

BEFORE THE JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES AT GURUGRAM

PETITION NO: 112 of 2023

DATE OF ORDER: 20.09.2024

IN THE MATTER OF: Petition under Section 27 of the Energy Conservation Act, 2001 for adjudication of the penalty under Section 26 of the Energy Conservation Act, 2001 by the Adjudicating Officer and for directions to Electricity Department, Chandigarh to make payment of penalty as adjudicated by the Adjudicating Officer.

AND IN THE MATTER OF:

The Bureau of Energy Efficiency ... Petitioner

Versus

Electricity Wing of Engineering ... Respondent
Department, Chandigarh (EWEDC)

Parties Present:

For the Petitioner

1. Ms. Namrata Mohapatra, Advocate, Bureau of Energy Efficiency
2. Sh. Rajendra Sharma, Legal Expert, Bureau of Energy Efficiency

For the Respondent

1. Sh. Daleep Kumar, Executive Engineer, Electricity Wing of Engineering Department, Chandigarh.
2. Sh. Anil Dhamija, Superintending Engineer, Electricity Wing of Engineering Department, Chandigarh.

The Petitioner filed a Petition under Section 27 of the Energy Conservation Act, 2001 for adjudication of the penalty under Section 26 of the Energy Conservation Act, 2001 by the Adjudicating Officer and for directions to Electricity Wing of Engineering Department, Chandigarh (EWEDC) to make payment of penalty as adjudicated by the Adjudicating Officer.

A. Submissions of the Petitioner

1. The Bureau of Energy Efficiency (“Petitioner”) filed a Petition against the Electricity Wing of Engineering Department, Chandigarh (“**Respondent**”) under Section 27 of the Energy Conservation Act, 2001 for adjudication of the penalty under Section 26 of the Energy Conservation Act, 2001 (“**Petition**”) before the Joint Electricity Regulatory Commission for the State of Goa and Union Territories at Gurugram (“**Commission**”).
2. The Petitioner is a statutory body set up by the Central Government on 01.03.2002 under the provisions of the Energy Conservation Act, 2001 (“**EC Act**”). The Respondent was included within the scope of the EC Act through statutory order No. 3445(E) dated 28.09.2020.

3. On 07.10.2021, the Petitioner as per the Clause (g) of sub-Section 2 of Section 58, read with Clause (q) of sub-Section 2 of Section 13 of the EC Act notified "*The Bureau of Energy Efficiency (Manner and Interval for Conduct of Energy Audit in Electricity Distribution Companies) Regulations, 2021*" (hereafter referred to as "**BEE Regulations 2021**").
4. The Regulations 2021 framed by the Petitioner for energy audit in Electricity Distribution Companies ("**DISCOMs**") provides broad framework for conduct of annual energy audit and quarterly energy accounting with necessary pre-requisite and reporting requirements. The relevant clauses of the Regulations 2021 are given below:

"3. Intervals of time for conduct of annual energy audit. –

(1) Every electricity distribution company shall conduct an annual energy audit for every financial year and submit the annual energy audit report to the Bureau and respective State Designated Agency and also made available on the website of the electricity distribution company within a period of four months from the expiry of the relevant financial year: Provided that on the commencement of these Regulations, the first annual energy audit of every electricity distribution company shall be conducted within six months from the date of such commencement, by taking into account the energy accounting of electricity distribution company for the financial year immediately preceding the date of the commencement of these Regulations.

(2) Where a new electricity distribution company is established after the commencement of these Regulations, such electricity distribution

company shall conduct its first annual energy audit on completion of the first financial year from the date of being notified as designated consumer.

Explanation. — If any entity created as a result of merger, demerger, slump sale, acquisition, change of control or any other corporate restructuring of, or involving, any existing electricity distribution company, such entity shall not be considered as a new electricity distribution company for the purposes of this sub-Regulation.

4. Intervals of time for conduct of periodic energy accounting. -

(1) Every electricity distribution company shall —

(a) ensure that all feeder wise, circle wise and division wise periodic energy accounting shall be conducted by the energy manager of the electricity distribution company for each quarter of the financial year; and

(b) submit the periodic energy accounting report to the Bureau and respective State Designated Agency and also made available on the website of electricity distribution company within forty-five days from the date of the periodic energy accounting.

