

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM 695 003

PRESENT: **Shri M.K.G. Pillai, Chairman**
Shri C. Balakrishnan, Member

August 20, 2003

Petition No. DP-1	Dy.No. 0086 dt 28-04- 2003	Technopark, Thiruvananthapuram. Kerala State Electricity Board, Thiruvananthapuram.	Petitioner Respondent
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INTERIM ORDER

1. Background:

1.1 Technopark is a licensee who receives power from the Kerala State Electricity Board, hereinafter called KSEB or Board, for the licensee's own use and also for distribution to other consumers in the Tecahnopark premises. The petition by Technopark is against the grid tariff revision order notified by the Board *vide* B.O. (CM). No. 426/03/TRAC/TO-1/2002 dated the 2nd April, 2003. As per this order, the Board has classified the petitioner in a new grid tariff category GII introduced by the Board through this notification and increased the energy consumption charges from Ps 125/kWh to Ps 260 /kWh, an increase of 108%. The petitioner has alleged that the categorization of the licensee was done by the Board unilaterally. The petitioner has further stated that the tariff increase of 108% is too steep to be sustained and is not rational and such a steep increase without any prior intimation will upset the entire business atmosphere in Technopark and adversely affect the investments in the IT Sector of the State. The retrospective effect of the increase from 1st October 2002 involves a long period which would create hardship to the licensee and the IT companies in the Technopark. The petitioner has further stated that it had paid an amount of Rs. 4.75 crores to the Board towards the cost of construction of a 110 kV substation near Technopark in addition to providing 4 acres of land free of cost for locating the substation which is being used by the Board for supplying power to the consumers in the areas around the substation. The petitioner also questioned the validity of the tariff revision order by the Board since at the time of notification of the tariff order, the Kerala State Electricity Regulatory Commission was in position. The petitioner has therefore requested for the following:

- a) Technopark be classified under category GI for fixing grid tariff,
- b) Tariff increase be limited to 25%,

- c) Tariff revision be made current and not retrospective with effect from October, 2002.

1.2 The matter was considered in a meeting of the Commission held on 30.4.2003. The Commission decided to seek clarification from the Board regarding the circumstances under which the tariff order was issued since the authority for determination/revision/modification of tariff for electricity was vested with the Commission since its inception on 29.11.2002. The clarification was sought *vide* Commission's letter No. 1/4/KERC-2003/140 dated the 2nd May 2003. The Board furnished the reply *vide* letter No. TRAC/SERC/GRID/146 dated the 28th May, 2003. The Board cited financial difficulties as the major reason for the increase. It was pointed out that there was wide gap between the revenue requirement and revenue collection. The Board was compelled to purchase costly power to meet the demand. The failure of monsoon during 2002 had aggravated the situation. The Board therefore stated that it was compelled to revise the tariff for licensees/sanction holders also. The Board further stated that the tariff was revised on the basis of the Government of Kerala, Power (A) Department G.O. (Ms) No. 26/02/PD dated the 11.10.2002 which *inter alia* stated that "Grid Tariff shall be fixed by the Board in such a way that additional income that may accrue to the licensee by the tariff revision is transferred to the KSEB". The Board further stated that since the Government order for revising the grid tariff was already in existence, the grid tariff notification dated April 2, 2003 is a continuation of the general grid tariff revision order notified on 24.10.2002 and it is considered that the grid tariff revision notified on April 2, 2003 was within the ambit of the Board and the Board issued this notification only after obtaining the approval of the Government".

1.3 The Board further stated that the tariff for licensees/sanction holders has been revised by reclassifying them into two categories, *viz.*, G I and G II with two different tariffs. The licensees which supply more than 50% of the electricity to the public within their areas are classified under category G I. industrial parks which have obtained licensee status and are supplying energy to their industrial consumers within their area are classified under category G II. The grid tariff for the G I and G II categories has been fixed respectively at 30% and 10% lower than the corresponding revised rates applicable to 110kV, 66kV and weighted average rate of 11kV consumers.

1.4 However the reply of the Board contained neither the basis for arriving at the figures nor the data to substantiate the premise that the tariff has been revised in such way that the additional income that may accrue to the licensee is transferred to the Board. There was also a contradiction in the reply of the Board where it stated that "it may please be noted that the rates for consumers other than for licensees' own consumption have not been revised by the said order."

1.5 As the petition of the licensee is on the revision of the electricity tariff by the KSEB after the Commission came into existence and the matter came under the powers assigned to the Commission as per the Regulatory Commissions Act, 1998 which was in force at that time, the Commission decided to proceed further in the matter. Accordingly,

the Commission sought clarification from the KSEB on the above issues and simultaneously notified the reply of the KSEB to the petitioner and other licensees/sanction holders in the State, viz., Thrissur City Corporation, Cochin Port Trust, Kochi and Tata Tea Ltd., Munnar for their response.

1.6 The subsequent reply received from the KSEB and the response of the licensees/sanction holders were exchanged among the parties. The contention of the different parties as emerging out of this exchange of correspondence is summarized below:

1.6.1 Technopark, Thiruvananthapuram.

Technopark, the petitioner, disputed the contention of the Board that the tariff increase was done in such a way that the additional revenue collected by the licensee was passed on to the Board. The petitioner, as a licensee, could increase the tariff to its consumers only after the increase of grid tariff was effected. The Board increased the grid tariff, in April 2003, with effect from 1st October, 2002. But the petitioner was not in a position to increase the tariff of its consumers with retrospective effect as it could adversely affect the viability of the IT companies which were going through a lean period.

