## THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

**THIRUVANANTHAPURAM**

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

**13th November, 2013**

**RP No. 5 of 2013**

In the matter of

Review of order on Bulk Supply Tariff dated 27-5-2013 applicable to Thrissur Corporation and order on approval of ARR&ERC for Thrissur Corporation for 2013-14 dated 15-5-2013

Kerala State Electricity Board ………………………… Petitioner
Thrissur Corporation, Thrissur ………………………….. Respondent

**RP No. 6 of 2013**

In the matter of

Review of order on approval of ARR&ERC for Thrissur Corporation for 2013-14 dt.15-5-2013

Thrissur Corporation , Thrissur………………………… Petitioner
Kerala State Electricity Board…………………………… .Respondent

# ORDER

**Background**

1. Kerala State Electricity Board filed a petition for review of the Order on the approval of ARR&ERC of Thrissur Corporation for the year 2013-14 dated 15-5-2013 in OP No.1/2013 and Order on Bulk Supply Tariff dated 27-5-2013 so far applicable to Thrissur Corporation. The petition was filed on 16-8-2013 and was admitted after scrutiny on 2-9-2013 and issued notices to Thrissur Corporation

2. Thrissur Corporation also filed a petition for review of the Order dated 15-5-2013 on approval of ARR&ERC for 2013-14 on 14-8-2013. The petition was admitted on 23-9-2013 and notice was issued to KSEB. As both of these petitions sought review of the same order, the petitions are considered together.

3. KSEB in its petition sought review of the Order on the approval of ARR&ERC for Thrissur Corporation for the year 2013-14 and consequently the order on Bulk Supply Tariff dated 27-5-2013 in view of unprecedented downward revision of BST applicable to the Thrissur Corporation despite having two successive retail tariff revisions resulting in considerable increase in revenue for the Thrissur Corporation. The Board has sought the review on following grounds:

    a. The bulk supply tariff applicable to Thrissur Corporation was revised downwards resulting in a reduction of Rs.50/kVA in demand charges and 80 paise per unit in energy charges. This appears to be an apparent error
    b. The revenue from sale of power considered (Rs.8595.76 lakhs) for arriving at the BST is under estimated by about Rs.1453.55 lakhs. The per unit realisation in 2010-11 was Rs.5.60 per unit, after which two tariff revisions were effected resulting in at least 40% increase, which would have resulted in revenue of about Rs.10049.31 lakhs for Thrissur Corporation.
    c. The revenue increase projected by the licensee for 2012-12 was about 23.60%, where such increase was not available for the year 2013-14 even though two tariff revisions were made. Hence the revenue from sale of power from Thrissur Corporation needs to be re-worked and the BST needs to be revised
    d. The revenue from non-tariff income has been much lower by about 185%, than the trued up figure of Rs.750.45 lakhs for 2010-11. The non-tariff income for the year 2013-14 is to considered by taking the available cash balance of Rs.57.83 crore.

e. The rent charged by the Thrissur Corporation is exorbitant when compared to similar establishments. As the Thrissur Corporation has not produced the required certificates from concerned authorities as observed by the Commission, the same may be disallowed.

f. The depreciation for assets created out of consumer contribution need not be allowed.

4. On the other hand, Thrissur Corporation in its review petition sought review of following grounds:

   a. The Commission has disallowed Rs.748.73 lakhs while approving the ARR&ERC of Thrissur Corporation for the year 2013-14.
   b. The Commission allowed only 10% increase in employee cost. On the other hand TECD expects an increase of 5% in basic pay and 30% increase in DA. Hence, salary and DA as projected by the licensee is to be allowed
   c. The pension liabilities will be about Rs.118.54 lakhs whereas the Commission has allowed only Rs.101.95 lakhs. Similarly in the earned leave encashment also, higher provision is required.
   d. In the case of A&G expenses, licensee has to pay duty under Section3(1) of Electricity Duty Act, consultancy charges and other fees to be remitted and cost of training to employees etc., are to be met.
   e. The rent to be paid to Thrissur Corporation may be admitted as projected as the rent is fixed based on 50% of the average rent realised by the Corporation, which is a reasonable determination.
   f. The advertisement charges and technical fee approved is lower than actually required.
   g. Other debits projected at Rs.10 lakhs is to be allowed as provision for bad debts.
   h. The return on equity of Rs.346.81 lakhs claimed for 2013-14 may be allowed.
   i. The distribution loss approved for the year 2013-14 is lower and it is to be admitted at the proposed level.
   j. The revenue gap after considering the revised power purchase cost for the year will be Rs.544.98 lakhs.

5. Thrissur Corporation and KSEB had given written reply to the above petitions in their capacity as respondents. In the reply to the review petition of KSEB, Thrissur Corporation stated that the determination of BST is in accordance with the law and there is no reason to question the same in the review petition. The BST determined in 2012-13 at the rate of Rs.5.20 per unit as energy charges and Rs.350/kVA as demand charges was made the operations of TECD unviable. Though the Corporation sought a review, the Commission rejected the review on the direction that it will be considered in the truing up process. In 2012-13, the net revenue available for the Corporation to meet the distribution expenses was only Rs.3 crore. However, in 2013-14, the Commission has revised the tariff considering this and accordingly reduced the BST. According to the Corporation, the estimated revenue from sale of power for 2013-14 is Rs.8656.10 lakhs and not Rs.10049.31 lakhs as stated by the Board. The per unit realisation from domestic category was reduced when compared to the level in 2010-11 as the minimum billing (30 units for single phase and 100 units for three phase) was discontinued in the tariff revision. Further, the consumption in domestic category is also reduced due to increase in tariff. Regarding reduction in agricultural connections, the Corporation has taken measures to disconnect the fake connections. The consumption in this category hence is reducing every year. In the case of LT IV also, the revenue was reduced due to reduction in demand charges for the category having connected load less than 10HP, where most of the LT IV consumers in the area are falling. The Corporation also given the actual demand for the months of June and July 2013, for which the average realisation is Rs.7.23 and Rs.7.48 per unit whereas the total demand is Rs.6.88 crore and Rs.6.29 crore respectively.

6. Regarding non-tariff income, the Corporation stated that details on non-tariff income is already furnished to the Commission and in order to meet the capital expenditure and revenue gap, they have ‘forced to utilise the surplus and therefore interest accrued on it will be negligible.

7. In the case of A&G expenses, the Corporation submitted that the rent for the land and building was fixed as per the powers conferred on to it as per

Kerala Municipal Act 1994. The rent fixed on a reasonable basis taking only 50% of the auction rates. Regarding depreciation, the Commission has determined the rates as per CERC norms and there is no error pointed out by the Board. Considering all the above, the Corporation requested to reject the petition of the Board.

8. KSEB in their reply to the review petition RP6/2013 filed by the Thrissur Corporation seeking review of the Order on ARR&ERC for 2013-14, stated that the Board has already sought the review of the ARR&ERC order for the Thrissur Corporation on the grounds of underestimation of revenue and imprudent expenditure. According to the Board, the review can be entertained only on the grounds of an apparent error or new or important facts or evidence that is relevant to the matter which in reasonable efforts could not be produced submitted. The Corporation sought review on the ground that financial obligations could not be met due to disallowance of expenses by the Commission. However, the licensee has a surplus of Rs. 57.13 crore as per the truing up orders of 2010-11. The Commission has considered all aspects in detail before taking a decision on the expenses to be passed on to the consumers and hence the review petition is not maintainable. If the expenses of the licensee is allowed as per KSERC (Terms and Conditions of Tariff for Retail sale of Electricity) Regulations, 2006, the expenses would have been substantially lower considering 2008-09 as the base year. The Corporation irrationally projecting the expenses high, in order to hide the undue surplus. The rent for the land and buildings are projected high. Though the Corporation has the right to fix the rent, it is not necessary that the licensee operations are to be conducted in that premises. The licensee is expected to occupy office premises at most competitive rates only and is duty bound to ascertain the prudence of the such expenses. In the case of disallowance of duty under Section 3(1) of Kerala Duty Act and other debits, the Board stated that reasons are given in the impugned Order itself. Regarding reasonable surplus, the Commission cannot provide the return as the ratebase is not approved yet. Regarding distribution losses, the licensee is trying to evade the regulatory scrutiny on the important performance parameter by brining electrical inspector as an arbitrator. The electrical inspector is not a statutory agency to determine the

distribution loss. The approved distribution itself appears to be high. Considering all the above, the Board requested to dismiss the review petition filed by Thrissur Corporation.

**Hearing on the matter**

9. Hearing on both the petitions were held on 8-10-2013 . Both the petitioners presented their contentions as given in the petition. In RP No. 5 of 2013, KSEB was represented by Shri. B.Pradeep who presented the petition. Thrissur Corporation represented by Shri.Jose, Electrical Engineer gave reply arguments on the petition. In RP No.6 of 2013, Shri. Jose presented the petition on behalf of the Thrissur Corporation. Shri. B. Pradeep representing KSEB presented the rejoinders. Written remarks of Thrissur Corporation and KSEB were made available only during the course of hearing. Accordingly, the Commission directed the petitioner/respondents to submit additional written reply/clarifications if any by 23-10-2013. Thrissur Corporation was also directed to furnish before the Commission, the details of cash and bank balance including all deposits as on 1-4-2013 and category wise demand raised for the months of April to September, 2013.

