

No. N/214/2017

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated: 05.08.2021

Present

Shri Shambhu Dayal Meena	: Chairman
Shri H.M. Manjunatha	: Member
Shri M.D. Ravi	: Member

RP No.09/2017

BETWEEN:

- 1) Bangalore Electricity Supply Company Limited (BESCOM),
A Government Company incorporated under the provisions of Companies Act, 1956 having its registered office at K.R. Circle, Bangalore-560 001.
(Represented by its General Manager.)

..... PETITIONER No.1
- 2) Hubli Electricity Supply Company Limited (HESCOM),
A Government Company incorporated under the provisions of Companies Act, 1956 having its registered office at P.B. Road, Navanagar, Hubli-580 029.
(Represented by its General Manager, Technical)

..... PETITIONER No.2
- 3) Gulbarga Electricity Supply Company Limited (GESCOM),
A Government Company incorporated under the provisions of Companies Act, 1956 having its registered office at Station Road, P.B. Road, Navanagar, Gulbarga-585 101.
(Represented by its General Manager, Technical)

..... PETITIONER No.3

4) Mangalore Electricity Supply Company Limited (MESCOM),
A Government Company incorporated under the provisions of Companies Act, 1956 having its registered office at MESCOM Bhavana, Bejai, Mangalore-575 004.
(Represented by its Superintending Engineer, Commercial)

..... PETITIONER No.4

5) Chamundeshwari Electricity Supply Company Limited (CESC),
A Government Company incorporated under the provisions of Companies Act, 1956 having its registered office at No.29, Vijaynagar, 2nd Stage, Hinakal, Mysore-570 017.
(Represented by its General Manager, Commercial)

..... PETITIONER No.5

(Petitioner No.1 to 5 represented by Sri S. Sriranga & Ms. Sumana Naganand, Advocates of M/s JUSTLAW Advocates)

AND:

1) NSL Sugars (Tungabhadra) Limited,
A Company registered under the Companies Act, 1956 having its Office at No.60/1, 2nd Cross, Residency Road, Bengaluru-560 025.
(Represented herein by its Director)

2) NSL Sugars Limited,
Aland Unit, A Company registered under the Companies Act, 1956 having its Office at No.60/1, 2nd Cross, Residency Road, Bengaluru-560 025.
(Represented herein by its Director)

3) NSL Sugars Limited,
A Company registered under the Companies Act, 1956 having its Office At No.60/1, 2nd Cross, Residency Road, Bengaluru-560 025.
(Represented herein by its Director)

- 4) Davanagere Sugar Company Limited,
A Company registered under the
Companies Act,1956 having its Office
At No.73/1, P.B. No.312, Shamanur Road,
Davanagere District-577 525.
(Represented herein by its Director)
- 5) Gem Sugars Limited,
A Company registered under the
Companies Act,1956 having its Office
at Hooday Apartments, Cunningham Road,
Bengaluru-560 0052.
(Represented herein by its Director)
- 6) Vijayanagar Sugars Pvt. Limited,
A Company registered under the
Companies Act,1956 having its Office
at Plot No.359, Road No.80,
Jubilee Hills,
Hyderabad-500 033.
(Represented herein by its Director)
- 7) ETD Parry (India) Limited,
A Company registered under the
Companies Act,1956 having its Office
at Dear House, 234,
N.S.C. Bose Road, Parrys Corner,
Chennai-600 001.
(Represented herein by its Director)
- 8) Athani Sugars Limited,
A Company registered under the
Companies Act,1956 having its Office
at Vishnu Anna Nagar, Navlihal Post,
Athani Taluk,
Belagavi District-591 234.
(Represented herein by its Director)
- 9) KPR Sugar Mills Private Limited,
A Company registered under the
Companies Act,1956 having its Office
at No.5, AKS Nagar,
Thadagam Road,
Coimbatore-641 001.
(Represented herein by its Director)

