

No 257/CT/2014

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

In the matter of : Petition requesting to review / reconsider the Tariff order dated 30-04-2013 in OP No 2 of 2013 of the Commission to the extent it concerns HT IV consumers under the respondent and particularly members of the petitioner association.

Petitioner - Association of Classified and approved Hotels of Kerala.,
Sea Gull Road,
Willington Island. Cochin 682003
Represented by Advocate N.Krishna Prasad

Respondents - Kerala State Electricity Board Ltd.,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram, Pin No. 695 004.
Represented by Shri P.V.Sivaprasad.

**Present - Shri T.M.Manoharan, Chairman
Shri P.Pameswaran, Member
Shri Mathew George, Member**

Order dated 04.06.2014

Introduction

1.Association of classified and Approved Hotels of Kerala is requesting to review / reconsider the Tariff Order dated 30-04-2013 issued by the Commission in OP No 2 of 2013 to the extent it concerns HT IV consumers under the respondent and particularly members of the petitioner association. In the said order the Commission approved the ARR and ERC for 2013-14 assessing the revenue gap at Rs 1049.91 crores and estimating the average cost of supply at Rs 5.04/Unit. Based on the same , tariff revision for all categories of consumers was approved. In respect of HT IV Commercial, which is the category in question , by paragraph no 107 and 108 along with table No 8.34, the Commission has approved energy charges at Rs 6.10/Unit up to 30,000 Units and Rs 7.20/Unit for above 30,000 Units. This was on the premise that the existing tariff

as regards energy charges was Rs 5.50/Unit up to 30,000. Units and Rs 6.50/ Unit above 30,000 Units. In the Appeal No 10 of 2012 challenging the order of the Commission in OP 23 of 2012, Hon. APTEL has by order dated 25-10-2013 set aside the tariff for HT IV Commercial category on the ground that the tariff of HT IV Commercial category consumers has been increased giving them tariff shock. It was ordered by Hon. APTEL that they will be charged at the tariff rate proposed by Electricity Board in their petition to the State Commission ie fixed charges at the rate of Rs 400/kVA/month and energy charges at the rate of Rs 5.50/kWh. KSEB pursued the matter before the Hon'ble Supreme Court of India in Civil Appeal No 84 of 2014. By the judgment dated 27-01-2014 the Hon'ble Supreme Court dismissed the appeal confirming the order of Hon'ble APTEL dated 25-10-2013 in Appeal No 10 of 2013. The petitioner association has sought review /reconsideration of the order of the Commission dated 30-04-2013 which is based on the HT IV Commercial tariff as per order dated 25-10-2013, which has subsequently been modified by Hon'ble APTEL.

PRAYER OF THE PETITIONER

2.The petitioner has prayed that the order dated 30.4.2013 in O.P.No.2 of 2013 be reviewed/reconsidered and the tariff of HT IV commercial category and particularly in respect of the members of the petitioner's association be appropriately modified in the light of the judgment of the Hon'ble APTEL in Appeal Petition No.10 of 2013 and also keeping in view the principle of not increasing the rate of cross subsidy.

Summary of averments in the petition

3.The main submissions and arguments submitted by the Petitioner on various issues are quoted below:

"2.The said Order was passed by the Commission pending appeal filed by the petitioner association against earlier order approving tariff for HT IV Commercial dated 25-07-2012 in OP No 23 of 2012. The Commission in the order sought to be reviewed had recorded the pendency of appeals before the Appellate Tribunal for Electricity and had directed follow up action if necessary based on the orders of the APTEL .

3.By order dated 25.10.2013 in Appeal No.10 of 2013 the Hon'ble APTEL has held as follows:

"21. The tariff determined by the State Commission for HT IV Commercial Category is inconsistent with the provisions of Act and Tariff Policy and the dictum held by this Tribunal in various judgments. The tariff of consumers of this category has been increased exorbitantly giving them tariff shock. Accordingly, the tariff fixed by the State Commission for HT IV Commercial

Category is set aside and they will be charged at the tariff as proposed by the Electricity Board in their petition to the State Commission i.e fixed charges of Rs.400 per KVA per month and energy charges of R.5.50 per kwh. The excess amount charged by the Electricity Board from the consumers of HT IV Commercial Category will be refunded in their bills from November 2013 to April 2014 in equal installments. For any delay in reimbursement of the amount as indicated above the consumers will be entitled to interest of 1% per month on the unpaid amount. As regards determination of voltage-wise cost of supply, the directions as given in this Tribunal's judgment in Appeal.No.179 of 2012 will apply.

