

KARNATAKA ELECTRICITY REGULATORY COMMISSION

No.9/2, 6th & 7th Floor, Mahalaxmi Chambers,

M.G. Road, Bengaluru-560 001

Dated 19th November, 2015

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

OP No.17/2015

Between:

Bangalore Electricity Supply Company Ltd.,

A company registered under the Companies Act, 1956 having registered Office at K.R.Circle, Bengaluru -560001 (Represented by ALMT Legal, Advocates)

....**Petitioner**

And

Nil

....**Respondent**

In the matter of:

Modification of formula for determination of FAC

ORDER

S/03/1

Date: **November, 2015**

1. In this Petition, the Bangalore Electricity Supply Company (BESCOM), herein after referred to as the 'Petitioner', has sought modification of the formula for computation of Fuel Cost Adjustment Charges (FAC), notified by the

Commission in its Regulations notified on 22nd March, 2013 and First Amendment thereon notified on 4th December, 2013.

2. The Petitioner has submitted that pursuant to the orders of the Hon'ble ATE, in OP.No.1 of 2011 dated 11th November, 2011, this Commission has issued the KERC (Fuel Cost Adjustment Charges) Regulations 2013 and that after considering the objections and suggestions the said Regulations were amended through the First Amendment issued on 3rd December, 2013 in the matter of allowance/recovery of FAC with reference to overall decrease/increase in the power purchase and computation of sales with reference to approved loss level.
3. It is submitted by the Petitioner that while the formula for computation of FAC as per Regulations merely takes into consideration the change in the variable charges of the State/ Central/ IPP thermal generating stations, it does not take into consideration the variance in capacity charges payable to the generators, the variance in the transmission charges of State / Central transmission utilities and the variance in the power purchase cost of Non-Conventional Energy Sources (NCE).
4. It is further submitted that, the Central Electricity Regulatory Commission and this Commission keep changing the formula for recovering capacity charges from the Central and the State generators respectively. It is also submitted that, this Commission has introduced generic tariff for many of the NCE sources. It is submitted that any change in the law for transmission utilities and generating station will immediately affect the financial position of the distribution licensees. It is therefore submitted that it is just and essential to modify the existing formula for early recovery of the power purchase cost.
5. The petitioner has furnished the factual details of the FAC proposed by the petitioner and the FAC approved by the Commission and also the overall increase in average power purchase cost for the period from July, 2013 to June, 2015. It is the case of the Petitioner that while the overall increase in

average power purchase cost is ranging between 6 paise per unit to 33 paise per unit, the variation in FAC is ranging from one paisa to (-) 17 paise per unit.

6. It is submitted that, the present formula has failed to achieve the objective of improving the financial health of the distribution licensees and also not in compliance of the Hon'ble ATE's Order. The Petitioner has therefore prayed for revision of the formula to take into consideration the increase in cost of power purchase including transmission charges from all the generators.
7. The Commission has carefully considered the written submissions made by the Petitioner and heard the Counsel for the Petitioner. The issues that would arise in deciding the prayer of the Petitioner are as under:

- (1) Whether the Regulations issued by this Commission are contrary to the requirement of the Electricity Act, 2003 and the Order of the Hon'ble ATE?
- (2) Whether the prayer to revise the FAC formula is justified?
- (3) What Order?

8. The above issues are analysed and the Commission's decisions on each of the issues thereon are as under;

9. **Issues No.(1)**

- (i) The provisions of the Electricity Act, 2003, in the matter of Fuel Cost Adjustment Charges are as under:

Section 62(4) *"No Tariff or part thereof may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified".*

- (ii) The Hon'ble ATE in its order dated 11th November, 2011 in OP. No. 1 of 2011 has directed that:

“Every State Commission must have in place a mechanism for Fuel and power purchase cost in terms of Section 62(4) of the Act. The Fuel and power purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating Companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within six months from the date of this order must put in place such formula/mechanism.”

- (iii) The Commission notes that the Electricity Act 2003 (Act) permits amendment of tariff more than once in a financial year only on the fuel surcharge formula. The Hon'ble ATE has also ordered to put in place a mechanism for Fuel and power purchase cost in terms of Section 62(4) of the Act. The Commission considers that the objective of the provisions of Section 62(4) of the Act and also the Orders of the Hon'ble ATE in the matter is to provide for amendment of retail supply tariff fixed during any year due to subsequent changes in the cost of fuel of generating stations as against the fuel cost factored while approving the ARR of the distribution licensee by devising a mechanism as specified in the Regulations. The Commission notes that the Section 62(4) of the Act does not provide for amendment in the retail supply tariff on account of change in power purchase cost due to any factor other than fuel cost (variable cost of generating stations). The Commission, therefore has issued necessary Regulations to put in place a mechanism to pass on the cost of increase in power purchase cost due to increase in fuel cost of the generating stations. The Regulations provide for allowing FAC to be charged on consumers during any quarter owing to increase in FAC along with increase in overall power purchase cost. Further, the Regulations provide for adjustment of any savings in FAC against overall increase in power purchase cost during a quarter without passing on

such savings to the consumers. Thus, the Commission considers that its current Regulations in the matter of FAC are in line with the provisions of the Electricity Act, 2003 as also the Order of the Hon'ble ATE. For the above reasons we hold the issue No.1 in the negative.

10. Issue No.2:

(i) The petitioner has contended that increase in transmission charges would result in increase in overall power purchase cost of the distribution licensees. The Commission notes that the Transmission charges for the year are determined before the commencement of a financial year duly considering the increase in costs of the Transmission utility and the same is factored in the approved Annual Revenue Requirement (ARR) of the Distribution Licensees. The transmission charges are payable based on the capacity allocation of each of the distribution licensees and the same remains unchanged throughout the financial year as approved in the ARR. Thus, the Commission considers that, there is no case for inclusion of increase in transmission charges in the FAC formula apart from it being not provided under Section 62(4) of the Electricity Act.

(ii) The Commission also notes that the generic tariff for renewable energy determined by the Commission during any control period would be applicable to only new plants which get commissioned during the control period and the same is not applicable to already existing plants. The variations, if any, on this account is being factored while approving the ARR in subsequent years. Thus, even this item cannot be factored in the FAC formula even on merit. As already noted by us, Section 62(4) of the Electricity Act also does not provide for it.

(iii) Thus, we hold the issue No.(2) also in the negative.

11. Issue No.(3):

In view of the above, we pass the following

ORDER

The petition is dismissed.

Sd/-

**(M.K.SHANKARALINGE GOWDA)
CHAIRMAN**

Sd/-

**(H.D.ARUN KUMAR)
MEMBER**

Sd/-

**(D.B.MANIVAL RAJU)
MEMBER**