

THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

Petition No. RP 2 /2014

In the matter of : Review Petition on the Order dated 25-9-2014 in OP No.9 of 2014 on Revision of BST

Petitioner : M/s Cochin Port Trust, Wellington Island, Cochin

Respondent : Kerala State Electricity Board Limited, Vydhyuthi Bhavan, Thiruvananthapuram

Petition No. RP 3 /2014

In the matter of : Review Petition on the Order dated 25-9-2014 in OP No.9 of 2014 on Revision of BST

Petitioner : M/s Cochin Special Economic Zone Authority, Cochin

Respondent : Kerala State Electricity Board Limited, Vydhyuthi Bhavan, Thiruvananthapuram

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PRESENT : Shri. T.M.Manoharan, Chairman
Shri. Mathew George, Member
Shri. K.Vikraman Nair, Member

ORDER DATED 29-12-2014

Background

1. Two petitions, one by M/s Cochin Port Trust and the other by M/s Cochin Special Economic Zone Authority were filed for a review of the revision of Bulk Supply Tariff (BST) issued by the Commission in its order dated 25-9-2014 in OP NO. 9/2014. Since these petitions relates to the same matter, both petitions are dealt together.

2. M/s Cochin Port Trust (CPT) has filed the petition vide letter dated 7-11-2014. In the petition, M/s CPT has sought review of the Order on BST as the BST was increased to Rs.5.75 per unit from Rs.5.05 per unit. According to CPT, the Commission has not considered certain components and admitted certain other components while analysing the distribution cost of CPT and the costs as projected by CPT especially in salary, interest and financing charges are not allowed.
3. M/s CPT stated in the petition that the Commission has allowed only 42% of the salary and not admitted the interest and financing charges. In 2012-13, the Commission allowed to retain a portion of surplus while fixing the BST to address contingencies. Same approach is to be taken in this time also and accordingly, the Commission should allow to retain the surplus of Rs120.12 lakhs arrived at in the ARR of the petitioner. The Commission has not considered Rs.20 lakhs required for payment of electricity duty under section 3 of Electricity Duty Act. Further, the truing up for 2012-13 is not completed, the revenue deficit thereon should be taken in to consideration. Considering these facts, the licensee requests to retain the BST at Rs.5.05 per unit. The Commission admitted the petition and issued notices to the petitioner M/s CPT and KSEBL for the hearing on 16-12-2014.
4. M/s Cochin Special Economic Zone Authority has filed the review petition dated 20-11-2014 on the revision of BST applicable to M/s CSEZA on the order dated 25-9-2014. In the review petition, M/s CSEZA has sought review of the Order on BST as the BST was increased to Rs.5.30 per unit from Rs.4.40 per unit, a steep increase of 90 paise per unit. According to CSEZ, the total consumption of HT 1(A), DHT and LTIV(A) category works out to 80% of the total energy sale and the retail tariff is less than the BST. According to CSEZA, the revenue projections given at the time of determination of BST needs to be revised based on the actual consumption from 1-4-2014 to 15-8-2014. Thus, if the revised BST of Rs.5.30 per unit is considered there will be a deficit of Rs.30.71 lakhs. Hence the petitioner requests to limit the BST at Rs.4.90 per unit.
5. Though there was some delay in filing the petition, the Commission condoned the delay and admitted the petition and issued notices to the petitioner M/s CPT and KSEBL for the hearing on 16-12-2014. KSEBL submitted their written comments during the hearing.

Hearing on the matter

6. Both the petitions were heard on 16-12-2014. During the hearing, representatives of the petitioners M/s CPT & M/s CSEZA and the representatives of the respondent KSEBL were present. Shri. Abdul Rahim, Executive Engineer, representative of M/s CPT during the hearing pointed out that the CPT has availed loans from different agencies including Government of India for creation of electrical as well as port assets. CPT has approached the Government of India for restructuring of the loan portfolio and its settlement and the Government agreed to waive the penal interest and once the repayment starts, the due share of licensee business i.e., distribution of electricity, should be payable. Since the Commission now disallowing interest and financing charges, the same is accounted towards determination of Bulk Supply Tariff payable by M/s CPT. In addition, some HT IV commercial consumers under the banner of "Association of Classified Hotels and Restaurants within the State of Kerala" have approached CPT for refund of excess amount liable to be returned as per the decision of Hon'ble APTEL dated 25-10-2013. The commitment on this account is about Rs. 1.5 crore. The revision of retail tariff vide order dated 14-8-2014 had also necessitated modification of computer software, resulting in an additional expenditure of about Rs.20 lakhs. The Commission has allowed RoE of only Rs.10 lakhs, which is not even sufficient to meet the burden of duty under section 3 of the Electricity Duty Act. Hence, he requested to retain the BST at Rs.5.05 per unit.
7. In reply to the petition, Shri. Sarmakumar, Dy. CE, KSEBL stated that the grounds on which review is sought by the petitioner are not sustainable under a review proceedings. Through this review petition, the petitioner is indirectly seeking review of the ARR&ERC order of the petitioner dated 19-5-2014. He pointed out that since the petitioner has neither challenged nor sought review of the order dated 19-5-2014, it has become final. The review can be admitted only in cases where any apparent error has been crept in the order or surfacing any new facts which could not be submitted prior to issuing of the order even after reasonable efforts. Since the petitioner could not point out any apparent errors, the petition is to be rejected. Further, the Commission has already addressed the liability of paying interest to government of India loans in the ARR&ERC order of the petitioner. The Commission has taken a position that interest can be allowed only if it is paid and if interest is actually paid the same can be considered in the truing up process. In the case of duty under Section 3 of the Electricity Duty Act, the Commission is following

a uniform approach hence the same need not be reviewed. According to KSEBL the review petition is devoid of merits and hence to be rejected.

8. In the other petition by M/s.CSEZA, the representatives of M/s CSEZA, Shri. Ajayakumar and Shri. Krishna Varma presented the petition. Shri. Krishna Varma stated that the revision of BST is to the tune of 90 paise per unit which is abnormal. The major portion of the consumption is to LT Industrial and HT industrial consumers. There is no margin between the present energy charge to these consumers and the BST. Since the projections made by CSEZA at the time of ARR&ERC and the actual are different, and the actual sales are lower. The calibration and correction of meters also led to lower revenue. According to CSEZA, now the difference between income and expenses will be about Rs.30 lakhs in 2014-15. Hence he requested to review the BST and retain at Rs.4.90 paise per unit.
9. In reply to the petition, KSEBL stated that the grounds in the petition that lower energy sales than that projected in the ARR is not a sufficient cause for allowing a review. The petitioner is in fact attempting to challenge the ARR&ERC order indirectly through the review petition. Since the ARR&ERC order of the petitioner dated 30-4-2014 is not challenged, the same has become final. In the BST order, the Commission has directed to submit the details of actual demand raised and category wise consumption of different consumers, the same has not submitted yet. It can also be seen that the per unit realization of different categories of consumers are different from that given in the ARR and in the review petition. It is to be noted that the licensee is already holding substantial surplus to the tune of Rs.1087.31 lakhs and the revenue deficit of Rs.30.71 lakhs projected is comparatively small. Hence there is no urgency to address the issue and the same can be addressed in the truing up process.

Analysis and decision of the Commission

10. The Commission has considered the arguments of the petitioners viz., M/s CPT and M/s CSEZA as well as the objections thereto of KSEBL in detail. At the outset, both the petitions are beyond the scope of the review powers of the Commission. Though the petitions were for review of the BST, the petitioner has sought re-estimation of various items in the ARR&ERC of the petitioners. The Commission is

bound by the provisions of the Electricity Act 2003 and Regulations issued there under. 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 of KSERC (Conduct of Business) Regulations provides that:

“67. Powers of review, -

(1) Any person or party affected by a decision, direction or order of the Commission may, within forty five days from the date of making such decision, direction or order apply for the review of the same.

(2) An application for such review shall be filed in the same manner as a petition under Chapter III of these regulations.

(3) The Commission may after scrutiny of the application, review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit within forty five days from the date of filing of such application:

Provided that the Commission may, at its discretion, afford the person or party who filed the application for review, an opportunity of being heard and in such cases the Commission may pass appropriate orders as the Commission deems fit within thirty days from the date of final hearing:

Provided further that where the application for review cannot be disposed of within the periods as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the same”.

“67 A. Amendment of orders.- Clerical or arithmetical mistakes in the orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Commission either on its own motion or on an application of any of the parties”.

11. The above provisions were notified in the gazette dated 23-9-2014 and are effective from that date.

12. 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 given 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”.

13. 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 with reasonable efforts, 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 earlier orders. M/s CPT has sought to provide the interest charges and the reversal of revenue on account of increase in tariff applicable to HT IV tariff as per the Order of APTEL. The Commission has already held that the interest charges will be allowed retrospectively once the interest charges are paid to Government of India. The Commission will allow the interest payable after prudence check, taking into consideration the notional repayment schedule consistent with depreciation already allowed. In the case of electricity charges to be refunded to the HT IV consumers as per the orders of the APTEL, the Commission will consider the same as part of the truing up for the respective years, the actual amount returned once it is paid to the consumers

14. In the case of CSEZA, the demand is to consider the revised energy sales based on actual for the previous months. This amounts to re-estimation of the ARR&ERC already approved for 2014-15, in the same financial year itself. The licensee estimates that since metering issues (negative losses) are addressed and there is reduction in revenue, there will be a shortfall of about Rs.30 lakhs. However, the

Commission always allows notional distribution loss while approving the ARR&ERC. Hence this argument is not acceptable. In any case, the issues raised can always be looked into in the truing up process, once the financial year is complete and actual accounts are available.

15. This being the position, the Commission cannot enlarge the scope of the review jurisdiction to deliberate on the merits of the issues already decided.

Orders of the Commission

16. In the light of the materials placed before the Commission and the analysis as above, the Commission has come to the view that there are no sufficient grounds placed by the petitioners for a review of the Order dated 25-9-2014 on the revision of BST for the year 2014-15. Accordingly, the petitions are rejected. Ordered accordingly.

Sd/-
K.Vikraman Nair
Member

Sd/-
Mathew George
Member

Sd/-
T.M. Manoharan
Chairman

Approved for issue

Secretary