

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

OP No. 1 of 2011

Dated : 3rd November, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

**Tariff Revision
(Suo-Motu action on the letter
Received from Ministry of Power)**

**Counsel for the Amicus Curiae(s) :Mr. Amit Kapur, Amicus
Curiae
Mr. M.G Ramachandran,
Amicus Curiae
Mr. R K Mehta,
Amicus Curiae,
Mr. Buddy A Ranganadhan,
Amicus Curiae**

**Counsel for the Commissions: Mr. Aditya Pyasi,
Forum of Regulators (FOR)
Mr. Sakesh Kumar,
Mr. Arushi Anthwal for PSEERC
Mr. Anish Garg (Rep. for JERC,
Goa & UTs)
Mr. G. Umapathy for TNERC
Mr. Arijut Maitra for MERC with
Mr. Palaniappan
Mr. Sugam Seth
Mr. Sanjay Verma,
Director(Tariff) &
Mr. Rajesh Monga, Law Officer
for HERC
Mr. V.G. Pandit, Director(Tariff),
KERC**

Dr. Rama Rao
Mr. C.K. Rai for RERC
Mr. P.Dave, Jt. Secy.(Law) for
RERC
Ms. Surbhi Sharma for MPERC

ORDER

This Tribunal by its order dated 11.11.2011 had given certain directions to the State Commissions regarding timely determination of tariff. The State Commissions were directed to follow the directions in this order scrupulously and to send periodical report by 1st June of the relevant financial year about their compliance to the Secretary, Forum of Regulators, who in turn will send the status report to this Tribunal and also place it on its website.

2. Accordingly, the Tribunal has been receiving the reports from the Secretary, Forum of Regulators and has been giving directions to the State Commissions from time to time.

3. The last order was passed on 30.06.2014 in which certain directions were given to the State Commissions/Joint Commissions. Subsequently, hearings were held on 28th August, 2014 and 11th September, 2014, in which the Secretary, Forum of Regulators submitted a compliance report.

4. We have heard Learned Amicus Curiae Counsel on the Report submitted by the Secretary, Forum of Regulators.

5. After considering the Report of the Forum of Regulators and the submissions made by the Learned Amicus Curiae Counsel, we give the following directions to the State and Joint Commissions:

i) **Andhra Pradesh Commission**: The Andhra Pradesh Commission in response to direction

regarding Amendment to the Conduct of Business Regulations has stated that the Government of Andhra Pradesh has been requested to take action keeping in view of the order of the Tribunal. We find that the response of Andhra Pradesh Commission does not show compliance of the directions of this Tribunal. The Conduct of Business Regulations have to be amended by the State Commission in terms of Section 181 of the Electricity Act, 2003. Accordingly, the Andhra Pradesh Commission is directed to immediately begin the proceeding of amending the Conduct of Business Regulations and send a report in matter to Secretary, Forum of Regulators after compliance.

ii) Joint Commission (Manipur and Mizorum):

It has been reported that Tariff Order for FY 2013-14 was issued on 28.02.2014. Since the time frame

contained in the main Order dated 11.11.2011 has not been complied with, the Joint Commission is directed to comply with the same in a time bound manner in future.

iii) **Jharkhand**: The Jharkhand Commission has not reported about the amendment of Conduct of Business Regulations providing quorum of one Member. The Jharkhand Commission is directed to furnish its response to Secretary, Forum of Regulators immediately.

(iv) **Punjab**: It has been reported that the MYT Regulations have been notified on 1.7.2014. However, we find from Regulation 4.2 of the MYT Regulations that the Commission has to notify the date of commencement of MYT framework for determination of tariff in the State. Thus, even though the Regulations

have been notified the same are yet to be implemented. Therefore, we direct the Punjab Commission to immediately provide a time frame within which it will implement MYT framework in the State.

(v) **Meghalaya:** The Meghalaya Commission has indicated that the MYT Regulations are ready for publication and the same will be notified after examining its consistency with the Central Commission's Regulations. Regarding true up for FY 2009-10, it has been reported that the provisional true up has been carried out and the final true up is in the final stage of completion. Meghalaya Commission is directed to send a report after compliance in the above matters to the Secretary, Forum of Regulators.

(vi) **Tamil Nadu:** The Tamil Nadu Commission in its report has not indicated the status of the

amendment of the Conduct of Business Regulations. Tamil Nadu Commission is directed to take immediate action in the matter and report the same to the Secretary, Forum of Regulators.

(vii) **West Bengal**: The report of the State Commission does not show the status of the Tariff Order for the State Distribution Company and whether there has been any compliance of the Tribunal's order in respect of the State Distribution Company. The Commission is directed to provide updated data to the Secretary, Forum of Regulators.

(viii) In our order dated 30.06.2014, we had also sought information from the State and Joint Commissions regarding issuance of Tariff Order for FY 2014-15, truing up of accounts, FPPCA mechanism and regulatory assets. The reports have been received

in this regard. We find that there has been some delay in passing the Tariff Orders for FY 2014-15. However, several of the Commissions have explained the delay in passing such orders on the ground of the directions given by the Election Commission of India. Some other State Commissions have also put forth other reasons such as non-submission of data, etc. It is apparent that almost all the State Commissions are cognizant of the necessity of passing timely tariff orders. In the circumstances, no further directions are needed in this regard except to reiterate the timelines mentioned in the main order dated 11.11.2011.

(ix) As regards the truing up of orders, a majority of the Commissions have conducted True up of FY 2012-13. Some of the State Commissions have undertaken true up till 2011-12. A small minority of Commissions have not conducted true up even till

2011-12. These Commissions are Madhya Pradesh, Kerala, Punjab, Andhra Pradesh, Arunachal Pradesh and Nagaland. The said Commissions are directed to complete the true up process at least for FY 2011-12 within a period of next four months.

(x) Regarding putting in place an FPPCA mechanism, we find that most of the State Commissions have put in place a Fuel Adjustment mechanism. The Commissions which have not done so far are: Sikkim, Arunachal Pradesh, Nagaland and Tamil Nadu. The said Commissions are directed to comply with the main order dated 11.11.2011 in respect of putting in place a Fuel Surcharge Mechanism, as applicable to them.

(xi) On the issue of Regulatory Assets in the Tariff Order for FY 2014-15, among the State Commissions

which have passed Tariff Orders for FY 2014-15, the Commission which has created a Regulatory Assets for FY 2014-15 is Karnataka. The Commissions for which the status of the creation of Regulatory Assets is not known are: Kerala, Delhi, West Bengal, Assam, Rajasthan and Tamil Nadu who have not yet passed the Tariff Order for FY 2014-15. The said Commissions are directed to send a report regarding the Regulatory Assets as sought in our order dated 30.06.2014 to the Secretary, Forum of Regulators.

(xii) The Secretary, Forum of Regulators is directed to put up the information received from the State/Joint Commissions in pursuance of the above directions on its website. It may also send the Report to this Tribunal regarding compliance of this Tribunal's directions, by the State Commissions/Joint Commission concerned.

6. With the above directions, O.P. No. 1 of 2011 is disposed of.

7. The Registry is directed to send a copy of this order to all State and Joint Commissions, Secretary, Forum of Regulators and Secretary (Power), Government of India.

8. Pronounced in the open court on this **3rd day of November, 2014.**

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NON-REPORTABLE

Vs