

No.B/01/09

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 25th February 2010

Present

**1. Sri Vishvanath Hiremath
2. Sri K. Srinivasa Rao**

**Member
Member**

In the matter of Review of Orders allowing Carrying Cost on the arrears of
Subsidy while Truing Up of ERCs of Hukkeri Rural Electric Co-operative
Society Limited

Between

Energy Department
Government of Karnataka
Bangalore

.... Petitioner

And

The Hukkeri Rural Electric Co-operative Society Limited
Hukkeri

.... Respondent

ORDER

1. The Government of Karnataka in its letter dated 5.10.2009 has sought review of the orders of the Commission dated 30.06.2009 passed while truing up of the ERCs of the Hukkeri Rural Electric Co-operative Society Limited (hereinafter referred to as Society) for FY02 to 07 and FY08, as regards the carrying cost on the arrears of subsidy due from the Government at 12 % and for allowing surplus to be retained by the Society. In support of its prayer, the Government has submitted that there was no delay in release of subsidy by the Government so as to pay carrying cost and delay was on account of non-submission of audited accounts by the Society and the audited accounts from FY02 to FY08 were filed with Government only in the year 2009.

2. On this application a notice was issued to the Society vide the Commission's letter dated 12.11.2009 enclosing copy of the Government letter.

3. The Society has filed its reply vide its letter dated 25.11.2009. In its reply Society has contended that the review prayer made by the Government through an administrative letter cannot be basis for review of the Commission's Order. Further it is contended by the Society that as per the provisions of Karnataka Cooperative Societies Act, 1959, the annual accounts of the Society have to be audited only by the auditors appointed by the Government and therefore there was delay in conducting the audit of the Society. Consequently there was delay in claiming the subsidy and filing of ERC for true up exercise by this Commission.

4. The Commission has heard the matter on 10.2.2010. Sri Ananth, Special Officer, appeared on behalf of the Department of Energy, Government of Karnataka and Sri Shridhara Prabhu, Advocate for the Society.

5. The Commission has considered the submissions of both the Government as well as the Society.

6. The question arises for consideration is whether the Order of the Commission dated 30.6.2009 needs to be modified as regards carrying cost and surplus revenue to be retained by the Society.

7. The Commission has passed an Order in the matter of application of the Society for truing up of ERCs for FY02 to FY07. In its Order the Commission has held as follows :

"..... The Commission notes that in view of supply of power at subsidized rates as per the policy of the Government of Karnataka, the consequential cost of subsidized supply to IP sets has to be met by the Government. As already stated, while truing up the ERCs the Commission has considered the subsidy as was considered in

the original orders on the ERC. Since the subsidy actually received from the GoK is much more than the subsidy considered in the approved ERCs, the actual subsidy received shall have to take into account to arrive at the revenue gap/surplus. Hence the Commission has reworked the revenue gap with reference to the subsidy actually received by the Society, which is as follows :

Table – 3

| Gap with subsidy as per actuals | | | | | |
|--|-------------------------------|-----------------|-------------------------------|--|---|
| (Rs. Lakhs) | | | | | |
| Year | Trued up difference of | | (Deficit)/ Surplus | Carrying Cost @ 12% p.a | Total (deficit)/ Surplus |
| | Revenue | Expenses | | | |
| <i>FY02</i> | 26.02 | 85.31 | -59.29 | -49.80 | -109.10 |
| <i>FY03</i> | 108.41 | 34.63 | 73.78 | 53.12 | 126.90 |
| <i>FY04</i> | 51.16 | 122.98 | -71.82 | -43.09 | -114.91 |
| <i>FY05</i> | 3763.93 | 4230.80 | -466.87 | -224.10 | -690.97 |
| <i>FY06</i> | 300.86 | 565.28 | -264.42 | -95.19 | -359.61 |
| <i>FY07</i> | 4213.65 | 5000.52 | -786.87 | -188.85 | -975.72 |
| Total | 8464.03 | 10039.52 | -1575.49 | -547.91 | -2123.40 |

It is seen from the above that after considering the actual subsidy received from the Government; the cumulative gap with carrying cost works out to Rs. 2123.40 Lakhs. In order to decide whether to treat the gap as subsidy receivable or not, the Commission has computed the actual subsidy requirement of the Society towards subsidised power to IP sets for the period FY02 to FY07. These computations are based on the figures furnished by the Society and the trued up ERC. A statement indicating the subsidy computations with reference to the trued up ARR is enclosed to this order vide Annex-2. The Commission has allowed a carrying cost of 12% p.a on the arrears of subsidy. It is seen from the said statement that based on the trued up average cost, the balance of subsidy from the Government for the period FY02 to FY07 works out to Rs.2142.96 lakhs. With the additional subsidy of Rs.2142.96 lakhs,, the cumulative gap of Rs. 2123.40 Lakhs for the period from FY02 to

FY07 gets fully covered and the Society would be left with a surplus of Rs.19.56 lakhs. The Commission allows this surplus to be retained by the Society.

The manner of payment of arrears of subsidy by the Government, for the period FY02 to FY07 is indicated in the truing up order for FY08, which is issued separately....”

8. It is contended by the Government of Karnataka that the delay is on the part of the Society in filing the audited reports for the year 2001-02 onwards and they filed them only in the year 2009. On account of this reason alone the additional subsidy could not be released by the Government earlier and therefore direction to pay carrying cost @ 12 % and allowing surplus to be retained by the Society is not justified and needs to be reviewed and deleted.

9. In reply it is contended by the Society that administrative letter cannot be a basis for review of the orders of the Commission which is a creature of the statute. Further it is contended that as per the provisions of Karnataka Cooperative Societies Act, 1959, the annual accounts of the Society have to be audited only by the auditors appointed by the Government of Karnataka and not by others and therefore there was delay in submission of audit reports to the Government as well as in filing application before the Commission for true up exercise by the Society. It is also contended by the Society that the subsidy by the Government should be released in advance as per section 65 of the Electricity Act, 2003 and admittedly the Society keeping public interest in mind has supplied the energy even before receipt of subsidy by the Government and hence there is a obligation on the Government to bear carrying cost on its obligation to pay this subsidy.

10. At the outset it has to be stated that the objection of the Society that Commission cannot review its Order based on Government letter has to be turned down. The Commission has power to review its orders under section 94 of the Electricity Act, 2003 read with Karnataka Electricity Regulatory Commission

(G&C) Proceedings Regulations, 2000 either on its own motion or at the instance of the party if there is an error apparent on the face of the record or for any other sufficient reason. Admittedly when Commission passed the impugned order directing the Government to release the additional subsidy along with carrying cost, etc., the Society had not brought to the notice of the Commission that there was a delay only on its part in submitting the claim and audited accounts and the Government was releasing the subsidy claimed by it as and when claims were made.

11. If the Society had brought to the notice of the Commission that it had not submitted the audited accounts and has submitted the accounts only in 2009, Commission would not have ordered the Government to pay the carrying cost as question of paying carrying cost arises only in case there was a culpable delay on the part of the Government. Further what is ordered by the Commission in the impugned order is the carrying cost on the additional subsidy which came to be worked only after the Society filed its application for truing up. If Society had submitted its audited accounts on time and had made the claims for the subsidy now ordered to be paid at the appropriate time, probably there was a case for ordering carrying cost. Admittedly there is a delay on the part of the Society itself in filing the audited accounts and truing up application. Therefore in our considered view, the Society is not entitled for any carrying cost. In the considered opinion of the Commission there is sufficient reason to allow the request of the Government and for reviewing the impugned order. Accordingly we order deletion of direction to the Government to pay carrying cost @ 12 % on the additional subsidy payable by the Government.

12. The question of considering the second request of the Government for deletion of the portion of order which allows the Society to retain the surplus of Rs.153.19 lakhs does not survive in view of deletion of the above. Ordered accordingly.

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER