

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT: Shri.K.J.Mathew, Chairman
Shri.M.P.Aiyappan, Member

September 20, 2010

In the matter of

Review of the Order dated 7-8-2010 on withdrawal of fuel surcharge

ORDER

Background

1. The Commission had withdrawn the billing of surcharge with effect from 1-9-2010 vide order dated 7-8-2010 ie., one month prior to the time allowed, based on *suo motu* proceedings on the complaints filed by certain consumers. In the said order, the Commission had observed that there was no justification to continue the billing of surcharge in the absence of proper implementation of the Order. There were mainly three deficiencies noted a). The Board had failed to furnish information on the amount of surcharge billed, b) details of surcharge was not properly provided in the bills issued to the consumers c) Board has violated Section 65 of the Electricity Act. This has to be viewed in the light of the direction contained in the Order that the Board could approach the Commission to remove any difficulty in implementing the surcharge Order. In the said Order, the Commission also stated that with reliable billing and subsidy details the Board could seek a review of the Order.
2. In the mean time, the Board approached the Hon. High Court of Kerala and the Court has ordered to maintain *status quo* till the review petition is considered in accordance with law and orders passed. The Commission considered the details provided by the Board vide letter dated 10-8-2010 as a review petition. Accordingly notices were issued to the parties and scheduled the hearing on 18-9-2010. The Commission also issued a press release to inform the stakeholders about the hearing.

Public hearing on the matter

3. In the public hearing held on 18-9-2010 at the Office of the Commission, the Board was represented by a team of officials led by the Chief Engineer (Commercial & Tariff). In the hearing, the Board stated that the surcharge was

implemented by the Board as ordered by the Commission. However, furnishing information within 15 days from the close of each month was difficult considering the billing cycle and time taken for billing. Further the Board contended that the Commission had allowed relaxation for providing the information till August 10-2010. Regarding the complaint that required information is not being furnished in the bills issued to the consumers, the Board stated that in the case of spot billing, meter readers record the reading and the bill is issued on the spot in pre-printed stationery. In certain cases, it was noted that the meter readers did not record details of surcharge as a separate item. But in the system generated bills for collecting the bill amount, surcharge is correctly recorded. The Board also placed a sample bill in this regard. The Board also stated that repeated directions were given to the field level for separately showing the surcharge details. Board officials reiterated that the software used for LT billing 'ORUMA' has the capability of showing separate details of surcharge. Now it has been recorded under the head '*Other information*', where subsidy is shown as '*Note: FS: (Rs.###): YS: (Rs.- ###)*'.

4. Regarding subsidy from the Government, an amount of Rs.54 crore for implementing the announcement of subsidy for domestic consumers having consumption below 120 units per month was passed by the Legislature in the July session as supplementary grants, which is adjusted against the electricity duty. The electricity duty for 6 months would be about Rs.120 Crore hence it is adequate to cover the subsidy announced by the Government. Accordingly, condition of advance receipt of subsidy as per Section 65 is fully complied with. Further, surcharge was implemented based on the KSERC (fuel surcharge formula) Regulations and the same was included in the ARR&ERC for 2010-11. Hence, there is no justification for withdrawal or stoppage of collection surcharge on the ground of delay in submission of details or violation of Section 65. If subsidy under Section 65 is not available, tariff determined by the Commission shall be applicable and hence the consumers are bound to pay the difference amount as arrears subsequently.
5. The Board also stated that based on the energy input into the system, the total surcharge that can be billed from April to September 2010 would only be Rs.179.98 crore and there may be a short fall of about Rs.10 crore. Vide letter dated 8-9-2010, the Board has reported that upto July 2010, about Rs.82 Crore (excluding the subsidy allowed to domestic consumers having consumption of less than 120 units per month) only was collected. Based on this premise, the Board requested that the decision to withdraw the subsidy may be reconsidered.

