

Nos.: N/59/15, N/78/15, N/44/16, N/45/16 and N/46/16.

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

**Dated : 18<sup>th</sup> August, 2016**

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

**OP No.33/2015**

**BETWEEN :**

Bangalore Electricity Supply Company Limited,  
K.R. Circle,  
Bangalore – 560 001

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**PETITIONER**

*[Represented by Just Law, Advocates]*

**OP No.41/2015**

Chamundeshawari Electricity Supply Corporation Limited,  
No.29, Kaveri Grameena Bank Road,  
Vijayanagar, 2<sup>nd</sup> Stage,  
Mysuru – 570 019

*[Represented by Just Law, Advocates]*

**OP No.34/2016**

Mangalore Electricity Supply Company Limited,  
Paradigm Plaza,  
A.R. Shetty Circle,  
Pandeshwara,  
Mangaluru – 575 001

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**PETITIONER**

*[Represented by Just Law, Advocates]*

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**OP No.35/2016**

Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi – 585 101. ..

**PETITIONER**

*[Represented by Just Law, Advocates]*

**OP No.36/2016**

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

**PETITIONER**

*[Represented by Just Law, Advocates]*

**AND :**

Nil ..

**RESPONDENT**

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**COMMON ORDER**

1) The Petitioners have filed the above Petitions, which have been clubbed together as they are similar in nature, under Section 11(2), read with Section 62 of the Electricity Act, 2003 (hereinafter referred to as the 'Act'), praying for:

- (a) determination of tariff payable by the Petitioners for electricity supplied in accordance with the Government Order bearing No.EN 11 PPT 2015, dated 16.09.2015 by generators; and,

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(b) such other orders as deemed fit by the Commission in the facts and circumstances of the case.

2) The material facts required for the disposal of these Petitions may be stated as follows :

(a) The Government of Karnataka, in exercise of the powers vested in it under Section 11 of the Act, have issued an Order bearing No. EN 11 PPC 2015, dated 16.09.2015, in public interest, with immediate effect, directing all the Generating Companies in Karnataka to operate and to maintain their Generating Stations to maximum exportable capacity and supply all exportable electricity generated to the State Grid for utilization within the State, at the provisional 'tariff' of ₹5.08 per Unit, subject to determination of final 'tariff' by this Commission. This was done in the backdrop of the State facing major power crisis stemmed from a failed monsoon causing severe drought, leading to enhanced power demand, which could not be met due to the partial shutdown of local independent Thermal Power producers, lower storage in State's own Hydro Power Projects, delay in the capacity addition from the proposed new Thermal Power Project in the State and non-availability of corridor for inter-State transmission of power. Alternative arrangement made for purchase of

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power from various other sources on short-term and long-term basis was not expected to meet the demand for power.

- (b) The above directions of the Government have been withdrawn with effect from 01.06.2016, vide Government Order dated 30.05.2016.
- (c) The State Government has fixed provisionally ₹5.08 per Unit, which was the tariff discovered at that time for short-term power procurement through bid route, for supply of power by the generators under Section 11 of the Act and directed the Petitioners to approach this Commission for fixing the 'tariff' for supply of energy by the generators, source-wise.
- (d) The Petitioners, in their Petitions, have submitted that the Government has fixed the 'tariff' to be paid to the generators after taking into consideration the past 'tariff' fixed in the exercises undertaken under Section 11(2) of the Act and the short-term procurement rate and that the same has been done under extraordinary circumstances, in public interest. That in the circumstances, it is just and necessary to approve the 'tariff' fixed by the State Government.
- (e) At this juncture, we observe that, while in the Government Order dated 16.09.2015, the State Electricity Supply Companies were directed to submit a Memorandum on the power situation, within fifteen days from

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the date of the Order and request this Commission to fix the 'tariff' for supply of energy by the generators, source-wise (i.e., Co-generation, Biomass, Captive IPP, etc.) under Section 11 of the Act, the Petitioners have not complied with such directions. The Petitions have been filed much later than fifteen days from the date of the Government Order and there is no request to fix the 'tariff', source-wise. The Petitioners have also not furnished any source-wise power supply details or data, to facilitate such determination by this Commission.

