in the State of Karnataka – have filed the above common Review Petition, against the Orders dated 15.12.2015 passed by this Commission in OP Nos.29 to 32 and 35 of 2015, praying for the following reliefs :

*“(i) Permitting the Petitioners to retain Clause 1.2(c)(2)(iii) in the Energy Service Agreement to be executed with M/s.EESL and incorporate the annual maintenance charges @ 2% in their Energy Service Agreement;*

*(ii) Permit the Petitioners to retain the Return on Equity (ROE) at 15.50% plus tax amounting to 23.48% per annum instead of the 12% previously approved by this Hon'ble Commission vide Order dated 15.12.2015;*

*(iii) Pass such other orders as this Hon'ble Commission may deem fit in the facts and circumstances of the case, in the interest of justice.”*

2) The material facts required for the disposal of this Review Petition may be stated as follows:

(a) The ESCOMs filed a draft Energy Service Agreement to be entered into between themselves and the Energy Efficiency Services Limited (EESL), an agency for implementing the Domestic Efficient Lighting Programme (DELP), before this Commission for approval. The said proceedings relating to each of the ESCOMs have been registered as OP Nos.29 to 32 of 2015 and OP No.35/2015.

- (b) After hearing all the ESCOMs and also the consumers in a public hearing, the Commission issued the Orders dated 15.12.2015 permitting the ESCOMs to facilitate the DELP, as part of the Demand Side Management (DSM) measures under the provisions of the Karnataka Electricity Regulatory Commission (Demand Side Management) Regulations, 2015 and approving the said draft Energy Service Agreement, subject to certain alterations in the terms of the Agreement as noted in the said Orders.
- (c) Article 1.2(c)(2) of the draft Energy Service Agreement contained the guidelines for determining the Programme Cost as follows :

Sl.No. (1)	Particulars (2)	Guideline for assessing Programme Cost per LED Bulb (3)
1	Cost of LED Bulb.	On actuals as determined through competitive bidding.
2	Cost of the Distribution & Awareness.	On actuals as determined through competitive bidding.
3	Annual maintenance charges.	2.00% of the cost of the LED Bulb as determined under Sl.No.1.
4	Debt Interest Cost**	10% per annum.
5	Return on Equity (i.e. 15.50% plus Tax Rate @ 33.99%).**	23.48% per annum.
6	Taxes.	As applicable.
<b>7</b>	<b>Programme Cost per LED Bulb</b>	<b>Sum of Sl.Nos.1 to 6.</b>

**\*\* Programme Cost less adjustment of Sl.Nos.(4 & 5) for upfront payment consumers.**

- (d) In the above-said Orders of this Commission, the item at Sl.No.3 of the Programme Cost, viz., Annual Maintenance Charges, was disallowed and the item at Sl.No.5 of the Programme Cost, viz., Return on Equity (ROE) suggested at the rate of 15.50%, was reduced to 12.00%, without

altering to add the tax rate at 33.99% on the ROE. The reasons given for the same are at paragraph 17(iii) and (v), respectively, of the said Orders, which read thus:

17) *Article 1.2(c)(2) of the draft Agreement provides for guidelines to determine the Programme cost payable by the consumers intending to purchase the LED bulbs by making an upfront payment or payment in instalments.*

(i) XXX XXX XXX;

(ii) XXX XXX XXX;

(iii) *Item No.3 relates to the annual maintenance charges at 2% of the cost of the LED bulb as determined under Item No.1. We are of the considered view that there is no need for the maintenance of the LED bulbs after distribution. Therefore, Item No.3 in the draft Agreement relating to the annual maintenance charges is to be deleted;*

(iv) XXX XXX XXX;

(v) *Item No.5 relates to Return on Equity (ROE) at 15.50% plus Tax Rate at 33.99% on the ROE, the total of which is said to be 23.48% per annum. The Commission is of the view that the ROE proposed is excessive and it is to be restricted to 12% per annum considering the present financial costs;*

(vi) XXX XXX XXX

(vii) XXX XXX XXX"

(e) The following reasons are stated in the present Review Petition for retaining the Annual Maintenance Charges mentioned at Sl.No.3 :

*"... It is pertinent to mention here that in order to implement this project, M/s.EESL incurs expenses on account of logistics, manpower for three years to man the counters where the LED bulbs will be replaced against the defective bulbs, cost of warranty of the products, tendering as well as other incidental expenses. In fact, an engineer is stationed round the clock to replace/resolve any technical issues faced by the Consumers of the Petitioners, in case any complaints are received. This is to primarily ensure that strict quality control measures are followed and the Consumers of the Petitioners are given good quality service. The cost of all these overheads have been factored into the annual maintenance charges, that was proposed to be included in the Draft Agreement, namely 2% of the cost of the LED bulbs. ..."*

- (f) In support of the ROE at the rate of 15.50% (post tax), it is stated by the Petitioners that the same rate of ROE has been allowed to the different entities in the Electricity Sector, therefore the same rate may be maintained.
- (g) As per the DELP, the purchase of the LED bulbs by the consumers is optional. If the consumers opt for purchase of the LED bulbs, they could either opt for upfront payment by bearing the Programme Cost shown at Sl.Nos.1 to 3 and 6, or they could opt for On-Bill Financing by bearing the Programme Cost shown at Sl.Nos.1 to 6. The consumers opting for On-Bill Financing have to pay an Upfront payment of ₹10/- per LED bulb and to pay the balance Programme Cost in ten equal monthly instalments, to be recovered in the monthly electricity bills of such consumers.

