

**KERALA STATE ELECTRICITY REGULATORY
COMMISSION**

THIRUVANANTHAPURAM

Petition No: RP 08 / 2022

Present : **Adv. A. J. Wilson, Member (Law)**

In the matter of : Review petition filed by M/s Rubber Park India Private Limited against Order of the Commission dated 15.07.2022 in OP 42/2022 on the truing up of accounts for the year 2020-21

Petitioner : M/s Rubber Park India Private Limited

Hearing : Through Video Conferencing on 31.01.2023

Represented by : Sri. George.V.James, Managing Director
Sri. M S Samuel, CFO & CS
Sri. Anees T.M, Asst. Manager (Electrical)

Order Dated 28.02.2023

1. M/s. Rubber Park India (P) Limited (hereinafter referred to as RPIL or the licensee or petitioner), is a distribution licensee of the Kerala State Electricity Regulatory Commission (herein after referred to as the Commission) under the Electricity Act, 2003 for distribution of electricity to the Industrial units within the industrial park at Valayanchirangara near Perumbavoor in Ernakulam District.
2. The licensee has filed the present review petition against the Order of the Commission dated 15.07.2022 in OP 42/2022 on the truing up of accounts for the year 2020-21 as per Regulation 67 of the KSERC (Conduct of Business) Regulations, 2003. The Commission in the Order had approved total income of Rs.2003.68 lakh, total expenditure of Rs.1810.94 lakh with revenue surplus for the year Rs.192.74 lakh as per the provisions of KSERC (Terms and conditions for determination of Tariff) Regulations 2014 (herein after referred to as the Regulations). The licensee in the petition filed for truing up of accounts had arrived at a revenue deficit of Rs.26.55 lakh for the year 2020-21. The summary of the Order on the truing up of accounts for the year 2020-21 is shown below.

Table 1
Total Income and Expenditure after Truing Up of Accounts for 2020-21

Particulars	2020-21		
	Approved inARR & ERC	Truing Up Petition	Trued Up
	(Rs. lakh)	(Rs. lakh)	(Rs. lakh)
Revenue from Sale of Power	2132.04	1958.17	1958.17
Income from wheeling charges	0.21	7.75	7.75
Non-Tariff Income	12.69	3.60	37.76
Total Income	2144.94	1969.52	2003.68
Purchase of Power	1855.47	1646.11	1646.11
Employee Cost	55.99	67.21	42.03
R&M Expenses	38.63	47.50	47.50
A &G Expenses	22.93	73.54	32.20
Prior Period A&G Expenses	-	-	-
Depreciation	43.10	44.41	0.00
Interest & Finance charges and Bank Charges	2.19	0.75	0.75
Interest on Normative Loan	1.70	56.85	4.55
Return on Equity	42.04	43.67	37.80
Tax on ROE	-	16.03	0.00
Total Expenditure	2062.05	1996.07	1810.94
Net Surplus/(Deficit)	82.89	-26.55	192.74

3. In review petition, the licensee has sought review against the decision of the Commission in disallowing the following expenses.
- Interest on Normative Loan
 - Depreciation
 - Tax on Return on Equity
4. The Commission admitted the petition as RP 08/2022 and the hearing was conducted on 31.01.2023.

Hearing on the Matter

5. The matter was heard on 31-01-2023 through video conference mode. The licensee was represented by Sri.George.V.James, Managing Director, Sri. M S Samuel, CFO & CS and Sri. Anees T.M, Asst. Manager (Electrical). Sri.George.V.James explained the grounds on the review petition as mentioned in the petition.

- **Interest on Normative Loan**

6. The licensee had claimed Rs.56.85 lakh as interest on normative loan in the petition for truing up of accounts for the financial year 2020-21 for the gross capital of Rs.1043.78 lakh based on the provisions of the KSERC (Terms and Conditions for Determination of Tariff) Regulations 2018. The Commission had approved the interest normative loan balance as on 01.04.2019 considering the additions to fixed assets with effect from 2015-16 as per the Regulations. The licensee submitted that the asset which forms part of the asset base of the distribution licensee is necessarily to be funded by way of equity and/or loan and such equity and loan are to be serviced in the tariff. The capital cost of any asset is divided into equity and loan. It cannot be that the capital cost is neither funded by equity nor by loan. The licensee submitted the details of the prior period interest on normative loan and interest on normative loan for 2020-21 as tabulated below.