- 3) After admitting the above Petitions, the Petitioners were directed to publish a Notice in the newspapers giving an abridged version of the Petitions and also informing the stakeholders / interested persons to file their response on the Petitions filed by them. Pursuant to the same, the gist of the Petitions has been published in Deccan Herald, an English newspaper, on 09.12.2015 and 24.12.2015, and Samyuktha Karnataka and Vijaya Karnataka, Kannada newspapers, on 09.12.2015 and 24.12.2015.
- 4) The Commission had published a public hearing Notice in two English newspapers, viz., Deccan Herald and Indian Express, and two Kannada newspapers, viz., Samyuktha Karnataka & Vijaya Karnataka, on 07.04.2016, informing the stakeholders and general public that the Commission would hold a hearing on 20.04.2016 to enable interested

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persons to participate and submit their oral or written objections, suggestions / views on the Petitions filed.

- 5) In response to the said notice, the Commission received written submissions only from the following generators stating that when the Order to supply power under Section 11 of the Act was issued by the Government of Karnataka, they had already entered into bilateral contracts to supply RTC power with Telangana and Andhra Pradesh States under medium and short-term open access and entered into Power Purchase Agreements (PPAs) with these States, for supply of power with different capacities.

Sl.No.	Name of the Co-generator	Contracted Capacity (in MW)	Rate at SR periphery ₹ per unit	Net Rate at KPTCL IC point ₹Per unit
1.	Hare Krishna Metallica Pvt. Ltd	5	5.95	5.40
2	Dhrudesh Metasteel Pvt.Ltd., Koppal	8	5.95	5.40
3.	ILC Iron & Steel, Hospet	5	5.95	5.40
4.	NSL Sugars, Bangalore (from three plants)	12 to 23	6.45	5.83 to 5.31

- 6) The above generators further submit that they were supplying the power under medium term and short-term contracts till September,

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2015, after obtaining NOC / concurrence from the SLDC of Karnataka, Telangana and Andhra Pradesh. But the open access was refused by the Karnataka State Load Despatch Centre (SLDC), consequent to the issue of Government Order dated 16.09.2015, imposing the directions under Section 11 of the Act. These generators (except NSL Sugars) stating that, as they had already entered into a contract to supply power to Telangana and Andhra States before the imposition of Section 11 of Act, have prayed for allowing a minimum price of ₹5.40 per Unit and to refund the excess charges collected towards import of energy at temporary tariff. The other generator, viz., NSL Sugars, has requested for fixing a minimum price of ₹5.83 per Unit, which is the rate as per the agreement made with Telangana and ₹5.31 per Unit, being the rate agreed to by Andhra Pradesh, and also sought for a direction for payment of the differential tariff of 75 Paise per Unit for the energy admitted from Aland unit and 23 Paise per Unit for the energy bills admitted from Koppa and Tungabhadra Units, along with the applicable Surcharge.

- 7) The above generators have also submitted that, the import of energy by the generators is being charged at temporary tariff, which was never charged earlier. That the temporary tariff for import of energy is applicable only when the power is transmitted through open access and does not apply during the period when the power is being

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supplied to the Petitioners under Section 11 of the Act. It is further submitted that, the due date of payment is being reckoned from the physical receipt of the bill and not from the date of reading.

- 8) It is also contended that, the Petitioners have deducted rebate in the bills even for payment of bills after due date, but have not paid the Surcharge for delayed payments (which was provided in the Government Order).
- 9) During the public hearing held 20.04.2016, the learned Counsel representing the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners, has urged for adoption of the provisional 'tariff' of ₹5.08 per Unit fixed by the Government as the tariff in respect of all the generators. Subsequently, the Petitioners have furnished the details of the energy supplied under Section 11 of the Act by the generators and also the quantum and price paid for the power purchased from power exchanges. The Petitioners, however, have not furnished the source-wise classified details of supply of energy by the generators. The Petitioners have not replied to the specific issues raised by some of the generators. The representative of Harekrishna Metallica Private Limited has reiterated the written submissions made earlier.
- 10) We now proceed to examine the issues involved in these Petitions.



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- 11) Section 11(2) of the Act requires this Commission to consider the manner in which the adverse financial impact of the directions issued under Section 11(1) of the Act on any generating company may be offset. This Commission, while disposing of the Petitions filed in the earlier years seeking reliefs under Section 11(2) of the Act, has adopted two different approaches for considering the manner in which the adverse financial impact could be offset.
- 12) This Commission, in its Order dated 24.03.2011 in OP No.16/2010 and other connected Petitions, has observed thus :

*"19. In the light of the observations of the Hon'ble High Court cited above, as also the decision of this Commission in OP No.24/2008, we have come to the conclusion that offsetting adverse financial impact of a generator would mean fixing a rate keeping in view both the revenue that a generator could have realized by selling the power in the short term market, subject to the said rate covering the costs of generation, so that the generating company does not incur a loss. In these cases, we have found that the estimates of the cost of generation vary from one company to another as also one category of generators to another. We have therefore come to the conclusion that for the present purpose, it would be adequate if the rates determined are generally what generating companies could realize from the market when they are generating power without being compelled by Orders under Section 11 of the Act. The rates prevailing in the market during the relevant period therefore become relevant for our consideration."*

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13) This Commission, on 22.5.2013, in its Order in OP No.14/2012 and other connected Petitions, has observed thus :

*“37) Thus, in view of the non-availability of corridor for procurement of power from the Northern and Western zones to the State, the power obtained under Section 11 orders of the State Government could also have commanded a price similar to the one obtained in the tenders if the generators who later supplied power in compliance of Section 11 orders could participate in the tenders called on behalf of the utilities. This leads us to the conclusion that the principle earlier adopted by this Commission, of giving the generators the rate they would have got in the market but for the orders issued under Section 11, requires that the generating companies which have supplied power in compliance of Section 11 orders in the present case need to be paid at the rates comparable to the rates obtained by the State's distribution utilities in the bidding process rather than at the weighted average rate of bilateral transactions for short term power at the national level, as done in the earlier cases of supply under Section 11 of the Act.*

*38) We are aware that the weighted average prices of short-term transactions of power at the national level are generally a more stable indicator of the price of electricity than the prices obtained by the utilities in any State. However, when the utilities in the State were unable to access sufficient power from outside the state / zone for reasons of corridor constraints and have, by due process of bidding according to guidelines, discovered the price of electricity in the regional market, it is clear that the said price reflects the price that may be commanded by a generating company in the State. In other words, the short-term power market becomes clearly segmented due to the corridor constraints mentioned above and the*

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*generators who have supplied power in this case are entitled to payment at rates prevailing in the State as ascertained through the bidding process adopted."*

- 14) We need to determine the suitability of either of the above two approaches in the present case. Apart from the absence of details of the cost of generation from different sources, which could have helped in source-wise rate, we find merit in the earlier stand of this Commission that, source of power may not be relevant and, fixing a rate that is generally applicable to all generators coming under Section 11(1) of the Act would be adequate.
- 15) Out of the sixty two generators who supplied energy to the Petitioners under Section 11(1) of the Act, only four generators have submitted that they were selling power at a higher rate than the provisional rate offered in the Government Order under Section 11. These four generators admittedly were selling power to other States under short-term open access, which was granted to them on a monthly basis with the consent of the SLDC, which withdrew its consent after issuance of directions under section 11(1) of the Act by the State Government.
- 16) We notice that none of the generators (including the four generators who have filed objections to these Petitions) have furnished any cost data to demonstrate that, they would incur a loss by supplying the power pursuant to the Government Order issued under Section 11 of the Act at the provisional rate fixed, nor have they opposed such rate

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fixed. The four generators mentioned earlier have only indicated the rates at which they had contracted to sell power to Telangana and Andhra Pradesh States under open access.