20. *The Appeal is allowed as indicated above. However, there is no order as to costs.*

21. *Pronounced in the open court on this **25th day of October, 2013.***

*(Rakesh Nath)
Technical Member*

*(Justice M. Karpaga Vinayagam)
Chairperson*

" 4.The licensee namely the 1st respondent pursued the matter before the Hon'ble Supreme Court of India in Civil Appeal No.84 of 2014. By order dated 27.1.2014 the Hon'ble Supreme Court dismissed the appeal in limine confirming the judgment of Hon'ble APTEL but extending time for reimbursement. Accordingly the petitioner association is seeking review/reconsideration of the order of this Hon'ble Commission dated 13.4.2014 which is based on the tariff before the correction by the Hon'ble APTEL.

5.The premise for increasing the tariff to Rs.6.10 (upto 30,000) and Rs.7.20 (above 30,000) was interalia that the existing tariff was Rs.5.50 (upto 30000) and Rs.6.50 (above 30000). Now that the Hon'ble APTEL has confirmed the tariff is Rs.5.50 per unit irrespective of the number of units, the fixation of tariff in O.P.No.2 of 2013 has to be reviewed/reconsidered accordingly.

6.Further it is stated in the petition that during 2011-12 the average cost of supply was determined at Rs.3.92. The petitioner association and its members and HT IV commercial category in general were subject to an average tariff of Rs.4.94. This represented a cross subsidy of 26.02%. The present (2013-14) average cost of supply has been determined as Rs.5.04. The average tariff for the petitioner association its members and HT IV commercial category in general has been fixed at Rs.8.59. This represents a cross subsidy of 66.46%. As this Hon'ble Commission is well aware the Hon'ble APTEL vide judgment

dated 30.5.2011 in Appeal No.102 of 2010 and Judgment dated 11.1.2012 in Appeal No.57 of 2008 has categorically directed that under no circumstances can the rate of cross subsidy be increased in respect of any subsidizing category. The rate of cross subsidy in 2011-12 being 26.02% the present rate of cross subsidy for 2013-14 at 66.46 % in respect of the petitioner association, its members and HT IV commercial consumer cannot be sustained. The average tariff of HT IV category will therefore necessarily have to be brought down at the least to 126.02% of the average cost of supply.

Issue of notice

4.It was decided to have an admissibility hearing and notice was issued to the petitioner and the respondent on 14-03-2014 fixing the hearing on 23.04.2014.

Summary of written statement submitted by respondent.

5.Main points of written *statement* submitted by the respondent KSEB are quoted below;

“1.Kerala State Electricity Board has filed tariff petition for increasing the tariff of all consumer categories including HT IV Commercial categories vide petition dated 30.03.2012. Kerala State Electricity Regulatory Commission vide order dated 25.07.2012 had approved the tariff of all consumer categories interalia HT-IV Commercial category. The tariff proposed by KSEB vide petition dated 30.03.2012 and the tariff approved by the commission vide order dated 25.07.2012 is given below.

Particulars	KSEB's Proposed rate	Approved Tariff wef 01.07.2012
<i>Demand charge (Rs/ kVA per month)</i>	400.00	400
<i>Energy Charge (paise per unit)</i>		

<i>upto 30,000 units (all units)</i>	<i>550</i>	<i>550</i>
<i>above 30,000 units (all units)</i>	<i>550</i>	<i>650</i>

2.By invoking the statutory powers as per the section-86, 62 and 64 of the Electricity Act-2003, vide the order dated 25th July-2012, Hon'ble Commission has slightly modified and approved the tariff of HT-IV commercial category consumers having monthly consumption above 30,000 units compared to the tariff enhancement proposed by KSEB for the above category.

3. Aggrieved by the order dated 25.07.2012 of Honourable Commission , the Association of Classified and Approved Hotels of Kerala, belongs to HT-IV commercial category, filed an appeal petition before the Hon'ble Appellate Tribunal for Electricity New Delhi under section-111 of the Electricity Act-2003.

