

Nos.: N/65/10 and N/66/10

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

**Dated : 14<sup>th</sup> February, 2013**

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

**1] OP No.40/2010**

**BETWEEN :**

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

*[Represented by M/s. Khaithan & Co., Advocates]*

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**Petitioner**

**AND**

- 1) The Government of Karnataka  
Represented by kits Principal Secretary  
Energy Department  
Vikasa Soudha  
BANGALORE – 560 001
- 2) Karnataka Power Transmission Corporation Limited  
Cauvery Bhavan  
BANGALORE – 560 009
- 3) State Load Despatch Centre  
Ananda Rao Circle  
BANGALORE – 560 009
- 4) Chamundeshwari Electricity Supply Corporation Limited  
No.927, L.J. Avenue, New Kantharaj Urs Road  
Saraswathipuram  
MYSORE – 570 009

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**Respondents**

*[Respondents 1 to 3 represented by M/s.Justlaw, Advocates and  
Respondent 4 represented by Shri N.S. Sanjay Gowda, Advocate]*

2]

OP No.41/2010

**BETWEEN :**

J.K. Cement Works  
Muddapur  
BAGALKOR – 587 122

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**Petitioner**

*[Represented by M/s. Shridhar Prabhu Associates, Advocates]*

**AND**

- 1) The Government of Karnataka  
Represented by kits Principal Secretary  
Energy Department  
Vikasa Soudha  
BANGALORE – 560 001
- 2) State Load Despatch Centre - Karnataka  
Ananda Rao Circle  
BANGALORE – 560 009
- 3) Power Company of Karnataka Limited  
KPTCL Building  
Cauvery Bhavan  
BANGALORE – 560 009
- 4) Hubli Electricity Supply Company Limited  
P.B. Road, Navanagar  
Hubli – 580 029
- 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) Gulbarga Electricity Supply Company Limited  
Main Road, Opposite Parivar Hotel  
Gulbarga – 585 101

8) Chamundeshwari Electricity Supply Corporation Limited  
No.927, L.J. Avenue, New Kantharaj Urs Road  
Saraswathipuram  
MYSORE – 570 009

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**Respondents**

*[Respondents 1,2, 6 to 8 represented by M/s.Justlaw, Advocates and  
Respondent 5 represented by its Legal Officer]*

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### **COMMON ORDER**

1) This Commission had passed an Order on 24.3.2011 in OP No.16/2010 and other connected Petitions as follows :

*"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 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."*

2) M/s. Himatsingka Seide Ltd., J.K. Cement Ltd., and MPPL Renewable Energy Private Limited had filed Appeal Nos.141 and 142 of 2011 and 10 of 2012 before the Hon'ble Appellate Tribunal for Electricity (ATE), assailing the Order dated 24.3.2011 of this Commission referred to above. The Hon'ble ATE has passed the Order dated 3.10.2012 in the above Appeals as follows :

**"Appeal nos. 141 & 142 of 2011**

***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. 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. 13.2 The Appellants are entitled to payment of interest charges for the delay in actual payment by the distribution licensees.*

**Appeal no. 10 of 2012**

*13.3 Regarding the jurisdiction issue raised in Appeal no. 10 of 2012, we hold that the State Commission has correctly exercised its powers u/s 11(2) of the Act to offset the adverse financial impact of the Government directions u/s 11(1) of the Act on the bio-mass power generator who have existing PPAs with the distribution licensees. The bio-mass generators having existing PPA with the distribution company are entitled to the rate determined by the State Commission for the quantum of energy in excess of the energy that they would have normally supplied to the distribution licensees under the PPA.*

*13.4 The State Commission was correct in deciding the quantum of energy under normal supply obligation as average of energy actually supplied during the months of April, May and June during the previous three years excluding the period in the year 2009*

***when they had been directed to maximise generation by the State Government's order u/s 11(1) of the Act.***

*14. With the directions given above, Appeal nos. 141 & 142 of 2011 are disposed off. The State Commission is directed to pass consequential order after hearing the Appellants within 45 days from the date of this judgment. Appeal no. 10 of 2012 is dismissed. No order as to costs."*

3) Pursuant to the above Order of the Hon'ble ATE, the original Petitions OP 40/2010 of Himatsingka Seide Ltd., and OP 41/2010 of J.K. Cement Works have been called back in order to determine the discount that has to be effected towards marketing and transmission charges to arrive at the rate of supply of energy to be paid to the Generators during the period April 2010 to June, 2010, and Notices were issued to Himatsingka Seide Ltd. and J.K. Cement Works.

4) J.K. Cement Works has also appeared, being one of the Appellants before the Hon'ble ATE in the above Appeals, and has sought for determination of the marketing and transmission charges in its case also.

5) We have heard the Counsel appearing for both the Petitioners in the remanded Petitions, as well as the Respondents' Counsel.

6) It is submitted by Shri Shridhar Prabhu, the learned Counsel who appeared on behalf of the Petitioners, that his clients being embedded entities and connected at the interface point, were not required to pay any transmission

charges, relying upon the standard draft of the Power Purchase Agreement (PPA) prescribed by the Government of Karnataka. Further, he submitted that even in the case of bilateral transactions on Inter-State Open Access, it was not required to pay any trading margin, since the bilateral Contract itself states that the transaction is directly between the Purchaser and the Seller, and all bilateral transactions are transacted on 'ex-bus' basis and all transmission costs would have been to the account of the Buyer. He also submitted that as per the Hon'ble ATE's Order, the Petitioner is entitled to the interest charges on the delayed payments, at the rate of 2% per month, to be calculated on a day-to-day basis, after the expiry of 30 days, within a reasonable period as per the Orders of the Government issued under Section 11 of the Electricity Act, 2003.

