

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

Dated : 11th February, 2016

Present:

Sri M.K. Shankaralinge Gowda	-	Chairman
Sri H.D. Arun Kumar	-	Member
Sri D.B. Manival Raju	-	Member

RP No.6 / 2014

BETWEEN:

Karnataka Power Transmission Corporation Limited
Cauvery Bhavan,
Bengaluru – 560 009

..

PETITIONER

[Represented by Thiru & Thiru, Advocates]

AND:

- 1) Bangalore Electricity Supply Company Limited
K.R. Circle,
Bengaluru - 560 001.
- 2) Mangalore Electricity Supply Company Ltd;
Paradigm Plaza, A.B. Shetty Circle,
Mangaluru - 575 001.
- 3) Chamundeshawari Electricity Supply Corporation Limited,
No.29, Kaveri Grameena Bank Road,
Vijayanagar, 2nd Stage,
Mysuru – 570 019
- 4) Hubli Electricity Supply Company Limited,
P.B. Road,
Navanagar,
Hubballi - 580 025.

- 5) Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi - 585 101.

.. **RESPONDENTS**

[Represented by Just Law, Advocates]

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ORDERS

1. This Review Petition has been filed under section 8 of the KERC (General Conduct of Proceedings) Regulations 2000, read with section 94 of the Electricity Act 2003, seeking review of the Commission's Order dated 12th May, 2014, on the Annual Performance Review of the petitioner for FY13 and revision of Transmission Tariff for FY15, in respect of the following:

- a) O & M Expenses;
- b) Depreciation;
- c) Return on Equity (RoE);
- d) Advance Against Depreciation (AAD):

2. The Petitioner has made detailed submissions on each of the above claims which may be stated as follows:

- a) O & M Expenses:

- (i) The Petitioner actually incurred O & M expenses of Rs.796.54 Crores (which include Employees cost of Rs.656.19 Crores, Rs.47.15 Crores towards Administrative and General Expenses Rs.93.20 Crores of Repair and Maintenance). However, the Commission has approved, normative O&M Expenses to the tune of Rs.417.37 Crores and uncontrollable expenses of Rs.287.64 Crores, aggregating to a sum of Rs.704.64 Crores thereby, omitting Rs.91.90 Crores, without assigning any reasons, which has resulted in a great loss to the Petitioner.

- (ii) As per Regulations 3.11.1 and 3.11.2 of the MYT Regulations, the actual O & M expenses ought to have been considered for the base year. For the

purpose of APR for FY13, the base year is FY10. While considering the O & M expenses for base year FY10, the Commission in its order dated 7th December, 2010 has considered the O & M expenses allowed for FY08 and FY09 to arrive at costs for base year FY10 and has not allowed the actual O & M expenses of the petitioner. The Commission has arrived at cost per ckt-km of lines and substation bays for the said base year only by inflating the cost of ckt-km of lines and bays, provided for FY09 and not by considering the actual O & M expenses of FY10, which is in contradiction of clause 3.11.1 and 3.11.2 of the MYT Regulations.

- (iii) Clause 3.11.3 of the MYT Regulations specify norms for O & M expenses per ckt-km and per bay for the control period FY07, FY08 and FY09 as follows:

Particulars	2007-08	2008-09	2009-10
O & M expenses (Rs. In lakh per ckt-km)	0.225	0.266	0.227
O & M expenses (Rs. In lakh per bay)	31.63	32.90	34.22

But the commission has considered O & M expenses of Rs.0.58 lakhs per bay and Rs.0.73 lakhs per ckt-km of line in its order dated 7th December, 2010, for the base year FY10, and Rs.68.04 thousand per bay and Rs.90.39 thousand per ckt-km of line in the impugned Order for FY13. This is contrary to the clause 3.11.3 of MYT Regulations. The Commission had considered O & M expenses Rs.1.44 lakhs per bay and Rs.0.62 lakhs per ckt-km of line for FY07 in its order dated 7th July, 2007 and these figures demonstrate the fact that higher cost is incurred towards the bay and lower costs towards the per km of line, which has missed the attention of the Commission.

- (iv) The actual cost per bay, incurred by the petitioner, is Rs.2.10 lakhs for FY13, as against the allowed cost of Rs.68.04 thousand per bay, in the order under review.
- (v) Since the Commission has not considered the actual O & M expenses for base year FY10 to arrive at the O & M costs for FY13, the same is contrary

to the MYT Regulations and has resulted in huge loss year after year and if not corrected, may continue for subsequent years.

b) Depreciation:

- (i) There is error apparent on record in disallowing the depreciation amount of Rs.14.67 Crores on the basis of a weighted average rate of depreciation on the Opening and Closing Balance of assets created out of consumer contribution for FY13. The petitioner is not bound to follow Schedule 12 of the ICAI and the Companies Act 2013 but entitled to charge depreciation as per the provisions of Section 69 of Electricity Supply Act, 1948, which permits the petitioner to charge depreciation on consumer's contribution.
- (ii) The petitioner's right to maintain accounts under Section 69 of Electricity Supply Act, 1948, is a "Vested Statutory Right" that cannot be taken away to any court or any authority including Commission. The Parliament, while enacting the Companies Act 1956, has excluded applicability of Schedule VI, disclosing norms under Sections 211 and 616 to Companies generating or supplying electricity. Similarly the Companies Act, 2013, vide Section 129 has reiterated the exclusion of compliance of Accounting Standards to Companies engaged in generation and supply of electricity.
- (iii) The erstwhile KEB was a predecessor of the Review Petitioner in title and the rights enjoyed by the erstwhile KEB, the right to maintain Accounts under Section 69 of Electricity Supply Act, 1948 has been vested under Sections 13 and 14 of Karnataka Electricity Reform Act, 1999. The Petitioner should be allowed to charge depreciation on consumer's contribution for FY13 under section 69 of Electricity Supply Act, 1948 and the Commission should allow Rs.14.67 Crores towards depreciation on consumer's asset for FY13.

c) Return on Equity (RoE);

- (i) The Commission has only considered the opening balance of the equity of FY13 and opening balance of Surplus in the Profit and Loss Account of

FY13 for computing the Return on Equity, which is erroneous because no returns are being provided on the additional equity infused and capital reserve accrued during the year. The Government of Karnataka has infused an additional equity of Rs.250 Crores during FY13 vide Government Order's dated 13.04.2012, 24.01.2013 and 30.03.2013 and the same has not been considered by the Commission. An amount of Rs.7,45,46,563 accounted as Capital Reserve during the year being the capital gain on sale of land and accumulation of capital gains since 2003-04, has not been considered for computing the RoE. The Capital Reserve forms part of the Reserves and Surplus for the purpose of computing RoE, as per the Accounting Standards.

- (ii) RoE must be computed by considering the average capital employed during the year. To compute the average capital employed, the opening and closing paid-up capital and pending share allotment (deposits) should be considered. Reserve and surplus should be taken into consideration as the same is a re-invested profit which is nothing but Capital for the purpose of RoE computation. This factor has been erroneously omitted by the Commission and should be rectified.
- (iii) The average capital will be Rs.1800.32 Crores and Reserve and Surplus will be Rs.499.52 Crores as per balance sheet and the RoE claimed thereon will be Rs.356.47 Crores at 15.5%.

d) Advance Against Depreciation (AAD):

- (i) The Commission had provided for Advance against Depreciation (AAD) of Rs.166.39 Crores for the FY10. However, the petitioner has not availed the said provision. The Commission vide its order under review, has presumed as if the Petitioner has availed the said provision and has adjusted the advance against depreciation provided during FY10 in the Approval (APR) for FY13, whereby an amount of Rs.166.39 Crores is adjusted in the APR for FY13, without any claim by this Petitioner on this account. The AAD has not been availed by KPTCL and its adjustment in ARR has caused huge cost burden on the petitioner.

- (ii) The Commission vide its Order dated 17.10.2013, has allowed Rs.166.39 Crores as AAD for FY10 to be deducted in FY13, in pursuance of Orders of the Hon'ble ATE dated 02.01.2013 in Appeal No.108 of 2010. The Hon'ble ATE, in the said Order, has ordered that, henceforth the ESCOMs have to maintain accounts in compliance with the Companies Act 1956. On the basis of the Orders of the Hon'ble ATE, the Commission in its Order dated 17.10.2013 has revised the depreciation of the petitioner, for FY10 as follows:

Year	Allowed in the Tariff Order	To be allowed as per APTEL Order	Difference
FY10	358.57	234.17	-124.40

From the above, it is clear that this Commission is of the opinion that it had approved Rs.124.40 Crores more than what it should have approved.

- (iii) The Commission is apparently of the review that the said amount of Rs.166.39 Crores may have been adjusted towards the extra depreciation provided by the Commission for FY10. However, the said amount of Rs.166.39 Crores has neither been adjusted towards the deemed extra depreciation allowed for FY10 nor it has been included in the ARR/APR for FY10 as AAD.
- (iv) The ruling of the Hon'ble ATE in Appeal No.108 of 2010, that all the ESCOMs have to maintain accounts in compliance with the Companies Act, 1956 should not to be given effect retrospectively as the Hon'ble ATE has directed the 2nd Respondent to submit annual statement of accounts in accordance with the Companies Act, "henceforth".
- (v) As held by the Hon'ble Supreme Court in the case *K. Narayanan –Vs- State of Karnataka*, reported in **AIR 1994 SCC 55**, "Rules operate prospectively. Retrospectivity is an exception."

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3. Based on the above submissions, the Petitioner has prayed the Commission to:

- a) Reconsider and modify the Order dated 12th May, 2014 with regard to O & M expenses, Return on Equity, Advance against Depreciation and Depreciation for FY13.
- b) Allow deficit of Rs.91.90 Crores towards O & M expenses by considering the actual O & M expenses for the base year FY10 and the rise in the number of bays and lines.
- c) Allow the RoE based on the average of opening and closing balances of the equity for FY13.
- d) Withdraw the deduction of Rs.166.39 Crores towards advance Against Deprecation.
- e) Allow depreciation of Rs.14.67 Crores on the assets created out of consumer's contribution.
- f) Pass such other orders as the Commission may deem it fit and proper, in the interest of justice and equity.

4. Upon issuance of notice, the Respondents entered appearance through their counsel and filed statement of objections to the petition in which it is mainly contended as follows on the issues raised.

a) O & M Expenses:

- (i) The Commission has allowed inflation of 5.93% as against CERC notified inflation rate of 10.76%.
- (ii) There was increase in House Rent Allowance (HRA) due to increase in basic pay, revision of rates by the GoK and merger of 75.75% DA w.e.f 01.04.2012.

b) Depreciation:

The Petitioner had not filed the actual depreciation on the assets created out of consumers' contribution and hence the Commission has rightly considered the same as per AS-12.

c) Return on Equity:

It is for the petitioner to establish the apparent error in considering the Reserves and Surplus.

d) Advance Against Depreciation:

The decision on Advance Against Depreciation has been taken by the Commission as per the Orders of Hon'ble ATE in Appeal No.108 of 2010 dated 02.01.2013. The petitioner cannot dispute the same without disputing the Orders of the Hon'ble ATE.

5. After considering the material on record and hearing the counsel for both parties, our findings on the issues raised in the petition are as follows:

a) O & M Expenses:

- (i) The petitioner had claimed O & M expenses of Rs.658.82 Crores for FY13, in its application dated 13.08.2010, for approval of ARR for the control period FY11 to FY13. The Commission in its Order dated 7th December, 2010 had computed the allowable O & M expenses of Rs.519.21 Crores for FY13 under MYT Regulations. Subsequently based on the application of the petitioner for approval of revised ERC and Transmission Tariff for FY13, the Commission in its Order dated 30.04.2012 had computed the allowable O & M expenses for FY13 at Rs.586.29 Crores. The petitioner, in its application dated 29th November, 2013 for APR for FY13, had requested to allow actual O&M expenses of Rs.796.54 Crores. In Multiyear Tariff Approach, the values of the base year of the Control period are being determined based on the latest audited accounts available, best estimates for the relevant years and other factors considered appropriate by the Commission, and after applying the tests for determining the controllable and uncontrollable nature of various items. (Clause 2.5.1 of the MYT Regulations)

- (ii) The allowable O & M expenses, which are classified as 'Controllable expenses' are determined as per the provisions of the MYT Regulations which read as under:

"3.11 Operation and Maintenance Expenses:

3.11.1: "In the case of existing Transmission Licensee, the Licensee in its filing shall submit the consolidated O & M expenses for the base year of the Control Period and for the two years preceding the Base year. The O M expenses for the base year shall be determined based on the latest audited accounts, best estimates of the Licensee of the actual O & M expenses for relevant years and other factors considered relevant. The O & M expenses for the Base year, if required, will be used for projecting the expenses for each year of the Control period. The Licensee shall also propose determination of the admissible O & M expenses on the basis of per ckt-km of lines and per bay of substation for the base year and appropriate Inflation Factor for operation and maintenance expenses for the first control period.

3.11.2: The O & M expense per ckt-km of lines and per substation bay for the Base year of second and subsequent Control Periods shall be determined on the basis of actual O & M cost of lines and substations to be filed separately by the Licensee."

- (iii) Accordingly, the normative O & M expenses have been computed based on the actual O & M expenses of the base year, number of bays, and circuit Kilometers of transmission lines by applying the inflation factor for the relevant years. The petitioner's claim that the actual O & M expenses, number of bays and ckt-km lines have not been considered for FY10 is factually incorrect. The Commission in its Order dated 30.04.2012 has considered the actual expenses of all the three years from FY8 to FY10 for the normative O & M expenses determined for the control period FY11-13 and the actual no. of bays and lines for FY13, as filed by the petitioner, by applying the inflation factor on the base year figures. The Commission in its order dated 12.05.2014, taking into consideration the methodology adopted for FY11 and FY12, has approved allowable O & M expenses at Rs.704.64 Crores. The Commission has been consistently adopting this

approach to work out the O & M expenses, as provided for in the MYT Regulations, besides allowing additional employee cost which is treated as uncontrollable O & M cost. The same approach adopted for FY11 and FY12 has been accepted by the petitioner. Further, while allowing the O & M expenses, the Commission has considered the actual number of bays of 19013 nos. and 31862 Ckt. kms of lines as reported by the petitioner for FY13. Based on the information provided, the normative allowable O & M expenses are worked out at Rs.417.37 Crores (as indicated in Table 4.5 on page No.26 of the Tariff Order dated 12.05.2014). The Commission has considered appropriate inflation factor and other factors considered relevant, as mandated under the MYT Regulations.

Further, in addition to the normative O & M expenses of Rs.417.37 Crores, the Commission has also allowed uncontrollable O & M expenses of Rs.287.27 Crores, towards increase in additional employee cost incurred by the petitioner due to revision of pay, change in Pension and Gratuity contribution and contribution towards leave encashment. Thus the total O & M expenses of Rs.704.64 Crores were allowed by the Commission FY13, as against the actual expenses of Rs.796.54 Crores.

- (iv) As discussed above, the O & M expenses are to be regulated as per MYT Regulations. The licensee is required to ensure that its controllable O & M expenses are within the norms determined by the Commission. The provisions of the Electricity Act, 2003 require the Commission to encourage efficiency, economical use of resources and good performance. The petitioner neither in the original application nor in the review petition has given proper justification for not being able to adhere to the approved controllable O & M expenses.
- (v) The Petitioner has drawn our attention to clause 3.11.3 of the MYT Regulations and has stated that the Regulations prescribe normative O & M expenses per ckt-km and per bay for the control period FY07, FY08 and FY09 as follows:

Particulars	2007-08	2008-09	2009-10
O & M expenses (Rs. In lakh per ckt-km)	0.225	0.266	0.227
O & M expenses (Rs. In lakh per bay)	31.63	32.90	34.22

The Petitioner has contended that the O & M expenses of Rs.10.58 lakhs per bay and Rs.0.73 lakhs per ckt-km of line considered by the Commission in its order dated 7th December, 2010, for the base year FY10, and Rs.68.04 thousand per bay and Rs.90.39 thousand per ckt-km of line for FY13 and that the said consideration of costs, is contrary to clause 3.11.3 of MYT Regulations. It is further contended that the Commission had considered Rs.1.44 lakhs per bay and Rs.0.62 lakhs per ckt-km of line for FY07 in its order dated 7th July, 2007 and that these facts have missed the attention of the Commission.

(vi) The relevant clause of the MYT Regulations is reproduced below:

“3.11.3 In the case of new Transmission Licensee undertaking intra-state transmission projects, the norms of operation and maintenance expenses per ckt-km and per bay shall be as under..xxxxx”

From the above, we find that norm of O & M expenses per ckt-km and per bay as per Clause 3.11.3 of the MYT Regulations, are applicable to new transmission licensee undertaking intra-state transmission projects and the same are not applicable to the Petitioner who is an existing STU. Further, we note that in the petitioner's case, the cost per ckt-km of line and cost per bay are being computed based on the total approved O & M expenses of the base year with appropriate inflation and they tend to vary year on year, depending on the actual number of bays and length of transmission line as furnished by the Petitioner.

(vii) In view of the above discussion we are unable to accept the prayer of the petitioner to review the Commission's Order so far as it relates to allowing O & M expenses for FY13.

b) Depreciation :

- (i) We find that, as per the decisions of the Hon'ble Appellate Tribunal for Electricity in Appeal No's.108/2010 and 46/2014, the Commission is required to follow the decisions of the Hon'ble Tribunal while allowing the Depreciation on the assets created out of consumer contribution/grants, while carrying out the APR /Truing up exercise from FY12 onwards. In compliance of the said decisions of the Hon'ble Tribunal, the Commission had issued order dated 17th October 2013. Accordingly, the Petitioner was required to compute the depreciation on the assets created out of consumer's contribution/grants, in accordance with AS12 of ICAI.
- (ii) The petitioner, in its replies to the Commission's preliminary observations on the petitioner's application for APR for FY13 had reported that an amount of Rs.2.36 Crores is to be reckoned as depreciation on account of assets created out of consumer's contribution for FY13. This was found to be not commensurate with the amount of assets created out of consumer's contribution / grants, as at the end of FY13 and the petitioner failed to furnish the correct information despite being asked to do so. In the absence of correct and reliable data, the Commission has considered the average assets of Rs.311.48 Crores (average of OB and CB of assets created from grants/consumer contribution as per Audited Accounts) and the weighted average rate of depreciation of 4.71%. The depreciation towards such assets has been worked to Rs.14.67 Crores.
- (iii) The exclusion of depreciation on the assets created out of consumers' contribution has been ordered by the Hon'ble ATE in Appeal No.108/2010 and 46/2014 and such direction has been reflected in the consequential Orders of the Commission dated 17th October, 2013. Thus, we find that there is no apparent error in allowing depreciation on average of the opening and closing balance of assets created out of consumers' contribution, as the Orders of the Hon'ble ATE, are binding on the Commission as well as on the petitioner. Further we note from Note on Account in the audited accounts of the Petitioner for FY14 and FY15, the

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Depreciation on the assets created out of consumer's contributions/grants, amounting to Rs.24.36 Crores and Rs.40.46 Crores (which also includes prior period depreciation) has been accounted, to give effect to the withdrawal.

(iv) In view of the above discussions. The petitioner's prayer for review of the Commission's Order on this issue also fails.

c) Return on Equity:

(i) The Petitioner has prayed for considering Rs.499.52 Crores towards Reserve and Surplus for the purpose of computation of RoE. We note that this amount includes capital reserve of Rs.7.45 Crores, contribution towards cost of capital assets of Rs.286.27 Crores, special grants received from Government of Rs.10.00 Crores, special grants towards capital works of Rs.13.65 Crores and accumulated surplus from P&L account of Rs.182.15 Crores. The Return on Equity is allowed only on the equity base consisting of share capital and retained earnings of the licensee's business and would not include any grant or capital gain. Except surplus of P&L account of Rs.182.15 Crores, all the other items noted earlier are not the retained earnings. They have been received either from the Government as grants or contributed by the consumers towards capital works. As per the provisions of the MYT Regulations, Return on Equity has to be computed on the equity base at a rate of 15.5%. The Commission has been considering the opening balances of share capital, share deposits and accumulated profit / loss from P&L account for the purpose of Return on Equity as at the end of the previous year, the accounts are closed and after considering all the incomes and expenses, the financial results of the licensee's business are worked out. After accounts are finalized, they are subjected to audit and the audited accounts reflect the true and fair view of the business and indicate the true balance of the equity on which RoE has to be allowed.

- (ii) The Commission in all its previous Tariff Orders has been consistently considering the balance of equity as at the beginning of the financial year for computing RoE, for the reason that the capital (equity) that exists at the beginning of the year gets reinvested in the business for the next financial year and therefore, the return on equity should be allowed on the balance at the beginning of the year which is invested for the full financial year. Even if the equity is infused in the middle of the financial year, the actual balance of equity and surplus earned or the loss incurred by a Company, during the financial year will be known only at the end of the year after preparation of Profit & Loss Account and Balance Sheet and duly certified by audit. Thereafter, based on the closing balance of equity as per audited accounts, the return on equity shall have to be computed for the next year. Hence considering the opening balance of the equity & retained earnings is the correct approach for computing the equity, which the Commission has adopted consistently.
- (iii) Based on the opening balance of share capital of Rs.1123.26 Crores, share deposit of Rs.552.06 Crores and surplus from P&L account of Rs.182.15 Crores, totaling to Rs.1857.47 Crores, the Commission has allowed RoE at 15.5% which works out to Rs.287.91 Crores. This approach is as per the provisions of MYT Regulations and the petitioner has accepted the same for the last several years. We are therefore, unable to accept the claims of the petitioner to consider the average equity for computing the RoE and review our order.
- d) Advance against Depreciation(AAD)
- (i) We find that the Petitioner's claim that it has not availed the AAD, is not correct. The element of AAD is included in the ARR approved by the Commission. Once the AAD is included in the ARR, the same gets factored in the transmission tariff being recovered from ESCOMs. Hence the question of availing it or otherwise would not arise. The advance depreciation so allowed has to be recovered/adjusted in subsequent years, otherwise the advance depreciation so allowed, along with

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Depreciation, will be in excess of the allowable depreciation on the assets, as per MYT Regulations and the provisions of the Companies Act.

(ii) Further, this issue has already been decided by the Commission in its Order dated 17th October, 2013, issued in compliance with the Orders of the Hon'ble ATE in Appeal No.108 of 2010. The Petitioner's claim that the order is only prospective and should not be given retrospective effect is not acceptable as the Hon'ble ATE has ordered submission of accounts in the format as per Companies Act '*henceforth*'. As far as regulating the other claims such as RoE and Depreciation and Advance against Depreciation, the Hon'ble ATE has ordered to regulate them, as per MYT Regulations and the Commission, in its Order dated 17.10.2013, has reworked the same in accordance with MYT Regulations and accounting procedures and ordered adjustment in subsequent tariff order, in compliance to the Order of the Hon'ble ATE. Hence we find no merit in the contentions of the petitioner to reconsider the disallowance of AAD in the Commission's Order dated 12.05.2014.

6. We feel that none of the grounds urged in the petition warrant a review of our Order.

7. Hence, the following:

ORDER

The Review Petition is dismissed.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER