

Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated this 17th day of September 2003

Present

Sri Philipose Matthai - Chairman
Sri H.S.Subramanya - Member
Sri S.D.Ukkali - Member

Case No OP 33 / 2003

In the matter of: Applications filed by KPTCL/ESCOMs on the following:

Application date	Subject
24.5.03	Approval of Special Incentive Scheme to the HT industrial consumers at Rs.3.80 per unit
11.7.03	Approval of Power Purchase and Other Cost Adjustment (POCA) formula.
4.8.03	Approval of the additional gap of KPTCL and ESCOMs worked out based on actual details of Income and Expenditure for FY03.
7.8.03	Approval for enhancement of Bulk Supply Tariff (BST) and retail supply tariff consequent on allowing US \$ 0.04 per kwh towards fixed charges payable to Tanir Bavi Power Company as per the Arbitral Award.

- 1) Karnataka Power Transmission Corporation Ltd (KPTCL)
- 2) Bangalore Electricity Supply Company Ltd }
- 3) Mangalore Electricity Supply company Ltd } (ESCOMs)
- 4) Hubli Electricity Supply company Ltd }
- 5) Gulbarga Electricity Supply Company Ltd }

- Applicants
(By Sri S.S. Naganand, Advocate
and MD, KPTCL)

Date of Hearing: 7.8.2003
28.8.2003
4.9.2003
8.9.2003

1. The relief sought by the Licensees in the above applications in essence amounts to seeking an increase / enhancement in the Tariff already fixed by the Commission.

2. The Commission had issued Tariff Order 2003 on 10.3.03 approving the ERC of KPTCL and ESCOMs for FY04 and allowing certain revision in tariff. KPTCL/ESCOMs have implemented the revised tariff approved by the Commission effective from 1.4.03. In the matter of revenue gap for FY03, the Commission had indicated in the said Tariff Order that KPTCL/ESCOMs may approach the Commission as and when FY03 actual figures are available and that the Commission will review the same and take appropriate decision duly considering the efficiency norms and other parameters fixed in the Tariff Orders. KPTCL had also requested for approval of Power Purchase Cost Adjustment (PPCA) Formula or in the alternative the Mix Change Adjustment (MCA) Formula in the ERC filing for FY04 & tariff filing. The Commission had indicated in the Tariff Order (Para 3, page 86 of the Tariff Order 2003) that KPTCL may approach the Commission during the first week of October 2003 when the hydro inflow position would be largely known with details of extra requirement of funds for power purchase and that the Commission will examine the proposal in terms of the approved power purchase quantity, approved T&D loss and the shortfall in hydro generation and pass appropriate orders to safeguard KPTCL's finances against the risk of poor monsoon. Before issuing the said Tariff Order, the Commission had taken due note of the objections of consumers and the responses of the Licensees

3. Subsequently, KPTCL/ESCOMs had filed a petition dated 24.3.03 before the Commission seeking review of the Tariff Order 2003 on several grounds. The Commission in its Order dated 9.5.03 had dismissed the review petition. KPTCL/ESCOMs have challenged the Tariff Order 2003 as well as the Order of the Commission dated 9.5.03 on the review petition in the High Court of Karnataka vide MFA No.3456 and 3457 of 2003 respectively. The said MFAs have been admitted by the Hon'ble High Court and are pending consideration.

4. **Special Incentive Scheme to HT consumers:** In the Tariff Order 2003, the Commission has ordered discontinuation of the Special incentive scheme to HT consumers at Rs. 3.50 per unit. In their applications dated 24.5.03, ESCOMs have proposed reintroduction of the scheme with a tariff Rs.3.80 per unit. The Commission has passed its order on 30.6.03 in the matter stating that the matter is sub judice and the applications
5. be kept in abeyance until the Hon'ble High Court considers the issues involved and adjudicates.
6. **POCA Formula:** KPTCL in their application dated 11.7.03 on the POCA formula have stated that the KPTCL is facing acute financial crisis due to failure of the monsoon and it is essential that this issue is addressed by the Commission without delay. On KPTCL's application dated 11.7.03, the Commission held a hearing on 7.8.03 regarding maintainability of the application and KPTCL had sought adjournment to explore a legal way out, since their appeal against the Tariff Order was pending before the Hon'ble High Court. The Commission had adjourned the hearing to 28.8.03. In the meantime KPTCL had filed a clarification application in the Hon'ble High Court in MFA No 3456 of 2003 seeking clarification that the pendency of appeal in the High Court will not come in the way of the Commission considering the applications and passing orders in accordance with law. While disposing this clarification application, the Hon'ble High Court vide order dated. 21.8.2003 has held that the Commission shall consider the applications filed before it and pass appropriate orders in accordance with law and on merit. The Hon'ble High Court has also directed to consider the application in accordance with law and pass appropriate order as expeditiously as possible. The Hon'ble High Court has further held that if the other applications filed by KPTCL under Section 27 of the Reforms Act are also pending, what is stated with regard to the application dated 11.7.2003 equally applies to the remaining applications and the Commission is bound to consider the same in accordance with law.

The case was accordingly fixed for further hearing on 4.9.03. KPTCL in their written submission dated 4.9.03 have further stated that there has been failure of monsoon and on account of the same, it has been constrained to purchase power from other sources at a higher price and that consequently it has been facing acute financial crisis due to adverse cash flow position. KPTCL also stated that accordingly it has approached the Commission with a request for approval of the POCA formula. Although the Commission had asked the KPTCL in the Tariff Order 2003 that it may approach the Commission during the first week of October 2003, KPTCL has stated that it has approached the Commission earlier than October 2003 considering the gravity of the financial crisis faced by it and the need for passing early orders.

7. **Revenue Gap for FY03:** In the application dated 4.8.03, KPTCL/ESCOs have stated the actual revenue gap for FY03 as Rs.433.74 crores and requested to Commission to consider the same for passing on the same through additional BST and transmission tariff to ESCOs and to provide suitable mechanism to pass on this additional requirement to the consumers during the remaining period of FY04. The Commission in its letter dated 12.8.03 requested KPTCL to provide certain additional information/ clarification in this regard. KPTCL has filed reply on 3.9.03 whereby the revenue gap for FY03 has been brought down from Rs.433.74 crores to Rs.238.16 crores.

8. **Arbitral Award in respect of Tanir Bavi Power Company:** Regarding difference in the dollar denominated fixed charges payable to Tanir Bavi Power company (TBPCL), the Commission, in its Tariff Order 2002 issued on 8.5.02, had decided that (i) the additional fixed charges payable to TBPCL of Rs.121.79crores in FY02 and Rs.163.81 crores in FY03 are disallowed for inclusion in the ERC for the respective years and (ii) KPTCL is directed not to take any further action on the claims of TBPCL without following the dispute resolution mechanisms included in the PPA. KPTCL had not included the difference in these fixed charges

for FY04 in the ERC for FY04. In its application dated 7.8.03, KPTCL has stated that the matter was referred to an Arbitral Tribunal and the Tribunal has passed the Award in favour of TBPCL. The additional power purchase cost required to be passed on to the ESCOMs and finally to the end consumers due to the said award amounts to Rs. 453.04 crores for the period from FY02 to FY04 including interest of Rs.34.10 crores. The Applicant has filed a copy of the Arbitration Award with the Commission along with the application and has requested the Commission to enhance the BST and consequential retail tariff of FY04 suitably.

The Commission has noted that the additional fixed charges for FY03 amounting to Rs. 158.10 crores has been included by KPTCL in the revenue gap for FY03 as well as in their application on the TBPCL claim which needs to be corrected.

9. Regarding the special incentive scheme for HT consumers at Rs.3.80 per unit, the Managing Director, KPTCL has explained the details of the scheme in his oral submission made on 4.9.03. This claim is also clubbed along with the other three claims.

9. Referring to the above issue of amendment of Tariff Order during the financial year, KPTCL in its submission before the Commission on 28.8.03 has drawn attention to the decision of the Hon'ble Supreme Court in the matter of Association of Industrial Electricity Users Vs State of AP & others reported in (2002) 3 SCC 711 in which the Hon'ble Supreme Court has interpreted section 26(9) of the Andhra Pradesh Electricity Reform Act and has held that it is permissible to amend the tariff during the financial year. KPTCL has stated that section 27(10) of KER Act is in pari materia with section 26(9) of AP Reform Act and therefore the interpretation given by the Hon'ble Supreme Court in respect of the powers of the Andhra Pradesh Commission in determining tariff and amending the same during a financial year would apply in respect of KER Act as well. They have accordingly argued that the Tariff could be amended during the Financial year.

According to Section 27(10) of the KER Act, "No tariff or part of any tariff implemented under sub-section (5) may be amended more than once in a financial year, except in respect of any charges expressly permitted under the terms of any fuel surcharge formula as may be approved by the Commission". Therefore the Commission held the view that the tariff can be revised once in a year under the provisions of Section 27(5) of the KER Act and the tariff so revised can be further amended not more than once in a financial year under Section 27(10) of the KER Act. Keeping Section 27(10) of the KER Act in view only, the Commission had indicated in the Tariff Order 2003 that KPTCL/ESCOMs may approach the Commission in the first week of October 2003 when the hydro inflow position would be largely known. It was KPTCL/ESCOMs who questioned the legality of revision of tariff more than once in a financial year under the KER Act in the MFAs filed by them in the Hon'ble High Court.

10. Regarding the procedure to be followed regarding the revision of the Tariff Order, KPTCL has further contended that as the present order is only an offshoot of the Tariff Order 2003 and is only approval of a formula and consideration of actuals for FY03, there is no necessity for granting a fresh public hearing as the Commission has already heard members of the public (on the ERC for FY04) and no one had taken exception to the formula. The same contention is reiterated in its written submission dated 4.9.03.

11. The Commission has heard the applicants and also considered the written submissions made from time to time. Before proceeding with the applicant's plea for revision of Tariff on various counts, it is considered necessary to note the following points in respect of the claims made by the applicants.
 - i. The POCA formula now proposed by KPTCL is different from the Power Purchase Cost Adjustment Formula (PPCA) and the Mix Adjustment Formula proposed by it in the ERC for FY03 and FY04. While the PPCA formula and Mix Adjustment formula

proposed provided for adjustment in the power purchase cost on account of difference in power purchase cost and mix variation only, the POCA formula now proposed includes not only the variation in power purchase cost but also other costs such as unpredictable and uncontrollable expenses, interest on working capital and also consideration of approved T&D loss etc.

- ii. In the case of revenue gap for FY03, the publication on the previous occasion did not include the impact of actual revenue gap for FY03 on the consumer retail tariff. The revenue gap for FY03 that was proposed in the ERC for FY04 was Rs. 412 crores which has now been reduced to Rs. 238.16 crores.
- iii. In the application dated 4.8.03 on the revenue gap for FY03 and in the application dated 7.8.03 on the TBPCL additional fixed charges, though the gross amount to be recovered from the consumers is made known, the actual distribution amongst various classes of consumers has not been indicated. KPTCL / ESCOMS in their applications have requested the Commission to provide a suitable mechanism to pass on the total additional requirement to the consumers during the remaining period of FY04. If there is an increase in the Tariff and mechanism in that context is going to be evolved, the affected class of consumers has a right to know to what extent they may be saddled with additional Tariff.

12. The Hon'ble Supreme Court in Civil Appeal No.4037 of 2002 in West Bengal Electricity Regulatory Commission V/s C.E.S.C. Ltd., has examined the Locus Standi of the consumers before the Commission in its proceedings and in essence had held that the Commission is obligated to bear in mind the interest of consumers and to hear them in regard to fixation of Tariffs. This right of the consumers is also further strengthened by clause (2) of Section 8 of the Karnataka Electricity Reforms Act 1999 (Karnataka Act of 1999). Regulation 16 of the KERC (General and

Conduct) Regulations 2000 and Regulations 4(2) and (8) of the KERC (Tariff) Regulations 2000 also fortify the said proposition. It is an established principle of law that the Commission should ensure transparency while exercising its powers and discharging its functions which results in the proceedings of the Commission to be public which in itself shows participation by interested persons. Even in the Electricity Act 2003 the above principle has been crystallised under Section 86(3) of the Act wherein it has been clearly stipulated that the State Commission shall ensure transparency while exercising its powers and discharging its functions. Section 64(3) of the Electricity Act 2003 also provides for issue of Tariff Order within 120 days of receipt of an application under Sub Section (1) after considering all suggestions and objections received from the public.

13. Regulation 7(2) of KERC (Tariff) Regulations 2000 empowers the Commission from adopting a procedure which is at variance with any of the provisions of the Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient for dealing with such a matter. Keeping in view the above and also considering the claim of the Licensees regarding gravity of the financial crisis being faced by them and the submissions made by the Licensees, the Commission considers appropriate to follow the following procedure and time schedule.

ORDER

Considering all the above aspects, the Commission orders that KPTCL/ESCOMs shall publish the following as per the time schedule given below:

- i. Abridged version of all the four applications to be published by KPTCL/ESCOMs in the enclosed Form in two successive issues each of two dailies each in Kannada and in English, within 10 days of this order, having circulation in the areas of operation of the Licensees.

- ii. Time to be allowed to consumers for filing objections – 10 working days from the date of first publication.
- iii. KPTCL/ESCOMs shall keep ready adequate number of copies of applications to provide the same to the consumers before notifying in newspapers. The interested consumers may obtain the same from KPTCL/ESCOMs on payment of copying charges. (Copying charges to be decided by KPTCL/ESCOMs).
- iv. On receipt of objections, KPTCL/ESCOMs to publish in the newspapers a consolidated rejoinder to the objections received within 8 days from the last date for filing the objections.

The Commission will consider the objections / suggestions received from public and the rejoinder issued by the Licensees and issue order expeditiously. Accordingly ordered.

Signed and delivered this order on 17th September 2003.

Sd/-
(Philipose Matthai)
Chairman

Sd/-
(H.S.Subramanya)
Member

Sd/-
(S.D.Ukkali)
Member

Enclosure to KERC Order in case No.OP 33/2003 dated 17.9.2003

Form of Publication of Applications

- 1) Karnataka Power Transmission Corporation Ltd
(Address)
- 2) Bangalore Electricity Supply Company Ltd
(Address)
- 3) Mangalore electricity Supply company Ltd
(Address)
- 4) Hubli Electricity Supply company Ltd
(Address)
- 5) Gulbarga Electricity Supply Company Ltd
(Address)

Before the Karnataka Electricity Regulatory Commission, Bangalore

In the matter of : Applications for amendment of tariff.

NOTICE

1. KPTCL/ESCOMs have filed the following Applications before the Hon'ble Karnataka Electricity Regulatory Commission, Bangalore for amendment of the tariff approved in KERC Tariff Order 2003.

- 1) Give date of application and brief details of the proposed special incentive scheme
- 2) Give date of application and POCA formula and explain the formula
- 3) Give date of application and brief details
- 4) Give date of application and brief details

2. KERC in its order dated 17.9.2003 has directed KPTCL/ESCOMs to publish an abridged version of the applications inviting objections on the said applications.

3. Proposed date of implementation of the amended tariff:
4. No of months in FY04 during which revenue at revised rates Will be applicable:.....

5. **Details of additional amounts proposed to be recovered through amended tariffs are given in the Table below:**

SI NO	Particulars	Amount proposed to be recovered (Rs in crores)
1	On account of lower revenues from Industrial consumers as a result of proposed Rs.3.80 per unit Special incentive scheme to HT consumers	
2	On account of lower hydro availability in FY04 than the forecast and variation in other expenses by applying proposed POCA Formula for the period ending Aug 2003.	
3	On account of revenue gap for FY03	
4	On account of Arbitral Award in Tanir Bavi Power Company case	
	Total	

6. It is proposed to increase the tariff applicable to various categories of consumers as detailed in Annexure to this notice. An abstract of revenue at the existing tariff and at proposed tariff for the period from the date of proposed implementation of the amended tariff to the end of March 2004 is indicated below:

**Abstract of Revenue from ----- to end of March 2004
(Rs in Crores)**

SI no	Tariff category	Revenue at existing tariff	Revenue at proposed tariff	Additional revenue expected	Percentage increase in revenue
1					
2					
etc					

7. Having regard to provisions of Electricity Act 2003, Karnataka Electricity Reform Act, 1999 and KERC (Tariff) Regulations 2000, it is hereby notified that persons who are interested in filing their objections to the above applications may file the same with The Receiving Officer, KERC, No.9/2, 6th & 7th Floor, Mahalaxmi Chambers, M.G. Road, Bangalore 560 001 along with the documents which they want to rely upon, in six sets duly supported by an affidavit within 10 working days from the date of the first publication of this notification. A copy of such objection along with its enclosures shall also be filed simultaneously with the respective ESCOM in their registered office.

8. For reference of those who are interested, copies of the applications are available for inspection at the following offices:

- 1.
- 2.
- etc

Further, a full set of applications with supporting material is also made available to the interested persons at the above offices on payment of Rs. -- --. They may also obtain copies of the required portion of the applications by paying photo copying charges.

9. Last date of receiving objections :
It may please be noted that objections received after ----- will not be considered.

For KPTCL/ESCOMs

(Signature of the authorised Officer)

Annexure

Details of existing tariff and proposed tariff

It is proposed to increase the tariff applicable to various categories of consumers as shown below:

Sl no	Tariff Category	Type of installation	Existing Tariff		Proposed Tariff	
			Fixed charge -			
			Energy charge-			

Note: Details of fixed charge/demand charge and energy charge to be provided slab wise as in the notification on the previous occasion.