(2) After the commencement of these Regulations, every electricity distribution company shall, notwithstanding anything in sub-Regulations (1)-

(a) conduct its first periodic energy accounting, for the last quarter of the financial year immediately preceding the date of such commencement; and

(b) conduct its subsequent periodic energy accounting for each quarter of the financial year for a period of two financial years from the date of such commencement and submit the periodic energy accounting report within sixty days from the date of periodic energy accounting.

5. According to the above-mentioned provisions of the Regulations 2021, the Respondent must conduct Periodic Energy Accounting by in-house energy manager and similarly Annual Energy Audit by an accredited energy auditor (by engaging a third-party agency). The Regulations also makes it mandatory for the Respondent to create a centralized energy accounting and audit cell with sufficiently qualified personnel.
6. The Petitioner to create awareness and facilitating the compliance of the Regulations 2021 organized region-wise webinars/workshops for DISCOMs. The Petitioner sent the invitation by email dated 15.11.2021 to the DISCOMs including the Respondent to join these webinars/workshops.
7. The timeline for the compliance of the Regulations 2021 by the Respondent is mentioned herein below:
 - i. The **First Periodic Energy Accounting Report** (Quarter-II) from period 01.07.2021 to 30.09.2021 was to be submitted by 06.12.2021.
 - ii. The **Subsequent periodic energy accounting report** (Quarter- III) from period 01.10.2021 to 31.12.2021 was to be submitted by 01.03.2022.

- iii. The **Subsequent periodic energy account report** (Quarter-IV) from period 01.01.2022 to 31.03.2022 was to be submitted by 30.05.2022.
 - iv. The **Annual energy audit report for FY 2020-21** was to be submitted by 06.04.2022.
 - v. The **Subsequent Annual energy audit report for FY 2021-2022** was to be submitted by 31.07.2022.
8. The Central Government in accordance with the Section 14 (i) of the EC Act issued a letter dated 27.10.2021 addressing the Chief Secretary, ACS/Principal Secretary/ Secretary (Energy/ Power) of all State Governments and UTs to inform about the Regulations 2021. It was instructed through this letter that all the distribution companies governed under the various provisions the EC Act are required to have its 1st energy audit conducted by an accredited energy auditor within six months i.e. by 06.04.2022 for FY 2020-21 and periodic energy accounting for the last quarter ending September 2021 by energy manager by 06.12.2021.
 9. The Petitioner issued a letter dated 18.11.2021 addressed to the Respondent informing that as per Clause 5(g) of the Regulations 2021, the DISCOMs shall create a centralized energy accounting and audit cell comprising of a Nodal Officer, an Energy Manager etc. The Nodal Officer will be the point of contact for all communication / activities related to the compliance of the Regulations 2021. The Petitioner requested to provide the details of Energy Audit Cell in a prescribed format as mentioned in the letter.
 10. The Petitioner sent two letters dated 09.12.2021 and 28.01.2022 to the Respondent requesting the submission of the 1st annual energy audit report and periodic Energy

Accounting Reports. It was also informed to the Respondent that non-compliance of the Regulations 2021 will attract penal provisions under the EC Act.

11. The Petitioner vide its E-mail dated 23.02.2022 circulated a letter dated 22.02.2022 to the Respondent that the 2nd periodic Energy Accounting Reports for Q3 of FY-2021-22 (period 01.10.2021 to 31.12.2021) must be submitted on or before 01.03.2022. The Respondent was also reminded about the non-submission of the 2nd Energy Accounting Report and the noncompliance of Regulations 2021 would attract the penal provision under the EC Act.
12. However, the Respondent did not submit the 1st Energy Accounting Report, therefore, the Petitioner issued a show cause notice dated 04.03.2022 to the Respondent for non-compliance of the provisions of the Regulations 2021 and directed the Respondent to explain the reasons of non-submission of 1st Energy Accounting Report.
13. The Petitioner vide letter dated 23.05.2022 informed the Respondent that 1st and 2nd Energy Accounting Report for Q2 and Q3 of FY 2020-21 has not been submitted to the Petitioner with a copy to state designated agency which was to be submitted by 06.12.2021 and 01.03.2022 respectively as per Regulations 2021. The Petitioner also directed the Respondent to submit their response and reasons for non – submission of the report along with a copy of 1st & 2nd Energy Accounting Report on or before 31.05.2022 failing which penal action would be initiated as provisions under the EC Act.
14. The Petitioner sent another letter dated 23.08.2022 to the Respondent requesting submission of its periodic Energy Accounting Report of FY 2021-22 and 1st & 2nd annual Energy Audit Reports for FY 2020-21 & FY 2021-22, duly providing reasons for non - submission of the report.