- 17) The State, in June, 2015, has resorted to purchase of short-term power of 700 MW at the bid-discovered rate of ₹5.08 per unit during the period from 25.08.2015 to 31.5.2016, which was adopted provisionally in the Government Order issued under Section 11(1) of the Act. Subsequent to the conclusion of the bids in the State of Karnataka, we notice that the rates in the short-term energy market have shown wide fluctuations, month on month, during the period from September, 2015 to May, 2016, when the Order issued under Section 11(1) was operative. The monthly weighted average rates of Short-term RTC power in the bilateral trade through traders, as published by the Central Electricity Regulatory Commission (CERC), are as follows :

<b>Month</b>	<b>Quantum of Energy through bilateral trade (MU)</b>	<b>Weighted average rate for the month (RTC) ₹ / unit</b>
Sep. 2015	5814.67	4.35
Oct. 2015	4570.50	4.92
Nov. 2015	4709.50	5.37
Dec. 2015	5294.69	5.42
Jan. 2016	4699.94	4.10
Feb. 2016	4092.38	4.06
Mar. 2016	3926.57	3.97
Apr. 2016	4375.67	3.91
May.2016	4931.86	3.70
<b>Weighted average rate</b>	<b>42416.05</b>	<b>4.45</b>

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- 18) From the above data, we notice that the short term prices have fallen sharply from January, 2016 onwards. The lowest price in May, 2016 is ₹3.70 per unit, while the highest price in November, 2015 was ₹5.42 per unit, showing wide fluctuations. It would be fair to assume that, the measures taken by the Central agencies to strengthen and augment inter-State transmission lines, as also in increasing the coal availability and generation capacity, have influenced such price reduction. It would also be fair to assume that this changed situation would have resulted in discovery of a lower rate than ₹5.08 per unit through bidding by the State Distribution Utilities, in our considered view, had such bidding process been initiated later than June, 2015. Hence, adoption of a uniform rate of ₹5.08 per unit for the period when the Government Order under Section 11(1) of the Act was operative, would not be justified.
- 19) We may also point out that, the price that would be obtained through bidding would necessarily be higher than the rate prevailing in the market, because of certain inherent features of the bidding process. In the bidding process, only those who can assure a minimum quantum of power as per the schedules of the procurer can participate in the bid and there are clauses to punish financially, the successful bidders who fail to comply with the supply schedules. The Distribution Utilities would be factoring in payment of a premium for assured and firm

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supply of power from big bidders to meet with their planned supply. Such is not the case in respect of generators supplying power pursuant to the Government Order issued under Section 11(1) of the Act.

- 20) In the circumstances, we are of the considered opinion that, it would be justified and proper to consider the price of power supplied through bilateral contracts as the basis for price determination under Section 11(2) of the Act, and also to provide for a fair additional compensation towards adverse local factors in the transmission corridor, etc., that the local generators would have realized in their price in the short-term market. We recognize that it is difficult to quantify exactly the additional compensation that needs to be allowed in the present case. We are of the considered opinion that, an additional amount of 5% over the weighted average short-term rate of ₹4.45 per unit would be appropriate. Thus, the aggregate rate works out to ₹4.67 per unit.
- 21) We would like to note that, the majority of the generators who have supplied power to the Petitioners are bagasse-based co-generation plants and that the generic tariff determined by this Commission in respect of bagasse-based co-generation projects is comparable to the above weighted average short-term rate. This Commission, in its Tariff Order dated 01.01.2015, has fixed revised tariff for bagasse-based co-generation projects, as follows :

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[₹ / KWhr]

