



केन्द्रीय विद्युत विनियामक आयोग  
CENTRAL ELECTRICITY REGULATORY COMMISSION



**[ MOST IMMEDIATE – BY HAND ONLY ]**

No.15/9(1)/2011/APTEL-TA/FOR/CERC

Dated: 4<sup>th</sup> July, 2012

The Registrar  
Appellate Tribunal for Electricity  
7<sup>th</sup> Floor, Core-4, SCOPE Complex  
Lodhi Road  
New Delhi – 110 003.

**SUB: Compliance of the directions given by the Appellate Tribunal for Electricity**

Sir,

This is in reference to the order O.P. No.1 of 2011 of the Hon'ble APTEL dated 11.11.2011 on the above subject. APTEL directed all State Electricity Regulatory Commissions (SERCs) and Joint Electricity Regulatory Commissions (JERCs) to send information in regard to the Tariff Revision, Adequacy of Tariff and Fuel and Power Purchase Cost Adjustment to the Forum of Regulators by 1st June of every year. APTEL also directed the FOR to send the status report in this regard to the Tribunal and also place it on its website. The FOR Secretariat sought information on the above matter from the SERCs/JERCs. The matter was also discussed in the 27<sup>th</sup> Meeting of FOR held on December 16, 2011 wherein the SERCs/JERCs agreed to send the information to the FOR Secretariat.

2. We received information from Twenty Seven (27) SERCs/JERCs as on 30.06.2012. A statement summarizing the information submitted by the SERCs/JERCs on the issues raised by APTEL is **enclosed** as **Annexure-I**. A copy each of the communications received from SERCs/JERCs in reply to the APTEL direction is also **enclosed** as **Annexure-II**.

3. It is requested that this may please be brought to the notice of the Hon'ble APTEL.

Yours faithfully,

**Encl : As above.**

  
4.7.12  
( RAJIV BANSAL )  
SECRETARY, CERC /FOR

तीसरी और चौथी मंजिल, चन्द्रलोक बिल्डिंग, 36, जनपथ, नई दिल्ली-110001  
3rd & 4th Floor, Chanderlok Building, 36, Janpath, New Delhi-110001  
Phone : 91-11-23353503 Fax : 91-11-23753923  
Web Site : www.cercind.gov.in E-mail : info@cercind.gov.in

## APTEL OP NO. 1 OF 2011

### **I. Background**

By order OP no 1 of 2011 dated November 11, 2011, the Hon'ble Appellate Tribunal of Electricity (APTEL) directed all State Electricity Regulatory Commissions (SERCs) and Joint Electricity Regulatory Commissions (JERCs) to send information on Tariff Revision, Tariff Adequacy and Fuel and Power Purchase Cost Adjustment to the Forum of Regulators (FOR) by June 1st of every year. APTEL also directed the FOR to send the status report in this regard to the Tribunal and also place it on its website.

The matter was discussed during the 27th meeting of FOR held on December 16, 2011 at Raipur, and a format was approved, with modifications, for furnishing the information sought by the Honorable APTEL. Subsequently, FOR Secretariat sought information on the above matter from the SERCs/JERCs in the agreed format by April 15, 2012 vide letter dated January 23, 2012.

By June 27, 2012, FOR Secretariat received response from twenty five (25) SERCs and two (2) JERCs. Arunachal Pradesh State Electricity Regulatory Commission (APSERC) responded that the Commission has come into workable stage w.e.f. July 2011 only and the Commission has been formulating the important regulations. Though the tariff regulations are already in place in Arunachal Pradesh, Department of Power is yet to file their first tariff petition. In view of the abovementioned reason, the APSERC reported that the required information could not be submitted. Sikkim Electricity Regulatory Commission (SERC) also responded that the Commission is constituted very recently and data for FY 2009-10, FY 2010-11 and FY 2011-12 is not available. However, the Commission has issued suo-motu tariff order for FY 2012-13 on March 30, 2012. SERC of Nagaland is yet to submit the information sought.