Table 2
Interest on Normative Loan

Description	Amount (Rs. lakh)
Prior period interest on Normative loan for theyear 2015-16	54.89
Prior period interest on Normative loan for theyear 2016-17	55.11
Prior period interest on Normative loan for theyear 2017-18	48.41
Prior period interest on Normative loan for theyear 2018-19	45.58
Prior period interest on Normative loan for theyear 2019-20	44.78
Sub Total of Prior period interest onnormative loan	248.77
Normative Loan for the year 2020-21	45.37
Total interest on Normative loan due till theyear 2020-21	294.14

7. Accordingly, the licensee requested the Commission to review the order dated 15.07.2022 and approve the interest on normative loan for the 70% of the approved paid-up equity capital of Rs. 900 lakhs and for 100% of the capital additions above Rs. 900 Lakhs from the FY 2015-16 to 2020-21.

- **Depreciation**

8. The Commission had provisionally disallowed the Depreciation for the years 2019-20 and 2020-21 and directed to submit the complete information on the Fixed Assets indicating therein, the Assets category, procurement date and cost, salvage value, useful life of assets, capitalization date, completed years as on 01-04-2020, remaining life of the assets, depreciation claimed till date etc. with two categories viz. (a) Assets below 12 years of age and (b) Assets with more than 12 years of age. The licensee has submitted the details and requested the

Commission for allowing the depreciation for the years 2019-20 and 2020-21.

- **Tax on Return on Equity**

9. The licensee in the review petition submitted that Tax on Return on Equity may be allowed as the licensee has paid Tax on RoE. The Commission in the Order had directed the licensee to establish with documentary evidence that the income tax amount has been paid from of the electricity distribution business. It was submitted that the same may be allowed considering the copy of the acknowledgement of filing of income tax return filed by the licensee.

Analysis and decision of the Commission

10. The Commission has considered the review petition filed by the licensee and the submissions of the licensee thereof. As per the provisions of Section 94(1) (f) of the Electricity Act, 2003 and Regulation 67 of the KSERC (Conduct of Business) Regulations, 2003, the Commission has been vested with the powers for reviewing its decisions, directions and orders, as per provisions of the Code of Civil Procedure 1908. The application and the scope of the review of an Order are circumscribed under Order 47, Rule 1, of Code of Civil Procedure, 1908. The review power, under the aforesaid provision is reproduced 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”.

11. Thus, as per the provisions of the Code of Civil Procedure 1908, review is justified on discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the parties 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 reasons. The petitioner has to provide such evidences for a

successful review.

12. Similarly, the provisions of the KSERC (Conduct of Business) (Amendment) Regulations 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”

13. As per Regulation 67 of the KSERC (Conduct of Business) (Amendment) Regulations 2014, any person or party affected by the decision, direction or order of the Commission may, within forty five days of making such decision, direction or order, apply for a review. In case, an opportunity of being heard is given to the party, the appropriate orders have to be passed within 30 days of the date of final hearing.

14. During the hearing the petitioner has raised the arguments for review of the impugned order on three counts viz., review of the decision on the interest on normative loan, the disallowing of depreciation and tax on Return on Equity. It can be seen that the petitioner could not place on record any material additional evidence supporting the grounds for review as mentioned above. The grounds raised in the petition and the arguments made are not new and hence not sufficient for warranting a review of the impugned order.

