

# KERALA STATE ELECTRICITY REGULATORY COMMISSION

## THIRUVANANTHAPURAM

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

**August 31, 2010**

Petition OP20/2010

In the matter of

Notifying fresh regulations under section-61 of the Electricity Act-2003 for preparing regulatory accounts for filing ARR&ERC, Truing Up of accounts for regulatory approval and for filing Tariff Petitions

Kerala State Electricity Board

- Petitioner

## INTERIM ORDER

### Background

1. Kerala State Electricity Board (*hereinafter referred to as the Board or KSEB*) filed a petition with following prayers :
  - i. Notify the regulation on 'Terms and Conditions for Determination of Tariff' as per the section-61 of the Electricity Act-2003 and also as per para 5.3 of the National Tariff policy, so that it can be made applicable to an entity not unbundled like KSEB to file regulatory accounts for approving Truing Up petitions, Tariff petitions, ARR&ERC submission etc.
  - ii. Notify the regulation on reduction of cross subsidies under section 61(g) of the Electricity Act-2003.
  - iii. Specify the regulation on methods and principles for fixation of tariff under section-45(2) (a) and section 45(5) of the Electricity Act
  - iv. Determine realistic distribution loss reduction trajectories for KSEB system.
2. After receiving the petition, the Commission issued notices for inviting objections and comments from the public through press release and also uploaded the

petition on the website of the Commission for the information of the public. A public hearing was scheduled on 11-8-2010 at the Office of the Commission.

3. During the hearing held on 11-8-2010, representative of the Board presented their case. According to the Board a consolidated norms for determination of tariff is required for the Board as established by the historical events. The Board is functioning as a generator, STU and a distribution licensee. Though partial transfer scheme was effected, the Government decided to keep the Board as a single entity. The Electricity Act saves the Electricity Supply (Annual Accounts) Rules (ESAAR) and KSEB is submitting the ARR&ERC as per the ESAAR. The Board recognizes that in a regulatory system there can be differences in actual accounts and regulatory accounts. Since, the methodology followed by the Commission and the methods used for preparing the accounts by the Board are different, the gap between approved ARR and actual is widening. Hence clear norms are required. The Tariff Policy has adequate provisions for having norms for a combined entity like KSEB. The Act provides for reduction in cross subsidies, in the absence of notification of cross subsidy reduction road map, the Board is not in a position to prepare tariff proposals. Further, regarding the T&D loss reduction, trajectory should be decided by the Commission so that the Board can plan the capital investments accordingly.
4. The arguments of the Board were objected by the HT-EHT Association. They presented the historical evolution of the Board and the provisions under Electricity (Supply) Act 1948, and as per this Act, the Board has powers to determine the tariff and other related matters. However, the enactment of the Electricity Act 2003 has changed the legal framework and now the Board holds a deemed licence for distribution and transmission and it act as a generating company. As per the provisions of the Act, the Board is a deemed distribution licensee just like other licensees in Kerala. Hence, the argument that separate regulations are required for the Board alone is untenable. The Commission already issued regulations for determination of tariff for distribution licensees which are applicable to the Board as well. The argument in the petition that the existing regulations are not applicable to the Board is highly objectionable. The Association even pushed an argument that the Board should be liable for action as per Code of Criminal Procedure under Section 95 of the Act.
5. They further contended that the argument of the Board that there is difference between approved ARR and actual as per accounts, should be rejected, since the projections made by the Board in the ARR and the actual are also substantially different. These difference are due to the non-compliance of the orders of the Commission by the Board and the unreasonable projections made

by the Board. In all the orders of truing up, the Commission has spelt out the reasons for the gap and the Hon. Supreme Court Order and APTEL order have categorically established that there can be differences between actual and regulatory accounts. The Association invited the attention of the Commission on the decision of the FOR on constitution of 'working group on Standardisation of Regulatory Accounts' and suggested that the principles evolved by the working group should be made applicable in Kerala.

6. Regarding loss reduction, the Association stated that, past data show that the Board has consistently underachieved the projections made by themselves, which is due to the lack of focus, planning and implementation. The Commission in its various orders have directed to conduct the loss assessment studies, which the Board has never undertaken and now requesting the Commission to take up the studies, which according to them is a baseless and offensive demand. Regarding regulations under Section 45, they have contended that the tariff can only be fixed by the Commission and the licensee can fix the tariff only in a situation of competition under Section 62(d) in the case of multiple licensees in an area.
7. Based on the arguments made by the respective parties and after analyzing the relevant factors, the Commission feels that the major objective of the Act is to have healthy vibrant licensees capable of providing services at the predetermined standards, thereby upholding the interests of the consumers. The Commission also observes that at present sufficient regulations are available as per the provisions of the Act, which are applicable to the Board also. Three regulations already exist on the subject. There is no provision in the Act or in the Policy to have regulations for an integrated entity as contended by the Board. The Commission is not in agreement with the arguments of the Board that para 5.3 of the Tariff Policy provides for a framework of determination of tariff for an integrated entity like the Board. Para 5.3 of the Tariff Policy provides for framework for performance based cost of service regulation in respect of *aspects common* to generation, transmission and distribution such as RoE, cost of debt, operational norms, depreciation etc., It cannot be interpreted that it provides for a common tariff for generation transmission and distribution or separate regulations for integrated operations. The regulations under Section 61 are for determination of tariff, and section 62 provides for various tariff such as supply of electricity by a generating company to a distribution licensee, transmission of electricity, wheeling of electricity and retail sale of electricity. At present the Commission is following principles as envisaged under Section 61(a) while determining the ARR&ERC of the Board. The Commission has always accepted the actual

accounts prepared by the Board as per EASSR. However, regulatory accounts are not identical to actual expenditure. The Commission can only admit justified and prudent expenditure consistent with the approved ARR. The difference is mainly due to the non-achievement of the capital expenditure proposed by the Board itself. The Commission has suggested loss reduction targets in the initial years, but it was never achieved by the Board. There is also a recommendation by FOR on a loss reduction trajectory. However, now-a-days the Commission accepts the loss reduction targets proposed by the Board and the corresponding capital expenditure proposed. At no point of time the Commission has reduced the capital expenditure proposed by the Board, in spite of repeated underachievement. The Commission from 2005 onwards have been issuing directions to the Board for taking up estimation of T&D loss and separation of voltage level and technical and commercial losses. A few days back only the Board has initiated action for compliance.

8. On the issue of cross subsidy reduction road map also there is no dead lock, and the Commission cannot accept the contentions of the Board. The arguments of the Board should be viewed in the light of directions issued by the Government under Section 108. Further, the Tariff Policy has a clear road map which is to be followed. The Commission is of the view that if the Board feels that a separate cross subsidy reduction road map is required, the Board, as has been contended on previous occasions, may study the matter and make suitable proposals considering the socio-economic policies of the State Government and preferably after consultation with the State Government. Such a proposal can be finalised after the due process of notification and public hearing.
9. Though this is the position, the Commission is very much open to a review of the regulations if it is justified for improving the systems and to address the concerns of the Board if any. The Commission also makes it clear that if further hearings are required on this matter the same can also be held as required. As contended by the Board there can be norms if required for the approval of ARR&ERC, but it can be only as per the provisions of the Act for the licensed business and generation separately. However, the Commission would like to point out that the expenditure norms and performance standards are inseparable. Fixation of standards of performance and norms can only be done after a detailed study on various parameters, for which complete co-operation of the Board to provide necessary information on various aspects is a precondition. The studies can be entrusted with experts/consultants selected through established procedures and can be funded by the Board. The Commission is also likes to

make it clear that any new regulations made can only be applicable on a prospective basis.

10. Accordingly, the Commission directs that the Board shall provide its reply on the following issues to proceed further in the matter:

- a. Regulations can only be as per Section 61 and 62 of the Act for enabling determination of tariff. Accordingly, the Board shall separately provide accounts for its licensed business and generation.
- b. Norms for expenses and performance are inseparable. Board may make their proposals in this regard. For initiating the action for determining the norms for expenses and performance, detailed study may be required for which Board has to provide all necessary information and complete co-operation in parting with necessary details.
- c. If the Commission is required to initiate studies, the Board shall provide full co-operation in all respects and also bear the cost of such studies.
- d. The Board may provide its proposal on cross subsidy reduction road map preferably in consultation with the Government.

11. The Board may file its reply in affidavit on the above issues within two months on the above issues for proceeding in the matter further. Till then the matter is adjourned. Ordered accordingly.

**Sd/-**

**M.P.Aiyappan  
Member**

**Sd/-**

**C. Abdulla  
Member**

**Sd/-**

**K.J. Mathew  
Chairman**

**Approved for Issue**

**Secretary**