

# KERALA STATE ELECTRICITY REGULATORY COMMISSION

## THIRUVANANTHAPURAM

Petition No. : **RP 1/2016**

In the matter of : Petition for review and reconsideration of the order on ARR&ERC dated 09-09-2015 for the control period 2015-16 to 2017.

Applicant : M/s Cochin Special Economic Zone Authority (CSEZA)

**PRESENT** : **Shri. T.M.Manoharan, Chairman**  
**Shri. S. Venugopal, Member**  
**Shri. K.Vikraman Nair, Member**

### **ORDER DATED 18/07/2016**

1. The Cochin Special Economic Zone Authority (hereinafter called CSEZA) is a Special Economic Zone under the Ministry of Commerce and Industry, Government of India. The Cochin Special Economic Zone Authority (CSEZA) constituted under the SEZ Act 2005 is the developer of the Zone providing infrastructure and other related services to the Zone. The Zone comprises 105 acres of land in Kakkanad, Kochi. CSEZA has been set up with the objective of promoting exports and creating employment opportunities. Exporting industries are provided with infrastructure facilities like power, water, effluent treatment facilities, communication etc. Power Distribution License was granted to CSEZ by Government of Kerala vide G.O (Rt) No. 118/02/PD dated 20-06-02. As per the provisions of the Electricity Act 2003, CESZA is a deemed licensee .
2. The Commission vide order dated 09-09-2015 had finalized the ARR & ERC for the first control period 2015-16 to 2017-18 as per the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2014 (hereinafter referred to as Tariff Regulations, 2014)
3. The licensee, vide letter dated 08-02-2016 filed an application under the KSERC (Conduct of Business) Amendment Regulations, 2014 for review and reconsideration of the order dated 09-09-2015 on ARR&ERC for the control

period. The details of the ARR and ERC projected by the licensee and the same approved by the Commission for the control period 2015-16 to 2017-18 are detailed below.

**Table -1**  
**CSEZA- Revenue Gap, Projected by the licensee and Approved by the Commission for the control period (Amount in Rs. lakh)**

Particulars	Projected	Approved	Projected	Approved	Projected	Approved
Financial Year	2015-16	2015-16	2016-17	2016-17	2017-18	2017-18
<b>Income</b>						
Revenue from Sale of Power.	3280.06	3280.06	3285.67	3285.67	3291.28	3291.28
Other Income	148.82	148.82	163.94	163.94	175.94	175.94
<b>Total Income</b>	<b>3428.88</b>	<b>3428.88</b>	<b>3449.61</b>	<b>3449.61</b>	<b>3467.22</b>	<b>3467.22</b>
<b>Expenditure</b>						
Purchase of Power	3335.67	3317.54	3342.80	3333.26	3359.43	3349.89
Depreciation	69.71	58.68	90.66	58.68	96.55	58.68
Interest & Finance Charges	9.90	-	12.39	-	15.59	-
Employee Cost	145.80	152.31	157.50	161.22	170.65	170.65
Repairs and Maintenance	8.00	7.80	8.47	8.26	8.97	8.74
Administration and General Expenses	70.88	25.43	74.13	26.92	77.41	28.90
Return on Equity	114.03	24.59	114.03	22.83	114.03	21.07
<b>Total Expenditure</b>	<b>3753.99</b>	<b>3586.35</b>	<b>3799.98</b>	<b>3611.17</b>	<b>3842.64</b>	<b>3637.93</b>
<b>Net Surplus/(Deficit)</b>	<b>(325.11)</b>	<b>(157.47)</b>	<b>(350.37)</b>	<b>(161.56)</b>	<b>(375.42)</b>	<b>(170.71)</b>

4. The licensee vide the application dated 08-02-2016 has requested the Commission to review the approved distribution loss, power purchase cost, the proposed capital expenditure for granting the depreciation and RoE. The licensee has also requested the Commission to review the decision on the return on equity.

## Hearing on the Matter

5. Public hearing on the application was held on 20-04-2016 at the Court Room, Office of the Commission. In the hearing M/s Cochin Special Economic Zone Authority was represented by Sri. Saju K Surendran, Deputy Commissioner CSEZA, Sri. K. C, Seetharaman, Chartered Accountant and Sri Krishna Varma, Resident Engineer of CSEZA. Sri. K. C, Seetharaman presented the details of the review petition. Sri Krishna Varma and Sri. K. C, Seetharaman responded to the queries of the Commission
6. Sri. Manoj.G, AEE, KSEB Ltd. presented the objections and views of KSEB Ltd. and submitted written remarks on the review petition. The summary of the objections raised by KSEB Ltd is given below.
  - a. It was submitted that a review petition was filed by the licensee only after a period of more than 45 days. As per the KSERC (Conduct of Business) Amendment Regulations, 2014 is to be filed within stipulated time as quoted.

*“ Any person or party affected by the 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”.*
  - b. It was submitted that the Commission may review the order issued only in cases where any apparent error has crept into the order. In the present case the petitioner has not pointed out any apparent error nor has brought out any new facts in the order dated 09-09-2015 in OA No.3/15 warranting a review.
  - c. The Commission may not alter the approved distribution loss of 1.5% as requested in the review petition, as CSEZA shall endeavor to reduce the distribution loss every year from the previous year’s level.
  - d. The power purchase cost may be approved considering only the approved distribution loss at 1.5%
  - e. The Capital expenditure plan of the licensee requires prudence check.
  - f. As the licensee has not provided any documents to prove that the initial investment done by GOI is equity and not grant, ROE can only be allowed at the rate of 3% on the net fixed assets as per the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014.

7. The Commission directed M/s CSEZA to submit the following details on or before 29-04-2016
  - a) Detailed cost-benefit analysis of the proposed Capital expenditure with justification on the same.
  - b) Cash flow statement.
  - c) Documentary evidence on the grants received from the Government of India for Distribution Business
  - d) A copy of the contract signed by CSEZA with their occupants/consumers with respect to the terms and conditions of their license/occupancy.
  - e) Any direction of the Govt. stating that all subsequent developments to be borne by CSEZA.
  - f) Any other details that need to be submitted before the Commission to substantiate the claims made in the review petition.
  
8. M/s CSEZA has submitted the details vide the letter No. H-12/2/2014: CSEZA dated 07-06-2016.

### **Analysis and decision of the Commission**

9. The Commission has considered the application filed by the licensee, oral submissions during the hearing, and the observations presented by the KSEB Ltd on the application. The application filed by the licensee is for reviewing the order dated 09-09-2015 in the matter of determination of determination of ARR&ERC of M/s CSEZA for the control period 2015-16 to 2017-18.
  
10. For reviewing its orders and decisions, the Commission is bound by the provisions of the Electricity Act-2003 and its own regulations. As per the clause (f) of subsection (1) of section 94 of the Electricity Act-2003, for reviewing its decisions, directions and orders, the Commission have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908.
  
11. The clause 67(1) of the KSERC (Conduct of Business) Amendment Regulation, 2014 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”.*

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 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”.*

13. As per the clause 67(1) of the KSERC (Conduct of Business) Amendment Regulation, 2014, the licensee has to file the review petition within 45 days from the date of the order. Since the present petition is in respect of the order of the Commission dated 09-09-2015, the licensee should have filed the review petition on or before 23-10-2015. But, the licensee has filed the application for review only on

08-02-2016, and hence there is a delay of 108 days in filing the application for review. The Commission hence condones the delay in filing the review and accepts the application for review.

14. Further as per the Order 47, Rule 1, of Code of Civil Procedure, 1908, 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.
15. Based on the above legal provisions, the major issues raised by the licensee CSEZA are dealt as given below.

**(1) Distribution Loss:** The Commission had approved the distribution loss reduction target at 1.50% as against the proposal of 1.82% for each year of the control period 2015-16 to 2017-18. The licensee in the review petition has stated that projection for the control period was based on actual distribution loss of 1.69%. Since, the distribution loss being a controllable parameter, and taking into consideration the limited area of operation and the fact that network consists predominantly of underground cables, the Commission has fixed the distribution loss of CSEZA at 1.50%. Since the distribution loss reduction being a controllable item, the licensee has to take all efforts to achieve the distribution loss reduction as approved by the Commission for the control period 2015-16 to 2017-18. It is also noticed by the Commission that there is no reliable figures which has captured the actual distribution loss of the licensee in the immediate past due to the metering problems in the licensee's distribution network. The licensee is hence directed to take necessary and sufficient steps to contain the loss within the approved targets. The Commission will make a review of the steps taken by the licensee to reduce the loss at the time of truing up and take a final call on this matter at that time.

**(2) Cost of power purchase:** The Commission had approved the power purchase cost for the control period considering the approved loss reduction target of 1.50%. The licensee has requested that the cost of power purchase may be allowed considering the distribution loss of 1.82%. As the Commission cannot revise the distribution loss as approved in the order on ARR & ERC for the control period 2015-16 to 2017-18 at this juncture, there is no sufficient ground for reviewing the cost of power purchase at this juncture. However Commission has noted that the cost of power purchase alone exceeds the revenue from sale

of power. This requires a re-fixation of the Bulk supply tariff, which the Commission will look into and provide due allowance at the time of truing up of the accounts.

**(3) Capital expenditure :** In the review petition, the licensee has stated that as per the Regulation 72 and Annexure IV of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014 prior approval of the Commission is required for schemes involving major investment above 10 Crore only. The licensee in the petition has stated that the capital expenditure is less than 8 Crore for all the years of the control period together.

The Commission during the hearing and vide daily order dated 20-04-2016 has directed the licensee to submit the detailed cost-benefit analysis of the proposed Capital expenditure with justification on the same on or before 29-04-2016. Though the licensee has produced the cost estimate of the certain capital cost for the control period 2015-16 to 2017-18, M/s CSEZA has not produced the present status of the project, source of finance etc. As per the information furnished by the licensee, entire capital investment is being done through the grants provided by the Central Government.

In the absence of data pertaining to the details of the project, its start date and expected end date and present status of the project expenditure, prior to actual incurring of the expenditure and the commissioning of the project, cannot be considered at this juncture. The expenditure would be considered during the time of truing up based on the actual cost and the details submitted justifying the capital expenditure incurred. The Commission has gone through the details of the Capital expenditure planned to be incurred by the licensee as per letter no.H-12/2/2014:CSEZA/3263 dated 07.06.2016 and most of it pertain to replacement of meters, RMU, HT and LT panels and procurement of some sub-station equipment, testing meters & equipment, energy meters and computers. The above capital expenditure may be incurred after following due competitive procurement process. However the procurement of a vehicle exclusively for the distribution business is not warranted taking into consideration the limited area of operation and scale of operation. The Commission in principle approves the following capital expenditure, requested for by the licensee for the control period 2015-16 to 2017-18; subject to prudence check while truing up of the accounts.

**Table-2**

**In-principle approval for capital expenditure for 2015-16**

<b>Proposal</b>	<b>Expenditure</b>
Replacement of KSEB 110 kV metering CTs and PTs at 110 kV substation	Rs.15.90 lakh
ABT Meters	Rs.9.60 lakh
Replacement of existing RMU with latest outdoor type RMU (First Phase)	Rs.59.40 lakh
Procurement of testing meters & equipment	Rs.45.46 lakh
Computers and peripherals	Rs.1.00 lakh
<b>Total</b>	<b>Rs.131.36 lakh</b>

**Table-3**

**In-principle approval for capital expenditure for 2016-17**

<b>Proposal</b>	<b>Expenditure</b>
Replacement of existing RMU with latest outdoor type RMU (Second Phase)	Rs.36.90 lakh
Spare for 110kV isolators for substation yard	Rs.9.35 lakh
Computers and peripherals	Rs.1.00 lakh
<b>Total</b>	<b>Rs.47.25 lakh</b>

**Table-4**

**In-principle approval for capital expenditure for 2017-18**

<b>Proposal</b>	<b>Expenditure</b>
Replacement of existing RMU with latest outdoor type RMU (Third Phase)	Rs.80.70 lakh
Replacement of HT Panel in SDF Building 16	Rs.31.90 lakh
Replacement of LT Panel in SDF Building 16	Rs.16.00 lakh
Energy Meters	Rs.1.75 lakh
Computers and peripherals	Rs.3.50 lakh
Heavy duty photocopying machine	Rs.4.00 lakh
<b>Total</b>	<b>Rs.137.85 lakh</b>



- (4) Return on Equity:** The licensee has submitted details of the grants received from the Government of India for setting up the infrastructure facilities for power distribution system. However, since the same has been given as a grant and since there is no direction by the Government, to the effect that there should be a return or cost associated with the grant, the Commission cannot allow return on this amount. However the Commission has allowed depreciation on the assets created out of the grant.

#### **16. Orders of the Commission**

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 09-09-2015 in the matter of the determination of ARR&ERC of M/s CSEZA for the control period 2015-16 to 2017-18. The Commission however approves in-principle the capital expenditure plan as proposed except for the procurement of vehicle and shall review the need for revising the BST. Ordered accordingly.

**Sd/-**

**K.Vikraman Nair**  
**Member**

**Sd/-**

**S.Venugopal**  
**Member**

**Sd/-**

**T.M.Manoharan**  
**Chairman**

Approved for issue

Sd/-

Santhosh Kumar.K.B

Secretary