No.N/16/09

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE

Dated this 11th December 2009

1. Sri K.P. Pandey Chairman
2. Sri Vishvanath Hiremath Member
3. Sri K. Srinivasa Rao Member

Case No. OP 08/2009

Between

M/s MPPL Renewable Energy Private Limited
No.29, Maliks Building, 1st Floor, Hospital Road
BANGALORE - 560 001 .... Petitioner
(Represented by its Advocate Mrs. Radhika Kolluru)

And

1. The Managing Director
   MESCOM
   Paradigm Plaza, 4th Floor
   A.B. Shetty Circle
   MANGALORE – 575 001

2. The Managing Director
   KPTCL
   Kaveri Bhawan, Kempegowda Road
   BANGALORE – 560 009

3. The Principal Secretary
   Energy Department, Govt. of Karnataka
   Vikasa Soudha, Vidhana Veedhi
   BANGALORE – 560 001 .... Respondents
(Represented by its Advocate Sri Sriranga)

1. The petitioner which owns a biomass generating plant at Malavalli has filed this petition seeking approval for payment of Rs.5.50 per unit by the respondent Mangalore Electricity Supply Company Limited (hereinafter referred to as MESCOM) which is fixed pursuant to the GO No. EN 65 EEB 2008 Bangalore dated 27.1.2009.

2. On issuance of notice the respondents have put in appearance through their counsel and have supported prayer made by the petitioner. Further
respondents have submitted that there was acute shortage of power on account of scanty rainfall and demand for power was going up unabated and therefore for them and Government there was no other alternative except to procure the power even though it will cost more than what they were getting through the PPAs in the interest of consumers. They have submitted that considering the circumstances under which the GO came to be issued and the requests submitted by them Commission may kindly approve the rates specified in the GO so that the amount paid to the generators will get added to the power cost of the year.

2. As the issue involved in this petition was of a general nature and any order passed in this petition will have a bearing on the purchases made by the distribution companies under the said GO from co-gen and other biomass generators and consumers as well, Commission decided to hear the general public also. Accordingly a notice was issued through the newspapers inviting the suggestions / objections from general public / consumers if any.

3. In response to the notice several consumer representatives promptly appeared before the Commission on 12.11.2009 and made their submissions. It was the general contention of the consumer’s representative that the additional cost paid by the ESCOMs for the power purchased shall not be allowed as power cost and the generators shall be paid only at PPA rates as otherwise it will burden the consumers. They further submitted that since additional cost has been paid by the ESCOMs at the instance of the Government, the Government shall bear the said cost.

4. We have carefully considered the submissions made by the petitioners and the views expressed by the consumer representatives.

5. It is undisputed that there was deficit in rainfall during the year 2008 and the power generally available was not adequate to meet the demand. To make available the power to the maximum level to the public the Government intervened and issued an order under Section 11 of Electricity Act, 2003 on 30.12.2008 making it mandatory for the generating companies of the state to
generate the electricity at maximum PLF and supply the same to the Distribution Licensees. In this order the Government also fixed tariff for the electricity to be supplied at Rs.6.50 per unit for the cogeneration plants of sugar companies and Rs.5.50 for the biomass generating plants. It is an admitted fact that pursuant to the GO, the ESCOMs of the State have purchased the power supplied by the generating companies under the GO and have made the same available to the general public and in some cases they have made payments also.

6. The question arises for consideration is whether Commission shall allow the additional cost incurred by the distribution companies for paying extra electricity charges to the generating companies pursuant to the GO referred to above.

7. In our considered opinion the whole thing could have been handled in a much better way by the Distribution Companies. Though the distribution companies have a duty to procure the power required for the State and supply the same to the consumers under the Licensing Conditions, there was no reason for the distribution companies for not approaching the Commission immediately after the GO was issued seeking the approval for the payment to be made by giving all the details that have been gone into while determining the rates specified in the GO, so as to make the whole process transparent and consumers are made aware of the State’s efforts to meet the shortage and the price they have to bear. The provisions of Electricity Act, 2003 are very clear on the powers of the Commission and duties of distribution companies. Section 62 empowers only the Commission for determining tariff of electricity supplied by a generating company to a distribution licensee. Hon’ble Supreme Court in the case of BSES Vs. Tata Power [(2004)1SCC195] has categorically held that it is only the Commissions, set up under the Electricity Act, 2003, that are empowered to determine the tariff. No doubt the Government has been empowered under Section 11 of the Electricity Act, 2003 to issue directions to the Generating Company of the State to generate the power in extraordinary circumstances; however, it is still the appropriate Commission which has to determine the rates to offset the adverse financial impact on the generators on account of the direction issued under sub section (1) of Section 11. The distribution companies
instead of seeking and obtaining approval for the rate by duly furnishing all the material details at which they were directed to pay to the generating company by the Government have come now much later after the period is over for an approval, while the tariff paid has become a fait accompli.

8. As regards the contention of the consumer representatives that the payment made for the additional power shall not be allowed to be passed on to the consumers and shall be borne by the Government which has compelled the Distribution Companies to purchase the power at the rate fixed by it in our view is not fair nor acceptable as none of the consumers raised any issue when the power was procured by the companies under the GO. Further, the consumer representatives have not disputed the fact of purchase of power and supply of the same to the consumers.

9. The Commission does not appreciate the approach of the distribution companies in procuring power and seeking post facto approval. However, since the State had exercised the powers conferred on it under section 11 for the first time, the distribution companies have purchased the power pursuant to the said Government Order for the first time, there were compelling reasons for procuring the additional power, the short term purchase regulation by the Commission was not in place and the case relating to the scope and ambit of the power of the Government under Section 11 is pending before the Hon’ble High Court of Karnataka, Commission, as a one time measure, approves the payment made to the generating companies including the petitioner as per the rates fixed in the GO. This amount incurred for extra power shall be treated as a Regulatory Asset and shall be passed on to the consumers in equal proportion in each year of the next control period. The Commission also directs that hereafter the Licensees shall effect purchases, even for short term, only in accordance with short term power purchase Regulations.

Sd/-
(K.P. PANDEY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER