

**No.N/48&49/03**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 30<sup>th</sup> July 2009**

**Present**

<b>1. Sri K.P. Pandey</b>	<b>Chairman</b>
<b>2. Sri Vishvanath Hiremath</b>	<b>Member</b>
<b>3. Sri K. Srinivasa Rao</b>	<b>Member</b>

**OP No. 33/2003**

**In the matter of Application filed by KPTCL / ESCOMs for approval of  
ERC filing for the year FY04 and the Tariff Filing**

**Karnataka Power Transmission Corporation Limited (KPTCL)  
Bangalore Electricity Supply Company Ltd. (BESCOM)  
Mangalore Electricity Supply Company Ltd. (MESCOM)  
Hubli Electricity Supply Company Ltd. (HESCOM)  
Gulbarga Electricity Supply Company Ltd. (GESCOM) ... Applicants**

**ORDER**

1. The Division Bench of the Hon'ble High Court of Karnataka, vide its Order dated 07.11.2008, in MFA Nos. 3456/2003 & MFA No.3457/2003 filed by Karnataka Power Transmission Corporation Limited (KPTCL) against the Commission under Section 41 of Karnataka Electricity Reforms Act, 1999, has directed the Commission to reconsider the claim of the appellant regarding increased cost incurred by the appellants on account of poor monsoon and also cost factors like bonus, interest liability of the appellant, etc., of the Tariff Order 2003 by giving proper opportunity to the appellant and the general public

2. After notice, we have heard the parties to reconsider the Tariff Order 2003 afresh keeping in view, the observations of the Hon'ble High Court.

3. On 18.06.2009, counsel appearing for Karnataka State Small Industries Association submitted that one of the Members of the Commission was a 'Law Officer' of the appellants when the 2003 Tariff Order was passed and therefore he may like to recuse himself in deciding this matter. We have considered this submission before considering the other aspects of the matter.

4. Verification of records maintained in this case reveal that the member in question has neither signed the pleadings nor appeared for the appellants. The position of the 'Law Officer' in an organization is akin to that of a lawyer appearing for the party. The lawyer always pleads the case of his client and will have no personal interest in the matter. It is the deciding authority which passes the Order on merit and in accordance with law. It cannot be disputed that the Member who was the Law Officer of the appellants had no personal interest in the matter. The appellants undisputedly are the Government companies and the decisions are taken by its Managing Director / Board. Further he will have no contribution so far as facts are concerned, as they have to be assimilated based on the records. As 'Law Officer' he may have rendered an opinion based on the Law prevailing or may have taken action to file the application or appeal based on the decision of the competent authority. Merely because the Law Officer was following the cases cannot be construed as the 'Law Officer' had personal interest or has influenced a decision. We therefore overrule the objection raised for the member's presence in the decision making.

5. Now coming to the issues raised in this matter, the counsel appearing for the appellant namely, KPTCL, BESCO, HESCO, GESCOM, MESCOM fairly submitted that the grievance made out by them before the Hon'ble High Court of Karnataka regarding shortfall in its revenue on account of poor monsoon and other points have been addressed by the Commission in the Tariff Amendment Order of 2003 dated 15.12.2003 and in subsequent orders and therefore they don't survive for a decision. Their only prayer was to consider the appellant's contentions while considering the tariff applications in future.

6. Sri Prabhakar representing FKCCI also fairly submitted that the grievances made by the appellants since have already been met as submitted by the counsel for the appellants the matter may be disposed of on that ground.

7. We agree with the parties that the issues raised in the appeal are fairly covered by subsequent orders of the Commission.

8. Therefore considering the above and placing the submission of the parties that the grievances made out have already been met in the Tariff Amendment Order of 2003 and subsequent orders of the Commission, we dispose of this petition without going into the merits of the issues raised reserving the liberty to the parties to raise any of points if they are so advised in the future proceedings and Commission will consider them on merit and in accordance with law.

Sd/-  
(K.P. PANDEY)  
CHAIRMAN

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd/-  
(K. SRINIVASA RAO)  
MEMBER