

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

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

August 7, 2010

Petition OP 22 / 2010

In the matter of

Suo-motu petition for withdrawl of fuel surcharge

ORDER

Background

1. As per the order dated 5-4-2010 the Commission has allowed the Kerala State Electricity Board (*hereinafter referred to as Board or KSEB*) to impose 25 paise surcharge from April 2010 for six months to recover the additional cost of fuel incurred during April 2009 to September 2009 as per the KSERC (Fuel surcharge formula) Regulations, 2009. The Commission received representations from the General Secretary, Confederation of Consumer Vigilance Centre (CVC) and the President, Udarasiromani Road Residents Association that the surcharge of 25 paise imposed shall be withdrawn since the exact revenue requirements to meet the additional cost cannot be assessed in the absence of filing of actual accounts of the Board for the period 2007-08 and 2008-09. Further it was requested that the decision of the Board to include Rs.400 Crores per year totaling Rs.2000 crore as a write off to the consumers' and the electricity duty collected from the consumers and kept with the Board without transferring to the Government, are also to be enquired. Based on these, they have requested the Commission to withdraw the surcharge imposed through improper accounts produced by the Board.
2. The Commission considered the above requests and sought remarks from the Board to be furnished by 7-7-2010. However, no reply was received from the Board. Hence, the Commission in the meeting held on 17-7-2010 discussed the matter and decided to treat the matter as a petition and issued notices to the Board and the parties. The public hearing was fixed on 6-8-2010 and press release was issued informing the public/stakeholders to respond on the petition. As a reply to the notice, the Board has filed reply vide its letter dated 4-8-2010.

Public hearing on the matter

3. In the public hearing held on 6-8-2010, the Board was represented by the Chief Engineer (Commercial & Tariff). He raised an objection that as per the KSERC (Conduct of Business) Regulations, 2003 there is no provision by which complaints of the consumers can be treated as petition. The proceedings before the Commission is dealt under clause 21, 22, 23 and 24 of the Regulations. However, the complaints neither fall in any of the provisions under clause 22 nor followed provisions of clause 24 of the Regulations. Hence the act of the Commission is not maintainable under the provisions of Regulations.
4. Shri. Ayyappan Nair, General Secretary, Consumer Vigilance Centre, stated that three issues were brought before the Commission. The consumers have no information about the accounts of the Board. The accounts for the year 2007-08 and 2008-09 are not yet provided in which substantial surpluses are said to be available. It is stated that about Rs.2000 Crore receivable from the Government is passed on to the consumers @Rs.400 crore per year. Though the Government has declared a subsidy of about Rs.54 crore to the Board for exempting domestic consumers having consumption less than 120 units, the consumers have no knowledge about the subsidy as no details are given in the bills. By presenting his own bill, he had shown that the surcharge amount is not given in the bills. Thus, the amount of fuel surcharge and the amount of subsidy given by the Government are not known to the consumers or the Commission. In such circumstances, as has been done in the past the Board will merrily write off the receivable from the Government, which will ultimately have to be borne by the consumers only. Shri. T.K.Bhaskara Panicker, the President, Udarashiromani Road Residents Association also endorsed the arguments of the General Secretary, CVC.
5. In the written and oral reply to the petition, the Board stated that complaints are based on news paper reports and not against the implementation of the orders by KSEB. The fuel surcharge was imposed based on the order of the Commission after a public hearing held on 27-1-2010. All the consumer groups including the present complainants were given the opportunity for raising objections. KSEB issued instructions to field offices to collect the fuel surcharge with effect from April 2010 and also exempt domestic consumers having consumption upto 120 units. The Board is collecting and compiling the details of surcharge from the field offices on a monthly basis. Since major portion of the consumers are billed on a bimonthly basis fuel surcharge from June 2010 will

only give the true picture. Considering the billing pattern it will take even upto November or December 2010 to get the complete details on the surcharge collected. Fuel surcharge collected till June will be intimated to the Commission by 10th August 2010.

6. The Board further contended that there is no reason to review the order since the income from surcharge is already treated as part of ARR &ERC for 2010-11. KSEB is facing acute financial crisis and had availed overdraft of Rs.950 crore in the month of July and it may go up to Rs.1000 Crores in August 2010. The Chief Engineer representing the Board, further stated that by requesting for withdrawal of surcharge, the petitioners have sought a review of the Order of the Commission. However, as held by the Commission in the previous occasions and as per Section 94, no character of review is available in the present petition, so it should be rejected.
7. In reply to the specific complaints of CVC & President, URRRA, the Board stated that Government is aware of the duty being collected and retained by KSEB. While making additional borrowings for new capital projects, KSEB is taking into accounts the duty retained by KSEB as internal resource and only balance is borrowed. Hence all consumers are benefitted out of this borrowing. As per the accounts of KSEB, which is audited by C&AG, KSEB has revenue deficit. Hence, there is no merit in the arguments of the petitioners. KSEB requested to dismiss the petition since any decision to withdraw surcharge will aggravate the finances of the Board.
8. The General Secretary, CVC in his reply to objections pointed out that as shown in the objections of the Board that clause 23 of the Business Regulations provide for the inherent *suo-motu* powers of the Commission which also provides that if deems necessary, the Commission may assign any person or officer of the Commission to present the case before the Commission. Hence the objections of the Board is not maintainable. He further stated that in the reply given by the Board, no specific answers to the issues raised were given. If the arguments of the Board are to be accepted the Commission has to wait till November or December to get the complete details on the surcharge collected and it is not possible to ascertain that the Board has over charged or undercharged. In the absence of accounts of previous years, it is even not known that surcharge is required. Thus, the Board is attempting to withhold information not only from the consumers but also from the Commission, who has to take a decision on this issue.

Analysis of the Commission

9. The Commission considered the objections raised by the Board carefully. As per the contention of the Board, the petition is not maintainable since it does not fall under any of the provisions of KSERC (Conduct of Business) Regulations 2003. The Commission is of the view that the arguments of the Board are not sustainable. Though the arguments in the petition are based on newspaper reports, the Commission decided to take further evidence and decided to treat it as a petition. As per clause 23, the Commission can initiate proceeding *suo-motu* through a Notice of enquiry, and issue notices to interested parties for filing replies and rejoinders. The Commission in the present case initiated action *suo-motu* since the replies of the Board were not forthcoming and hence issued notice to the Board for proceeding on the issue as an enquiry. Further, press release was issued to invite replies and rejoinders and the details were uploaded in the website of the Commission for the information of the public. Hence if deemed fit, the Commission can initiate action *suo-motu* for any matter brought before it and hold the enquiry.
10. Another objection raised by the Board that since the petitioners wanted to withdraw surcharge, it shall be in the nature of a review petition. According to the Board, the petitioner could not point out any apparent errors or any other relevant points for review, hence the petition is not maintainable and needs to be rejected. In this score also the contention of the Board is misplaced. In the petition it was argued that the surcharge imposed to be withdrawn based on the reasons that the Board is withholding details which are relevant to understand the financial position of the Board and as directed in the order dated 5-4-2010 details are not provided to the consumers. As argued by the Board, the contentions of the petition in no way resemble a review and accordingly the Commission did not treat it as a review petition. The Board themselves assumed that it is a review petition and demanded that it should be rejected.
11. During the hearing, the Commission sought specific queries on the details of surcharge collected, the details included in the bills and the subsidy received from the Government. As per the order dated 5-4-2010, the Board has to provide tariff category wise monthly statements on the collection of surcharge after the close of 15 days of every month. Even after four months of implementation of surcharge, no data were produced before the Commission. The Commission pointed out that the Section 65 of the Act was included by the Parliament primarily to protect the finances of the licensees. As per Section 65 of the Act the

Commission has to state the manner of payment of subsidy. After receiving the copy of the Government Order on 21-4-2010 allowing subsidy of Rs.54 Crore for exempting the domestic consumers having consumption upto 120 units per month, the Commission sought the details from the Board vide its letter dated 12-5-2010, on the monthly requirement of subsidy for deciding the manner of payment of subsidy. However, the Board did not respond to the letter. It is also pertinent to bring to the notice here the Thirtieth Report of the *Parliamentary Standing Committee on Energy* recommended that it would be useful if the important details like cost of electricity, subsidy given to the consumers thereon etc., are clearly mentioned in the bills issued to the consumers to educate and make them aware of the money being spent by the Government for making them available the electricity at a particular rate. However, from the bill furnished by the petitioner no entries are made about subsidy. In the absence of such details how the Board would finalise their total demand and the amount to be claimed as subsidy cannot be easily made out.

12. The Chief Engineer agreed that the Commission has raised pertinent issues. On a specific question of the Commission whether the Board has received the subsidy from Government, the Chief engineer replied that till now no payment was received and correspondence with the Government is going on. He also agreed that the benefit of subsidy was extended to the consumers without receiving advance subsidy, clearly flouting the provisions of Section 65 of the Act. He stated that as soon as the order on surcharge was received, the Board had issued instructions to all field offices to separately show the surcharge details in the bills. He also stated that all the Electrical Sections of the Board are computerized and the billing software being used has the facility to incorporate the surcharge details separately in the bill. Notwithstanding, the Board could not supply the details. They did not express any difficulty while fixing the date for submission of details. It would appear that they did not protest about the time limit as they had no intention to comply with it.
13. The Commission considered the arguments and reply of the parties. In the present proceedings, the Commission normally would have dismissed the petition especially because the surcharge income is reckoned in the ARR&ERC for 2010-11. However, the replies given by the Chief Engineer have brought serious lapses on the part of the Board in implementing the orders of the Commission. In the Order dated 5-4-2010, the Commission has directed that :

“KSEB shall after the close of 15 days from each month provide the Commission with the details of surcharge collected from each consumer category separately to the Commission promptly. As soon as Rs.190 Crore

is recovered, KSEB shall inform the Commission promptly and the Commission shall terminate the collection of fuel surcharge by all licensees. All licensees shall indicate the rate of surcharge and the total amount as surcharge separately in the bills issued to the consumers.”

14. It was also provided in the Order that KSEB shall approach the Commission if any difficulty arises in implementing this Order. It is brought to the notice of the Commission that the pertinent details such as amount of surcharge and details of subsidy are not informed to the consumers. It is clear that the demand was not raised for the subsidy portion in the bills issued to the consumers. It is not known in such situation how the exact amount of subsidy will be claimed from the Government. From the reply of the Chief Engineer, it is clear that after issuing instructions to the field office, Board did not bother to see whether such instructions are actually being implemented in a proper manner. Even after four months of implementation, no details on the collection of surcharge were given to the Commission. The contention of the Board that because of bimonthly billing details will be available only from June is not acceptable. The Chief Engineer submitted that computerization is complete and relevant details can be incorporated in the software. Since the Board is following staggered billing it should be possible to compile the details every month. Even if the contentions of the Board are accepted in the case of bi monthly billing, the Board failed even to provide the details of monthly billed consumers, like industrial and commercial consumers, the consumption of such categories being substantial.
15. Regarding the subsidy receivable from the Government, even after reminding the Board by the Commission, no steps seem to be initiated to bring to the notice of the Commission. This is critical, if the finances of the Board are red as reported. In 2006-07 the rebate of 20 paise offered by the Government and provided by the Board the subsidy amount still remains to be collected by the Board and hence remains as a liability. The reply given by the Chief Engineer amply brought to light the fact that the Board could not manage its information systems to implement the order on fuel surcharge in the present form. The Commission has ordered collection of a total amount of Rs.190 crore towards surcharge but it is not known whether the amount has already been collected. The failure to obtain the subsidy also creates a carrying cost and drag on the finances of the Board. Additional costs like carrying cost will have to be passed on to the consumers. The Commission cannot be a mute spectator to the proceedings of flouting the directions and orders of the Commission as well as the clear provisions of the Act. Based on the details brought before the Commission by the Chief Engineer,

the Commission is of the view that the contentions of the consumers cannot be ruled out.

Order of the Commission

16. Based on the arguments and replies given by the Chief Engineer of the Board, the Commission is of the opinion that there is no justification to continue the billing of surcharge based on the Order dated 5-4-2010 in the absence of proper implementation of the Order. Hence the Commission is constrained to withdraw the fuel surcharge of 25 paise from 31-8-2010. No fuel surcharge shall be applicable for consumption from 1-9-2010 onwards. However, with reliable billing and subsidy details the Board can seek a review of this Order. Ordered accordingly.

Sd/-

M.P.Aiyappan
Member

Sd/-

C. Abdulla
Member

Sd/-

K.J. Mathew
Chairman

Approved for Issue

Secretary