The KSEB had never assessed the composition of the categories of consumers in Technopark and therefore there was no basis for categorizing it as G II. The Petitioner contented that natural justice demanded prior consultation with them before tariff categorization and increase. The petitioner came to know of the tariff increase only when the Board raised the bill for the electricity charges after the increase. The petitioner reiterated that it had contributed Rs 4.75 crores and 4 acres of land free of cost to the KSEB for construction of the 110 kV substation from which surrounding areas were also supplied electricity by the Board which accounted for 80% of the supply made from the substation, and pleaded for tariff concession on this score. The petitioner also stated that it had to incur sizeable expenditure towards maintenance of the distribution system, administrative charges, *etc.*, in addition to the payment of grid tariff to the Board.

1.6.2 Cochin Port Trust, Kochi.

Cochin Port Trust stated that about 65% of the purchased energy was sold by the Trust to general public throughout Willingdon Island and therefore categorization of the Port Trust under G II was not correct. The Trust disputed the contention of the Board that when the Board effected the general tariff revision, the licensees could apply the same rate to their consumers. The tariff applicable to the consumers of the Trust was not the same as that of the Board. The Port Trust revised the tariff only after the revision of grid tariff by the Board. The tariff proposal of the Trust had to be got approved by the Board of Trustees of the Port Trust and thereafter by the Government of Kerala, before notification. Although it was mentioned in the Board's notification of 24.10.2002 that the grid tariff

would be revised with effect from 1.10.2002, there was no indication regarding the actual increase. The grid tariff increase in the case of Cochin Port Trust was 77% and it was not possible to pass on such an abnormal hike to consumers, while general tariff increase outside the Port Trust was only to the extent of 20-25%. The Trust has also disputed the statement made by the Board in its reply that the Board had not revised or altered any rates to the consumers, except the licensees. The Port Trust also furnished details of energy sold to its consumers which accounted for about 58 to 68% of the energy purchase during various months. The Port Trust therefore pleaded that it should be classified under category G I and the tariff increase limited to 20%.

1.6.3 Tata Tea Limited.

Tata Tea Ltd., have stated that since the Tariff revision was made without referring the matter to the Commission, it was issued without jurisdiction and did not have the sanction of law and therefore unenforceable. They have contented that while the Government of Kerala Order G.O. (Ms) No. 26/02/PD dated 11.10.2002 stated that "the grid tariff shall be fixed by the Board in such a way that the additional income that may accrue to the licensee by the tariff revision is transferred to the KSEB", the actual position was not so. In their case, while the arrears demanded by the KSEB along with the bill for the month of April, 2003 was Rs. 1,14,62,155.16 the additional amount realized by the company from its consumers under the revised tariff was only Rs. 22,39, 238.63. They have, therefore, argued that the revision of grid tariff was arbitrary, illegal and unjustified.

1.6.4 Thrissur City Corporation.

The Corporation did not respond to the notices of the Commission.

1.6.5 The KSE Board.

The Board stated that in the case of Technopark, even though the energy charges increased by 108% the overall hike in tariff was only 67%. The Board has confirmed that Technopark had contributed Rs 4.75 crores and 4 acres of land free of cost for the construction of the 110 kV substation. However, according to the Board, Technopark is the main beneficiary from the sub-station and utilises about 22% of the energy supplied from the sub-station. The Board has assumed 20% energy loss and 10% for other expenses for licensees under category G I. For licensees under category GII, the Board has assumed that there would not be any appreciable energy loss in their system since the electricity drawn for their own use and the use of their sub units was for industrial activity. The Board has further stated that these licensees did not have to incur huge expenditure on installation and maintenance of the distribution systems. Based on these assumptions, the energy rate for licensees under G II category was fixed at 10% lower than the revised rates for industrial consumers and therefore the Board is

not agreeable to change the tariff category of Technopark to G II. The Board further stated that since the information regarding the energy sold by licensees to different categories of consumers were not available with the Board, the actual income by way of tariff increase could not be calculated. The Board, therefore, assumed that the additional income by way of tariff increase would be compensated by the additional income accrued to the licensees due to the general tariff increase to the consumers.

The Board further stated that the power supply to Technopark is metered at 11 kV, but billed at 110 kV EHT tariff. Thus, even though Technopark is enjoying the status of 110 kV EHT consumer, the 110 kV substation near Technopark is maintained by the KSEB. The Board further stated that the Board was not responsible for the perceived difficulty of any licensee in revising the tariff and any concession given by the licensees to its consumers was for the interest of the licensee and not for the Board.

As regards Cochin Port Trust, the Board contented that the real increase was only 50%, as there was no hike in demand charges. The Board had called for details regarding the Port Trust's own consumption and power supply to general public, *etc.*, on receipt of which the request to categorise it under G I would be considered.

2. Hearing of the matter.

2.1 In the proceedings of the commission held on 30.7.2003, the parties to the petition, *viz.*, Technopark and KSEB, and other licensees, *viz.*, Cochin Port Trust, Thrissur Municipal Corporation and Tata Tea Ltd., were heard.

2.2 The petitioner, *viz.*, Technopark reiterated its argument made in the petition and the subsequent correspondence. The petitioner stated that the Board had no authority either to revise the grid tariff or alter the categorization, as the Regulatory Commission was already in existence. It was argued that even if the average increase was only 67%, it was too steep an increase to be afforded by the IT Industry in Technopark. The petitioner further stated that the contention of the Board that grid tariff increase would be compensated by the general tariff increase to the consumers was not valid, as in the case of Technopark, the increased payment to the KSEB on account of the grid tariff increase was much more than the increased collection from the consumers of Technopark. On a query from the Commission, the representative of the petitioner stated that the consumers in Technopark by and large came under HT I, LT IV, LT VIA and LT VIIA categories. The petitioner pleaded for tariff concession to compensate for the contribution of Rs 4.75 cores and 4 acres of land free of cost towards construction of the substation. It was further argued by Technopark that it should be classified under category G I and the tariff increase made effective from May, 2003 from which period the tariff for the sub-units at Technopark was revised.

2.3 The representatives of Cochin Port Trust stated that the Board had no authority to revise the tariff. Since the Port Trust supplied about 65% of the energy received from the Board to its consumers, the classification of the Port Trust under category G II was wrong and the Trust should be classified under category G I and the tariff increase should not be made effective retrospectively.

2.4 The representatives of Tata Tea Ltd. stated that the tariff revision ordered unilaterally by the Board, after constitution of the Electricity Regulatory Commission, was illegal. They also stated that change of grid tariff category was not permissible in accordance with the provisions of Section 46 of the Electricity (Supply) Act, 1948 and therefore it was illegal. While the Board claimed that only the additional revenue collected by the licensees from their consumers was passed on to the Board, in their case, the gap between the revenue collection and remittance to the Board would account for an amount of over Rs. 6 lakhs per month. They, therefore, argued for appropriate reduction in the grid tariff and pleaded for retaining them under GI category even if their own consumption exceeded 50% of the energy drawal from the Board after implementation of the proposed up-gradation of their system to 66 kV. On a query from the Commission, they confirmed that they had increased the tariff of their consumers with effect from 1.10.2002, as per Board's notification.

2.5 The representatives of the Thrissur City Corporation who participated in the proceedings, although they had not responded to the communications of the Commission, stated that the Corporation was classified under G I category. As per an agreement between the Corporation and the KSEB, the Corporation was availing a concession of 30% on the prevailing rates and therefore the tariff increase would not have much impact on the finances of the Corporation. The corporation has increased the tariff to its consumers with effect from 1.10.2002.

2.6 The representatives of the KSE Board stated that the decision to revise the grid tariff was taken much earlier to the constitution of the Commission and therefore there was no violation of the Act. On a query from the Commission as to why the notification of the grid tariff revision took a long time if the decision was taken much earlier, the Board had no answer. The representatives further stated that the licensees were required to revise the tariff to their consumers immediately after the general tariff revision by the Board on 24.10.2002. The representatives of the Board reiterated the argument that the licensees would not incur any loss as they were only passing on additional revenue due to the general tariff increase to the Board. When the representatives of Technopark and Tata Tea disputed this, the Board's representatives argued that till the latest grid tariff revision, the grid tariff was so low that the licensees were making huge profits. After the latest revision, even though the profit margin might have been reduced, the overall remittance to the Board would be less than the revenue realized by the licensees from their consumers.

2.7 The Commission directed the petitioner, *viz.* Technopark and the other licensees, *viz.*, Cochin Port Trust and Tata Tea Ltd. to furnish the details of revenue collection from their consumers based on the pre-revised rates applicable before 1.10.2002 and the revised rates with effect from 1.10.2002 and also the remittances to the Board based on the grid tariff applicable to the respective period. Licensee's own consumption was also required to be accounted for, based on pre-revised and revised rates. The licensees were asked to furnish the information latest by 18.8.2003.

2.8 Tata Tea Ltd., furnished the information as directed by the Commission on 6.8.2003 and the Technopark on 11.8.2003, The Cochin Port Trust *vide* letter No. D/F17/Electricity Tariff/2003 dated 14.8.2003 has stated that the tariff structure and classification of consumers of Cochin Port Trust were not the same as that of the KSE Board. The activities of consumers in Port area are not confined to a specified category as classified in KSEB's tariff notification. Single consumer premises involved several activities like industrial, non-industrial, commercial, *etc.* The Port Trust has therefore stated that it was very difficult to classify these consumers under different categories and hence it is not in a position to calculate and submit the details as required by the Commission.

3. Commission's Findings:

3.1 The various communications received from the Board reveal that the Board does not have data regarding the details of the categories of consumers under the licensees and the revenue collected by them. This has been confirmed by the statement of the Board's representatives during the hearing. The Board had therefore no means of conforming to the decision of the Government of Kerala that "Grid Tariff shall be fixed by the Board in such a way that the additional income that may accrue to the licensee by the tariff revision is transferred to the Board" and therefore the grid tariff revision was not based on this principle. Since the Board has gone about with grid tariff revision in a manner entirely different from the above Government decision, there is no substance in the argument that the grid tariff revision was based on a Government decision taken earlier to the constitution of the Commission. The Board had no answer to the question as to why the grid tariff notification was much delayed, if the tariff revision was already decided before the constitution of the Commission. The proceedings held by the Commission reveal that although the Board had disclosed its intention of revising the grid tariff in the notification of 24.10.2002, it had absolutely no idea then as to how to proceed in the matter.