- 10) Jamakhandi Sugars Private Limited,
A Company registered under the
Companies Act,1956 having its Office
at Hirepadasalagi, Naganur Post,
Jamakhandi Taluk,
Bagalkot District.
(Represented herein by its Director)
- 11) Sri Chamundeswari Sugars Limited,
A Company registered under the
Companies Act,1956 having its Office
At Plot No.88/5, Richmond Road,
Bengaluru-560 025.
(Represented herein by its Director)
- 12) Manali Sugars Limited,
A Company registered under the
Companies Act,1956 having its Office
At A/P: Malgahn,
Sindhagi Taluk,
Vijayapura District.
(Represented herein by its Director)
- 13) ETD Parry (India) Limited,
A Company registered under the
Companies Act,1956 having its Office
at Dear House, 234,
N.S.C. Bose Road, Parry's Corner,
Chennai-600 001.
(Represented herein by its Director)
- 14) Jamakhandi Sugars Private Limited (Unit-2),
A Company registered under the
Companies Act,1956 having its Office
at Nadkd, Indi Taluk,
Vijayapura District.
(Represented herein by its Director)
- 15) Shamanur Sugars Limited,
A Company registered under the
Companies Act,1956 having its Office
at No374, 4th Main,
P.J. Extension,
Davangere-577 002.
(Represented herein by its Director)

- 16) Bhalkeshwar Sugars Limited,
A Company registered under the
Companies Act,1956 having its Office
at Basaveshwara Chowk,
Near I.B. Bhalki-585 328.
(Represented herein by its Director)

- 17) Godavari Bio Refineries Limited,
A Company registered under the
Companies Act,1956 having its Office
at Somaiya Bhavan,
45/47, M.G. Road, Fort,
Mumbai-400 001.
(Represented herein by its Director)

- 18) Core Green Sugar & Fuels Private Limited,
A Company registered under the
Companies Act,1956 having its Office
at Plot No.860-A, Road No.45,
Jubilee Hills,
Hyderabad-500 003.
(Represented herein by its Director)

- 19) Shiraguppi Sugar Works Limited,
A Company registered under the
Companies Act,1956 having its Office
at "Doddanavar Corporate House",
738/1, Khanappur Road,
Near 3rd Railway Gate,
Belagavi-590 008.
(Represented herein by its Director)

- 20) Shre Renuka Sugar Limited
A Company registered under the
Companies Act,1956 having its Office
at BC-10, Havelock Road, Camp:
Belagavi-590 001.
(Represented herein by its Director)

- 21) Indian Cane Power Limited,
A Company registered under the
Companies Act,1956 having its Office
At No.677, Shri Kalleshwara Rice Mill
Compound, R.M.C. Road, Ankola,
Davanagere-577 001.
Represented herein by its Director)

- 22) Shree Renuka Sugar Limited,
A Company registered under the
Companies Act,1956 having its Office
at BC-10, Havelock Road, Camp:
Belagavi-590 001.
(Represented herein by its Director)
- 23) Shree Renuka Sugar Limited,
A Company registered under the
Companies Act,1956 having its Office
at BC-10, Havelock Road, Camp:
Belagavi-590 001.
(Represented herein by its Director)
- 24) Vishwaraj Sugar Industries Limited,
A Company registered under the
Companies Act,1956 having its Office
at Bellad-Bagewadi,
Hukkeri Taluk,
Belagavi District-591 305.
(Represented herein by its Director)
- 25) Nirani Sugars Limited,
A Company registered under the
Companies Act,1956 having its Office
at No.904, 9th Floor, World Trade Centre,
Brigade Gateway Campus,
No.26/1, Dr. Rajkumar Road,
Bengaluru-560 055.
(Represented herein by its Director)
- 26) Prabhulingeshwara Sugars & Chemicals Limited,
A Company registered under the
Companies Act,1956 having its Office
at Sukrut Building,
Opp: K.C. Park Main Gate,
P.B. Road,
Dharwad-580 008.
(Represented herein by its Director)
- 27) Shivashakti Suars Limited,
A Company registered under the
Companies Act,1956 having its Office
at 204, Shukravar Peth, Tilakwadi,
Belagavi.
(Represented herein by its Director)

28) Bannari Amman Sugars Limited,
A Company registered under the
Companies Act,1956 having its Office
at P.B. No.3979, 1212, Trichy Road,
Coimbatore-641 018.

29) Bannari Amman Sugars Limited,
A Company registered under the
Companies Act,1956 having its Office
at P.B. No.3979, 1212, Trichy Road,
Coimbatore-641 018.
(Represented herein by its Director)

....RESPONDENTS

(Respondents No.1 to 9, 11, 13, 17, 18, 21, 25, 26,
28 & 29 represented by M/s Navayana Law Offices)

(Respondent No.20, 22 & 23 represented by
Sri Manmohan P.N. Associates, Advocates)

ORDERS

1. The present petition is filed under Section 62 read with Section 94 of the Electricity Act, 2003, for review of Common Orders dated 11.04.2017 passed in OP No.38/2016 & Other connected cases determining tariff payable per unit for the energy supplied from Co-gen plants commissioned in different years during the period from 2005 or earlier to 2014, as stated in the final order along with the terms & conditions mentioned therein (the Common Order dated 11.04.2017 is hereinafter referred as impugned order).
2. The brief facts leading to pass the Common Orders dated 11.04.2017 in OP No.38/2016 & Other connected cases may be stated as follows:
 - a) The respondents herein are the bagasse based co-gen plants with different installed capacities and certain exportable capacities. They

were not having any Power Purchase Agreements (PPAs) with any of the ESCOMs of the State. They intended to sell power to the extent of exportable capacity after the captive use for a period of five years and approached the State Government for appropriate directions. They also filed OP No.38/2016 & other connected cases against ESCOMs of the State.

b) All ESCOMs who are the review petitioners herein have filed a common petition in OP No.85/2016 on 18.11.2016 praying for the following reliefs:

“(i) To approve the proposal of the petitioners (ESCOMs) for procurement of electricity on medium term basis from the Bagasse-based Cogen Plants, who are already generating electricity and do not have PPAs with the ESCOMs, in terms of the Government Order dated 11.11.2016; and

(ii) To determine the tariff payable by the Petitioners (ESCOMs) herein in accordance with the Government Order No.EN 16 PPT 2016, Bangalore, dated 11.11.2016 from Bagasse-based Cogen Plants.”

This OP No.85/2016 was clubbed along with other cases filed by Co-gen plant owners.

c) During the hearings of OP No.38/2016 and other connected cases and OP No.85/2016, the arguments submitted by the learned counsel on both sides are noted in para 6 (a) to (c) of the impugned order. The said paras read as follows:

“para 6 (a) – The learned counsel for both sides submitted that this Commission has already passed different Orders regarding the Generic Tariff applicable to the Cogen Plants during Control Periods and based on the norms applied therein and taking into consideration the Government Order dated 11.11.2016 and the Government Order dated 18.11.2016, the tariff may be determined by this Commission for a 5-year term, from FY 17 to FY21.

Para 6 (b) – The learned counsel for the ESCOMs submitted that these Cogen Plants had earlier supplied power to the ESCOMs under short-term contracts and also under the Section 11 Orders, at a rate more than Rs.5.00 per unit in the last eight years and some of these Cogen Plants had also exported power through open access to other States, at a rate more than Rs.6.00 per unit. The learned counsel for the ESCOMs submitted that, at present the average rate prevailing in the IEX for peak period during the first week of January 2017 was Rs.4.17 per unit including the transmission charges of Rs.0.36 per unit and the lowest discovered rate by the Power Company of Karnataka Limited (PCKL) for short-term contract of PTC and JSW was Rs.4.15 per unit and Rs.4.18 per unit, respectively, for procurement of 1,200 MW. Further, he submitted that, as the procurement of power from these Cogen Plants for the present is for a period of five years, the rate should be less than the rates for short-term contracts discovered by the PCKL.

Para 6 (c) – The learned counsel for the Cogen Plants submitted that, in respect of the Cogen Plants commissioned on or after 1.1.2015, the Generic Tariff Order dated 1.1.2015 passed by this Commission has to be applied and in respect

of other Cogen Plants, the Generic Tariff Order dated 22.01.2015 passed by this Commission in the matter of 'Revision of Fuel Cost for the existing Biomass Power Plants in Karnataka' has to be applied."

d) The gist of the grounds urged in the present Review Petitions are noted in para 2 of the impugned order. The scrutiny of the material on record particularly, the letter dated 17.08.2016 (Annexure-B) & letter dated 18.01.2017 (Annexure-C) written by the Managing Director, BESCO respectively, produced along with Review Petition would show that the Review Petitioner-BESCO had given up the contentions raised in the letter dated 17.08.2016 (Annexure-B) which are now again alleged in the present Review Petition. This can also be clearly inferred from the submissions made by the parties as noted in para 6 (a) to (c) of the impugned order.

e) The gist of letter dated 17.08.2016 (Annexure-B) may be stated as follows:

(i) That this letter was written in reply to the notice served by the Commission seeking the opinion/consent of the ESCOMs as to whether they were willing to purchase power from Cogen Plants and as to whether the tariff which they could afford to.

(ii) That earlier most of the Cogen Plants were having valid PPAs with ESCOMs. The rate in open market were attractive and almost twice the rate agreed in the PPAs during 2008-09. To get rid off from the valid PPAs, most of these Cogen Plants

raised various disputes alleging delay in payments, non-payment of interest and non-establishing Letter of Credits and were successful in getting PPAs terminated in the middle of the PPA terms. Now, the rate in the open market has come down. The power in IEX and PXIL is available at less Rs.3.00 per unit. Hence, the Cogen Plants have filed the Petitions before the KERC seeking determination of tariff and to enter into PPAs as ESCOMs etc.,

- (iii) The Cogen Plants have already served their initial 10 years of operations. The loan repayment and depreciation are completed and the remaining costs payable are only Return on Equity O&M Expenses, Income Tax and Interest on Working Capital and the Fuel Cost.
- (iv) If the Cogen Plants agreed to supply the power at Average Power Projects Cost (APPC) excluding Transmission charges approved by KERC for FY 17 (Rs.3.38 per kWh) in the Tariff Order dated 30.03.2016 as Generic Tariff for the PPAs to be executed on Long-term basis, the consent for executing the PPAs could be given.
- (v) The total capacity of Cogen Plants which have filed the Petitions is 590 MW, wherein BESCO's share is at 47.7879% i.e., 282 MW. This quantum may be procured through IEX during deficit situation or from thermal plants having long term

PPAs or otherwise, if the Cogen Plants agreed to supply power at Average Power Purchase Cost (APPC) excluding Transmission charges approved by KERC for FY 17 (Rs.3.38 per kWh). The BESCO can afford this rate under long term contract.

f) The gist of letter dated 18.01.2017 (Annexure-C) may be stated as follows:

(i) This letter dated 18.01.2017 is written in continuation of the letter dated 17.08.2016. That GoK vide Order dated 11.11.2016 had directed the ESCOMs to procure 501 MW from 28 Sugar Factories having Bagasse-based Cogen Plants. The GoK vide letter dated 18.11.2016 had informed this Commission that the ESCOMs may be allowed to purchase power from the Bagasse-based Cogeneration Plants of Sugar Factories, at the tariff already determined by the KERC for Bagasse-based Plants starting in different Control Period based on the Commercial Operation Date (COD). The ESCOMs can pay for the power purchase based on the COD and tariff determined by the Commission for different Control Periods.

(ii) BESCO and other ESCOMs have filed a Petition in OP No.85/2016 for determination of Tariff and approval to procure the power from 28 Sugar Factories in the share of

allocation as per GoK Order dated 18.03.2016. KERC vide Order dated 05.12.2017 in OP No.38/2016 and other connected cases had approved an interim tariff of Rs.3.47 per unit and accorded approval to procure the power from the Sugar Factories limiting to 501 MW.

(iii) The cases filed by ESCOMs and Cogen Plants are heard on 12.01.2017 and after hearing the matter is reserved for orders by this Commission and, in turn, directed the parties to file any additional information if required within one week through Memo.

(iv) BESCOB furnished the further details in this letter regarding the tariff as per GoK Order/Ministry of New & Renewable Energy (MNRE) Guidelines prevailing prior to June 2004 and also the details of different Generic Tariff Orders passed by this Commission relating to Bagasse-based Cogen Plants.

(v) The letter is concluded as follows:

“As could be seen from the above details, the tariff for Co Gen units commissioned prior to 2010 is Rs.3.30 per kWh, for control period 2010-15 it is ranging from Rs.4.05 to Rs.4.22 per kWh and for 2015-18 it is Rs.4.83 to Rs.5.16.

The Co Gen Plants have supplied power to ESCOMs under short term contracts and under Section-11 where the rate was more than Rs.5 per kWh from past 8 years. The Co Gen Plants have also exported power through open access to other States at a rate

more than Rs.6 per unit. At present the Average rate prevailing in IEX for peak period during first week of January 2017 is Rs.4.17 per kWh which includes transmission charges of 36 paise per unit. The lowest discovered rate by PCKL for short term contract of PTC and JSW is Rs.4.15 per kWh and Rs.4.18 per kWh respectively for procurement of 1200 MW. As the power procurement from Co Gen Plants is for medium term basis, the rate should be less than the rates of short term contracts discovered by PCKL.

In view of the above, it is requested to fix a suitable Tariff duly allowing a discount of 30 paise per unit."

- g) Earlier this Review Petition was heard on 24.04.2018 and reserved for orders. After perusal of records, the Commission found that in the meanwhile, this Commission had determined the Generic Tariff applicable to the Bagasse-based Cogen Plants commissioned during the Control Period from 01.04.2018 to 31.03.2021. During the process of the determining the said tariff, the Commission had determined the Fuel Cost applicable for FY 19 to FY 21 apart from determining the Fixed Cost for the said period. The same Fuel Cost was made applicable to the existing Cogen Plants having PPAs for FY 19 to FY 21. It was found that the Fuel Cost determined for FY 19 to FY 21 was less than the Fuel Cost determined for the previous Control Period for the Bagasse-based Cogen Plants. In the impugned order, the Fuel Cost allowed for FY 19 to FY 21 for the Cogen Plants was as per the Fuel Cost determined in the previous Control Period which was higher than the Fuel Cost determined for the Control Period from 01.04.2019 to 31.03.2021. Therefore, this

Commission intended to hear the parties on the question, as to whether the reduction of Fuel Cost in the recent Generic Tariff Order was relevant for the disposal of the present Review Petition, either as a ground of review or independent of it. Therefore, the Review Petition was re-opened and listed for further hearing on 26.07.2018.

h) Some of the Cogen Plants owners preferred Writ Petition Nos.31942 & 31943 of 2018 (GM-KEB) against the above Order dated 19.07.2018 asking the parties to submit their view, challenging the legality of the said Order. Ultimately, the Hon'ble High Court of Karnataka, dismissed these Writ Petitions on 27.11.2019 and the present matter was again taken up for further hearing. Some of the respondents - Cogen Plants owners opposed for applicability of the newly determined lesser Fuel Cost applicable for FY 19 to FY 21, stating that subsequent fact is not relevant and that the said Order reducing the Fuel Cost has been challenged before the Hon'ble ATE vide Appeal No.229 of 2018 between South India Sugar Mills Association Vs. KERC and that matter is still pending. The learned counsel for the Review Petitioners submitted that the reduction in Fuel Cost determined by this Commission applicable for FY 19 to FY 21, is to be applied for the Cogen Plants owners who executed the PPAs pursuant to the impugned orders. The Commission notes that Appeal No.229 of 2018 has been disposed of on 02.08.2021 by the Hon'ble ATE setting aside the order dated 14.05.2018 to the extent as indicated therein and this Commission is directed to consider the matter afresh and pass

consequential order keeping in view of the opinion expressed in the judgment in accordance with law.

3. We have heard the learned counsel for the parties. The following points arise for our consideration:

Point No.1: Whether the reduction in Fuel Cost determined by this Commission applicable for Control Period from 01.04.2018 to 31.03.2021 vide Generic Tariff Order dated 14.05.2018, can be made applicable in the present case?

Point No.2: Whether the petitioners have made out any ground for review of the impugned order?

Point No.3: What Order?

4. After considering the submissions of the parties and the records, our findings on the above points are as follows:

5. Point No.1: Whether the reduction in Fuel Cost determined by this Commission applicable for Control Period from 01.04.2018 to 31.03.2021 vide Generic Tariff Order dated 14.05.2018, can be made applicable in the present case?

a) This Commission in its Generic Tariff Orders dated 01.01.2015 and subsequent Order dated 22.01.2015 has held that the Fuel Cost for the Cogen Plants remains the same in any year, though the Cogen Plants have commissioned in different years of a Control Period. In the impugned order, the Commission determined Average Fixed Cost per unit for 5 years from FY 17 to FY 21 based on the year of commissioning of the plants at different rates as noted in para 13 (c) of the said Order. Further, the Commission determined the Fuel Cost for all the Cogen

Plants applicable for FY 17 to FY 21 based on the Generic Tariff Order dated 01.01.2015 and the subsequent Order dated 22.01.2015. In the Generic Tariff Order dated 01.01.2015 and subsequent Order dated 22.01.2015, the Fuel Cost determined in the said Orders were made applicable for the Control Period ending with FY 18 with certain escalations per year. The same escalation was made applicable to FY 19 to FY 21 for the Cogen Plants involved in the present case, though the Fuel Cost was required to be determined from FY 19 to F21 for other Cogen Plants who had existing PPAs.

b) The reduction in Fuel Cost subsequently determined for FY 19 to FY 21 vide Generic Tariff Order dated 14.05.2018 challenged by the South India Sugar Mills Association (SISMA) before the Hon'ble ATE vide Appeal No.229 of 2018 between SISMA Vs. KERC is for the present set aside by Order dated 02.08.2021 by the Hon'ble ATE and the matter has been remanded to this Commission for fresh disposal in accordance with the directions given therein. Therefore, we are of the considered opinion that the Fuel Cost already determined in the impugned order for FY 17 to FY 21 need not be re-opened. The Review Petition was also not based on this ground with a request to revise the Fuel Cost for FY 19 to FY 21.

b) For the above reasons, we hold Point No.1 in the negative.

6. Point No.2: Whether the petitioners have made out any ground for review of the impugned order?

As already noted, the grounds urged in the Review Petitions, though were taken at the initial stage of the proceedings as noted in para 2 of the impugned order, however, subsequently those grounds were given up in OP No.38/2016 and other connected cases. This is also further made clear is the averments made in OP No.80/2016 filed by the Review Petitioners, where they have specifically requested to procure the electricity on Medium-term basis from the Bagasse-based Cogen Plants, who were not having existing PPAs with ESCOMs, in terms of the Government Order dated 11.11.2016. The Government letter dated 18.11.2016, it is stated that the ESCOMs may be allowed to purchase power, from the Bagasse-based Cogen Plants of Sugar Factories at the tariff already determined by KERC for the Sugar Factories starting generation in different Control Periods based on the Commercial Operation Date (COD). The Review Petitioners did not dispute to follow the request made by the Government to this Commission while determining the tariff. The Review Petitioners had made the same submissions during the arguments in OP No.38/2016 as can be seen from the narrations in para 6 of the impugned order. The same grounds which were earlier given up, cannot be urged now in the Review Petition. Therefore, the Point No.2 is held in the affirmative.

7. Point No.3: What Order?

For the above reasons, we pass the following:

ORDER

The Review Petition is dismissed holding that no ground is made out for reviewing the impugned order dated 11.04.2017.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member