JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURGAON

Quorum
Shri M.K. Goel, Chairperson
Smt. Neerja Mathur, Member

Review Petition No. 239/2017
Date of Hearing: 04.09.2017
Date of Order: 20.09.2017

In the matter of:

Review Petition in respect of Tariff Order for FY 2017-18 dated 4th May, 2017 issued by the JERC for the Electricity Department, UT Chandigarh.

And in the matter of:

Electricity Department, Chandigarh **.... Review Petitioner**

Present

1. Shri Rohit Kumar Sekhri, Executive Engineer, Electricity Department, UT Chandigarh
2. Shri U.K. Patel, Asstt. Executive Engineer, Electricity Department, UT Chandigarh
3. Shri Shubham Bhalla, Lawyer, Electricity Department, UT Chandigarh
4. Shri Amit Goenka, Consultant, Electricity Department, UT Chandigarh
5. Shri Pratik Kumar, Consultant, Electricity Department, UT Chandigarh

ORDER

The Review Petitioner through this Petition has sought the review of the Impugned Tariff Order dated 04.05.2017 on the following issues:-

1. Disallowance of gap of Rs 208.17 crore for the FY 2011-12 to FY 2013-14.
2. Disallowance of Rs 33.74 crore on account of depreciation on revised Gross Fixed Assets (GFA).
3. Overstated and understated projections in revenue and expenditure.
4. Penalty for non achievement of T&D Losses level for FY 2015-16 and T&D loss trajectory for the Control Period.
5. O&M expenses for FY 2015-16.
6. Projections for unit sold (energy sales) for FY 2016-17 & FY 2017-18.
7. Under Projection with respect of power purchase quantum & costs for FY 2016-17 & FY 2017-18.
8. Renewal Purchase Obligation (RPO) compliance for FY 2016-17 & FY 2017-18.
9. Projections for O&M Expenses for the FY 2016-17 and FY 2017-18
10. Depreciation.

11. Other parameters:

a) Large Industrial Power supply
b) Replacement of Meter in case of tempered with and / or protection by the consumers.
c) Security Deposit for categories like Bulk Supply, Public Lighting, Agriculture Power and Temporary supply.
d) Service connection charges for Industrial and Bulk Supply (for new connections)/ 100 kW as per the supply code.
e) Interest on consumer's Security Deposit.

ISSUE NO. 1

Shri Shubham Bhalla, Learned Counsel for the Review Petitioner submitted that it had earlier submitted audited accounts for true – up / provisional true – up from FY 2011-12 to FY 2013-14 along with Tariff Petitions for the FY 2013-14, FY 2014-15 and FY 2015-16. Whereas the Commission in its First Tariff Order dated 16.07.2011 and subsequent Tariff Orders dated 07.05.2012 and 15.04.2013 has repeatedly directed the Review Petitioner to submit audited accounts on commercial principles for determination of the tariff as well as true – up for earlier years. The Commission in its Order dated 15.04.2013 observed as under:-

"Since the audited accounts based on commercial account principles are still awaited, Commission thinks it would be inappropriate to consider provisional true up of FY 2011-12. It would be done once the audited accounts are made available. Since, CED is operating as a department within the Govt. of India, the system of account keeping is on cash receipt and expense basis i.e. proforma accounts. Further, the expenses / income as mentioned in proforma accounts doesn't match with the expenses / income for FY 2011-12 in the ARR and Tariff Petition filed for FY 2013-14. The Commission had approved a gap of Rs 45.93 crores after review of ARR of FY 2011-12 in tariff order dated 07th May, 2012. The Commission has brought forward this gap of Rs 45.93 crs in ARR of FY 2012-13 as reviewed in this Order".