While the Commission agrees with the view that the risk of supply should be shared also by the licensees, the basis for tariff determination should be the cost of supply to the licensees. In the absence of appropriate data relating to this, the only other option would have been to base the tariff determination on revenue realization by the licensees from their consumers. Tariff revision by the Board without recourse to these principles, and by merely applying *ad hoc* reduction on industrial tariff, is arbitrary. The classification of the licensees into two categories, *viz.*, G I and G II is also not based on

facts and is presumptive in nature. As the tariff categorization of the licensees as well as the tariff revision has been implemented by the Board without the approval of the Commission, it is violative of Subsection (1) of the Section 22 of the Regulatory Commissions Act, 1998 which has been in force at the time of notification of the revision by the Board. The Commission is therefore not in a position to endorse the grid tariff revision or the tariff categorization of the licensees by the Board.

3.2 The Commission analyzed the data furnished by the Technopark and Tata Tea Ltd., regarding the revised cost of their own consumption and the revenue realization from their consumers consequent to general tariff revision and the corresponding remittance to the Board based on the revised grid tariff.

The information furnished by Technopark is summarized below:

		February 2003 Rs	March 2003 RS	April 2003 Rs
1	Monthly revenue realization	30,20,022	32,75,863	34,34,779
2	Monthly Expenditure			
	a) Payment to KSEB	29,23,391	32,37,142	31,95,660
	b) Other expenses	6,04,257	6,10,813	6,09,971
3	Total Monthly expenses	35,27,648	38,47,955	38,05,631

As per the information furnished by Tata Tea Limited, the revenue realization by them during the period October, 2002 to March 2003 worked out to Rs 10,22,44,185/- as against estimated payment of Rs 10,85,45,700/- to the Board based on revised grid tariff. Tata Tea however did not furnish any information on other expenses covering maintenance charges, depreciation, *etc.*, towards supply to their consumers. Even in the case of Technopark which has furnished the expenditure towards maintenance charges, depreciation, *etc.*, the Commission has no means of verifying the reliability of the furnished data, as details have not been furnished. In general, the Commission finds lack of transparency in the details furnished by both Technopark and Tata Tea Ltd.

3.3 The Commission has found that on one side, the Board is trying to justify the tariff of increase notified by it, and on the other side, the licensees are trying to dispute the extent of increase. In any case, the onus of proving as to what extent the increase is not justified rests with the petitioner and the other licensees. However, neither the petitioner nor the other licensees has furnished the requisite information to enable the Commission to arrive at a conclusion as to whether the tariff increase is justified or not.

3.4 Apart from categorization under GI and tariff reduction, the major prayer of Technopark is relating to tariff concession for compensating the contribution of land and money for the substation. The Board has confirmed the contribution of 4 acres of land

and an amount of Rs 4.75 crores by Technopark towards the construction of the 110 kV substation. The Commission is of the view that while the contribution of land free of cost may be treated as a goodwill gesture for according priority for supply to Technopark, the petitioner should be compensated for the contribution of the amount of Rs. 4.75 crores towards the cost of the substation. Assuming a moderate interest of 10%, the annual amount to be compensated would work out to Rs 47.5 lakhhs. During the hearing, the Board's representative stated that the 110 kV substation was maintained by the KSEB and the annual maintenance charges of the substation towards supply to the Technopark would work out to Rs 24 lakhs. This would leave a balance of Rs 23.75 lakhs. The Commission is of the opinion that Technopark should be allowed concession in the tariff to the extent of compensating this amount. Based on the present monthly consumption of about 9 lakh units and possible load growth in the immediate future, a concession of 20 paise per unit is considered reasonable.

3.5 The Commission is not in a position to appreciate the difficulties being expressed by the Cochin Port Trust in assessing the details of classification of consumers and furnishing the details regarding revenue collection from them as required by the Commission. Nevertheless, the Commission accepts the position that the Port Trust supplies more than 50% of the energy received by it from the Board to its outside consumers. For this reason, the Commission holds the view that the Port Trust is entitled to be treated on par with other licensees like Thrissur Municipality Corporation and Tata Tea Ltd., for purposes of grid tariff.

4. Commission's decision:

4.1 In determining the grid tariff revision notified on 2.4.2003, the KSE Board has not conformed to the Government of Kerala decision of 11.10.2002 to fix the tariff in such a way that the additional income that may accrue to the licensee by tariff revision is transferred to the Board. The Commission holds that the categorization of the licensees for tariff purposes and the grid tariff revision by the Board are arbitrary and devoid of any commercial principle. As the revision was effected after the constitution of the Commission and without its approval, the revision is violative of Sub section (1) of Section 22 of the Regulatory Commissions Act, 1998 which has been in force at the time of grid tariff revision.

4.2 The Commission seeks to keep in abeyance the classification of the licensees into two categories G I and G II by the Board, since these are based on mere presumptions on the character of the licensees supply systems and the type of consumers served by them. The Commission will take a decision on the categorization only after receipt of actual data regarding the details of power supply system and type of consumers in respect of each licensee.

4.3 In the absence of complete details regarding the revenue realization and expenditure from each licensee, the Commission is not in position to come to a conclusion as to whether the tariff increase is justified or not. The Commission,

therefore, allows the Board to charge the licensees based on the grid tariff notified on 2.4.2003, subject to the following adjustments.

4.4 Technopark should be allowed a concession of Ps 20 per unit in energy charges in order to compensate it for the contribution made towards cost of construction of the 110 kV substation.

4.5 For the reason mentioned earlier, the grid tariff for Cochin Port Trust should be fixed on the same basis as in the case of Thrissur Municipal Corporation and Tata Tea Ltd. The Port Trust has not yet filed any tariff petition with the Commission to revise the tariff for its consumers. In order to avoid administrative difficulties in realizing huge arrears from the consumers, as a special case, the Commission permits the Port Trust to revise the tariff for its consumers from an appropriate date. However, such revised tariff shall not exceed the tariff fixed for different categories of consumers in other parts of the State as per notification No. B.O. (CM) No. 1462/02/TRAC/TO-1/2002 dated the 24th October, 2002. Notwithstanding the above, the Commission directs the Port Trust to file the tariff petition along with ERC and full details regarding category of consumers, revenue realization from them, *etc.*, as early as possible.

4.6 The Commission directs all licensees to make prompt payments against the bills raised by the Board, including arrears, based on the above decisions of the Commission. However this will be subject to the orders of the Hon'ble High Court of Kerala, if any, on the subject matter.

4.7 The above directions of the Commission do not prohibit the licensees or the Board from filing petitions supported with full details, with the Commission for modifications of the grid tariff. However, the Commission's decision on such petitions will only be operative prospectively.

4.8 The Petition DP -1 from Technopark is disposed of accordingly.

C. BALAKRISHNAN
MEMBER

M.K.G. PILLAI
CHAIRMAN

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM 695 003

PRESENT: **Shri M.K.G. Pillai, Chairman**
Shri C. Balakrishnan, Member

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1.2 The matter was considered in a meeting of the Commission held on 30.4.2003. The Commission decided to seek clarification from the Board regarding the circumstances under which the tariff order was issued since the authority for determination/revision/modification of tariff for electricity was vested with the Commission since its inception on 29.11.2002. The clarification was sought *vide* Commission's letter No. 1/4/KERC-2003/140 dated the 2nd May 2003. The Board furnished the reply *vide* letter No. TRAC/SERC/GRID/146 dated the 28th May, 2003. The Board cited financial difficulties as the major reason for the increase. It was pointed out that there was wide gap between the revenue requirement and revenue collection. The Board was compelled to purchase costly power to meet the demand. The failure of monsoon during 2002 had aggravated the situation. The Board therefore stated that it was compelled to revise the tariff for licensees/sanction holders also. The Board further stated that the tariff was revised on the basis of the Government of Kerala, Power (A) Department G.O. (Ms) No. 26/02/PD dated the 11.10.2002 which *inter alia* stated that "Grid Tariff shall be fixed by the Board in such a way that additional income that may accrue to the licensee by the tariff revision is transferred to the KSEB". The Board further stated that since the Government order for revising the grid tariff was already in existence, the grid tariff notification dated April 2, 2003 is a continuation of the general grid tariff revision order notified on 24.10.2002 and it is considered that the grid tariff revision notified on April 2, 2003 was within the ambit of the Board and the Board issued this notification only after obtaining the approval of the Government".

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1.4 However the reply of the Board contained neither the basis for arriving at the figures nor the data to substantiate the premise that the tariff has been revised in such way that the additional income that may accrue to the licensee is transferred to the Board. There was also a contradiction in the reply of the Board where it stated that "it may please be noted that the rates for consumers other than for licensees' own consumption have not been revised by the said order."

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the Commission sought clarification from the KSEB on the above issues and simultaneously notified the reply of the KSEB to the petitioner and other licensees/sanction holders in the State, viz., Thrissur City Corporation, Cochin Port Trust, Kochi and Tata Tea Ltd., Munnar for their response.

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1.6.2 Cochin Port Trust, Kochi.

Cochin Port Trust stated that about 65% of the purchased energy was sold by the Trust to general public throughout Willingdon Island and therefore categorization of the Port Trust under G II was not correct. The Trust disputed the contention of the Board that when the Board effected the general tariff revision, the licensees could apply the same rate to their consumers. The tariff applicable to the consumers of the Trust was not the same as that of the Board. The Port Trust revised the tariff only after the revision of grid tariff by the Board. The tariff proposal of the Trust had to be got approved by the Board of Trustees of the Port Trust and thereafter by the Government of Kerala, before notification. Although it was mentioned in the Board's notification of 24.10.2002 that the grid tariff

would be revised with effect from 1.10.2002, there was no indication regarding the actual increase. The grid tariff increase in the case of Cochin Port Trust was 77% and it was not possible to pass on such an abnormal hike to consumers, while general tariff increase outside the Port Trust was only to the extent of 20-25%. The Trust has also disputed the statement made by the Board in its reply that the Board had not revised or altered any rates to the consumers, except the licensees. The Port Trust also furnished details of energy sold to its consumers which accounted for about 58 to 68% of the energy purchase during various months. The Port Trust therefore pleaded that it should be classified under category G I and the tariff increase limited to 20%.

1.6.3 Tata Tea Limited.

Tata Tea Ltd., have stated that since the Tariff revision was made without referring the matter to the Commission, it was issued without jurisdiction and did not have the sanction of law and therefore unenforceable. They have contented that while the Government of Kerala Order G.O. (Ms) No. 26/02/PD dated 11.10.2002 stated that "the grid tariff shall be fixed by the Board in such a way that the additional income that may accrue to the licensee by the tariff revision is transferred to the KSEB", the actual position was not so. In their case, while the arrears demanded by the KSEB along with the bill for the month of April, 2003 was Rs. 1,14,62,155.16 the additional amount realized by the company from its consumers under the revised tariff was only Rs. 22,39, 238.63. They have, therefore, argued that the revision of grid tariff was arbitrary, illegal and unjustified.

1.6.4 Thrissur City Corporation.

The Corporation did not respond to the notices of the Commission.

1.6.5 The KSE Board.

The Board stated that in the case of Technopark, even though the energy charges increased by 108% the overall hike in tariff was only 67%. The Board has confirmed that Technopark had contributed Rs 4.75 crores and 4 acres of land free of cost for the construction of the 110 kV substation. However, according to the Board, Technopark is the main beneficiary from the sub-station and utilises about 22% of the energy supplied from the sub-station. The Board has assumed 20% energy loss and 10% for other expenses for licensees under category G I. For licensees under category GII, the Board has assumed that there would not be any appreciable energy loss in their system since the electricity drawn for their own use and the use of their sub units was for industrial activity. The Board has further stated that these licensees did not have to incur huge expenditure on installation and maintenance of the distribution systems. Based on these assumptions, the energy rate for licensees under G II category was fixed at 10% lower than the revised rates for industrial consumers and therefore the Board is

not agreeable to change the tariff category of Technopark to G II. The Board further stated that since the information regarding the energy sold by licensees to different categories of consumers were not available with the Board, the actual income by way of tariff increase could not be calculated. The Board, therefore, assumed that the additional income by way of tariff increase would be compensated by the additional income accrued to the licensees due to the general tariff increase to the consumers.

The Board further stated that the power supply to Technopark is metered at 11 kV, but billed at 110 kV EHT tariff. Thus, even though Technopark is enjoying the status of 110 kV EHT consumer, the 110 kV substation near Technopark is maintained by the KSEB. The Board further stated that the Board was not responsible for the perceived difficulty of any licensee in revising the tariff and any concession given by the licensees to its consumers was for the interest of the licensee and not for the Board.

As regards Cochin Port Trust, the Board contented that the real increase was only 50%, as there was no hike in demand charges. The Board had called for details regarding the Port Trust's own consumption and power supply to general public, *etc.*, on receipt of which the request to categorise it under G I would be considered.

2. Hearing of the matter.

2.1 In the proceedings of the commission held on 30.7.2003, the parties to the petition, *viz.*, Technopark and KSEB, and other licensees, *viz.*, Cochin Port Trust, Thrissur Municipal Corporation and Tata Tea Ltd., were heard.

2.2 The petitioner, *viz.*, Technopark reiterated its argument made in the petition and the subsequent correspondence. The petitioner stated that the Board had no authority either to revise the grid tariff or alter the categorization, as the Regulatory Commission was already in existence. It was argued that even if the average increase was only 67%, it was too steep an increase to be afforded by the IT Industry in Technopark. The petitioner further stated that the contention of the Board that grid tariff increase would be compensated by the general tariff increase to the consumers was not valid, as in the case of Technopark, the increased payment to the KSEB on account of the grid tariff increase was much more than the increased collection from the consumers of Technopark. On a query from the Commission, the representative of the petitioner stated that the consumers in Technopark by and large came under HT I, LT IV, LT VIA and LT VIIA categories. The petitioner pleaded for tariff concession to compensate for the contribution of Rs 4.75 cores and 4 acres of land free of cost towards construction of the substation. It was further argued by Technopark that it should be classified under category G I and the tariff increase made effective from May, 2003 from which period the tariff for the sub-units at Technopark was revised.

2.3 The representatives of Cochin Port Trust stated that the Board had no authority to revise the tariff. Since the Port Trust supplied about 65% of the energy received from the Board to its consumers, the classification of the Port Trust under category G II was wrong and the Trust should be classified under category G I and the tariff increase should not be made effective retrospectively.

2.4 The representatives of Tata Tea Ltd. stated that the tariff revision ordered unilaterally by the Board, after constitution of the Electricity Regulatory Commission, was illegal. They also stated that change of grid tariff category was not permissible in accordance with the provisions of Section 46 of the Electricity (Supply) Act, 1948 and therefore it was illegal. While the Board claimed that only the additional revenue collected by the licensees from their consumers was passed on to the Board, in their case, the gap between the revenue collection and remittance to the Board would account for an amount of over Rs. 6 lakhs per month. They, therefore, argued for appropriate reduction in the grid tariff and pleaded for retaining them under GI category even if their own consumption exceeded 50% of the energy drawal from the Board after implementation of the proposed up-gradation of their system to 66 kV. On a query from the Commission, they confirmed that they had increased the tariff of their consumers with effect from 1.10.2002, as per Board's notification.

