



केन्द्रीय विद्युत विनियामक आयोग  
CENTRAL ELECTRICITY REGULATORY COMMISSION



/ MOST IMMEDIATE-BY HAND ONLY /

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

Dated: 19<sup>th</sup> November, 2012

The Registrar  
Appellate Tribunal for Electricity  
8th Floor, Core-4, SCOPE Complex  
Lodhi Road  
New Delhi 110003

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

Sir,

This is in reference to the order dated 19.10.2012 in O.P.No.1 of 2011 of the Hon'ble APTEL on the above subject. Hon'ble APTEL specifically directed the State Commissions of Assam, Uttar Pradesh and West Bengal to submit the information in regard to the compliance of APTEL's order dated 11.11.2011. Hon'ble APTEL also directed the Secretary of FOR to contact these State Commissions along with other SERCs and JERCs to collect the present data and submit the same by 19<sup>th</sup> November, 2012. The FOR Secretariat sought information on the above matter from all the SERCs and JERCs.

2. We received information from Twenty Three (23) SERCs and JERCs as on 19.11.2012. A statement summarizing the information submitted by the SERCs and JERCs on the issues raised by APTEL is enclosed as Annexure-I. A copy of the communications received from all the SERCs and JERCs in compliance to the direction of the Hon'ble APTEL are also enclosed as Annexure-II.

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

Encl: As above.

Yours faithfully,

  
19.11.12  
(RAJIV BANSAL)

SECRETARY, CERC/FOR

**APTEL's Order in OP NO.1 OF 2011**

**I. Background**

By order OP NO. 1 of 2011 dated 11<sup>th</sup> November, 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 01<sup>st</sup> of June every year. APTEL also directed FOR to send the status report in this regard to the Tribunal and also place it on its website.

In compliance of the order dated 11<sup>th</sup> November, 2011, the Secretary of FOR submitted the status report to the Hon'ble APTEL vide letter dated 04<sup>th</sup> July, 2012. The Hon'ble APTEL in its order dated 19<sup>th</sup> October, 2012, noticed that except the State of Assam, Uttar Pradesh and West Bengal all other State's State Commissions and Joint Commissions have revised their tariff in the year 2012-13 and no information had been received from the States namely Assam, Uttar Pradesh and West Bengal. APTEL directed Secretary of FOR to contact these State Commissions and collect the present data and submit the same.

Accordingly, the FOR Secretariat wrote letters on 29<sup>th</sup> October, 2012 to all the SERCs and JERCs. No response has been received from the ERCs of Maharashtra, Meghalaya, Nagaland, Jharkhand and West Bengal, till the date of finalisation of this report.

Data for the year 2012-13, as per the information submitted by the respective SERCs and JERCs (i.e. twenty three SERCs and JERCs) has been considered for preparing this report.

**II. Summary of response received from SERCs and JERCs**

Summary of response received from SERCs and 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 and 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 Annual Performance Review (APR) filing**

Punjab, Odisha, Himachal Pradesh, Karnataka, Delhi, Uttar Pradesh (for NPCL), Chhattisgarh (for CSPDCL) and JERC (Manipur & Mizoram) 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. Jammu & Kashmir (J&K), Gujarat, Uttar Pradesh (for DVVNL, MVVNL, PVVNL, and PuVVNL) and JERC (Goa & UTs) reported a delay in filing the APR petitions.

### **Timeliness of APR Order**

The Commissions of Bihar, Punjab, Jammu & Kashmir, Odisha, Himachal Pradesh, Karnataka, Delhi, Uttar Pradesh (for NPCL) and Chhattisgarh (for CSPDCL) have reported that APR orders have been issued within time specified in the regulations. Tripura and Uttar Pradesh (for DVVNL, MVVNL, PVVNL and PuVVNL) have issued the APR orders with some delay. Andhra Pradesh ERC has reported that the time for issuing the APR order is not yet due. Most of these States have not provided the actual date of order and the year for which the order was issued.

### **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 Average Revenue Requirement (ARR) Filing**

The ARR petitions were filed in time in Fifteen (15) States (Tamil Nadu, Madhya Pradesh, Bihar, Punjab, Uttar Pradesh (NPCL), Haryana, Chhattisgarh (for CSPDCL, JSPL), Kerala, Odisha, Himachal Pradesh, Tripura, Uttarakhand, Karnataka, Andhra Pradesh and Delhi). In case of Gujarat, Uttar Pradesh (for DVVNL, MVVNL, PVVNL and PuVVNL), JERC (Manipur & Mizoram) and Jammu & Kashmir filing of ARR petitions for FY 2012-13 was delayed. JERC (Goa & UTs) reported that the tariff petition was filed with a delay of less than a month. Assam ERC stated that following the APTEL order in OP No.1 of 2011, the Commission directed the licensees (APGCL, AEGCL and APDCL) to comply with the order and further file petition for APR of 2011-12, True Up for 2009-10 and 2010-11 and determination of ARR for 2012-13.

### **Timeliness of Tariff Order**

Ten (10) State Commissions issued the Tariff Orders as per the time specified in the Regulations (Tamil Nadu, Madhya Pradesh, Punjab, Chhattisgarh (for CSPDCL, JSPL), Odisha, Himachal Pradesh, Uttarakhand, Karnataka, Tripura and Andhra Pradesh). The Commissions of Gujarat, Uttar Pradesh (for DVVNL, MVVNL, PVVNL, and PuVVNL), JERC (M&M), J&K and Delhi reported a delay in filing the tariff and accordingly tariff order by these Commissions got delayed beyond stipulated period. Tariff for FY 2012-13 has not yet been notified by the Commission of Assam (for APGCL) as the utility submitted the tariff

petition for 2012-13 on 28.09.2012. However, discom APDCL and Transco AEGCL are yet to submit their tariff petitions. West Bengal Electricity Regulatory Commission has stated that no tariff order for the year 2012-13 has yet been passed by the Commission and these are under process. The Tariff Order for Uttarakhand was issued on 11.04.2012. In case of Gujarat the Tariff Order for the State Discoms and most other Discoms was issued on 02.06.2012.

The Commissions of Jharkhand, Maharashtra, Meghalaya and Nagaland have not responded to the request sent by the FOR Secretariat.

- (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 2012-13 should be decided before 1st April, 2012. 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, Ten (10) State Commissions (Tamil Nadu, Madhya Pradesh, Punjab, Chhattisgarh (for CSPDCL and JSPL), Odisha, Himachal Pradesh, Uttarakhand, Karnataka, Andhra Pradesh and Tripura) issued the Tariff Orders before 1st April of the tariff year.

**Tariff Applicability**

SERCs/ JERCs for sixteen (16) States/UTs (Madhya Pradesh, Bihar, Tripura, Tamil Nadu, Punjab, Himachal Pradesh, Odisha, Haryana, Uttarakhand, Assam, J&K, Andhra Pradesh, Tripura, Kerala, Uttar Pradesh (for MVVNL, PVVNL, PuVVNL DVVNL), JERC (Goa & UTs) and Chhattisgarh (for CSPDCL)) have reported that the tariff is applicable till the end of financial year. For the States of Karnataka, JERC (M&M), Sikkim, Rajasthan and Delhi, it has been reported that the present tariff is applicable till the time next tariff order is issued.

- (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:**

In case of Gujarat, the time limit for filing the Tariff petition was extended up to 31.1.2012. But, the Discoms failed to file the petition even after the expiry of the time granted by the Gujarat Commission. Consequently, the Commission initiated a Suo Moto Proceedings and issued tariff orders for most of the Discoms on 02.06.2012. The Commission of Arunachal Pradesh has stated that it came into workable stage only in July 2011, though it was created sometime earlier. The Utilities in Arunachal Pradesh, which are Government Departments, have already been requested to file the Tariff Petitions and the Commission has been

informed that they are in the final stages of filing their respective Tariff Petitions for the first time. The Commission has so far not taken any Suo Motu action due to delay on this account as the Departments are new to this exercise and doing it for the first time.

Assam Commission has stated that AEGCL and APDCL have been given time to file petitions by 15<sup>th</sup> November, 2012, failing which Suo Motu action will be initiated for the determination of tariff. The Commission of Sikkim issued Suo Motu Tariff order on 30.03.2012 for the year 2012-13.

- (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 Seven (7) States (Tamil Nadu, Madhya Pradesh, Odisha, Himachal Pradesh, Uttarakhand, Karnataka, and Andhra Pradesh) where the gap between Average Revenue Requirement (ARR) and Average Cost of Supply (ACS) per unit is nil.

The Commissions of Odisha, Haryana and Delhi (for BYPL and NDMC) have shown a very small positive revenue gap between ARR and ACS per unit for FY 2011-12. In case of Gujarat, the revenue gap between ARR and ACS per unit varies for the Discoms in the State from a positive gap of Rs. 0.161 per unit in case of Torrent Power Limited (TPL- Surat) to a gap of Rs. 0.981 per unit in case of MPSEZ Utilities Pvt Ltd (MUPL).

In all ten (10) States (Bihar, JERC (M&M), Kerala, Uttar Pradesh (PVVNL, MVVNL, DVVNL, KESCO, PuVVNL), Sikkim, Chhattisgarh (for CSPDCL and BSP), Tripura, JERC (Goa & UTs -Puducherry) and J&K, Delhi (BRPL and TPDDL)) have shown a revenue gap between ARR and ACS on per unit basis. Chhattisgarh (for JSPL), Rajasthan and Punjab did not provide data regarding tariff adequacy.

#### **Regulatory Assets**

Of the 10 State Commissions reported to have revenue gap, three (3) State Commissions of Bihar, Chhattisgarh (for CSPDCL), JERC (Goa & UTs -Puducherry)) have allowed creation of regulatory assets. Karnataka Commission has carried forward the gap to the next year. The Commissions of Gujarat, Madhya Pradesh, Punjab, Uttar Pradesh (for MVVNL, PVVNL, PuVVNL, DVVNL ), Chhattisgarh (for BSP), JERC (M&M), Sikkim, Tripura, Kerala, Uttarakhand, Andhra Pradesh and Delhi have not allowed creation of regulatory

assets. JERC (Goa & UTs) has reported a revenue gap between ARR and ACS in case of Chandigarh to be Rs. 0.29 per unit, Andaman & Nicobar Islands to be Rs. 14.25 per unit, but the gap is being met by the Government.

Despite showing no revenue gap between ARR and ACS, Tamil Nadu Commission has stated that Regulatory Assets have been created. In case of J & K, the revenue gap is being met by the State Government and in case of Uttar Pradesh (for NPCL) the revenue gap is being met by way of regulatory surcharge of 8%.

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

Only Chhattisgarh (for CSPDCL) and JERC (Goa & UTs) 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**

The Commissions of Tamil Nadu, Uttar Pradesh (for NPCL) and Chhattisgarh (for CSPDCL) have reported that the carrying cost shall be/ have been allowed. Delhi Commission has stated that for meeting the revenue gap till FY 2010-11 and liquidation of revenue gap, the Commission has decided to introduce a surcharge of 8% over the revised tariff in FY 2012-13. Bihar Commission and JERC (Goa & UTs) have created regulatory assets but did not allow the carrying cost of these regulatory assets.

- (v) True up should be carried out regularly and preferably every year. For example, true up for the financial year 2010-11 should be carried out along with the ARR and tariff determination for the financial year 2012-13.

### **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 except for Bihar. No further information has been provided. 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 that in 7 States (Tamil Nadu, Punjab, Chhattisgarh (for CSPDCL), Odisha, Himachal Pradesh, Karnataka and Delhi), the true up orders have been issued regularly within the time specified in the Act. Only Tripura has reported delay in issuing the True Up order. No further information has been provided by other SERCs and JERCs.

- (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 17 States/UTs, namely, Madhya Pradesh, Andhra Pradesh, Tripura, Tamil Nadu, Punjab, Odisha, Haryana, Gujarat, Rajasthan, Kerala, JERC (M &M), Assam, Uttar Pradesh (for DVVNL, MVVNL, PVVNL, PuVVNL and NPCL), Chhattisgarh (for CSPDCL), Himachal Pradesh, Delhi, JERC (Goa & UTs). The Karnataka Commission has stated that a separate order would be issued in due course of time. 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 (FSA) is not provided in the regulations but was provided in the Commission's order dated August 26, 2011 and Tariff Order dated August 26, 2011. SERCs of 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, i.e. from the Control Period FY 2013-14 with quarterly adjustments. In the State of Chhattisgarh (for CSPDCL) though the Fuel Surcharge Adjustment formula/mechanism has not been provided in regulations but it is being done by the Commission by suo-motu order on 30.06.2012 for VCA mechanism.

**Frequency of adjustment**

The Commissions in 12 States (Tamil Nadu, Madhya Pradesh, Haryana, Punjab, Uttar Pradesh (for MVVNL, PVVNL, PuVVNL, DVVNL, NPCL), Chhattisgarh (for CSPDCL), Himachal Pradesh, Tripura, Kerala, JERC (Goa & UTs), Andhra Pradesh and Delhi) have provided for quarterly adjustment of Fuel Surcharge and 2 States (Bihar, Chhattisgarh (for JSPL)) have provided for monthly adjustment of Fuel Surcharge. JERC (M&M) has reported both monthly/ quarterly adjustment of Fuel Surcharge. Odisha has been undertaking fuel surcharge adjustment annually along with the ARR.

**Fuel Surcharge Adjustment**

It has been clearly indicated by the Commissions of Tamil Nadu, Gujarat, Bihar, Punjab, Uttar Pradesh (for MVVNL, PVVNL, PuVVNL, DVVNL and NPCL), Haryana,

Chhattisgarh (for CSPDCL), Himachal Pradesh, JERC (Goa & UTs), Andhra Pradesh and Delhi that fuel surcharge adjustment orders have been issued as per the Tariff Regulations. Karnataka Commission in the tariff order for 2012-13 issued on 30<sup>th</sup> April, 2012 directed all the licensees to submit certain data for fuel cost variation. After the analysis of the same, a separate order would be issued to be effective from the current year.

Although the regulations provide for quarterly adjustment of Fuel Surcharge in the State of Rajasthan, no information has been provided regarding the actual adjustments being made in FY 2012-13. In the State of Sikkim, FSA will be provided in the next tariff order. The Commission of Uttarakhand has stated that the FSA provision has been made in the Multi Year Tariff (MYT) Regulations for the Control Period FY 2013-14 with quarterly adjustments. However, at present, fuel surcharge adjustment bills raised by Central Generating stations are being paid by the licensee and the same is being allowed as power purchase cost in the ARR.

For the State of Uttar Pradesh, in tariff order dated 19th Oct, 2012 it has been provided that the FPPCA will be applicable from Jan-March 2013 quarter. 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. Rajasthan has not provided information regarding actual adjustments for FSA in FY 2012-13. JERC (M&M) has stated that FSA has not been made due to non availability of fossil fuel based generation in the State.