

# KERALA STATE ELECTRICITY REGULATORY COMMISSION

## THIRUVANANTHAPURAM

### NOTIFICATION

No.1123 /Con. Engg/2023/ KSERC

Dated Thiruvananthapuram 29<sup>th</sup> May, 2023

In exercise of the powers conferred under sub section (1) of Section 181, read with Section 61 of the Electricity Act, 2003 (Central Act 36 of 2003), and all other powers enabling it in this behalf and after previous publication; the Kerala State Electricity Regulatory Commission hereby makes the following Regulations to amend the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021, namely: -

### **THE KERALA STATE ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR DETERMINATION OF TARIFF) (FIRST AMENDMENT) REGULATIONS, 2023**

1. Short Title and Commencement. –

- (1) These Regulations shall be called, the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (First Amendment) Regulations, 2023;
- (2) These Regulations shall come into force from the date of publication of the same in the Official Gazette of the State of Kerala.

2. Amendments in the Principal Regulations. - In the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021;

**A. Insert clause (ia) after clause (i) under sub regulation (1) of Regulation 25, namely;**

- (ia)** Capital cost of distribution assets considered by the distribution licensees, whose main business operation includes development of real estate; as a park developer or under any other authority or name, for estimation of the lease charges, rental charges, development charges or in any other name meant for recovery from

the allottees of the developed space or co-developers;

**B. Insert sub regulation (3a) after sub regulation (3) of Regulation 26 , namely;**

**(3a)** Where the equity and loan employed are not clearly identifiable, the total approved capital cost after adjusting for grants, regulatory surplus allowed for creation of assets and/ or consumer contributions will be treated as normative loan.

**C. Insert sub regulation (3) after sub regulation (2) of Regulation 28, namely;**

**(3)** The return on equity or return on Net Fixed Assets, as the case may be, eligible to the licensees as per sub regulation (1) and (2) above shall be allowed for the assets created after obtaining prior approval of the Commission for the Capital Investment Plan:

Provided that, in case the assets are created without prior approval of the Capital Investment Plan and approved on an ex post facto basis, the admissible return will be decided by the Commission on a case to case basis, after examining whether the assets are put to use for the intended purpose at the optimum level. If such assets are underutilized or unutilized, the admissible return will be reduced appropriately, as decided by the Commission.

**D. Insert the following proviso and explanation, after sub regulation (5) of Regulation 29 namely;**

Provided that the interest on normative loan eligible to the licensees as per Regulation 29 shall be allowed subject to the condition that, the assets created without the prior approval of the Capital Investment Plan and approved by the Commission on an ex post facto basis are actively in use for the intended purpose at the optimum level. If such assets are underutilized or unutilized, the admissible interest will be reduced appropriately, as decided by the Commission.

*Explanation:* For the purpose of Regulation 28 and 29, the expression “prior approval of Capital Investment Plan” means approval sought by the licensee for the Capital Investment Plan for a control period along with the approval of the Aggregate Revenue Requirement for the respective control period, from the Commission, in accordance with the Regulations prevailing for the respective periods.

**E. Insert Regulation 62A after Regulation 62 under Chapter VI (Transmission), namely;**

**62A. Adoption of tariff for the projects allotted through TBCB route.-**

Notwithstanding anything contained in this Chapter, the Commission shall adopt the tariff discovered under Section 63 of the Act, for the projects allotted through 'Tariff Based Competitive Bidding' (TBCB) route based on any policy formulated by the State Government, if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government:

Provided that the threshold limit of the estimated capital cost, above which the projects have to be executed through TBCB route, may be notified by the State Government as a matter of policy and intimated to the Commission in writing under Section 108 of the Act.

**F. Substitute the existing Regulation 87 (Fuel Surcharge Formula) and Annexure- 3 as follows: -**

**87. Fuel Surcharge adjustment. –**

- (1) The tariff or any part of the tariff determined in accordance with these Regulations shall not ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted by the Commission under the terms of the fuel surcharge formula specified in these Regulations.
- (2) Fuel surcharge is; the amount/ rate fixed by the licensee monthly or the amount/ rate approved by the Commission based on a petition filed by the licensee for a specific period, in terms of the formula specified in *Annexure 3* and the provisions of these Regulations, by way of recovery from or refund to the consumer, so as to enable the distribution business/ licensee to pass through to the consumer as additional expenditure or savings due to, -
  - (i) the difference between the actual cost of fuel and the cost of fuel approved in the Aggregate Revenue Requirement Order by the Commission for generation of electricity in the generating stations owned by the distribution business/ licensee; and
  - (ii) the difference on account of the change in the cost of fuel, between the actual cost of power purchase and the cost of power purchase from the generators having the Commission approved PPAs, as

approved by the Commission in the Aggregate Revenue Requirement Order.

- (3) The distribution business/ licensee may be allowed by the Commission to adjust by recovery or refund the fuel surcharge on monthly basis, at the rate determined by the Licensee in accordance with the formula specified in *Annexure 3* to these regulations:

Provided that the maximum rate of fuel surcharge in a month permitted for pass through to the consumers in the monthly/ bimonthly electricity bills, without the prior approval of the Commission, shall be limited to ten (10) paise per unit (kWh):

Provided further that the balance fuel surcharge amount, if any, in a month can be carried forward to the next month, subject to the condition that the total rate of fuel surcharge recovery during that month under consideration shall not exceed ten (10) paise per unit:

Provided also that such carry forward shall not exceed a maximum duration of six months. If the amount pending to be adjusted under the fuel surcharge is significant after three (3) months, the licensee may approach the Commission to adjust the amount through the regulatory process specified in sub regulation (7) below:

Provided also that the fuel surcharge, if any, approved by the Commission through the regulatory process specified in sub regulations (7) and (14) below, will be in addition to the monthly ceiling rates specified above.

- (4) The amount of fuel surcharge to be adjusted shall be:
- (i) The difference between the actual cost of fuel and the approved cost of fuel for own generation, computed for each month with respect to the month wise quantity of generation as approved by the Commission in the Aggregate Revenue Requirement Order of the distribution business/ licensee.
  - (ii) The difference between the actual cost of power purchase and the approved cost of power purchase, on account of the change in the cost of fuel for each month as approved by the Commission in the Aggregate Revenue Requirement Order of the distribution business/ licensee.
- (5) Every distribution business/ licensee shall, within twenty-five days

after the close of each month (n), calculate the amount of fuel surcharge to be adjusted from the consumers for the previous month (n) and publish it in the website of the licensee; the detailed calculation with supporting data and the proposed rate of surcharge to be adjusted from/ to the consumers through the electricity bill to be issued during the next month (n+2), on account of the adjustment of fuel surcharge for the previous month (n):

Provided that KSEB Ltd shall publish the monthly surcharge rate based on the provisional bills and the provisional energy accounts provided by SRPC/ SLDC, if the final bills and energy account for the month (n) are not received before 15<sup>th</sup> of the next month (n+1):

Provided further that KSEB Ltd shall get certified by the Chief Internal Auditor of the licensee, such data and the computed rate for fuel surcharge, and publish the same:

Provided also that the rate of fuel surcharge finalized for the month shall be rounded to the nearest paise:

Provided also that the licensee shall publish *at its website* the amount of fuel surcharge collected during the previous month, if any, for the information of the stakeholders:

Provided also that the distribution licensees who purchase electricity from KSEB Ltd in bulk for the retail sale, are exempted from the above requirement.

- (6) The rate of adjustment of fuel surcharge shall be expressed in paise per unit (kWh), and the surcharge amount shall be accounted separately along with the existing tariff for the energy billed to each consumer, on monthly or bi-monthly basis, as the case may be:

Provided that for consumers under bimonthly billing, the rate of adjustment of fuel surcharge for the bills issued in the month of (n+2) shall be the average of the rates fixed for the months of (n-1) and (n).

Provided further that for the bills issued during the month of June, 2023, rate for the bi-monthly consumers shall be the rate published for the month of April, 2023.

- (7) After adjustment of the fuel surcharge as detailed in sub regulation (3) above, if the licensee has excess fuel surcharge amount due to be recovered for the respective billing periods, the distribution business/

licensee may within forty-five days after the close of three months but not later than six months , file a petition before the Commission with all the relevant details, including the monthly surcharge already realized during the period, for the approval of the amount of outstanding fuel surcharge to be adjusted from the consumers along with the proposed rate and the period of such recovery:

Provided that the Commission may seek additional information or any other documents, if any required, from the distribution business/ licensee and the distribution business/ licensee shall file the details within 15 days to the Commission.

- (8) The Commission shall, after prudence check, approve the additional amount of fuel surcharge with modifications if any, to be adjusted from the consumers and specify the rate and the period of such adjustment.
- (9) The fuel surcharge adjustment shall be uniformly applicable to all the consumers in the State, except for the domestic consumers with connected load of and below 1000 Watts and having monthly consumption of and below 40 units.

Provided that the fuel surcharge as per these regulations, will not be applicable to consumers who are availing power at green energy tariff, for the quantum of renewable energy procured from the licensee.

- (10) Distribution licensees who purchase electricity from KSEB Ltd. in bulk for retail sale, -
  - (i) shall within fifteen days of the close of each financial year, provide to KSEB Ltd. the estimated month-wise details of the retail sale of energy for the current financial year to facilitate estimation of the fuel surcharge;
  - (ii) shall promptly include the fuel surcharge in the bills issued to the consumers in the month of (n+2), at the rates published by KSEB Ltd. and adjust the same from their consumers;
  - (iii) shall promptly remit to KSEB Ltd on a monthly basis, the amount of fuel surcharge collected from their consumers. If such distribution licensee fails to remit the amount of fuel surcharge collected from their consumers before 25<sup>th</sup> of the next month, KSEB Ltd is entitled to recover interest on the amount to be remitted, at the rates specified in the Supply Code/ PPA, as applicable.
- (11) The revenue recovered or refunded on account of monthly pass through of fuel surcharge and that recovered through the orders of the Commission based on the half yearly petitions filed by the licensee, if

any, shall be trued up along with the truing up petition for the relevant financial year. The difference between the amount of the provisional bills mentioned in the first proviso to sub regulation (5) above and the final bills for the months, if any, will be considered while finalizing the truing up of the accounts for the financial year.

- (12) The distribution licensee shall submit the details, in the formats specified, of the variation between the expenses incurred and the fuel surcharge adjustment amount recovered, and the detailed computations and supporting documents, as required by the Commission during the annual true up process.
- (13) The licensee shall indicate separately in the electricity bill, the rate and the amount included in the bill for the month on account of the fuel surcharge adjustment.
- (14) Any proceedings pending before the Commission pertaining to the fuel surcharge on account of the power purchase upto 31<sup>st</sup> March, 2023 and the orders issued by the Commission on account of these shall be governed by the original provision of Regulation 87 of the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021, as it stands prior to this substitution. Any orders issued by the Commission on this account after the notification of these amendment regulations have to be complied by the licensees and consumers as provided in the parent regulations and shall be in addition to the provisions under these amendment regulations.

By Order of the Commission

Sd/-

C R Satheeshchandran  
Secretary

## ANNEXURE – 3

### Fuel Surcharge Formula for Thermal Stations

The Formula for adjustment of fuel surcharge shall be as under:

The rate of fuel surcharge adjustment in **paise per kWh =  $(F \div E) \times 100$** ;

Where, -

**F** = the amount of fuel surcharge in rupees, which is the sum of Fg, Fp and A, (Fg and Fp shall be calculated for each station for the month (n));

**E** = Energy billed for retail sale to the consumers other than the domestic consumers with connected load of and below 1000 W and consumption of and below 40 kWh, in the month (n), based on the annual approved level of transmission and distribution loss;

**A** = Balancing term to take care of the difference, if any, in the energy sales;

**Fg** = the change in the cost of fuel for generation of electricity from own stations:

$$\mathbf{Fg = Qg \times (R1 - R2);}$$

Where,

**Qg** is the quantity of fuel used for generation of electricity from own stations:

**Qg** = (Approved station heat rate in kilo calories per kWh x Actual or approved energy, whichever is less; in MU x 1000) ÷ Calorific value of the fuel in kilo calories per kilo gram;

**R1** = Actual price of fuel in rupees per metric ton;

**R2** = Approved price of fuel in rupees per metric ton.

**Fp** = the change in cost of the energy purchased, due to the change in fuel cost:

$$\mathbf{Fp = Qp \times (P1 - P2);}$$

where,

**Qp** = Actual quantity of energy purchased or approved, whichever is lesser;

**P1** = Actual price of purchased energy in rupees per kWh;

**P2** = Approved price of purchased energy in rupees per kWh.

The indicative Format (Form – FSA) to be provided by the licensee every half year, with the details of monthly changes in the fuel cost is given in Annexure -3 (a).

## Explanatory Note

(This does not form part of the notification, but is intended to achieve the general purport)

1. The Commission has notified the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021 on 16<sup>th</sup> November, 2021 for the Control Period 2022-2027. Under Regulation 87 (Fuel Surcharge Formula) of these Regulations, the procedure for claiming the variations in the electricity charges incurred by the licensee due to uncontrollable factors such as; fuel charge and cost of power purchase, as envisaged in Section 62(4) of the Act, is specified. The Principal Regulations authorize the licensee to file the fuel surcharge adjustment petition in every quarter of the financial year. The fuel surcharge formula was also provided as Annexure- 3 to the Principal Regulations. During the FY 2022-23 the licensee has filed petitions in this regard for all the four quarters. The Commission has finalized the first quarter fuel surcharge rate and authorized the licensee to collect the same. The petitions for the subsequent quarters are under process.

Meanwhile, Ministry of Power (MoP), Government of India has issued the Electricity (Amendment) Rules, 2022 on 29<sup>th</sup> December, 2022, to further amend the Electricity Rules, 2005. In these rules, Rule 14 was introduced for the “Timely recovery of power purchase costs by distribution licensee”. As per this rule, the Appropriate Commission shall specify a price adjustment formula for the recovery of the cost, arising on account of variation in the price of fuel, or power purchase cost. Further such variation shall be automatically passed through the consumer tariff on a monthly basis. Such monthly automatic adjustment shall be tried up on annual basis.

The Electricity (Amendment) Rules, 2022 obviate the regulatory process and allow the licensees to recover the fuel surcharge automatically on a monthly basis. The Hon’ble APTEL has also ordered in many petitions to put in place a mechanism to timely adjust the variations in fuel price preferably on monthly basis. The licensee (KSEB Ltd) has also requested the Commission through a petition to allow automatic pass through of variations in the cost of power purchase on monthly basis as envisaged in the Electricity (Amendment) Rules, 2022.

The Commission is of the view that, the adjustment towards cost variations due to the variations in power purchase/ fuel cost need to be aligned with the provisions in the Electricity (Amendment) Rules, 2022 and balance the interests of the consumers of the State, which is having a unique consumer mix. Accordingly, a ceiling of 10 paise per unit is fixed for the automatic recovery of

fuel surcharge by the licensee, which is considered as an appropriate ceiling to avoid tariff shock to the consumers. Any recovery over and above the said ceiling shall be only with the approval of the Commission. Thus, provisions for allowing fuel surcharge after due regulatory process will be after three months and not later than six months, in case of under recovery due to ceiling prescribed and for prudence check during the annual true up process are included.

2. Chapters VI of the Principal Regulations detail the process of determining the tariff of the Intra State transmission system in the State. In the process, the transmission licensee has to provide a Capital Investment Plan for strengthening and augmenting the Intra State transmission system for meeting the requirement of power evacuation, load growth, reduction in transmission loss etc. for the control period along with the ARR petition. The details of which is specified in sub regulations (1) to (6) of Regulation 54.

