

Nos.: N/29/12, N/31/12, N/32/12, N/49/12, N/51/12, N/52/12, N/53/12, N/79/12.

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

Dated : 22nd May, 2013

- | | |
|-------------------------------|---|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member (will pronounce
Separate order) |

1] OP No.14/2012

BETWEEN :

Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
[Represented by Shri Prashant T. Pandit , Advocate]

... **Petitioner**

AND

Nil

... **Respondent**

2] OP No.15/2012

BETWEEN :

Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
[Represented by Shri V.Y. Kumar, Advocate]

... **Petitioner**

AND

Nil

... **Respondent**

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3] OP No.16/2012

BETWEEN :

Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
[Represented by M/s.Justlaw , Advocates]

... **Petitioner**

AND

Co-generation Plants, Bio-mass Plants, Captive Generators,
Independent Power Producers, etc., who do not have PPA
with ESCOMs in Karnataka

... **Respondents**

4] OP No.25/2012

BETWEEN :

Shree Renuka Sugars Ltd
B.C.105, Havelock Road
Cantonment
Belgaum – 590 001
[Represented Shri Prabhuling K. Navadgi, Advocate]

... **Petitioner**

AND

- 1) Government of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
Bangalore – 560 001
- 2) Karnataka Power Transmission Corporation Limited
Cauveri Bhavan
Bangalore – 560 009

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

- 3) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029
 - 4) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101
 - 5) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
 - 6) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
 - 7) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
 - 8) Power Company of Karnataka Limited
KPTCL Building, Cauveri Bhavan
Bangalore – 560 009
- ... **Respondents**

[Respondents Nos. 2, 3, 7 & 8 represented by M/s.Justlaw, Advocates, Respondent No.5 represented by Shri V.Y. Kumar, Advocate and Respondent No.6 represented by Shri Prashant T. Pandit, Advocate]

5] OP No.29/2012

BETWEEN :

Star Metallics & Power Private Limited
Metal & Ferro Alloys Plant
Mariyammanahalli
Near Hospet – 583 222
Bellary District
[Represented Shri Prabhuling K. Navadgi, Advocate]

... **Petitioner**

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

AND

- 1) Government of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
Bangalore – 560 001
- 2) Karnataka Power Transmission Corporation Limited
Cauveri Bhavan
Bangalore – 560 009
- 3) Power Company of Karnataka Limited
KPTCL Building, Cauveri Bhavan
Bangalore – 560 009
- 4) State Load Despatch Centre – Karnataka
No.28, Ananda Rao Circle
Race Course Road
Bangalore – 560 009
- 5) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 6) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
- 7) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
- 8) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029
- 9) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101

... **Respondents**

*[Respondents Nos. 2 to 4, & 6 to 9 represented by M/s.Justlaw, Advocates
Respondent No.5 represented by Shri V.Y. Kumar, Advocate]*

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

6]

OP No.30/2012

BETWEEN :

Shamanur Sugars Ltd.

No.374, 4th Main

P.J. Extension

Davanagere – 577 002

[Represented Shri Prabhuling K. Navadgi, Advocate]

...

Petitioner

AND

- 1) Government of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
Bangalore – 560 001
- 2) Karnataka Power Transmission Corporation Limited
Cauveri Bhavan
Bangalore – 560 009
- 3) State Load Despatch Centre – Karnataka
No.28, Ananda Rao Circle
Race Course Road
Bangalore – 560 009
- 4) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 5) Power Company of Karnataka Limited
KPTCL Building, Cauveri Bhavan
Bangalore – 560 009

...

Respondents

*[Respondents Nos. 2 & 5 represented by M/s.Justlaw, Advocates
Respondent No.4 represented by Shri V.Y. Kumar, Advocate]*

7]

OP No.31/2012**BETWEEN :**

Himatsingka Seide Ltd.
10/24, Kumara Krupa Road
High Grounds
Near Sindhi High School
Bangalore – 560 001

...

Petitioner

[Represented by Shri Prabhuling K. Navadgi, Advocate]

AND

- 1) Government of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
Bangalore – 560 001
- 2) Karnataka Power Transmission Corporation Limited
Cauveri Bhavan
Bangalore – 560 009
- 3) State Load Despatch Centre – Karnataka
No.28, Ananda Rao Circle
Race Course Road
Bangalore – 560 009
- 4) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
- 5) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 6) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
- 7) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029

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8) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101

9) Power Company of Karnataka Limited
KPTCL Building, Cauveri Bhavan
Bangalore – 560 009

... **Respondents**

*[Respondents Nos.2 to 4 & 6 to 9 represented by M/s.Justlaw, Advocates
Respondent No.5 represented by Shri V.Y. Kumar, Advocate]*

8] OP No.40/2012

BETWEEN :

Ugar Sugar Works Limited
317, 9th Main, 14th Cross
Jayanagar, 2nd Block
Bangalore – 560 011

... **Petitioner**

[Represented by Shri Prabhuling K. Navadgi, Advocate]

AND

1) Government of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
Bangalore – 560 001

2) Karnataka Power Transmission Corporation Limited
Cauveri Bhavan
Bangalore – 560 009

3) Power Company of Karnataka Limited
KPTCL Building, Cauveri Bhavan
Bangalore – 560 009

4) State Load Despatch Centre – Karnataka
No.28, Ananda Rao Circle
Race Course Road
Bangalore – 560 009

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- 5) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 6) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
- 7) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
- 8) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029
- 9) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101

... **Respondents**

[Respondents Nos.1, 2, 6 & 7 represented by M/s.Justlaw, Advocates]

COMMON ORDER

1) The Government of Karnataka, in exercise of the powers vested in it under Section 11 of the Electricity Act, 2003 (hereinafter referred to as the Act), have issued an Order bearing No. EN 2 PPC 2012, Bangalore, dated 27th January, 2012, 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 tentative tariff of Rs. 5.30 per Unit, subject to determination of the final tariff by this Commission. The period of operation of the Government Order

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is specified as from 1st February 2012 to 31st May, 2012 or until further orders, whichever is earlier. The said Government Order also gives in its preamble, the reasons for directing the Generating Companies to supply electricity to the State Grid only.

2) Pursuant to the above-said Government Order which directs all the State Electricity Supply Companies (hereinafter referred to as 'ESCOMs') to approach this Commission to fix the tariff for supply of energy by the generators under Section 11 of the Electricity Act, 2003 (hereinafter referred to as the 'Act'), the Distribution Companies in the State have filed the present Petitions, OP Nos.14, 15 and 16 of 2012, under section 62 of the Act. They have requested the Commission to fix the tariff for supply of electricity by Generators made in compliance with the Government's Order under Section 11 of the Act, for the period from February, 2012 to May, 2012. In their petitions, among others, they have highlighted the fact that bids invited for procurement of both RTC and peak power have not yielded the desired results, and due to non-availability of corridor they have not been able to obtain supply of even contracted quantities from outside the State.

3) Some of the Generating Companies referred to in the Cause Title above have also presented Petitions under Section 11(2) of the Act, praying for offsetting the adverse financial impact suffered by supplying electricity

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generated by them to the State Grid during the period from February, 2012 to May, 2012 at the rate of Rs.5.30 per Unit.

4) As the determination of the price of power in these cases will ultimately have an impact on the Consumers, we have also held a Public Hearing on 30.8.2012, after issuing a Public Notice calling upon interested persons to make their submissions, if any, in the matter, in addition to the written submissions already made in response to the Notification calling for objections / suggestions.

5) As the prayers of all the Petitioners are based on a common Order dated 27.1.2012 issued by the Government of Karnataka, with the consent of the parties, we have heard them together. We have also considered the averments made in the Petitions, Applications and Objections filed, and the material placed by all the parties in support of their respective prayers and submissions.

6) Before dealing with the submissions of the stakeholders, we deem it proper to extract the relevant operative part of the Government Order, which is as follows:

"GOVERNMENT ORDER NO. EN 2 PPC 2012, BANGALORE,
DATED 27TH JANUARY 2012

In the circumstances explained in the Preamble and in exercise of the powers conferred under section-11 of Electricity Act 2003, the State Government hereby issues the following directions

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in the public interest with effect from 1st February 2012 and will be in force till 31st May 2012 or until further orders whichever is earlier :

- a) *All the Generators in the State of Karnataka shall operate and maintain their generating stations to maximum exportable capacity and shall supply all exportable electricity generated to the state Grid for utilization within the State subject to following conditions :*
 - i) *The tentative tariff for supply of energy by the Generators under section 11 and who do not have Power Purchase Agreement with Electricity Supply Companies shall be Rs.5.30/unit subject to determination of final tariff by Hon'ble KERC.*
 - b) *The above tariff is provisional and is subject to approval of Karnataka Electricity Regulatory Commission (KERC).*
 - c) *The above proposal shall not be applicable for the Intra-State Generators who are having valid PPA's with the Distribution Licensees in the State of Karnataka.*
 - d) *All State Electricity Supply Companies (ESCOMs) shall submit a Memorandum on the power situation within 15 days from date of this order before the Karnataka Electricity Regulatory Commission (KERC) and request to fix the tariff for supply of energy by Generators source-wise (i.e., Cogeneration, Biomass, Captive, IPP, etc.) under Section 11 of Electricity Act 2003."*
- 7) *Shri Sriranga, the learned Counsel who appeared for the Petitioners-ESCOMs and the Government of Karnataka, relying on the facts recorded in the Government Order dated 27.1.2012, submitted that the government had to issue the Order under Section 11(1) of the Act in the interest of the consumer public, so that adequate power supply was maintained in the State. Further, he*

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submitted that the Government of Karnataka had fixed Rs.5.30 per Unit for the electricity supplied by the Generating Companies, subject to approval of this Commission, considering the rates obtained earlier by ESCOMs through Tenders called for short-term purchase of power. He also submitted that the principles to be adopted for fixing the rate for the electricity supplied under Section 11 of the Act had already been decided by this Commission in OP No.16/2010 and the said principles have also been approved by the Hon'ble Appellate Tribunal for Electricity (ATE). Therefore, the Commission may consider adopting the same set of principles while fixing the rates in the present cases.

