

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

Dated : 25th September, 2014

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri H.D. Arun Kumar | Member |
| 3. Sri D.B. Manival Raju | Member |

ORDERS

OP No.15/2014

BETWEEN :

1. Bangalore Electricity Supply Company Limited
K.R.Circle,
Bangalore – 560 001
2. Hubli Electricity Supply Company Ltd.
P.B.Road, Navanagar,
Hubli - 580 029
3. Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle,
Mangalore – 575 001.
4. Chamundeshwari Electricity Supply Company Ltd
No.972, LJ Avenue New Kantharaja Urs Road,
Saraswathipuram,
Mysore-570 009
5. Gulbarga Electricity Supply Company Ltd,
Station Road,
Gulbarga
[Represented by Justlaw, Advocates]

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PETITIONERS

AND

NII

...

RESPONDENT

1) Preamble:

The Government of Karnataka, in exercise of the powers vested in it under Section 11 of the Electricity Act, 2003, have issued an Order bearing No. EN 26 PPC 2014, dated 26th March, 2014, 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.5.50 per Unit, subject to determination of the final tariff by this Commission. The Government Order is effective from the date of order i.e. 26th March, 2013 and to remain in force until 30th June, 2014 or until further orders whichever is earlier. The said directions are issued statedly to mitigate the acute power crisis in the State.

In the above order the Electricity Supply Companies (hereinafter called ESCOMs) were directed by the Government to submit a memorandum within 15 days from the date of said order before this Commission and request for fixation of tariff for the supply of energy by the Generators under Section 11 of the Electricity Act, 2003.

The Government of Karnataka vide its Order No. EN 26 PPC 2014, dated 28th April, 2014, has withdrawn the directions issued under section 11 of the Act with immediate effect.

2) Petition filed by ESCOMs:

Pursuant to the above-said Government Order which directed all the ESCOMs to approach this Commission to fix the tariff for supply of energy by the generators under Section 11 of the Electricity Act, 2003, ESCOMs have filed the present Petition on 28.04.2014 and have prayed the Commission to fix the tariff for supply of electricity by Generators made in compliance with the Government Order

under Section 11 of the Electricity Act, 2003, for the period from 26th March, 2014 to 28th April, 2014.

3) Legal provisions

The Government of Karnataka has issued the directive in public interest in terms of Section 11 of the Electricity Act, 2003, which is reproduced below:

*"11. **Directions to generating companies.**-(1) The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.*

Explanation. - For the purposes of this section, the expression "extraordinary circumstances" means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest.

(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."

In terms of the above provision, the Commission has to ensure that there is no adverse financial impact due to the directions of the State Government on the generating companies. However, as per the directions of the Government, the ESCOMs have filed the present petition for fixing the tariff by this Commission. Determination of tariff for generation of energy falls under the functions of the Commission under section 86(a) of the Act. While Section 61 of the Act deals with tariff regulations, section 62 of the Act deals with determination of tariff. In view of these statutory provisions, the Commission has considered the petition under, section 61 & 62 and section 86 read with section 11 of the Act.

4) Tariff Determination Process:

After the petitions were filed by ESCOMs, the Commission has directed the ESCOMs to publish a Notice in the newspapers, giving an abridged version of the tariff proposal and also informing that interested persons could file their response on the petitions filed by ESCOM and that a public hearing would be held on 31st July, 2014 by the Commission, in the matter. The said Notice was published in the following newspapers:

- (1) English Newspaper: Deccan Herald on 19th July 2014;
- (2) Kannada Newspapers: Samyaktha Karnataka, Vijay Karnataka on 19th July, 2014.

The Commission also published a public hearing notice in English and Kannada newspapers on 23rd July, 2014, informing that the Commission would hold a public hearing on 31st July, 2014 and requesting interested persons to participate and submit their objections, suggestions / views.

The Commission did not get any written objections on the proposal. In the public hearing held on 31st July, 2014, Ms.Sumana Naganand, learned Advocate appeared before the Commission on behalf of ESCOMs and made submissions. No other member of the public has come forward to make any statement at the hearing their objection suggestions/views.

The learned Counsel representing the ESCOMs sought time to submit the details of energy supplied during the period in question. The details were submitted to the Commission through a Memo dated 1st September, 2014. It was submitted that in March, 2014, 23.305 MU and in April, 2014, 405.951 MU of energy was supplied by the generators to the grid.

5) Issues before the Commission for Tariff fixation:

a) **Short term Market Rates:** The learned Counsel appearing on behalf of the petitioners requested the Commission to adopt the methodology of considering short term market rates during the period from 26th March, 2014 to 28th April, 2014. It was submitted that this methodology has been upheld by the Hon'ble ATE.