Hon'ble Supreme Court vide judgment dated 23.11.2022, in Civil Appeal No. 1933 of 2022 (TATA Power Company Limited vs. Maharashtra Electricity Regulatory Commission & Ors.), has directed all the State Electricity Regulatory Commissions to frame Regulations under Section 181 of the Act on the terms and conditions for determination of tariff within three months from the date of the judgment. While framing these guidelines on determination of tariff, the Appropriate Commission shall be guided by the principles prescribed in Section 61, which also includes the NEP and NTP. Where the Appropriate Commission(s) has already framed regulations, they shall be amended to include provisions on the criteria for choosing the modalities to determine the tariff, in case they have not been already included. The Commissions while being guided by the principles contained in Section 61 shall effectuate a balance that would create a sustainable model of electricity regulation in the States. The Regulatory Commission shall curate to the specific needs of the State while framing these regulations. Further, the regulations framed must be in consonance with the objective of the Electricity Act 2003, which is to enhance the investment of private stakeholders in the electricity regulatory sector so as to create a sustainable and effective system of tariff determination, that is cost efficient, so that such benefits percolate to the end consumers.

On a detailed consideration of the matter it is noted that, even though the Commission has already issued the MYT Regulations for the control period 2022-27, the provision for approval of tariff of Intra- State transmission projects executed through Tariff Based Competitive Bidding (TBCB) route, executed based on appropriate policy to be framed by the State Government, are not specifically mentioned in the Regulations. In view of the directions of the Hon'ble

Supreme Court, the Commission decided to amend the Regulations to incorporate adoption of tariff under Section 63 of the Act for projects allotted through TBCB route, once the State Government frames appropriate policy and adopts a threshold project cost, above which TBCB route will be considered based on the approved transmission plan for the State.

3. Chapter IV of the Principal Regulations details the financial principles on which the ARR and tariff of the licensees are determined by the Commission. Regulation 26 (Debt- Equity ratio), Regulation 28 (Return on Paid up Equity or Net fixed Assets) and Regulation 29 (Interests, Finance charges and Carrying cost) specify the principles for allowing RoE, interest and finance charges to the investments made by the licensee. Accordingly, RoE is allowed based on the equity or as return on Net Fixed Assets (NFA), as the case may be. Further, interest and finance charge are allowed based on the loans arrived, subject to the debt equity ratio specified in Regulation 26.

While analyzing the ARR and True up accounts of many licensees, it is found that remarkable portion of the assets created by the licensees are underutilized or unutilized. It is also noticed that the licensees have considered a high business volume for the prospective years and created these assets, without prior approval of the Commission for the Capital Investment, as mandated under the Tariff Regulation notified by the Commission, from time to time. This type of unutilized asset creation brings burden on the consumers, in view of the returns to be provided for such imprudent asset creation. The Commission is of the view that, the asset creation should be in line with the realistic prospective business growth; and the mechanism to ensure the same is to seek the approval of the Commission prior to making such investments, as per the tariff Regulations in force, by the licensee. However, it is noted that, some licensees create the assets without seeking approval in time as mandated in the Regulations and thereafter seek approval of the capital investments in an ex post facto basis. Such practices results in by passing the Regulatory process that is required to ensure optimum and prudent investments. Any such assets created in excess of the requirements compared to the current business growth and without the mandated prior approval of the Commission cannot be promoted through guaranteed RoE/ return on NFA/ interest on normative loans. To balance the interests of the consumers and the licensees, the Commission intends to amend the relevant Regulations.

It is also noted that many small distribution licensees have acquired the license to facilitate their main business of development of real estate to facilitate industrial development in the State. As part of the main business, the developed space is allotted to prospective industries/ IT entrepreneurs etc. by charging/ levying

appropriate lease rentals/ rent/ development charges etc., to recover the cost of infrastructure put in place. At the same time, the Commission is allowing recovery of capital cost incurred for establishing electricity distribution infrastructure in the area by way of depreciation, interest and finance charges, return on equity on net fixed assets etc. An appropriate mechanism is to be put in place to avoid double recovery of the cost related to capital investment and amendments to this effect are incorporated.

4. Consequently the Commission has published a draft of this amendment regulations for information of the stakeholders on 26<sup>th</sup> April, 2023, inviting suggestions and objections, if any. A public hearing was held on 24<sup>th</sup> May, 2023. Many stakeholders including licensees provided verbal and written suggestions. The Commission after considering all such suggestions and objections, finalized the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (First Amendment) Regulations, 2023.

This notification is intended to achieve the above object.