

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

No.1134/SEA/KSERC/2011

January 19, 2012

In the matter of
Non-Compliance of Directions & Regulations by Thrissur Corporation

ORDER

Background

1. Thrissur Corporation (*hereinafter mentioned as the Corporation or the Licensee*) is a deemed licensee of the Commission. As per the KSERC (Tariff) Regulations, 2003, all the licensees in the State have to file ARR&ERC petition every year. The Corporation had filed the ARR&ERC petition for the years 2010-11 & 2011-12 and the truing up petition for the years 2006-07 to 2009-10 together as a single petition. Since the petition was not in order and the prescribed fee was not remitted, the Commission conveyed the defects and directed the Corporation to file the petitions in proper form. The Commission also arranged a meeting with the officials of Thrissur Corporation and explained the procedures for filing the petitions and the relevant information to be provided in these petitions. However, the Corporation could not cure the defects in the petitions on time. Hence, the Commission rejected ARR&ERC petition of the Thrissur Corporation for the year 2011-12 and gave 15 days time for rectifying

the defects and filing the petition afresh. This decision was communicated vide letter dated 28-7-2011. In the same communication, it was also indicated that truing up petitions shall also be filed rectifying the defects without further delay. Since the Corporation did not file the petitions, the Commission decided to initiate action under Section 142 of the Electricity Act, 2003 against the Corporation.

2. In the meantime, the Corporation filed the ARR&ERC petition for 2011-12 on 26-9-2011 after a delay of about 40 days. However, no explanation was furnished for the delay. Also the Truing up petitions for the year 2006-07 to 2009-10 were not filed. The Commission therefore issued show cause notice under Section 142 of the Electricity Act to the Corporation on 4-10-2011 for not having explained the delay in filing the ARR&ERC petition for the year 2011-12 and for not filing the truing up petitions as directed.
3. In response to the notice issued by the Commission, Shri. Baby Antony, Secretary, Thrissur Corporation in his reply received on 24-10-2011 admitted that there was flaw on the part of the Corporation in filing ARR&ERC petition for 2011-12 and truing up petitions for 2006-07 to 2009-10, which was not a wilful act of negligence but was due to reasons beyond their control. He also submitted the following reasons for not filing the petitions/delay in filing the petitions.
 - Employees were deputed for census work and Corporation elections
 - Information needed was not readily available as the computer system was under upgradation
 - Consultant's computer system was damaged and hence data were lost. Personnel attending the work were also not available.
 - Like any Government department, Corporation faces acute manpower shortage.
4. He further stated that stringent orders were issued to the officials concerned for complying with the orders of the Commission. The Secretary also sought one more month time for filing truing up petition.

5. Though the Commission was not convinced of the reasons for the delay furnished by the licensee, further action was kept pending till 20-11-2011 ie., for one month as sought by the Secretary. Instead of complying with the time limit, the Corporation, in its letter dated 21-11-2011 sought further time of one month for filing the truing up petitions stating the reason that their consultants M/s Vasu & Sivaram have requested for extension of time due to loss of data in their computer system. Since the reason given by the Corporation for extension was not convincing and already sufficient time was given for filing the petition (from 15-7-2011), the Commission issued notice to the Secretary, Thrissur Corporation for an opportunity for a hearing and to explain in person reasons if any for not taking action and for not imposing the penalty under Section 142 of the Electricity Act.

Hearing on the matter

6. The hearing was held on 10-1-2012. In the hearing Shri. Baby Antony, Secretary, Thrissur Corporation was present. He submitted that truing up petition as directed by the Commission was filed on 9-1-2012. The delay was not intentional since the accounts were to be reconciled to the double entry system as per the provision of the Regulations, and the Corporation is now following single entry system. He also stated that the personnel in charge of the work are not familiar to the regulatory system. He also filed a written statement in the matter. In the written statement, he repeated the same reasons.

Analysis and decision of the Commission

7. The Commission has considered the submissions of the Secretary and the written statement filed by him. The reasons given by the Secretary are totally unsatisfactory and the Commission is not convinced of the reasons given by the Secretary for the delay. Regulatory compliance is mandatory for all licensees and Thrissur Corporation is not an exception. Failure to adhere to the provisions of the Regulations and Act necessarily reflects on the inability of the Corporation to carryout the operations as a distribution licensee. The Corporation has to have a permanent arrangement for regulatory compliance. There is no dearth of funds for the Corporation. It is also pertinent to note that it is not the first time that

the Corporation is filing the ARR&ERC petitions. Hence they are aware of the procedures on regulatory compliance.

8. The Corporation finally submitted the petition on 9-1-2012, a day before the scheduled date of hearing. There is delay of more than 5 months for filing the corrected truing up petitions after the Commission returned it to the petitioner for curing the defects on 28-7-2011. The ARR&ERC for 2011-12 which had to be filed four months prior to the commencement of the financial year 2011-12 was filed only on 26-9-2011 after a lapse of about 10 months, that too after giving several extensions of time and issuing notices. The Commission also notes that the Corporation has not yet filed the ARR&ERC petition for the year 2012-13.
9. Based on the elaboration of the events above, it is established that there is negligence and failure on the part of the Corporation in complying with the provisions of the Act and Regulations. As the Chief Executive of the licensee, the Secretary has failed to comply with the directions of the Commission, even after sufficient time was allowed. The Secretary himself has admitted that there is failure on regulatory compliance. The Secretary has stated that direction was complied with and truing up petitions are now filed. The Commission notes that still the petition is not complete for want of required fee. Filing of petitions now in any way does not exonerate the Secretary from the violation already committed. It is also pertinent to mention the Hon. APTEL's judgement dated 11-11-2011 in OP NO.1/2011 and the directions to the State Commissions for ensuring timely filing of ARR&ERC and truing up petitions. In the above circumstances, the Commission is of the considered view that there shall be exemplary punishment for such lapses and non-compliance.

Orders of the Commission

10. On the basis of the findings noted above, the Commission decided to treat the matter as a serious instance of non-compliance by the Thrissur Corporation as a distribution licensee. There is continuous contravention of Commission's directions. The Commission is of the considered opinion that the Licensee represented by its Secretary is responsible for the lapse as it has failed to discharge its functions properly. The Commission however, notes that the truing

up petition is filed on the day previous to the hearing, though in a defective manner. This calls for some leniency. Hence **the Commission, in exercise of the powers conferred as per Section 142 of the Electricity Act 2003, imposes a penalty of Rs.25,000 (Rupees Twenty Five Thousand only) on Thrissur Corporation, the Licensee, for non-compliance of the directions of the Commission and provisions of the Regulations.** The Licensee shall within one month of the receipt of the Order, remit the amount to the Commission. The penalty amount shall not be considered as a pass through expense of the licensee.

11. This order is appealable under Sec 111 of the Electricity Act 2003 before the Appellate Tribunal for Electricity, New Delhi within a period of 45 days.

Sd/-
P.Parameswaran
Member

Sd/-
Mathew George
Member

Sd/-
K.J.Mathew
Chairman

Approved for Issue

Sd/-
Secretary