

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT: Sri.K.J.Mathew, Chairman
Sri.P.Parameswaran, Member
Sri.Mathew George, Member

March 16, 2011

Petition RP No. 20 of 2010

In the matter of

Review petition on the Order dated 15-11-2010 on ARR&ERC of
KDHPCL for 2010-11

Kanan Deven Hill Plantations Company Private Limited - Petitioner

ORDER

Background

1. Kanan Deven Hill Plantations Company Private Limited (*hereinafter referred to as KDHPCL or licensee*) filed a petition for review of ARR&ERC order for the year 2010-11. In the petition, it is stated that as per the Order of the Hon. APTEL dated 18-5-2010 on the appeal on ARR&ERC of the petitioner for the years 2008-09 & 2009-10, a review of the impugned Order dated 15-11-2010 is warranted. The petitioner stated that the interlinked issue of the rate for own consumption and computation of Maximum Demand, the finding of the APTEL was not properly applied in the impugned Order. The APTEL Order as an interim measure allowed the petitioner's method of computation of Maximum Demand, whereas it was denied in the impugned order, hence the review is justified. It is argued that without prejudice to this, even if such calculation by the petitioner is not accepted the expenses for running the D.G sets and other allied expenses to compensate for the same may be allowed particularly in the light of the APTEL order dated 18-5-2010. According to the petitioner, in order to avoid tripping of lines at KSEB interface points, the petitioner makes switchover to diesel generators in own factories and divert the available grid power to other consumers. Hence, the claim on the expenses of DG sets needs to be allowed in the ARR&ERC.

2. Second issue mentioned in the petition is the computation of own consumption based on the total input of energy rather than based on total sales as done by the Commission.
3. Third issue is regarding power purchase cost. The order of the Commission dated 25-5-2010 has been challenged by the petitioner in the APTEL and the order is received on 15-12-2010. Hence, power purchase cost may require revision based on the APTEL order. Further, the Commission allowed only Rs.1308.62 lakhs instead of Rs.1324.82 lakhs proposed by the petitioner. With respect to employee costs, the Commission approved only Rs.58.77 lakhs against Rs.68.45 lakhs for the year 2009-10. The method adopted by the Commission for allowing salary of Manager and Executive Director is also to be reconsidered and reviewed for the year 2010-11. Regarding A&G expenses, the petitioner sought higher allocation of Rs.5 lakhs for legal expenses, but the Commission limited the total A&G expenses to the 2009-10 level at Rs. 6.72 lakhs, which also is to be reconsidered. Accordingly, the petitioner prayed that ARR&ERC application for three years be reviewed in a consolidated manner.

Hearing on the matter

4. Hearing on the matter was held on 1-3-2011 at the Office of the Commission. List of persons who participated in the hearing is given in annexure. Learned Counsel Advocate Shri. Joseph Kodianthara represented KDHPCL. His arguments were limited to the estimation of MD for own consumption arising out of the orders of APTEL and for allowing the cost of captive DG sets in the ARR&ERC. He stated that in the Order dated 18-5-2010, the APTEL has endorsed the stand of the Regulatory Commission that there shall not be any discrimination among the consumers of the licensee and other consumers. As an interim measure, till the Maximum Demand readings are available, the APTEL allowed to adopt the procedure followed by the petitioner for estimating revenue from own consumption. Learned counsel for M/s KDHPCL submitted that during the proceedings before the APTEL, M/s.KDHPCL submitted their written note of arguments in which it was mentioned that if the cost of DG sets are allowed the grievance will be settled to a certain extent. According to the counsel for the petitioner, the APTEL in principle agreed to such a suggestion and in the Order, APTEL had mentioned that the methodology proposed by M/s.KDHPCL was agreed to as an interim measure. He forcefully submitted that during peak hours, in order to avoid tripping, KDHPCL's own factories are backed off and DG sets are run so that KSEB supply is made available to the other consumers. Accordingly, this cost should be compensated by allowing the cost of DG sets in

the ARR&ERC. All records on the matter can be made available to the Commission to determine the cost of DG sets.

5. The petition was objected by KSEB. The representative of KSEB stated that APTEL order is very clear that MD shall be based on meter reading. According to KSEB, M/s KDHPCL as a licensee fails to provide electricity to its consumers, especially its own units. It is mainly due to the inadequate system and lack of periodic improvements made in the system that M/s KDHPCL as a consumer is suffering and forced to use DG sets. As far as the DG sets are concerned, it is not synchronized with the grid and serves to the consumer alone. Hence allocating the expenses of DG sets to all consumers is not correct.

Analysis and decision of the Commission

6. The Commission analysed the matter in detail. *Prima facie* we note that the petitioner has not brought any material before us to substantiate a review of the Order dated 15-11-2010 under Section 94(1)(f) of the Electricity Act. Even then, the Commission would like to dispose of the matter considering the contentions of the petitioner. The main contention of the petitioner was in the light of the APTEL Order, to claim the cost of DG sets in the ARR&ERC of M/s KDHPCL. The petitioner confirmed that DG Sets are standalone captive units for the individual factories. According to the petitioner connections to own factors are switched off and DG sets are used during the peak hours, so that other consumers are served better. Hence the cost of DG sets which are used to run own factors needs to be recovered from other consumers. On analyzing the power flow it has been found that the two 11kV incoming feeders to the supply area are heavily overloaded. This line cannot meet the load in the Licensee's area during peak hours. Hence, certain consumers in the supply area had to back off and depend upon costly Gensets. The licensee is demanding that cost of running the Gensets may be provided in the ARR. According to the petitioner, such an approach was in principle agreed to by the APTEL in the Order dated 18-5-2010. The APTEL Orders were placed before us. Regarding treatment of Maximum demand for Own consumption, the relevant portion reads as follows:

“19. Having heard the counsel for the parties and considering the submissions made by them, we feel that no different treatment can be given for consumers at large: whether Appellant itself is the consumer notwithstanding. The Act does not permit such differential treatment. The ground realities in the case in hand are that MD meters are not installed at the premises of all consumers of the Appellant. This is a clear violation

of the Section 55 of the Act. The Commission is not powerless to enforce installation of MD meters. In this view of the matter we direct that the Appellant ensures installation of MD meters within six months of the date of this order.

20. In the absence of MD meters, actual Maximum Demand of the Appellant cannot be determined and only an approximation can be made. Considering that the Appellant does substitute the KSEB supply by running its own captive diesel generators at its own cost during peak hours it would be only fair and equitable to use the approximate method used by the Appellant to determine the Maximum Demand for the time being. We, therefore, are inclined to agree with the methodology of the Appellant only as an interim measure and as an exceptional case. We again direct the Appellant to ensure installation of meters within six months.”

7. Hon. APTEL has clearly ruled that there shall not be any discrimination among the consumers and all consumers shall be metered. Further, in the absence of MD meters, actual MD of the petitioner cannot be determined, as an interim measure, APTEL allowed as an exceptional case to determine the maximum demand using the approximate method of the petitioner. A direction was given to the appellant to ensure installation of meters within six months. However, the petitioner again approached APTEL for a review of the Order stating that lack of meters was not the case of the petitioner. APTEL finally disposed of the matter in its order dated 24-11-2010 as follows:

“It is submitted by the learned counsel for the Appellant petitioner that it was not the question before the Tribunal in course of hearing of the Appeals as to whether the Appellant –petitioner had or had not installed meters at different consumption points. On the contrary, it was the case argued before the Tribunal that meter reading does not reflect the actual for the purpose for determining the maximum demand, and moreover it was not installed meters. The learned counsel for both the Respondents submitted that this review application is bereft of substance because the Tribunal upheld the finding of the Commission that the maximum demand can only be determined on the basis of the meter readings instead of hypothetical speculation of the Appellant and the order of the Tribunal so far as this point is concerned has attained finality in view of the fact that the said point has not been canvassed again in this review application. We find that in as much as in the

review application, the Appellant-petitioner does not cavil once again that meter readings would not reveal that actual to the extent of determination of maximum demand, the question whether the appellant has already installed meters or not can no longer be subject matter of lis in this review application. The tribunal clearly held that the meter reading of consumption points for own use of electricity would be proper way of arriving at the maximum demand. If as the learned counsel for the Appellant –petitioner submits, it has already installed meters, then the matter ends there and the directions of the Tribunal to that effect has to be read to have stood complied with.”

8. Thus Hon. APTEL has nowhere agreed to allow the cost of DG sets to the appellant. The D.G sets are operated at the premises of petitioner's factories purely as captive units. The sets are not synchronized with the grid. The sets are operated by isolating the main supply. The DG sets are operated by the consumers of the licensee. The licensee cannot claim any compensation for the cost of running the DG sets by some consumers in his area of supply. More over the consumers of the supply area are forced to disconnect from their service from the distribution lines of the licensee due to this failure of the licensee in providing the infrastructure for catering to the load in the supply area. The argument that cost of such operation has to be passed on to all consumers cannot be accepted. It is not at all reasonable to pass on such cost to all consumers. In all fairness, such demand is beyond the scope of this review petition.
9. The Commission notes that at present the feeders supplying to the area of the petitioner are overloaded. There is urgent necessity for distribution system improvement in the area. The petitioner stated that the feasibility of installing a substation was considered but dropped due to lack of viability. The Commission is of the view that this situation cannot be allowed to continue any longer. The consumers including that of the petitioner, in the area are suffering from lack of adequate distribution system capacity. The licensee shall envisage a short term and long term strategy to immediately address the issue. In the short term, feasibility of an additional line from the Pallivasal Power station may be explored with KSEB. Accordingly the Commission directs that the licensee shall take up the matter with KSEB immediately. KSEB shall render all assistance for addressing the matter on a priority basis.
10. The petitioner has tried to mix up the issue of metering and billing all consumers and the cost of DG sets. This cannot be approved. The licensee has a primary responsibility to ensure that each and every consumer in the supply area is

metered, billed as per the appropriate tariff and the revenue reflected in the accounts of the licensee. The petitioner is directed to ensure that this primary responsibility is discharged properly.

11. The other issues mentioned in the petition are regarding the power purchase cost due to revision of tariff and for allowing higher employee costs and A&G expenses. Regarding power purchase costs, the expenses shall be as per the approved tariff only. As per the Order dated 28-1-2011 in Appeal No. 140 of 2010, APTEL had upheld the retrospective revision of tariff ordered by the Commission. Accordingly, the power purchase cost needs revision for 2010-11. Since the year is almost over, it can be considered in the truing up process. In the case of A&G and Employee costs, the Commission is of the view that the impugned order is clear and there are no valid grounds warranting a review of the order. This subject was not stressed by the review petitioner at the time of the hearing also.

Orders of the Commission:

12. After considering the material placed before the Commission and the arguments of the parties, the Commission is of the view that there are no valid grounds for review of the Order dated 15-11-2010. The request of the petitioner that the cost of running the DG sets should be provided in the ARR of the licensee is not legitimate and hence denied. Other issues in the petition such as employee costs and A&G expenses are in detail dealt with the original Order and no need for review was established.
13. Considering the lack of distribution capacity prevailing in the area of supply of the licensee, the Commission hereby directs that the licensee shall take immediate action to strengthen the facility for drawing power to his area of supply. KSEB as a State Transmission Utility shall render all necessary support to the licensee to address the issue. The petition is disposed of and Ordered accordingly.

Sd/-

**P.Parameswaran
Member**

Sd/-

**Mathew George
Member**

Sd/-

**K.J.Mathew
Chairman**

Approved for Issue

Secretary

Annexure

List of persons attended the Public hearing held on 1-3-2011

1. Shri. P.M.Sreekrishan, Executive Director, KDHPCL
2. Shri. R. Thankavel, Executive, KDHPCL
3. Advocate Shri.Joseph Kodianthra, Sr.Advocate, KDHPCL
4. Smt Sreedevi, Dy. CE, TRAC, KSEB
5. Shri. B. Pradeep, Exe. Engineer, TRAC, KSEB
6. Shri. Prasad, Asst. Exe. Engineer, TRAC, KSEB