

Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated 10th December 2004

Present

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|-----------------------|--------|
| 1. Sri H.S.Subramanya | Member |
| 2. Sri S.D.Ukkali | Member |

In the matter of issue of Supply Licence for Limited Area in Toranagallu to Jindal Thermal Power Company Limited (JTPCL), Toranagallu

O R D E R

The matter in question pertains to issue of a licence under section 14 and 15 of the Electricity Act 2003, by Karnataka Electricity Regulatory Commission (KERC) to M/s Jindal Thermal Power Company Limited (JTPCL), the applicant.

2. The applicant, namely JTPCL, vide application dated 17th May 2004, has applied for a "Supply licence for limited area in Toranagallu" for supply of power to the industries situated in the entire industrial complex adjacent to the generating station of the applicant.

3. The facts of the case are as under:

(i) The applicant is a registered company under the companies Act, 1956 and is engaged in the business of generation of power from its thermal power plant in Toranagallu, Bellary District.

(ii) The applicant had earlier sought exemption from holding a supply license for supplying power from its thermal plant to a few industries which are located in the industrial complex adjacent to JVSL/JTPCL complex in petition No.OP14/2003 before the Commission. The Commission while disposing of the said petition on 22nd January, 2004 had observed as follows:

“ If the petitioner intends to supply power to a group of consumers with his own distribution network he will come under the purview of Part-IV of the Act and would require a distribution licence”.

(iii) In the present application the Applicant has sought a “Supply licence for limited area in Toranagallu” for power supply from its thermal plant to the entire industrial area complex adjacent to JVSL/JTPCL complex. As stated by the applicant company, it intends to supply power to the two industrial Units namely (i) . Bhuwalka Pipes Ltd., and ii) Karignur Iron and Steel Ltd and any other Industry coming up in the Industrial area complex.

(iv) The applicant has applied for grant of supply licence for a limited area following the procedure set out in KERC (Licensing) Regulations 2000 as the Licensing Regulations under the Electricity Act 2003 was not notified by the Commission as on the date of the application. The applicant has undertaken to abide by the Licensing Regulations proposed to be issued by the Hon'ble Commission as per the new Act.

4. The Applicant has made the following submissions before the Commission in support of his request for grant of licence.

(i) Jindal Vijayanagar Steel Limited (JVSL) has set up a 1.6 MTPA integrated steel plant and Jindal Praxair Oxygen Company Limited has set an oxygen plant at Toranagallu near the Steel Plant set up by JVSL. It is stated by the applicant that the State Government have approved a proposal of JVSL to establish an ancillary industrial complex near the steel Plant. As a part of this scheme, M/s Bhuwalka Pipes Ltd., and M/s Karignur Iron & Steel Ltd., have set up ancillary units producing ERW pipes and sponge iron respectively. The State Government, while approving the project, has approved supply of power by the applicant to these ancillaries on a negotiated tariff basis subject to approval of the rates by KPTCL/KERC. The applicant intends

to supply the requirement of power of these units through dedicated transmission lines.

- (ii) The ancillaries were established as a part of the industrial scheme of the JVSL to promote industrial development in the Bellary – Hospet region for the purpose of providing spares, services , materials etc., to the steel plant, oxygen plant and the power plant which are all part of the JVSL complex. The Government of Karnataka order dated 7th March 1994 states that the power plant was being set up to supply power to JVSL, the then KEB and various ancillary units in and around Bellary – Hospet region. In the permission granted by the GoK in order dated 17th January 2002 and 11th June 2002 and by Karnataka Udyoga Mitra vide its letter dated 27th June 2002 and 3rd September 2002, it has been stated that the power requirement for the ancillary units is to be fulfilled by the applicant. It was submitted that the applicant is already supplying power to JVSL and Jindal Proxair Oxygen Company Limited situated within JVSL complex. The original intention of the Government of Karnataka is to provide reliable and quality power in the entire industrial complex so that the steel plant can function smoothly without any infrastructure bottlenecks and bring overall economic prosperity to this region. It was submitted that the supply of power by the applicant to the ancillaries is therefore essential to keep up this intention of the Government.
- (iii) The 'ancillaries' are located adjacent to the JTPCL and JVSL Complex and the extension of supply to them would be very easy and can be arranged in a very effective manner at 33 KV or 11 KV. In the event the area supply licensee GESCOM has to meet the power demand of the ancillaries, then power has to be brought from a nearby 110 KV sub-station, establish a