6. Shri. Ayyappan Nair, General Secretary, Consumer Vigilance Centre, Shri. George Thomas, representing the Kerala HT-EHT Industrial Electricity Consumers Association, Shri. M. Nawas, M/s Binani Zinc Limited, Shri. Foroz, M/s Travancore Titanium Products limited, Advocate Shri. T.K. Suresh/Adv. Karakulam Manoj, Shri. T.K.Bhaskara Panicker, the President, Udarashiromani Road Residents Association, and Shri, Khan P. Madathil, Peruvanthanam Panchyath objected the review petition. According to Shri. Ayyappan Nair, the technical arguments presented by the Board is not known to the consumers due to insufficient details provided in the bills. Even now the bills are not issued as directed by the Commission. In the absence of proper details submitted to the Government, there is every chance that the subsidy amount from the Government will not be received. The Board is not properly equipped with the implementation of surcharge even for consumers having consumption more than 120 units. In support of the argument he presented bills issued to the consumers on 5th May 2010 (consumer no.558-5), and 12th May 2010 (consumer no.9979-2), where no surcharge was levied even though it was applicable from April 2010. According to him the short fall in revenue is due to such improper implementation. He also pointed out discrepancies in the data submitted by the Board. For the month of April, no surcharge from LT consumers is reported, though surcharge was applicable from April 1st. However this backlog or arrear is not seen reflected in the billing details for the month of May. According to him, considering the data for June and July provided by the Board and the subsidy committed by the Government, surcharge collection would be more than Rs.200 Crores till September 2010.
7. Shri. George Thomas, representing the HT-EHT Association argued that the Board has willfully defied the Commission by not submitting the details. The argument that monthly details cannot be collected within 15 days, shall not be accepted since firms having global presence can consolidate the accounts within 5 days. The Board is holding back justice by retaining about Rs.2200 Crore which is the surplus estimated for the years 2006-07 and 2007-08. By purposively withholding the accounts and truing up petition, the Board robbed off the opportunity and eligibility of consumers for having lower tariff. Based on the energy input data from SRLDC, it can be seen that about Rs.10 Crore more will be available than the amount of surcharge estimated by the Board. The argument that KSEB is facing financial crisis is not correct since power is available at much cheaper rates from power exchanges. The Board's power purchase cost is less than what was projected during the period. He also argued that the surcharge demanded by the Board for the 3rd and 4th quarter shall not be

allowed considering the huge surpluses available with the Board. Similar arguments were also advanced by M/s Binani Zinc Limited and M/s TTP Limited.

8. Advocate Shri. Karakulam Majoj stated that the collection of surcharge shall not be allowed till arrears are fully collected. About Rs. 600 crore is to be collected from bulk consumers, where no measures are taken to disconnect supply. On the other hand, for domestic consumers, disconnection is promptly effected for non-payment. According to him, such double standards shall not be allowed. Shri. T.K. Bhaskara Panicker argued that surcharge should be allowed when the Board is in financial difficulty. At present there is surplus and truing up for the past years is not completed. Until complete audit of the accounts is over further collection shall not be allowed. Shri.Khan P.Madathil, stated that the Board was not properly providing information in their bills about the surcharge. He also complained that even for Panchyath Offices, huge bills are raised for which no explanation is given by the Board Officials.
9. In reply to the objections, the Board officials stated that repeated instructions are issued to the field for properly showing the subsidy details. If any correction is required in the bills, the same can be provided on the production of defective bills. As per the provisions of Section 65, advance subsidy from Government is required and if the subsidy is not received from the Government, the tariff determined by the Commission is applicable. Hence, the dues on the account of subsidy can be recovered as arrears from the consumers to whom the subsidy was intended and hence there is no case for withdrawl of subsidy. The Board also quoted a study by PFC, where subsidy receivable from the Government on an all India basis is only 60%. The Board also objected to the adjustment of surplus if any available against the surcharge since surcharge is levied based on the Regulations, which does not provide for such adjustment. The Board is a public entity and any amount available as surplus is promptly ploughed back to the sector itself.

Analysis of the Commission

10. The Commission considered the arguments raised by the Board and the objectors carefully. Based on the materials and submissions provided, the Commission is constrained to note that the non-compliance observed by the Commission in the Order dated 7-8-2010 still exists. The Commission notes that the Board did not act in consonance with the Order dated 5-4-2010. It was provided in the Order that in the event of any difficulty in implementing the Order, the Board shall approach the Commission. However, the Board did not act promptly, which led to withdrawl of the surcharge vide order dated 7-8-2010. The

Commission cannot accept the argument of the Board that time was given till 10-8-2010 for providing information on billing of surcharge. The time limit was given under a separate proceedings in OP No.18 and OP No.21 for the levy of surcharge for 3rd and 4th quarters from October 2009 to March 2010 and no relaxation on the Order dated 5-4-2010 was allowed to the Board.

11. Though the Board officials claimed that sufficient flexibility is available to the billing software, it is not clearly substantiated as contended by the Board on considering the sample bills provided during the proceedings. The bills still show only abstract information, which are not comprehensible to ordinary consumers. The surcharge is claimed as part of *Other items*, for which explanation is given under the head '*Other information*' as '*Misc:FS(Rs.xxxx)*'. The abbreviations are not explained in the bill and no information is available as to how surcharge is computed or the rate of surcharge.
12. The Board also advanced an argument to support the claim that though the bills issued by the spot biller does not contain the necessary information, the bills generated using the billing software at the field Office of the Board is error free, and hence accounts of the Board are proper. The argument of the Board is surprising since, the Commission has directed the Board to provide the information in the bills issued to the consumers so that the consumers are aware for what all items they are liable to pay. The bills generated in the system never reaches the consumers and hence such excuses to overcome the deficiency is not acceptable as the consumers are still deprived of the required information.
13. The Board claimed that the delay was due to lack of familiarity of employees to generate special reports on surcharge. Such arguments are also not acceptable. The regulations on fuel surcharge was issued in January 2010. Even after the lapse of 8 months proper systems are not in place.
14. There is still violation of Section 65 regarding the administration of subsidy. The Board official claimed that the July session of the Kerala Assembly passed supplementary grants of Rs.54 Crore towards subsidy for fuel surcharge for domestic consumers having monthly consumption of less than 120 units per month, and decided to adjust the amount against the electricity duty. However, Board could not provide any Government Order authorizing the Board to retain the duty portion in lieu of surcharge. Unless such official communication is available it cannot be claimed that advance subsidy has been received or there is adjustment against electricity duty. The correctness of the Board's claim calls for verification. The Commission is not in a position to accept the arguments of the Board that in the event of non-receipt of subsidy from the Government, Board can

collect the dues as arrears from the consumers who enjoyed the benefit. The Commission would like to stress the rationale for including Section 65 of the Act, which ensures immunity to the licensees from the non-performance of commitments by the Government. The Commission observes that there is *prima facie* violation of Section 65. For the purpose of clarity Section 65 is reproduced below:

Section 65. (Provision of subsidy by State Government):

If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.

15. Plain reading of the Section 65 reveals that if subsidy is to be administered, amount to compensate the person affected by grant of subsidy shall be provided in advance in the manner as the State Commission may direct; if not subsidy shall not be operative and the tariff fixed by the State Commission shall be applicable. The above provision does not provide any freedom to the Board to claim arrears from the consumers since subsidy shall be provided only on advance receipt of money from the Government. The action of the Board can only be treated as deliberate violation of Section 65.
16. The Commission would like to point out that after receiving the copy of the Government Order dated 21-4-2010 allowing subsidy of Rs.54 Crore, 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 care to respond to the letter. The Commission also stresses the need to provide the details of subsidy actually made available to the consumers, since as per section 65, subsidy received in advance based on estimates. This needs to be adjusted for surplus/deficiencies if any based on the actual subsidy extended to the consumers.
17. The Commission is inclined to accept the arguments of Shri. Ayyappan Nair that even now surcharge is not properly collected and the details for the month of

April for LT consumers are not properly reflected in the Month of May, in the absence of any other information supplied by the Board. It is also revealed from the data provided by the Board that details of subsidy extended to the consumers are not available with the Board. The amount of surcharge collected does not include the subsidy billed. In the letter dated 8-9-2010 Board has stated that revenue shortfall on account of exempting domestic consumers with monthly consumption upto 120 units will be provided separately. This shows that details of subsidy extended to the consumers are not available with the Board even after 5 months of the implementation of surcharge. Further, the demand against which subsidy is allowed is not carried as part of the total demand from sale of power. The result is that the total demand from sale of power is short of the subsidy, which is not correct. This, once again consolidates the observation of the Commission in the Order dated 7-8-2010 that proper information systems are not in place in the Board. This observation is further corroborated by the details in the bill (Consumer No.575-5) placed before the Commission by the Board themselves. The subsidy details are included as part of *Other information* as 'Misc: FS: (Rs. 30.00): YS: (Rs.-30.00). Apparently it seems that this entry is generated as a comment/other details, and is in no way reflected in the demand raised for the sale of power. This could have been the reason for non-availability of the data on subsidy along with surcharge billed. Thus, genuine apprehension on the flexibility of the present billing system cannot be ruled out. The Commission is of the view that subsidy details if any may be properly reflected if the format as shown below is used.

Particulars	Amount Rs.
1. Fixed charges	####
2. Energy Charges	####
3. Electricity Duty	####
4. Meter rent	####
5. Other items	####
a. Fuel Surcharge	####
b. XXXXXXXXX	####
6. Total Bill Amount	####
7. Adjustments	####
a. Less Govt. Subsidy against Surcharge	####
b. Arrears/advance	####
8. Net Amount Payable	####
<u>Note:</u> Fuel Surcharge @25 paise/unit for xxxx units	

18. The summation of item 6 will provide the total demand from sale of power of which summation of item 5(a) will provide the total fuel surcharge billed.

Summation of item 7(a) will provide the total government subsidy available to the consumers. The net amount payable by the consumers is shown as item 8.

19. The Board has stated that the billing software developed inhouse is being modified to integrate and network all section offices. The Commission is not making any observation on the billing software being used by the Board based on the information available in the present proceedings. However, the Commission suggests that the Board shall seriously consider to avail the service of an experienced and independent software auditor to ensure that the system developed/modified inhouse meets the required standards in the industry and has enough flexibility to address contingencies.

Order of the Commission

20. Based on the evidence presented by the Board and objectors, the Commission is convinced that the Board could not properly implement the orders of the Commission on fuel surcharge. It cannot be said that all the bills issued to the consumers contain adequate information on the levy of surcharge. The Board could not provide the details of subsidy receivable from the Government even after 5 months. In the absence of Government Orders authorizing the adjustment of subsidy against electricity duty, Section 65 of the Electricity Act 2003 has been clearly flouted by the Board. The argument of the Board that in the absence of subsidy, surcharge shall be collected from consumers as arrears cannot be accepted. Even after repeated experience of non-receipt of subsidy from the Government, the Board is in no mood to honour the spirit of Section 65.
21. The facts of the case as brought out in the review hearing do not justify a reversal of the original order stopping collection of surcharge after 31-8-2010. But it is seen that because of the *status quo* ordered by the Hon. High Court, the Board may have already collected surcharge for the month of September also from a section of consumers till the date of this order. Considering the fact that there are only few days left to complete the 6 month period already allowed vide order dated 5-4-2010, the Commission is inclined not to disturb the collection of surcharge till 30-9-2010. The Board can collect the surcharge at a rate of 25 paise per unit till 30th September 2010 and to this extent the original order is reviewed. However, the Commission reserves the right to initiate separate proceedings to address the violation of Section 65 and the Orders of the Commission as revealed in the present proceedings. In future, in order to enable the Commission to allow billing of surcharge, the Board has to show reasonably that proper systems are in place to provide information as required to the

consumers as well as to the Commission. With the above observations, the petition is disposed of.

Sd/-

M.P.Aiyappan
Member

Sd/-

K.J. Mathew
Chairman

Approved for Issue

Secretary