

**KERALA STATE ELECTRICITY REGULATORY COMMISSION,
THIRUVANANTHAPURAM**

**Present : Sri. T.M.Manoharan, Chairman
Sri. K.Vikraman Nair, Member
Sri. S. Venugopal, Member**

In the matter of determination of retail tariff applicable to the Financial Year 2015-2016 for the consumers of Kerala State Electricity Board Limited and other licensees in the State and determination of bulk supply tariff (BST) applicable to the licensees other than Kerala State Electricity Board Limited, for the bulk purchase of electricity from Kerala State Electricity Board Limited.

ORDER dated 25-09-2015

1. The Commission had issued the tariff order dated 14.08.2014 in OP No.9/2014, revising retail tariff of all consumers under Kerala State Electricity Board Ltd (KSEBL) and other distribution licensees in the State. The validity of the said order is for the period from 16-08-2014 to 31-03-2015. The Commission had also issued the tariff order dated 25.09.2014 in OP No.9/2014, revising the bulk supply tariff (BST) applicable to all licensees for the bulk purchase of electricity from Kerala State Electricity Board Limited. The validity of the tariff order dated 25.09.2014 is also from 16-08-2014 to 31-03-2015.
2. Kerala State Electricity Board Limited (KSEBL), being a utility engaged in the business of transmission and supply of electricity under the provisions of the Electricity (Supply) Act, 1948, is continuing as the State Transmission Utility and the distribution licensee as per the provisions of Section 14 of the Electricity Act, 2003. Further, Kerala State Electricity Board Limited, being a Government company referred to in sub-section (2) of Section 131 of the Act, shall be deemed to be a licensee under the Electricity Act, 2003. As per clause (a) of sub-section (2) of Section 39 of the Act, Kerala State Electricity Board Limited has the duty to undertake transmission of electricity through intra-state transmission system.

Thus, Kerala State Electricity Board Limited is engaged in transmission of electricity in the State, as the State Transmission Utility and in distribution of electricity as a deemed distribution licensee. There are eight other distribution licensees in the State namely,- Thrissur Municipal Corporation, Kanan Devan Hills Plantations Company Limited, Munnar, Cochin Special Economic Zone Authority, Cochin Port Trust, Technopark, Rubber Park India Limited, Infopark and KINESCO Power Utilities Private Limited. All the distribution licensees in the State have common uniform retail tariff for various categories of consumers. Commission follows the principle of determination of differential bulk supply tariff (BST) considering the expected revenue from charges (ERC), aggregate revenue requirement (ARR) as well as revenue surplus / gap of each licensee which purchase electricity in bulk from Kerala State Electricity Board Limited, after providing for the distribution cost and provisional return on equity applicable to each of them.

3. Section 61 of the Electricity Act, 2003, authorizes State Electricity Regulatory Commissions to specify terms and conditions for determination of tariff for the supply of electricity by a generating company to a distribution licensee, transmission of electricity, wheeling of electricity and for retail sale of electricity and such other charges incidental thereto. Sub section (3) of Section 32 of the Act authorizes the Commission to specify fees and charges that may be levied by the State Load Dispatch Centre. The Kerala State Electricity Regulatory Commission had formulated the draft Kerala State Electricity Regulatory Commission (Terms and Conditions of Determination of Tariff) Regulations, 2014 based on Multi-year tariff (MYT) framework for the first control period from the first day of April 2015 to thirty first day of March 2018. The said draft was published in the web site of the Commission on 02-06-2014 for eliciting opinions, suggestions and objections from the stakeholders and the general public. A public hearing was conducted on 25-07-2014. After considering all suggestions and objections received in writing and in public hearing, the Commission has approved and issued Kerala State Electricity Regulatory Commission (Terms and Conditions of Determination of Tariff) Regulations, 2014 (hereinafter referred to as Tariff Regulations, 2014). The

said regulation came into force with effect from 14.11.2014 and it has been published in the Kerala Government Gazette Extra-Ordinary dated 14.11.2014. Regulation 11 of the Tariff Regulations, 2014, stipulates the procedure for filing application for determination of tariff under multi-year tariff (MYT) frame work. As per regulation 10 of the Tariff Regulations, 2014, the first control period shall be 3 financial years commencing from 01.04.2015 to 31.03.2018. As per the provisions in regulation 11, the distribution licensee shall file the application for approval of ARR and for determination of tariff for each year of the control period and the application for truing up of accounts of the previous financial year on or before 30th day of November of the current financial year. As per the second proviso under clause (b) of sub-regulation (1) of regulation 11 of Tariff Regulations, 2014, the applications for approval of ARR and determination of tariff as well as the application for truing up of accounts can be filed on or before 31.12.2014. Kerala State Electricity Board Limited has not submitted any application under the above provisions till 25.03.2015. Since the Commission follows the principle of uniform retail tariff and differential bulk supply tariff for all the licensees who purchase electricity from Kerala State Electricity Board Limited, the retail tariff and the bulk supply tariff applicable to 2015-16 can be determined realistically only after getting all relevant particulars from all the licensees.

4. KSEBL has filed a Writ Petition WP(C) No. 465/2015 (G) before the Hon'ble High Court of Kerala challenging the provisions of the Kerala State Electricity Regulatory Commission (Terms & Conditions for Determination of Tariff) Regulations, 2014. Exhibit P5 in the said Writ Petition is the Tariff Regulations, 2014. The prayers in the petition are,-
 - (i) *issue a writ of certiorari or any other appropriate writ , order or direction calling for the records leading to Exhibits P5 and quash the same as illegal and violative of Article 14 of the Constitution of India.*
 - (ii) *issue writ of mandamus or any other appropriate writ, order or direction to the respondent to revise Exhibit P-5 regulations strictly as per the legal mandate provided in Electricity Act, 2003, National*

Electricity Policy, National Tariff Policy and on the basis of past performance of KSEB including its audited accounts.

And

(iii) issue such other writs, orders or direction which this Hon'ble Court may deem fit and proper to issue in the facts and circumstances of the case

5. Hon'ble High Court of Kerala has, in the said Writ Petition, issued an ex-parte interim order on 07-01-2015 which states as follows.

"Tariff proposal if any submitted by the petitioner shall not be rejected on the basis of ext .P5 regulations"

KSEBL has not submitted any application for approval of ARR and for determination of tariff applicable to the financial year 2015-16, till 25.03.2015.

6. Hon'ble Appellate Tribunal for Electricity vide order dated 11-11-2011 in OP No 1 of 2011 had issued the following directions to the State Commissions to ensure that the tariff for a financial year is decided before 1st April of that year:-

(i) Every State Commission has to ensure that Annual Performance Review, true-up of past expenses and Annual Revenue Requirement and tariff determination is conducted year to year basis as per the time schedule specified in the Regulations.

(ii) It should be the endeavour of every State Commission to ensure that the tariff for the financial year is decided before 1st April of the tariff year. For example , the ARR and Tariff for the financial year 2011-12 should be decided before 1st April, 2011. The State Commission could consider making the tariff applicable only till the end of financial year so that the licensees remain vigilant to follow the time schedule for filing the application for determination of ARR/Tariff.

(iii) In the event of delay in filing of the ARR, truing up and Annual Performance Review, one month beyond the schedule date of submission of the petition , the State Commission must initiate suo-moto proceedings for tariff determination in accordance with Section 64 of the Act read with clause 8.1 (7) of the Tariff Policy.

7. Section 64 of the Electricity Act, 2003, stipulates procedure for tariff order. As per sub-section (1) of Section 64 the generating company and licensee shall file application for determination of tariff under Section 62. As per sub-section (2), every applicant shall publish the application, in such abridged form and manner, as

may be specified by the Commission. As per sub-section (3) the Commission shall, within 120 days from the receipt of the application under sub-section (1), and after considering all suggestions and objections received from the public,

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force.

In view of the above provisions in Section 64 of the Act, the Commission felt that a clarification is required in the implementation of the order of the Hon'ble Appellate Tribunal for Electricity dated 11.11.2011. Steps have been initiated for obtaining clarification from the Hon'ble Appellate Tribunal for Electricity.

8. Considering the above legal provisions and the fact that the validity of the retail tariff order dated 14.08.2014 and the bulk supply tariff order dated 25.09.2014 would expire on 31.03.2015, the validity of the retail tariff order dated 14.08.2014 in OP No 9/2014 and the validity of the bulk supply tariff (BST) order dated 25.09.2014 in OP No 9/2014 were extended up to 30-09-2015 or the date of effect of the new tariff order pertaining to the financial year 2015-16, whichever was earlier.
9. The circumstances, which necessitated the extension of validity of the orders dated 14.08.2014 and 25.09.2014 till 30.09.2015 still continue. The clarificatory order sought for from the Hon'ble High Court has not yet been received. In view of the above facts, the validity of the orders dated 14.08.2014 and 25.09.2014 in OP No.9/2014 is extended for a further period up to 31.12.2015 or the date of effect of the new tariff order pertaining to the financial year 2015-16, whichever is earlier.

Sd/-
K. Vikraman Nair
Member

Sd/-
S.Venugopal
Member

Sd/-
T.M.Manoharan
Chairman

Approved for Issue,

Santhosh Kumar. K.B
Secretary