- **Interest on Normative Loan**

15. RPIL had claimed an interest on normative loan of Rs. 56.85 lakh in the Truing Up petition for the financial year 2020-21. Commission had analyzed the matter in detail and had allowed only Rs.4.55 lakh as the interest on normative loan. The

argument that the petitioner is entitled for interest on normative loan was agitated in the original proceedings and also at the time of truing up of accounts for 2015-16. Further, the licensee has escalated the matter before the Hon. APTEL by preferring an appeal (Appeal No.114/2018) under Section 121 of the Electricity Act 2003 against the order of the Commission. The Court had considered the case and had remanded the matter to the State Commission vide Order dated 18-06-2020 for re-consideration and fresh adjudication in accordance with law.

16. The Commission, after examining the matter in detail in the light of directions by Hon. APTEL and based on the material placed before the Commission as well as the provisions of the Tariff Regulation 2006 and Tariff Regulation 2014, vide Order dated 19-10-2020 ordered that the interest charges for the assets created from the year 2015-16 alone can be allowed. The relevant portion of the Order is given below.

“48. After examining the matter in detail in the light of directions by Hon. APTEL vide its Order dated 18.06.2020 and the material placed before the Commission and the provisions of the Tariff Regulation 2006 and 2014, the Commission came to the conclusion; (i) that the interest charges for the assets created during the year 2015-16 alone can be allowed, considering the fact that the licensee could not produce any material evidence for funding of the said assets using paid up equity capital. (ii) Asset addition of Rs.66.49 lakh during 2015-16 is hereby treated as normative loan and interest is allowed on pro rata basis as mentioned in Para 40 ibid. (iii) Regarding the contention of interest on normative loan for the existing assets as on 01.04.2015, considering the provisions of Tariff Regulation 2006 & Tariff Regulations 2014 and other facts as explained in para 29 to 37, interest charges on normative basis is not allowed. However, the same is subject to the observations mentioned in para 21 above.”

“21. Thus, there were no provisions for treatment of funding of existing assets as on 01.04.2007 in a normative manner, and the only treatment mentioned in the Regulation is on allowing actual basis or as approved by the Commission in case there is any loans. In other words, in the case of existing assets, whatever is approved in the previous occasions are to be taken as a base. On the other hand, the future addition of assets that is assets added after 01.04.2007 can be treated with normative debt-equity ratio of 70:30. Hence, normative treatment is possible for the addition of assets from 01.04.2007 to 31.03.2014 as per Regulations and interest charges on the said loan is allowable.”

17. The Commission had while truing up the accounts, adopted the practice of allowing normative interest on additions to fixed assets and had allowed interest on normative loan on the average normative loan balance.

18. The Commission notes that RPIL has filed an Appeal before the Hon'ble APTEL – Appeal No.145 of 2021 against the Order dated 19-10-2020 requesting to set aside the Order issued by the Commission. The Hon'ble APTEL has not yet issued a final Order in the matter. As such, the matter is subjudice. A final decision can be taken only after disposal of the appeal by Hon'ble APTEL.

• **Depreciation**

19. The Commission while issuing the Orders on the truing up of accounts for the years 2019-20 and 2020-21 had provisionally disallowed the Depreciation for the years due to the reason that the licensee had not properly submitted the details of depreciation as required for the proper analysis of the Commission. The licensee was directed to submit the complete information on the Fixed Assets indicating therein, the Assets category, procurement date and cost, salvage value, useful life of assets, capitalization date, completed years as on 01-04-2020, remaining life of the assets, depreciation claimed till date etc. with two categories viz. (a) Assets below 12 years of age and (b) Assets with more than 12 years of age.
20. The licensee had claimed Rs.30.12 lakh and Rs.44.41 lakh as the depreciation for the year years 2019-20 and 2020-21 respectively. The depreciation claimed by the licensee for the years is shown below.

Table-3
Depreciation claimed for the year 2019-20

Particulars	Rate (%)	Gross fixed assets			Depreciation		
		At the beginning of the year	Additions during the year	At the end of the year	Cumulative upto the beginning of the year	Deprecation for the year	Cumulative at the end of the year
Land & land rights	0	26.85		26.85			
Civil works for EHT Substation	3.34	9.26		9.26	4.97	0.42	5.39
HV Distribution system/Transmission line	5.28	99.00		99.00	56.68	1.80	58.48
HT Distribution lines	5.28	122.03		122.03	68.59	2.62	71.22
Sub-station equipments	5.28	483.07	5.98	489.05	267.19	15.82	283.01
Transformers	5.28	0.00		0.00	0.00		0.00
Switchgears, Control gear & Protection	5.28	3.50		3.50	0.32	0.22	0.54
Batteries	5.28	0.00		0.00	0.00		0.00
Others (Testing Equipments)	5.28	19.88	3.49	23.37	0.89	1.23	2.12
LT Distribution System	5.28					0.00	
Distribution lines	5.28	0.28		0.28	0.16		0.16
Sub-station equipments	5.28	0.00		0.00	0.00		0.00
Transformers	5.28	0.00		0.00	0.00		0.00
Switchgears, Control gear & Protection	5.28	31.20		31.20	19.14	1.07	20.21

Batteries	5.28	0.44		0.44	0.01	0.02	0.03
Others	5.28	0.00		0.00	0.00		0.00
Communication equipment	6.33	0.00		0.00	0.00		0.00
Meters	5.28	1.18		1.18	0.72	0.11	0.84
Vehicles	6.33	0.00		0.00	0.00		0.00
Furniture & fixtures for Substation	6.33	0.77		0.77	0.32	0.04	0.36
Office Equipments	6.33	0.00		0.00	0.00		0.00
Capital spares of HV & LT transmission	5.28	0.00		0.00	0.00		0.00
IT Equipments	15	2.02		2.02	0.89	0.27	1.16
Any other items		228.00	0.00	228.00	101.41	6.49	107.90
Gross Asset		1027.48	9.47	1036.95	521.29	30.12	551.41
Net Asset considered for depreciation		1027.48	9.47	1036.95	521.29	30.12	551.41
Work in progress			5.75	5.75			
Net Assets		1027.48	15.22	1042.70	521.29	30.12	551.41

Table-4
Depreciation claimed for the year 2020-21

Particulars	Rate (%)	Gross fixed assets			Depreciation		
		At the beginning of the year	Additions during the year	At the end of the year	Cumulative upto the beginning of the year	Depreciation for the year	Cumulative at the end of the year
Land & land rights	0	26.85		26.85			
Civil works for EHT Substation	3.34	9.26		9.26	5.39	0.31	5.70
HV Distribution system/Transmission line	5.28	99.00		99.00	58.48	2.65	61.13
HT Distribution lines	5.28	122.03		122.03	71.22	3.68	74.90
Sub-station equipments	5.28	489.05	4.15	493.20	283.01	23.74	306.75
Transformers	5.28	0.00		0.00	0.00		0.00
Switchgears, Control gear & Protection	5.28	3.50		3.50	0.54	0.18	0.72
Batteries	5.28	0.00		0.00	0.00		0.00
Others (Testing Equipments)	5.28	23.37		23.37	2.12	1.23	3.35
LT Distribution System	5.28					0.00	
Distribution lines	5.28	0.28		0.28	0.16		0.16
Sub-station equipments	5.28	0.00		0.00	0.00		0.00
Transformers	5.28	0.00		0.00	0.00		0.00
Switchgears, Control gear & Protection	5.28	31.20		31.20	20.21	1.71	21.92
Batteries	5.28	0.44		0.44	0.03	0.02	0.05
Others	5.28	0.00	0.63	0.63	0.00	0.02	0.02
Communication equipment	6.33	0.00		0.00	0.00		0.00

Meters	5.28	1.18	-0.53	0.65	0.84	-0.65	0.19
Vehicles	6.33	0.00		0.00	0.00		0.00
Furniture & fixtures for Substation	6.33	0.77		0.77	0.36	0.00	0.36
Office Equipments	6.33	0.00		0.00	0.00		0.00
Capital spares of HV & LT transmission	5.28	0.00		0.00	0.00		0.00
IT Equipments	15	2.02		2.02	1.16	0.00	1.16
Any other items		228.00	0.00	228.00	107.90	10.99	118.89
Fences, wells, tube wells	100	0.00	2.58	2.58	0.00	0.47	0.47
Gross Asset		1036.95	6.83	1043.78	551.41	44.41	595.82

21. The licensee has submitted the fixed asset register and other details along with the petition. The Commission has analysed the details in line with the provisions of the Tariff Regulations, 2018 and is of the considered view that, the depreciation admissible has to be computed strictly as per the provisions in the Regulations and the relevant provisions are extracted below

27 (2).