7) The learned Counsel appearing for the Respondents has filed a Memo dated 30.11.2012 along with the Calculation Sheet to show the transmission charges and marketing expenses prevailing during the period April, 2010 to June, 2010. According to the statement filed with the Memo, the Open Access Transmission charges for third party sale in Karnataka was Rs.80/- per MWhr, for inter-regional sales in an adjacent State Rs.160/- per MWhr, and where the supply involves more than two regions, Rs.240/- per MWhr during the months of April, 2010 to June 2010. This rate works out to 8 paise per MWhr in Karnataka, 16 paise per MWhr for supply in the adjacent region and 24 paise per MWhr, if the supply involves more than two regions. Further, there are operating charges payable to the Regional Load Despatch Centre, which amount to 1 paise per KWhr in each of the regions, and therefore, if the supply involves more than two regions,

it will be 3 paise per KWhr. Besides the above, an application fee of Rs.5,000/- is payable to State Load Despatch Centre (SLDC) for obtaining Open Access. Further, the Respondents' Memo also gives details of Transmission losses ranging between 2.06% and 2.75% for electricity scheduled within the region, and 4.54% and 6.87% for electricity scheduled through an adjacent region, with the loss levels varying from month-to-month.

8) We have considered the submissions made by the Petitioners' Counsel and that of the Respondents.

9) While passing its Order dated 24.3.2011 in OP No.16/2010 and other connected Petitions, this Commission had observed at Paragraphs 19, 20 and 21 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.”*

10) From the above observations, it could be made out that this Commission had considered the Weighted Average Rate prevailing in the market between April, 2010 and June, 2010 to determine the price at which the Petitioners could be compensated, The Weighted Average at that time, as stated at Paragraph-21 of the above observations, was Rs.5.68 per Unit in April, 2010, Rs.6.26 per Unit in May, 2010 and Rs.5.57 per Unit in June, 2010 and the Weighted Average Rate of the above rates works out to Rs.5.82 per Unit.

11) The Hon'ble ATE, in the Order referred to above, had directed this Commission to determine the discount on account of marketing expenses and transmission charges, and re-determine the rate of supply of energy to be paid to the Generators during the period April, 2010 to June, 2010, after hearing the Appellants therein. The direction of the Hon'ble ATE is to determine the net amount that a generating company can realize after deducting any expenses, which are incurred by the generators incidental to the sale of electricity. For this purpose, it is necessary for us to take into account only those expenses, which are payable by the generators in connection with sale of power and which need to be deducted from the price ruling in the short-term bilateral power market, as published by the CERC. In this regard, we have seen some of the PPAs entered into between the generators and traders to arrive at the usual terms governing such transactions. In the said Agreements, it is commonly seen

that the Transmission losses from the Point of Injection into the State Transmission Network at the generator's end, and up to the Delivery Point, including the losses in the intra-State and inter-State Transmission Networks, are on the account of the buyers. Further, the Transmission charges payable to Transmission Utilities are also to be borne by the buyers. Therefore, the amount to be deducted from the price payable to the generators cannot include the cost attributable to Transmission losses and Transmission charges. However, the generators selling electricity in the short-term bilateral power market have to pay the trading margin, unless the electricity is sold directly in response to bids invited by the buyers. Even in such cases, it is not uncommon that the energy trading companies submit bids on behalf of the generators. Thus, the trading margin as fixed by the CERC is generally paid by the generators to the traders. In addition, the generating companies also incur expenditure by way of application fee and operating charges paid to the SLDCs for obtaining Open Access. While the trading margin during the period in question was fixed by the CERC at a maximum of 7 (seven) paise per KWhr with a Weighted Average of 5 (five) paise per KWhr, the SLDC charges amount to approximately 4 to 5 paise per KWhr, considering the calculations furnished by the Respondent-ESCOMs in the Memo referred to above. We assume another one paise per unit as administrative expenses, which may be incurred by the generators in connection with the recovery of payments and related correspondence. Thus, we determine the expenses incurred by the generators towards marketing and transmission of electricity, including trading margin, at 10 (ten) paise per Unit. Therefore, 10 (ten) paise per Unit determined as Transmission and Marketing expenses as above,

has to be deducted in the above Weighted Average Rate, which works out to Rs.5.72 per Unit.

12) As recorded at Paragraph-2 of the Hon'ble ATE's Order dated 3.10.2012 in Appeal Nos.141 and 142 of 2011 and 10 of 2012, referred to above, the Hon'ble ATE has approved the approach of this Commission in taking the Weighted Average Market Rate for the purpose of determining the rate at which the adverse financial impact had to be offset. Consequently, in our view, the Petitioners are entitled to Rs.5.72 per Unit instead of Rs.5/- per Unit as held by this Commission in its Order dated 24.3.2011 in OP No.16/2010 and connected cases. That means, the Respondents have to pay additional 72 (Seventy Two) paise per Unit over and above Rs.5/- per Unit, i.e., to the Petitioners in OP No.40/2010 – Himatsingka Seide Ltd. and OP No.41/2010 – J.K. Cement Works.

13) As regards interest on delayed payment, we deem it proper and equitable to order payment of simple interest at the base rate of the State Bank of India on lending, which is at present 9.70% per annum.

14) Accordingly, the directions issued to this Commission by the Hon'ble ATE in its Order dated 3.10.2012 are complied with and these Petitions are disposed of in the above terms.

Sd/-	Sd/-	Sd/-
(M.R. SREENIVASA MURTHY)	(VISHVANATH HIREMATH)	(K.SRINIVASA RAO)
CHAIRMAN	MEMBER	MEMBER