The Learned Counsel further submitted that it finally submitted audited accounts on commercial principles for truing – up for the FY 2011-12 to FY 2013-14 along with its Tariff Petition for FY 2016-17. The Commission in its Order dated 28.04.2016 observed as under:-

"However, in case the Petitioner had adhered to timelines as per the directions issued in various orders, the audited accounts (prepared on commercial principles) would have been available by now for the True up. The Commission is of view that the delay, which is on account of Petitioner, cannot be burdened on the consumers and therefore no carrying cost will allowed

for gap for FY 2011-12, FY 2013-14 and FY 2013-14 (if any, after true-up is undertaken once the audited accounts on commercial principles are available)".

In view of the above, it was submitted that the Commission had disallowed only the carrying cost on the revenue gap arising out of truing – up for the FY 2011-12 to FY 2013-14.

The Learned Counsel further submitted that with respect to the treatment of revenue gap of Rs 208.17 crore, the Commission in its Tariff Order for the FY 2016-17 and FY 2017-18 directed the Review Petitioner that it should approach the Government to provide budgetary support to meet this approved revenue gap of Rs 208.17 crore.

The Learned Counsel further submitted that expenditure of Rs 241.91 crore has already been made from the Consolidated Fund under proper appropriation and sanctions from the Government of India in anticipation of recovery through the tariff.

The Learned Counsel requested the Commission to allow the revenue gap of Rs 208.17 crore in the subsequent Tariff Orders as there is no other source to recover this gap.

ISSUE NO. 2

The Learned Counsel submitted that the Commission has considered the fixed assets and depreciation as per the audited accounts. Due to this, there is an incremental revenue gap of Rs 43.25 crore as approved by the Commission in the Impugned Tariff Order for the FY 2017-18. At the same time, the Commission has rejected the claim of incremental revenue gap of Rs 33.74 crore upto the FY 2013-14. Further, the Commission has allowed an amount of Rs 9.51 crore in addition to the approved revenue gap of Rs 143.83 crore for the FY 2014-15. The disallowance of legitimate cost would adversely impact the financial health of the utility. It is requested to consider the claim of incremental revenue gap of Rs 33.74 crore and allow the recovery of the same.

ISSUE NO. 3

The Learned Counsel submitted that the projections made by the Commission for power purchase and other expenses were under projected and revenue from retail sales were projected on a higher side. The average ratio of Purchase of Power to Revenue from Sale of Power for the last 5 years (from FY 2010-11 to 2015-16) was 1.06. Whereas, the Commission has reduced the same to 0.69 and 0.71 for the FY 2016-17 and FY 2017-18 respectively, which appears to be incorrect. The Review Petitioner has requested the Commission to review the Purchase of Power/Sale of Power projections for FY 2016-17 and FY 2017-18.

ISSUE NO. 4

The Learned Counsel submitted that in its Petition it had submitted for revision of T&D loss trajectory for the Control period based on the actual T&D Loss for the FY 2014-15 and FY 2015-16. The Commission in its Order for the Business Plan had approved a loss reduction trajectory of 0.5% over the approved T&D loss target of 13.75%.

The Learned Counsel further submitted that the approved loss T&D target for the Control period was neither based on the past year actual T&D losses nor on any technical studies with regard to the potential for reduction in the T&D loss in its distribution area.

The Learned Counsel further submitted that for a realistic target of T&D loss during the Control period, the Commission should at least consider the actual loss of the base year i.e. FY 2015-16. The Review Petitioner requested the Commission to re-assess the T&D loss trajectory for the Control period as the current loss target is unrealistic and difficult to achieve in view of the actual T&D loss of 15.24%, and also waive off the penalty imposed on it.

ISSUE NO 5

The Learned Counsel submitted that the Commission has followed different approaches for the various components of O&M expenses in the truing – up for FY 2015-16. It is observed that while the Commission has approved the Employee cost and R&M cost as per the audited accounts for the FY 2015-16 which is lower than the approved cost in the Review Order, at the same time, the A&G expenses have been retained at the approved level of Rs 3.42 crore for the FY 2015-16 which is lower than Rs 3.59 crore as approved by the Commission in the Review Order dated 28.04.2016.

The Learned Counsel requested the Commission to follow the same approach for truing – up for the various components of O&M expenses and allow all expenses as approved in the Review Order dated 28.04.2016.

ISSUE NO. 6

The Learned Counsel submitted that the sales projections for the FY 2016-17 duly approved are 1637.33 MUs which are high considering the actual increase in sales during the FY 2014-15 and FY 2015-16, as well as the actual sale for the first six months of the FY 2016-17. The provisional sales for the FY 2016-17 are 1589.04 MUs which is approximately 50 MUs lower than that approved by the Commission.

The Learned Counsel further submitted that higher projection of sales would not only result in higher revenue but would also lower the average cost of supply. The impact at the time of truing – up on this account shall therefore multiply leading to difficulty in recovery of the revenue gap. Thus the Commission is requested to review the sales projections on a realistic basis in order to avoid the large revenue gap.

ISSUE NO. 7

The Learned Counsel submitted that the approved power purchase quantum as well as cost for the FY 2016 - 17 and FY 2017-18 is estimated /projected on the lower side. Projections of power availability by the Commission include the power from BBMB where approximately 51.5% of the power was projected to be available during the second half of the year which was contradictory to the general trend of availability of power from hydro stations.

The Learned Counsel further submitted that the approved power purchase cost for the FY 18 at Rs 628.19 crore is even lower than the approved power purchase cost of Rs 638.15 crore for FY 16 despite the higher number of power purchase units in the FY 18. This difference is primarily attributed to higher units projected from hydro plants, resulting in lower than actual power purchase cost.

It is further submitted that lower projections for the power purchase cost and the rates approved from various generating stations shall lead to high FPPCA charge applicable on the consumer. The Industrial Association has also been raising complaints about the high rate of FPPCA charge.

In view of above, the Commission is requested to review the projections of power purchase cost and power purchase quantum on a more realistic basis to avoid high FPPCA charge on the consumer.

ISSUE NO. 8

The Learned Counsel submitted that as per the 3rd amendment of the Commission's RPO Regulations, 2016 on procurement of Renewable Energy, the minimum quantum of RPO was specified as % of the total energy after excluding hydro power. The amended Regulations provide for the following RPO trajectory for FY 2016-17 & FY 2017-18:

FINANCIAL YEAR	***MINIMUM QUANTUM OF RENEWABLE PURCHASE OBLIGATIONS (RPO) OF RENEWABLE ENERGY (IN KWh) (% OF TOTAL ENERGY MIX OF CONSUMPTION, EXCLUDING HYDRO POWER)***	
	Total RPO (%)	***Solar RPO (%)***
2016-17	*4.85*	*1.65*
2017-18	*6.70*	*2.50*

The Learned Counsel further submitted that it is noticed that the Commission has considered the revised target as per the 3rd amendment of the Regulations, 2016 but hydro power is not excluded while approving the RPO requirements for the FY 2016-17 and FY 2017-18. The Review Petitioner requested the Commission to review the RPO targets for the FY 2017-18.

ISSUE NO. 9

The Learned Counsel submitted that regarding Employee cost, A&G expenses and R&M expenses, the Commission has undertaken the revised computation of all the parameters based on the lower WPI Index, and revised GFA by applying the necessary escalation to the base figures thereby revising the approved figures for the Control period. It is observed that on account of decline in the CPI and WPI Index figures there has been a negative growth which has resulted in lower escalation factors leading to lower approved figures for the FY 2016-17 and FY 2017-18 respectively.

The Learned Counsel further submitted that while the linkage of Employee cost to WPI may be in line with the Tariff Regulations of the Commission, the same is not aligned with the Model Tariff Regulations issued by the Forum of Regulators.

The Learned Counsel further submitted that Employee cost should be aligned with the increase in the CPI Index as followed across all other State Commissions. This would help in elimination of any unintended disallowance of legitimate Employee cost to the utility.

The Learned Counsel further submitted that while computing the R&M expenses, the Commission has maintained the 'K' factor at 2.60% as approved in the Order on Business Plan. At the same time, based on the GFA as per the accounts, the revised 'K' factor stands at 2.72%. This has led to reduced R&M expenses approved for the FY 2017-18 which will adversely affect the maintenance of infrastructure resulting in non adherence of service to the consumers as per the Supply Code Regulations of the Commission.

The Learned Counsel requested the Commission to consider the revised 'K' factor and CPI Inflation for working out the R&M expenses and Employee cost for the Control period.

ISSUE NO. 10

The Learned Counsel submitted that the Commission has not approved the depreciation in its Tariff Order for the FY 2017-18 as per its Tariff Regulations, 2014. As per Regulations 23(C):-

"Depreciation shall be calculated annually as per straight-line method over the useful life of the asset at the rate of depreciation. The same shall be as specified in the Central

Electricity Regulations Commission (Terms & Conditions of Tariff), Regulations, 2014. The same may vary as notified by the CERC from time to time".

In this regard, it is submitted that the depreciation rates used for preparation of audited accounts of the Review Petitioner are in line with the Companies Act , 2013 which are in variance with the depreciation rates approved by the CERC. Thus, the depreciation approved by the Commission is lower as the CERC depreciation for the initial years is higher. The Review Petitioner requested the Commission to revise the depreciation as per the depreciation rates approved in the CERC Tariff Regulations, 2014.

ISSUE NO. 11

The Learned Counsel brought to the notice of the Commission some typographical errors in (i) Para 9.5 (B) being Service connection charges for industrial and bulk supply (for new connections) and (ii) Para 6.11 regarding Interest on Consumer Security Deposit at Rs 9.73 crores for the FY 2016-17.

COMMISSION'S ANALYSIS

The Commission has considered the submissions made by the Review Petitioner. It has also re-examined the Impugned Tariff Order dated 04.05.2017, Tariff Orders for the FY 2011 – 12 to FY 2015-16 and the entire records placed before it along with relevant provisions of the Electricity Act, 2003 and Rules & Regulations made thereunder.

With the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commission has been vested with powers for reviewing its decisions, directions and Orders under Section 94 (1) (f) of the Electricity Act, 2003 and Order 47, Rule 1 of the Code of Civil Procedure. The instant application, made before the Commission, for the review of its decisions, directions and Orders, therefore, derives its scope and authority from the aforesaid Section of the Electricity Act, 2003 read with Order 47, Rule 1 of the Code of Civil Procedure.

Section 94 of the Electricity Act, 2003 provides that:

"The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code or Civil Procedure,1908 (5 of 1908) in respect of the following matters, namely:-

.... (f) reviewing its decisions, directions and orders;"

Under Section 94 (1) (f) of the Electricity Act, 2003 Order / Judgment may be open to review, interalia, if there is a mistake or an error apparent on the face of record. An error, which is not self evident has to be detected by process of reasoning and such an error can hardly be said to be an error apparent on the face of the record, justifying the Commission to exercise its power of review under the above said Section of the Electricity Act, 2003.

The Commission has noted that the Review Petitioner has not indicated any error apparent on the face of the record to justify the Review of the Impugned Tariff Order dated 04.05.2017 on issue Nos. 1,2,3,4,5,6,7,9,10 and 11 (a) to (d). The Commission had deliberated on these issues in detail in the Impugned Tariff Order and took a conscious decision on all the above mentioned issues and thereafter determined the Tariff for the Review Petitioner after due consideration of all the submissions made during public hearing as well as in the Tariff Petition.

The Commission is not convinced with the submissions of the Review Petitioner. The Review Petitioner has failed to make out any case for Review on the above mentioned issues. The Commission is of the view that the power of Review can be exercised only within the domain prescribed under section 94 (1) (f) of the Electricity Act, 2003 and Order 47, Rule 1 of the Code of Civil Procedure for rectification of an error apparent and glaring on the face of record and on discovery of new and important matter or evidence which, after due diligence was not within knowledge and could not be produced at the time of making the order, which would warrant reconsideration of the Impugned Tariff Order. However, the error should be such that its continuance would strike at the roots of justice. The Commission noticed that there is neither any error apparent nor any new matter or evidence was produced by the Review Petitioner which was not within the knowledge of the Review Petitioner at the time of making the Order. The Commission is therefore of the considered view that these issues do not qualify for review. In such circumstances, the Review Petition on the above mentioned issues is liable to be dismissed.

(ii) The Commission is convinced with the submissions of the Review Petitioner on issue No. 8 regarding computation of Renewable Purchase Obligations (RPO). The Review Petitioner submitted that the Commission has calculated Renewable Purchase Obligations in violation of the JERC (Procurement of Renewable Energy) (3rd Amendment) Regulations, 2016. Wherein it is provided that the minimum quantum of Renewable Purchase Obligation shall be specified as % of the total energy mix after excluding hydro power.

The Commission has reexamined the JERC (procurement of Renewable Energy) (3rd Amendment) Regulations, 2016 and also considered the submissions of the Review Petitioner. The Commission has noted that there is an error in the computation of RPOs. The Commission rectifies the error as under:-

Table 5.13 : (Computation of RPO(MU) for the FY 2016-17 (MU)) at page 73 of the Impugned Tariff Order dated 04.05.2017 shall be replaced and read as under:-

RPO (MU) Compliance net of Hydro-FY 2016-17 APR		
Sl.	**Particulars**	**MUS**
1	**Energy Sales Within UT**	**1,637.33**
2	**Hydro Power Purchase FY 2016-17 APR**	**1351.84**

3	Inter State Loss @4.05 % of Sl. 2	54.75
4	Intra State Loss @13.25% of Sl. 2	171.86
5	**Total Losses Sl.3+Sl. 4**	**226.61**
6	**Hydro Power Consumed with in UT Sl.2- Sl.5**	**1125.23**
7	**Conventional Power Consumed in the UT (without Hydro) Sl.1-Sl .6**	**512.10**
8	**RPO Obligation (in MU) Sl. 7*4.85%**	**24.84**
8.1	- Solar Sl. 7* 1.65%	8.45
8.2	-Non Solar Sl. 6- Sl. 7	16.39
9	**Cumulative Shortfall till FY 2015-16**	**0.45**
9.1	- Solar	0.45
9.2	-Non Solar	0
10	**Total RPO Compliance (Required) Sl. 8 + Sl.9**	**25.29**
10.1	- Solar Sl. 8.1+Sl. 9.1	8.90
10.2	-Non Solar Sl. 8.2+Sl. 9.2	16.39
11	**RPO Compliance (Actual Purchase)**	**4.01**
11.1	- Solar : subject to True Up	4.01
11.2	-Non Solar: subject to True Up	-
12	**RPO Compliance (REC Certificate Purchase)**	**75.85**
12.1	- Solar: subject to True Up	23.46
12.2	-Non Solar: subject to True Up	52.39
13	**Total RPO Compliance (Provisioned for by CED)**	**79.86**
13.1	- Solar	27.47
13.2	-Non Solar	52.39
14	**Shortfall (Surplus) in RPO Compliance Sl. 10-Sl.13**	**(54.57)**
14.1	- Solar Sl.10.1-Sl.13.1	(18.57)
14.2	-Non Solar Sl.10.2-Sl.13.2	(36.00)
15	**Cumulative Shortfall in RPO Compliance (if any)**	-

Table 6.14 at page No. 103 of the Impugned Tariff Order dated 04.05.2017 shall be substituted and under:-

RPO (MU) Compliance net of Hydro-FY 2017-18 ARR		
Sl.	**Particulars**	**MUS**
1	**Energy Sales Within UT**	**1715.93**
2	**Hydro Power Purchase FY 2017-18 ARR**	**1288.77**
3	Inter State Loss @4.05 % of Sl. 2	52.20
4	Intra State Loss @13.25% of Sl. 2	157.66
5	**Total Losses Sl.3+Sl. 4**	**209.86**
6	**Hydro Power Consumed with in UT Sl.2- Sl.5**	**1078.91**
7	**Conventional Power Consumed in the UT (without Hydro) Sl.1-Sl. 6**	**637.02**
8	**RPO Obligation (in MU) Sl. 7*6.70%**	**42.68**
8.1	- Solar Sl. 7* 2.50%	15.93
8.2	-Non Solar Sl. 6- Sl. 7	26.75

