

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT: Sri. K.J.Mathew, Chairman
Sri.C.Abdulla, Member
Sri.M.P.Aiyappan, Member

March 22, 2010

Petition No. OP16/2010

In the matter of

Amendments in the KSERC (Fuel Surcharge Formula) Regulations, 2009

Kerala State Electricity Board

- Petitioner

ORDER

Background

1. Kerala State Electricity Board (*hereinafter referred to as KSEB or Board*) filed a petition for making certain amendments in the KSERC (fuel surcharge formula) Regulations, 2009 notified by the Commission. According to KSEB, while providing comments on the draft regulation, KSEB sought to include some additional issues which were not considered while finalizing the regulation by the Commission. According to KSEB, if the regulation is implemented in the present form it will upset the generation and power purchase schedule. KSEB wants to include all purchases including those which are not from the approved sources, if such sources are cheaper than approved sources. Energy from sources such as UI, traders, day ahead market etc., are regularly used to substitute costly generation from internal Liquid fuel stations. According to KSEB the intention of the regulation is not to encourage the efforts of replacing costlier approved sources with less costly alternate sources. KSEB further submitted that they are the sole generator and power procurer of all consumers. A certified copy of the regulation was yet to be communicated and the petition is filed after downloading the same from the website of the Commission.

Hearing on the petition

2. The Commission admitted the petition and a hearing was held on 10-3-2010. The Commission also issued a press release to inform the public on the hearing and placed a copy of the petition in its website for inviting comments. In the hearing held on 10-3-2010, representing KSEB, the Chief Engineer (commercial

& tariff) presented the contents of the petition. He reiterated the stand of KSEB to include purchases from all sources in the formula so as to have quarterly adjustment. According to him, KSEB is making efforts to replace power purchase from costly stations with cheaper stations wherever available and the financial burden will be substantially high if the additional liability is not passed on to the tariff. KSEB also raised the point that certified copy of the regulation was not made available to them. According to them regulations posted in the website cannot be relied, as it can be tampered with.

3. However, the contentions of KSEB were strongly objected to by the representatives of HT-EHT Association and some industrial consumers. Representing the HT-EHT Association, Shri. George Thomas stated that KSEB cannot argue that all the comments raised by KSEB are to be included while finalizing the regulations. KSEB is simply repeating the arguments made during the public hearing held for the finalization of the regulations. According to him, the purpose of the regulation is to accommodate fluctuations in fuel prices. If all expenses are passed on to the consumers on a quarterly basis, the very purpose of power purchase approval in ARR is questioned. As per section 62(4) of the Electricity Act 2003, only changes in fuel prices needs to be considered and all other additional expenses are to be considered while truing up. In other states also, only the fuel price changes for the approved purchase are considered. Hence he requested to reject the petition of KSEB. Representative of M/s Binani Zinc Limited also raised similar objections. Another objector M/s TCC Limited stated that instead of fuel cost adjustment, variations due to other factors shall not be allowed. Further, T&D loss factors should also be considered while passing the additional burden to consumers.

Analysis of the Commission

4. The Commission has notified the said regulation after following the due procedure of previous publication as provided under notification No.GSR 387(E) dated 9th June, 2005 of the Ministry of Power, Government of India and the subsequent Order issued by the Commission dated August 9, 2005 on the '*Procedure for notification of regulations made by the Commission*'. As per the law in force, the publication of the Regulations in the Official Gazette was made in exercise of the powers to make Regulations after previous publication shall be conclusive proof that the Regulations have been duly made. Generally as a courtesy, the Commission forward sufficient number of copies of the notified regulation to the licensees and other concerned, once it is received. Further sufficient number of copies of the regulations are also made available to the Government for laying in the Legislative Assembly as may be required. There is

no procedure laid down to provide certified copy of a regulation, as in the case of Orders of the Commission. Hence, the Commission is not in a position to accept such arguments of the Board. Further, the argument that the information available in the website cannot be relied on as it is amenable to tampering, is also without merit. Website is used as a major medium for dissemination of information to the public by the Commission and many other public authorities. Tender schedules of the Government and PSUs are available only in the websites. The Commission also issued gazette notification of the Regulations. Hence, the arguments of the Board are quite surprising and cannot be accepted.

5. The written comments made by KSEB vide letter dated 14-10-2009 and submissions and suggestions made by others during the public hearing held on 2-12-2009 were considered in detail by the Commission before finalizing the regulation. In the present petition, Board did not make any new or additional points other than those given earlier. The said regulation is notified by complying with the provisions of section 62(4) of the Electricity Act, 2003. As per Section 62(4) tariff cannot be amended more frequently than once in a financial year except in terms of fuel surcharge formula as may be specified. Thus, the Act provides for certainty and predictability in tariff with provisions such as Section 62(4) and section 61(g) ie., Multi Year Tariff Principles. Fuel surcharge formula shall not be construed as a one stop solution for mitigating all risks. It is for the limited purpose of transferring the additional liability arising out of fuel risk alone. It is not intended to transfer the burden of hydro-thermal risk or demand risk without any prudence check on a quarterly basis.
6. According to the Commission, the provisions in the regulation neither bar nor limit KSEB in optimizing generation and power purchase using all the available resources. In fact providing supply at lowest cost is the duty cast upon KSEB by virtue of the deemed licensee status they hold and considering the fact that it is a public entity and a 'sole generator and power procurer for all' as claimed by it. The Commission is of the strong view that KSEB will be failing in its duty as a licensee under the Act if supply is not provided at the lowest cost considering all the options available by economizing the use of resources. The Commission further supports all measures to source cheaper sources than those approved in ARR.
7. Further, excess/short fall in hydro availability can be reasonably known only at the end of the year in question. There are provisions in the regulation to address the hydro thermal mix variations immediately after the end of the financial year. The Commission provided enough flexibility in the regulation to address the issue. KSEB is unduly concerned with failure of hydro, where as the situation of

excess hydro is not addressed in their arguments. Another argument of KSEB is that there should be a mechanism to pass on the additional commitment on account of purchase from alternate sources due to non-availability of approved sources and liability on account of purchasing from cheaper sources by backing down of approved costlier sources. In both the situations, it may be noted that, it cannot be said that liability is substantial since cost of procuring from approved sources is already provided in the ARR. In fact, KSEB may stand to gain if costly approved sources are substituted with cheaper sources, till the year end adjustments are made. The impact of changes in demand may be either due to the inaccuracies of demand forecast or due to seasonal factors. Demand risk cannot be addressed in the fuel surcharge formula regulations, as the scope of the regulation is limited to fuel price variations. The additional burden if any on any of these factors are considered once the financial year is over.

8. According to the Commission, there should be an opportunity to verify whether the transactions are prudent and economical. This will be possible only if a complete picture of the expenses are available after the close of the financial year. Consumers cannot be left to a situation of shouldering all imprudent expenses especially in a situation giving no choice for the consumers. As claimed by KSEB, they are in the business for the last 50 years, no where in the history, such facility for immediate pass through of expenses was available. It is difficult to comprehend suddenly how KSEB is so much aggrieved with the introduction of the fuel surcharge formula.

Orders of the Commission

9. Considering the observations made above and the submissions and arguments made by the parties, the Commission is of the view that, the petition is to be rejected as it is devoid of merits. As provided in the said regulations, KSEB shall approach the Commission if any difficulty is encountered in implementing the regulation. The petition is disposed of accordingly.

Sd/-
M.P.Aiyappan
Member

Sd/-
C. Abdulla
Member

Sd/-
K.J. Mathew
Chairman

Approved for Issue

Sd/-
Secretary