15. The Petitioner finally issued a show cause notice dated 19.01.2023 to the Respondent directing submission of its response as to why action should not be taken against the Respondent for non-compliance of the Regulations, 2021 and for non-submissions of the reports along with a copy of the Periodic Energy Accounting Report and Annual Energy Audit Report within a period of 7 days.
16. The Petitioner has filed the present Petition in accordance to the S.O.6027(E) dated 23.12.2022 wherein the Petitioner has been empowered to file Petition before the Competent Authority for Non-Compliance of the Regulation.
17. The Petitioner submitted a Rejoinder to the Counter Affidavit filed by the Respondent dated 04.01.2024 in compliance of the interim order dated 13.11.2023.
18. The Petitioner submitted that upon bare perusal of the Reply, it is evident that it has been based on frivolous premises with the intention to deviate the issue at hand and hence deserves to be set aside. The Petitioner submitted that the Respondent being under process of privatization does not have any bearing on the delay or non-compliance of the Regulations 2021 and the EC Act, which provides for mandatory and strict timelines for compliance. The Respondent is still submitting the Periodic Energy Accounting Reports and Annual Energy Reports with inordinate delay without completion of the privatization process.
19. The Petitioner submitted that the Respondent has admitted that they submitted the Periodic Energy Accounting Reports with delay and did not conduct Annual Energy Audit in time based on frivolous reasons intending to misguide the Hon'ble Commission. The Respondent has admitted that they have not appointed officers as prescribed in Regulation 5 (g) (i) of the Regulations 2021 and non-compliance of such regulation by the

Respondent cannot be condoned as an excuse for non-submission of reports to the Petitioner.

20. The Petitioner submitted that submission of Annual Energy Audit reports and Periodic Energy Accounting reports do not depend on allotment of the Smart Grid Project to the city. The Respondent is still submitting the Periodic Energy Accounting Reports and Annual Energy Reports with inordinate delay without completion of the Smart Grid Project.
21. The Petitioner submitted that the Respondent has enumerated a number of excuses and reasons for non-submission of reports and has merely relied on afterthoughts such as being under process of privatization and smart grid project being put on hold. The Respondent has admitted that the Petitioner had already declined the Respondent's request for exemption on the ground of the Respondent being under process of privatization.
22. The Petitioner submitted that the Respondent is in violation of Section 26 of EC Act for delay in submission of reports. The Regulations 2021 prescribe strict timelines for submission of periodic accounting reports and the Annual Energy Audit reports and no exemption is granted for delay in submission of reports. No provisions governing the submission of reports provide for any case of condonation of delay and the Petitioner has submitted the reports with an inordinate delay.
23. The Petitioner submitted that the Respondent's submissions regarding change in format is false. As per the Regulations, 2021 the formats for submission of Annual Energy Audit report are mentioned in Schedule II of the Regulations 2021 and no change in format has been notified by the Government. Further, the Periodic Energy Accounting Reports are

prepared and signed by the in-house manager of the Respondent and the Petitioner has not notified any change in format of submission of the Periodic Energy Accounting Reports.

24. The Petitioner submitted that even though it is the legal obligation of the Respondent to conduct energy audits at their own expense, the Petitioner themselves had to take matters into their own hands and had to initiate Annual Energy Audit from their end by appointing M/s A to Z Energy Engineer Private Limited.
25. The Petitioner vide email dated 07.11.2022 informed the Respondent that the Respondent cannot accept annual energy proforma as compliance of annual energy audit as per Regulations, 2021 and further requested the Respondent to submit all their quarterly reports for FY 2021-22 and also Q1 & Q2 of FY 2022-23 within a week's time.
26. The Petitioner submitted that the Respondent has disregarded the number of requests of the Petitioner for submission of the periodic energy accounting reports and the annual energy audit reports as per timeline mentioned in the Regulations 2021. The Respondent kept sending communications citing various excuses of their inability to appoint an accredited energy auditor, and deliberately delayed the preparation of the annual energy audit report in time. The Petitioner has replied to each and every one of the Respondent's communications with utmost good faith.

B. Submissions of the Respondent

27. The Respondent submitted their Reply against the said Petition in compliance of the interim order dated 13.11.2023 passed by the Adjudicating Officer.
28. The Respondent is the distribution licensee for transmission and distribution of electricity in the Union Territory of Chandigarh.

29. The Respondent has challenged the maintainability of the present Petition on the ground that the formats for supply of Energy Audit Report has been changed by Ministry of Power and therefore the schedule for submission of Audit Reports becomes pointless.
30. The Respondent faces several constraints for compliance with the Regulations 2021 which has been communicated to the Petitioner on various occasions.
31. The Respondent states that it is under process of privatization. Due to the privatization process, the smart grid project covering whole of Chandigarh has been put on hold by the Ministry of Home Affairs as per Minutes of Meeting dated 10.05.2022. As a result, the requisite infrastructure such as information technology (IT) enabled energy accounting and audit system including associated software for energy accounting/ auditing could not be installed by the Respondent.
32. Further, the Respondent states that there is a requirement for constitution of Centralized Energy Accounting & Audit cell comprising of full time Nodal Officer, Energy Manager, Information Technology Manager and a Financial Manager, however the same could not be processed by the Respondent due to the ongoing privatization process.
33. The Respondent in compliance with Regulations 2021 designated a Nodal Officer for Energy Audit and informed the Petitioner vide letter dated 30.12.2021.
34. The Respondent vide its letter dated 11.05.2022 informed the Petitioner that the required infrastructure for energy accounting/ auditing has not been installed and will take considerable time due to the smart city project being put on hold on account of ongoing privatization and requested the Petitioner to withdraw the show cause notice and grant exemption from submission of Annual Energy Audit and Periodic Accounting. The Petitioner vide letter dated 07.06.2022 declined the Respondent's request.

35. Despite the constraints, the Respondent made significant efforts to comply with Regulations 2021. The Respondent floated an RFP in July 2022 for appointment of energy auditor and carrying out energy audit of the Respondent on the basis of model RFP framed by the Petitioner. The Petitioner's officials visited the Respondent's office on 27.10.2022 to guide the preparation of Energy Audit reports.
36. The Respondent vide letter dated 04.11.2022 submitted Annual Energy Audit Report of FY 2021-22 manually compiled by the department. However, the Petitioner vide email dated 07.11.2022 informed the Respondent that the Annual Energy Audit Report of FY 2020-21 & FY 2021-22 has to be conducted by a third-party agency. The Respondent vide letter dated 02.12.2022 submitted the Energy Accounting Report of Q2, Q3 & Q4 of FY 2021-22 and Q1 & Q2 of FY 2022-23 to the Petitioner.
37. Meanwhile, the Petitioner vide letter dated 23.02.2023 appointed M/s A to Z Energy Engineer Private Limited ("Energy Auditor") as the third-party agency for carrying out the Annual Energy Audit of the Respondent for FY 2020-21 and FY 2021-22. The Respondent stated that no representative of the Energy Auditor is based in Chandigarh and no substantial support or inputs have been received by the Respondent in carrying out the energy audit.
38. The Respondent vide letter dated 18.05.2023 provided the compiled data in desired formats to the Energy Auditor. However, the Respondent was requested vide email dated 14.08.2023 for compiled data in revised formats. The Respondent vide letter dated 15.11.2023 submitted the compiled data in revised/ additional formats for FY 2020-21 & 2021-22 to the Energy Auditor.

39. The Respondent vide its emails dated 17.05.2023, 08.08.2023 and 13.10.2023 submitted the manually compiled Periodic Energy Accounting reports for Q3 & Q4 FY 2022-23 and Q1 of FY 2023-24 to the Petitioner.
40. The Respondent has also floated an RFP for carrying out Annual Energy Audit of FY 2022-23 and FY 2023-24 Audit on 07.08.2023 with due date of opening 22.08.2023. The due date of RFP has been extended repeatedly on 01.09.2023, 12.09.2023, 04.10.2023, 23.11.2023 and further extended to 04.12.2023 due to non-participation of any bidder. The Respondent is relaxing various terms and conditions of the RFP for wider participation/ response from bidders.
41. The Respondent further submitted that any alleged non-compliance of Regulations 2021 was not intentional and consistent efforts have been made by the Respondent for compliance of Regulations 2021 irrespective of various difficulties faced.

