

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

Dated : 15th December, 2015

Present:

- | | |
|---------------------------------|----------|
| 1. Sri M.K. Shankaralinge Gowda | Chairman |
| 2. Sri H.D. Arun Kumar | Member |
| 3. Sri D.B. Manival Raju | Member |

OP No.32 / 2015

BETWEEN:

Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 025.

..

PETITIONER

[Part in person]

AND:

Nil

..

RESPONDENT

ORDERS

1) In essence, the Petitioner has prayed for the following reliefs in this Petition:

- (a) To allow Petitioner to facilitate for implementation of Domestic Efficiency Lighting Programme (DELP) as part of Demand Side Management (DSM) measures in the entire licence area of the Petitioner;

- (b) To allow Petitioner to recover the Programme cost from consumers in 10 monthly instalments, along with interest in case of default, through their electricity bill, on behalf of EESL;
 - (c) To authorize the Petitioner to treat default in payment of instalments by consumers as "default payment" under Section 56 of the Electricity Act, 2003, read with Conditions of Supply in State of Karnataka (i.e., disconnection of supply in default of payment) or as amended from time-to-time and recover such charges by Suit, cut-off the supply of electricity;
 - (d) To allow the Petitioner :
 - (i) To make monthly Programme payments to EESL;
 - (ii) To approve the Energy Service Agreement proposed to be executed by the Petitioner with EESL; and,
 - (e) To pass necessary orders as deemed fit by the Commission.
- 2) The EESL is a joint venture Company of Public Sector Undertakings (PSUs) under the aegis of the Ministry of Power, Government of India. The objectives of the EESL are as follows :
- (i) To facilitate preparation of energy efficient projects for Demand Side Measures including municipal functions, agriculture, public building, lighting, etc.;
 - (ii) To implement schemes, programmes and policies of central and state governments or its agencies;

- (iii) Partner with private ESCO's and other companies to promote energy efficiency;
 - (iv) To provide consultancy services in the field of energy efficiency, CDM projects and other related areas; and,
 - (v) To identify and impart training to build the capacity of stakeholders.
- 3) With the above objectives, the EESL has prepared a Project Report for LED lightings for domestic consumers with a view to achieve the energy efficiency, thereby to conserve energy and to provide the LED bulbs to the domestic consumers at much lower rate than the market price. The EESL intends to take the assistance of Hubli Electricity Supply Company Limited (HESCOM) for implementing the said project.
- 4) Key elements of the Project are as follows :
- (i) DELP – On-Bill Financial Proposal (DELP Petition) to be submitted by the HESCOM to KERC for approval;
 - (ii) Distribution of LED Bulbs :

The DELP portal with consumer data shall be updated on a real-time basis and distribution of the LED bulbs to registered users can take place via door-to-door delivery after collecting registration number, latest copy of electricity bill, a copy of photo ID proof, a consumer-signed consent-deed and exchange funds. An alternative delivery option is through dedicated distribution

points, such as camps, booths, stalls, counters advertised by the agency in the local media, e.g., local DISCOM officers, retail outlets, resident association officers, schools, etc. To avail the scheme, the consumer shall be asked for the following documents:

- (a) Copy of the latest electricity bill – this ascertains unique electricity service number;
 - (b) Copy of residential proof to ascertain current occupancy (ex.: Aadhar Card, Gas Registration Card, Passport, Rental Agreement, etc.) – the address on the proof must match the address on the electricity bill – electricity bill shall not be accepted as an address proof. This is applicable for the on-bill financing (OBF) consumers;
 - (c) Copy of a photo identity proof – to record who is availing the scheme.
- (iii) The HESCOM shall facilitate collection of monthly instalments from those domestic consumers who have taken the LED bulbs under the OBF payment mode, from their monthly electricity bills and transfer the instalment amount so recovered to the EESL on monthly basis.
- (iv) The HESCOM shall provide payment security for the average monthly payment dues to the EESL through Irrevocable and Revolving Letter of Credit or ESCROW arrangement to the EESL for twelve months or till the complete payment of all dues to the EESL is made, whichever is later; and,
- (v) The EESL extend warranty for replacement of the faulty LED bulbs due to technical defects, free of cost, for three years commencing

from distribution of the LED bulb to the consumer. Technical defects exclude physical damage, outdoor applications, etc.

- 5) As the HESCOM has the responsibility of collecting the monthly instalments from the consumers who take the supply of the LED bulbs on instalments, the HESCOM requests to include the instalment amounts in the monthly energy bills, and in case of a default in payment of instalments, to treat such default as "default payment" under Section 56 of the Electricity Act, 2003 (hereinafter referred to as the 'Act').
- 6) The EESL and the HESCOM have prepared a draft Agreement to be entered into between themselves, for implementation of the Project. The HESCOM requests for the approval of the said Agreement.
- 7) After filing of the Petition, public comments were called for and comments were received from the public. None has opposed the implementation of the proposed Project.
- 8) We have heard the learned counsel for the Petitioner. During the hearing, it was enquired as to whether, the implementation of the present Project would fall under the Demand Side Management Regulations and for non-payment of instalment amounts due by the consumers towards the price of the LED bulbs, the remedy of disconnection of energy under Section 56 of the Act can be approved. The modifications that may be required to

the terms in the proposed Agreement to be entered into between the HESCOM and the EESL were also discussed and considered.

- 9) We may now consider whether the implementation of the proposed Project would fall under the Demand Side Management Regulations. Clauses (4) and (6) of Regulation 5 of the Demand Side Management Regulations, read thus:

“5. DSM Cell, its roles & responsibilities:

- | | | | |
|-----|---|-----|------|
| (1) | XXX | XXX | XXX |
| (2) | XXX | XXX | XXX |
| (3) | XXX | XXX | XXX |
| (4) | <i>The Distribution Licensees may include any relevant DSM Programme (including Multi-State Programme) developed by the Bureau of Energy Efficiency in its perspective plan, as and when such Programmes are announced by the Bureau;</i> | | |
| (5) | XXX | XXX | XXX |
| (6) | <i>The DSM Programme shall be implemented by the Distribution Licensee on its own or through BEE empaneled Energy Service Companies;</i> | | |
| (7) | XXX | XXX | XXX” |

Clause (5) of the Regulation 5 of the said Regulations provides that the DSM programme shall include measures for replacing the existing domestic lighting (CFL/ICL) with LED bulbs. Therefore, the Programme

- under the present Project can be termed as a 'DSM Programme' under Clause (5) of Regulation of the said Regulations.
- 10) It is claimed that the EESL has been set up by the Ministry of Power (MoP), Government of India, as the Implementation Arm of the MoP and the Bureau of Energy Efficiency (BEE). Hence, it can be said that the proposed Project can be treated as a Programme sponsored or developed by the BEE, as contemplated under Clause (4) of the Regulation 5 of the said Regulations. Further, the BEE has recognized the EESL to work as Energy Service Company (ESCO). As such, the Programme can be implemented by the HESCOM through the EESL, as provided under Clause (6) of the Regulation 5 of the said Regulations. Therefore, we are of the considered view that the implementation of the present Project falls under the Demand Side Management Regulations.
- 11) Now, we have to examine whether the dues towards supply of the LED bulbs on instalment-basis could be treated as "default payment" under Section 56 of the Electricity Act, 2003. It is submitted, on behalf of the HESCOM, that any instalment due towards the price of the LED bulbs can be treated as "default payment" under Section 56 of the Act. On a perusal of the said provision, we are of the view that, any instalment due towards the price of the LED bulbs cannot be treated as "default payment" under Section 56 of the Act. The dues, referred to in this Section, should relate to the dues for electricity, or any sum other than a

charge for electricity, in respect of supply of electricity. Therefore, the dues should relate to the supply of electricity or some other dues related to supply of electricity. The collection of dues towards supply of the LED bulbs in monthly instalments does not fall under this Section.

- 12) The purchase of the LED bulbs under the proposed Project by the consumers is optional. If a lumpsum payment is made towards the price of the LED bulbs, there is no question of recovery of the said amount in instalments. However, if the supply of the LED bulbs is done on instalments, then only the question of recovery of dues in instalments would arise. Therefore, if a consumer gives his/her consent to treat such dues as "default payment" and agrees for disconnection of electricity, the supply of the LED bulbs on instalments can be extended to only such consumers.
- 13) The Petitioner has stated in its Petition that the implementation of the proposed Project does not burden it, financially at all and it would be that of an intermediary, who would ensure that the consumers would have access to affordable LED bulbs and that it would only collect the instalment amounts due towards LED bulbs and remit it to the EESL. The claim of the Petitioner that the implementation of the Project does not burden it financially is accepted.
- 14) We have gone through the terms of the draft Agreement, intended to be entered into between the EESL and the HESCOM. We are of the opinion

that the terms of the Agreement would prevail over the Project Report. Therefore, the terms of the Agreement should precisely express the rights and liabilities, duties and responsibilities, of the parties concerned.