110/33/11 KV substation with additional costs to KPTCL and transmit this power over 33 KV and 11 KV lines involving greater transmission and distribution losses compared to the most economical and technically justified supply source in the adjacent JTPCL power plant. Further the tariff at which the area licensee can supply to these ancillaries will be high as compared to the actual cost of supply due to cross subsidy element of around 40% thus making power costlier to the ancillaries and the parent company JVSL, thus defeating the very purpose of the GoK orders dated March 1994 and January 2002.

- (iv) by supplying power to these industrial consumers no existing contract will be circumvented by JTPCL or the existing industries (Bhuwalka or Karignur) as the area distribution licensee GESCOM is not supplying power to any of these consumers at present and there will not be any loss of revenue to GESCOM. Further, in the new Act the proviso 5 to section 14 of part IV states that:

"Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area,, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (including the capital adequacy, credit-worthiness, or code of conduct) as may be prescribed by the Central Government"

- (v) Petitioner being a generating company and having the approval of the State Government for supply of power to ancillaries in the specified area has all the requirements like adequate capital, credit worthiness and code of conduct doing business in the state for over 4 years. He is also willing to

accept any additional requirements that may be imposed by the Central Government.

5. The Commission had directed the applicant to publish a notice of his application as required under section 15(2) of the Electricity Act 2003, calling for objections for the grant of licence, In pursuance of the said direction, the applicant had published a notice on 20th and 21st August 2004 in two Kannada and English newspapers. The Commission did not receive any objections for granting the licence except one objection from the Village Panchayat Toranagallu which had objected for the supply of power to M/s Bhuwalka Pipes limited for the reason that the latter had not obtained any licence from the village panchayat.
6. Further, the Commission conducted a hearing to elicit the views/objections from the public and stakeholders on 18th October 2004. In the hearing, JTPCL was represented by Sri Viswanathan, Learned Counsel from M/s Amarchand Mangaldas & Co.,. JTPCL made a brief submission on the application filed by it and stated that only one objection from Village panchayat Toranagallu village was received and that the same has been withdrawn by the VP subsequently. JTPCL further submitted that they have complied with all the requirements as per EA 2003 and satisfied all the conditions laid down by the Commission and are prepared to meet further compliances if any required under the Act. They requested the Commission to grant the licence.

Major objections/ views expressed during the hearing and response of JTPCL thereon are as follows:

- (i) MD, GESCO stated that since the regulations on open access are yet to be issued by the Commission under the Electricity Act, 2003, the grant of licence as sought for by the Applicant would be premature. He further stated that Supply of power only to HT consumers in a limited area as sought by the Applicant would result in cherry picking and granting licence could set precedence for further cherry picking and consequent loss of revenue/cross subsidy to GESCO. In the event of grant of licence, the new licensee should also be given a social responsibility of supplying power to weaker sections of the society.

JTPCL responded by stating that the provisions of section 42 pertaining to open access are not relevant to the present application. On being questioned by the Commission as to how to deal with the loss of cross subsidy from the consumers who would have availed power supply from GESCO, but for supply of power under the proposed licence, JTPCL stated that as they are proposing to supply power to new industries in the proposed area that too by installing their own network, the question of compensating for the existing cross subsidy may not arise. However, JTPCL stated that they are agreeable to compensate the GESCO for the loss of cross subsidy as may be decided by the Commission.

- (ii) Sri Sridhar Prabhu, speaking for Indian Wind Power Association sought clarification whether the application is under section 14 or 15 of the Act. He further stated that as per Section 86(1)(e) of the Act, the Commission has specified that 5 to 10% of the total consumption of distribution licensee shall be procured from renewable sources. This shall be applied to JTPCL also if licence is granted. Since the distribution licensees are not required to have a separate trading

licence (Proviso 8 of section 14 of the Act), once the licence is granted as sought by the Applicant, JTPCL may indulge in trading activity as well. This will be a backdoor entry for trading. Before granting such licence, the Commission has to ensure capital adequacy, creditworthiness, code of conduct as may be prescribed by the central government as specified in the EA 2003. These are conditions precedent and therefore, the Commission should ensure compliance to these provisions before granting licence.

JTPCL clarified that their application for grant of licence is under section 14 of the Act and the application has been filed as required under section 15 of the Act. On the purchase from NCE sources, JTPCL stated that the said provision is not applicable to the Applicant since he is proposing to supply power from his own generating company. On the trading activity, they stated that JTPCL would not enter the area of trading nor they intend to extend the area of supply proposed in the application .

- iii) Sri Sridhar Prabhu further argued that the Commission is not bound by the Government orders on the supply of power to an industrial area/ industrial zones as contended by the Applicant. There is no promissory estoppel either, even if such permissions are granted by the Government earlier. Therefore, the Commission should have a fresh look on the application. If such applications are encouraged, other licensees including ESCOMs may also choose to supply power to only such industrial areas in future.

JTPCL responded stating that government has contemplated supply of power to ancillary units by the plant even at the stage of approval of the project and accordingly the present application. They also further

stated that at present KPTCL is not evacuating any power from the plant and the corex gas is going waste and as such there is urgent need to make use of the available national resource for productive purpose.

iv) Sri Y.G. Muralidharan, Consultant (Consumer Advocacy),KERC stated that grant of licence to JTPCL for intended power supply to a few HT consumers would affect the subsidy equation resulting in increased tariff to the other consumers thereby affecting the financial viability of ESCOMs. He also stated that section 14 of the Act provides that the Commission can grant license subject to the additional requirement like capital adequacy, credit worthiness and code of conduct to be prescribed by the central Government. In the absence of notification of such norms from the Central government, the Commission cannot grant license to the applicant. He stated that the Act does not provide for grant of licence to a limited area as sought by the Applicant but the Applicant may supply power to consumers when the Open Access is introduced by the Commission. He further contended that the applicant has sought several exemptions in the conditions of licence like exemption from requirement to file ERC, adherence to model conditions of supply etc that would amount to discrimination amongst the licensees if such exemptions are granted. He stated that the conditions of licence shall be uniform to all the distribution licensees including ESCOMs.

(v) To a pointed question by the Commission whether the Applicant is already supplying power to any new industries in the area of supply proposed by the Applicant, the Applicant confirmed that he is

supplying power to Buwalka Pipes based on an earlier order of the Government.

7. Having regard to the facts and circumstances of the case and the objections raised by the public and the stakeholders, the Commission has examined the matter in detail. The following are the major points for examination with reference to the various provisions of the Act.

- 1) The Applicant has sought a "supply licence" for limited area in Toranagallu to supply power to the entire industrial area complex adjacent to JVSL and JTPCL complex. Whether such supply licence is permissible under the Electricity Act 2003?
- 2) Whether the Application of the generating company for grant of licence for supplying power directly to consumers is in accordance with the provisions of the Electricity Act 2003?
- 3) Whether the Licence, if granted, as sought by the Applicant is in tune with the objectives of the Electricity Reforms ?
- 4) Whether the licence if granted would amount to discrimination amongst the licensees ?

8. Point No 1:

Section 14 of the Electricity Act, 2003 is as under:

"the Appropriate Commission may, on an application made to it under section 15, grant a licence to any person-

- (a) to transmit electricity as a transmission licensee; or
- (b) to distribute electricity as a distribution licensee; or
- (c) to undertake trading in electricity as an electricity trader,

in any area as may be specified by the licence;

-----etc"

Therefore, it is clear that there is no concept of "Supply Licence" in the Electricity Act 2003 as sought by the Applicant. Further, the Applicant's request for a supply Licence for a "Limited Area" has no relevance as there is no mention of such limited area in the Act. The Commission has already observed in its order dated 22nd January, 2004 that *supply of power to a group of consumers with his own distribution network will come under the purview of Part-IV of the Act and would require a distribution licence.*