C. Analysis and Findings

42. Heard the Petitioner and the Respondent at length.
43. I have examined the entire record placed before me along with the relevant provisions of the Energy Conservation Act 2001, the Energy Conservation (Amendment) Act 2022, The Bureau of Energy Efficiency (Manner and Intervals for Conduct of Energy Audit in Electricity Distribution Companies) Regulations, 2021 (BEE Regulations, 2021) and the MoP Notification dated 23.12.2022 (hereafter referred to as MoP Notification, 2022).
44. The Petitioner in its Petition has relied upon Section 26 of Energy Conservation Act, 2001 which has since been amended vide Energy Conservation (Amendment) Act, 2022 and is quoted below:

“26. (1) If any person fails to comply with the provisions of clause (h) or clause (i) or clause (k) or clause (l) of section 14 or clause (h) of section 15, he shall be liable to a penalty which shall not exceed ten lakh rupees:

Provided that in the case of continuing failures, the person shall be liable to an additional penalty which may extend to ten thousand rupees for every day during which such failures continue.

(2) Notwithstanding anything contained in this Act or any other Act for the time being in force, if any person fails to comply with the provisions of clauses (c) and (d) of Section 14, he shall in addition to the penalty of ten lakh rupees, be also liable to pay additional penalty which shall not exceed five thousand rupees per appliance or equipment in relation to which the non-compliance has occurred, but shall not be lower than two thousand rupees:

Provided that where such non-compliance relates to any industrial unit or vessel, he shall also be liable to an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent consumed in excess of the prescribed norms:

Provided further that if the manufacturer of a vehicle fails to comply with the fuel consumption norms, he shall also be liable to pay an additional penalty per unit of vehicles sold in the corresponding year, as follows, namely: --

- i. twenty-five thousand rupees per vehicle for non-compliance of norms up to 0.2 litres per 100 kms;*
- ii. fifty thousand rupees per vehicle for non-compliance of norms above 0.2 litres per 100 kms.*

(3) If any person fails to comply with the directions issued under clauses (n) and (x) of section 14, he shall be liable to a penalty which shall not exceed ten lakh rupees for each such failure:

Provided that he shall also be liable to an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent prescribed under this Act, which is in excess of the prescribed norms.

(4) If a person fails to comply with the provisions of sub-section (1) of section 13A or fails to provide any information under section 52, he shall be liable to a penalty which may extend to fifty thousand rupees on first such non-compliance or failure: Provided that for every subsequent non-compliance or failure, he shall be liable to pay an additional penalty which shall not exceed ten thousand rupees per day of such non-compliance or failure:

Provided that for every subsequent non-compliance or failure, he shall be liable to pay an additional penalty which shall not exceed ten thousand rupees per day of such non-compliance or failure.

(5) Any amount payable under this section, if not paid, may be recovered as if it were an arrear of land revenue.”

45. The Petitioner has prayed the following:

- a. Direct the Adjudicating officer for holding an enquiry for the purpose of adjudging the penalty under section 26 of the Energy Conservation Act, 2001 for non-compliance of the Regulation by the Respondent.
- b. Direct the Respondent to make payment of penalty as adjudicated by the Adjudicating Officer.
- c. Direct the Respondent to comply with the Regulation notified by the Petitioner and submit the requisite form for Energy Audit as provided in the Regulation.

d. Pass any such other and further orders as are deemed to fit and proper in facts and circumstances of the case.

46. The main grievance of the Petitioner is that the Respondent has not complied with the provisions of the BEE Regulations, 2021 as it has failed to submit the energy accounting report and audit report for the FY 2020-21 and 2021-22.

47. Clause 3 of the BEE Regulations, 2021 provides for the periodic accounting and audit of the Distribution Licensees as under:

1. Every electricity distribution company shall conduct an annual energy audit for every financial year and submit the annual energy audit report to the Bureau and respective State Designated Agency and also made available on the website of the electricity distribution company within a period of four months from the expiry of the relevant financial year: Provided that on the commencement of these regulations, the first annual energy audit of every electricity distribution company shall be conducted within six months from the date of such commencement, by taking into account the energy accounting of electricity distribution company for the financial year immediately preceding the date of the commencement of these Regulations.

