

No.N/12/12

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION BANGALORE**

**Dated : 3<sup>rd</sup> October, 2012**

1. Sri M.R. Sreenivasa Murthy Chairman
2. Sri Vishvanath Hiremath Member
3. Sri K. Srinivasa Rao Member

**Review Petition No.4/2012**

**BETWEEN**

Hukkeri Rural Electric Co-operative Society Ltd.,  
HUKKERI – 591 309  
(Represented by M/s. Shridhar Prabhu Associates,  
Advocates)

... **Review Petitioner**

**AND**

NIL

1. This review petition is filed by the petitioner for review of the orders of this Commission dated 07.12.2011 in the matter of determination of tariff.
2. The Petitioner is a Co-operative Society and the sole distributor and retail supplier of electricity for Hukkeri Taluk, Belgaum District. The Petitioner has sought review of this Commission's tariff order dated 07.12.2011 on the ground that the order suffers from several errors apparent on the face of the record, resulting in prejudice to the petitioner in the matter of truing up of accounts for FY10 and FY11, determining RoE considering MAT of 20.000775% instead of income tax of 30%, creation of Regulatory Asset instead of increasing IP set subsidy payable by the Government of Karnataka. The Petitioner prays to

review and recall the Tariff Order dated 07.12.2011 on the above grounds and pass such other orders as deemed fit.

3. The Commission heard the matter on 29.03.2012. The Counsel for the petitioner submitted that the facts have been narrated in the review petition which may be taken into consideration.

4. In the review petition, the petitioner has made the following prayers:

a) *“Call for the entire records pertaining to the Petitioner available with the office of the Hon'ble Commission;*

b) *Review and Recall the impugned order dated 07.12.2011, to the extent of taking into account a sum of Rs.2677.26 lakhs as other income in FY10 and adjusting the same against the subsidy entitlement of the Petitioner to be receivable from the Government of Karnataka as IP set Subsidy and Revenue Subsidy in FY10 to FY13 respectively, by allowing this review petition;*

c) *Review and Recall the impugned order dated 07.12.2011, to the extent of grossing up of MAT in RoE and consequently include income Tax liability at the rate of 33% on RoE, in the Annual Revenue Requirement of the Petitioner for FY12 and FY13, respectively.*

d) *Review and Recall the impugned order dated 07.12.2011, to the extent of creation of regulatory asset of Rs.160.00 lakhs in ARR of FY12, and consequently, revise the IP Set subsidy receivable from Government of Karnataka to that extent in FY12; and*

e) *Revise the interest payable on consumer deposit in FY13 from Rs.232.73 lakhs instead of Rs.209.75 lakhs, and allow the consequent changes in Table 4.7 to 4.10 of the impugned order.*

f) *Consequentially:*

i) *Declare that the Petitioner is entitled for IP Set subsidy of Rs.304.42 lakhs and Revenue subsidy of Rs.57.16 lakhs, from Government of Karnataka, in FY10;*

- ii) *Declare that the Petitioner is entitled for IP Set Subsidy of Rs.1750.12 lakhs and Revenue Subsidy of Rs.150.01 lakhs from Government of Karnataka in FY11;*
  - iii) *Declare that the Petitioner is entitled for IP Set subsidy of Rs.5437.25 lakhs, from Government of Karnataka, in FY12; and*
  
  - g) *Grant carrying cost on the amount receivable by it, either as IP set subsidy or revenue subsidy or a pass through in the subsequent tariff at a rate as considered appropriate by the Hon'ble Commission.*
  
  - h) *Allow cost of this Petition as a pass through.*
  
  - i) *Grant such other and further relief as the Hon'ble Commission deems fit to pass under the facts and circumstances of the case, in the interest of justice."*
5. Under Section 94(f) of the Electricity Act, 2003, this Commission has power to review its orders in the same manner as a Civil Court under the Code of Civil Procedure and review its orders. Therefore, in order to maintain a Review Petition under Order XLVII Rule (1) of CPC, the Review Petitioner has to establish that he has discovered a new and important matter or evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the Order sought to be reviewed was passed, or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, he desires a review of the Order passed.
6. The Commission has considered the review petition and the points raised by the review petitioner in the following paragraph.
- i) The review petitioner has submitted that Rs.2677.26 lakhs considered as other income by the Commission during the APR of FY10 needs to be reviewed for the reason that this amount comes

from reversal of power purchase cost for FY09 based on the Commission's Order at the time of true up.

During FY09 power purchase cost as recognized by the review petitioner in his books of accounts was of the order of Rs.7127.97 lakhs and as per the true up undertaken by the Commission for FY09, the power purchase cost considered was to the extent of Rs.4876.04 lakhs only, thus the difference is only Rs.2251.93 lakhs and not Rs.2677.26 lakhs as it comprises of the difference of Rs.2251.93 lakhs- power purchase cost variation and other income of Rs.425.33 lakhs. The Commission considers expenditure and income for the relevant year at the time of true up with reference to the amount indicated in the audited accounts. The Commission therefore accepts that the claims of the society is justifiable to the extent of Rs.2251.93 lakhs. To this extent the order needs to be corrected. Accordingly, the review petitioner is entitled for relief of Rs.2251.26 lakhs out of Rs.2677.26 lakhs and Rs.425.33 lakhs is only to be recognized as other income for FY10. Resultantly Rs.2251.93 lakhs included in the other income of Rs.2677.26 lakhs is to be excluded for recognizing the other income and the amount has to be carried forward to the Annual Revenue Requirement of FY13. **Thus the Commission decides to allow this amount of Rs.2251.26 lakhs to be carried forward to the subsidy payable by the State Government for FY13.**

- ii) As regard to the claim of the review petitioner for allowing income tax at 33% on estimated taxable income (RoE) as he is a Co-operative society, the commission notes that RoE determined on the basis of estimates for FY12 is subject to review at the time of APR for FY12. The Commission has examined the provisional accounts for FY12 submitted by the review petitioner, and it is seen that the society has not suffered any income tax as the petitioner did not generate profit. Therefore there is no error in the order passed.

**Accordingly, the Commission cannot consider the claims of the petitioner.**

iii) The review petitioner has claimed interest on consumer security deposit of Rs.232.73 lakhs instead of Rs.209.75 lakhs allowed by the Commission. The claim of the review petitioner is based on RBI circular No.RBI/2011-2012/396 and Ref.No.MPD.BC.352/05.03.004/2011-12 dated February 13, 2012. The quoted circular stipulates the bank rate as 9.5% p.a. Whereas as per KERC (Interest on Security Deposit) Regulations, 2005, *"the licensee shall pay interest on security deposit of the consumer at the bank rate prevailing as on 1<sup>st</sup> April of the financial year for which interest is due."* Since the interest payable at the bank rate as prevailing on the 1<sup>st</sup> of April of 2011 for 2011-12 was 6% per annum, the contention of the petitioner to allow interest on consumer deposit at 9.5% p.a for 2011-12 is not tenable. **Therefore the claim of the review petitioner is rejected.**

iv) The review petitioner has submitted that IP set subsidy should be revised upward to the extent of Regulatory Asset of Rs.160.00 lakhs created in ARR of FY12. The Commission in its Tariff Order dated 07.12.2011 had noted that the average cost of supply based on approved expenditure for FY11 the revenue should have been Rs.1989.00 lakhs and the revenue from categories other than IP sets for FY11 was of the order of Rs.1829.00 lakhs and as a result there was a short fall in revenue by Rs.160.00 lakhs for categories other than IP sets during FY11. Since such a short fall has occurred due to increase in average cost of supply and non revision of tariff for FY11, the Regulatory Assets of Rs.160.00 lakhs reserved in the tariff order for FY12 will be fully absorbed in the tariff order to be issued for FY13. Therefore **the Commission does not find any justification for reconsideration.**

- v) In regard to allowing carrying cost and other cost on the claims made by the petitioner, the Commission notes that, the petitioner had filed the tariff revision application on 21.03.2011 though was required to be filed before 30.11.2010. Thus there is a delay in filing Tariff application. Therefore consequent cost due to the delay in filing the application cannot be passed on to the consumers, and hence **the Commission rejects the claim for carrying cost.**

In terms of the above the review petition is disposed of.

Sd/-  
**(M.R. SREENIVASA MURTHY)**  
**CHAIRMAN**

Sd/-  
**(VISHVANATH HIREMATH)**  
**MEMBER**

Sd/-  
**(K. SRINIVASA RAO)**  
**MEMBER**