(a) depreciation shall be computed annually based on the straight line method at the rates specified in the Annexure-I to these Regulations for the first twelve financial years from the date of commercial operation;

(b) the remaining depreciable value as on the Thirty First day of March of the financial year ending after a period of twelve financial years from the date of commercial operation shall be spread over the balance useful life of the assets as specified in Annexure- I;

22. Accordingly, depreciation has to be worked out separately for the first twelve years as per the rates specified in the Regulations and for the remaining period depreciation has to be worked out based on the balance useful life. Accordingly, the depreciation admissible for the years 2019-20 and 2020-21 has been recalculated based on the details furnished by the licensee as shown below.

Table-5
Depreciation approved for the year 2019-20 (Rs.lakh)

Asset category	Rate of Depr. (%)	GFA on 01.04.2019	Addition FY 2019-20	GFA on 31.03.2020	Cumulative Depreciation on 01.04.2019	NFA as on 01.04.2019	Depreciat ion FY 2019-20	Cumulati ve Depreciat ion on 31.03.2020
Land & land rights	-	26.85	-	26.85	-	-	-	-
Batteries	5.28	0.44	-	0.44	0.01	0.43	0.02	0.03
Civil works for EHT Substation	3.34	9.26	-	9.26	4.90	4.36	0.21	5.11
Furniture & fixtures for Substation	6.33	0.77	-	0.77	0.36	0.41	0.03	0.39
HT Distribution lines	5.28	122.04	-	122.04	59.17	62.87	2.72	61.89

HV Distribution system/Transmission line	5.28	99.00	-	99.00	51.41	47.59	1.80	53.20
IT Equipments	15.00	2.02	-	2.02	0.83	1.19	0.22	1.05
LT Distribution System	5.28	0.28	-	0.28	0.14	0.14	0.01	0.15
Meters	5.28	1.18	-	1.18	0.58	0.60	0.02	0.60
Others (Testing Equipments)	5.28	19.88	-	19.88	0.89	18.99	1.05	1.94
Substation equipments	5.28	483.07	9.47	492.54	213.46	269.61	12.25	225.71
Switchgears, Control gear & Protection	5.28	34.70	-	34.70	16.68	18.02	0.75	17.43
Any other items	5.28	228.00	-	228.00	112.81	115.19	4.40	117.21
		1027.49	9.47	1036.96	461.22	539.42	23.49	484.71

Table-6
Depreciation approved for the year 2020-21 (Rs.lakh)

Asset category	Rate of Depr. (%)	GFA on 01.04.2020	Addition FY 2020-21	GFA on 31.03.2021	Cumulative Depreciation on 01.04.2020	NFA as on 01.04.2020	Depreciation FY 2020-21	Cumulative Depreciation on 31.03.2021
Land & land rights	-	26.85	-	26.85	-	-	-	-
Batteries	5.28	0.44	-	0.44	0.03	0.41	0.02	0.06
Civil works for EHT Substation	3.34	9.26	2.58	11.84	5.11	4.15	0.67	5.79
Furniture & fixtures for Substation	6.33	0.77	-	0.77	0.39	0.38	0.03	0.42
HT Distribution lines	5.28	122.04	-	122.04	61.89	60.15	2.72	64.61
HV Distribution system/Transmission line	5.28	99.00	-	99.00	53.20	45.80	1.80	55.00
IT Equipments	15.00	2.02	-	2.02	1.05	0.97	0.22	1.27
LT Distribution System	5.28	0.28	-	0.28	0.15	0.13	0.01	0.15
Meters	5.28	1.18	-	1.18	0.60	0.58	0.02	0.62
Others	15.00		0.62	0.62	-	-	0.06	0.06
Others (Testing Equipments)	5.28	19.88	-	19.88	1.94	17.94	1.05	2.99
Substation equipments	5.28	492.54	4.15	496.69	225.71	266.83	12.68	238.39
Switchgears, Control gear & Protection	5.28	34.70	-	34.70	17.43	17.27	0.75	18.18
Any other items	5.28	228.00	-	228.00	117.21	110.79	4.40	121.61
		1036.96	7.35	1044.31	484.71	525.40	24.44	509.15