4.Hon'ble APTEL vide its judgment dated 25th October-2013 has set aside the tariff fixed by the Hon'ble Commission for HT-IV commercial category vide its order dated 25th July-2012, citing the reason that, the tariff increase resulted in tariff shock to the HT-IV commercial consumers and ordered to charge the HT-IV commercial consumers at the tariff proposed by KSEB vide the tariff petition dated 29-03-2012. The operating part of the judgment of the Hon'ble APTEL is extracted below.

21. Summary of our findings:

..... The tariff of consumers of this category has been increased exorbitantly giving them tariff shock. Accordingly, the tariff fixed by the State Commission for HT IV Commercial Category is set aside and they will be charged at the tariff as proposed by the Electricity Board in their petition to the State Commission i.e. fixed charges of Rs. 400 per kVA per month and energy charges of Rs. 5.50 per kWh. The excess amount charged by the Electricity Board from the consumers of HT IV Commercial Category will be refunded in their bills from November 2013 to April 2014 in equal installments. For any delay in reimbursement of the amount as indicated above the consumers will be entitled to interest of 1% per month on the unpaid amount. As regards determination of voltage-wise cost of supply, the directions as given in this Tribunal's judgment in Appeal no. 179 of 2012 will apply.

5.As extracted above, Hon'ble APTEL has ordered to limit the tariff enhancement of HT-IV commercial consumers having monthly consumption above 30,000 units at the same tariff proposed by the Electricity Board in their proposal ie; at Rs.5.50 per unit. Hon'ble APTEL has issued the judgment on the petition filed by the Association of Classified and Approved Hotels of Kerala, against the order dated 25th July-2012 of the Hon'ble Commission in the matter of 'revising the tariff of all consumers of the State of Kerala for the tariff period from 01.07.2012 to 31.03.2013'.

6.Subsequently, based on the ARR&ERC petition filed by KSEB for the year 2013-14 on 03-01-2013, Honourable Commission vide its order dated 30.04.2013 had revised the tariff of the consumer categories of the State including HT-IV Commercial category for the Tariff period from 01.05.2013 to 31.03.2014. Honourable Commission has extended the validity of the order up to 31.05.2014. The rates proposed by KSEB vide its petition dated 03-01-2013 and the tariff approved by the Hon'ble Commission vide its order dated 30-04-2013 is extracted below.

<i>Particulars</i>	<i>Proposed Tariff vide the petition dated 03-01-2013</i>	<i>Approved Tariff vide the order dated 30-04-2013</i>
<i>Demand charge (Rs/ kVA per month)</i>	<i>470</i>	<i>400</i>
<i>Energy Charge (Rs/ unit)</i>		
<i>Up to 30,000 Units</i>	<i>6.30</i>	<i>6.10</i>
<i>Above 30,000 Units</i>	<i>7.50</i>	<i>7.20</i>

7.As per the Section 111 of Electricity Act 2003, all the affected parties against the order dated 30th April-2013 had to file an appeal petition against the order within 45days from the date of order. ie;“Any person aggrieved by the order dated 30.04.2013 has to file an appeal petition before the Honourable APTEL within a period of 45 days from the date of the order”.

However as per the records available with KSEBL, no consumers in the state including the petitioner has not filed any appeal petition against the order dated 30.04.2013 before the Hon'ble APTEL.

8. However, recently the Association of Classified and Approved Hotels of Kerala vide its petition dated 07.02.2014 has requested that "The order dated 30.04.2013 in O.P no. 2 of 2013 be reviewed/reconsidered and the tariff of HT-IV commercial and particularly in respect of the members of petitioner's Association be properly modified in the light of the judgment of Hon'ble APTEL in appeal petition No. 10 of 2013, keeping in view the principle of not increasing the rate of cross subsidy."

9. In this matter KSEB may submit the following.

- (i) The tariff orders dated 25-07-2012 and 30-04-2013 are two different orders applicable for different tariff periods. As per the section-111 of the Electricity Act-2003, if the petitioner is aggrieved by the orders issued by the State Commission, the petitioner have to approach the Hon'ble APTEL for each case. In the present case, the petitioner has not filed appeal against the tariff order dated 30th April-2013.
- (ii) The facts and circumstances considered for revising the tariff vide the order dated 30.04.2013 is entirely different from the facts and circumstances considered for revising the tariff vide order dated 25.07.2012.
- (iii) The tariff order dated 30th April-2013 applicable for the tariff period from 1st May-2013 to 31st March-2014 was approved by the Hon'ble Commission, much before the judgment dated 25th October-2013. Though the judgment of the Hon'ble APTEL in petition No. 10 of 2013, was issued 5 months and 26 days after the order dated 30th April-2013, there is no direction to revise the tariff order dated 30-04-2013 applicable for the FY 2013-14.
- (iv) Under these circumstance, there is no mandate from the Hon'ble APTEL to revise or modify the tariff order dated 30th April-2013 based on the judgment of the Hon'ble APTEL dated 25th October-2013.
- (v) However, Hon'ble Commission may consider the observation of the Hon'ble APTEL in the judgment dated 25th October-2013 in appeal petition No. 10 of 2013 while deciding the next tariff revision exercise.

10. KSEBL may further submit that, the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003, issued by Honourable Kerala State Electricity Regulatory Commission specifies the procedure for filing the petition including the review petition against the orders issued by the Hon'ble Commission. Section 67 (i) of KSERC Conduct of Business Regulation

2003, deals with review, revision etc on the orders issued by the Hon'ble Commission, which is extracted below.

Quote:

“ 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.”

Unquote

As detailed above, the petitioner has to file the review petition before the Honourable Commission within 90 days from the date of order i.e., the petitioner has to file the review latest by 28.07.2013 against the KSERC order dated 30.04.2013. However the petitioner has filed the review on 4th day of February 2014. i.e.; after a delay of 276 days from the date of order.

11. Further , the tariff period of the impugned order, which is from 1st May-2013 to 31st March-2014, which is already over. Hence it is not appropriate to revise the tariff retrospectively with effect from 01.05.2013 as requested by the petitioner.

12. Considering the above, there is no scope for reviewing the order dated 30.04.2013 in the light of judgment of Honourable APTEL dated 25.10.2013. Hence it is prayed that the petition cannot be admitted as per the Section 67 (i) of KSERC Conduct of Business Regulation 2003 and it may be dismissed.”

Analysis and decision of the Commission

6. The petition is for review / reconsideration of Tariff Order of the Commission dated 30-04-2013 in OP No 2 of 2013. The regulation 67 of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003 states as follows;

“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 any decision, direction, order, notice or other documents 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 documents issued or action taken by the Commission or any of its officers”.

The petition was received in the Commission on 11-02-14 and hence it is badly delayed. Further the petitioner has not requested to condone the delay in filing the petition.

The relief sought for is to reduce the tariff of HT IV commercial category by redetermination of tariff for the Financial Year 2013-14 . The above relief was sought by the petitioner based upon the order of the Hon: APTEL dated 25-10-2013 in Appeal No 10/2013 on the tariff applicable for the Financial Year 2012-13. The Hon: APTEL in the said order had set aside the tariff fixed by the State Commission for HT IV consumers for 2012-13 and directed that they will be charged at the rates proposed by KSEB. This directive cannot be extended to the subsequent Financial Year as sought by the petitioner. Tariff determination has to be done for each financial year in accordance with the procedures specified for it which include pre-publication of tariff proposal and public hearing. The tariff is determined for all the consumers of the licensee and the tariff petition is not a dispute between two contending parties. The Hon: Appellate Tribunal for Electricity and the Hon: Supreme Court have clarified that the tariff determination process is a quasi-legislative process. Therefore petitions of individual consumers against tariff order cannot be considered in a petition like this. Any person aggrieved by the tariff order issued by the Commission can only approach the Appellate Tribunal by filing an appeal. Therefore the petition is not maintainable on this ground also.

Decision of the Commission.

The review petition having been filed beyond the period of 90 days, is barred by limitation as specified in regulation 67 of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003 and hence the Commission orders that the petition is not admissible. It is ordered accordingly.

Sd
Member (Engineering)

Sd
Member (Finance)

Sd
Chairman

Approved for issue

Sd/-

Secretary