

THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT: Shri. K.J.Mathew, Chairman
Shri. M.P.Aiyappan, Member

October 7, 2010

In the matter of
Suo-motu Proceedings on Non-Compliance of Directives by KSEB
under Section 142 of the Electricity Act

ORDER

Background

1. In the Order on ARR & ERC for 2010-11 for Kerala State Electricity Board (*hereinafter referred to as KSEB or the Board*), the Commission had issued several directions with time frame for compliance. It was provided in the Order that the difficulties, if any, in compliance could be brought to the notice of the Commission promptly and the Board could approach the Commission for a review within one month from the date of the Order. It was also made clear that failure to submit the reports and non-adherence of time limit would invite penal provisions of the Act. Of the directives issued, for 6 directives reports/action has to be taken within one month. However, even after considerable lapse of time, the Board neither filed any material nor approached the Commission stating difficulty for compliance or seeking more time. Since the action of the Board amounts to deliberate and wilful non-compliance of the directions, the Commission in its meeting held on 24-6-2010 considered the matter in detail. The Commission came to the conclusion that it is a case for initiating action under Section 142 of the Act, for wilful non-compliance of the directions. Accordingly a notice was issued to the Special Officer/Secretary to allow him an opportunity of being heard in person and to give reasons if any as to why action should not be initiated under Section 142 of the Act. Personal hearing was scheduled on 17-7-2010, which was communicated to the Board. In reply to the notice, Chief Engineer (Commercial & Tariff) forwarded a letter dated 15-7-2010 addressing the Secretary of the Commission.

2. In the hearing scheduled on 17-7-2010, neither the Special Officer nor the Secretary or any Lawyer representing them was present. Two officers present on the occasion were not allowed to represent the Special officer/Secretary since the notice was issued to the Special Officer/Secretary to appear in person as per Section 142. Hence the Commission considers that no personal representation was offered by Special Officer/Secretary in the matter and decided to consider only the written submissions dated 15-7-2010. The Board in its reply stated that several actions had been initiated for complying with the directives of the Commission as per the time schedule. The following are reported by the Board in the letter dated 15-7-2010.

- a) A high level meeting was conducted on 25-6-2010 with all CEs/HODs for formulating a plan to comply with the directives within stipulated time
- b) A task force for collection of arrears under the Chief Engineer (Commercial & Tariff) was created
- c) The Board has communicated to the Commission on the likely delay in commissioning of Central Generating station and the additional liability likely to be incurred for procuring energy from alternate sources. The Board has finalised a revised month-wise energy generation and power purchase for the water year from June 2010 to May 2011, which will be communicated to the Commission by this month end.
- d) The Board require 6 months time for studying operating parameters for diesel/LSHS stations in the country before filing a petition for own stations.
- e) The Board has instructed Member (distribution) to monitor the status of implementation of Standards of Performance regulations. A status report on the same will be furnished separately.
- f) A status report on the RGGVY and R-APDRP scheme is provided along with the letter.
- g) The budget estimates were prepared based on the ARR&ERC for 2010-11. As a government owned entity KSEB has its own governing hierarchy entrusted with duties and powers to prepare the budget, decide on details of generation, power purchase, employee benefits etc. The utility is of the opinion that limiting expenses as per SERC's version can cause power crisis in the State and industrial unrest in the organisation. The Board has filed an

appeal against the Order of the Commission before the APTEL under Section 111 of the EA 2003. Hence KSEB is not in a position to comply with these directives.

3. In the mean time, the Board has approached Hon. High Court of Kerala and the Court has disposed of the petition directing that the reply filed by the Board could be considered as a review petition and pass final orders in accordance with law and also directed that further action on the notice need not be taken for the time being. Accordingly, the Commission scheduled an appeal hearing on 3-9-2010.

Hearing on the matter

4. In the hearing held on 3-9-2010, the representatives of the Board requested to condone the delay in approaching the Commission as directed in the Order and to withdraw the penal action initiated. The Commission reminded the Board that one month time was given for seeking review of the directions and/or time limit, which the Board failed to comply with. The Commission also stated that if the Board feels that time limit stipulated requires modification due to any genuine difficulties, the same could be proposed. In reply the Board stated that all out efforts have been taken by them to comply with the direction issued by the Commission. The Board narrated the steps taken for the compliance of the directives issued. LT billing was computerised in all sections, SCMS is under dry run in two circles in Kollam and HT-EHT billing computerisation is also under trial run. The Board representatives explained during the hearing the steps taken in each of the direction given.
5. Further to the hearing, the Board provided a list of compliance for various directives vide letter dated 23-9-2010. In the said letter, the Board reported that as per the Board Order dated 9-9-2010, different task forces/committees has been constituted under the direct chairmanship of members of the Board. In all seven task forces and a Steering Committee were also formed to monitor the progress every month. KSEB further stated that there was no wilful or deliberate action from the Board for non-compliance of the directives of the Commission and reasonable time frame may be allowed for complying with the directives. However, the Board without mentioning the exact time required for complying with the direction, had stated that it may not be practicable to implement the directives within the time frame stipulated in the Order. Even after providing ample opportunity for the Board for suggesting revision of time frame for complying with the direction, the Board has not proposed any changes. In the

absence of input from KSEB, the Commission is constrained to stipulate the time frame in some of the directives for which compliance level is inadequate.

Analysis and decision of the Commission

6. The Commission has considered the compliance level reported for each of the directives and orders are issued as in the following paragraphs.

Direction No.1.

T&D loss:

- a. Separation of Transmission and distribution loss: The Board shall estimate transmission losses and distribution losses at different voltage levels with supporting details along with all ARR & ERC filing.
- b. The Board shall initiate a study for assessing loss levels in 33kV/11kV system and LT system separately. The estimates with supporting details shall be filed along with ARR & ERC filing
- c. Separation of technical and commercial loss : The Board shall study and submit along with ARR & ERC separate estimates for technical and commercial losses with supporting details.

Action taken reported by the Board

- a. The Board has decided to engage M/s CPRI to study the transmission losses and entrusted the Chief Engineer (Corporate Planning) to prepare the ToR and assign the task to CPRI.
- b. The Chief Engineer (Corporate Planning) was entrusted to conduct a study on the segregation of technical and commercial losses. KSEB vide letter dated 31-8-2010 forwarded the methodology to be followed by the Board for segregation of technical and commercial losses.

Analysis and Decision of the Commission

The Commission notes that KSEB has not made any time frame for the study nor sought any extension of time. The transmission loss study is assigned to CPRI and distribution level losses are studied in-house. As per the letter, the Board has communicated the methodology for LT level loss assessment. The Commission in its letter dated 29-9-2010 has directed the Board to provide the results of sample study proposed so as to ascertain the robustness of the methodology.

Based on the compliance reported by the Board, the Commission is of the view that the Board can provide the details as directed at the time of the next ARR&ERC filing. No revision of time limit appears to be necessary.

Direction No.2.

The Board shall chalk out plans for loss reduction to the targeted level by fixing section wise/ monthwise targets for execution of capital works for loss reduction and faulty meter replacement and continuous monitoring of the same. The monthly target for each section shall be reported to the Commission within 2 months.

Action taken reported by the Board

A taskforce under Member (distribution) was constituted for fixing section wise/ monthwise targets for execution of capital works for loss reduction and faulty meter replacement and continuous monitoring of the same.

Analysis and Decision of the Commission

As per the direction, the Board has to report the monthly target for each section within two months. Already four months have elapsed and the Board has not sought any extension of time. Considering the action reported by the Board, the Commission extend the time limit upto 30-10-2010. The Board shall include in the ARR&ERC the plans for loss reduction and monthwise targets as given in the above direction.

Direction No. 3.

The Board shall prepare scheme/project wise details with date of commencement, funding pattern, physical and financial progress, target date of completion etc., and submit along with ARR&ERC. For all new projects, an analytical report showing cost and benefit shall also be furnished. Further, the Board shall within one month furnish the status report on the R-APDRP and RGGVY schemes for evaluation and monitoring.

Action taken reported by the Board

The Board vide letter dated 9-9-2010 and 22-9-2010 has reported the current status of R-APDRP scheme and vide letter dated 15-7-2010 reported the RGGVY project. The details of capital expenditure programme as per the direction will be furnished in the ARR&ERC for 2011-12.

Analysis and Decision of the Commission

The Commission has noted the compliance.

Direction No.4

The Board shall within one month initiate a work study to assess the reasonable level of employee strength and cost taking into consideration improvement in technology, possibility of outsourcing, mechanization, improved management strategies etc. Progress shall be intimated in the first week of August 2010.

Action taken reported by the Board

The Board reported that as per the Board order dated 9-9-2010 Centre for Management Development (CMD) was entrusted to conduct a detailed work study. The ToR is under finalisation in consultation with CMD. The status of work study will be reported separately.

Analysis and Decision of the Commission

As per the direction, the progress of study to be intimated in the first week of August 2010. It can be inferred from the reply that so far the study is not initiated. The Board shall forward the copy of the final ToR and methodology/inception report of CMD for the study to the Commission. Definite time frame should be given to CMD, and the contact person for CMD shall be intimated to the Commission. The progress should be reported by 30-10-2010

Direction No.5

The Board shall take steps for the establishment of pension funds and efforts for reducing pension liabilities immediately. The progress shall be intimated in the end of August 2010.

Action taken reported by the Board

Board vide letter dated 10-6-2010 communicated the present position on the establishment of the pension fund and the efforts for reducing the pension liabilities.

Analysis and Decision of the Commission

As per the letter, KSEB informed that M/s PFC was engaged to study the option of creating pension fund and the Government is yet to take a final decision on this matter. The direction was issued considering the mounting pension liabilities of the

Board which cannot be sustainably funded from the tariff. Since a decision from Government is also involved in an important matter like this, the action taken and the progress reported by the Board is taken as compliance.

Direction No.6

The Board shall revive the Task Force for overseeing arrear collection and file a first report for the first quarter by 20th of the July 2010. Further quarterly report will be filed by 20th of succeeding month.

Action taken reported by the Board

As per the Board Order dated 11-6-2010 a task force was constituted and the task force has started operation. As part of realisation of long pending arrears especially those under litigation, sub divisional level adalaths were conducted. Age wise details of arrears at the circle level will be provided by the middle of next month.

Analysis and Decision of the Commission

The Commission has noted the compliance. Periodic quarterly reports shall be filed starting for the first two quarters by 20th of October. Further reports should be filed by the 20th of the succeeding month.

Direction No.7

The Board shall furnish benchmark Performance parameters for diesel stations for determining the fuel surcharge within one month.

Action taken reported by the Board

As per the Board Order dated 9-9-2010, the Board has constituted a committee under Member (Generation) for preparing benchmark parameters and operating norms for generating stations. The Committee will submit the report to the Board within 2 months.

Analysis and Decision of the Commission

No time limit was proposed by the Board for compliance with the above direction. As per the directions issued, the Board has to provide the proposal within one month from 17-5-2010. However, vide letter dated 15-7-2010, the Board has requested for 6 month time for completing the study and to propose the benchmark parameters. The Commission grants the request and allows six months time from the date of the ie., 20-11-2010.

Direction No.8

The Board shall within three months furnish comprehensive proposal for determining the operation norms for generating and transmission system with all supporting details with detailed analysis of actual performance.

Action taken reported by the Board

As per the Board Order dated 9-9-2010, the Board has constituted committees under Member (Generation) and Member (transmission) for preparing the operational norms for generating stations and transmission system respectively.

Analysis and Decision of the Commission

As per the direction, the Board shall provide the proposal within 3 months ie., by 16-8-2010, which was not complied with. In the reply also Board has not proposed any time limit. The Commission extends the time limit till 30-10-2010.

Direction No. 9.

The Board shall within in one month prepare a status report on implementation of Standards of Performance regulation at the circle level and the monitoring mechanism if any created by higher offices. The baseline data on standards shall also be provided for each circle along with the status report. Also report on the amount of compensation paid to consumers may be submitted monthly as envisaged in Section 59(b) of the Act.

Action taken reported by the Board

A detailed report on the compliance report was given by the Member (T&D) on 13-9-2010.

Analysis and Decision of the Commission

The Commission notes that though the Board has taken some steps for implementing the Standards of Performance, still the baseline data was not provided. In the meeting held on 13-9-2010 with the Commission, the Board has agreed that at Section level proper registers will be maintained for data recording/retrieval and also to provide the status of compliance for the quarter ending September, 2010. The Commission will treat the same after scrutiny as the baseline information.

Direction No.10

The Board shall prepare separate ARR&ERC for each licensed business from 2011-12. The Board shall also propose transmission tariff, SLDC charges, and open access charges along with the ARR for 2011-12.

Action taken reported by the Board

As per the Board Order dated 9-9-2010, the Board has constituted a committee under Member (Finance) for complying with the direction. A report will be furnished to the Commission by this month end.

Analysis and Decision of the Commission

The Commission has noted the compliance and as directed, the Board shall provide the proposals in the 2011-12 ARR&ERC.

Direction No.11

The Board shall revise the budget for 2010-11 based on the ARR&ERC order and submit the same within one month from the date of this order.

Action taken reported by the Board

The Board stated that the budget is a statutory document placed before the legislative assembly and State Planning Board. The budget is same as the ARR&ERC for ensuing year. The deviations occur in employee costs and power purchase. Power purchase cost is highly volatile. The Board will submit the actual expenses as truing up petition. Further instructions are issued to Financial Advisor and other HODs to enforce financial control as per the ARR&ERC order for 2010-11.

Analysis and Decision of the Commission

The reply of the Board and the historical facts indicate that the Board would continue rulelessness in expenditure. Though the statutory colour is claimed, the records indicate that the Board never adhered to the figures in the budget documents both in capital and revenue items. Nor the approved ARR&ERC is followed. The Commission is of the opinion that tendency of lack of financial control needs to be curtailed. The Board claims that instructions have been issued to HoDs and Financial Advisor to enforce financial control. However no material is placed to substantiate the claim. Hence, the Board shall prepare and submit within one month of the receipt of the Order on ARR&ERC, its operational budget for the ensuing year based on the approved ARR&ERC. If the Board feels that any revision of approved

expenses is required in view of the Government approved budget the same may be indicated as a separate Note attached to the revised budget with proper reasons for deviations. For the financial year 2010-11 the revised budget in the light of the ARR&ERC order should be filed by 15-11-2010 positively.

Direction No.12

The Board shall study and report the impact of the revised ToD tariff for HT-EHT consumers within two months.

Action taken reported by the Board

Board has filed a petition dated 21-7-2010 to this effect.

Analysis and Decision of the Commission

The Commission has noted the compliance

Direction No.13

The Board shall prepare an implementation plan including procurement plan for all the important capital projects under generation, transmission and distribution with information to the Commission. The SCMS shall be fully operational within 6 months and the status should be reported in six months.

Action taken reported by the Board

As per Board Order dated 9-9-2010, Chief engineer (TC&M) was entrusted to put up necessary proposals and the SCMS software is under pilot implementation and will be fully operational within 6 months.

Analysis and Decision of the Commission

The Commission has noted the compliance.

Direction No.14.

The Board shall file a Proposal for new bill payment mechanism and other customer satisfaction measures within two months.

Action taken reported by the Board

As per Board Order dated 9-9-2010, IT steering Committee of the Board to prepare the bill payment mechanism and other consumer satisfaction measures.

Analysis and Decision of the Commission

As per the direction, the Board has to propose the mechanism within in two months of the Order ie., July 16, 2010. In the present reply also the Board has not proposed any time limit. In the absence of the proposal of the Board, the Commission directs that the direction shall be complied with by 30-11-2010.

Direction No.15

The Board shall propose programs for achieving the 5% energy sales through renewable sources by encouraging private/own renewable generation within three months.

Action taken reported by the Board

The Board has furnished vide letter dated 17-8-2010 various actions initiated for meeting the 3% of the total energy sale from renewable sources.

Analysis and Decision of the Commission

The Commission noted the compliance.

Other Directions:

The Commission has directed KSEB to estimate and submit monthwise energy sales and energy generation/purchase plan based on the approved figures for 2010-11. In the letter dated 15-7-2010, the Board has stated that since appeal on the Orders of the Commission was filed in APTEL, the directions cannot be complied with.

It is well established principle that unless and otherwise an Appellate Court/Forum stays or quashes the proceedings, the order issued by the respective authority stands and merely filing of an appeal in the appellate forum would not nullify the Orders. The Board could not produce any order on the stay or quashing of the directions of Commission and hence, the directions still stand. The Commission has directed the Board to provide the estimated monthwise details of energy generation/purchase based on the approved figures for facilitating the implementation of fuel surcharge for 2010-11, since fuel surcharge is estimated as the difference in actual and approved fuel cost for the approved level of energy or actual which ever is lower. The estimates required by the Commission is only the apportionment of approved generation/power purchase based on the past trends,

which KSEB every year uses as part of the ARR&ERC exercise. Though the Commission required the basis of apportionment/past data as the part of the clarification exercise at the time of ARR&ERC 2010-11 approval, Board did not provide the same. **Since KSEB continuously refused to provide and still withholding the information, the Commission may not be in a position to allow fuel surcharge based on fuel cost escalation for the year 2010-11 in accordance with the KSERC(fuel surcharge formula) Regulations, 2009.** The Commission restrains itself from invoking the penal provisions of the Act for getting the information, as KSEB themselves will be a sufferer in recouping the eligible surcharge as per the Regulations.

In the ARR&ERC order 2010-11, the Commission had directed KSEB that:

*“In order to insulate the licensee from hydro risk, the Commission would resort to a comprehensive review of hydro energy availability in the month of December 2010, by then the rainfall position and the shortage/surpluses if any would be reasonably established. Accordingly, **KSEB shall approach the Commission with all necessary details for the review and if necessary, a reasonable proposal for short term purchases in a situation of hydro failure or reduction in availability from CGS or short fall in meeting peak load.”***

The Board in the letter dated 21-6-2010 reported that there would be likely shortage of 1199MU in 2010-11 due to the delay in Commissioning of Koodamkulam and NLC expansion stage II and requested to pass on the additional burden as fuel surcharge. The Commission in the letter dated 27-7-2010 conveyed that it is not possible to transfer the burden under the provisions of the Fuel Surcharge Formula regulations, but if the alternate strategies for meeting the shortages with cost are provided, the same can be considered. The Board again vide letter dated 13-8-2010 provided a revised generation/power purchase plan for the water year for 2010-11 (ie., from June 2010 to May 2011). In the proposal, KSEB has estimated short term purchase of about 1569MU for the water year 2010-11. The Commission has noted the revised proposal of KSEB, in the absence of any concrete proposal on the cost implication, the Commission is not in a position to revise the ARR&ERC estimates.

Orders of the Commission

Considering the compliance reports filed by the Board and the replies given by the Board in the hearing held on 3-9-2010, the Commission has decided to drop the proceedings initiated under Section 142 for non-compliance of the directions. The Board shall adhere to the revised time limit given for various directions given in this Order.

Ordered accordingly.

Sd/-

M.P.Aiyappan
Member

Sd/-

K.J. Mathew
Chairman

Approved for issue

Secretary