

THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

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

March 24, 2011

RP No. 1 of 2011

In the matter of
Review of revision of BST applicable to KPUPL

Kinesco Power and Utilities Private Limited	- Petitioner
Kerala State Electricity Board	- Respondent

RP No.3 of 2011

In the matter of
Review of revision of BST applicable to Rubber Park Limited

Rubber Park Private Limited	- Petitioner
Kerala State Electricity Board	- Respondent

RP No.5 of 2011

In the matter of
Review of revision of BST applicable to Cochin Port Trust

Cochin Port Trust	- Petitioner
Kerala State Electricity Board	- Respondent

RP No.6 of 2011

In the matter of
Review of revision of BST applicable to Cochin Special Economic Zone

Cochin Special Economic Zone	- Petitioner
Kerala State Electricity Board	- Respondent

ORDER

Background

1. The above batch of review petitions are against the Order of the Commission on the revision of Bulk Supply Tariff (BST) order dated 13-12-2010. In the order, the Commission has stated that “in case any licensee notices serious adverse impact by this order, they may free to approach the Commission with full details for a review”. The above four licensees sought the review on this ground. Since all the petitions are on the same matter, the Commission decided to dispose of the same together.
2. M/s. Kinesco Power and Utilities Private Limited (KPUPL) in their review petition (RP No.1 of 2011) stated that the petitioner was in the process of taking over the distribution assets of Kinfra Export Promotion Industrial Parks (KEPIP) in the industrial parks at Kakkanad, Kalamassery and Palakkad. The Commission has transferred the licence from KEPIP to the petitioner by the Order dated 30-11-2009. The petitioner is undertaking the licensed activity of distribution and retail supply in the above areas with effect from 1-2-2010. In the impugned order the Commission has proceeded on the basis that the petitioner has the advantage of surplus during the period from 2004-05 to 2010-11 of about Rs.755.12 lakhs. According to the petitioner, the KPUPL is not the beneficiary of the surplus, and it has to start the operations fresh. Even if there is a surplus, the matter has to be dealt with by KEPIP. According to the petitioner, to this extent the order has an apparent error which needs to be corrected. The petitioner requested to pass consequent orders to reduce the BST payable by the petitioner to KSEB and also an interim stay on the order dated 13-12-2010.
3. M/s. Rubber Park India (Private) Limited in their review petition (RP No.2 of 2011) also requested for review of the Order and allowing a differential BST for the petitioner. The petitioner operates in 107 acres and with a consumer base of 21. The objective is to provide infrastructure / to act as facilitator for Rubber based industries. Petitioner buys electricity from KSEB for retail sale. According to the petitioner, the argument of KSEB that the licensees are getting cross subsidy is not true. The cross subsidy arises only when commercial consumers are in appreciable numbers. This may be the case of Cochin Port Trust and Thrissur Corporation and not other licensees. The investment per consumer of the petitioner is Rs. 30 lakh, where as for KSEB it is only Rs.2000. KSEB is saving

money by supplying energy at single point since the T&D loss of KSEB is about 18% and that of licensees is much less. The increase in BST by about 41 paise was made without changing the retail supply price. The petitioner also stated that if KSEB is willing to wheel power without cross subsidy surcharge, the petitioner is ready to wheel power. The enhancement of tariff leads to additional commitment of Rs.4.80 lakhs per month. As per the revised truing up petitions the accumulated loss is Rs.151 lakhs as on 31-3-2010. Hence, the petitioner requested to quash the impugned order.

4. The Cochin Port Trust in its petition (petition No. RP 5 of 2011) stated that In the tariff order for 2009, the Commission concluded that there is no necessity of tariff revision. Now the Commission singled out bulk licensees to provisionally increase the tariff by 15%. The Commission erred in accounting the surplus of the petitioner in previous years (2005-06 to 2008-09) since the surplus was utilised for system improvement for rendering better service to consumers. The Commission did not consider the deficit of Rs.53.11 lakhs in 2010-11 for the petitioner. This deficit will increase to Rs.1.85 crore. As per the decision of APTEL in Appeal No.121 of 2007 (UPPCL Vs Noida Power Company Limited) and in APPEAL No.51 of 2010, when there is a deficit in succeeding years, the surplus in the previous year cannot be passed on to the respondent. As per clause 11(c) of PPA dated 17-11-2008 with KSEB, the petitioner is entitled to get power lower than prevailing EHT tariff applicable to other consumers. The prevailing EHT tariff is Rs.2.90/kWh the BST is Rs.3.16/kWh. As per Regulation 3(3) of KSEERC (Terms and Conditions of Retail Sale of Electricity) Regulations 2003, surplus if any is to be shared with consumers. Further, the Commission also advised to share the surplus with the consumers, accordingly retail tariff was reduced. The reworked truing up petition shows that the net deficit is Rs.50 lakhs. By implementing the order it will further increase by Rs.1.3 crore. Hence it is requested to review the decision of the Commission and cancel/revoke the decision. Pending decision, stay on the implementation of the order is requested.
5. The Cochin Special Economic Zone in its petition (RP NO. 6 of 2011) stated that the argument that KSEB is supplying power to licensees at subsidised rate is not correct. As per the ARR of KSEB the average cost comes to Rs.3.65/kWh. However, the cost of supplying to the licensee comes to Rs.2.28/kWh only, but KSEB charges Rs.2.75/kWh. If the licensees are making profit it could be due to efficiency or favourable consumer mix. However the petitioner CSEZ has only industrial consumers.

6. Whenever the cost of electricity is increased the rates payable to KSEB was also increased. That is KSEB is compensated for the risk taken for procurement of power. There is no cross subsidy enjoyed by the licensees. The consumers with the licensees are also entitled to avail the benefit of natural resources in the State. After cornering the natural resources and central grid allocation, KSEB cannot absolve them their responsibility to share the benefit to the consumers under the licensees. According to CSEZ, it is not proper to say that all licensees have cash surplus. Surplus without considering the return allocated to the government investment in the licensees is not correct. There is no surplus if the system is evaluated on real basis. For most licensees, power distribution is part of the main activity. The licensees should not be penalised for efficiency. If the Commission feels that there is abnormal surplus, the same may be transferred to the consumers by reduction in tariff. With the present rate, the net loss projected for 2011-12 is Rs.78 lakhs. The licensees cannot function with the present increase in tariff. Hence the tariff should be reviewed. Till then the decision may be stayed.

Hearing on the matter

7. All the above petitions were heard on 4-3-2011 at the Office of the Commission. M/s KPUPL represented by Advocate Shri. Anand Ganesan, argued that KPUPL has an additional grievance that the Rs.7.55 crore surplus mentioned by the Commission is not received by them so far. The petitioner has started with a clean balance sheet and not taken over any accumulated surplus and liabilities. In this respect, KPUPL is on a separate footing compared to other licensees. The new company started operations from 1-2-2010. The company was floated with 50% share each from NTPC and KINFRA. The assets are not transferred yet. But the company now manages and maintain the assets. The Asset transfer and takeover is based on an asset transfer agreement. Since, no surplus was taken over from the previous entity, no surplus is available. Hence the tariff revision needs to be reviewed.
8. M/s Rubber park limited repeated the arguments in the petition. At present the Rubber park is incurring about 34 paise loss for each unit of energy. If the BST is changed, correspondingly the RST is also to be changed.
9. The Cochin Port Trust was represented by Advocate Shri.Paulose C Abraham. According to him, CPT is entitled to reasonable profit. As per the ARR&ERC, the loss is Rs.110 lakhs. When the CPT was making profit, the Commission has directed to reduce the tariff and the benefit was given to the consumers. The tariff

was reduced from 1-4-2008 and entire surplus is wiped out. The Appellate Tribunal has held in UPPCL Vs M/s Noida Power Company Limited (Appeal No. 121 of 2007) that when there is deficit in succeeding years, surplus in the previous year cannot be adjusted. According to the counsel for CPT, CPT is entitled for positive consideration considering the loss levels in KSEB system. The learned Counsel also advanced an argument that the existing PPA with KSEB had a provision that the tariff applicable to the petitioner shall not be more than the tariff applicable to EHT consumers. The provision was consistent with the earlier categorisation of licensees into G1 and G2.

10. M/s Cochin Special Economic Zone submitted that they have only industrial consumers. The retail tariff cannot be less than the BST. As contended by the Board, there is no cross subsidy available to CESZ. From the date of inception, the CSEZ is making profit and an accumulated amount of Rs.5 crore has been used for system improvement. Hence the increased tariff should be cancelled and what ever already paid to KSEB shall be adjusted against the future bills.
11. In reply to the objections of licensees, KSEB stated that regarding KPUPL, there is no dispute that surplus is available, but the question is who holds the surplus. As per the provisions of Electricity Act, surplus has to be passed on. In the case of KEPIP and KPUPL the parties involved are all government entities and they can settle the issue of surplus themselves. In the regulated regime, no person shall be allowed to run away with the surplus created. In many proceedings, M/s.KPUPL claims that they are successor to the earlier entity KEPIP. In such situation, as an inherited entity, the surplus shall also be transferred to the new entity.
12. In the case of M/s Rubber park, they have not brought any new material before the Commission. According to them the additional liability is Rs.4.8 lakhs per month. As per the 2010-11 ARR, the average cost of the licensee is Rs.4.25/kWh where as the average realisation is Rs.4.69/kWh. Hence there is no impact on licensee with revision of BST.
13. According to KSEB, CPT is the most costly licensee in the State with distribution cost of Rs.2.81/kWh. The average realisation is also the highest (Rs.6.29/kWh). As per the statement of CPT itself the tariff revision was made effective from 2008 and the accumulated surplus before 2008 is still with the licensee. The APTEL order referred by the licensee is not strictly applicable in the case. As per the provisions of the Act, the provisions of PPA has an over riding effect in the case of tariff. As contended by CPT, KSEB also demands that the surplus of the licensee

shall be passed on to the consumers of Kerala by providing higher BST. According to KSEB in the case of CSEZ, there is no case for review. Adequate accumulated surplus is available with the licensee and there is no case for the review of the Order.

14. KSEB also made a point that as soon as the revision in rates of Central Generating Stations are effected, KSEB has to meet the additional burden. Similarly, the additional burden shall also be immediately passed on to the licensees. Except KDHPCL and Thrissur Corporation, other licensees in the State did not have the Universal Service Obligation as that of KSEB. The consumers under these licensees receive premium service and accordingly, they shall be liable to higher tariff.
15. In reply, KPUPL stated that it was not their case that surplus is not available, but they are not aware of such surplus. Under section 43 of the Act all licensees are mandated to provide electricity in the service area irrespective of the type of consumer. It is a policy decision then in the Commission has to take whether the uniform tariff is to be applied in Kerala or not. M/s CPT submitted that surplus was already invested for system improvement and hence the order has to be stayed. M/s CSEZ stated that, distribution losses in their system is below 1%, compared to 18% for KSEB. Considering these factors CSEZ argued for stay of the impugned order.

Analysis and decision of the Commission

16. The arguments of the petitioners and the respondent were heard and considered carefully. The Commission in the impugned order had stated that "In case any licensee notices serious adverse impact by this order, free to approach the Commission with full details for a review". Apparently none of the petitioners could provide any additional arguments to enable a proper review of the Order dated 13-12-2010.
17. The case of M/s KPUPL is that they are beginning with a clean balance sheet for the distribution operations and no surplus is inherited from the M/s.KEPIP. The asset transfer is still not in place but the operations have started. According to them, the surplus shown in the Order is not available with them. The Commission notes that the surplus noted in the Order was as per the records provided by the KPUPL and KEPIP. Further, the licence was transferred from KEPIP to KPUPL. When the licence is transferred to new entity, it is reasonable to believe that all the

obligations, liabilities and assets are also to be transferred to the new entity. It is not proper and just that this surplus created out of the distribution business is retained by the Transferor and additional burden is passed on to the stakeholders. Though the licensee stated that as per the asset transfer agreement no amount is transferred, the licence issued to KPUPL is silent on such conditions. The Commission has to examine the matter separately on the validity of such agreement in the broad framework of the Electricity Act. Generally, the Commission is not concerned on the understanding between the parties before transfer unless such understanding infringes the rights of stakeholders and or such transactions affect the interest of stakeholders. Based on this premise, the Commission is of the view that the argument of the petitioner cannot be considered at present. The licensee has mentioned about the asset transfer agreement with Kinfra. The Commission reserves its right to initiate separate proceedings to ensure that such agreements and within the framework Electricity Act 2003 and license was obtained through fair and proper means.

18. M/s Cochin Port Trust argued that the surplus was adjusted by providing a tariff reduction to the consumers and there is no surplus left. Further in view of the APTEL Order dated 15-12-2010 in UPPCL Vs Noida Power Company limited (Appeal No.121 of 2007) surplus cannot be adjusted. However, this argument is completely misplaced. The context in which the APTEL Order issued is different. In the said order, the APTEL has supported the method of adjustment of surplus in the case of determination of BST for licensees. The BST is decided in such a way that the distribution licensees earn reasonable level of profits. In the present case, in the absence of periodic truing up of accounts of licensees, the Commission is not in a position to determine the required level of expenses that can be reasonably passed on to the consumers. The Commission notes that even after filing the truing up petitions, CPT has revised the actual accounts several time, clearly pointing out the fact that maintenance of accounts of the licensee operations is not as per the principles envisaged in the Electricity Act 2003. The truing up of accounts of CPT is yet to be done for the years 2004-05 to 2009-10. Only after the truing up exercise the actual surplus available at present can be computed. The Commission has increased the rates on the premise that no revision of BST was taken place since 2007, but the cost of providing power to the licensees has increased considerably. In the review petition, CPT could not provide substantiated evidence for a reasonable conclusion that increase in BST will adversely affect their financials. Hence, the Commission is of the view that the review sought by CPT is not reasonable and hence cannot be allowed. The

argument that the petitioner is entitled to get a power at EHT tariff as per the conditions of PPA with KSEB is an issue to be agitated among the parties to the agreement and hence not relevant to the issue of review of BST.

19. In the case of Cochin Special Economic Zone, the argument was that there is no cross subsidy available since they have only industrial consumers. It is to be noted that as a licensee, the CSEZ is eligible to earn only regulated return after meeting the legitimate expenses. Any additional earnings have to be adjusted in such a way that ultimately the licensee is left with regulated returns. As per their submission, over the years about Rs.5 crore has been generated as surplus, which according to them is used for capital investment. The licensee has not so far taken any formal approval of the Commission on the capital investment, but only mentioned that investment in street lighting and web based SCADA is planned. Accordingly, the Commission is not in a position to ascertain the legitimacy of such investments as part of licensed business. In this case also the licensee has not convincingly shown that revised BST affected the operations. In any case, the Commission has to ensure the financial viability of the licensees and properly adjust the retail or bulk tariff. The Commission is of the strong view that the revision of BST can be manageable in the present context in the case of CSEZ.
20. M/s Rubber park stated that revision has resulted in additional Rs.4.8 lakhs per month. The licensee has filed revised truing up petition in which the accumulated deficit is about Rs.1.51 crore. In the case of Rubber park also, the Commission had to initiate strict measures for filing the truing up petitions. Further, as in other cases, the licensee has not made segregation of accounts and the initial truing up filings reflected substantial surplus. However, the revised petitions shows deficit in some years. As per the approved ARR&ERC for 2010-11, the revenue surplus would be Rs. 99.48 lakhs. Based on the records, there is revenue deficit in some of the previous years, which will be addressed in due course. In the meantime, the Commission is of the view that the revised tariff can continue for some more time.
21. The Commission would place on record that present the revision of BST is only temporary. The truing up petitions of the licensees are still not finalised and are revised several times. The small licensees are seen to be very reluctant and irregular in submitting their ARR&ERC in time. The provisional accounts are not trued up with the actual promptly. As such the actual financial position of such licensees are not available before the Commission. In any case, if the distribution business, properly segregated, documented and accounted, is found to be generating deficits, the Commission will initiate appropriate remedial action in

future. The Commission is also in the process of initiating a consultancy for properly assessing the rate base, cost sharing and depreciation allowance for the licensees. The Commission is in the process of comprehensive examination on the policy to be adopted for fixing the BST/RST for the licensees procuring bulk power from KSEB, which is related to the issue of competitive procurement of power and policy on uniform or differential retail supply tariff. Till such time, there may be uncertainties which will be addressed in the due course.

Orders of the Commission

22. After considering the review petitions and the arguments of the petitioners and the Board carefully, the Commission is of the view that the revised BST shall continue for the present. The review petitions are rejected and ordered accordingly.

Sd/-

**P.Parameswaran
Member**

Sd/-

**Mathew George
Member**

Sd/-

**K.J.Mathew
Chairman**

Approved for Issue

Secretary

List of persons attended the Public hearing held on 4-3-2011

1. S. Balasubramanian, CSEZ
2. T V Chandran, CSEZ
3. George Joseph, Rubber park limited
4. M.S Samuel, Rubber park limited
5. Pramod S.V. Rubber park limited
6. George Thomas, NESCL
7. Anand K Ganesan, Advocate KUPUL
8. Joseph Kurian, KPUPL
9. Paulose C Abraham, Advocate (Cochin Port Trust)
10. M.M Abdul Rahim, Cochin Port Trust
11. B. Sreedevi, KSEB
12. B. Pradeep, KSEB
13. S. Prasad, KSEB