- 3) We have heard the learned counsel for the Petitioners and perused the material placed on the record.
  
- 4) The following points would arise for our consideration :
  - (1) Whether the Annual Maintenance Charges as claimed in the Programme Cost is to be allowed? If so, from what date?
  
  - (2) Whether the ROE at the rate of 15.50% (post tax) is to be allowed, as claimed in the Programme Cost? If so, from what date?
  
  - (3) What Order?
  
- 5) After considering the submissions made by the parties and the material placed on the record, our findings on the above points are as follows :
  
- 6) **POINT No.(1)** : *Whether the Annual Maintenance Charges as claimed in the Programme Cost is to be allowed? If so, from what date?*
  - (a) The details of the Annual Maintenance Charges at the rate of 2% of the cost of an LED bulb, which are now stated in the Review Petition, were not stated in the Original Petitions, viz., OP Nos.29 to 32 and 35 of 2015, or in any of the documents produced along with the Original Petitions. Now, for the first time, it has been stated in the present Review Petition that, the Annual Maintenance Charges are essentially

the expenses required for replacing the faulty LED bulbs due to technical defects, free of cost, for a Warranty Period of three years commencing from the date of distribution of the LED bulbs to the consumers. Therefore, the description of this Head could have been, "*Expenses required for replacement of faulty LED bulbs*", for a better understanding of the expenses required under this Head. If the particulars now furnished for recovery of 2% of the cost of an LED bulb towards "Annual Maintenance Charges" were to have been available at the time of passing of the Orders dated 15.12.2015 on the Original Petitions, then this Commission would not have disallowed the entire claim of the Petitioners under this Head.

- (b) The Orders on the Original Petitions filed by the Petitioners were passed on 15.12.2015. The draft Energy Service Agreement to be executed between the ESCOMs and the EESL was approved, subject to the modifications of the terms as indicated in the said Orders. It is a fact that, soon after passing of the Orders dated 15.12.2015, the DELP has been implemented by the concerned parties. As on the date of filing of the Review Petition, more than one year had elapsed from the date of passing of the Orders dated 15.12.2015 on the Original Petitions. The term of the Energy Service Agreement to be entered into between the parties concerned was for one year from the date of execution of the said Agreement. Therefore, if the Energy Service Agreements as per the Orders of this Commission on the Original Petitions had been entered into by the ESCOMs within a reasonable period, the term of

the Agreements would have come to an end by this time. The Petitioners have not specifically stated in the Review Petition, whether they had / had not entered into the Energy Service Agreements with the EESL, as per the Orders dated 15.12.2015 of this Commission. They have also not stated that, for one or the other reason, the DELP cost was calculated as stated in the draft Energy Service Agreement and the same was recovered by the consumers. If the DELP cost is recovered as per the Order dated 15.12.2015, it would be practically not possible to recover the shortfall, if the Annual Maintenance Charges are now allowed with retrospective effect.

- (c) The EESL would be the aggrieved party for having disallowed certain claims as directed in this Commission's Orders dated 15.12.2015 on the Original Petitions. If the parties concerned intend to continue the DELP beyond the one year period of the term of the Energy Service Agreements, they have to enter into fresh Energy Service Agreements, and in that event they may approach this Commission for including the Annual Maintenance Charges. Therefore, we answer Point No.(1), accordingly.

- 7) **POINT No.(2)** : *Whether the ROE at the rate of 15.50% (post tax) is to be allowed, as claimed in the Programme Cost? If so, from what date?*

Regarding the claim of ROE at the rate of 15.50% (post tax), this Commission had reduced it to 12%. The rate of 12% allowed was not a pre-tax ROE. Therefore, the ROE allowed by this Commission was 12%



plus the tax rate at 33.99%, the total of which comes to 18.18%. The EESL, which is undertaking the implementation of the DELP, cannot be compared with different entities under the Electricity Sector. Therefore, we are of the considered opinion that, the ROE at the rate of 12% (post tax) is reasonable in the present case. The impression of the Petitioners that, the total of the ROE was only 12% is not correct and it may be clarified that the total of the ROE rate comes to 18.18%. Therefore, we answer Point No(2) in the negative,

8) **POINT No.(3)** : *What Order?*

For the foregoing reasons, we pass the following :

**ORDER**

The above Review Petition is dismissed, subject to the observations made in this Order.

Sd/-  
(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-  
(H.D. ARUN KUMAR)  
MEMBER

Sd/-  
(D.B. MANIVAL RAJU)  
MEMBER