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

Coram
Dr. V.K. Garg, Chairperson
Sh. S.K.Chaturvedi, Member
Petition No. 80/2012

In the matter of:
Petition for review of order dated 7th May, 2012 passed by Joint Electricity Regulatory Commission for State of Goa and Union Territories in petition no. 64 of 2012 filed by Electricity Department Union Territory of Chandigarh for approval of ARR and Tariff Determination for FY 2012-13.

And in the matter of:
Electricity Department, UT of Chandigarh …. Petitioner

ORDER

09.10.2012

1. In exercise of the powers conferred by Section 83 of the Electricity Act, 2003 the Central Government constituted a two member (including Chairperson) Joint Electricity Regulatory Commission for all Union Territories except Delhi to be known as "Joint Electricity Regulatory Commission for Union Territories" with Headquarters at Delhi as notified vide notification no. 23/52/2003- R&R dated 2nd May, 2005. Later with the joining of the state of Goa, the Commission came to be known as "Joint Electricity Regulatory Commission for the State of Goa and Union Territories" as notified on 30th May, 2008. The Joint Electricity Regulatory Commission (for the State of Goa and Union Territories) started functioning with effect from August 2008 temporarily in the district town of Gurgaon, Haryana.

2. Electricity Department- UT of Chandigarh (CED) herein the petitioner has filed the present petition under section 94 (1) (f) of the Electricity Act, 2003 (herein after referred as the Act) and Regulation 74 of Joint Electricity Regulatory Commission (Conduct of Business) Regulations 2009 (in short referred as the Regulations) for review of order dated 7.05.2012 passed by the Commission in

petition no. 64 of 2012 filed by the petitioner for approval of ARR & Determination of Tariff for FY 2012-13.

3. The brief facts giving rise to the present petition are that the petitioner filed petition no. 64 of 2012 for approval of ARR & Determination of Tariff for FY 2012-13 before the Commission. The Commission approved ARR & determined tariff for FY 2012-13 for CED vide order dated 7th May, 2012. Feeling aggrieved by the impugned order dated 7.5.2012 the petitioner filed the present petition with averments that CED has been allowed to function as an integrated distribution licensee for area of UT of Chandigarh. The CED does not have its own power generating stations. The power demand of UT- Chandigarh is met from allocation of power from Central Sector Generating Stations.

4. The petitioner prayed for review of the impugned order dated 7.05.2012 on following grounds:-

(i) According to the petitioner, they claimed interest on Working Capital as per clause 29 of Joint Electricity Regulatory Commission (Terms and Conditions for determination of Tariff Regulations), 2009 i.e. Rs. 8.07 Cr. for FY 2012-13. Whereas the Commission subtracted the security deposit available with the petitioner which can be treated as available to meet part of working capital required for FY 2012-13 i.e. Rs. 34.35 Cr. The Commission considered the security deposit available with the petitioner as a source to meet working capital required and deducted this amount from the working capital in FY 2012-13. The petitioner further submitted that the Joint Electricity Regulatory Commission (Terms and Conditions for determination of Tariff Regulations), 2009 do not provide for deduction of security deposit amount from the requirement of working capital, therefore, interest on working capital be considered to be re-computed by the Commission in principle.

(ii) Further according to the petitioner the Commission considered the normative T&D loss level at the @ 16% as per recommendations of Abraham Committee. The present T&D losses of the petitioner for FY 2011-12 are around 17%, therefore, analysis/ adoption of T&D losses as per recommendations of Abraham Committee at @ 16% by the Commission may jeopardize business of CED for FY 2012-13. The reduction target are based on the implementation/

completion of R-APDRP programme. Implementation of R-APDRP programme of CED is under progress and is estimated to be completed in FY 2013-14.

The T&D losses for Chandigarh are also lower and comparable to other similar states and bringing down T&D losses by 1% from such level would require substantial planning and implementation of various schemes which are not envisaged in this financial year. It would be easier for any utility with losses level of 30-35% to bring down losses by 1-2% in a year, but it would be very difficult to bring down losses by 1% from 17% in one financial year without huge capital investment specially when around 75% of the consumption for UT- Chandigarh is at LT level and making the loss reduction proposal much more difficult for CED. The CED is engaged in business of transmission as well as distribution of power where as the Commission has approved the losses considering CED to be only distribution licensee. The Commission may also consider intra – state transmission losses while approving T&D losses.

(iii) Further according to the petitioner the Commission in tariff order dated 7/5/2012 has observed that CED is already overstaffed and it appeared that some patent mistake invariable occurred in tariff order. Whereas the petitioner is struggling for sanction of additional staff for the last 15 years. The Commission has not notified any norms to establish that CED is over staffed. Whereas comparison of maximum demand, electricity connections, connected load, reduction in employees due to death/retirement and performance in respect of input energy, energy billed, T&D losses and comparison of power infrastructure in last 30 years shows that work load has increased tremendously and staff strength has reduced drastically. On 31.3.2012 only 1085 employees were working out of which 123 employees are going to retire in the years 2012-13, 2013-14 and 2014-15 and if immediate action is not taken to recruit the staff CED will not be able to provide uninterrupted power supply to the consumers as per standard of performance. Therefore, 1855 posts may be approved as an interim arrangement and 207 posts for which recruitment process has been already started may be approved.

(iv) Further according to the petitioner the Commission in Joint Electricity Regulatory Commission (Electricity Supply Code), Regulations 2010, has notified that all future load above 60 kW should be released on HT (11kV), but to pursue the existing LT consumers having old sanctioned load beyond 60 kW to switch over to HT connection, levy of surcharge to the consumers having certain load at lower voltage than the prescribed standard voltage as proposal in CED e-mail dated 30.4.2012 will help in minimizing T&D losses.

(v) The petitioner further submitted that the Commission has not considered the power purchase from bilateral sources as proposed by the petitioner. In order to match the energy requirements, the Commission has considered the power purchase of 110.74 MUs from Energy short term sources including PXIL at a six months average rate of Rs. 3.50 per unit (with a permissible upward deviation of 10% in unit rate) for estimation purposed for FY 2012-13. The average power purchase cost assessed at page 146 in the impugned order by the Commission is Rs. 2.95/- per unit for FY 2012-13 including the short term power purchase at six months average rate of purchase from power exchanges i.e. Rs. 3.50/- per unit. The Commission has analyzed that with every 10% increase in the six months average rate of Rs. 3.50/- per unit of short term power purchase, there will be an increase of 2 paise per unit in the average power purchase cost and 3 paise per unit in the average cost of supply assessed by the Commission for FY 2012-13. Therefore, the Commission is of the view that short term power purchase should be made in such a way that the average cost of supply should not increase by more than 3 paise per unit. Further the petitioner is directed to consider the above analysis for short term power purchase.

5. The petitioner has prayed that in the interest of justice, petitioner and consumers the impugned order dated 7.5.2012 may kindly be reviewed on all the above issues.

6. On receipt of the petition, the petition is taken on record as petition no. 80/2012 on 20.06.2012. The petition was admitted in Commission on 26.6.2012.

7. The Commission issued notice of hearing for 17.7.2012 to be held at Commission's headquarter.

8. The Commission held hearings on 17.7.2012, 22.8.2012 & 11.09.2012 at Commission's headquarter.

9. The petitioner has prayed for review of the impugned order dated 7.5.2012 on following five Issues:-

Issue No. 1: Interest on Working Capital

10. The petitioner submitted that they claimed interest on Working Capital as per clause 29 of JERC (Terms and Conditions for determination of Tariff Regulations), 2009 i.e. Rs. 8.07 Cr. for FY 2012-13. Whereas the Commission subtracted the security deposit available with the petitioner which can be treated as available to meet part of working capital required for FY 2012-13 i.e. Rs. 34.35 Cr. The Commission considered the security deposit available with the petitioner as a source to meet working capital required and deducted this amount from the working capital in FY 2012-13. The petitioner further submitted that the JERC (Terms and Conditions for determination of Tariff Regulations), 2009 do not provide for deduction of security deposit amount from the requirement of working capital, therefore, interest on working capital be considered to be re-computed by the Commission in principle.

11. The Commission has gone through the ARR and tariff determination petition, impugned order and review petition carefully and thoroughly and has considered submissions of the petitioner and reached to the conclusion that the Commission in its tariff order date 7th May 2012 has assessed the need and availability of funds required by the petitioner. The Consumers security deposit is the consumers funds available with the petitioner. The petitioner is not paying interest on security deposits to the consumers as required u/s 47(4) of the Act, therefore, the Commission treating such security deposit amount as available fund with the petitioner to meet part of working capital required for FY 2011-12, has deducted the consumers security deposit amount from the working capital requirement of the petitioner. Accordingly interest is allowed on the balance amount of working capital (i.e. total working capital required minus security deposit amount available). The amount of interest on security deposit for FY 2011-12 payable to the consumers is allowed to meet the petitioners obligation u/s 47(4) of the Act.

Example:	Say, Total w/c required	= Rs. 100/-
	Consumers' security deposit with petitioner	=Rs. 20/-
	Net (actual) w/c to the licensee	=Rs. 100-20 = 80/-

Interest on w/c allowed @ 13% p.a. in tariff order dated 7.05.2012 in Pg. 113 on Rs.80 considered in ARR is Rs. 10.40.

On consumer security deposit of Rs. 20:-

Interest payable on consumer security deposit as per section 47 (4) of EA, 2003 to be paid by the licensee (@ 9.5% allowed in ARR in page 168 of Tariff Order dated 7.05.2012) is Rs. 1.90.

Total IWC allowed =Rs. 10.40+1.90 = Rs. 12.30

Issue No. 2: T&D Losses

12. The petitioner submitted that the Commission considered the normative T&D losses level at the @ 16% as per recommendations of Abraham Committee. The present T&D losses of the petitioner for FY 2011-12 are around 17%, therefore, analysis/ adoption of T&D losses as per recommendations of Abraham Committee at @ 16% by the Commission may jeopardize business of CED for FY 2012-13. The reduction target are based on the implementation/ completion of R-APDRP programme. Implementation of R-APDRP programme of CED is under progress and is estimated to be completed in FY 2013-14.

13. It is further submitted that T&D losses for Chandigarh are also lower and comparable to other similar states and bringing down T&D losses by 1% from such level would require substantial planning and implementation of various schemes which are not envisaged in this financial year. It would be easier for any utility with losses level of 30-35% to bring down losses by 1-2% in a year, but it would be very difficult to bring down losses by 1% from 17% in one financial year without huge capital investment specially when around 75% of the consumption for UT-Chandigarh is at LT level and making the loss reduction proposal much more difficult for CED. The CED is engaged in business of transmission as well as distribution of power where as the Commission has approved the losses considering CED to be only distribution licensee. The Commission may also consider intra – state transmission losses while approving T&D losses.

14. The Commission has perused the ARR and tariff determination petition, impugned order and review petition carefully and thoroughly and has considered submissions of the petitioner and found that the Commission in its tariff order dated 7th May 2012 observed that the Abraham Committee Report recommend

reduction of AT&C losses @ 1% per annum, where the existing level of T&D losses of a distribution utility is between 10% to 20%. The petitioner did not provide energy audit report for FY 2010-11 and FY 2011-12. The petitioner in its tariff petition for FY 2012-13 sought T&D losses for FY 2012-13 at same level of 17% as it was approved for FY 2011-12 vide Tariff Order dated 16th July 2011. The Commission also observed that New Delhi Municipal Corporation is similarly placed utility like ED- Chandigarh, has a loss level of 11.94% (trued up figure for FY 2010-11).

15. The Commission in the impugned order dated 7.05.2012 has observed that the petitioner is an integrated utility engaged in the business of transmission & distribution of power. The petitioner did not provide intra- state transmission and distribution losses in the petition separately. Therefore, the Commission considered recommendations of the Abraham Committee Report and approved normative T&D losses at 16% for FY 2012-13 in Tariff Order for FY 2012-13 dated 7th May 2012.

Issue No. 3: Employee Cost

16. The petitioner submitted that the Commission in tariff order dated 7/5/2012 has observed that CED is already overstaffed and it appeared that some patent mistake invariable occurred in tariff order. Whereas the petitioner is struggling for sanction of additional staff for the last 15 years. The Commission has not notified any norms to establish that CED is over staffed. Whereas comparison of maximum demand, electricity connections, connected load, reduction in employees due to death/retirement and performance in respect of input energy, energy billed, T&D losses and comparison of power infrastructure in last 30 years shows that work load has increased tremendously and staff strength has reduced drastically. On 31.3.2012 only 1085 employees were working out of which 123 employees are going to retire in the years 2012-13, 2013-14 and 2014-15 and if immediate action is not taken to recruit the staff CED will not be able to provide uninterrupted power supply to the consumers as per standard of performance. Therefore, 1855 posts may be approved as an interim arrangement and 207 posts for which recruitment process has been already started may be approved.