2.5 The representatives of the Thrissur City Corporation who participated in the proceedings, although they had not responded to the communications of the Commission, stated that the Corporation was classified under G I category. As per an agreement between the Corporation and the KSEB, the Corporation was availing a concession of 30% on the prevailing rates and therefore the tariff increase would not have much impact on the finances of the Corporation. The corporation has increased the tariff to its consumers with effect from 1.10.2002.

2.6 The representatives of the KSE Board stated that the decision to revise the grid tariff was taken much earlier to the constitution of the Commission and therefore there was no violation of the Act. On a query from the Commission as to why the notification of the grid tariff revision took a long time if the decision was taken much earlier, the Board had no answer. The representatives further stated that the licensees were required to revise the tariff to their consumers immediately after the general tariff revision by the Board on 24.10.2002. The representatives of the Board reiterated the argument that the licensees would not incur any loss as they were only passing on additional revenue due to the general tariff increase to the Board. When the representatives of Technopark and Tata Tea disputed this, the Board's representatives argued that till the latest grid tariff revision, the grid tariff was so low that the licensees were making huge profits. After the latest revision, even though the profit margin might have been reduced, the overall remittance to the Board would be less than the revenue realized by the licensees from their consumers.

2.7 The Commission directed the petitioner, *viz.* Technopark and the other licensees, *viz.*, Cochin Port Trust and Tata Tea Ltd. to furnish the details of revenue collection from their consumers based on the pre-revised rates applicable before 1.10.2002 and the revised rates with effect from 1.10.2002 and also the remittances to the Board based on the grid tariff applicable to the respective period. Licensee's own consumption was also required to be accounted for, based on pre-revised and revised rates. The licensees were asked to furnish the information latest by 18.8.2003.

2.8 Tata Tea Ltd., furnished the information as directed by the Commission on 6.8.2003 and the Technopark on 11.8.2003, The Cochin Port Trust *vide* letter No. D/F17/Electricity Tariff/2003 dated 14.8.2003 has stated that the tariff structure and classification of consumers of Cochin Port Trust were not the same as that of the KSE Board. The activities of consumers in Port area are not confined to a specified category as classified in KSEB's tariff notification. Single consumer premises involved several activities like industrial, non-industrial, commercial, *etc.* The Port Trust has therefore stated that it was very difficult to classify these consumers under different categories and hence it is not in a position to calculate and submit the details as required by the Commission.

3. Commission's Findings:

3.1 The various communications received from the Board reveal that the Board does not have data regarding the details of the categories of consumers under the licensees and the revenue collected by them. This has been confirmed by the statement of the Board's representatives during the hearing. The Board had therefore no means of conforming to the decision of the Government of Kerala that "Grid Tariff shall be fixed by the Board in such a way that the additional income that may accrue to the licensee by the tariff revision is transferred to the Board" and therefore the grid tariff revision was not based on this principle. Since the Board has gone about with grid tariff revision in a manner entirely different from the above Government decision, there is no substance in the argument that the grid tariff revision was based on a Government decision taken earlier to the constitution of the Commission. The Board had no answer to the question as to why the grid tariff notification was much delayed, if the tariff revision was already decided before the constitution of the Commission. The proceedings held by the Commission reveal that although the Board had disclosed its intention of revising the grid tariff in the notification of 24.10.2002, it had absolutely no idea then as to how to proceed in the matter.

While the Commission agrees with the view that the risk of supply should be shared also by the licensees, the basis for tariff determination should be the cost of supply to the licensees. In the absence of appropriate data relating to this, the only other option would have been to base the tariff determination on revenue realization by the licensees from their consumers. Tariff revision by the Board without recourse to these principles, and by merely applying *ad hoc* reduction on industrial tariff, is arbitrary. The classification of the licensees into two categories, *viz.*, G I and G II is also not based on

facts and is presumptive in nature. As the tariff categorization of the licensees as well as the tariff revision has been implemented by the Board without the approval of the Commission, it is violative of Subsection (1) of the Section 22 of the Regulatory Commissions Act, 1998 which has been in force at the time of notification of the revision by the Board. The Commission is therefore not in a position to endorse the grid tariff revision or the tariff categorization of the licensees by the Board.

3.2 The Commission analyzed the data furnished by the Technopark and Tata Tea Ltd., regarding the revised cost of their own consumption and the revenue realization from their consumers consequent to general tariff revision and the corresponding remittance to the Board based on the revised grid tariff.

The information furnished by Technopark is summarized below:

		February 2003 Rs	March 2003 RS	April 2003 Rs
1	Monthly revenue realization	30,20,022	32,75,863	34,34,779
2	Monthly Expenditure			
	a) Payment to KSEB	29,23,391	32,37,142	31,95,660
	b) Other expenses	6,04,257	6,10,813	6,09,971
3	Total Monthly expenses	35,27,648	38,47,955	38,05,631

As per the information furnished by Tata Tea Limited, the revenue realization by them during the period October, 2002 to March 2003 worked out to Rs 10,22,44,185/- as against estimated payment of Rs 10,85,45,700/- to the Board based on revised grid tariff. Tata Tea however did not furnish any information on other expenses covering maintenance charges, depreciation, *etc.*, towards supply to their consumers. Even in the case of Technopark which has furnished the expenditure towards maintenance charges, depreciation, *etc.*, the Commission has no means of verifying the reliability of the furnished data, as details have not been furnished. In general, the Commission finds lack of transparency in the details furnished by both Technopark and Tata Tea Ltd.

3.3 The Commission has found that on one side, the Board is trying to justify the tariff of increase notified by it, and on the other side, the licensees are trying to dispute the extent of increase. In any case, the onus of proving as to what extent the increase is not justified rests with the petitioner and the other licensees. However, neither the petitioner nor the other licensees has furnished the requisite information to enable the Commission to arrive at a conclusion as to whether the tariff increase is justified or not.

3.4 Apart from categorization under GI and tariff reduction, the major prayer of Technopark is relating to tariff concession for compensating the contribution of land and money for the substation. The Board has confirmed the contribution of 4 acres of land

and an amount of Rs 4.75 crores by Technopark towards the construction of the 110 kV substation. The Commission is of the view that while the contribution of land free of cost may be treated as a goodwill gesture for according priority for supply to Technopark, the petitioner should be compensated for the contribution of the amount of Rs. 4.75 crores towards the cost of the substation. Assuming a moderate interest of 10%, the annual amount to be compensated would work out to Rs 47.5 lakhhs. During the hearing, the Board's representative stated that the 110 kV substation was maintained by the KSEB and the annual maintenance charges of the substation towards supply to the Technopark would work out to Rs 24 lakhs. This would leave a balance of Rs 23.75 lakhs. The Commission is of the opinion that Technopark should be allowed concession in the tariff to the extent of compensating this amount. Based on the present monthly consumption of about 9 lakh units and possible load growth in the immediate future, a concession of 20 paise per unit is considered reasonable.

3.5 The Commission is not in a position to appreciate the difficulties being expressed by the Cochin Port Trust in assessing the details of classification of consumers and furnishing the details regarding revenue collection from them as required by the Commission. Nevertheless, the Commission accepts the position that the Port Trust supplies more than 50% of the energy received by it from the Board to its outside consumers. For this reason, the Commission holds the view that the Port Trust is entitled to be treated on par with other licensees like Thrissur Municipality Corporation and Tata Tea Ltd., for purposes of grid tariff.

4. Commission's decision:

4.1 In determining the grid tariff revision notified on 2.4.2003, the KSE Board has not conformed to the Government of Kerala decision of 11.10.2002 to fix the tariff in such a way that the additional income that may accrue to the licensee by tariff revision is transferred to the Board. The Commission holds that the categorization of the licensees for tariff purposes and the grid tariff revision by the Board are arbitrary and devoid of any commercial principle. As the revision was effected after the constitution of the Commission and without its approval, the revision is violative of Sub section (1) of Section 22 of the Regulatory Commissions Act, 1998 which has been in force at the time of grid tariff revision.

4.2 The Commission seeks to keep in abeyance the classification of the licensees into two categories G I and G II by the Board, since these are based on mere presumptions on the character of the licensees supply systems and the type of consumers served by them. The Commission will take a decision on the categorization only after receipt of actual data regarding the details of power supply system and type of consumers in respect of each licensee.

4.3 In the absence of complete details regarding the revenue realization and expenditure from each licensee, the Commission is not in position to come to a conclusion as to whether the tariff increase is justified or not. The Commission,

therefore, allows the Board to charge the licensees based on the grid tariff notified on 2.4.2003, subject to the following adjustments.

4.4 Technopark should be allowed a concession of Ps 20 per unit in energy charges in order to compensate it for the contribution made towards cost of construction of the 110 kV substation.

4.5 For the reason mentioned earlier, the grid tariff for Cochin Port Trust should be fixed on the same basis as in the case of Thrissur Municipal Corporation and Tata Tea Ltd. The Port Trust has not yet filed any tariff petition with the Commission to revise the tariff for its consumers. In order to avoid administrative difficulties in realizing huge arrears from the consumers, as a special case, the Commission permits the Port Trust to revise the tariff for its consumers from an appropriate date. However, such revised tariff shall not exceed the tariff fixed for different categories of consumers in other parts of the State as per notification No. B.O. (CM) No. 1462/02/TRAC/TO-1/2002 dated the 24th October, 2002. Notwithstanding the above, the Commission directs the Port Trust to file the tariff petition along with ERC and full details regarding category of consumers, revenue realization from them, *etc.*, as early as possible.

4.6 The Commission directs all licensees to make prompt payments against the bills raised by the Board, including arrears, based on the above decisions of the Commission. However this will be subject to the orders of the Hon'ble High Court of Kerala, if any, on the subject matter.

4.7 The above directions of the Commission do not prohibit the licensees or the Board from filing petitions supported with full details, with the Commission for modifications of the grid tariff. However, the Commission's decision on such petitions will only be operative prospectively.

4.8 The Petition DP -1 from Technopark is disposed of accordingly.

C. BALAKRISHNAN
MEMBER

M.K.G. PILLAI
CHAIRMAN