

BEFORE THE JOINT ELECTRICITY REGULATORY COMMISSION

FOR THE STATE OF GOA AND UNION TERRITORIES AT GURUGRAM

PETITION NO: 110 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, UT of Andaman & Nicobar Islands to make payment of penalty as adjudicated by the Adjudicating Officer.

AND IN THE MATTER OF:

The Bureau of Energy Efficiency

... Petitioner

Versus

Electricity Department, UT of Andaman &
Nicobar Islands

... Respondent

Parties Present:

Petitioner

1. Namarta Mohapatra, Advocate, Bureau of Energy Efficiency
2. Rajinder Sharma, Legal Expert, Bureau of Energy Efficiency

Respondent:

1. Vikrant N Goyal, Advocate, Electricity Department, Andaman & Nicobar
2. Rizwana, Executive Engineer, Electricity Department, Andaman & Nicobar

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 Department, UT of Andaman & Nicobar Islands 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 Department, UT of Andaman & Nicobar Islands ("**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 Regulations 2021 known as “*The Bureau of Energy Efficiency (Manner and Interval for Conduct of Energy Audit in Electricity Distribution Companies) Regulations, 2021*” (hereafter referred to as “**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 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 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.
16. The Petitioner submitted a Rejoinder to the Reply filed by the Respondent dated 06.03.2024 in compliance of the interim order dated 13.11.2023.

17. 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.
18. 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.
19. 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 lack of internet connectivity, geographical remoteness and various other accessibility issues.
20. 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.
21. 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 PPS Energy Solutions Pvt. Ltd.
22. The Petitioner submitted that the onus of appointment of Energy manager is on the Respondent and has to be managed by the Respondent and the Petitioner is under no legal obligation under the Regulations 2021 to provide financial support or any handholding for formation of energy audit cell in the Respondent's department. The Respondent

created the energy audit cell only on 26th April 2023 whereas as per the Regulations 2021, the energy audit cell must be formed before the start of the respective financial year.

23. The Petitioner submitted that the Petitioner vide emails dated 13.05.2022, 27.05.2022, 19.01.2023, 27.01.2023 made attempts to schedule and finalize a meeting with the parties to resolve the Respondent's queries however, the Respondent failed to be available for any date for the meeting.
24. The Petitioner submitted that despite multiple confirmations, clarifications and communications between the parties, the energy audit cell was not created by the Respondent as per timeline mentioned in the Regulations 2021. The dates of these communications between the parties are as follows: - Respondent's letter dated 12.04.2022, Petitioner's email dated 13.04.2022; Respondents' letter dated 22.04.2022, Petitioner's email dated 13.05.2022. Respondent's letter dated 16.06.2022, Petitioner's email dated 17.06.2022; Respondent's email dated 01.07.2022, Respondent's email dated 23.09.2022, Petitioner's email dated 28.09.2022 and Respondent's email dated 08.10.2022.
25. The Petitioner submitted that even after the long communication and clarifications, the Petitioner kept trying to resolve the queries of the Respondent. The Respondent declined to attend meetings scheduled by the Petitioner on 30.01.2023, 02.02.2023 and 21.02.2023.
26. The Petitioner submitted that the Respondent kept corresponding with the Petitioner and delaying the process of appointing an energy auditor. In response to letter dated 29.12.2022 of the Respondent, the Petitioner replied on 10.03.2022 and also forwarded on 05.04.2022 the model RfP for appointment of accredited energy auditor for conducting the annual energy audit for the FY 2020-2021 and FY 2021-2022.

27. 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 inabilities 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. The Petitioner on 18.01.2023 replied to the Respondent's letter dated 21.12.2022 and provided the list of accredited energy auditors already available on the Petitioner's website and informed that the Petitioner did not help in the formation of an energy audit cell within the Respondent's Department.

B. Submissions of the Respondent

28. The Respondent submitted their Reply against the said Petition in compliance of the interim order dated 13.11.2023 passed by the Adjudicating Officer.

29. The Respondent is the deemed distribution licensee for transmission and distribution of electricity in the Union Territory of Andaman and Nicobar Islands.

30. The Respondent had initiated compliance with the Regulations 2021 and had observed that there were several internal constraints within the Respondent department in complying with the requirements of the Regulations, 2021 which had been communicated to the Petitioner on various occasions.

31. The geographical location of the islands with limited access, minimal internet connectivity, absence of database management systems and lack of in-house expertise for conducting the energy accounting & auditing were also part of the constraints faced by the Respondent. The islands under the Respondent's jurisdiction comprise numerous stand-alone systems with different voltage levels, situated at considerable distance and

limited accessibility which further add to the challenges faced by the Respondent in compiling data for Energy Audit.