2. When a new electricity distribution company is established after the commencement of these Regulations, such electricity distribution company shall conduct its first annual energy audit on completion of the first financial year from the date of being notified as designated consumer.

Explanation, ---- if any entity created as a result of merger, demerger, slump sale, acquisition, change of control or any other corporate restructuring of, or involving, any

existing electricity distribution company, such entity shall not be considered as a new electricity distribution company for the purposes of this sub-regulations.

48. Clause 4 of the BEE Regulations, 2021 provides as under:

- 1. Every electricity distribution company shall---*
 - a. Ensure that all feeder wise, circle wise and division wise periodic energy accounting shall be conducted by the energy manager of the electricity distribution company for each quarter of the financial year; and*
 - b. Submit the periodic energy accounting report to the Bureau and respective State Designated Agency and also made available on the website of electricity distribution company within forty-five days from the date of the periodic energy accounting.*
- 2. After the commencement of these Regulations, every electricity distribution company shall, notwithstanding anything in sub-regulations (1)-*
 - a. Conduct its first periodic energy accounting, for the last quarter of the financial year immediately preceding the date of such commencement; and*
 - b. Conduct its subsequent periodic energy accounting for each quarter of the financial year for a period of two financial years from the date of such commencement and submit the periodic energy accounting report within sixty days from the date of periodic energy accounting.*

49. Clause 5 of the BEE Regulations, 2021 provides as under:

Pre-requisites for annual energy audit and periodic energy accounting-

Save as otherwise provided, every electricity distribution company shall undertake all actions as may be required for the annual energy audit and periodic energy accounting before the start of the relevant financial year, including the following actions, namely:

- a. *The identification and mapping of all of the electrical network assets;*
- b. *The identification and mapping of high tension and low-tension consumers;*
- c. *The development and implementation of information technology enabled energy accounting and audit system, including associated software;*
- d. *The electricity distribution company shall ensure the installation of functional meters for all consumers, transformers and feeders:*

Provided that meter installation may be done in a phased manner within a period of three financial years from the date of the commencement of these regulations in accordance with the trajectory set-out in the First Schedule:

- e. *All distribution transformer (other than high voltage distribution System upto 25kVA and other distribution system below 25kVA shall be metered with communicable meters. And existing non-communicable distribution transformer meters shall be replaced with communicable meters and integrated with advanced metering infrastructure:*

- f. *the electricity distribution company shall establish an information technology enabled system to create energy accounting reports without any manual interference:*

Provided that such system may be established-

- i. *within a period of three years from the date of the commencement of these regulations in case of urban and priority area consumers; and*
- ii. *within five years from the date of the commencement of these regulations in case of rural consumers:*

- g. *the electricity distribution company shall create a centralized energy accounting and audit cell comprising of-*

- i. *a nodal officer, an energy manager, and an information technology manager, having professional experience of not less than five years; and*
- ii. *a financial manager having professional experience of not less than five years.*
- h. *any other requisite that Bureau may direct for energy audit and accounting purpose.*

50. Regulation 3 of BEE Regulations, 2021 deals with the periodicity for carrying out energy audit and the submission of audit reports to BEE. Similarly, Regulation 4 deals with the periodicity for carrying out energy accounting and the submission of accounting reports to BEE. Regulation 5 deals with the pre-requisites to be arranged by the distribution companies for the purpose of energy audit and energy accounting.

51. The MoP Notification, 2022 issued on 23rd Dec, 2022 provides as under:

S.O 6027 (E)--- In exercise of the power conferred by clauses (l), (k) and (1) of sections 14, 26 and 52 of the Energy Conservation Act, 2001 (52 of 2001), the Central Government, in consultation with the Bureau of Energy Efficiency (BEE) hereby direct: -

- a. *that every Electricity Distribution Company shall designate or appoint energy manager and accredited energy auditor and get periodic energy accounting conducted by the appointed energy manger and annual energy audit conducted by the appointed accredited energy auditor and furnish reports to the State Designated Agency (SDA) and Bureau in accordance with the Bureau of Energy Efficiency (Manner and Intervals for Conduct of Energy Audit in electricity distribution companies) Regulations, 2021 as amended from time to time.*

That in case of non-compliance of these directions or and non-submission of periodic energy accounting reports of annual energy audit reports or such other reports or such other reports as required submission of incorrect data or

misrepresentation of facts, the State Designated Agency or Bureau or any person as designated by the Central Government shall file Petition for non-compliance to the respective State Electricity Regulatory Commission or Joint Electricity Regulatory Commission.

