

# THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

## THIRUVANANTHAPURAM

PRESENT: Sri.P.Parameswaran, Member  
Sri.Mathew George, Member

**December 20, 2012**

**RP No. 8 of 2012**

In the matter of  
Review of revision of Bulk Supply Tariff applicable to Thrissur Corporation as per Order  
dated 25-7-2012

Thrissur Corporation

- Petitioner

Kerala State Electricity Board

- Respondent

## ORDER

### Background

1. Thrissur Corporation (*hereinafter referred to as the Corporation or TCED*) filed a review petition on the Tariff Order dated 25-7-2012 of the Commission on the revision of the Bulk Supply Tariff (BST) so far as applicable to the petitioner. The petition was admitted on 19-10-2012. According to the petitioner, the revision of BST is a tariff shock to the licensee as the revised BST is Rs.6.11/kWh, which is about 62% higher. According to the petitioner, this is due to the surplus recognised by the Commission for the licensee in 2012-13, and the increase in BST has resulted in grave financial difficulties as the revenue gap based on the accrual principles after the revision of BST will be about Rs.6.97 Crore. The licensee further submitted that already 55.7MU has been purchased of the total 128MU approved for the year. Hence, for the balance 72.3MU, the BST should be reduced by Rs.0.96/kWh effective from 1<sup>st</sup> September, 2012.
2. The Corporation further contended that the determination of BST has been contrary to the Regulations. As per the KSERC (Terms and Conditions of Tariff for Retail Sale of electricity) Regulations 2006, if there is a surplus, it should be shared with the consumers as reduction in tariff. Hence, the surplus if any is to be passed on to the consumers of TCED and not to KSEB as increase in BST

3. According to the Corporation, the revised tariff is to be made applicable only 4 months from the date of filing the proposal as per Section 4(2) of the KSERC (Tariff) Regulations, 2003. Hence revision is to be made only from August 25, 2012 and the excess amount charged is to be refunded. Accordingly, the licensee has prayed to revise the BST to reflect the ground realities of operations and to grant other reliefs which the Commission deems fit.

### Hearing on the matter

4. The petition was heard on 27-11-2012 in the Office of the Commission. Shri. Kiran Vergis, Consultant for the petitioner, presented the petition for the Corporation. He has stated that the Corporation is aspiring to be an efficient utility delivering superior services to its consumers. The Corporation is now moving towards accrual based system of accounting. After the revision of BST, the Corporation is incurring operational loss on a monthly basis, leading to an unsustainable scenario, though it is trying to limit the expenses at the approved level. In the case of pension payments, the required funds from the Directorate of Urban Affairs is not available and the Corporation is meeting the expenses resulting in fiscal crisis. The Corporation requested the Commission to appreciate the ground realities and to allow the pension payment by the Corporation, which will be adjusted when the funds from the Government are available. According to the Corporation, based on accrual principles, the estimates of expenditure and revenue for 2012-13 with respect to the approved figures are as shown below:

	Revised Figures as per accrual principles	As per Approved ARR
	Rs. crore	Rs. crore
Interest & depreciation	2.81	2.63
O&M expenses	14.03	9.51
RoE	1.95	0.1
<b>Total distribution costs</b>	<b>18.78</b>	<b>12.25</b>
Power purchase	72.36	48.89
<b>Gross ARR</b>	<b>91.14</b>	<b>61.14</b>
Non-tariff income	7.56	6.30
Net ARR	83.58	54.84
Revenue	76.62	67.43
<b>Revenue gap</b>	<b>-6.97</b>	<b>12.59</b>

5. As shown above, the revision of BST is leading to non-recovery of expenses and regulated return. The BST was revised based on the principle of uniform Retail

Supply Tariff. However, the Government has declared subsidy for some group of consumers, which is not available to the consumers of the Corporation. Effectively it violated the principle of uniform retail tariff.

6. The Board has strongly objected to the review petition. Arguments of the Board were presented by Shri. B. Pradeep, Executive Engineer. He stated that the Corporation could not point out any apparent error in the impugned order to warrant a review. The argument that the principle of uniform retail supply tariff is violated is not correct as the tariff for the consumers in the State is determined by the Commission and the decision of the Government to provide subsidy will not alter the position of the Tariff.
7. According to the Board, the approved power purchase cost of the Board has increased from Rs.3083.53 crore to Rs.5201.64 crore, showing an increase of 69%, where as the BST increased by 62% only. Further the retail supply tariff of the Corporation has also increased simultaneously and hence the argument that there is a tariff shock is not correct.
8. The Board stated that the ARR&ERC order for 2012-13 of the petitioner is not challenged so far and it has become final. Any changes in the ARR&ERC can now be adjusted only in the truing up process. In the petition, the petitioner has projected inflated expenses so as to project a higher revenue gap than the approved level. As per the revenue figures given by the petitioner, the increase in tariff approved by the Commission is same as that in almost all categories except domestic. The lower rate of realisation of domestic consumers may be due to bimonthly billing or delayed implementation of the tariff order.
9. Prior to the revision of BST & RST, State Co-ordination forum discussed the issue of differential BST in detail and suggested to have uniform RST and differential BST. While accepting the principle, it was felt that in order to realise reasonable return for the licensees, the BST has to be regulated differentially for each licensee. This approach was adopted by the Commission in its order dated 13-12-2010, the same was later upheld by the Hon. Appellate Tribunal. In that order, the Commission has noted that the Board has to recover its reasonable cost and the licensees have to ensure cost recovery and reasonable return. The Board has also pointed out that the APTEL in various orders has approved the present methodology followed by the Commission.

10. On the issue of date of implementation of the Order, the Board has pointed out that as per the orders of Hon. APTEL in its order dated 11-11-2011, the Commission has been empowered to issue tariff revision orders suo motu to be effective from 1<sup>st</sup> of April every year and delay on the part of KSEB in filing the petition does not take away the inherent powers of the Commission. The Board has also objected to the contention of the Corporation that revision of BST results in cash deficit on a monthly basis. According to the Board, as per the data furnished by the petitioner himself, there is no cash flow problems. The Board also pointed out that the petitioner is holding surplus worth Rs.5712.85 lakhs as per the truing up orders of the Commission and as per the ARR&ERC orders for 2012-13 of the petitioner surplus funds amounting to Rs.6304.21 lakhs have been parked in the commercial banks. Hence, the apprehension of the petitioner that increase in BST will result in operational issues is not true and temporary gaps in revenue can be bridged through the surplus funds available with the petitioner. The Board requested to dismiss the petition on the above grounds,.
11. In the reply to the comments of the Board, the petitioner in letter dated 6-12-2012 stated that the Commission has to ensure the implementation of the subsidy under Section 65 of the Act. The right of the domestic consumers of Kerala to get subsidised electricity is applicable to domestic consumers of TCED as well and the Commission should take urgent cognizance of the fact and allow subsidised electricity to the domestic consumers of TCED and order payment of subsidy to TCED to compensate the implementation of subsidy decision of GoK. The Corporation reiterated the stand that the Commission determined uniform tariff for the consumers in Kerala, but the Retail supply tariff which is the actual tariff paid by the consumers in Kerala is not uniform due to subsidised electricity being provided to domestic and agricultural consumers of KSEB, which is in violation of the Commission's stated policy of uniform RST and differential BST.
12. The Corporation further stated that the interest on the surplus funds is treated as non-tariff income whereas, the return allowed for that capital is not commensurate with the cost of capital. The Corporation also objected to the argument of KSEB that power purchase cost has increased by 68.69% between 2009-10 and 2012-13, by stating that the Board has not given the complete information. The power purchase cost in fact has reduced from Rs.2.96 per unit to Rs.2.63 per unit during the same period. The increase in cost of power purchase of the Board is primarily for serving additional consumers of KSEB and it cannot be attributed to the growth in demand of TCED alone. In 2012-2013, the average power purchase cost

including the transmission cost works out to be Rs.3.01 per unit only and if the BST is set at that level, KSEB will ensure full cost recovery. The Corporation further submitted that by considering the revenue in September and October 2012, the revised estimate for the full year shows a revenue gap of Rs.5.54 crore. Hence a reduction in tariff of Rs.1.09/kWh for the remaining months is required to bridge the revenue gap.

