

THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT: Sri.T.M. Manoharan, Chairman
Sri.P.Parameswaran, Member
Sri.Mathew George, Member

25th November, 2013

RP.No. 3 of 2013

In the matter of

Review Petition on the Order on ARR&ERC of KSEB for the year 2013-14

The Kerala State Electricity Board

- **Petitioner**

ORDER

Background

1. Kerala State Electricity Board (*hereinafter referred to as the Board or KSEB*) has filed a review petition on 12-7-2013 on the Order on ARR&ERC for 2013-14 and Tariff Order dated 30-4-2013. After the initial scrutiny, the petition was admitted as RP No.3 of 2013. In the review petition, the Board has raised several issues for reconsideration. According to the Board, the Commission has disallowed a total of Rs.1690.92 crore worth of expenses projected by the Board for the year 2013-14 and the decision of the Commission denying the expenses would result in difficulty in meeting the obligations and carrying out the licensed business. The issues raised by the Board in the review petition are ; estimation of cost of generation and power purchase, interest and financing charges, depreciation, employee costs, R&M expenses, A&G expenses, Return on Equity, capitalization of expenses and determination of open access charges. After admitting the petition, the same was placed in the website of the Commission and a press release was also issued on 14-8-2013 for information of the public for the purpose of obtaining objections, if any.

Hearing on the Petition

2. The petition was heard on 29-10-2013 at the office of the Commission. Other than the petitioner, consumers and the representatives of various associations such as Kerala HT & EHT Industrial Electricity Consumers' Association, Kerala Small Scale Industries Association, domestic consumers, KSEB pensioners association etc., were also present for the hearing. The Board was represented by a team led by the Chief Engineer (Commercial & Tariff) for the hearing. The Board sought review of the impugned order on the following items:

- I. Energy procurement from traders and liquid fuel stations in April & May 2013
- II. Variable cost for BDPP
- III. Employee Cost
- IV. Repair and Maintenance Expenses
- V. Administration and General Expenses
- VI. Return on Equity
- VII. Interest and Finance Charges
- VIII. Depreciation
- IX. T&D loss reduction target
- X. Open access charges
- XI. Capitalization of expenses

3. Regarding the first issue, KSEB stated that the Commission had approved the energy purchases and the pooled power purchase rate as the ceiling rate for purchase of power. However, due to failure of monsoon, the Board had to procure power through traders and exchanges at rates higher than the pooled cost of Rs.5/unit due to higher rates prevailed in the short term power markets. Similarly, the actual power purchase from liquid fuel stations is also higher than approved rates. Hence, the Board requested to consider the actual power purchase for these months. As regards the second issue, the Board has reported that the variable cost of BDPP is higher than the rate approved by the Commission mainly on account of its operation using HSD since the availability of LSHS is low. When HSD is used the return fuel is pumped back to the LSHS settling tank resulting in mixing HSD and LSHS. Since there is no provision for measuring the return fuel, the recorded consumption of LSHS is lower than the fuel consumption, which resulted in reduction in specific fuel consumption and low heat rate of LSHS. This results in erroneous

heat rate. Hence, the Board requested that actual usage of LSHS, HSD and lube oil may be considered.

