

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 24th March 2011

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

In OP No. 05/2009

Between

M/s Bangalore Electricity Supply Co. Ltd.
K.R. Circle
Bangalore – 560 001
(Represented by Just Law Advocates) ... Petitioner

Vs.

1. M/s. Davanagere Sugar Company
No.73/1, P.B. No.312
Shamanur Road
Davangere – 577 004
2. M/s. Shamanur Sugars Ltd.
No.73/1, P.B. No.312
Shamanur Road
Davangere – 577 004
3. M/s. SCM Sugar Ltd.
No.61/1, Residency Road, II Cross
Bangalore – 560 025
(Represented by its Advocate Sri Prabhuling Navadgi) ... Respondents

In OP 39/2009

Between

M/s. Davanagere Sugar Company Limited
No. 73/1, P.B. Road
312, Shamanur Road
Davangere – 577 004
(Represented by its Advocate Sri Prabhuling Navadgi) ... Petitioner

Vs.

1. Government of Karnataka
Energy Department
Vikasa Soudha
Bangalore – 560 01
 2. Karnataka Power Transmission Corporation Limited
Kaveri Bhavan, Kempegowda Road
Bangalore – 560 009
 3. Bangalore Electricity Supply Company Ltd.
K.R. Circle
Bangalore – 560 001
 4. The State Load Dispatch Centre
Karnataka Power Transmission Corporation Limited
26, Race Course Road
Bangalore – 560 001
 5. M/s. Reliance Energy Trading Co. Ltd.
2/22A, Shanti Niketan
NEW DELHI
(Represented by Just Law Advocates)
- ... Respondents

In OP No. 40/2009**Between**

- M/s Shree Renuka Sugars Ltd.,
B.C. 105, Havelock Road
Cantonment
B E L G A U M – 590 001
(Represented by its Advodate Sri Prabhuling Navadgi)
- ... Petitioner

Vs.

1. Government of Karnataka
Energy Department
Vikasa Soudha
B A N G A L O R E – 560 001
2. Karnataka Power Transmission Corporation Limited
Kaveri Bhavan, Kempegowda Road
B A N G A L O R E – 560 009
3. Hubli Electricity Supply Company Limited
Hubli-Dharwad Road, Navanagar
H U B L I – 580 025

4. Gulbarga Electricity Supply Company Limited
Main Road, Beside Mini Vidhana Soudha
G U L B A R G A – 595 001

5. M/s. Reliance Energy Trading Co. Ltd.
2/22A, Shanti Niketan
NEW DELHI

... Respondents

(Represented by Just Law Advocates)

In OP No.51/2009

Between

M/s. India Cane Power Ltd.,
627, Kalleshwara Rice Mill Compound
RMC Road, Anekonda

D A V A N G E R E – 577 001

... Petitioner

(Represented by its Advocate Sri Prabhuling Navadgi)

Vs.

1. Government of Karnataka
Energy Department
Vikasa Soudha
B A N G A L O R E – 560 001

2. Karnataka Power Transmission Corporation Limited
Kaveri Bhavan, Kempegowda Road
B A N G A L O R E – 560 009

3. Hubli Electricity Supply Company Limited
Hubli-Dharwad Road, Navanagar
HUBLI

... Respondents

(Represented by Just Law Advocates)

COMMON ORDER

1. In this batch of petitions, the petitioner as well as respondents are seeking approval to make payments by the ESCOMs at the rates fixed by the Government of Karnataka in its Orders dated 17.12.2008 and 27.1.2009 for the electricity generated and supplied during the period in which the Government of Karnataka had under Section 11(1) of the Electricity Act, 2003 mandated all

the generators of the State to generate electricity and supply the same to the State Grid.

2. We have heard the counsels appearing for the parties and also considered the orders issued by the Government and the other material produced by the parties.

3. This Commission after considering the power position then prevailing and other factors has in OP 08/2009 approved the payments to be made under the above orders on 11.12.2009. As these petitions also relate to the payment to be made under the same Government Orders dated 17.12.2008 and 27.1.2009, we have to keep in view the orders issued by the Commission in OP No. 08/2009.

4. Sri Prabhuling Navadgi appearing for M/s. Davangere Sugar Company Limited, M/s. Shree Renuka Sugars Ltd., and M/s. India Cane Sugars Ltd., has however contended that this Commission may consider fixing a higher rate in these two cases as they were selling electricity in the open market at the relevant time at a rate higher than what was fixed in the Government Orders. In support of his argument, the learned Counsel stressed upon the wordings used under Section 11(2) of the Electricity Act, 2003, which states that the appropriate Commission may offset the adverse financial impact on any generating company of the direction issued in such manner as it considered appropriate. He also drew our attention to the observations of the Hon'ble High Court of Karnataka in WP Nos. 590 and 591 of 2009 and connected petitions.

5. Sri Sriranga, learned counsel appearing for the petitioner BESCOM contends that the generators who have supplied electricity under the Government Orders are not entitled to any higher rate than the one fixed as the same will adequately compensate the generation cost and also will not result in any loss. He further contended that the generators cannot rely on the private contracts entered into by them prior to the issue of the Government Orders as these private contracts have to yield to the statutory power exercised by the Government under Section 11 of the Electricity Act, 2003 in the public interest.

6. We have considered the contentions advanced on behalf of both the parties. It is seen that the Government had approved Rs.7.25 per unit in December 2008 and later reduced it to Rs.6.50 per unit from January 2009 to May 2009 for energy purchased from bagasse based cogen units, and Rs.5.00 per unit for power purchased during December 2008 to May 2009 from the biomass based generation units. During the hearing the Commission had asked the petitioner's counsel if the cost of generation of different categories of generation units was the criterion adopted by the Government. It was submitted that the Government had taken into account both the cost of generation and also the prevailing market price. We have noted that during the months of December 2008 to May 2009, the short-term prices for power traded in the power market ranged from Rs.6.60 to Rs.7.77 in respect of Round the Clock supply made through the traders as per the data published by the CERC. The month-wise average prices were Rs.7.77 for December 2008, Rs.7.43 for January 2009, Rs.6.89 for February 2009, Rs.7.35 for March 2009, Rs.6.83 for April 2009 and Rs.6.60 for May 2009, working out to an average of Rs.7.10 for the entire period. It is

reasonable to assume that the generators have to incur about ten per cent of the price as marketing expenses, transmission losses and wheeling charges. Therefore the price fixed by Government for supplies made during the relevant period in compliance of orders issued under Section 1(1) of the Electricity Act, 2003 appears to reflect the revenues that could be realized by generators in the short term market in view of the prices then prevailing. The Hon'ble High Court at Para 84 of their order in the writ petition referred to above have observed that "Adverse financial impact means the electricity generated by virtue of direction issued by the Government is not fetching the generating company the price what it would have fetched in the event of their supplying to the licensee or customer, i.e., less than the same". The view taken by the Commission in OP 24/2008 is in harmony with the Hon'ble High Court's observation that the generators shall not suffer losses on account of compulsory sale of electricity.

7. Keeping the above factors in view, we approve the rates fixed by the Government for purchase of power in compliance to orders issued by the Government dated 17.12.2008 and 27.1.2009 under Section 11 of the Electricity Act, 2003 during the period December 2008 to May 2009.

8. Accordingly all Distribution Licensees who have received electricity under the aforesaid Government Orders of 17.12.2008 and 27.1.2009 shall make payments if not already made within two (2) weeks from today.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER