

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated: 15th February, 2013

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson,
Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr.V J Talwar, Technical Member

OP No.1 OF 2011

Tariff Revision (Suo-Motu action on the letter received from Ministry of Power)

Amicus Curiae Counsel: Mr. M.G. Ramachandran,
Mr. Amit Kapur,
Mr. R K Mehta,
Mr. Buddy A. Ranganadhan,

Counsel for Respondent(s): Mr. Umapathy (Tamilnadu State Commission)
Mr. C K Rai (Rajasthan & Tripura State Commissions)

ORDER

1 The present proceedings were initiated at the instance of a representation dated 21.01.2011 received from the Union Ministry of Power requesting for issuance of suitable directions to various State Electricity Regulatory Commissions for securing long term viability of the electricity sector by timely and appropriate revision of tariff in accordance with the letter and spirit of the Electricity Act. After considering responses of various State Commissions and hearing the learned Amicus Curiae Counsel appointed to assist this Tribunal, on 11th November 2011, we had passed the

order in OP No. 1 of 2011 giving following directions to all the State Commissions:

- i. *Every State Commission has to ensure that Annual Performance Review, true-up of past expenses and Annual Revenue Requirement and tariff determination is conducted year to year basis as per the time schedule specified in the Regulations.*
- ii. *It should be the endeavour of every State Commission to see that the tariff for the financial year is decided before 1st April of the tariff year. The State Commission could consider making the tariff applicable only till the end of the financial year so that the licensees remain vigilant to follow the time schedule for filing of the application for determination of ARR/tariff.*
- iii. *In the event of a delay in filing of the ARR true-up and Annual Performance Review, beyond 31st December, the State Commission must initiate suo-moto proceedings for tariff determination in accordance with Section 64 of the Act read with clause 8.1 (7) of the Tariff Policy.*
- iv. *In determination of ARR/tariff, the revenue gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset shall be allowed to the utilities to avoid problem of cash flow.*
- v. *Truing up shall be carried out regularly and preferably every year.*
- vi. *Fuel and Power Purchase cost is a major expense of the distribution Company and is uncontrollable. Every State Commission must have in place a mechanism for adjustment of Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis as per the Central Commission's Regulations for the*

generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula and ensure its implementation latest by 1.4.2013.

- 2 In order to ensure that our above-mentioned directions referred to above are being duly complied with by the Commissions, we have directed the Secretary of the Forum of Regulators to collect the requisite particulars in prescribed formats from all the Commissions and submit the same before this Tribunal. Accordingly, the Secretary, FoR has gathered those particulars from all the State Commissions and sent a report summarising the details of the information submitted by the State Commissions, the copies of which was given to Amicus Curiae Counsel.
- 3 The learned Amicus Curiae counsel, after discussion with the FoR staff, having analysed the information submitted by the Commissions, submitted a report giving their suggestions, which are as under:
 - a) Most of the directions issued by this Tribunal in its order dated 11.11.2011 in OP No.1 of 2011 have been followed by almost all the State Commissions. However, no information has been received from Nagaland and Jharkhand State Commissions.
 - b) Assam State Commission had informed that it had repeatedly asked the licensee to file tariff petitions and has now taken- up suo-motu action. Similarly, State Commissions of Gujarat and Sikkim have also initiated suo-moto action for determination of tariff for FY 2012-13. The

Arunachal Pradesh State Commission has informed that it has become workable only in July, 2011 and is yet to issue any tariff order.

- c) Some of the State Commissions have either not framed MYT Regulations or the MYT Regulations framed had not been made operational. Consequently, the concerned utilities did not file the APR petitions.
- d) The distribution utilities of following States have filed delayed ARR and tariff petitions resulting in the delayed issuance of Tariff order for the year 2012-13.
- i. Chhatisgarh
 - ii. Karnataka
 - iii. Maharashtra
 - iv. Delhi
 - v. Himachal Pradesh
 - vi. Mizoram
 - vii. Manipur
 - viii. Kerala
 - ix. Uttar Pradesh
 - x. West Bengal
 - xi. Gujarat
 - xii. Assam
 - xiii. Arunachal Pradesh
 - xiv. Goa
 - xv. All the Union Territories (Chandigarh, Puducherry, Dadra Nagar & Haveli, Daman & Diu, Andaman & Nicobar, Lakshadweep)
- e) Following State Commissions did not pass Tariff Orders for FY 2012-13 within 120 days from date of submission of the completed Tariff petitions:
- i. Delhi
 - ii. Uttar Pradesh
 - iii. West Bengal
 - iv. Punjab

- f) Following State Commission have reported delay in issuance of Truing up Orders for FY 2010-11:
- i. Delhi
 - ii. Punjab
 - iii. Rajasthan
 - iv. Uttar Pradesh
 - v. West Bengal
- g) Following State Commissions have not furnished the actual date of Issuance of Truing up Orders for FY 2010-11:
- i. Gujarat
 - ii. Joint Commission for Goa and Union Territories
 - iii. Joint Commission for Manipur & Mizoram
 - iv. Karnataka
 - v. Kerala
 - vi. Meghalaya
 - vii. Tripura
 - viii. West Bengal

4 In view of the above, we deem it fit to issue the following further directions:

- a. State Commissions of Jharkhand and Nagaland are directed to furnish their explanation as to why the requisite information was not submitted to the Secretary, FoR after the Order of this Tribunal dated 3-1-2013.
- b. State Commissions, who have not framed the MYT Regulations in accordance with provisions of Section 61 of the Electricity Act 2003, are directed to frame these regulations immediately so that the MYT framework be implemented at least w.e.f 1-4-2014, and report compliance.
- c. State Commissions, referred to in Para 3(d) above, are directed to furnish the particulars regarding the action taken by them against the utilities who have not filed the ARR &

Tariff Petitions for FY 2012-13 within time period stipulated under the Act and the Regulations and also to offer explanation as to why such State Commissions did not initiate suo-moto action in the event of non-filing of tariff petitions by the utilities.

- d. State Commissions mentioned at para 3(e) above are directed to explain as to why they could not pass the Tariff Order within 120 days from the date of submission of completed ARR & Tariff Petitions as stipulated in the Act.
- e. State Commissions mentioned in para 3(f) above are required to furnish an explanation as to why they have not issued Truing up Order for FY 2010-11.

5 All the State Commissions are required to submit information regarding filing of ARR and Tariff Petitions for FY 2013-14 and issuance of Tariff order for FY 2013-14.

6 The information directed to be submitted in the above directions must be furnished to the Secretary, Forum of Regulators by 31st March, 2013.

7 Secretary, Forum of Regulators is also directed to submit the consolidated Report along with the explanation submitted by the State Commissions to the Registrar, Appellate Tribunal for Electricity on or before 15th April 2013 and serve the copies to the learned Amicus Curiae Counsel.

8 The Registry is directed to send copies of this order to all the Commissions and Forum of Regulators as well as to the Secretary

of Power Ministry on whose letter, the suo-motu proceedings were initiated.

9 We record our appreciation for the services rendered by the Secretary, Forum of Regulators and the learned Amicus Curiae Counsel.

10 Post the matter for 30th April 2013.

(V J Talwar)
Technical Member

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 15th February, 2013

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REPORTABLE/~~NON-REPORTABLE~~