17. It is worth mentioning here that Mr. Alex sent e-mail on 19/8/2012 to the Secretary of the Commission stating that CED is not declaring result of LDC and Assistant Linemen for the last six months. They are giving reference of impugned order that CED is regulated by the Commission and the Commission has advised CED that no post should be filled without approval of the Commission.

18. Mr. Gopal Dutt Joshi, General Secretary, U.T. Power Men Union, UT Chandigarh has also sent representation dated 5/9/2012 with a request to implead them party in a case for recruitment of staff for UT CED. The Commission has gone through e-mail of Shri Alex and representation of Mr. Gopal Dutt Joshi and observed that no action is called for by the Commission on the e-mail of Mr. Alex. Even no petition as stated by Mr. Gopal Dutt Joshi is pending before the Commission.

19. The Commission has also received a representation from Sh. R.L. Arora, House No. 4, Sector 21A, Chandigarh with averments that CED is already overstaffed. His representation is accompanied with information collected by him from the public Information Officer O/o Superintending Engineer Elecy. 'Op' Circle Deluxe Building, Sector -9D, Chandigarh.

20. The Commission has gone through the ARR and tariff determination petition, impugned order and review petition carefully and thoroughly and has considered submissions of the petitioner on this issue and found that the Commission in its tariff order date 7th May 2012 observed that as per the data available for FY 2012-13 in the Tariff Order dated 16th July 2011 in ARR and Tariff determination petition for FY 2011-12 for CED, the Commission approved recruitment of 161 employees. The petitioner recruited only 2 employees despite approval of the Commission for recruitment of 161 employees in FY 2011-12. The data for FY 1990-1991 shows that only one employee was catering to 73 consumers. Even today physical area of Chandigarh is same. Whereas density of consumers per sq. km. has increased. As shown by the petitioner in the data submitted one employee is catering to 174 consumers against an all India average number of employees per thousand consumers i.e. 0.40 (one employee catering to 2500 consumers) as per annual plan for FY 2011-12. Even then the Commission in its Tariff Order dated 7th May 2012 has approved that IT, Commercial and Accounts officers may be considered for recruitment in equal number as

employees to fill the vacancies created due to superannuation of employees in these departments, who will provide commercial service to the consumers.

Issue No. 4: Inclusion in Tariff Schedules

22. The petitioner submitted that the Commission in tariff order dated 7/5/2012 has observed that CED in JERC (Electricity Supply Code), Regulations 2010, has notified that all future load above 60 kW should be released on HT (11kv), but to pursue the existing LT consumers having old sanctioned load beyond 60 kW to switch over to HT connection, levy of surcharge to the consumers having certain load at lower voltage than the prescribed standard voltage as proposal in CED e-mail dated 30.4.2012 will help in minimizing T&D losses.

23. The Commission has gone through the ARR and tariff determination petition, impugned order and review petition carefully and thoroughly and found that the petitioner submitted the said proposals for the first time vide e-mail dated 30.4.2012. The same was not submitted in its original ARR and tariff petition for 2012-13 or even by 5.3.2012 on which public hearing was held at Chandigarh on the submission made by the petitioner in its ARR and Tariff petition for 2012-13.

The Commission is of the view that since the said submission regarding levy of surcharge to the consumers having load at lower voltage than the prescribed standard voltage being a new submission and going to affect the consumers commercially and financially, ought not be considered without public hearing on such matters. Therefore, the Commission did not consider the said submission of the petitioner made vide email dated 30.4.2012 after public hearing at Chandigarh.

