

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

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| 1. Bangalore Electricity Supply Company Ltd.,
K.R.Circle,
Bangalore – 560 001.
<i>[Represented by M/s. Just Law, Advocates]</i> | ... | Petitioner |
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AND

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| Nil | ... | Respondent |
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1. This Review Petition has been filed by the Bangalore Electricity Supply Company Limited (hereinafter referred to as 'BESCOM') 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 submitted that under the Electricity Act, 2003, read along with the National Electricity Policy, 2005 and the Tariff Policy, 2006, the Open Access Consumers have to pay to the Distribution Licensee a Cross-Subsidy Surcharge in addition to Wheeling Charges as determined by this Commission, but this Commission has exempted Consumers in the State from payment of Cross-Subsidy Surcharge. It is further submitted that under Section 42(4) of the Electricity Act, 2003, the Open Access Consumers are required to pay an additional Surcharge along with Wheeling Charges, but this Commission has not ordered payment of any additional Surcharge. It is also

submitted by the Petitioner that the grant of concessional Wheeling and Banking Charges given to RE Generators needs to be re-looked into, as it will not compensate the cost the petitioner incurs to provide Wheeling and Banking facility.

3. The Commission held a public hearing on the petition on 29.3.2012. Sri Shridhar Prabhu, Advocate for FKCCI and Kaleewari 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. BESCO on 15.6.2011 had filed the following applications.

- a) Annual Performance Review for FY11
- b) Revision of ERC and Tariff application for FY12

In the said applications, the Petitioner neither mentioned nor made any specific Prayer regarding refixation of the Wheeling Charges or for imposition of the Cross-Subsidy Surcharge.

6. 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 and the material placed in support of it.

7. 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."

8. As regard 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".

9. 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.

10. On consideration of the entire Review Petition, we do not find any of the above elements. The Petitioner admittedly had not made the grievance now made either on Cross-Subsidy Surcharge, Wheeling and Banking Charges or

additional surcharges while making the applications. Further, the Review Petitioner had not made any submission regarding the additional Surcharge.

11. 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