- 15) In Article 1.2(d) of the draft Agreement, it is stated that the HESCOM may provide assistance through Meter Readers for the distribution of the LED bulbs to consumers. No other mode or outlets for distribution of the LED bulbs to consumers has been incorporated in this Clause or elsewhere in the draft Agreement. Therefore, the outlets for distribution of the LED bulbs may be considered for insertion under Article 1.2(d) of the draft Agreement.
- 16) Article 1.2(f) of the draft Agreement relates to Warranty for replacement of the faulty LED bulbs due to technical defects, by EESL. It states that replacement of the faulty LED bulbs would be made within a period of five working days from the date of lodging a complaint. There is no clarity as to the person / authority before whom the complaint is to be filed and through which mode the complaint could be lodged. The parties may agree to the places at which the complaint could be lodged, which would allow easy access to the consumers, and in the same manner, the mode of lodging the complaint may also be worked out.
- 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) Item No.1 relates to the cost of the LED bulb as determined through competitive bidding;
- (ii) Item No.2 relates to the cost pertaining to distribution and creating awareness. It is to be determined through competitive bidding;

There can be no dispute for inclusion of the above two Items in the Programme Cost.

- (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) Item No.4 relates to Debt Interest Cost at 10% per annum. The same appears to be reasonable and may be included in the Programme Cost;
- (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) Item No.6 relates to Taxes applicable for sale of the LED bulbs to consumers. There can be no objection for collecting taxes.

- (vii) Item No.7 explains the Programme Cost per LED bulb, which is the sum of the charges stated at Item Nos.1 to 6 above. It is also made clear that, for the upfront payment by consumers, costs indicted at Item Nos.(iv) and (v) above would not be applicable. The Programme cost shall be modified as indicated above.
- 18) The EESL has undertaken for replacement of the faulty LED bulbs, if any, due to technical defects free of cost for three years, from the date of distribution of the LED bulbs to the consumers. A reasonable Performance Guarantee may be sought for from the EESL in this regard. The parties may negotiate amongst themselves on this point.
- 19) Article 2.1 relating to Contract period, states that the Agreement would be valid either till complete payment of all the dues to the EESL is made or till the end of the Warranty period of three years, whichever is later, apart from stating that the Agreement shall come into force on the date of execution by both the parties. The Contract period so described in this Article is an indefinite period. The Contract period or the term of the Agreement should be for a specific period during which the parties are entitled to carry out the terms. The rights and liabilities of the parties arising under the Contract during its validity period, would survive even after the determination of the Contract. Hence, this Article 2.1 be re-drafted specifying the Contract period as one year from the date of execution of the Agreement by both the parties.

20) For the foregoing reasons, we pass the following :

ORDER

- (a) The Petitioner is permitted to facilitate the implementation of the Domestic Energy Lighting Programme (DELP) as part of the Demand Side Management (DSM) measure under the provisions of the Karnataka Electricity Regulatory Commission (Demand Side Management) Regulations, 2015;
- (b) The Petitioner is permitted to collect the Programme cost, i.e., the gross cost of the LED bulbs as approved, from the consumers who voluntarily participate in the DELP and receive such bulbs;
- (c) The Petitioner is permitted to treat the default in payment of instalments under this Programme as "default payment" under Section 56 of the Electricity Act,2003, if the consumer has given his/her consent for it;
- (d) The Commission hereby approves the draft Energy Service Agreement (produced along with the Petition), subject to effecting the modifications of the terms of the Agreement, as indicated in the preceding paragraphs;
- (e) HESCOM shall maintain a separate account pertaining to collection and remittance of the amounts towards sale of the LED bulbs to consumers;

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- (f) Cost, if any, incurred by the Petitioner in implementing the DELP shall not be included in its computation of ARR and determination of tariff; and,
- (g) Both the parties shall follow prudent electricity practice in implementing the Programme and upload the details periodically on their Websites.

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

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

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