Issue No. 5: Power Purchase Cost

24. The petitioner submitted that the Commission has not considered the power purchase from bilateral sources as proposed by the petitioner. In order to match the energy requirements, the Commission has considered the power purchase of 110.74 MUs from Energy short term sources including PXIL at six months average rate of Rs. 3.50 per unit (with a permissible upward deviation of 10% in unit rate) for estimation purposed for FY 2012-13. The average power

purchase cost assessed at page 146 in the impugned order by the Commission is Rs. 2.95/- per unit for FY 2012-13 including the short term power purchase at six months average rate of purchase from power exchanges i.e. Rs. 3.50/- per unit. The Commission has analyzed that with every 10% increase in the six months average rate of Rs. 3.50/- per unit of short term power purchase, there will be an increase of only 2 paise per unit in the overall average power purchase cost and 3 paise per unit in the overall average cost of supply assessed by the Commission for FY 2012-13. Therefore, the Commission is of the view that short term power purchase should be made in such a way that the average cost of supply should not increase by more than 3 paise per unit. Further the petitioner is directed to consider the above analysis for short term power purchase.

25. The Commission has gone through the ARR and tariff determination petition, impugned order and review petition carefully and thoroughly and has considered submissions of the petitioner on this issue and found that the Commission in its tariff order date 7th May 2012 approved power purchase cost after due prudence check of the information/ data submitted by the petitioner in its Tariff Petition/ additional information. Accordingly, a short fall of 110.94 MUs was assessed by the Commission in energy availability based on the prevailing allocation of power of CGS and procurement of the same from other short term sources including PXIL at an average estimated rate of Rs. 3.50/ unit(with permissible upward deviation of 10% in unit rate) had been approved. Further the Commission at page 146 of the Tariff Order dated 7th May 2012 has already expressed opinion that short term power purchase should be made in such a way that its impact on the average cost of supply should not be more than 3 paise per unit. This means that in case of change in allocation by MOP or non availability of allocated quota of CGs due to reasons beyond control of the petitioner, the petitioner may meet their approved energy requirement through procurement of power from other short term sources including PXIL at such rates that the average cost of supply for FY 2012-13 of ED-Chandigarh should not increase by more than 3 paise per unit. Further, reasonable and justified increase, if any will be considered at the time of true up.

26. The powers to the Commission to review own orders are provided under section 94 of the Act and Regulation 74 of the Regulations. From bare reading of

the provisions of section 94 of the Act, it is clear that the Commission has same powers to review own orders as that of the Civil Court provided under section 114 of the Civil Procedure Code (CPC). The grounds to review are provided under order 47 of the CPC. According to order 47 of the CPC the Civil Court, here the Commission, can review own order if no appeal is filed and new facts or evidence is brought to the notice of the Court or there is a mistake or error on the face of it in the order.

27. Before proceeding further it will be appropriate to reproduce Regulation 74 of the Regulations which run as under:-

Review of the decisions, directions and orders

(a) The Commission may at any time on its own motion or on the application of any of the persons or parties concerned, within 45 days of the making of any decision, direction or order, review such decisions, directions or orders and pass such appropriate orders as the Commission thinks fit:

Provided that power of review by the Commission on its own motion shall be exercised limited to correction of clerical or typographical errors.

(b) An application for such review shall be filed in the same manner as a Petition under Chapter II of these regulations.

28. After having heard representative of the petitioner at length, going through the ARR and Tariff determination petition FY 2012-13 for CED, the present petition, impugned order dated 7.05.2012 and documents on record as well as relevant provisions of Electricity Act, 2003 and JERC Regulations the Commission is of the confirmed opinion that there is no merit in the review petition and the same deserves dismissal on following grounds:

29. From bare perusal of the provisions of Regulation 74 of the Regulations it is clear that the Commission can review own order on its own or on application of any person or parties concerned. The power to review own order are limited and can be exercised only when there is clerical or typographical mistake. But when there is an application for review the scope for review of own order by the Commission is open.

30. In the present case, when the Commission dealt the ARR and Tariff determination petition for FY 2012-13 for CED and passing impugned order dated 7th May, 2012 the Commission has applied its mind on the petition and carefully perused the documents and the evidence produced in support of the petition. The order under review is well reasoned, speaking, as per facts, provisions of the Electricity Act, 2003 and JERC Regulations. The petitioner has failed to point out any issue which requires review by this Commission. Even in the light of our of above discussion and observations there is nothing on the record to show that any of the five issues raised by the petitioner were not properly dealt by the Commission at the time of passing the impugned order and any of the issues requires review. So there is no merit in the petition, the same fails and is hereby dismissed.

Sd/-	Sd/-
(S.K.Chaturvedi) Member	(Dr. V.K.Garg) Chairperson