Year	With PPAs signed as per 2005 Tariff Order and earlier	With PPAs signed as per 2009 Tariff Order	Average
2015-16	4.28	4.83	4.55
2016-17	4.45	5.00	4.72
Weighted Average during the Section 11 period (i.e., from September, 2015 to May, 2016)			4.59

Similarly, for old rankine cycle-based biomass projects, the weighted average rate during the period, in which the Government Order issued under Section 11(1) of the Act was operative, works out to ₹4.67 per unit. We note that this Commission has not determined any generic tariff in respect of waste heat recovery generation plants and oil-based generation plants, which had supplied power as per the Government Order issued under Section 11(1) of the Act. Likewise, in the case of Thermal Units operated by the State Government Undertakings also, the generation tariff fixed for the various Units commissioned at different dates varies from ₹3.99 per unit to ₹4.821 per unit. Thereby, the rate in respect of any other Thermal Unit supplying power pursuant to the Order issued by the State Government under Section 11(1) of the Act would be in the same range.

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- 22) The phrase, "such other circumstances affecting public interest", used in the explanation to Sub-Section (1) of Section 11 of the Act, covers severe scarcity of electricity for distribution to the various categories of consumers in the State. Therefore, while fixing the price of electricity for offsetting the adverse financial impact of such a direction on the Generating Companies, the public interest is to be kept in mind.
- 23) The rate discovered in a competitive bidding would always be on the higher side when there is severe scarcity of electricity in the State or regions, that too, when there is a corridor constraint for importing power to the southern region States from the other regions of the country. Therefore, the rate discovered during the period when there is scarcity of electricity in the State would always be higher than the rate that could be discovered during the normal circumstances. Therefore, we are of the considered view that the weighted average prices of short-term transactions of power at the national level have to be preferred over the rates discovered in the short-term competitive bidding of the State.
- 24) It may be noted that, the non-availability of corridor for procurement of electricity from the Northern and Western zones to the State has been prevailing at least for the past one decade. The corridor constraint was not specifically brought to the notice of this Commission, while disposing



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of OP No.16/2010 and other connected Petitions, but it was brought to the notice only while disposing of OP No.14/2012 and other connected cases.

- 25) Therefore, we hold that, out of the two principles earlier adopted by this Commission, the principle stated in OP No.16/2010 is more appropriate to the present case.
- 26) We find that, certain other issues raised by some of the generators relating to commercial settlement of payments between the Petitioners and the generators, as also the tariff applicable on the energy imported by the generators, do not fall within the purview of the disposal of the present Petitions. We do not wish to delve into such issues, which need to be taken up separately by the generators.
- 27) For the foregoing reasons, we pass the following orders:

**ORDER**

- (i) The generators, who have supplied power to the Petitioners (excluding the power supplied in accordance with any subsisting Power Purchase Agreement with the Petitioners) during the period from September 2015 to May, 2016 in terms of the directions of the Government of Karnataka, vide its Order

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dated 16.09.2015 issued under Section 11(1) of the Electricity Act, 2003, shall be paid at the rate of ₹4.67 (Rupees Four and paise Sixty Seven) only per KWhr, with such rebate or surcharge, as the case may be, in terms of the said Government Order;

- (ii) The concerned Electricity Supply Companies (ESCOMs) shall issue Notice to recover the excess amount paid, if any. If any Generating Company fails to pay the excess amount received by it within 30 (thirty) days from the date of receipt of the Notice from the concerned ESCOM, it shall be liable to pay interest at 1.5% (one point five percent) per month from the date of default till the date of payment; and
- (iii) The original of this Order shall be kept in OP No.33/2015 and a copy each thereof shall be retained in OP No.41/2015, OP No.34/2016, OP No.35/2016 and OP No.36/2016.

Sd/- (M.K. SHANKARALINGE GOWDA) CHAIRMAN	Sd/- (H.D. ARUN KUMAR) MEMBER	Sd/- (D.B. MANIVAL RAJU) MEMBER
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