4. Another issue raised was on employee costs. According to the Board, the Commission had disallowed Rs.747.69 crore from the projected employee cost of Rs.2551.50 crore. In order to limit the employee cost to the approved level, the Board has to curtail the DA now released to the employees or to reduce the pension payments or reduction in revision of pay already effected in the Board. The salaries and wage settlement agreement entered into between the KSEB and trade unions as per the provisions of Industrial Dispute Act hence the Board cannot unilaterally withdraw from wage negotiations. Further, the methodology adopted by the Commission for approving the employee costs is not rational. The Board in the petition has arrived at the basic salary, DA, other allowances, pension, earned leave encashment etc., separately from the approved employee costs and argued that the allowed cost under various heads are insufficient. The Board also pointed out the provisions in the Model Tariff Regulations of Forum of Regulators to support the view that employee cost has to be allowed considering wage revisions and other parameters. The per unit employee cost allowed by the Commission is not sufficient to cover the even the inflation index (CPI). The Commission has also not considered the business growth as a factor in determining the employee costs. The number of consumers and energy sales have been increased by 19% and 47% from 2008-09 to 2013-14. As an example, the Board has given the cost allowed by CERC for RGCCPP, Kayamkulam, where the escalation factor of about 5.7% is allowed as inflation factor.
5. In the case of repair and maintenance expenses, the Board argued that the Commission had reduced Rs.88.45 crore from the projected expenses, by indexing the R&M expenses at 2008-09 level and applying inflation factors. The Model regulations provides for indexing the R&M expenses based on opening level of GFA. The Board also pointed out that Hon. APTEL has directed to decide the R&M expenses based on norms within 6 months.
6. The A&G expenses is directly related to the business growth and including energy sales and number of connections provided. As per the model regulations, A&G expenses are allowed per 1000 consumers. The APTEL has also directed to determine norms for A&G expenses. According to the Board, per unit A&G

expenses has to be allowed based on norms. Based on inflation, the per unit employee cost admissible will be 8 paise where as the commission has allowed only 5.2 paise per unit. Hence, the Board requested to allow A&G expenses duly considering the business growth and inflation.

7. Another issue raised was return on equity. According to the Board, the return of 15.5% is to be allowed as per the revised CERC norms. The Tariff policy also provides that the return should be allowed considering the risk factors involved in the business and hence, higher return is necessary for distribution business. The Board also sought interest on working capital which was not fully allowed by the Commission. Already the Board has unfilled revenue gap on account of failure of monsoon to the tune of about Rs.2517 crore. The Board has been resorting to short term loans for meeting the revenue gap, which is now at Rs.1826 crore. Further the overdraft position is about Rs.1600 crore. The security deposit is not freely available to the Board as it has been used for loan repayments and meeting capital expenditure. Considering this, the Board requested that interest on working capital amounting to Rs.100 crore projected by the Board needs to be allowed.
8. Regarding depreciation, the Board stated that it is difficult to identify assets created out of consumer contribution. Further the consumer contributions received are mainly as OYEC charges which are not fully used for creating assets. Hence, the Board requested to exclude the OYEC charges collected from depreciation.
9. Another issue pointed out by the Board is on reduction in T&D loss. According to the Board, the Commission should allow the loss targets proposed by the Board. The capitalization of expenses approved by the Commission is same as proposed by the Board but the Commission has reduced the capital expenditure and other expenses considerably, and accordingly, the capitalization of expenses should have been lower. The Board also raised the issue of determination of open access charges such as wheeling charges and surcharges. The Commission reduced the non tariff income for determination of the charges. The non-tariff income is mainly on account of distribution and not relating to transmission. Similarly, the Board has raised issues relating to depreciation, splitting up expenses among HT-EHT level, determination of cross subsidy surcharge etc. The Board requested that open access may be allowed only to consumers who avail power continuously and not on

intermittent periods mainly aiming at gaming. Based on above issues, the Board requested to review the order.

Objections of the stakeholders:

10. The petition of the Board was objected to by several persons. The Kerala State HT-EHT Industrial Electricity Consumers' Association stated that KSEB has been filing review petitions on almost all the ARR&ERC Orders issued by the Commission. In the review proceedings only error apparent can be pointed out, whereas the Board is challenging the each and every aspect of determination of ARR. Since no error was pointed out, the petition has to be summarily rejected.

11. Regarding the issue of energy procurement from liquid fuel stations, the Association pointed out that the Board has admitted its failure to meet the directions of the Commission and now raised the same as a review, which cannot be admitted. Similarly, the Board is asking for more generation from KDPP, which according to the Association is not necessary at present. The variable cost for BDPP and KDPP shall not be allowed based on the actual for 2012-13. Instead of LSHS, the Board should explore the option of using furnace oil as has been done by other industries. The Board has used nearly half of the petition for challenging the employee costs, but failed to present any new arguments warranting a review. The arguments given in the petition are mere repetitions of the arguments given in the ARR&ERC petition. Hence the same is to be rejected. The argument that model regulations provide for determination of R&M expenses is a new argument which is not presented in the original proceedings. Further, the model regulations are not mandatory to be adopted by the State Commissions. The argument that A&G expense is to be linked to business growth, has been raised in several occasions before the Commission and the Commission has rejected the same on each occasion. The Commission has been following a consistent methodology and the Board could not point out any valid grounds for review. Regarding RoE also, the Commission has carefully considered whether to allow 15.5% RoE or not and decided to allow only 14%. In this case also there is no valid ground put forward by the petitioner. Regarding interest and financing charges, depreciation and T&D loss reduction targets, the argument of the Board is not reasonable and hence are to be rejected. Regarding the arguments of the Board on open access charges, the Association has given detailed objections. According to the Association, the eligibility criteria and other

terms of open access is decided as per the Open Access Regulations and KSEB cannot challenge the same in a review petition. Methodology adopted by the Commission is the same as that of previous year and no change is required now. The ratio of HT to LT taken by the Commission is just and fair considering the length of HT lines (52146km) and LT lines (187169 kms). KSEB cannot substantiate their arguments for having ratio of 40:60, which is a new argument. The arguments of the Board on open access cannot be accepted and not relevant in a review proceedings. The short term open access prevailing in the country is as per the CERC regulations and in Kerala it had started only few months back. The open access consumers are availing power during day, peak and off peak and the allegations on the contrary is not correct. With these objections the Association requested to reject the petition of the Board.

12. M/s Binani Zinc in their objections repeated the arguments of the Association. In the case of open access, they have mentioned that the arguments of the Board is not correct as they have availed open access irrespective of time slots and not just off peak hours as alleged by the Board.

13. Sri. Suresh, residing at NCC Road, Thiruvananthapuram raised many issues relating to the irregularities noted by the C&AG. According to him, the Board employees had availed illegal claims to the tune of about Rs.205 crore, which has to be clawed back from the employees. He has given a list of irregular claims enjoyed by the Board employees which has not been recovered so far. He also given a list of illegal claims allowed by the Board to the tune of Rs.53.75 lakhs to the contractors. Shri. Suresh specifically mentioned that the Board employees have been governed by the rules and regulations such as KFC, KTC, KSR etc., applicable to the Government employees and any claims made over and above such rules and regulations can be only through specific orders from the Government. The Government has not made any such special orders for KSEB employees so far. He pointed that even C&AG and Government have not taken any concrete steps for the recovery of the claims. Now for every increase in costs, the consumers have been burdened and the expenses can be curtailed if the rules are made applicable to the Board. He pointed out that in Meghalaya, the State Commission after considering the arguments of the objectors and calling for details from the distribution licensee, has reduced the tariff for electricity. In Kerala also there is a scope for reducing the tariff in a similar manner.

14. Shri. Jerome Antony, former employee of the Board argued that pay revision and other benefits to the employees need to be provided adequately. The disallowances of expenses is not justified and the Board has to function financially viable manner. The Board should take up the planning process seriously so as to function efficiently.
15. Shri. K.R Unnithan, representing Electricity Pensioners Welfare Association stated that the Board has to take steps for improving the efficiency. However denial of pension is unconstitutional as the KSR and Supreme Court judgments have categorically provides that pension is a vested right. Industrial Disputes Act provides for pay revision. He stated that the performance of KSEB is best among the other Indian states as per the Planning Commission reports. Wages, pension etc., are decided by negotiations between trade unions and management, which cannot be flouted by KSEB unilaterally. The consumer per employee in Kerala is substantially higher than that of rest of India. Section 133 of the Electricity Act also provides for ensuring employee benefits without deterioration. Shri. Anandakuttan Nair, representing the same organization mentioned that at present there is feeling among the people that Board is delaying or denying the pension benefits on the reason that the Commission has given such directions and disallowing the pension expenses. There should be a clarity that whether there is any directions of the Commission to curtail the pension payments. He also agreed that the Board has to improve efficiency and directions if any given by the Commission in this regard needs to be complied with.
16. Shri. A.R Satheesh, representing M/s Carborandum Universal stated that major portion of the petition of the Board targets towards employee costs. If such efforts are taken by the Board, it should reflect in their efficiency also. The ratio of number of consumer per employee, projected as the efficiency parameter by the Board has reduced from 358 to 347. He also pointed out some figures to show the sub-optimal level of hydro and power purchase management.
17. Shri. V.K Appu. in his representation requested for reduction in the tariff considering the generous monsoon received during the year. Shri. Abdul Karim mentioned that KSEB should reduce the expenses and also suggested various measures for reduction in costs. Shri. P.M. Chitrasenan, Thrissur after studying the operations in distribution offices of KSEB , suggested many practical suggestions for reducing the

employee cost. According to him, sub division and circle offices can be very well abolished if proper computerization and work allocation is made.

18. Shri. Kuriakose, Kottayam in his representation suggested that the slab rates are to be avoided and domestic tariff shall be Rs.1.50 per unit and industrial tariff shall be Rs.2.50 unit. It is not fair to collect meter rent if cost of meter has been paid by the consumer. The irrelevant details are to be removed from consumer bills. The effort towards arrear collection are to be improved. He also suggested many measures for reduction in loss and thereby improving the financials of the Board. He suggested that the Commission should ensure that the rules and regulations are properly implemented by the Board.
19. Thrissur Corporation in their written objections stated that R&M expenses should be allowed based on CPI-WPI index basis. The capital investments made by the Board since 2008-09 should have been reduced the requirement of R&M expenses. The inflation rates presented by the Board is different from the actual inflation. There is no need for reviewing the RoE and interest and financing charges. The Corporation suggested that the actual pension shall not be considered in the employee costs instead only pension contribution alone should be considered. The argument of the Board that OYEC amount to be considered for depreciation is to be rejected and even from the figures given by KSEB in the petition regarding OYEC is not consistent.
20. Shri. Harrison David, Shri. Suresh K.N, Shri. Sumumaran, Shri. Jose Paul and Shri. Ayyappan Nair, Consumer Vigilance Centre furnished suggestions for reducing the cost and improving the performance of the Board.

Analysis and decision of the Commission

21. The Commission has considered the arguments of the Board and the objections thereto in detail. At the outset, most of the issues raised in the review petition of the Board have been deliberated in detail while considering the original petition. The Board raised no new issues for consideration in the review proceedings.. An elaborate consideration of similar arguments was made in the Order dated 21-11-2009 in RP 9 of 2011 and order dated 27-9-2013 in RP6 of 2012. As has been held on previous occasions, the Commission is bound by the provisions of the Electricity Act and Regulations. As per the provisions of Section 94(1)(f) of the Electricity Act

2003, the Commission has been vested with the powers for reviewing its decisions, directions and orders as in the Code of Civil Procedure 1908. Accordingly, clause 67(1) of KSERC (Conduct of Business) Regulations, 2003 provides that:

Powers of Review, Revision etc.,-(1) The Commission may either on its own motion or on an application made by any interested or affected party, within 90 days of the making or issuing of any decision , direction, order, notice, or other document or the taking of any action in pursuance of these regulations, review revoke, revise, modify, amend, alter, or otherwise change such decision, direction, order, notice, or other document issued or action taken by the Commission or any of its officers.

22. The application and the scope of the review of an Order are prescribed under Order 47, Rule 1, of Code of Civil Procedure, 1908. The review power, under the aforesaid provision is reproduced as below: -

“Application for review of judgment – (1) Any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed; or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order”.

23. As has been held in similar proceedings, the review jurisdiction is a limited power to be exercised when new facts which could not be produced at the time of the order or any apparent error on the face of record are brought to the notice of the Commission. The review is not in any way envisaged for challenging the merits of the case. This being the position, the Commission cannot enlarge the scope of the review jurisdiction to deliberate on the merits of the issues already decided. Based on the arguments and submissions made by the parties, the major issues raised by the Board in the petition are dealt as given below.

24. The Board has sought review of the power purchase cost for the months of April and May 2013 and requested to approve the actual power purchase cost. The Commission is not in a position to take up the matter now as these issues are to be dealt with at the truing up stage. The issues raised in the case of BDPP etc., has to be properly addressed by the Board itself. If the plant is designed for certain level of operations, it can be altered after providing suitable arrangements if any needed. The reason that there is no mechanism to measure the return fuel is not a sufficient ground for review of the impugned order. The team deputed by the Commission for audit of the diesel stations of Board visited the plant on 7-7-2011 and had found that flow meters are non-functional for measurement of LSHS for each unit of the plant. The Commission has also directed the Board vide letter dated 6-1-2012 to take corrective actions on the issues reported and submit the report within one month. So far the Board has not taken any step in this regard. Accordingly, the Commission in its order dated 3-10-2012 was constrained to disallow Rs.17.27 crore as fuel surcharge for the diesel stations for the period from January 2012 to March 2012, for the reason of not having complied with the directions of the Commission and submitted report on such compliance.

25. In the case of employee cost, the Board has sought review of the methodology on cost approval. By separating the approved employee cost into several components, the Board has argued that the Basic pay, DA and pension are not sufficient to meet the obligation. The Board has argued that the methodology of the Commission based on CPI-WPI does not reflect the actual increase in the employee costs. They also argued that norms for employee cost have not been given. However, it is to be clarified that the Commission in several occasions in the past have pointed out the importance of improving employee productivity and limit the employee expenses so as to reduce the overall cost of electricity. The Commission had further stated in the Order that as follows:

“However, the Commission would like to reiterate the comments made in the previous ARR&ERC order. The Board has to sincerely venture in for radical internal reforms to control the costs. The reform measures are not aiming at retrenchment or reducing the existing benefits allowed to the employees but to aim at measures especially at the HR level that include redesigning the tasks, re-training, re-tooling, process re-engineering, infusion of proper IT and technology, intervention aiming at improving the efficiency and productivity of employees.”

26. However, the Board has not taken any tangible action towards this direction and the employee cost has been increasing unabated. The consumers have been consistently voicing against the continued increase in cost and also the dismal action taken by the Board to address the issue. Though the Board mentioned about some steps taken by it, in the compliance reports, which were cosmetic and has made no impact so far. The Board could not even initiate a study to assess the optimum level of human resources taking into account the technological advancements and adoption of new and improved technology. Since the progress made by the Board in this regard was not satisfactory, the Commission had no option but to approve the employee expenses based on CPI:WPI norm, which is more objective than the figures projected by the Board. The Commission has allowed Rs.1803.81 crore as employee costs to be passed on to the consumers for 2013-14 and no amount is separately approved as DA, Pay, pension etc.. It is highly objectionable on the part of the Board to split the approved number based on its whims and presenting the same as approved numbers under various heads. Actual entitlement of salary, DA, pension etc., for the employees and pensioners of the Board are governed by the conditions of employment and pension rules of the organization and this in no way is related to limiting of revenue requirements by the Commission based on prudence checks, industry norms and reasonableness. The Commission has clarified this position on several occasions and the Board management has to take a re-look at their HR policies and take effective steps for optimal man-management..

27. In the case of R&M Expenses, A&G expenses, Depreciation and RoE, the arguments made by the Board do not seem to warrant a review as the arguments do not seem to fall within the review jurisdiction. Further, the Board has relied on the provisions of Model Tariff Regulations published by the Forum of Regulators to support their claim. However, in review proceedings such arguments and reliance of such materials which were not presented in the original petition cannot be entertained. In this context it is to be mentioned that, the expenses allowed by the Commission is not much different than the norms as per model regulations of FOR as shown below:

Comparison of approved R&M expenses and as per Model Regulations

Year	GFA at the beginning of the Year	R&M cost approved	Allowed R&M expenses as a % of GFA	R&M expenses as per FoR Model Regulations	R&M expenses as % of NFA as per Model regulations
	(Rs. Cr)	(Rs. Cr)	(%)	(Rs.Cr)	(%)
2008-09	8,684.45	138.79	1.60%	138.79	1.60%
2009-10	9,249.11	152.39	1.65%	147.81	1.60%
2010-11	10,185.00	167.91	1.65%	162.77	1.60%
2011-12	11,203.00	181.38	1.62%	179.04	1.60%
2012-13	12,073.79	195.95	1.62%	192.96	1.60%
2013-14	13,051.79	216.11	1.66%	208.59	1.60%

28. It can be seen that, R&M expenses allowed by the Commission is more than the estimated R&M expenses as per the FOR model regulations. Similarly, the A&G expenses are also almost the same as that approved by the Commission for the year 2013-14. In this context, it is to be noted that the FoR regulations, completely ignore the productivity improvements which are part and parcel of MYT principles.

Year	Consumer strength	A&G Expenses allowed	A&G expenses per 1000 consumers with 3 year average WPI	A&G expenses as per FOR Guidelines
	(Lakhs)	Rs. Cr	Rs./consumer	Rs. Cr
2008-09	94.00	60.99	64883	60.99
2009-10	97.00	66.97	68293	66.24
2010-11	101.28	73.78	72705	73.64
2011-12	104.57	79.71	76727	80.23
2012-13	108.07	86.11	82192	88.82
2013-14	111.57	94.97	88303	98.52

29. Regarding interest and financing charges, the Board has argued for allowing interest on working capital of Rs.100 crore on the reason that over-draft and short term loans are availed to meet the deficit. The Commission has considered these aspects while approving the ARR, as additional short term loans worth Rs.500 crore and interest at 12% was allowed for 2013-14.

30. In the case of T&D loss reduction target it may be noted that, the Commission had arrived at the target after analyzing the matter in detail with the previous year's achievements. Hence, the Commission is of the view that there is no ground to re-open the loss reduction target fixed by the Commission. Regarding capitalization of expenses, generally the actual capitalized amounts have been allowed by the Commission in the truing up process. The Board did not properly explain in any of the ARR&ERC petitions, the methodology relied for the capitalization of expenses. Accordingly the Commission relied on the projections of the Board. In any case, the Board may not seem to have been affected by the decision of the Commission so far as the actual expenses have been allowed in the truing up process.

31. In the case of wheeling charges, transmission charges and surcharge, the Board has sought review on the grounds of consideration of non-tariff income and splitting up HT and LT. The methodology adopted by the Commission is not new and same methodology was given in 2012-13 also. The splitting up of income etc., has been made as per the latest provisional accounts of 2011-12 available then. Regarding restricting the open access on short term basis as suggested by the Board cannot be taken up this stage, as it has been allowed by the Board as per the provisions of the regulations notified by CERC.

Orders of the Commission

32. In the light of the materials placed before the Commission and the detailed analysis as above, the Commission has come to the view that there are no sufficient grounds placed by the petitioner for a review of the Order dated 30-4-2013 on ARR&ERC of KSEB for the year 2013-14 and Tariff Order. Accordingly, the petition is rejected. Ordered accordingly.

Sd/-
P.Parameswaran
Member

Sd/-
Mathew George
Member

Sd/-
T.M. Manoharan
Chairman

Approved for Issue

Sd/-
Secretary