9	**Cumulative Shortfall till FY 2016-17**	**0**
9.1	- Solar	0
9.2	-Non Solar	0
10	**Total RPO Compliance (Required) Sl. 8 + Sl.9**	**42.68**
10.1	- Solar Sl. 8.1+Sl. 9.1	15.93
10.2	-Non Solar Sl. 8.2+Sl. 9.2	26.75
11	**RPO Compliance (Actual Purchase –Planned)**	**16.00**
11.1	- Solar: subject to True Up	16.00
11.2	-Non Solar: subject to True Up	-
12	**RPO Compliance (REC Certificate Purchase – Planned)**	**26.75**
12.1	- Solar(surplus) : subject to True Up	(0.07)
12.2	-Non Solar: subject to True Up	26.75
13	**Total RPO Compliance (Provisioned for by CED)**	**42.68**
13.1	- Solar	15.93
13.2	-Non Solar	26.75
14	**Shortfall (Surplus) in RPO Compliance Sl. 10-Sl.13**	-
14.1	- Solar Sl.10.1-Sl.13.1	-
14.2	-Non Solar Sl.10.2-Sl.13.2	-
15	**Cumulative Shortfall in RPO Compliance (if any)**	-

(iii) The Commission is convinced with the submissions of the Review Petitioner on issue No. 11 (e) Interest on Consumers Security Deposit. The Review Petitioner submitted that while the Commission has approved the interest on Consumers Security Deposit at Rs 9.73 crore for the FY 2017-18, it has wrongly mentioned FY 2016-17 in the Impugned Tariff Order. The Commission has noted that there is a typographical error and the same is corrected as under:-

On Page 112 under Table 6.23 **in the last line "FY 2016-17" shall be read as "FY 2017-18".**

(iv) The Commission also noticed a typographical error at page No. 147. Under "'B' Service connection charges for industrial and bulk supply (for new connections) in the first line below the table **"60 kW" shall be read as "100 kW"** and at page 148 at "extension of load (a) (i)" in the first line **"60 kW" shall be read as "100 kW".**

(v) The Commission has also observed certain inadvertent errors which are corrected as follows:

Tariff Order Page no:	Category	Character of Service
133	133 Domestic Supply (DS)	For "...................and above 5kW up to 60 kW" Read "................and above 5kW up to 100kW"
		For "...................loads above 60 kW supply will be connected on 11kV".

Tariff Order Page no:	Category	Character of Service
133	133 Domestic Supply (DS)	For "...................and above 5kW up to 60 kW" Read "................and above 5kW up to 100kW"
		For "...................loads above 60 kW supply will be connected on 11kV". Read "................loads above 100 kW supply will be connected on 11kV".
134	Commercial / NRS	For "...................and above 5kW up to 30 kW" Read" ....and above 5kW up to 100 kW"
		For "......................loads above 30 kW" Read "...................loads above100kW"
135		For "....load above 60 kW" Read "....load above 100kW"
136	Medium Industrial Power Supply (MS)	For "... .... load above 60 kW" Read "................. load above 100kW"
137	Bulk Supply (BS)	For "Loads exceeding 60 kW" Read "Loads exceeding 100kW"
148	Extension of Load a) i)	For "...................750/- per total load up to 60 kW for extension..........." Read "...................750/- per total load up to 100 kW for extension.........."

Under such circumstances, the Review Petition is partly allowed on issues no. 8 and 11 (e) and the Review is dismissed on issues Nos. 1 to 7, 9, 11 (a) to (d).

Ordered accordingly.

Sd/-
(NEERJA MATHUR)
MEMBER

Sd/-
(M.K. GOEL)
CHAIRPERSON

CERTIFIED COPY

Rinku Gautam

(RINKU GAUTAM)
SECRETARY