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

13. The arguments of the petitioner and the respondent 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. 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. The application and scope of review under Order 47, Rule 1, of Code of Civil Procedure is as shown 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”.*

14. In the present review petition, the petitioner has sought review of the order of the Commission dated 25-7-2012 on the ground that the petitioner Corporation is incurring loss on account of revision of BST. The petitioner has given the details of revised Aggregate Revenue Requirements for the year 2012-13. According to the petitioner, the revision of BST will result in revenue gap of about Rs.5.54 crore in 2012-13. However, the Board has strongly objected to the petition primarily on the reason that the review petition is not maintainable. According to the Board, the

revenue loss of the petitioner on can be made up by the accumulated surplus over the past years.

15. Prima facie, the Commission is of the view that the petitioner could not provide sufficient grounds for a review under the provisions of law. The petitioner M/s. Trichur Corporation did not seek any review of the ARR Order for the year 2012-13 nor did they file any appeal against that in the appropriate forum within the prescribed time limit. Hence the ARR order for the year 2012-13 has become final. The main contention of the petitioner is that due to revision of BST, revenue after tariff revision is not sufficient to cover the costs. Though the petition is not strictly falls under the realm of review, the Commission has analysed the premise of the contentions of the petitioner. As per the revised estimates submitted by the petitioner vide letter dated 6-12-2012, the estimated revenue gap for 2012-13 will be Rs.5.54 crore as shown below:

	As per Approved ARR for 2012-13	Revised estimates as per letter dated 6-12-2012
	Rs. crore	Rs. crore
Interest & depreciation	2.63	2.82
O&M expenses	9.51	14.04
RoE	0.1	1.93
<b>Total distribution costs</b>	<b>12.25</b>	<b>18.79</b>
Power purchase	48.89	72.07
<b>Gross ARR</b>	<b>61.14</b>	<b>90.86</b>
Non-tariff income	6.30	8.94
Net ARR	54.84	81.92
Revenue	67.43	76.38
<b>Revenue gap</b>	<b>12.59</b>	<b>-5.54</b>

16. As shown above, the revised estimates for 2012-13 of the petitioner show an increase in distribution costs from the approved level of Rs.12.25 crore to Rs.18.79 crore ie., by about Rs.6.54 crore. So the expected revenue gap projected by the petitioner is mainly on account of the increase in distribution costs. As per the estimates given by the petitioner, the increase in power purchase cost is about Rs.23.18 crore in 2012-13, and the increase in revenue including the net approved surplus is about Rs.21.54 crore. Thus, there is no shortage on account of increase in BST if the increase in non-tariff income projected is also considered, provided the distribution costs are limited to the approved level.

17. Argument of the petitioner regarding subsidy from the Government and that the Retail Supply Tariff is different in Kerala, cannot be acceptable as the Government in its wisdom chose to provide subsidy to the consumers of KSEB. The petitioner may approach the Government for releasing the subsidy for its consumers, in which case, the Commission will consider the matter strictly under the provisions of Section 65. The other issues raised by the petitioner on retrospective application etc., are not maintainable and hence rejected.

#### **Orders of the Commission**

18. After considering the review petition and the arguments of the petitioner and the Board carefully, the Commission is of the view that there is no scope for review of the order dated 25-7-2012 as sought by the petitioner. The adjustment of BST consequent on lower revenue or revenue gap if any in 2012-13 of the petitioner can be considered at the time of truing up or when the actual data is available.

19. The review petition is rejected and ordered accordingly.

Sd/-

**P.Parameswaran  
Member**

Sd/-

**Mathew George  
Member**

**Approved for Issue**

**Secretary**