Four states viz. Madhya Pradesh, Bihar, Tamil Nadu and Meghalaya submitted data for the period up to FY 2012-13. The remaining SERCs/JERCs submitted data for the period up to FY 2011-12. The Maharashtra Electricity Regulatory Commission (MERC) has submitted the data for the period up to FY 2010-11. It was reported by MERC that the tariff for FY 2011-12 could not be determined as utilities had filed petition for deferment of MYT Regulations, 2011 citing various reasons. FOR Secretariat has requested the SERCs/JERCs to send the information for the year 2012-13 vide letters dated 15<sup>th</sup> June and 25<sup>th</sup> June, 2012.

Data for the latest year as per the information submitted by the respective SERCs/JERCs (i.e. for the year 2012-13 for four SERCs and for the year 2011-12 for twenty two SERCs/JERCs and for the year 2010-11 for one SERC) has been considered for preparing this report. A supplementary report will be sent to the Hon'ble APTEL after receipt of information for the year 2012-13 from the remaining SERCs/JERCs.

## **II. Summary of response received from SERCs/JERCs**

Summary of response received from SERCs/JERCs against major directions of the APTEL order OP no 1 of 2011 is as follows:

- (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.*

*Response:*

### **Timelines in Tariff Regulations**

- Most of the SERCs / JERCs have reported that timelines for filing petitions for Annual Performance Review (APR), true up of past expenses, Average Revenue Requirement (ARR) and Tariff Order have been specified in tariff regulations.

### **Timeliness of APR filing**

- Madhya Pradesh, Bihar, Meghalaya, Punjab, Orissa, Gujarat, Karnataka and Chhattisgarh have reported that Annual Performance Review (APR) petitions have been filed as per the requirements of the regulations. Actual date and year for which APR petitions were filed have not been reported by most of the Commissions.
- Assam Electricity Regulatory Commission reported that petitions for APR of FY 2010-11 have not been submitted by the licensees.

### **Timeliness of APR Order**

- Only the Commissions of Madhya Pradesh, Bihar, Meghalaya and Orissa have reported that APR orders have been issued within time specified in accordance with the regulations. Out of these states actual date of order and the year for which the order was issued have been provided by Bihar only.
- For Bihar APR order for FY 2011-12 was issued on March 30, 2012.

### **Timeliness of True-up Filing and Order**

- Summary of filing of true up petition and issuance of true up order has been covered in (v) below.

### **Timeliness ARR Filing**

- The ARR petitions were filed in time in Nine (9) states (Madhya Pradesh, Bihar, Tamil Nadu, Meghalaya, Punjab, Himachal Pradesh, Orissa, Haryana and Uttarakhand).
- In case of Delhi, filing of ARR petitions for FY 2011-12 was delayed as the matter regarding tariff order of FY 2010-11 and True up of FY 2008-09 was subjudice before the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi had stayed the proceedings for issue of Tariff Order for FY 2010-11 including True up of FY 2008-09. The order in the case No. W.P. (C) 4821/2010 was issued on May 23, 2011.
- Rajasthan discoms had sought time extension for tariff filing. The Commission took up the matter with the State Govt. and impressed upon the Govt. to direct discoms to file the tariff petitions. The discoms thereafter filed tariff petitions for FY 2011-12 on January 04, 2011.

### **Timeliness of Tariff Order**

- Eight (8) State Commissions issued the Tariff Orders as per the time schedule specified in the Regulations (Madhya Pradesh, Andhra Pradesh, Bihar, Tripura, Tamil Nadu, Meghalaya, Orissa and Chhattisgarh).
- In case of Delhi, Tariff Order (ARR) for FY 2011-12 (including True up for FY 2008-09 and FY 2009-10) for NDPL, BRPL, BYPL and NDMC was issued on August 26, 2011. The order could only be issued after the judgement of The Hon'ble High Court of Delhi dated May 23, 2011 in case No. W.P. (C) 4821/2010.
- The discoms in Rajasthan filed tariff petitions for FY 2011-12 in January 2011 followed by a supplementary petition in March 2011. The Commission issued tariff order on September 08, 2011.

*(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 & 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 the financial year so that the licensees remain vigilant to follow the time schedule for filing of the application for determination of ARR/tariff.*

**Response:**

- As mentioned above, Eight (8) State Commissions issued the Tariff Orders before 1<sup>st</sup> April of the tariff year.