10. The Thrissur Corporation in its letter dated 19-10-2013 given reply on the rejoinder of KSEB on their review petition. In the reply, they have stated that the non-tariff income of Rs.750.45 lakhs in 2010-11 is on account of cash basis accounting where all the interest received was accounted for that year. Hence, the comparison made by KSEB in this regard with 2010-11 is not correct. In the case of surplus of Rs.5712.85 lakhs arrived at by the Commission after truing up of accounts till 2010-11, the Corporation stated that, the Commission had directed in the Order to keep the same as separate fund. In order to comply with the same, the Corporation has not appropriated the interest and principal amount and reinvesting the fixed deposits along with interest as and when it get matured. Accordingly, the Corporation did not project the interest on fixed deposits as part of the Non-Tariff income.

11. Regarding the rent booked under A&G expenses, the Corporation stated that rent is charged based on the directives given by the Commission on

performance based on commercial principles. According to the Corporation, the rent is determined based on the Fair Market Value principle, and fair market value as per International Financial Reporting Standard (IFRS) is that the quoted market price provides most reliable evidence of fair value. Similar concepts are available in the Income Tax Act and para 6.2 of Accounting Standard 10. Thus fixation of rent based on the auction rates as has been done by the Corporation is fair and correct. Similarly, the accounting of R&M expenses, advertisement income, capital works etc., for the works done by the licensee for the Corporation are on commercial principles. Accordingly, the recognition of rent is also on commercial principles. The rental values of the premises taken by the Board is not applicable in the Corporation's case. The accumulated surplus mentioned by the Board have been locked in/earmarked mainly to comply with the Commission's Order. Hence the actual cash and bank balance available to the licensee is only Rs.5.83 crore in the savings bank. Regarding the remarks of the Board on the distribution loss, the electrical inspectorate has conducted the loss study suo-motu for assessing the technical and commercial losses for recommending the remedial measures for supply system profitable. The inspectorate could have taken up the study as part of their mandate to minimise the energy loss so as to improve energy efficiency. It may be noted that even after increase in retail tariff, the revenue gap expected by the Corporation Electricity Department for the year will be Rs544.78 lakhs.

12. In the letter dated 23-10-2013, the Board has provided further comments on the petition of Thrissur Corporation and their objections on Board's petition. The Board contented that Thrissur Corporation is holding on to the surplus of Rs.5712.85 lakhs and not yet passed on to the consumers. It can be done by appropriate revision of BST. As per the truing up of accounts filed by the Corporation, an amount of Rs.789.86 lakhs of accumulated depreciation has been reversed as value of land has been reversed. Hence the surplus would increase to this effect. As pointed out during the hearing, the reduction in revenue in June and July 2013 is on account of reduction in sales and consequently there is reduction in power purchase cost.

**Analysis and decision of the Commission**

13. The arguments of the petitioners and the counter replies were heard and considered by the Commission. As has been held by the Commission on various occasions, the review petition has to be dealt with as per the provisions of the Electricity Act 2003. Clause 67(1) of KSERC (Conduct of Business) Regulations, 2003 provides that within 90 days of issuing of any decision, direction, order, notice, or other document or the taking of any action in pursuance of these regulations, the Commission may 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. The review has to be as per the provisions of Section 94(1)(f) of the Electricity Act 2003, as in Order 47, Rule 1, of Code of Civil Procedure.

14. In the petition filed by Thrissur Corporation seeking review of the ARR&ERC order for 2013-14, the petitioner stated that the Commission has disallowed Rs.748.73 lakhs on various heads and denying reasonable expenses projected by them. In their petition, no attempt has been made to show genuinely on grounds on which the review is required. The bottom line of the contention was that the projections made by the petitioner in the ARR&ERC petition were not accepted. The petition is more in the nature of an appeal than a review, though sound justification for altering the decisions were not given. In the case of employee cost, after having considered all aspects, the Commission has allowed 10% increase over the approved level in 2012-13, where as the licensee has projected about 31%. In the A&G expenses, the Commission has stated the position clearly that charging rent for the building and land cannot be a reciprocal arrangement for charging electricity supply to streetlights. Further, fixation of rent shall be on a reasonable level by complying with the practices existing in the State. The Commission though allowed the rent provisionally for the year 2013-14, has given directions for providing supporting documents. Regarding consultancy charges, the petitioner pointed out that the amount of Rs.38 lakhs is required for imparting training to accounting staff in financial techniques and skill development and computer applications,

which works out to Rs.1lakh per employee. However, the Commission allowed a reasonable level of Rs.10 lakhs for this purpose. The Commission also allowed Rs.2 lakhs towards the professional charge for the Chartered Accountant for helping to implementing double entry accounting system. In the case of advertisement expenses, the Commission has allowed 10% increase over the approved level in 2012-13, whereas the licensee has projected about 2.5 times higher. The distribution loss was approved at the same level as projected by the licensee in the petition. The revenue gap of Rs.544.98 lakhs now projected by the licensee, is mainly on account of inclusion of expenses which are not admitted by the Commission. Hence, the Commission is of the view that there are no reasonable grounds placed by Thrissur Corporation before the Commission for a review of the order.

15. However, it is pertinent to point out that the Commission in the impugned Order stated that the Corporation has considerably underestimated the revenue from non-tariff income. Though the Commission has sought clarifications on the estimation of non-tariff income, the licensee has pointed out that it is mainly due to accounting of interest on fixed deposits on an accrual basis. However, in the present proceedings, the licensee has stated that interest on fixed deposits was not included as part of non-tariff income. The reason now stated by the licensee is that as per the Commission's directions, the surplus has to be kept in a separate fund and the principle and interest was hence not brought in to the ARR. However, the Commission is not in a position to accept the reason given by the Licensee. Keeping funds in a separate account does not mean that it is removed from the accounts. In that case, the fixed deposits held by the licensee would have to be Rs. 57.13 crore, the same amount as the surplus arrived at by the Commission after the Truing up process. However, the present balance as per the details given by the licensee is only Rs.48.04 crore. The Commission has specifically noted the lower projection of non-tariff income for the year 2013-14 while processing the ARR&ERC petition of the licensee for the year 2013-14. It is also pertinent to point out that vide letter dated 2-3-2013, the licensee has clarified that though the Commission has directed the licensee to keep the revenue surplus in a

separate fund, due to revision of BST, the licensee has forced to utlise the surplus in order to meet the revenue gap. Hence, the interest accrued on it is negligible, when compared to the previous years. The licensee has also given a table showing utilisation of the surplus funds. The Commission based on this premise finalised the ARR&ERC of the licensee for 2013-14. It is to be noted that the licensee has attempted to misrepresent the facts and withheld the information before the Commission. The Commission views such misrepresentation of facts and withholding information seriously. Such under reporting of facts cannot be allowed and has to be dealt with under the relevant penal provisions of the Act. The person signing the affidavit has to be held accountable for such acts. The Commission, however, restraints from initiating any action for the time being.

16. The main contention of the Board in its petition was under estimation of revenue and over estimation of expenses by the Corporation, the result of which is the reduction in BST applicable to the Thrissur Corporation. As per the details furnished by the Corporation, a comparison of revenue from sale of power till August 2013 considered while fixing BST and actual revenue reported is as follows:

| | Average Monthly Revenue (Rs.lakhs) | |
|---|---|---|
| | As per BST Order dt. 27-5-2013 | Revenue as per actuals |
| April, 2013 | 661.96 | 723.40 |
| May, 2013 | 721.25 | 745.80 |
| June, 2013 | 721.25 | 687.70 |
| July, 2013 | 721.25 | 629.40 |
| August, 2013 | 721.25 | 687.10 |

17. The demand for the month of April at pre-revised tariff estimated and the actual is considerably different. The actual demand for the month of April and May is inclusive of higher charges for the energy on account of power restrictions, the benefit of which is passed on to KSEB as higher power purchase cost.

18. The Commission while determining the BST, the revenue at revised tariff for the months after April 2013, was taken as Rs.7933.80 lakhs for 11 months or Rs.721.25 lakhs per month. Based on the actual data, the average monthly demand from May to August, 2013 is about Rs.687.5 lakhs only. This could be due to lower sales during these months on account of heavy monsoon. In any case, the actual data on revenue from sale of power does not show that the estimates of revenue from sale of power used for determination of BST is way of target warranting a review at this stage. In any case, such discrepancies can be addressed as part of the truing up process.

19. Other issues such as non-tariff income, determination of rent, depreciation etc., are addressed in the impugned order.

**Orders of the Commission**

20. After considering the review petitions and the arguments of the respective respondents carefully, the Commission is of the view that there is no scope for review of the order dated 15-5-2013 and 27-5-2013 as sought by the petitioners. Based on the details of actual revenue given by the Thrissur Corporation, there is no urgent requirement to revise the BST this year. The adjustment of BST consequent on lower revenue or revenue gap if any in 2013-14 of the Corporation will be carried out prospectively at the time of truing up or when the actual data is available.

21. The review petitions are rejected and ordered accordingly.

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|---|---|---|
| **Sd/-** | **Sd/-** | **Sd/-** |
| **P.Parameswaran** | **Mathew George** | **T.M. Manoharan** |
| **Member** | **Member** | **Chairman** |

**Approved for Issue**

**Secretary**