8) In the public hearing held on 30.8.2012, Shri Prabhuling K. Navadgi, the learned Counsel who appeared for the Petitioner-Generating Companies, submitted that the petitions, OP Nos.14, 15 and 16 of 2012, filed by ESCOMs are not maintainable as ESCOMs had no role to play in the matter. It was only between the Government and generating companies who have supplied power in compliance of Government orders under Section 11(1) of the Act. It is the Government which is responsible to offset any adverse financial impact on the generating companies as may be determined by the Commission. Further, he has also argued that the present proceedings do not fall within the ambit of Section 62 of the Act, as it did not involve 'supply' of electricity but 'compulsory sale'. Subsequently, he has submitted that though the principles adopted by this Commission in OP No.16/2010 have been approved by the Hon'ble ATE in appeal Nos.141 and 142 of 2011, this Commission can still consider other

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principles for determining the rates, keeping in view the specific circumstances existing in each case. He therefore submitted that while fixing the rates, this Commission may be justified in considering the offers received by the Generators from their prospective Purchasers. He submitted that in the case of M/s.Renuka Sugars (Petitioner in OP No.25/2012), the said Company had received an offer at Rs.6.50 per Unit and therefore the same may be adopted for fixing the rate in the said case. Further, he submitted that in the case of M/s.Star Metallics (Petitioner in OP No.29/2012), this Commission may have to consider the cost incurred by the said Company for generation of electricity, as the generation of the said Company was in the first year and accordingly the cost of generation was high, as compared to the existing Plants. In the case of M/s. Shamanur Sugars (OP No.30/2012), he has argued that the Commission may consider the IEX rates while deciding on the rate to be fixed for their supply. On behalf of the Petitioner in OP No.31/2012 - M/s. Himatsingka Seide Ltd., he submitted that the Petitioner has incurred Rs.7.50 per Unit towards cost of generation of electricity and therefore the Petitioner has incurred a loss of Rs.2.20 per unit on account of supplying the electricity to the State Grid at Rs.5.30 per unit pursuant to the orders of the Government dated 27.1.2012 under Section 11 of the Act and this has to be offset by this Commission. As regards the Petitioner in OP No.40/2012 – M/s. Ugar Sugar Works Ltd., he submitted that on account of the Government Order dated 27.1.2012, the Petitioner has been deprived of the higher rate offered in IEX and thereby has suffered a loss to the tune of Rs. 19.07 Crores, which needs to be offset by the Commission.

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9) During the course of the Public Hearing on 30.8.2012, Shri P. Rajashekar and Shri M.G. Prabhakar, on behalf of FKCCI, submitted that the Commission may fix a reasonable rate and Rs.5.30 per Unit would be reasonable. They requested the Commission to have a relook into the percentage of power allotted to different ESCOMs under the Government Order. Shri K. Jayaraj Pai of DSIA, Mangalore, submitted that Rs.5.30 per Unit was reasonable. Shri Rajaram Shetty of KASSIA submitted that the Commission has to fix a reasonable rate protecting the interest of the consumers, particularly the industrial sector.

10) After the above Petitions were heard on 10.12.2012 and reserved for orders, the Petitioner in OP No.31/2012, viz., Himatsingka Seide Ltd., filed a Memo on 1.3.2013, praying for re-hearing the case in view of the subsequent pleadings made by the Respondents in their Memo dated 29.1.2013. Accordingly, the case was recalled on 7.3.2013 for further hearing and the learned counsel for both the parties were re-heard. On the request of the Petitioner's counsel, he was granted time to file written submissions on behalf of the Petitioner by 11.3.2013 and the case was reserved for orders again. The Petitioner has filed its written submissions on 18.2.2013. Further, the Petitioner in OP No.40/2012, viz., Ugar Sugar Works Ltd., filed an Application under Order VI Rule 17 of the Code of Civil Procedure on 6.3.2013, seeking permission for correction of figures in the main Petition from Rs.16.36 Crores to Rs.19.07 Crores, on the ground that there was a typographical error. In view of this, the case was again recalled on

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21.3.2013 and further hearing of both the parties was held and the Respondents were directed to file objections, if any, to the Application filed by the Petitioner, within 5 days and the case was reserved for orders again. The Respondents have filed their objections to the Petitioner's Application on 1.4.2013.

11) We have considered the various submissions of the parties and also kept in view the view the earlier decision of this Commission in OP No.16/2010, and the Hon'ble ATE's Order thereon in Appeal Nos.141 and 142 of 2011, in order to determine the rate at which the Generators, who supplied electricity pursuant to the Government Order dated 27.1.2012 issued under Section 11 of the Act, have to be paid.

12) Before we proceed with the main issue of determination of the rate payable to the generators for supply of electricity made pursuant to the order dated 27.1.2012 issued under Section 11(1) of the Act, we would like to dispose of the issue raised by Shri Prabhuling K. Navadgi, learned counsel for the generating companies, on the question of jurisdiction of this Commission in determining the tariff payable to the generators under Section 11 of the Act. In our view, this question need not detain us for long. Under the scheme of the Electricity Act, 2003, the Regulatory Commissions have been conferred with ample powers for regulation of purchase, supply and distribution of electricity. Section 86(1)(a) of the Act reads as under :

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“86. Functions of State Commission.- (1) *The State Commission shall discharge the following functions, namely,-*

(a) *determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State”*

A reading of Sub-Section 1(a) of the provision extracted above leaves no doubt that this Commission is empowered to determine the tariff for generation supply and as the case may be, within the State, be it under Section 62 or under Section 11 of the Act, as the State Government is not empowered under the Act to determine the tariff. In our view, under Section 11 of the Act, the State is empowered only to direct the generating companies generate and supply, but it has not been conferred with the power to fix the tariff. It is only the State Commission which is empowered under the Act, as stated above. Precisely for this reason, it appears, the Government while issuing the order under section 11 of the Act has specifically stated that the price provisionally fixed by it has to be got approved from the Commission. In Appeal No.10/2012 filed before the Hon'ble ATE, it was contended that the State Commission had no jurisdiction to interfere with or vary the orders passed by the State Government, including the rate of supply which was to be applied on the energy supplied, as the Commission under Section 11(2) of the Act can only offset adverse financial consequences suffered by the generating companies. The Hon'ble ATE, after considering the arguments advanced before it on behalf of the generators as

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well as the distribution licensees, has held that, "the State Commission has jurisdiction under Section 11(2) of the Act to decide the rate of power supplied by the Appellant in compliance with the State Government's direction under Section 11(1) of the Act." Therefore, the contention of Shri Prabhuling K.Navadgi that this Commission cannot determine the prices for the electricity supplied pursuant to the directions issued by the Government under Section 11 of the Act, has to be rejected.

13) It is contended on behalf of Renuka Sugars that this Commission may consider the offer of Rs.6.50 per Unit received by that company from M/s.Reliance Energy Trading Limited (RETL) for the period 12.2.2012 to 31.5.2012 as the market price. We have perused the offers dated 15.1.2012 received by the Petitioner from RETL, which indicate that the latter was in a position to buy power from the Petitioner's units subject to the terms and conditions set out in the offer, including a per unit rate of Rs.6.50. The offer letters from RETL mention that the offer was subject to "reconfirmation of this offer by RETL". Looking at the terms of the offer in this case, we do not consider it as indicative of market price, as a mere offer cannot give the basis for fixing the rate, and an offer unless accepted does not fructify into a Contract which is enforceable in law. Further, such offers may vary in the case of each generator and may depend on various factors to be negotiated between the parties. Eventhough the Petitioner has contended that the offers had resulted in contracts, no evidence is furnished in support of the contention. Also, the offer referred to was subject to

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reconfirmation and therefore was not a firm offer and the same cannot be relied upon by the Petitioner.

14) It is contended by the learned Counsel, who appeared for M/s.Star Metallica's Petition, that the cost of generation in his client's case was Rs.7.44 per Unit, as certified by their Chartered Accountant. In this regard, it was put to the Counsel for this Petitioner that for a captive unit to be economically viable, the cost of generation has to be generally lower than that of a distribution licensee's tariff, particularly when the captive unit has to meet the entire power requirement of an industry. In response, it was submitted on behalf of the Petitioner that the rate of Rs.7.44 per Kwh included a profit and return on equity of Rs.1.52 and the net cost of power was Rs.5.92 per Unit. This, according to the Petitioner, is comparable to the distribution licensee's retail tariff in the area, which was Rs.5.94 per Unit up to April, 2012 and later Rs.6.15 per Unit. Therefore, it was advantageous for the Petitioner to generate electricity from the captive plant rather than obtain supply from the local distribution company.

15) In the light of the above submission of the Counsel, we have looked into the cost structure of this generating unit as furnished by the Petitioner. In the break-up of the cost of generation given by the Petitioner, fuel cost per Kwh is shown as Rs.5.03, taking the landed cost of coal at Rs.4,600/- per tonne, with a gross calorific value of Rs.4,200/- Kcal. However, the Petitioner has not provided details of the Station Heat Rate and the specific consumption of coal by the unit,

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even though the same was sought during the course of the hearing. According to the 2009 Tariff Regulations of the Central Electricity Regulatory Commission, the Design Heat Rate of coal-based generating plants commissioned after 2009 is given as ranging between 2,300 Kcal/Kwh to 2,176 Kcal/Kwh, yielding a Gross Station Heat Rate (GSHR) of 2,450 Kcal/Kwh to 2,317 Kcal/Kwh. However, since these norms are applicable to larger generating units of more than 200 MW capacity, we cannot take the CERC Regulations as the basis for arriving at the cost of fuel for the smaller capacity generating station of the Petitioner.

16) We have seen that recently, the U.P. Electricity Regulatory Commission has issued Regulations, specifying Terms and Conditions of Generation Tariff in October, 2012, after circulating a discussion paper. These regulations specify a GSHR of 2,800 Kcal/Kwh for Thermal Power Plants of 0 to 50 MW capacity using imported coal. Taking 2,800 Kcal/Kwh with an auxiliary consumption of 8.5%, the Net Station Heat Rate works out to 3,060 Kcal/Kwh. This gives a specific consumption of 0.728 Kg of coal per Kwh. and a fuel cost of Rs.3.06 of coal per Kwh (at Rs.4,600 per MT of coal), which may be rounded off to Rs.3.10, as fuel cost, inclusive of the cost of oil of about two ml. per unit.

17) The Respondents in this case have also submitted calculations of fuel requirement in the case of cogeneration units in sugar factories which use coal in the absence of bagasse. These smaller capacity thermal units (often less than 50 MW) have a station heat rate of about 3,700 Kcal, as assumed in the Tariff Order

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for Renewable Energy issued by this Commission on 11.12.2009. This gives a specific consumption of about 0.80 Kg of coal per Kwh. At the price of Rs.4,600 per MT of landed cost of imported coal indicated by the Petitioner, the cost of coal works out to about Rs.3.70 per Unit and not Rs.5.03 per Unit as claimed by the Petitioner.

18) Considering the above discussion and the norms for determining the fuel cost for generating stations like that of the Petitioner, we are unable to accept the cost of generation as worked out by the Petitioner as normal. The Petitioner in fact admitted during the course of the hearing that its Plant was new (commissioned in January, 2011) and therefore its cost of generation is somewhat high.

19) It is submitted by Shri Prabhuling K. Navadgi that as the entire electricity generated by his Client's Plant was supplied to the State Grid in view of the non-off-taking of the same by the captive consumers, it will be proper to fix the rate keeping in view the actual cost of generation of the Unit of the Petitioner. In our view, the cost of generation of this Plant, as projected by the Petitioner, will not be an appropriate basis while determining the rate at which the Generator has to be compensated, as the cost of generation of this new Plant was admittedly high as, perhaps, the plant still had to stabilize its generation. Generally, such abnormal costs are to be absorbed by the promoters and cannot be passed on to the market. At any rate, if this Petitioner had gone to the market for selling

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the electricity generated during the period in question, it would have got the rate prevailing in the market and not more than that irrespective of the fact that the cost of generation was more than the market rate.

20) The contention in OP No.30/2012 and other petitions that the generating companies should be paid the IEX rate prevailing during the period of operation of the Order under Section 11(1) cannot also be accepted for the reasons cited in our Order in OP No.16/2010, i.e., "the quantum of power traded through the exchange is hardly about 5% of the total power consumed in the country and the rates in the exchange keep fluctuating very frequently." This order has been upheld by the Hon'ble ATE in Appeal No.141/2011 and other connected cases, dated 3.10.2012.

21) The submission of Shri Prabhuling K. Navadgi, the learned Counsel appearing for the Petitioner in OP No.31/2012 that the cost of generation incurred by his client is Rs.7.50 per Unit and the Government having paid Rs.5.30 per Unit for the electricity supplied, there is adverse financial impact to an extent of Rs.2.20 per Unit which needs to be offset by this Commission, also does not commend acceptance. From the cost details furnished by the Petitioner, it is seen that the Petitioner's plant uses imported coal costing about Rs.3300 per MT as fuel. However, the per KWH cost of fuel is claimed to be Rs.5.53 and interest cost another Rs.0.98. We consider these projections to be unrealistic as explained in the earlier paragraphs dealing with the claim of the Petitioner in OP

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No.29/2012. Also, these figures do not agree with the assumptions of cost of production in the Petitioner's project report, which has also been submitted to us. Further, when a similar contention was raised in the earlier Petition OP No.40/2010 filed by the very same Petitioner, this Commission, vide its common Order dated 24.3.2011, had rejected the same and had adopted the weighted average market rate principle. Aggrieved by the said Order of the Commission, the Petitioner had filed Appeal No.141/2011 before the Hon'ble ATE and had raised the same contention then before the Hon'ble ATE. The Hon'ble ATE, at Paragraphs 9.10 to 9.14 of its Order dated 3.10.2012, has rejected the said contention and held as follows :

"9.10 Another point raised by the generators is that the State Commission did not consider the actual cost of production though the data was furnished by the Appellants.

9.11 We find that even though the principle adopted by the State Commission in fixing the rate was price of electricity in short term market provided the rate covers the cost of generation so that the generating company does not incur a loss, the State Commission did not actually consider the actual cost of generation to check if the generating companies would incur any loss at the price fixed by the State Commission. The reason given by the State Commission for not considering the same is that the generation cost data furnished by the various generators varied.

9.12 We have examined the generation cost data furnished by the Appellants in Appeal nos. 141 and 142 of 2011. We observe that the claims made by the Appellants are based on the principles

used in determining the tariff of a generating company for supply of power for long term under Section 62 of the Act on cost plus basis and not on the principles to be adopted for short term trading for a period of three months. The Appellants themselves have argued that principles of tariff determination u/s 62 will not be applicable in this case where the rate is to be determined u/s 11(2) by the State Commission. Thus the Appellants can not claim the tariff on the principles for determination of tariff for long term basis on cost plus basis u/s 62 of the Act. We feel that for Appellants' captive power plant the price based on short term market rate decided by the State Commission should definitely cover the incremental cost of generation to generate the additional power for supply to the distribution licensee plus a reasonable margin, so that the generator does not suffer loss.

9.13 We find that the parameters on which the cost of production has been claimed by the Appellants are on higher side. For example in Appeal no. 141 of 2011, the Appellant has claimed auxiliary consumption of 14.9% which is very high and the Appellant has not indicated the station heat rate and the heat used in the captive process. The Appellant has also claimed 16% margin over cost per unit including interest cost @ 12% which is not in line with the accepted economic principles which only allow return on equity. Thus the claim of the Appellant is high and is not based on the accepted economic principles. Similarly, in Appeal no. 142 of 2011, the Appellant has made the claim on the normative plant load factor of 80% instead of taking the actual PLF during the period April-June, 2010 when they were asked to maximize generation. The heat rate of TG of 3500 kcal/kWh and auxiliary consumption of 12% are also high. The heat used in captive process has not been indicated.

9.14 The Appellants Power Plants are cogeneration plants and have been installed for captive use and are expected to have a high efficiency. Only the power surplus to the requirement of the captive use is sold by the Appellants. At this stage, for the purpose of the present cases, what is required to be seen by us is that the Appellants do not incur any loss in supplying power in compliance of the State Government's direction when the price is fixed by the State Commission on the basis of price of electricity in the short term market. We are not inclined to go into the estimated loss of profit considering the return on investments on the generation assets of the Appellants which will be depending on the perceptions of generators regarding return on investment and as the supply was for only on short term in which the principles of cost plus tariff including specified return on investment will not be applicable. However, we have to ensure that the price of supply decided by the State Commissions covers the variable cost plus a margin. We find that the variable cost of the plant even on the parameters and calculations furnished by the Appellants which in our opinion are on higher side, is less than Rs. 5/- per unit. Further, the case of the Appellants is that they have not been able to recover the cost of generation calculated with the required return on capital investment, depreciation, etc. but it is not their case that they have not been able to recover the incremental cost of generating the additional power for supply to the distribution licensee. Thus, we reject the claim of the Appellants regarding fixing of price based on cost of production at Rs. 6.50 per unit."

In view of the Order of the Hon'ble ATE referred to above, the Petitioner cannot raise the very same contentions again and plead for payment on the basis of the assessed cost of its generation.

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22) Shri Prabhuling K. Navadgi, the learned Counsel appearing for the Petitioner in OP No.40/2012, has contended that the Petitioner had two PPAs With Tata Power Trading Company Limited in relation to two of its Generating Units. Under the said PPAs, the Petitioner would have realized IEX rates, the average IEX rates according to him being Rs.7.21 per Unit for February, 2012, Rs.10.29 per Unit for March, 2012 and Rs.11.51 per Unit for April, 2012. On account of supplying electricity at the rate of Rs.5.30 per Unit pursuant to the Government Order dated 27.1.2012, the Petitioner as pointed out in the I.A. dated 5.3.2013, has suffered a loss to the tune of Rs.19.07 Crores.

23) We have considered the above submissions of Shri Prabhuling K.Navadgi, learned Counsel for Petitioner in OP No.40/2012, in the light of the PPAs produced in support and also the weighted average market rates prevailing during the relevant period. The first PPA dated 3.3.2008, produced as Annexure-A, provides for a rate of Rs.3.61 per Unit and the second PPA dated 4.9.2009, produced as Annexure-A1, provides for a rate of Rs.4.50 per Unit. Both these PPAs do not make it binding on the Purchaser therein to pay the rates prevailing in the power exchange as contended by the Petitioner. This is clear from Article-3 of the PPA dated 4.9.2009, which is extracted below :

“3. Price & Period

The annual average rate at the delivery point for the period 05th September 2009 to 04th September 2012 shall be Rs.4.50 per kWh.

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All efforts will be made by TPTCL to secure the highest possible rate based on market dynamism. ..."

Therefore, the Petitioner cannot contend that it has suffered a loss to the tune of Rs.19.07 Crores as claimed by him.

24) It is now appropriate to recall the principle adopted by this Commission in arriving at the rate to be fixed for the energy supplied under Section 11 Orders of the Government of Karnataka in an earlier case. This Commission, in OP No.16/2010 – *The South Sugar Mills Association (Karnataka) –Vs- Government of Karnataka and others* - and other connected cases, by its Common Order dated 24.3.2011, has gone by the following observations made by the Hon'ble High Court of Karnataka in W.P.Nos.590 & 591 of 2009 while dealing with the meaning of 'adverse financial impact' under Section 11(2) of the Electricity Act, 2003 :

"Adverse financial impact means the electricity generated by virtue of the direction issued by the Government is not fetching the generating company the price which it would have fetched in the event of their supplying to the licensee or a customer i.e., less than the same. It has adverse financial impact. Their interest is protected under the said provision. It implies if the electricity so produced is supplied to the Government at a price lesser than the commercial price, the said provision intends to protect the generating company from such adverse financial impact."

25) This Commission has then detailed its approach in the matter as follows :

“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 were 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.

20. The short term power market mainly consists of power traded through licensed traders, and that supplied on the basis of day ahead bids in two power exchanges. We do not think that the prices prevailing in the power exchanges can be the appropriate basis to fix the rates as the quantum of power traded through the exchange is hardly about 5 % of the total power consumed in the country and the rates in the exchange keep fluctuating very frequently. In our view, the price of power supplied through bilateral contracts and traders offers a better indication of the price that a generating company could have realised for its power

for short term sales of a few weeks or months. Even these prices vary from month to month. Further, there are costs associated with marketing of power through traders and transmission costs which need to be suitably discounted to arrive at the revenues realized by the generating companies.