9. Point No.2

The duties of the generating companies have been specified under section 10 of the Act, which is reproduced below:

- " 10. (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.
- (2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.
- (3) Every generating company shall -
- (a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority.
 - (b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it. "

It could be seen from the above provision that while section 10(1) deals with the duties of a generating company to establish, operate and maintain generating stations, tie lines, sub-stations and dedicated

transmission lines, section 10(2) provides for the persons to whom a generating company can supply electricity. Accordingly a generating company may supply electricity to:

- (i) any licensee and
- (ii) subject to the regulations made under section 42(2) to any consumer.

Therefore it is amply clear that a generating company can supply electricity to the consumers only under the Open Access regulations issued by the Commission under the provisions of Section 42(2) of the Act and by no other means. In the present application, the Applicant's proposal is not to supply electricity to consumers under the Open Access scheme. Hence, the Applicant's request for grant of Supply Licence in order to supply electricity to a few industries is not in accordance with the provisions of the Act.

10. Point No.3

One of the major objectives of bringing in reforms in the electricity sector is to promote competition in the sector. The Electricity Act 2003 has introduced several innovative provisions such as trading of electricity, Open Access to consumers, provision for grant of licence to two or more persons for distribution of electricity within the same area, provision for wheeling of electricity for their own consumption by captive generating plant etc in order to promote competition. Further, the Act contemplates unbundling of the monolithic electricity utilities into separate generation, transmission and distribution companies. Section 32, section 39 and Section 41 of the Act prohibit the State Load Despatch Centre, State Transmission utility and a transmission licensee respectively from engaging in the business of trading in electricity. It is clear that these are measures towards unbundling of the electricity industry. Such being the case, if a

distribution licence is granted to a generating company, such company will engage in generation, transmission and distribution functions and can also engage as well in trading of electricity. In the opinion of the Commission, such licence would be contrary to the basic objective of reforms. Therefore, the present Application is not in the scheme of reforms under the Electricity Act 2003.

11. Point No 4

The Applicant has sought the licence to supply electricity to industrial consumers in a limited area adjacent to its complex. In fact, the industrial consumers are the major consumers in the State contributing about 35% of its revenue of the licensees. The industrial consumers are contributing about 34% over the average cost of supply to cross subsidise electricity supply to other categories especially the Irrigation pump sets and small domestic consumers (the cross subsidy percentage would be much higher if cost to serve HT industrial consumers is considered instead of average cost of supply). If the distribution licensees are given an option, every distribution licensee would like to supply only to such consumers who pay equal to or above the cost of supply, leaving out other subsidised category of consumers. In fact, according to the draft National Electricity Policy dated 30.6.2004 of the Govt. of India, for grant of second and subsequent distribution licences within the area of an incumbent distribution licensee, *a revenue district, a Municipal Council for a smaller area or a Municipal Corporation for a larger area as defined in the Article 243(Q) of the Constitution of India (74th Amendment) may be considered as the minimum area*. Therefore, if such licences are granted as sought by the Applicant, it would lead to discrimination amongst the licensees. It is clear, that the Act contemplates supply by generating companies to consumers only under open access as discussed earlier.

12. To a query raised by the Commission in the course of public hearing, the Company's Counsel has stated that power is being supplied to Bhuwalka Pipes Ltd., and further stated that the same is in accordance with the Government approval. As per the GOK'S order No. CI 306 SPI 2001 dated 11th June 2002, referred to by the applicant, JTPCL was required to enter into an agreement with the 'ancillary' units for supply of power at mutually agreed terms, subject to approval by KPTCL/KERC as applicable. The Commission notes that no such approval has been obtained by the Applicant from the Commission and therefore, the act of the Applicant in providing such supply is devoid of legal sanction.
13. Having regard to the facts and circumstances of the case and in the light of the above discussion, the Commission holds that this is not a fit case to grant 'Limited Area Supply Licence'. Ordered accordingly.

Sd/-

**S.D.Ukkali,
Member**

Sd/-

**H.S.Subramanya,
Member**