**Tariff Applicability**

- SERCs / JERCs for fifteen (15) States/UTs (Madhya Pradesh, Andhra Pradesh, Bihar, Tripura, Tamil Nadu, Meghalaya, Punjab, Himachal Pradesh, Orissa, Haryana, Uttarakhand, Assam, Jharkhand, J&K and Chandigarh) have reported that the tariff is applicable till the end of financial year. Haryana and Assam reported that in case the tariff order is delayed the same tariff is applicable till the next tariff order is issued.
- For the states of Gujarat, Chhattisgarh, Maharashtra, Delhi and Uttar Pradesh it has been reported that the tariff is applicable till the next tariff order is issued.
- For the remaining States/UTs, it has been reported that applicability of tariff is not till the end of the financial year. However, the period of applicability is not specified.

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

**Response:**

- For states where ARR petitions have not been filed in time, the Commissions of Jharkhand, Sikkim and JERC (Goa & UTs) are reported to have initiated suo-motu proceedings.
- In the case of Gujarat for FY 2011-12, the time limit for filing MYT petitions was extended upto December 31, 2010 as the commission issued 'Draft MYT regulations 2010' in November 2010. All Discoms except Kandla Port Trust filed their petitions after the extended last date. However, the delay was condoned by the Commission. The tariff order was subsequently issued after the stipulated time as per the regulations.
- Similarly, in case of Delhi as mentioned above, the filing of ARR petition for FY 2011-12 was delayed due to stay order of the Hon'ble High Court of Delhi on the proceedings for issue of Tariff Order for FY 2010-11 including True up of FY 2008-09. Tariff Order (ARR) for FY 2011-12 including True up for FY 2008-09 and FY 2009-10 in respect of NDPL, BRPL, BYPL and NDMC was issued on August 26, 2011.

- It was reported in case of Maharashtra, that the tariff for FY 2011-12 could not be determined by the Commission as utilities had filed petition for deferment of MYT Regulations, 2011 citing various reasons.

*(iv) In determination of ARR/tariff, the revenue gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee.*

**Response:**

### **Revenue Gap**

- As per the information received by FOR Secretariat, there are Eight (8) states (MP, Maharashtra (MSEDCL), Andhra Pradesh, Tamil Nadu, Meghalaya, Himachal Pradesh, Uttarakhand and West Bengal) where the gap between Average Revenue Requirement (ARR) and Average Cost of Supply (ACS) per unit is nil.
- Tripura and Orissa have shown a positive revenue gap between ARR and ACS per unit for FY 2011-12.
- In all, ten (10) states (Bihar, Haryana, Gujarat, Chhattisgarh, Delhi, Rajasthan, Kerala, Uttar Pradesh, Karnataka and J&K) have shown a revenue gap between Average Revenue Requirement (ARR) and Average Cost of Supply (ACS) on per unit basis.
- Jharkhand State Electricity Regulatory Commission (JSERC) did not provide data regarding tariff adequacy.

### **Regulatory Asset**

- Of the 10 states reported to have revenue gap, six (6) State Commissions of Bihar, Punjab, Orissa, Chhattisgarh, Delhi and Rajasthan have allowed creation of regulatory assets. Karnataka carried forward the gap to the next year.
- Gujarat, Haryana and Kerala have not allowed creation of regulatory assets.
- Despite showing no gap between ARR and ACS, Tamil Nadu has stated that Regulatory Assets have been created.

### **Road map for recovery of Regulatory Assets**

- Only Delhi and Karnataka have proposed a road map/timeline for recovery of regulatory assets/revenue gap.
- In case of Tamil Nadu, it was reported that the regulatory assets are proposed to be amortized over a period of 5 years commencing from FY 2013-14.

### **Carrying cost of regulatory assets**

- Tamil Nadu, Punjab, Delhi, Rajasthan have reported that the carrying cost shall be/have been allowed.
- Bihar, Chhattisgarh and Karnataka have created regulatory assets but did not allow the carrying cost of these regulatory assets.

*(v) Truing up should be carried out regularly and preferably every year. For example, truing up for the financial year 2009-10 should be carried out along with the ARR and tariff determination for the financial year 2011-12.*

*Response:*

### **True up petition**

- Five States (Bihar, Tamil Nadu, Meghalaya, Punjab and Orissa) have clearly indicated that the true up petitions were filed as per the requirements of regulations. However, the date of filing and year for which petitions were filed have not been reported. No further information has been provided. Bihar has reported that true up petition is not due for any year.
- Tripura has reported the date of filing petition as January 20, 2012. However, there is no clarity on the year for which the petition was filed.

### **True up order**

- It has been reported for 4 States (Tripura, Tamil Nadu, Meghalaya and Orissa) that the true up orders have been issued regularly within the time specified in accordance with the Act. Only Tripura has reported about the years for which true up orders have not been issued. No further information has been provided.
- It was reported by Bihar Electricity Regulatory Commission that the true up orders for FY 2006-07, FY 2007-08 and FY 2008-09 were issued on January 04, 2012 and true up order for FY 2009-10 was issued on January 27, 2012. True up order for FY 2010-11 was issued on March 30, 2012.
- In case of Delhi, true up order for all the four discoms for FY 2008-09 and FY 2009-10 was issued on August 26, 2011. It was reported by DERC

that the order could only be issued after the judgement of the Hon'ble High Court of Delhi dated May 23, 2011 in case No. W.P. (C) 4821/2010.

*(vi) Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/mechanism.*

*Response:*

#### **Fuel Surcharge Adjustment formula/mechanism in the regulations**

- Provision for fuel surcharge adjustment has been provided in the regulations for 21 States/UTs, namely, Madhya Pradesh, Maharashtra, Andhra Pradesh, Tripura, Tamil Nadu, Meghalaya, Punjab, Orissa, Haryana, Gujarat, Rajasthan, West Bengal, Kerala, Manipur & Mizoram, Assam, Uttar Pradesh, Jharkhand, Dadar & Nagar Haveli and Pondicherry. Though the provision of fuel surcharge adjustment is there in the Madhya Pradesh Electricity Regulatory Commission's regulations, the formula has been provided in the Retail supply tariff order for FY 2012-13.
- It was reported in case of Delhi that the formula for fuel surcharge adjustment is not provided in the regulations but was provided in the Commission's order dated August 26, 2011 & Tariff Order dated August 26, 2011.
- SERCs in Himachal Pradesh and Uttarakhand have not provided fuel surcharge adjustment mechanism in the regulations as there are no thermal generating stations in the states. However, such provision has been provided in the MYT Regulations of Uttarakhand which will come into effect from April 01, 2013.

#### **Frequency of adjustment**

- The Commissions in 13 States have provided for quarterly adjustment of Fuel Surcharge and 6 States have provided for monthly adjustment of Fuel Surcharge.
- It was reported for Bihar that the Fuel surcharge adjustment is being undertaken on monthly basis through orders. Orissa has been undertaking fuel surcharge adjustment annually along with the ARR.



## **Fuel Surcharge Adjustment**

- It has been clearly indicated by the Commissions of Madhya Pradesh, Maharashtra, Andhra Pradesh, Bihar, Tripura, Meghalaya, Orissa, Gujarat, Delhi, West Bengal, Jharkhand, Dadar & Nagar Haveli and Daman & Diu that fuel surcharge adjustment has been undertaken for these 13 States/UTs as per the regulations/Tariff Order.
- It has been reported for Tamil Nadu that the licensee has been directed in the Tariff Order of FY 2012-13 to file FSA for approval of the Commission.
- Haryana has reported that as per the regulations utility can recover FSA in respect of approved sources of power purchase on monthly basis but the FSA is generally for short term purchases for which utility has to file separate petition.
- In Rajasthan, the Discoms sought Commission's approval for recovery of fuel surcharge and the Commission has clarified vide order dated September 08, 2011 that discoms are authorised to recover fuel surcharge. However, Discoms have not recovered the same so far.
- JERC (M&M) has provided for fuel surcharge adjustment mechanism in the regulations, the same has not been undertaken due to non availability of fossil fuel based generation in the state.
- The licensee in Uttarakhand has been paying for the fuel surcharge adjustment bills raised by Central generating stations. This additional cost is being allowed as power purchase cost in the ARR.