32. The Respondent vide letters dated 12.04.2022, 22.04.2022, 16.06.2022, 23.09.2022, 08.10.2022 and email dated 01.07.2022 informed the Petitioner that the structure as designated under the Regulation, 2021 comprising of a Nodal Officer, Energy manager, IT Manager and Finance Manager were not available within the Respondent's department.
33. The Respondent vide emails dated 13.05.2022, 18.05.2022, 21.01.2023, 25.01.2023, 27.01.2023 and 02.03.2023 informed the Petitioner about the practical difficulties and constraints faced by the Respondent and also requested the Petitioner to conduct VC's to resolve the issues for complying with Regulations 2021.
34. The Respondent submitted that they made other significant efforts too to comply with the Regulations 2021. The Respondent issued a RFP dated 20.10.2022 to carry out energy audit of the Respondent for the FY 2021-22 and 2022-23. However, no bidder participated in the process. The Respondent also explored the possibility of engaging an Energy Auditor through the GeM/CPP portal. However, the same could not be done as there was no provision on the portal for publishing a limited bid/tender inquiry.
35. The Respondent vide letter dated 29.12.2022 gave status update to the Petitioner regarding the compliance of Regulations 2021.
36. The Respondent submitted that the Petitioner issued a Letter of Award to M/s PPS Energy Solutions Ltd on 09.02.2023 to conduct Annual Energy Audit for FY 2020-21 and 2021-22. M/s PPS Energy Solutions Ltd thereafter conducted Energy Audit and submitted draft Energy Audit Reports for FY 2020-21 and FY 2021-22 on 15.09.2023. Further, M/s PPS Energy Solutions Ltd also submitted the final Annual Energy Report of Respondent for FY

2020-21 vide email dated 04.12.2023 and final Annual Energy Report for FY 2021-22 vide email dated 07.12.2023.

37. The Respondent submitted that after identifying the gaps mentioned above, they established an Energy Audit Cell under the expertise of M/s PPS Energy Solutions Ltd.
38. The Respondent, despite facing the number of challenges mentioned above, submitted on 21.12.2022, the Annual Energy Audit Report for FY 2021-22 and 4 quarters Periodic Energy Accounting Reports for FY 2021-22.
39. The Respondent has also initiated a proposal for engaging Energy Auditor for FY 2022-23 & FY 2023-24 and the model RfP of the same has been approved by competent authority and floated on the GeM portal on 23.11.2023. The bids for the same are under evaluation.
40. 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

41. Heard the Petitioner and the Respondent at length.
42. 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).
43. 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.”

44. 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.

45. 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.

46. 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.

47. 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.*

48. 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.

49. 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.

50. 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.

51. 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.

52. 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	Bureau of Energy Efficiency and	First Annual Energy Audit	FY 2020-21	06.04.2022

Accredited Energy Auditor (AEA)	State Designated Agency	Subsequent Annual Energy Audit	FY 2021-22	31.07.2022
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53. 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

54. The Respondent has submitted that the Respondent had initiated compliance with the Regulations 2021 and had observed that there were several internal constraints within the Respondent department in complying with the requirements of the Regulations 2021 which had been communicated to the Petitioner on various occasions. The geographical location of the islands with limited access, minimal internet connectivity, absence of database management systems and lack of in-house expertise for conducting the energy accounting & auditing were also part of the constraints faced by the Respondent.

55. The Respondent in justification of delay, submitted that they made significant efforts to comply with the Regulations 2021. The Respondent issued a RFP dated 20.10.2022 to carry out energy audit of the Respondent for the FY 2021-22 and 2022-23. However, no bidder participated in the process. The Respondent also explored the possibility of

engaging an Energy Auditor through the GeM/CPP portal. However, the same could not be done as there was no provision on the portal for publishing a limited bid/tender inquiry. The Respondent vide letter dated 29.12.2022 gave status update to the Petitioner regarding the reasons and delay in compliance of Regulations 2021.

56. Subsequently, the Petitioner itself issued a Letter of Award to M/s PPS Energy Solutions Ltd on 09.02.2023 to conduct Annual Energy Audit for FY 2020-21 and 2021-22. M/s PPS Energy Solutions Ltd thereafter conducted Energy Audit and submitted draft Energy Audit Reports for FY 2020-21 and FY 2021-22 on 15.09.2023. Further, M/s PPS Energy Solutions Ltd also submitted the final Annual Energy Report of Respondent for FY 2020-21 vide email dated 04.12.2023 and final Annual Energy Report for FY 2021-22 vide email dated 07.12.2023.

57. 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 53 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 02.02.2023 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