21. We have looked at the statistics published by CERC relating to short term power transacted through traders during the period between April and June 2010. The average prices during these months were Rs.5.68 in April, Rs.6.26 in May and Rs.5.57 in June 2010 for energy supplied on round the clock basis. After discounting the marketing expenses and transmission charges involved, it would be reasonable in our opinion to assume that short term sales of power would have resulted in net revenues of about Rs.5.00 per kwh during the above period. We have also seen that the offers received from the traders included a guaranteed price of only Rs.5/- to some of the petitioners in these cases.

22. In the light of the foregoing discussion, we direct that the power supplied in compliance of the orders issued by the Government under Section 11(1) of the Act, 2003 in April 2010 by cogen power suppliers including sugarcane cogen generators and biomass based generators and also others who do not have PPA governing supplies during the said period shall be paid for at Rs.5.00 per kwh.

23. In the case of generators who have an existing PPA, even though the Government Orders mention the question of suspending the PPAs for the period from 29.3.2010 to 30.6.2010, no such prayer for suspension of PPAs has been made by the ESCOMs

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in their petitions and therefore, it is not necessary for the Commission deal with that aspect of the matter. In fact, one of the Respondents in OP 16/2010, GESCOM, has fairly submitted in reply to the Commission's queries that ..."for generators having valid and subsisting PPAs with this Respondent, legal permissibility of payment of higher rates than the rates as contained in the PPA for the very quantities of power / energy covered by the PPA, as the Government Order directs so, needs to be decided by the Commission after considering the merits of the case." The generators with existing PPAs are therefore obliged to supply power at rates specified in the agreement to the extent of the supplies committed in the PPAs and the higher rate of Rs.5.00/- per kwh shall be applicable only if the supplies are made over and above the normal PPA obligations. For determining the normal supply obligation of such generators, we direct that the utilities shall take into account the quantum of power supplied by them during the months of April, May and June during the previous three years and any supplies made in excess of the average supply of the last three years shall be eligible for payment at Rs.5.00 per kwh determined under this order."

26) The Hon'ble ATE, in Appeal Nos.141, 142 of 2011 and 10 of 2012, while approving the above Order dated 24.3.2011 of the Commission passed by the Commission in OP No16/2010 and connected cases, had observed that:

13.1 We are in agreement with the principle adopted by the State Commission in offsetting the adverse financial impact on the generators complying with the directions of the State Government u/s 11(1) of the Act by fixing rate keeping in view the revenue that

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a generator could have realized by selling power in the short-term market, subject to the said rate covering the cost of generation, so that the generating company does not incur a loss. Accordingly, we do not find any infirmity in the State Commission arriving at average short-term market price of Rs. 5.68, Rs. 6.26 and Rs. 5.57 per unit respectively prevailing in the months of April, May and June, 2010 based on the price of traded power as per the statistics published by the Central Commission. There is also no infirmity in the decision of the State Commission to fix the price after discounting the marketing expenses and transmission charges. However, the State Commission has not actually determined the marketing and transmission expenses and has arbitrarily fixed the price at Rs. 5/- per kWh. Accordingly, we direct the State Commission to determine the discount on account of marketing expenses and transmission charges and redetermine the rate of supply of energy to be paid to the generators during the period April- June 2010, after hearing the Appellants."

27) This Commission, pursuant to the above Orders of the Hon'ble ATE, has re-determined the marketing expenses to be deducted from the Weighted Average of the price of short-term bilateral transactions as published by the Central Electricity Regulatory Commission (CERC) while arriving at the net price realized by Generator in OP No.40/2010 – *Himatsingka Seide Ltd. –Vs- Government of Karnataka and others*, as 10 (ten) paise per Unit including the Traders' margin of 5 (five) paise.

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28) The short-term rates prevailing at the National level during the relevant period were: Rs.4.41 per Unit for February, 2012, Rs.4.37 per Unit for March, 2012, Rs.4.35 per Unit for April, 2012 and Rs.4.26 per Unit for May, 2012, giving a Weighted Average Rate of Rs.4.34 per Unit for the entire period. If we deduct 10 (ten) paise as the marketing expenses, as mentioned above, the net realization by the Generators in the present cases works out to Rs.4.24 per Unit.

29) On the face of it, it appears logical for this Commission to go by the rates prevailing in the short-term bilateral market at the National level as published by the CERC, as was done in the earlier cases cited above but for certain factors which differentiate the present case from the earlier cases dealt with by this Commission, viz., OP No.16/2010 and connected cases. In the present case, unlike in the earlier cases, the rate adopted in the Government Order of Rs.5.30 per Kwh is based on the rates obtained by the Distribution Licensees through a transparent bidding process for short-term power purchased during the period from November, 2011 to June, 2012. The rates obtained in the bids referred to above ranged between Rs.5.15 per Unit and Rs.5.30 per Unit of RTC power, giving a Weighted Average Rate of Rs.5.29 per Unit. Further, the above rates obtained through the bidding process were approved by this Commission and the Respondents have purchased energy on that basis for three months prior to and during the period when the Section 11 order was in operation.

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30) Considering the above additional factors in the present case, the Commission has to take a view on whether it is appropriate to adopt the Weighted Average Rate of short-term bilateral power transactions as published by the CERC, as adopted in the earlier cases, or whether we should also consider the rate approved by this Commission for procurement of short-term power through bids invited by the Distribution Utilities as the basis for determining the rate to be paid to the Generating Companies in the present case.

31) We have given careful thought to the above issue in the light of the circumstances prevailing during the relevant period. The distribution utilities in the State issued a tender for procurement of 500 MW of RTC firm power on a short term basis for the period from 10th November 2011 to 15th June 2012. This notification was issued on 28th/29th October 2011 by the Power Company of Karnataka Limited (PCKL) on behalf of the distribution utilities. In response they received offers with rates ranging from Rs.5.15 per Kwh to Rs.5.30 Kwh as shown below :

Sl. No.	Name of the Firm / Bidders	Quantum of Power offered by the Firm in MW	The rate quoted by the Firm (At KPTCL periphery) Rs.Ps.
1.	M/s. Harekrishna Metalics Pvt. Limited, Koppal	10.10	5.15
2.	M/s. PTC India Limited (Sathavahana Ispat), Bellary	20.00	5.28
3.	M/s. JSW Power Trading Company Limited (Toranagallu)	150.00	5.30

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4.	M/s. NSL Sugars (Toranagallu, Bellary)	15.00	5.30
5.	M/s. PTC India Limited (Vijayanagar Sugars Pvt. Ltd.), Gadag	15.00	5.30
	Total	210.10	

32) The distribution utilities accepted the above offers of 210 MW after obtaining the approval of this Commission in its letter dated 17.11.2011. The weighted average cost of the power supplied to distribution utilities from the above sources approved by the Commission was Rs.5.29 per Kwh. As has been submitted by the learned counsel on behalf of the respondents, the Government also considered the rates obtained in the above tender for procurement of short term power as the benchmark for provisionally fixing the rate at which power had to be supplied by the generating companies in compliance to the orders under Section 11 issued by them on 27.11.2012.

33) Thus, while the weighted average rate for RTC power in bilateral transactions at the national level was much lower at Rs.4.34 per unit during the period, it is clear that for the power available for procurement by the distribution utilities in Karnataka, it was considerably higher as evidenced by the bids received barely three months earlier to the Government issuing their order under Section 11. It is also significant to note that even at that higher rate, the supply that could be obtained through the bidding process approved by the Commission was only 210 MW against the tender for 500 MW floated by the

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utilities. This was on account of the non-availability of the required transmission corridor for the State utilities to obtain power at the lower rates prevailing outside the Southern Region during the period in question. This is evident from the letter dated 10.11.2011 from PCKL addressed to the Commission, the relevant portion of which is extracted below :

“11. As already informed vide letter under reference, the availability of corridor from WR & ER is very meager at present and Karnataka may get corridor under MTOA only from June 2012, the only option available is to tap energy from generation sources in Karnataka.

12. As against the LOIs placed for procurement for 780 MW RTC firm power, only 530 MW is available from Karnataka generators. Out of 250 MW from outside sources, nil power for November 2011 and only 72 MW of RTC power for December 2011 is available due to corridor congestion.”

34) Therefore this Commission, considering the facts placed before it, approved the short-term power procurement of whatever that could be purchased through the short-term tenders.

35) The Government Order bearing No.EN 2 PPC 2012, dated 27.1.2012, issued under Section 11 of the Act, in its Preamble, also explicitly mentions this position

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of non-availability of corridor for procurement of power from outside the southern region, in the following words :

"PREAMBLE :-

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9. *To augment power supply, the State has initiated measures for procuring power on competitive basis in the short term and medium term to meet the load of summer months. As a result, advance action was initiated for procurement of power through competitive bidding process from September 2011 to June 2013 by Power Company of Karnataka Limited on behalf of Distribution Companies of Karnataka.*
10. *As against the LOIs placed for procurement of 780 MW RTC power, only 530 MW is available from Karnataka generators. Out of 250 MW from outside sources, only small quantum was made available by SRLDC due to corridor congestions (November 2011 – Nil, December 2011 – 72 MW, January 2012 – 60 MW, February 2012 – Nil and March 2012 – 105 MW).*
11. *Even for procurement of Peak power, as against LOIs issued for an average of about 438 MW, the quantum being received / cleared due to corridor congestion is also very small (February 2012 – 49 MW and March 2012 – 195 MW).*

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12. *In view of non-availability of corridor from ER/WR to SR, power flow to Karnataka from outside sources up to end of May 2012 is meager.*
13. *The availability of power through Energy Exchanges is also constrained by corridor congestion. Rates are fluctuating and there is no guarantee that the required power can be obtained through energy exchange. Hence, the State cannot depend on any additional quantum of power from outside sources for the period between February 2012 to May 2012.*
14. *There is remote possibility of getting any additional quantum of power from outside generators either through bidding process or bilateral transactions due to corridor congestion.*
15. *In the circumstances, the endeavour of the State is that every possible source of power should be tapped in the coming months. ...*

XXXX

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XXXX"

36) In the Petitions filed on behalf of the MESCOM, BESCOM and CESC also, the circumstances explained in the Government Order necessitating issuance of the Section 11 Order have been reiterated, as noticed at the beginning of the Order.