It was also submitted through a Memo dated 1st September, 2104 that, this Commission had, in OP No. 40/2010 and in OP 41/ 2010, considered weighted average rate prevailing in the market between April, 2010 and June, 2010 to determine the tariff. After considering this, the Commission was pleased to determine the weighted average rate of Rs.5.82 per unit with a discount of 10 paise per unit towards trading, marketing and transmission charges and approved tariff was fixed at Rs.5.72 per unit.

b) **Non-Availability of Corridor:** Commission was also informed that although the ESCOMs had medium term contracts for the period between August 3013 and June 2015 with JUVNL, ESSAR Power and IDEAL Power, due to corridor constraints no power was imported in the months of March and April, 2014.

c) **Short term rates discovered under bid route:** The Government, while fixing the rates in 2012 (February, 2012 to May, 2012) had considered the short term rates discovered under bid route for that period. In view of this, the Government has considered a rate of Rs.5.50 per unit discovered through competitive bid route for the period from 1st September, 2013 to 30th June, 2014. It has also kept in view the Energy Exchange maximum rate of Rs.5.51 per unit and Market Clearing Price for 23.04.2014 (average rate of Rs.5.23 per

unit), so that generating companies do not suffer 'adverse financial impact' on account of the directive.

d) The Commission has also kept in view the provisions of Section 61 regarding safeguarding consumers' interest and provisions of section 11(2) to offset the adverse impact of the Government's directions.

6) Commission's Analysis & Decision

The ESCOMs have requested to consider the short term trading rates that were prevailing during the period in question. The weighted average short term trading rate for March and April, 2014 are Rs.4.47 and Rs.4.21 per unit respectively, for RTC power, as per the monthly reports of the CERC. However, for procuring power through trading one has to rely on the availability of transmission corridor. But as submitted by the petitioners themselves, even the medium term contracted power could not be procured for want of transmission corridor during this period and hence, we need to see if adoption of the average short-term rates of bilateral trade as published by CERC, which reflect the rates that could be obtained by generators selling power in the national market is appropriate in this case.

7) This Commission, in its orders in OP Nos.16, 17, 19, 23, etc., of 2010, had first adopted the short-term power market rates for power supplied through bilateral contracts and traders, as published by the Central Electricity Regulatory Commission (CERC), as the basis for determining the price that could be obtained by a generator, but for being compelled to supply power to the State utilities under orders issued under Section 11(1) of the Electricity Act, 2003. The

above principle was also upheld by the Hon'ble ATE in Appeal Nos.141 and 142 of 2010 and 10 of 2012, which has observed thus:

“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 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. ...”

- 8)** However, the Commission had to take a different approach in its Order dated 22.5.013 in OP Nos.14, 15, 16, 25, 29, 30, 31 and 40 of 2012, in which we were dealing with determining the rate for supplies made in compliance of the orders issued by the State Government under Section 11(1) of the Act in the year 2012. In those cases, it was observed that even though the short-term rates prevailing at the national level during the relevant period would be relevant in the normal circumstances, the rates available to the generators in the Southern region were different from those prevailing in the national market as a result of the corridor constraints restricting the flow of power into the Southern region from the Northern and Western regions. Therefore, the Commission took the view that it would be fair to adopt the rates obtained by the distribution licensees through a transparent bidding process for short-term power purchase, close to the period covered by the orders under Section 11(1) of the Act. Considering the above circumstances, this Commission reached the following conclusion :

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

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

- 9) In the present case also, the circumstances are very similar to those mentioned above. The distribution utilities in the State were unable to obtain the required quantum of power for meeting the demands through long and medium term contracts, once again due to the non-availability of corridor. The medium term contract for procurement of 1,050 MW power from the Western and Northern regions could not result in filling the gap for the same reason. They had therefore to resort to procurement of power on short-term basis through competitive bids with the approval of this Commission, in the month of August, 2013. The bids invited on behalf of all the ESCOMs together had resulted in the lowest rate of Rs.5.50 per KWhr, at which the distribution utilities contracted for supply of 225 MW to 466 MW for different months between September, 2013 and June, 2014, as against the requirement of 500 MW, for which the bids were called. In view of the non-availability of corridor for drawal of short-term power from outside the State, mainly from the Western and Northern regions, the bids were called for only from the generators of the Southern region. Even after this procurement, the distribution utilities could not fully meet the energy demand approved for the year by this Commission, which was the reason given in the Government Order issued under Section 11(1) of the Act in the present case.
- 10) In view of the above, it is clear that the circumstances in the instant case justify the adoption of the rates of power obtained through competitive bidding earlier during the year by the distribution utilities as the basis for determining the price payable to the generators for the power supplied during the months of March and April, 2014.

11) For the foregoing reasons, we pass the following:

ORDER

The Commission hereby holds that a rate of Rs.5.50 (Rupees Five and paise Fifty only) per KWhr is to be paid to the generators, who have supplied power to the Petitioners during March and April, 2014 in terms of the directions of the Government of Karnataka, vide its Order dated 26th March, 2014.

This rate, however, shall not apply to the power supplied in accordance with any subsisting Power Purchase Agreements with the Petitioners.

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

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER