

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION BANGALORE**Dated 9th August 2012**

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

RP No. 3/2012**BETWEEN**

- | | | |
|----------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------|
| 1. Gulbarga Electricity Supply Company Ltd., Station Road Gulbarga – 585 101 <i>[Represented by M/s. Just Law, Advocates]</i> | ... | Petitioner |
|----------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------|

AND

- | | | |
|-----|-----|-------------------|
| Nil | ... | Respondent |
|-----|-----|-------------------|

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1. This Review Petition has been filed by the Gulbarga Electricity Supply Company Limited (hereinafter referred to as 'GESCOM') seeking review of the Order dated 28.10.2011 of this Commission, wherein retail tariff has been fixed for supply of electricity to various categories of consumers in the jurisdiction of the petitioners.

2. In the review petition, the petitioner has prayed that the Order issued by the Commission on 28.10.2011 is to be reviewed and modified to redetermine or continue the same rate of cross subsidy surcharge as ordered by the Commission in its Order dated 25.4.2007 for all open access transactions including for wheeling of NCE energy within the State. The Commission may pass such other orders as deemed fit in the facts and circumstances of the case, in the interest of justice.

3. The Commission held a public hearing on the petition on 29.3.2012. Sri Shridhar Prabhu, Advocate for FKCCI and Kaleeuwari Refinery Private Limited, Sri Mahesh Vipradas representing the Indian Wind Energy Association and Sri Raja

Rao representing the Consumer Care Society, appeared before the Commission and made their submissions.

4. We have considered the averments made in the Review Petition and also the oral submissions made during the hearing by the Review Petitioner's Counsel, Sri Sriranga and the Counsels appearing for the FKCCI and others.

5. The Review Petitioner had filed an Application on 15.6.2011 for approval of its Annual Revenue Requirement & Expected Revenue from Charges and Tariff Petition for FY-12. In the said Application, the Petitioner had made the following submissions as regards the Wheeling Charges and Cross-Subsidy Surcharge.

A. The modalities adopted by the Hon'ble Commission in the Tariff Order 2009, with the following assumption, are considered for determination of Wheeling Charges for GESCOM.

- i. Allocation of distribution ARR between HT & LT in the ratio of 30:70.
- ii. Reasonable loss compensation as per Energy Flow Diagram.

B. Wheeling charges in Cash [Distribution charges]:

| | |
|----------------------------------------------------------|---------|
| 1. Distribution ARR [Rs. In Cr.] | 758.19 |
| 2. Sales [in MUs] | 5300.20 |
| 3. Wheeling Charges [Paise / unit] [2/1] | 143.05 |
| 4. For HT [30% of 3 after rounding off to nearest paise] | 42.91 |
| 5. For LT [70% of 3 after rounding off to nearest paise] | 100.14 |

Wheeling charges in Kind [Loss compensation]:

| Loss Allocation | % Loss |
|-----------------|--------|
| HT | 5.88 |
| LT | 7.85 |

- C. The actual Wheeling Charges payable depending upon the point of injection & point of drawl as below;

| Injection Point → | HT | LT |
|--------------------------|---------------|-----------------|
| Drawl Point ↓ | | |
| HT | 42.91 (5.88%) | 143.05 (13.73%) |
| LT | 143.05 | 100.14 (7.85%) |

Note: Figures in brackets are applicable losses.

Hon'ble Commission in the Tariff Order 2009 has prescribed the Wheeling charges in kind only 5% for the energy sourced from NCE units and used in the State as 5% and for wind & mini hydel additional banking charges of 2%.

This concessional rate is seriously affecting the distribution business of GESCO as its system is utilized for Wheeling which carries higher technical loss level also.

Therefore, it is requested for maintenance of parity in Wheeling charges even for the energy sourced from NCE units and supplied within the State.

In case wheeling of energy [other than NCE] involves usage of Transmission network or network of more than one licensee, the charges shall be as indicated under:

- i. If only transmission network is used, transmission charges determined by the Commission shall be payable to the Transmission Licensee.
- ii. If Transmission network & ESCOMs' network are used, the Transmission Charges shall be payable to the Transmission Licensee and the Wheeling Charges of the ESCOM where the power is drawn is payable & such wheeling charges shall be shared equally among the ESCOMs whose networks are used.

The Transmission charge in cash as determined in the Transmission Tariff order shall be payable to KPTCL & Wheeling charge of 143.05 paise

per unit shall be payable to GESCOM. In case more than one ESCOM is involved the above 143.05 paise shall be shared by all ESCOMs involved.

Further, above wheeling charges are also applicable for open access transactions with the addition of cross subsidy surcharge of 203.82 paise per unit (calculation shown in Annexure-G). Even though Hon'ble Commission has not allowed any cross subsidy surcharge for open access transactions in the Tariff Order 2009 & 2010. It is requested for considering the cross subsidy contribution to sustain the deficit cost in providing power supply to meet the social objectives.

Cross – Subsidy surcharge for FY-2012

Calculation of Cross – Subsidy surcharge for fy-12 payable by Open – Access consumers.

| | |
|------------------------------------------------|---------|
| Total Energy Input for FY-11 (as projected)MU | 7001.19 |
| Million Units (MU) at margin of 5% | 350.05 |

| Details of power Purchase at 5% margin (excluding liquid fuel project & renewables) | | | |
|-------------------------------------------------------------------------------------|--------|-------------------|---------------------------------|
| Source | MUs | Cost (Rs. In Cr.) | Average per Unit (Paise / Unit) |
| NLC TPS 1-Expansion | 86.61 | 30.04 | 346.84 |
| Kaiga Unit 1&2 | 68.35 | 22.90 | 335.02 |
| Valhur TPS stage –1 | 3.58 | 1.16 | 329.64 |
| NLC-II-Expansion | 22.59 | 7.52 | 332.81 |
| Kaiga-III | 76.68 | 24.80 | 323.38 |
| Simhadri-I | 84.72 | 23.59 | 278.45 |
| NLCTPS-II Stage-II | 7.52 | 1.67 | 222.97 |
| Total | 350.05 | 111.68 | 319.04 |

Details of surcharge at 66 KV & above level and 33 KV level
(Paise/Unit)

| | 66 KV Above level | 33 KV Level |
|----------------------------------------------------------|-------------------------|----------------|
| Cost of power purchase / unit at margin | 319.04 | 319.04 |
| Transmission Loss % (as per KPTCL: filing) at 4.18% | 13.33 | 13.33 |
| Cost at margining after accounting for Transmission Loss | 332.37 | 332.37 |
| 33 KV Loss % 3.2% | 0.00 | 10.63 |
| Cost at margining after accounting for 33 KV level loss | 332.37 | 343.00 |
| Transmission Charges per unit (as per KPTCL filing) | 28.5 | 28.5 |
| Average Wheeling charges at 33 KV level | 0 | 143.05 |
| Cost of Supply | 360.87 | 514.55 |
| Average Tariff of HT -2a consumers (Project for FY-12) | 660.63 | 660.63 |
| Cross Subsidy Surcharge | 299.76 | 146.08" |

6. However, the Petitioner had not made any specific Prayer in its Application regarding Wheeling Charges or for imposition of Cross-Subsidy Surcharge. Also, no material was placed before the Commission in support of the above position taken by the licensee.

7. This Commission, after conducting a public hearing passed a detailed Tariff Order on 28.10.2011. While passing the Tariff Order dated 28.10.2011, the Commission has considered every issue raised in the application filed by the Petitioner and the material placed in support of it.

8. As regards Wheeling Charges, this Commission, has held in its Order dated 11.7.2008, as follows :

"We are of the view that the concessional wheeling charges provided for NCE generators for transmission of power within the State needs to be continued and will be in the interest of the State in general. This will also

not affect KPTCL adversely, as income generated by collecting the transmission charges from NCE generators, will have to be deducted while calculating the net ARR of KPTCL. As pointed out above, even now KPTCL is collecting transmission charges for carrying NCE power, from ESCOMs, not directly but indirectly.

The contention of KPTCL that it is incurring loss due to non payment of transmission charge is not tenable. KPTCL, having not incurred any additional expenditure on account of transferring NCE power to ESCOMs or captive generators there is no justification for the KPTCL to complain about losses incurred by it. If KPTCL has incurred any special expenditure, it may bring up a separate claim. Till then, in our opinion, fixing of 5% wheeling charge does not require any modification."

9. As regards the cross subsidy surcharge the Commission has held as follows:

"In order to encourage open access and to incentivise the State consumers to purchase power from outside the state at reasonable rates, thereby relieving the state of extra burden of high cost energy, the Commission has decided to retain the cross subsidy surcharge at zero. The State is facing shortage of power in FY12 also and hence the Commission has decided to continue the same policy until further orders".

10. Under Section 94(f) of the Electricity Act, 2003, this Commission has power to review its orders in the same manner as a Civil Court under the Code of Civil Procedure and review its orders. Therefore, in order to maintain a Review Petition under Order XLVII Rule (1) of CPC, the Review Petitioner has to establish that he has discovered a new and important matter or evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the Order sought to be reviewed was passed, or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, he desires a review of the Order passed.

11. On consideration of the entire Review Petition, we do not find any material in support of the prayers made regarding cross subsidy surcharge and

the wheeling and banking charges for Renewable Energy. Further, the Review Petitioner had not made any submission regarding the additional Surcharge.

12. In the absence of any averment or specific Prayer or production of required material on the points on which the review now has been sought, the Commission could not have passed any different Order than what was passed. It is well-settled now that the Review Jurisdiction of the Courts cannot be used for re-arguing a case or making out a new case. Through the Review Petition, the Petitioner cannot raise any issue which was not originally raised. Therefore, in our view, this Review Petition has to be rejected as not maintainable.

Accordingly, the Review Petition stands rejected.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K. SRINIVASA RAO)
MEMBER