23. Accordingly, the Commission hereby approves the amount of Rs.23.49 lakh and Rs.24.44 lakh as depreciation for the years 2019-20 and 2020-21 respectively.

- **Tax on Return on Equity**

24. RPIL in the petition for truing up had claimed tax on RoE of Rs.16.03 lakh. Commission had examined the submission based on provisions of the Tariff Regulation. As per Regulation 31(2) of the Tariff Regulations, 2018, the difference between the Income Tax on regulated business actually paid and that approved by the Commission in the Aggregate Revenue Requirement can be allowed subject to prudence check in the Truing Up process. The Commission noted that the licensee has not claimed any amount as Tax on Returns from Equity in the ARR&ERC. Further the Commission noted that, as per Regulation 31(3), the tax on any income other than from the regulated business shall not in any circumstances be allowed to be recovered through Aggregate Revenue Requirements.
25. The Commission has examined the licensee's claim in the petition and the audited financial statements of the Company and Form D P&L Profit & Loss Account of the Distribution Business. It was noted that the Company was not maintaining any separate or segment accounts for the electricity distribution business. The Commission had analyzed the details in para 84 of the Order and stated that it cannot be authentically established as to whether any income tax has actually been paid on the claimed return on equity. Accordingly, Commission had provisionally disallowed the claim of Rs.16.03 lakh towards Tax on Return on Equity in the order and directed that the RPIPL shall produce documentary evidence to prove that income tax on account of the electricity distribution business has actually been paid. The licensee as part of the review petition has submitted a copy of the Acknowledgement of filing of Income Tax Return. Commission has gone through the document and is not able to clearly identify the income tax on account of the electricity distribution business. Accordingly, the claim for Tax on RoE is rejected.
26. Thus, as detailed above, other than the point on depreciation, the Commission is of the considered view that the contentions in the petitioner are not within the ambit of a review petition and hence cannot be considered. The arguments made are already considered and hence neither no new facts are brought nor any apparent error is pointed out. Hence, the Commission approves the depreciation as per para 19 and the other contentions submitted in the review petition is rejected.

Orders of the Commission

27. In the light of the above analysis of all the points raised by the licensee, the provisions of the Electricity Act and Regulations thereof, the Commission decides on the review petition as follows.
- a) ***The decision on interest on normative loan can be taken only after the final decision of Hon'ble APTEL as the matter is subjudice.***
 - b) ***Depreciation of Rs.23.49 lakh and Rs.24.44 lakh is approved for the years 2019-20 and 2020-21 respectively.***
 - c) ***The claim made on Tax on RoE is rejected as the income tax paid on account of the electricity distribution business is not clearly identifiable.***
 - d) ***The Order in OP 61/2021 dated 26.03.2022 and OP 42/2022 dated 15-07-2022 with regard to the truing up of accounts for the years 2019-20 and 2020-21 is revised to that extend.***
 - e) ***Total cumulative revenue surplus till 2020-21 will be Rs.540.99 lakh (Rs.588.92 lakh – Rs.23.49 lakh – Rs.24.44 lakh)***
28. With the above, the petition disposed of. Ordered accordingly.

Sd/-

Adv. A. J. Wilson
Member (Law)

Approved for Issue

Sd/-

Secretary