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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

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mentioned above and the 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.

39) For the above reasons, we feel that the rate of Rs.5.30 per unit indicated by the Government in their order of 27.11.2012 is reasonable and the same should be paid for the power supplied by the generating companies, including Petitioners In these cases, for the supply of energy made in compliance of the orders issued under Section 11 of the Act between 1st June 2012 and 15th June 2012.

40) In the light of the above discussion, we order as follows :

(1) The Petitions filed by the ESCOMs, viz., MESCOM, BESCO and CESC, are allowed in the following terms ;

(a) The price for the electricity supplied by the generating companies pursuant to the Order bearing No. EN 2 PPC 2012, dated 27th January, 2012 of the Government of Karnataka, issued under Section 11(1) of the Electricity Act, 2003, is determined at Rs.5.30 (Rupees Five and Paise Thirty only) per KWH;

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- (b) The Petitioner-ESCOs are liable to pay at the above rate for all the electricity supplied by the generating companies during the period in which Section 11(1) Order of the Government was in operation;
- (2) The prayer of made by the Petitioner-generating companies for paying a higher rate, as worked out by them in their Petitions, is rejected, and they are also entitled to be paid at the rate of Rs.5.30 (Rupees Five and Paise Thirty only) per KWH determined above for the electricity supplied.
- 41) Accordingly, these Petitions are disposed of in the above terms.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

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Nos.: N/29/12, N/31/12, N/32/12, N/49/12, N/51/12, N/52/12, N/53/12, N/79/12.

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

Dated : 22nd May, 2013

- | | | |
|-------------------------------|----------|--------------------------------------|
| 4. Sri M.R. Sreenivasa Murthy | Chairman | } (Will pronounce
separate Order) |
| 5. Sri Vishvanath Hiremath | Member | |
| 6. Sri K. Srinivasa Rao | Member | |

1] OP No.14/2012

BETWEEN :

Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
[Represented by Shri Prashant T. Pandit , Advocate]

... **Petitioner**

AND

NII

... **Respondent**

2] OP No.15/2012

BETWEEN :

Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
[Represented by Shri V.Y. Kumar , Advocate]

... **Petitioner**

AND

NII

... **Respondent**

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

3] OP No.16/2012

BETWEEN :

Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
[Represented by M/s.Justlaw , Advocates]

... **Petitioner**

AND

Co-generation Plants, Bio-mass Plants, Captive Generators,
Independent Power Producers, etc., who do not have PPA
with ESCOMs in Karnataka

... **Respondents**

4] OP No.25/2012

BETWEEN :

Shree Renuka Sugars Ltd
B.C.105, Havelock Road
Cantonment
Belgaum – 590 001
[Represented Shri Prabhuling K. Navadgi, Advocate]

... **Petitioner**

AND

- 1) Government of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
Bangalore – 560 001
- 2) Karnataka Power Transmission Corporation Limited
Cauveri Bhavan
Bangalore – 560 009

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

- 3) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029
 - 4) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101
 - 5) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
 - 6) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
 - 7) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
 - 8) Power Company of Karnataka Limited
KPTCL Building, Cauveri Bhavan
Bangalore – 560 009
- ... **Respondents**

*[Respondents Nos. 2, 3, 7 & 8 represented by M/s.Justlaw, Advocates,
Respondent No.5 represented by Shri V.Y. Kumar, Advocate and
Respondent No.6 represented by Shri Prashant T. Pandit, Advocate*

5] OP No.29/2012

BETWEEN :

Star Metalics & Power Private Limited
Metal & Ferro Alloys Plant
Mariyammanahalli
Near Hospet – 583 222
Bellary District
[Represented Shri Prabhuling K. Navadgi, Advocate]

... **Petitioner**

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

AND

- 1) Government of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
Bangalore – 560 001
- 2) Karnataka Power Transmission Corporation Limited
Cauveri Bhavan
Bangalore – 560 009
- 3) Power Company of Karnataka Limited
KPTCL Building, Cauveri Bhavan
Bangalore – 560 009
- 4) State Load Despatch Centre – Karnataka
No.28, Ananda Rao Circle
Race Course Road
Bangalore – 560 009
- 5) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 6) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
- 7) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
- 8) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029
- 9) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101

... **Respondents**

[Respondents Nos. 2 to 4, & 6 to 9 represented by M/s.Justlaw, Advocates
Respondent No.5 represented by Shri V.Y. Kumar, Advocate]

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

6]

OP No.30/2012

BETWEEN :

Shamanur Sugars Ltd.

No.374, 4th Main

P.J. Extension

Davanagere – 577 002

[Represented Shri Prabhuling K. Navadgi, Advocate]

...

Petitioner

AND

- 1) Government of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
Bangalore – 560 001
- 2) Karnataka Power Transmission Corporation Limited
Cauveri Bhavan
Bangalore – 560 009
- 3) State Load Despatch Centre – Karnataka
No.28, Ananda Rao Circle
Race Course Road
Bangalore – 560 009
- 4) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 5) Power Company of Karnataka Limited
KPTCL Building, Cauveri Bhavan
Bangalore – 560 009

...

Respondents

*[Respondents Nos. 2 & 5 represented by M/s.Justlaw, Advocates
Respondent No.4 represented by Shri V.Y. Kumar, Advocate]*

7]

OP No.31/2012**BETWEEN :**

Himatsingka Seide Ltd.
10/24, Kumara Krupa Road
High Grounds
Near Sindhi High School
Bangalore – 560 001

...

Petitioner

[Represented by Shri Prabhuling K. Navadgi, Advocate]

AND

- 1) Government of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
Bangalore – 560 001
- 2) Karnataka Power Transmission Corporation Limited
Cauveri Bhavan
Bangalore – 560 009
- 3) State Load Despatch Centre – Karnataka
No.28, Ananda Rao Circle
Race Course Road
Bangalore – 560 009
- 4) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
- 5) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 6) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
- 7) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

8) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101

9) Power Company of Karnataka Limited
KPTCL Building, Cauveri Bhavan
Bangalore – 560 009

... **Respondents**

*[Respondents Nos.2 to 4 & 6 to 9 represented by M/s.Justlaw, Advocates
Respondent No.5 represented by Shri V.Y. Kumar, Advocate]*

8]

OP No.40/2012

BETWEEN :

Ugar Sugar Works Limited
317, 9th Main, 14th Cross
Jayanagar, 2nd Block
Bangalore – 560 011

... **Petitioner**

[Represented by Shri Prabhuling K. Navadgi, Advocate]

AND

1) Government of Karnataka
Represented by its Principal Secretary
Energy Department
Vikasa Soudha
Bangalore – 560 001

2) Karnataka Power Transmission Corporation Limited
Cauveri Bhavan
Bangalore – 560 009

3) Power Company of Karnataka Limited
KPTCL Building, Cauveri Bhavan
Bangalore – 560 009

4) State Load Despatch Centre – Karnataka
No.28, Ananda Rao Circle
Race Course Road
Bangalore – 560 009

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

- 5) Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001
- 6) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
- 7) Chamundeshwari Electricity Supply Company Limited
No.927, LJ Avenue
New Kantharaja Urs Road
Saraswathipuram
Mysore – 570 009
- 8) Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli – 580 029
- 9) Gulbarga Electricity Supply Company Limited
Main Road, Opposite Parivar Hotel
Gulbarga – 585 101

... **Respondents**

[Respondents Nos. 1, 2, 6 & 7 represented by M/s. Justlaw, Advocates]

I am in general agreement with the facts and details of submissions brought out in the Order of my colleagues. However, since my analysis and decision in the cases listed below being different, they are given separately as follows:

I] OP Nos.14/2012, 15/2012 and 16/2012 (COMMON ORDER)

- 1) This Order is confined only to OP Nos.14, 15 and 16 of 2012 filed by MESCOM, BESCOM and CESC, respectively, under Section 62 / Section 11 of the Electricity Act, 2003, as applicable, to fix a tariff for supply of electricity by non-

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

OP Nos.14/2012, 15/2012 & 16/2012

PPA generators, made in compliance with the Government's Order under Section 11 of the Act, for the period from February, 2012 to May, 2012. MESCOM AND BESCO in their Petitions have not included any party as Respondent, while CESC in its Petition has included Co-generation Plants, Bio-mass Plants, Captive Generators, Independent Power Producers, etc., who do not have PPA with ESCOMs in Karnataka, as Respondent. Since these Petitions are based on similar set of facts and submissions, a common Order has been made.

2) Some of the Generating companies involved in the Order of the Government dated 27.1.2012 have also filed Petitions under Section 11(2) of the Act, praying for offsetting the adverse financial impact suffered by them. These are being dealt with by me in separate Orders.

3) Shri Sriranga, the learned counsel appearing for the ESCOMs submitted, among other things, that the principle to be adopted for fixing the rate for the electricity supplied under Section 11 of the Act had already been decided by this Commission in OP No.16/2010 and the said principle had also been approved by the Hon'ble ATE and that the Commission may, therefore, consider the same set of principles while fixing the rate for the present cases.

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

OP Nos.14/2012, 15/2012 & 16/2012

4) Shri Prabhuling K. Navadgi, the learned Counsel who appeared for the Generating Companies, submitted that though the principles adopted by this Commission in OP No.16/2010 have been approved by the Hon'ble ATE in Appeal Nos.141 and 142 of 2011, this Commission can still consider other principles for determining the rates, keeping in view the specific circumstances existing in each case. He therefore submitted that while fixing the rates, this Commission may be justified in considering the offers received by the Generators from their prospective Purchasers. He supplemented his submission with related details for each of the generators and the pleas thereon, as applicable. The counsel also contended that the petition by the ESCOMS under section 62 of the ACT was not maintainable since thereunder the tariff was fixed only for mutually consented purchases and not for power supplied under compulsion, as in case of Section 11(1) order compliance. He added that nor the ESCOMS can seek fixation of tariff under section 11(2) of the ACT. During the public hearing held on 30.8.2012, the view expressed invariably was that the Commission has to fix a reasonable rate protecting the interest of consumers.

5) I have considered the submission of all the parties.

6) The issue now on hand is to determine whether the cases of the generators involved under Section 11 Order for the period February, 2012 to May,

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

OP Nos.14/2012, 15/2012 & 16/2012

2012 do get covered by the Order of this Commission in OP No.16/2010. Firstly, in OP No.16/2010, this Commission covered the cases of those generators not having PPAs with the ESCOMs and came to the conclusion that in the view of the Commission, the price of power supplied through bilateral contracts and traders offered a better indication of the price that a generating company could have realised for its power for short term sales of a few weeks or months and the same was adopted for those not having PPAs with ESCOMs. As regards generators having PPAs with ESCOMs, a different approach was adopted.

7) Subsequently, as far as the generators required to supply power under Section 11 Order of January, 2012 are concerned, it is seen that the generators were either having a PPA with licensees other than ESCOMs or were supplying in Power Exchanges / having NOCs to supply in these Exchanges. The issue of Order under Section 11 had necessitated withdrawal of NOC issued by the SLDC in some of the cases consequent to the said Order.

8) Accordingly, in cases of generators under consideration and not getting covered under the scope of Order of this Commission in OP No.16/2010, the same are dealt by me, individually, in separate Orders. Considering the submissions made by Shri Prabhuling K. Navadgi, I find no merit in the contention that the offers received by the generators from their respective purchasers is

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

OP Nos.14/2012, 15/2012 & 16/2012

justifiable for the Commission to take into account while fixing the rates. This is for the reason that offers do not form contracts and accordingly do not have any specific rate at which power was to be supplied to some customers and that the imposition of the order under Section 11(1) of the Act results in generator not being in a position to realize the rates agreed with its customer. Accordingly, this contention of the Respondent is rejected. However, the contention of the learned counsel for the Respondent that the filing of the Petitions by the ESCOMs under Section 62 of the Act was not maintainable, since thereunder the tariff was fixed only for mutually consented purchases and not for power supplied under compulsion as in the case of Section 11(1) Order complied with, as well as its contention that the ESCOMs cannot seek fixation of tariff under Section 11(2) of the Act, merit acceptance. This is because of the correctness of the contention that under Section 62 of the Act, the tariff fixation exercise has to be carried out, as seen from the intent of the Act, only for mutually consented purchases and not for power supplied under compulsion under Section 11(1) order. Further, Section 11(2) of the Act clearly confers the powers on this Commission to offset the adverse financial impact of the directions referred to in Sub-Section (1) only on a generating company in such manner as it considers appropriate. Thus, it is the generating company, which has suffered adverse financial impact, if any, consequent to the direction by the Government under Section 11(1) of the Act, which is entitled to seek offset of the adverse financial

OP Nos.: 14/2012, 15/2012, 16/2012, 25/2012, 29/2012, 30/2012, 31/2012 and 40/2012.

OP Nos.14/2012, 15/2012 & 16/2012

impact under Section 11(2) of the Act, and not the distribution licensees. Accordingly, I am in agreement with the contention of the Respondent in this aspect. For the above reasons, I am not in agreement with the submission of the learned counsel for the Petitioners that the tariff for the generators can be fixed under Section 11. Taking into consideration the context of the supply of power under Section 11 Order by the generators and the various submissions made by the parties, it is my considered view that the request of the Petitioners' counsel for fixing the admissible rate for electricity supplied in pursuance of the Section 11 Order of 27.1.2012, following the principle adopted by this Commission in OP No.16/2010 , cannot be acceded to as a matter of course.

9) In view of the above, the Petitions, viz., OP Nos.14/2012, 15/2012 and 16/2012, filed by the said ESCOMS, are not maintainable and are accordingly rejected.

Sd/-
(K. SRINIVASA RAO)

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II] OP No.25/2012

1) The Petitioner M/s. Shree Renuka Sugars owning three co-generating plants located at Munoli, Kokatnur and Havalga, under compulsion to supply under section 11 Order of the Government of Karnataka, dated 27.1.2012, has

stated that it was not under any obligation to supply to any of the State utilities and that prior to the order of the Government of Karnataka under Section 11(1) of the Act, it had entered into firm contracts with RETL for all the three plants for supply from 1.2.2012 to 31.5.2012 at Rs.6.50 per KWH. However, during the hearings, it was admitted by the learned counsel for the Petitioner that there was no agreement entered into with RETL and only letters of offer were available from the trader. The Petitioner had supplied to the grid in pursuance of the Order of the Government of Karnataka only between 1.2.2012 to 16.5.2012. It has claimed that it has suffered the total adverse financial impact of Rs.9.60 Crores, described in Annexure-E, computed based on the difference in the rate offered by the Order of the Government of Karnataka and the offer rate of Rs.6.50 per KWH for each of the three plants, for the period of supply between February, 2012 and May, 2012, even beyond 16th May, 2012.

2) The Petitioner has prayed to direct the Respondents to offset the adverse financial impact suffered by the Petitioner, by paying a sum of Rs.9.60 Crores.

3) On the part of the Respondents, the learned Counsel for Respondents 2 to 5 and Respondents 7 and 8 has pleaded that the Section 11 Order has been issued by the Government under difficult power availability situations and furnished the associated details. The tariff of Rs.5.30 per KWH set out in the

Order of the Government was arrived at after taking into reckoning the cost of generation that would be incurred in different circumstances and that the principle adopted by the Commission in OP No.16/2010 should be followed. It is the submission that contracts, such as that with RETL, cannot govern determination of adverse financial impact, being a result of private negotiations. On behalf of MESCOM, it has been pleaded mainly that Rs.5.30 per KWH covers the production cost and Annexure-E of the Petition is based on speculation and not on actual data. The generic order of the Commission dated 11.12.2009 for NCE generators must be made applicable for the energy supplied by the Generator. Further, during the public hearing held on 30.8.2012, the view expressed invariably was that the Commission has to fix a reasonable rate protecting the interest of consumers.

4) I have considered all the submissions made by various parties in respect of this Petition. The issues that arise for consideration in the above Petition are:

- (1) Whether there was any contract by the Petitioner with the trader; if so, what is the rate to be fixed for supply of power by the Petitioner; if not also, what rate to be fixed?

- (2) In view of the Order of the Government of Karnataka, dated 27.1.2012, whether the generator supplied energy in terms of the Order and what could be the corresponding applicable tariff?
- 5) Although the Petitioner has mentioned in the Petition, vide paragraph-3, that it had entered into contracts on firm basis with RETL, it has been admitted during the hearing that only an offer was received and no agreement has been reached between the parties. It therefore turns out that the Petitioner neither had any firm PPA either with ESCOMs or with any third party, nor had any NOC for supply in Power Exchange. Accordingly, as far as the specific context of the Petitioner's case is concerned it is governed by the provisions of the Order of this Commission in OP No.16/2010 for those not having PPA with ESCOMs. Hence, for each month of supply, the corresponding CERC published short-term market rate for bilateral trade needs consideration for fixing the tariff for the generator. This tariff, as per the manner in which it is finally determined, will be applicable for the actual quantum of energy supplied during the dates of 1.2.2012 to 16.5.2012, in response to the order under Section 11(1) of the Act. The payment to the generator will then be at a rate to be worked out as a difference of the above finally determined rate minus the rate already paid for the actual supplied energy, subject to the discussions that follow in the succeeding paragraphs.

6) The next aspect is the issue to be considered in the context of the Order of the Government of Karnataka, Section 61 and Section 11(2) of the Electricity Act, 2003 read together. Section 61(d) and Section 11(2) of the Act are reproduced for enabling ready reference in the context of the following discussion. Similarly, the relevant extract of the Government of Karnataka Order dated 27.1.2012 is also reproduced:

- (1) **“Section 61 – Tariff Regulation** : The appropriate Commission shall ... subject to the provisions of this Act, specify the terms and conditions for the determination of tariff and in doing so shall be guided by the following, namely :

XXXX

XXXX

XXXX

- (d) *Safeguarding of consumers' interest and at the same time recovery of the cost of electricity in a reasonable manner.*

XXXX

XXXX

XXXX”

- (3) **“Section 11(2)** : The appropriate Commission may offset the adverse financial impact **of the directions referred to in sub-section (1)** on any generating company in such manner as it considers appropriate.” *[Emphasis supplied.]*

(3) **Relevant Extracts of Government of Karnataka Order dated 27.1.2012 :**

“Preamble:

XXX

XXX

XXX

Order :

In the circumstances explained in the Preamble and in exercise of the powers conferred under Section 11 of the Electricity Act, 2003, the State Government hereby issues the following directions 1st February 2012 till 31st May 2012 or ... :

- (a) All the generators in ... Karnataka **shall operate and maintain their generating stations to maximum exportable capacity and shall supply all exportable electricity generated to the State Grid** for utilization within the State, subject to

XXX

XXX

XXX”

[Emphasis supplied]

7) The perusal of the Order of the Government of Karnataka shows that the Preamble has gone to a greater length to explain in detail the shortage

situation, issues contributing to widening gap between demand and supply, the need to ensure availability of power to consumers having regard to ensuing examinations and agricultural seasons, increase in average consumption, corridor constraints for obtaining power from other regions / Power Exchanges, the associated need for ensuring tapping of every possible source of power, etc., to meet the challenging shortage situation. It is under these outlined circumstances that the State Government had issued the Order dated 27.1.2012 to procure the maximum exportable capacity generation by all the generators and supply all exportable energy to the Grid. This shows the amount of importance associated by the Government with the requirement imposed on the generators to supply to the maximum exportable capacity under the impugned Order.

8) In the context of the above, it becomes essential to examine the situation of rate fixation to those generators who may not have supplied to the maximum exportable capacity in keeping with the requirement of the Order of the Government of Karnataka. As far as the Respondents are concerned, there has been no plea to the effect that restriction should be imposed on the tariff payable to the generator on this account of lesser supply, if any, to the Grid than the maximum exportable capacity. However, the requirement under Section 61 of the Act is to safeguard the consumers' interest even while

specifying the terms and conditions for the determination of tariff. This equally applies to the fixation in the circumstances of the case on hand. Further, even under Section 11(2) of the Act, when the Commission is required to apply its mind to decide the manner of offset of adverse financial impact of generators, as considered appropriate by it, it is consumers' interest as one of the aspects contributing to this. Keeping the interest of the consumers, as provided for under Sections 61 and 11(2) of the Act, I am examining the issue of whether using the powers conferred under Sections 61 and 11(2) of the Electricity Act, 2003, the Commission can arrive at a reasonable conclusion on this aspect:

(1) As far as Section 61 of the Act is concerned, the Commission is required, while specifying the terms and conditions for determination of tariff, to be guided by the necessity to safeguard the interest of consumers. In other words, one of the necessary factors while finalizing terms and conditions of determination of tariff under Section 61 of the Act is the need to safeguard the interest of consumers, which equally applies to the context of rate fixation also. Similarly, perusal of Section 11(2) shows it attaches utmost significance to "of the directions referred to in sub-section (1) of Section 11." To elaborate, Section 11(2) provided offset can only be consequential and proportional to the extent of implementation of the directions referred to in Section 11(1). In case the

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requirements imposed by the order under Section 11(1) are not fully met, the suffered adverse financial impact also requires to be pegged at a corresponding lower level. In other words, the rate fixed by the Government of Karnataka in its Order issued under Section 11(1) of the Act can only be for the cases of supply of energy at the desired and expected level, as per the Order. Accordingly, I realize the need for absolute necessity on the part of the generators to comply fully with the requirements of the directions imposed under Section 11(1) of the Act. Therefore, while examining the rate fixation under the context of Section 11(1) Order, it is necessary for the Commission to keep in view the necessity to safeguard the interest of consumers, which at times go unrepresented before the Commission. Thus, in the context of the Order of the Government imposing Section 11(1) for supply by generators to meet its shortages, the appropriate manner of rate fixation mandated under Section 11(2), in my considered view, has to necessarily address the question, whether the rate can be fixed without taking into account the actual quantum and period of power supplied by the generator in the spirit of the Order of the Government and irrespective of the requirements imposed in view of the difficult circumstances. My answer to the question is a firm no, because the purpose of the entire Order of

the Government is to obtain the maximum generation to the State grid from the generator-companies in terms of the Order. As explained earlier, Section 11(2) emphasizes the requirement that the adverse financial impact has to be offset, keeping in view the directions referred to in Sub-Section (1) of Section 11 of the Act. This contributes to my view that offset of adverse financial impact can only be proportional to the period and actual quantum of supply by the generator vis-à-vis those imposed by and under Section 11(1) directions.

9) In the circumstances of the above, an additional factor has to enter into the rate fixation. This, in my view, has to be a pro-rata factor, arrived at for each month of supply under the scope of Order under Section 11(1) by dividing the actual quantum of energy supplied by the quantum of energy that should have been supplied, taking into account the maximum exportable capacity of the particular generator. The rate obtained from the CERC published short-term bilateral market rate applicable for each of these months of Section 11 Order, has to be multiplied by the above factor to arrive at the actual rate of compensation for the generator. In all cases where the arrived at rate is greater than Rs.5.30 per KWH offered by the Order of the Government, the differential rate is additionally payable to the generator for each KWH of actual supply. In case, the arrived at rate is less than Rs.5.30 per KWH, that rate will be the rate at

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which the generator will have to get paid for actual supply of energy made against the Order under Section 11(1). Excess payments, if any, made in such a case shall be recovered by the ESCOMs from the generator concerned.

10) In the case of the Petitioner, the maximum exportable capacity applicable for the period 1.2.2012 to 31.5.2012 shall be as per the agreed maximum exportable capacity during the season corresponding to that period.

11) The Petition is allowed in terms of the above and disposed of accordingly.

Sd/-
(K. SRINIVASA RAO)

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III]

OP No.29/2012

1) The Petitioner, M/s. Star Metalics and Power Pvt. Ltd., has established a 32 MW coal-based captive thermal power plant in Bellary District and the dispute has arisen in view of the Section 11 Order of the Government of Karnataka, dated 27.1.2012. The Petitioner has been supplying power in IEX between January, 2011 and January, 2012. The Petitioner's application for selling power

under the Open Access to an extent of 29 MW for the month of February, 2012 was not considered by the SLDC, vide its letter dated 28.1.2012, and it was directed to inject all power from 1.2.2012 to 31.5.2012 to the State Grid. It is contended that issue of Order under Section 11(1) due to non-availability of the corridor for inter-State transmission of power and the tentative tariff fixed by the Government under Section 11 is not commercially viable and justified. Non-viability of the offered tariff to meet the generation costs, has led to operational loss.

2) The details of energy supplied during the months of February, 2012 to May, 2012 have been furnished. Citing the Order of the Government under Section 11 and the Order of the Hon'ble High Court of Karnataka dated 26.3.2012 in W.P.Nos.590, 591 of 2009, the Petitioner submitted that it has suffered adverse financial impact and that the rate of Rs.5.30 per KWH was not meeting its cost of generation. It has been prayed that its adverse financial impact was to be compensated by two elements, one at Rs.2.11 per KWH due to loss in operation, and Rs.1.89 per KWH on account of opportunity loss.

3) On the part of Respondents 6, 8 and 9, it is contended that the Commission has set out a methodology, looking into the issues raised by the Petitioner, which has been upheld by the Hon'ble Appellate Tribunal for

Electricity (ATE) and the same has to be followed. The view of the Commission in OP No.16/2010 that offsetting adverse financial impact would mean fixing a rate, keeping in view the revenue that could be realized by the generator in short-term market, subject to conditions, should be followed. The Commission has also held it as imprudent to place reliance on IEX rates.

4) Further, during the public hearing held on 30.8.2012, the view expressed invariably was that the Commission has to fix a reasonable rate protecting the interest of consumers.

5) I have considered the submissions by the parties and firstly it is noted that this Commission, vide its Order in OP No.16/2010, has not considered the cost of generation details and the IEX rates for fixing rates as compensation under section 11(2) of the Act and has adopted the principle of compensating based on short-term bilateral market rates. However, in the case of the Petitioner since its application for sale in IEX for the month of February, 2012 has been specifically rejected by the SLDC, citing the prevalence of the Government Order under Section 11 dated 27.1.2012, It will not be fair to reject the claim for compensation in terms of IEX rates for the month of February, 2012 in the context of the above and instead sanction short-term bilateral market rate for the month of February,

2012. Accordingly, it is my considered view that for the month of February, 2012, the weighted average IEX rates, as published by CERC, will be admissible to the Petitioner, subject to the discussions in the following paragraphs. As far as the months of March, 2012 to May, 2012 are concerned, the Petitioner has failed to establish the fact of any application by it for NOC to sell in Power Exchange and its rejection by SLDC. Also, no PPA for this period has been entered into by the Petitioner with any trader or a customer. In view of the same, I am not in a position to agree to admit any compensation in terms of IEX rates for these months. Accordingly, the Petitioner becomes entitled to the CERC published short-term market rates for bilateral trades for each of the months – March, 2012 to May, 2012 - in terms of the Order of this Commission in OP No.16/2010, for March, 2012 to May, 2012, subject to the discussions in the following paragraphs.

6) In my Order in OP No.25/2012 in the case of *Renuka Sugars -Vs- Government of Karnataka and others*, the aspect of applicable and allowable rate of price for the actual energy supply vis-à-vis that imposed by the Order of the Government, viz., energy corresponding to maximum exportable capacity, has been dealt with in detail. The same is applicable to this Petitioner also for the actual supply of energy made as against the requirement of maximum exportable capacity imposed by the Order of the Government. In the case of

this Petitioner, the applicable maximum exportable capacity for the months of March, 2012 to May, 2012 has to be 29 MW, since the Petitioner obtained NOC for 29 MW for February, 2012; because of this, there is sufficient reason for applying the same for the months of March, 2012 to May, 2012. In terms of this, the applicable rate for each month will be worked out based on the same principles enunciated by me in my Order in OP No.25/2012. As detailed therein, the generator becomes entitled for additional compensation only when the finally arrived at rate is in excess of the Government of Karnataka fixed rate of Rs.5.30 per KWH. In all cases where the arrived at rate is greater than Rs.5.30 per KWH offered by the Order of the Government, the differential rate is additionally payable to the generator for each KWH of actual supply for each month. In case, the arrived at rate is less than Rs.5.30 per KWH, that rate will be the rate at which the generator will have to get paid for actual supply of energy made against the Order under Section 11(1) for that month. Excess payments, if any, made in such a case shall be recovered by the ESCOMs from the generator concerned.

7) Accordingly, the Petition is disposed of in the above terms.

Sd/-
(K. SRINIVASA RAO)

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IV]**OP No.30/2012**

1) The Petitioner's co-generation plant at Duggavathi in Davanagere District has an installed capacity of 20 MW. It is submitted that the imposition of Section 11 Order dated 27.1.2012 has caused adverse financial impact. NOC has been obtained for supply of power under Open Access to the extent of 18 MW for the month of February, 2012 and March, 2012, and the same has been withdrawn by the SLDC, vide communication dated 28.1.2012. It is noted that the actual supply of power to the Grid under Section 11 Order by the Petitioner has been only between 1.2.2012 and 20.3.2012, since the Petitioner decided to shut-down the generation from the plant due to sugarcane crushing season being called off and the cost of generation with imported coal being of the order of Rs.6.74 per KWH. The actual power supply to the State Grid was stopped on 20.3.2012, as submitted by the Petitioner. The IEX rates during the period of supply were higher and the rate of Rs.5.30 per KWH fixed by the Government had resulted in adverse financial impact, it is submitted. The Petitioner has prayed for a compensation of Rs.14.47 Crores, as detailed in Annexures - E and G of the Petition.

2) During the public hearing held on 30.8.2012, the view expressed invariably was that the Commission has to fix a reasonable rate protecting the interest of consumers.

3) The submissions made by the parties have been considered by me. In the case of this Petitioner, NOC was granted for supply in IEX during the months of February, 2012 and March, 2012, and was subsequently withdrawn by the SLDC consequent to the Order of the Government of Karnataka. Accordingly, since there is a specific withdrawal of the NOC, our Order in OP No.16/2010 does not get applied in the case of the Petitioner, which allows a price as per the short-term bilateral market rate. The Petitioner in this case is entitled to compensation as per published IEX rates for the months of February, 2012 and March, 2012 (upto the date of supply), subject to the discussions in the following paragraphs.

4) As discussed by me in my Order in OP No.25/2012 in the case of *Renuka Sugars -Vs- Government of Karnataka and others*, this Petitioner also becomes entitled for compensation only to the extent of energy supplied, proportionately, vis-à-vis the energy that should have been supplied as per the orders of the Government of Karnataka dated 27.1.2012, corresponding to the maximum exportable capacity to be supplied to the Gird during February, 2012 and March, 2012. In the case of this Petitioner, the maximum exportable capacity for the months of energy supply has to be corresponding to 18 MW since the Petitioner had obtained NOC for supply of that much quantity in IEX for February, 2012 and March, 2012. Accordingly, the factor worked out as per principles in Order in OP No.25/2012 will have to be applied on the published IEX rates of

OP No.30/2012

CERC for the months of February, 2012 and March, 2012 to arrive at the final admissible rate to the Petitioner for the energy supplied to the Grid during February, 2012 and March, 2012 (upto stoppage of supply). The Petitioner has not supplied any energy during the months of April and May, 2012 into the Grid and therefore the question of any compensation during these months does not arise. In cases where the arrived at rate for that month is greater than Rs.5.30 per KWH offered by the Order of the Government, the differential rate is additionally payable to the generator for each KWH of actual supply. In case, the arrived at rate for that month is less than Rs.5.30 per KWH, that rate will be the rate at which the generator will have to get paid for actual supply of energy made against the Order under Section 11(1). Excess payments, if any, made in such a case shall be recovered by the ESCOMs from the generator concerned.

5) Accordingly, the Petition is disposed of in the above terms.

Sd/-
(K. SRINIVASA RAO)

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V]**OP No.31/2012**

1) The Petitioner, M/s. Himatsingka Seide Ltd., has installed a 12.5 MW co-generation captive coal-based power plant, with exportable capacity of 6 MW. The imposition of Order under Section 11(1) has adverse financial impact upon the Petitioner. The Petitioner has produced a statement of cost for tariff fixation and had claimed the loss incurred because of the rate of Rs.5.30 per KWH fixed by the Government. The Petitioner has not furnished any details regarding any NOC to supply power in Power Exchange during the months of February, 2012 to May, 2012, although it is stated that sale was effected in Power Exchange earlier during February, 2011 to January, 2012. The Petitioner has computed the adverse financial impact based on the average price fetched during Section 11 Order months in Power Exchange. It is submitted that because of the Section 11 Order, the Petitioner was forced to maintain maximum PLF by using imported coal, expending a considerable amount.

2) In Annexure-B, on Pages-25 to 27, the Petitioner has provided the Statement of Cost for Tariff fixation and details of cost incurred for generation, and in Annexure-D at Page-30, has provided IEX day-ahead rates for the months of February, 2012 to May, 2012. Combining these two, it is the prayer of the Petitioner that it should be paid a sum of Rs.8.83 per KWH as per details in Annexures - B and D. The Petitioner has also submitted documents in support of certified actual power cost and the Project Report.

3) On the part of Respondents 6 to 8, it has been mainly contended that given the mandate of this Commission, the Petitioner's reliance on IEX rates was erroneous and accordingly no adverse financial impact has been suffered by the Petitioner. Further, during the public hearing held on 30.8.2012, the view expressed invariably was that the Commission has to fix a reasonable rate protecting the interest of consumers.

4) I have considered the submissions of the parties. As far as the Petitioner's reliance on the cost of generation and the IEX rates for seeking compensation under Section 11(2) is concerned, this Commission in its Order in OP No.16/2010 has finally concluded that the compensation to the generators will be as per the short-term bilateral trade market rates, and not the IEX rates or based on cost of generation. Accordingly, the issue to be considered here is the compensation for the relevant months of actual power supply by the generator during the Section 11 Order period. Since there is no established NOC for sale in Power Exchange during the Section 11 Order period, nor any PPA has been entered, the only compensation that arises in the case of the Petitioner is in line with the Order in OP No.16/2010 of this Commission and as per the CERC published short-term bilateral trade market rates for each month, subject to the application of the factor on the rates above to arrive at the actual rate of allowable compensation based on the actual energy supplied, vis-à-vis that was required to be supplied as per the Order of the Government, viz., maximum exportable

capacity. In the case of this Petitioner , the maximum exportable capacity specified is 6 MW. The working out of the factor for multiplication of the applicable short-term bilateral market rate will have to be as detailed in my Order in OP No.25/2012 in the case of *Renuka Sugars – Vs- State of Karnataka and others*. In each of the months, the Petitioner becomes entitled to the payment of difference between the finally computed compensation rate and the rate fixed by the Government of Rs.5.30 per KWH, in case the compensation rate is in excess of Rs.5.30 per KWH, for application on the actually supplied units. In all cases where the arrived at rate is greater than Rs.5.30 per KWH offered by the Order of the Government, the difference amount is additionally payable to the generator. In case, the arrived at rate is less than Rs.5.30 per KWH, that rate will be the rate at which the generator will have to get paid for actual supply of energy made against the Order under Section 11(1). Excess payments, if any, made in such a case shall be recovered by the ESCOMs from the generator concerned.

5) Accordingly, the Petition is disposed of in the above terms.

Sd/-
(K. SRINIVASA RAO)

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VI]**OP No.40/2012**

1) The Petitioner-Company owns two generating plants, situated at Gulbarga and Belgaum Districts, respectively. In the case of the Gulbarga plant, the Petitioner had entered into a PPA for 10 years from April, 2008 to March, 2018 with M/s. Tata Power Trading Co. Ltd (TPTCL). For the Belgaum plant, the PPA was for a period of 3 years from 5.9.2009 to 4.9.2012, with different exportable capacities during season and off-season in respect of both the plants.

2) For both the plants, the Petitioner had obtained NOC to sell surplus power in Power Exchange for the month of February, 2012. Both the NOCs were withdrawn by the SLDC subsequent to the issue of Section 11 Order by the Government of Karnataka. The details of exported energy by the plants have also been furnished for the Section 11 Order period. The Petitioner has sought compensation of the differential amount between the Power Exchange rates and that of the Government of Karnataka Order rate. It has sought an amount of Rs.16.36 Crores for both the plants put together.

3) On the part of Respondents 1, 2, 6 and 7, it is contended that the Government Order was passed when the State was reeling under severe power

crisis, explaining the details of causes that were contributing to the crisis; that the tariff set out in the Government Order of Rs.5.30 per KWH was arrived at after taking into reckoning the cost of generation that would be incurred in different circumstances (Annexure-R1); that the tariff also ensures that no loss is incurred by the Petitioner. Further, during the public hearing held on 30.8.2012, the view expressed invariably was that the Commission has to fix a reasonable rate protecting the interest of consumers.

4) I have considered the submissions of the parties in all respects.

5) In the case of the Gulbarga plant, the price applicable as per Clause 3 of the PPA is that, the applicable annual average base rate at the delivery point for the period of 3 years (i.e., April, 2008 to March, 2011) was Rs.3.61 per KWH and as per mutually agreed rates for the rest of the period of contract upto March, 2018. It is specifically mentioned in the PPA that in the event of KPTCL not allowing corridor for inert-State sale, and there being a need to sell power to KPTCL itself, then the rate would be based on the offer rate of KPTCL and the same shall be acceptable to USWL. Analyzing the period of Order of the Government, viz., February, 2012 to May, 2012, it is seen from the PPA that there is no mutually agreed rate during the said period and the rate fixed by KPTCL (Government of Karnataka in this case) shall have to be acceptable to USWL,

according to the terms of the PPA. Accordingly, the Petitioner does not become eligible for a higher rate than that offered by the Government, as seen from the Petitioner's PPA itself. In other words, although for the month of February, 2012 the NOC was withdrawn by the SLDC, the PPA between the Petitioner and TPTCL binds the Petitioner to the rate offered by the Government for the entire period of February, 2012 to May, 2012, in the absence of a mutually agreed rate in the PPA, subject to adjustment of the rate as detailed in my Order in OP No.25/2012 in the case of *Renuka Sugars –Vs-m State of Karnataka and others*, for the actual supply of energy made during February, 2012 to May 2012 for each of the months.

6) In the case of the Belgaum plant, as per Clause 3 of the PPA, the annual average rate at Delivery Point for the period 5.9.2009 to 4.9.2012 shall be Rs.4.50 per KWH. The additional revenue, if any, will be passed on to USWL, subject to adjustment of trader's margin as applicable. In this case, the Petitioner will be eligible to obtain the IEX rates, as published, for the month of February, 2012 as compensation rate - considering that the NOC was withdrawn - subject to adjustment of the rate as detailed in my Order in OP No.25/2012 in the case of *Renuka Sugars –Vs- State of Karnataka and others*, for the actual supply of energy made during February, 2012. It is clear from the PPA terms that as per the Order of the Government of Karnataka, the rate of Rs.5.30 per KWH or a lesser

rate is only admissible for the months of March, 2012 to May, 2012, and not anything higher, because of the PPA terms that binds the parties, viz., USWL and TPTCL, subject – however - to restriction of the allowable rate as detailed in my Order in OP No.25/2012 in the case of *Renuka Sugars –Vs- State of Karnataka and others*, considering the actual supply of energy made during March to May 2012. In this case, USWL could not have obtained any higher rate for March to May 2012, because there was no established sale proposal of the petitioner to sell in Power Exchange, seen from the details furnished.

7) In the case of both the plants, while computing the pro-rata factor as detailed in OP No.25/2012, the maximum exportable capacity will be the agreed maximum exportable capacity for the plants during the season prevailing during February, 2012 to May, 2012.

8) Further, in all the above cases where the arrived at rate is higher than Rs.5.30 per KWH, it will be restricted to Rs.5.30 per KWH, restricted however by the factor of multiplication pertaining to actual energy supplied during that month. In case the arrived at rate is less than Rs.5.30 per KWH, that rate will be the rate at which the generator will be eligible to get paid for actual energy supplied during a particular month. Excess payments, if any, shall be recovered by the ESCOMs from the generator concerned.

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9) Accordingly, in the case of both the plants, the rate admissible as compensation to the Petitioner will be determined in terms of the above for each of the months of the Section 11 Order.

10) The Petition is disposed of in the above terms.

Sd/-
(K. SRINIVASA RAO)
MEMBER