52. Thus, MoP Notification 2022 issued the directions to the Distribution Companies to designate or appoint energy managers to carry out energy accounting and accredited energy auditors to carry out energy audit. In my view, the Respondent could give effect to the BEE Regulations, 2021 after issue of the MoP Notification 2022.

53. I have noted that the Petitioner has submitted the following specific timeline for the compliance of the BEE Regulations, 2021 as under:

Report	Whom to be submitted	Type of report/ audit	Period	Due date for submission
Periodic Energy Accounting by Energy Manager (EM)	Bureau of Energy Efficiency and State Designated Agency	First Periodic Energy accounting (Quarter- II)	01.07.2021 To 30.09.2021	06.12.2021
		Subsequent Periodic Energy accounting (Quarter- III)	01.10.2021 To 31.12.2021	01.03.2022
		Subsequent Periodic Energy accounting (Quarter- IV)	01.01.2022 To 31.03.2022	30.05.2022
Annual Energy Audit by an Accredited Energy Auditor (AEA)	Bureau of Energy Efficiency and State Designated Agency	First Annual Energy Audit	FY 2020-21	06.04.2022
		Subsequent Annual Energy Audit	FY 2021-22	31.07.2022

54. The above timeline does not take into account the fact that directions for appointment of energy manager and accredited energy auditor was issued through MoP Notification 2022 only on 23.12.2022. In my view, the Petitioners should have issued the following timeline for submission of the reports after the issue of MoP Notification:

(a) Audit Report for 2020-21: 22.6.2023

(b) Audit Report for 2021-22: 22.6.2023

(c) Audit Report for 2022-23: 31.7.2023

55. The Respondent in justification of delay, has submitted that Respondent is under process of privatization. Due to the privatization process, the smart grid project covering whole of Chandigarh has been put on hold by the Ministry of Home Affairs as per Minutes of Meeting dated 10.05.2022. As a result, the requisite infrastructure such as information technology (IT) enabled energy accounting and audit system including associated software for energy accounting/ auditing could not be installed by the Respondent. Respondent has also floated an RFP for carrying out Annual Energy Audit of FY 2022-23 and FY 2023-24 Auditor on 07.08.2023 with due date of opening 22.08.2023. The due date of RFP has been extended repeatedly on 01.09.2023, 12.09.2023, 04.10.2023, 23.11.2023 and further extended to 04.12.2023 due to non-participation of any bidder.

56. I observe that even though BEE Regulations, 2021 provides for a time line for generation and submission of energy accounting report and audit report, the Respondent could not have complied with the said Regulation prior to 23.12.2022 when the MoP Notification for

appointment of energy manager and accredited energy auditor was issued. As noted in para 54 above, the audit report for FY 2020-21 and 2021-22 should have been sought by 22.06.2023 and audit report for 2022-23 should have been sought by 31.07.2023. Thus, it is clear that only last quarter report for FY 2022-23, would be due only after 4 months as per Clause 3 of the BEE Regulations, 2021 i.e. on 31st July, 2023. In case of failure by the Respondent to submit the audit report by the said due date, the Petitioner could have approached the Commission for adjudication and imposition of suitable penalty. However, it is noted that the petitioner has filed the said petition Under Section 27 of the Energy Conservation Act, 2001 on 02.03.2023 for the period FY 2020-21& 2021-22 which is not in accordance with Clause 3 of the BEE Regulations, 2021 read with MoP Notification, 2022. Based on the facts and circumstances mentioned above, I am of the considered view that the said petition is premature. Accordingly, I consider it appropriate not to proceed with the enquiry for the purpose of imposition of penalty. Hence the said petition is dismissed.

Sd/-

(Jyoti Prasad)

Member (Law), JERC

Adjudicating Officer