

No.N/14/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 6th January 2011

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

Case No. RP 04/2010

Between

Government of Karnataka
Department of Energy
Vikasa Soudha
BANGALORE – 560 001
(Represented by its Advocates Just Law)

... Petitioner

Vs.

1. Bangalore Electricity Supply Company Limited
Corporate Office, K.R. Circle, BANGALORE - 560 001
2. Hubli Electricity Supply Company Limited
Navanagar, P.B.Road, Hubli-29
3. Gulbarga Electricity Supply Company Limited
Main Road
Gulbarga – 29
4. Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001
5. Chamundeshwari Electricity Supply Corporation Limited
L.J.Avenue Commr. Complex, New Kantharaja Urs Road,
Saraswathipuram
Mysore-570 009
(Represented by Assistant Law Officer, BESCOM)

... Respondents

1. This Review Petition is filed by the Department of Energy, Government of Karnataka, seeking review / modification of the Tariff Order dated 25.11.2009 passed by this Commission in respect of ERCs filed by BESCOM and others.

2. The 1st Respondent BESCO has put in appearance and has filed a statement supporting the review petition with a prayer that the revenue requirements of ESCOMs including BESCO have to be met suitably. Written submissions have also been filed by MESCOM the 4th Respondent.

3. The FKCCI, Laghu Udyog Bharati and Sri D.S. Bhat through their counsel Sri Shridhar Prabhu, and Sri Satyanarayana Udupa in person have also put in appearance with the leave of the Commission and have made their submissions both in writing and orally.

4. It is submitted by Sri Sriranga, counsel for the Government of Karnataka that, in the tariff orders dated 25.11.2009 passed by this Commission, errors have crept in while working out subsidy payable by the State Government and this has resulted in an unprecedented increase in the subsidy liability to Rs.3,922.61 crores for FY08 to FY10. He further submitted that ESCOMs in their ERC application had asked for an increase of only 51 paise for all the categories of consumers including IP set consumers, whereas this Commission has determined for irrigation pump sets tariff ranging from Rs.1.46 per KWH for BESCO to Rs.3.80 per KWH for HESCO which is much beyond the 51 paise increase proposed by ESCOMs. It is also submitted by him that the burden of subsidy on the Government for the years 2007-08 and 2008-09 has also gone up and in addition to Rs.4,186 crores of subsidy released by the Government for these two years an amount to the extent of Rs.2,574.28 crores is determined on account of the truing up exercise done by the Commission for 2008-09 together. This amount has been ordered to be payable in 12 monthly installments. As a result the Government has to bear a huge financial burden of the past two years at a time. According to him, Instead of imposing this entire burden on the State, the Commission should have treated the same as Regulatory Asset to be passed on to the consumers in future years.

5. Sri Shridhar Prabhu, learned counsel appearing for FKCCI, Laghu Udyog Bharati and Sri D.S. Bhat, while supporting the prayer of the Government for review of the order relating to subsidy, submitted that, this Commission should

look into the disparities noticed between metered consumption and unmetered consumption and revise the subsidy payable by Government. Also the learned counsel has contended that the ESCOMs have in their ERC applications overstated the supply of electricity made to the IP sets and therefore, the Commission should evolve a method of assessing the actual supply made to IP sets more accurately. Further, he has stated that FKCCI opposes any cross subsidy and would like the Commission to go only by the cost of supply principle to determine tariff for each category of consumers. Sri Satyanarayana Udupa submitted that, there is a large difference between metered consumption of IP sets and the one that has been claimed by MESCOM and therefore the claim of subsidy is excessive and needs to be corrected.

6. We have considered the submissions made on behalf of the Government and others with reference to the tariff order passed by the Commission on 25.11.2009.

7. The question that arises for consideration and decision is, whether there are any apparent errors in the orders of the Commission dated 25.11.2009 which require a review / modification of the order.

8. While passing the tariff orders dated 25.11.2009, this Commission has elaborately considered every aspect of the cost of the respective ESCOMs as submitted in their applications for annual performance review, ERC and revision of tariff. It is not made out by the Government that there is any error in the computation of the costs of ESCOMs considered in the impugned order. This Commission has also considered the statutory norms prescribed in the MYT Regulations and the policy decision of the Government of subsidizing the entire electricity consumption of IP sets up to 10 HP in the State as a whole.

9. The impugned order dated 25.11.2009 covers the APR of the ESCOMs for the financial year 2007-08 and 2008-09 and also determines the tariff for these utilities for the financial year 2009-10. The Commission had earlier passed separate tariff orders for all the ESCOMs mentioned above in January 2008 to

cover the financial year 2007-08. However, due to the fact that the said order was stayed by the Hon'ble ATE the tariff determined therein did not come into force. For similar reasons, the tariff determined for various categories of consumers in the Commission's Order dated 27.09.2005 continued to be in force till 30.11.2009 after which the impugned order came into effect. The Commission therefore had to take up the truing up of the accounts of the utilities and determine the subsidy liability to be paid by the Government for the earlier years 2007-08 and 2008-09 which were the first two years of the control period 2008-10 under the Commission's MYT Regulations of 2006. This truing up has been carried out applying the norms stipulated in the MYT Regulations of 2006 and every aspect of the expenditure incurred by the distribution licensees and their revenue requirements is dealt with in detail in the said orders. On behalf of the Government, no particular defect or error in the orders relating to any utility has been pointed out except to say that a substantial part of the revenue requirement should have been kept as regulatory asset instead of being determined as subsidy payable by the State Government.

10. We have examined this matter carefully. It is seen that during the financial year 2008-09, the State Government took a policy decision to supply electricity free of cost to the IP sets of farmers below 10 HP in rating. This was effective from 1st August 2008. For the period prior to 1st August 2008, the Commission has taken into account the liability of Government towards the irrigation pump sets only at the average cost of supply minus cross subsidy and 40 paise per unit which was the tariff then payable by the farmers. While determining the subsidy payable for the period subsequent to 1st August 2008 and up to the end of the financial year 2008-09, the Commission has taken into account the average cost of supply after deducting the cross subsidy available out of the revenue from other categories of consumers. As such, the total amount of subsidy payable by Government for the years 2007-08 and 2008-09 reflects only the average cost of supply of the power supplied to IP set users minus cross subsidy and the tariff payable by the farmers (prior to 1.8.2008) concerned. This amount has been worked out at Rs. 9035.66 crores for the two

financial years in the truing up exercise. Taking into consideration the subsidy actually paid by the Government which was Rs.2532.36 crores during 2007-08 and Rs.1653.62 crores during 2008-09, totaling Rs.4185.98 crores and the cross subsidy contribution totaling to Rs.2275.11 crores for 2007-08 and 2008-09, the balance subsidy liability is determined at Rs.2574.57 crores. In fact in the case of each ESCOM, the tariff for IP sets determined by following the above procedure is lower than the average cost of service. Thus the amount of subsidy due from Government as determined above relates only to the cost of electricity supplied to IP sets.

11. On behalf of the Government it is also contended that the Commission should have assigned some cross-subsidy to the BJ/KJ categories of consumers as provided in the case of IP sets. As shown in the truing up calculations set out in the impugned order, the amount available as cross-subsidy for 2007-08 and 2008-09 being limited it would have made no difference to the subsidy liability of the Government even if part of the cross-subsidy amount was apportioned to BJ/KJ categories of consumers since that would have correspondingly reduced the cross-subsidy for IP sets. With the tariff for both IP sets and BJ/KJ consumers being payable by Government through its subsidy, we do not think that the point raised in this regard merits consideration.

12. In the above circumstances, there was no occasion for determining any portion of this subsidy liability as regulatory asset since any amount determined as regulatory asset is to be made good in the tariff from different categories of consumers in the subsequent years.

13. The contention of the learned counsel for FKCCI, Laghu Udyog Bharati and Sri D.S. Bhat as also that of Sri Satyanarayana Udupa mainly concerns the method of determining the quantum of power actually consumed / supplied to farmers' IP sets. Since most of the IP sets in the State are as yet unmetered, the consumption of power by this category is assessed on the basis of sample DTC metering carried out across the State. In the absence of a better method, the Commission is consistently following this procedure for some years to determine

the quantum of supply to the IP sets category and the subsidy payable by the Government on that account.

14. Therefore, we hold that the subsidy arrived at pursuant to the true up exercise does not require any modification. Further as this amount relates to IP sets, the same cannot be treated as Regulatory Asset and passed on to the other consumers as submitted on behalf of the review petitioners. However, considering the submissions of the Government for granting more time to pay this additional amount, we deem it proper to modify the order to allow thirty six (36) months in place of twelve (12) months for the Government to pay these arrears of subsidy. The Government may pay this subject to at least one third of the amount due to each ESCOM being paid in successive blocks of twelve months commencing from January 2011.

15. The Commission on ESCOMs' application for APR for the year 2009-10 has also now carried out the truing up of the ARR of 2009-10. Due to this the subsidy payable by the Government for FY10 has come down from Rs.3,428.36 crores as determined in the tariff orders of 25.11.2009 to Rs.2,983.52 crores, i.e., there is a reduction to the extent of Rs.445 crores. Consequent to this the Government has to pay only the reworked subsidy of Rs.2,983.52 crores in place of the original subsidy of Rs.3,428.36 crores for the year 2009-10 as detailed in the Tariff Orders issued by the Commission on 7.12.2010.

16. Regarding the other contentions raised by FKCCI, Sri Satyanarayana Udupa and others, relating to disparity in consumption between categories of consumers in different areas, the methodology for determining the cost of service, etc., we feel that they do not make any difference to the issues raised by the Government and therefore in our view need not be considered in this review petition.

17. Accordingly we dispose of this review petition in the above terms.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER