

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No.38 of 2008**

**Dated: December 07, 2009.**

**Present: - Hon'ble Mrs. Justice Manju Goel, Judicial Member  
Hon'ble Shri H.L. Bajaj, Technical Member**

**IN THE MATTER OF:**

1. Bangalore Electricity Supply Company  
Limited (BESCO)  
K.R. Circle  
Bangalore-560001
2. Hubli Electricity Supply Company  
Limited (HESCO)  
P.B. Road, Nava Nagar Hubli  
Karnataka-580025
3. Mangalore Electricity Supply  
Company Ltd. (MESCO)  
Paradigm Plaza, Mangalore-575001  
Karnataka
4. Gulbarga Electricity Supply  
Company Ltd. (GESCO)  
Station Road, Gulbarga-585102  
Karnataka
5. Chamundeshwari Electricity Supply  
Company Ltd. (CESCO)  
927, L.J. Avenue, Saraswatipuram  
Mysore-570009  
Karnataka

....Appellant(s)

Versus

Karnataka Electricity Regulatory Commission  
6<sup>th</sup> and 7<sup>th</sup> floors,  
Mahalakshmi Chambers  
9/2 M.G. Road  
Bangalore-560001

.....Respondent(s)

Counsel for Appellant(s) : Mr. M.G. Ramachandran  
Mr. Anand K. Ganesan  
Ms Swapna Seshadri

Counsel for Respondent(s): Mr. M. Srinivas R Rao  
Mr. Rohit Rao  
Mr. M.G. Prabhakar, Chairman  
Linergy for FKCCI  
Mr. Ananga Bhattacharya  
Mr. L. Roshmani

## **JUDGMENT**

### **Per Hon'ble Member Mr. H.L. Bajaj**

This Appeal jointly filed by five distributions companies namely: BESCO, HESCO, MESCO, GESCO and CESCO challenges the order dated February 21, 2008 passed by the Karnataka Electricity Regulatory Commission (KERC or the Commission in short) implementing the order dated February 07, 2008 passed by this Tribunal in Appeal No. 250 of 2006

(2008 ELR (APTEL) 164) in which the appellants had challenged the Commission's order determining ARR and Retail Supply Tariff for the year 2006-07 on following issues:

- (A) Reduction of quantum of power purchase required.
- (B) Disallowance of power purchase cost to Tanir Bhavi
- (C) Distribution loss calculation
- (D) Interest and finance charges on investment
- (E) Employees cost
- (F) Charges payable to KPTCL
- (G) Repair and Maintenance Expenses

2. We now proceed to deal with the issues which have been agitated before us in this appeal. As similar issues are agitated by the five companies, our decisions reached will be applicable mutatis mutandis in case of a particular distribution company to the remaining four also.

**(a) Calculation of Power Purchase Cost and Quantum.**

3. It has been contended by the Appellant that the Commission has adopted wrong methodology to adjust power purchase cost and expenses of the Appellants for the Tariff Year

2006-07 and that the methodology followed by the Commission for calculating the Power Purchase Cost and Quantum has already been set aside by this Tribunal in the case of Karnataka Power Transmission Corporation Limited in Appeal No. 100 of 2007 decided on December 04, 2007, Appeal No. 9 of 2008 decided on May 09, 2008 and also in Appeals No. 15,20,21,22 and 23 of 2008 decided on October 09, 2009. Appellant contends that the decision of this Tribunal in the aforementioned Appeals squarely applies to the present case.

4. In this regard para 36 of our judgment in Appeal 09 of 2008 is reproduced below:

*“36. The Commission has erred in its assessment of power purchase quantum to be considered for the purpose of revenue requirement for the relevant year FY 2000-01 to FY 2005-06. While arriving at the quantum of power purchase to be allowed for revenue requirement, KERC should first reduce the disallowed T&D losses from the quantum of power purchase entered in the audited accounts of KPTCL. From the figure so arrived, the Commission has to reduce the allowed T&D losses which will give the quantum of power available for sale yielding revenue. Moreover, KERC has to*

*realize that the audited sale quantum includes metered sale and unmetered sale which also includes agricultural pumping sets and, therefore, there is an overlapping between the unmetered sale and loss. In this view of the matter, we are of the opinion that calculations should be carried out on the basis of the methodology given by KPTCL in its Memo of Appeal at para “W”. We order accordingly”.*

5. Para ‘W’ referred in the judgment extracted above is reproduced below:-

*“W.In addition to the above the State Commission has adopted a methodology to adjust costs and expenses related to the six financial years namely 2000-01 to 2005-06 which is illogical, irrational and capricious. For example for the financial year 2000-01 the State Commission had assumed that 1807 MUs out of total quantum of power purchase of 27,700 ought to be disallowed and the disallowance in terms of reduction in the power purchase cost would be 1807 MUs multiplied by pooled rate of Rs 1.36 per kwh which works out to Rs 245.29 Crs. This has been derived based on sale of 17867 MUs instead of approved sale of 18766. The*

*correct and simple method for dealing with the variation in power purchase quantum to be considered is as under:*

- i. The Approved Power Purchase quantum is 27197 MUs.*
- ii. The Actual Power Purchase quantum is Rs 27700 MUs.*
- iii. The variation in power purchase in quantum to be considered should begin with and based on actual quantum of power purchase of 27700 which is a real item and not a derivative or notional item.*
- iv. The sale quantum as per audited accounts mentioned in row 1 of Table 1 of the impugned order dated 31.12.07 comprised of Metered sale and also un-metered sale. The un-metered sale consists of sale to agricultural pump set and the quantum is an estimate only. There is therefore an overlapping between un-metered sale and losses*

*and it is always difficult to determine correctly the percentage of un-metered sale and percentage of losses. Thus the sale of 17867 MUs mentioned in row 1 and loss of 9834 MUs mentioned in row 2 of Table 1 are to certain extent inter changeable because of estimation of un-metered sale. The sale of 17867 MUs cannot therefore be a correct basis for deciding on the variation in power purchase in MUs to be considered.*

*v. Accordingly so long the quantum of actual power purchase is more than quantum of power purchase approved no adjustments in the quantum of power purchase need to be carried out.*

*vi. Without prejudice to the above even if any adjustment is to be carried out ignoring the mixing up of un-metered sale and losses, the variation should be derived from actual quantum of power*

*purchase of 27700 MUs and not from any other derivative numbers.*

*vii. The actual quantum of power purchase of 27700 is to be adjusted for three elements namely:*

*1. Sales*

*2. Loss Level allowed;*

*3. Loss level not allowed.*

*viii. In accordance with the above, out of 27700 the loss level of 4.50% which is in excess of 31% approved loss level ought not to be allowed. This means 1246.50 MUs should be reduced from 27700 and the balance quantum of 26453.50 MUs of power purchase should be allowed. This 26453.50 MUs is the power purchase to be allowed with 31% loss level.*

*ix. Instead of the above 26453.50 MUs the State Commission has considered only 25894 MUs as the quantum of power purchase to be allowed by*



*adopting a reverse calculation and giving cumulative and double effect.*

- x. The fallacy in the approach adopted by the State Commission in the calculation is writ large in Table 1 itself where the State Commission has taken 25894 out of 27700 MUs as admissible power purchase quantum which would mean 1806 MU or 1807 MU which the commission has mentioned in row 6 to be disallowed as additional losses for excess of 4.50% above 31%. This 1806 constitute 6.97% of 27700. Thus the State Commission has penalized KPTCL for more than 4.50% and has implemented a loss level of 28.53% instead of 31%.*

*Similar obvious mistakes exist in many of the calculations leading to the wrong conclusion that upon truing up there will be surplus in the hands of KPTCL even after adjusting Tanir Bhavi costs*

*which was previously disallowed and now purported to be allowed because of the order dated 4.12.2007 passed by the Tribunal in Appeal No 100 of 2007.”*

6. In its response the Commission has contended that it has determined the power purchase quantum by grossing up the actual sales as per audited accounts by the approved loss level which is in line with Clause 8.3.1(1) of the Tariff Policy which is reproduced below:

*“ 8.2.1(1)xxxx Actual level of retail sales should be grossed up by the normative level of T&D losses as indicated in MYT trajectory for allowing power purchase cost subject to justifiable power purchase mix variation xxxx”*

7. The Commission contends that the above approach is also in line with the orders of this Tribunal in Appeal No. 100 of 2006. Moreover, power purchase quantum being dependent upon sales and losses, the quantum of power purchase has to be determined from the dependent variables sales and losses. The Commission does not agree with the contention of the Appellant

that the unmetered sales and losses are interchangeable and are notional. The Commission has pointed out that Section 55(1) of the Act requires all consumers installations are metered within two years from the appointed date and this time limit has not been extended by the Commission for installation of meters. The licensee should have complied with the provisions of the Act and installed the meters. The Commission contends that in the absence of 100% metering the sales of Irrigation Pump Set and unmetered categories are being assessed based on statistical sampling and therefore plea of the Appellant that the unmetered sales are notional is not correct.

### **Analysis and decision**

8. Our judgment in Appeal No. 100 of 2007 does not relate to the issue of unmetered supply to IP sets contributing to the losses. Therefore, we are unable to agree with the contention of the Commission that our judgment in Appeal No. 100 of 2007 will apply to this case. Impugned truing up order implements judgment of this Tribunal in Appeal No. 250 of 2006 and,

therefore, specific directions in this order have to be complied with.

9. Issue of unmetered sales has been settled in our judgment dated February 7, 2008 in Appeal No. 250 of 2006 as wherein this Tribunal has held at para 32 that once the Govt. of Karnataka had extended the time limit for regularization of unauthorized unmetered I.P. sets, it will not be proper to designate the existing connections as unauthorized. Moreover, the unmetered consumers are also paying electricity charges as per tariff determined by KERC for the year 2006-07. It can not be the case that revenue stream is taken into account but corresponding purchase cost is not allowed. In view of this, it would be appropriate to take into account both: the electricity consumed for such consumers and corresponding quantity to be purchased. Actual figures as per audited accounts given by KERC in its impugned order at Annexure-I are as under:-

**Power purchase cost with reference to approved losses.**

| <b>Particlars</b>  | <b>Approved</b> | <b>Acruals as per audited accounts</b> |
|--|-----------------|--|
| Energy input @ IF points   | 16222.26        | 18521.64                               |
| Sales  | 12896.70        | 14126.45                               |
| Loss Percentage  | 20.50%          | 23.73%                                 |
| Loss (MU)  | 3325.56         | 4395.19                                |
| Power purchase considering approved loss levels  |                 | 17769.12                               |
| Deviation in loss to be borne by licensee  |                 | 752.52                                 |
| Power purchase cost  | 3,604.86        | 4,580.58                               |
| Average power purchase cost per unit   |                 | 2.47                                   |
| Power Purchase cost to be allowed as per approved losses                               |                 | <b>4,394.47</b>                        |
| Deduction from actual power purchase cost as per actuals w/r/ to approved loss levels. |                 | <b>186.11</b>                          |

10. Judgment of this Tribunal in Appeal No. 9 of 2008 dated 9<sup>th</sup> May 2008 at para 36 regarding power purchase cost will squarely apply to the case in hand. Energy input to be disallowed is to the extent of excessive level of losses over and above the approved figures of 20.5% i.e.  $23.75\% - 20.50\% = 3.23\%$  which is  $18521.64 \times 0.0323 = 598.25$  MU. Accordingly the appeal is allowed in this view of the matter.

**(b) Double counting of subsidy:**

11. The Appellant alleges that in case of Bangalore Electricity Supply Company Ltd.(BESCO) and Mangalore Electricity Supply Company Ltd.(MESCO) the Commission has erroneously taken the subsidy received from the state Government twice and thereby artificially increasing the revenue of the Distribution Companies. Appellant would contend that the subsidy received from the state Government was already included in the revenue from the sale of power of the Distribution Companies as shown in the audited accounts. As against the actual revenue of Rs. 5384.97 crores as per the audited accounts, the Commission has erroneously considered a revenue of Rs. 5747.17 crores. It is contended that the revenue from sale of power indicated in the audited accounts includes subsidy component but the Commission has again added an amount of Rs. 361.20 crores to arrive at a revenue of Rs. 5746.17 crores.

### **Analysis and decision**

12. The Commission in its response has stated that as per notes to BESCO audited accounts for FY 2007 it is stated that the subsidized portion from Government of Karnataka on Irrigation Pumping Set energy sales is not recognized in the books as per letter dated 16/19 December, 2005. In view of this the Commission had considered the revenue as per Profit and Loss Accounts as the revenue from sale of power without subsidy. The Commission has fairly offered to correct the factual error, if any.

13. In view of the above we would direct the Commission to re-check for the factual errors and make necessary corrections.

#### **( c ) Disallowance of interest paid on belated power payments.**

14. Appellant has contended that the Commission has disallowed Rs. 17.75 crores of interest paid on belated power purchase payments on the plea that if the same is allowed it

would result in payment of interest twice by the consumers. The appellant contends that the interest cost was incurred by the utilities due to severe cash flow constraints which was occasioned by the inadequate revenue requirements allowed by the Commission. Moreover, the Commission has included the interest on late payments received from the consumers in the revenue of the Distribution Companies.

### **Analysis and decision**

15. The Commission has submitted that as the appellate companies are repositories of revenues they are expected to collect the revenue and discharge their payment obligations on time and the consumers cannot be asked to bear the extra interest cost on belated power purchase payments.

16. The Commission has included the interest on late payments received from the consumers towards the revenue of the distribution companies. It is the delayed payment received from the consumers which is the root cause for delaying the power purchase payments by the appellants to the generators.



It will be unfair and inequitable to include the interest on delayed payments in the revenue stream and not allow interest on belated power purchase payments as pass through in the tariff. We, therefore, direct the Commission to allow the interest cost on belated power purchase payments as pass through in the Retail Supply Tariff.

**(d) Other debits:**

17. Appellant has contended that the Commission has disallowed provision of Rs. 182 crores for bad and doubtful debts stating that the surplus amount earned is being utilized to write off subsidy receivable as bad debt. Appellant would contend that BESCO had made a provision of Rs. 182 crores as bad and doubtful debt in accordance with its policy stated in the audited account and that this amount is not at all related to the subsidy. The amount proposed as bad debt has been demanded from the consumers after accounting for the tariff subsidy and therefore, the consumers portion of demand still remains unrecovered.

## **Analysis and decision**

18. Regarding issue of Bad Debts, in Appeal No. 250 of 2006 this Tribunal had decided as under at para 58:

*“ 58. It is normal accounting practice to allow bad debts. The Commission has fairly stated in its order for allowing the same on receipt of full details and, therefore, we need not interfere with the order of the Commission with regard to the provision for bad debts.”*

19. We see no relationship between the bad debts which are receivable from the consumers and the subsidy receivable from the state Government. In this view of the matter we direct the Commission to appropriately re-examine the bad debts without linking with the subsidy receivable from the state Government which cannot be written off as bad debt.

### **(e) Return on Equity.**

20. It is contended by the Appellant that the Commission has not considered the return on equity elements and thereby

reducing the revenue requirement by Rs. 52 crores which seems as obvious mistake.

### **Analysis and decision**

21. The Commission in its reply has fairly stated that it would consider factual omissions, if any. We direct that the Commission may re-examine the issue of return on equity.

#### **(f) Depreciation.**

22. The Appellant has contended that the Commission has erroneously omitted a sum of Rs. 18.15 crores on depreciation accounted for in case of MESCO and that the same is obvious mistake which requires to be corrected.

### **Analysis and decision**

23. The Commission in its affidavit has not contested the contention of the appellant. In view of this we direct that the Commission have a re-look into the aforementioned issue and decide the same.

**(g) Loss level calculation.**

24. The appellant contends that the Commission has not considered, in case of CESCO, the loss level trajectory proposed by the utility based on the actual loss level for the year 2005-06 and the projections for the Multi Year Tariff Period FY 2008-10.

Distribution Loss Profile

| Year                | Loss Percentage (%) |
|---------------------|---------------------|
| 2005-06 (Actuals)   | 27.03               |
| 2006-07 (Projected) | 26.00               |
| 2007-08 (Projected) | 24.00               |
| 2008-09 (Projected) | 22.00               |
| 2009-10 (Projected) | 21.00               |

25. The Appellant stated that in its tariff petition it had brought out that unprecedented high rate of growth of 31% in consumption during the year FY 2007. Appellant contends that the Commission has passed the impugned order suo moto

without notice and without hearing any of the parties thereby debilitating the appellant to explain its position to revisit the loss level in view of the unprecedented growth in consumption of electricity.

### **Analysis and decision**

26. It is noticed that the tariff order for FY 2006-07 inter alia stating the loss level targets was not challenged by the appellant and, therefore, at the truing up stage the target which was fixed earlier in the tariff order cannot be agitated.

27. In conclusion, the Appeal is allowed in part to the extent indicated in paras 10, 13, 16, 19, 21, 23 and 26.

28. No order as to costs.

29. Pronounced in the open court on 7<sup>th</sup> day of December, 2009.

(H.L. Bajaj)  
Technical Member

(Justice Manju Goel)  
Judicial Member