

FORUM OF REGULATORS (FOR)
C/o. CENTRAL ELECTRICITY REGULATORY COMMISSION (CERC)
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☎: 011-23353503/23752958

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

Dated: 7th February, 2014

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

Subject: Compliance of the directions of Hon'ble Appellate Tribunal for Electricity issued vide order dated 2nd December, 2013 and 6th January, 2014, in OP No. 1 of 2011

Sir,

This is in reference to the order dated 2nd December, 2013 and 6th January, 2014 in O.P. No. 1 of 2011 of the Hon'ble APTEL on the above subject. The Hon'ble Tribunal directed FOR Secretariat to file a comprehensive report on or before 07.02.2014 on the response received from State/Joint Commission regarding the directions issued to 13 State/Joint Commissions.

2. FOR Secretariat sought the information from the State/Joint Electricity Regulatory Commissions. We have received information from all the concerned SERCs/JERCs. The summary of the direction issued and response received from the SERCs/JERCs is enclosed as **Annexure-I**. A copy of response received from SERCs/JERCs is also enclosed.

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

Yours faithfully,

Encl.: As above (8 copies).

Chaudhari, 7.2.2014
(M.M. Chaudhari)
Assistant Secretary (FOR)

Copy to:

Amicus Curiae Counsel

**Summary of response received from the SERCs/JERCs on the directions of Hon'ble
Appellate Tribunal in its order dated 02.12.2013**

1. Para 4A - Direction to Uttar Pradesh Electricity Regulatory Commission (UPERC)

Direction

"the Uttar Pradesh Commission is directed to frame the MYT Regulations without further delay as we had directed earlier and put the same in place by the end of the Current Financial Year."

Response received from UPERC

The UPERC has submitted that the Commission has held meetings on the draft MYT Regulations with the stakeholders and held public hearing on 10.01.2014. The UPERC has further submitted that the presentation on the final draft shall be made to the Commission after vetting and processing of the comments received from the stakeholders.

2. Para 4B- Direction to Punjab State Electricity Regulatory Commission (PSERC)

Direction

"Punjab State Commission has expressed its inability to put into effect the MYT Regulations from 1.4.2004 due to various defects like non implementation of the audited accounts etc. In view of this, the Punjab Commission is hereby directed to furnish a report on or before 31.12.2013 as to what steps the Punjab Commission has taken to ensure that the State Utility provides the audited accounts etc., The Punjab Commission is further directed to furnish a clear timeframe for the implementation of the MYT Regime in the State in view of our judgment in OP No.1/2011 reported in 2011 ELR (APTEL)1742."

Response received from PSERC

PSERC has submitted that the erstwhile Punjab State Electricity Board, the integrated utility carrying out the functions of generation, transmission, distribution and trading of electricity, was unbundled by the Government of Punjab through a transfer scheme vide notifications dated 16.04.2010 into two companies, Powercom (Punjab State Power Corporation Limited (PSPCL)) to carry out the Generation, Trading and Distribution of power and Transco (Punjab State Transmission Corporation Limited (PSTCL)) to carry out the Transmission of power (including State Load Dispatch and State Transmissions Utility functions) in the State. The unbundled companies i.e. PSPCL and PSTCL could not get the audit of accounts carried out for FYs 2010-11, 2011-12 and 2012-13 earlier in the absence of fixation of aggregate value of assets allocated to PSPCL and PSTCL by the State Govt. The Govt. of Punjab vide notifications dated 24.12.2012 has further amended the transfer scheme, 2010 and has fixed the aggregate value of assets pertaining to PSPCL and PSTCL as on the date of unbundling i.e. 16.04.2010.

It is further submitted by PSERC that on the fixation of aggregate value of assets pertaining to PSPCL and PSTCL by the Government of Punjab vide notifications dated 24.12.2012; these companies have initiated the exercise for the audit of accounts. PSPCL and PSTCL have now submitted the audited accounts for FY 2010-11 in their respective petitions for Annual Revenue Requirement and Determination of Tariff for FY 2014-15. PSPCL and PSTCL have also submitted annual accounts for FY 2011-12 duly signed by the Statutory Auditors along with the audit report of the Statutory Auditors. However, the C&AG audit report as per Section 619 of the Companies Act, 1956, for FY 2011-12 has not been submitted and it has been intimated that the same will be submitted to the Commission as and when the same is received from C&AG. Regarding audited accounts for FY 2012-13, it has been submitted by PSTCL that annual accounts for FY 2012-13 are not finalized and as such they have not submitted the petition for the approval of ARR for FY 2012-13 (True up). PSPCL has submitted that the audit of accounts for FY 2012-13 is under process and is likely to be completed before filing the next ARR and Tariff Petition and as such the true up of costs and revenue for FY 2012-13 be undertaken along with ARR and Tariff Petition of PSPCL for FY 2015-16, when the audited accounts for FY 2012-13 are likely to be made available.

It has been further submitted that the Punjab State Electricity Regulatory Commission has been pointing out to the PSPCL and PSTCL and directed for submission of audited accounts in its various references made to PSPCL and PSTCL at the time of processing of ARRs and otherwise also.

PSERC has submitted that the Commission has made serious efforts to ensure that the State Utilities i.e. PSPCL and PSTCL provide the audited accounts.

It has been further submitted by PSERC that it is making concerted efforts to finalize and notify the MYT Regulations. PSERC has appointed consultants for framing the MYT Regulations. The comments on the draft MYT Regulations were invited in December, 2010. The final draft of MYT Regulations after making the amendments in the draft MYT Regulations is again being put to public notice and the MYT Regulations are likely to be finalized and notified shortly.

The licensees in the State of Punjab (PSPCL and PSTCL) have submitted the audited accounts only for FY 2010-11 in the petition for ARR and Determination of Tariff for FY 2014-15. PSERC has submitted that it may not be possible for the Commission to indicate a clear timeframe for implementation of MYT regime in the State of Punjab in the absence of audited accounts for FYs 2011-12 and 2012-13 which are still to be submitted by the licensees (PSPCL and PSTCL) in spite of issue of directions by the Commission as detailed above. But the Commission is committed to comply the direction of the Hon'ble Tribunal and implement the MYT regime as soon as possible.

3. Para 4C- Direction to State Commissions of Arunachal Pradesh, Meghalaya and Joint Commission of (Manipur & Mizoram)

Direction

"The State Commissions of Arunachal Pradesh, Manipur & Mizoram and Meghalaya have not yet completed the process of framing the MYT Regulations. Therefore, these State Commissions are also directed to take necessary steps to ensure that our earlier orders to put into effect the MYT Regulations from 1.4.2014, are complied with."

Response received from Arunachal Pradesh State Electricity Regulatory Commission (APSERC)

The APSERC has submitted that the Commission has now notified the MYT Regulation 2013 for the state of Arunachal Pradesh vide its notification No. APSERC/Notification/14/2013, dated 18th October 2013 and is already in force.

Response received from Joint Electricity Regulatory Commission For Manipur & Mizoram (JERC (M&M))

JERC (M&M) has submitted that the draft MYT Regulatory Commission have been revised for final publication.

Response received from Meghalaya State Electricity Regulatory Commission (MSERC)

MSERC has submitted that the draft of the MYT Regulations has been previously notified on 08.04.2013. MeECL wanted time due to finalisation of their accounts and other matters related with the final transfer schemes of the power sector. The final comments of the utilities were received on 06.11.2013. Matter was further examined and discussions/consultations took place. The final notification of the MYT Regulations is ready for Gazette notification.

4. Para 4D – Direction to Gujarat Electricity Regulatory Commission (GERC)

Direction (Para 4D (I)) to GERC

"The Electricity Regulatory Gujarat Commission has granted extension of time for filing of the Petitions etc., the grant of extension of time would indicate that the State Commission is conscious of the existence of the time limit. It has also taken a considered decision to grant such an extension. However, we intend to advise the Gujarat Commission to ensure that the extension of time is not granted as a matter of course. The State Commission should satisfy itself about the genuineness of the reasons for such a request for extension and the time granted must be reasonable keeping in view of the letter and spirit of the Act while passing the reasoned order granting such extension."

Response received from GERC

The GERC has submitted that the Commission shall follow the advice given by the Hon'ble Tribunal regarding the time limit extension as mentioned in the above direction.

Direction (Para 4D (II)) to JERC (Goa and UTs)

"The Joint Commission for Goa and Union Territories have given two reasons for the delay in the MYT Regulation 2013.

- a) *Re-determination of the orders of this Tribunal;*
- b) *In Goa public hearing could not be held due to enforcement of the Model Code of Conduct for the Assembly Elections in Goa.*

In this context, we are to remind the Joint Commission the following aspects:

(i) Prima facie, the Election Commission's Code of Conduct does not prohibit holding of a public hearing by a Statutory Authority in discharge of its statutory functions under the Act of the Parliament.

(ii) Even assuming that the State Commission had reasonable ground to impinge upon the Model Code of Conduct, the State Commission should have approached the Election Commission to clarify the above situation. In fact, the Karnataka Commission when a similar situation arose before them, sought the clarification from the Election Commission on the issue of Tariff Order and on such a clarification, the Election Commission had granted the permission to the State Commission for conducting public hearing and also for release of the tariff order. Therefore, the Joint Commission for Goa and Union Territories have to get those clarifications from Election Commission if such a situation arose.

In these circumstances, we direct the Joint Commission to appear before this Tribunal through its Counsel to seek for necessary clarifications and for further directions if any on this issue from this Tribunal."

Response received from JERC (Goa & UTs)

The JERC (Goa & UTs) has submitted that the directions given by the Hon'ble APTEL are noted and shall be complied in letter and spirit in future by JERC.

5. Para 4E- Direction to Chhattisgarh State Electricity Regulatory Commission (CSERC)

Direction

"The Chhattisgarh State Commission, as per the report of the Forum of Regulators, has submitted that the tariff order could not be passed on account of non-furnishing of the necessary data. It is not clear as to what steps have been taken by the Chhattisgarh Commission to call for the requisite data from the persons concerned. Assuming that no

data was made available, the Chhattisgarh Commission has not given any explanation as to why the said Commission did not proceed suo-moto as directed by this Tribunal in our order in OP No.1 of 2011.

Therefore, we direct Chhattisgarh State Commission to comply with the directions given in our Order in OP No.1 of 2011 dated 11.11.2011 and submit a report to the Forum of Regulators by 31.12.2013."

Response received from CSERC

CSERC has submitted that there are three distribution licensees in the State and the status of Tariff determination in respect of these three licensees for the year 2013-14 is as under.

(1) Chhattisgarh State Power Distribution Company Ltd (CSPDCL)-

The Commission vide its letter No. 03/CSERC/Tariff/17/809 dated 19/07/2012 has already reported to the "Forum of Regulators" that the Commission has initiated suo-motu proceedings for determination of retail tariff for Chhattisgarh State Power Distribution Co. Limited-CSPDCL (State owned distribution licensee).

(2) M/s Jindal Steel and Power Ltd (JSPL)-

M/s Jindal Steel and Power (JSPL) has filled tariff petition on 17/12/2012. So no suo-motu proceeding was initiated in respect of M/s JSPL.

(3) Bhilai Steel Plant (BSP)-TEED (SAIL)-

In case of M/s BSP-TEED, the Commission has initiated suo-motu petition as the licensee did file tariff petition by 31/12/2012. But the Tariff order in respect of BSP-TEED could not be issued because of the reason that licensee has not provided the requisite data for determination of tariff. The Commission initiated proceedings under section 142 of the Act, for not complying the directions issued in respect of determination of tariff. M/s Bhilai Steel Plant is primarily in business of Steel production and has obtained distribution license primarily for supplying power to its own colony meant for its employees. It can be observed that the position of BSP-TEED is different from the other distribution licensees. M/s BSP-TEED in its earlier submission has given an undertaking that if any revenue gap occurs in supplying power to its employees and other consumers, then such gap will be borne by M/s Bhilai Steel Plant. In absence of proper audited segregated accounts for distribution business of BSP, the Commission could not pass the order in suo-motu petition registered in respect of BSP-TEED.

6. Para 4F- Direction to JERC (M&M)

Direction

"The Joint Commission of Manipur and Mizoram have submitted that due to the repetitive late filing of the Electricity Department, the Commission has taken a decision not to issue tariff order for the Financial Year 2013-14. The State Commission has sent two orders in

this connection. We have gone through the same. We have to point out with regret that the above decision of the Commission not to issue the tariff order for the Financial Year 2013-14 is not in consonance with the directions given by this Tribunal in Judgment No. OP No.1 of 2011. Therefore, we deem it appropriate to advise the Joint Commission that such action would tantamount to non-compliance and in which event, the said conduct would be construed to be wilful non-compliance of the orders of this Tribunal.

Therefore, the Joint Commission for Manipur and Mizoram is advised to follow the directions given in OP No.1 of 2011 and pass the Tariff Orders by taking suo-moto action in the future i.e. from the Financial Year 2014-15 onwards."

Response received from JERC (M&M)

The Joint Electricity Regulatory Commission for Manipur & Mizoram has submitted that the tariff petitions for both the states of Manipur and Mizoram respectively for the FY 2014-15 are under examination for issue of Tariff Orders in time as per Regulations.

7. Para 4G - Direction to Madhya Pradesh Electricity Regulatory Commission (MPERC) and Meghalaya State Electricity Regulatory Commission (MSERC)

Direction

"It is noticed from the report that the other Commissions such as Madhya Pradesh and Meghalaya have granted extension of time for filing of the true-up petitions. The grant of extension of time would indicate that the State Commission is conscious of the existence of the time limit and has taken a considered decision to grant such extension. However, the State Commission must be concerned about the fact that extension of time ought not to be granted as a matter of course. As a matter of fact, the State Commission should satisfy itself about the genuineness of the reasons for such a request for extension for passing a reasoned order granting only such extension so warranted."

Response received from MPERC

The relevant text from the submission made by MPERC is as under.

"The Commission is conscious about expediting the finalizing of the true-ups of ARR's of the licensees. The true-up exercise for the ARR's of the distribution companies for FY 2008-09, 2009-10, 2010-11 and 2011-12 is under process. The public hearings in the matter have already been held by the Commission. Finalization of the orders for true-up for the aforementioned financial year's ARR is under process.

In the judgments given by the Hon'ble APTEL's in the matter of Appeal No.145 of 2009 and No.150 of 2010 one of the directions was about determination of assessment of sale to unmetered category of consumers in excess of the prescribed benchmarks, for consideration as pass through. The Commission was directed to apply a prudence check to determine the sale to the un-metered consumers by seeking requisite data/information from the distribution licensees. The distribution licensees of the State were directed to

substantiate their claim with regard to assessment of sale to unmetered categories of consumers in excess of prescribed benchmarks. Despite several time extensions the distribution licensees did not submit the required details to authenticate their claims. The petitions for review of true-up of ARR for 2007-08, were therefore closed by the Commission on 9.4.2013 with the directions that as and when the distribution companies file requisite data, the matter would again be reviewed. The issue of determination of sale to unmetered category of consumers in excess of prescribed benchmarks is intrinsic to the subsequent periods also. Determination of sale to unmetered categories of consumers in excess of prescribed benchmarks has a direct bearing on the power purchase expenses. The Commission, as mentioned in the preceding para, has already taken up the exercise to expedite finalization of true-ups."

Response received from MSERC

MSERC has submitted that in view of Hon'ble Supreme court order dated 28.08.12, the bills of IHT & EHT Industrial consumers of the period 2009-10 were revised in FY 2013-14 and incorporated in the accounts. The audited certificates were filed on 24.1.2014 by the utility. Matter is under active consideration for passing the trueing up orders in the tariff order for 2014-15.

8. Para 4H - Direction to West Bengal Electricity Regulatory Commission (WBERC)

Direction

"In respect of the West Bengal Commission it is noticed from the report of the Forum of Regulators that though the ARR Order for the Financial Year 2013-14 have been passed as far back as in December, 2012 and February, 2013, there is no explanation by the State Commission as to why the Tariff Orders for the Financial Year 2013-14 were still under process.

So, in view of the above, the West Bengal State Commission is directed to follow the time limit given in Section 64(3) of the Act and file a status report to the Forum of Regulators as well as the Tribunal on or before 31.12.2013."

Response received from WBERC

The West Bengal Electricity Regulatory Commission has submitted as under.:

- Though the Aggregated revenue requirement (ARR) for FY 2013-14 for different utilities was determined in the orders passed by this Commission in December 2012 and February 2013 but as per provisions of tariff regulations the revenue recoverable through tariff by the utilities during FY 2013-14 are to be determined after adjusting the recoverable/ refundable amount as determined in the annual performance review (APR) for FY 2011-12.
- The APR order for FY 2011-12 for all the utilities were issued by this Commission in September 2013.

- After issuing the APR order for FY 2011-12 the process of finalization of Tariff Order for FY 2013-14 in respect of the utilities under the Commission were taken up in the month of September, 2013 and those were almost ready for issue.
- The Commission was in dilemma to pass Tariff Order with single Member after retirement of the Chairperson on 12th September, 2013 till the issue of the order of Hon'ble Tribunal dated 02.12.2013.
- The Commission has now passed the tariff order for FY 2013-14 in respect of the West Bengal Power Development Corporation Limited (WBPDCL), West Bengal State Electricity Transmission Company limited (WBSETCL), West Bengal State Electricity Distribution Company Limited (WBSEDCL), CESC Limited, The Durgapur Projects Limited (DPL) and DPSC Limited on 26.12.2013.

9. Para 5 to Para 12- Direction to State Commissions of Andhra Pradesh, Jharkhand and Tamil Nadu

"5. Forum of Regulator's Report dated 16.9.2013 with regard to the issue of quorum have reported as follows:

(a) The State of Andhra Pradesh, Jharkhand and Tamil Nadu are non-functional due to lack of quorum.

(b) As regards the Andhra Pradesh State Commission, the State Commission has reported that the AP Reforms Act provides for a quorum of two members.

(c) In regard to the Jharkhand State Commission, Clause 10 of the Conduct of Business Regulations provides for a quorum of two members. The State Commission has reported that the positions of Chairperson and Member (Finance) are lying vacant since 16.12.2012.

(d) As regards, the Tamil Nadu Commission it is noticed that Clause 12 of the Conduct of Business Regulations provides for a quorum of two members but the State Commission has reported that the post of the Chairman as well as the Member were vacant.

.....

12. Therefore, we direct that all the Commissions concerned irrespective of the Regulations with regard to the quorum for a meeting, that Commission, even with a single Member despite that there are vacancies of other Members or Chairperson, can continue to hold the proceedings and pass the orders in accordance with the law "

Response received from Jharkhand State Electricity Regulatory Commission (JSERC)

JSERC has submitted that as per the directions issued in the order OP No. 01 of 2011 by Hon'ble APTEL on 2.12.2013, JSERC has initiated the process of amendment of JSERC (Conduct of Business) Regulation, 2011 with regards to quorum for meeting even with

single Member. The draft amendment was kept in JSERC website for sending comments/ suggestions by the stakeholders/ consumers on 27th December, 2013 so as to reach the office of the JSERC by 10.01.2014 and the date of public hearing was fixed on 11.01.2014

After the public hearing, the suggestions if any pointed out by the stakeholders will be taken in to consideration and the amendment of JSERC (Conduct of Business) Regulation, 2011 will be finalised and accordingly the single Member will continue to hold the proceedings and pass the orders in accordance with the law despite there is a vacancy of another Member and Chairperson.

Response received from Tamil Nadu Electricity Regulatory Commission (TNERC)

TNERC has submitted that an amendment has been initiated to the TNERC Conduct of Business Regulations 2004 to provide that the quorum of the Commission shall be one Member where there is only one Member due to vacancies in the post of Members and the same is hosted in the website of the Commission for eliciting public response. After receipt of comments, the amendment will be finalized. Further a new Member has since been appointed to the Commission and he has also assumed charge on 9.1.2014.

Response received from Andhra Pradesh Electricity Regulatory Commission (APERC)

The APERC has submitted that the vacancy of Chairman and Member posts arisen on 25th April, 2013 and 14th August, 2013 respectively. The Commission became non-functional in terms of holding proceedings, issuing orders, etc., during the period 14.08.2013 to 18.09.2013 as it become a single Member Commission.

Subsequently, in pursuance of Government of Andhra Pradesh orders new Chairman (Dr. V. Bhaskar) has taken charge on 19th September, 2013 and the new Member (Sri P. Rajagopal Reddy) has taken charge on afternoon of 6th November, 2013.

The Commission is functional in terms of holding proceedings, issuing orders, etc., from 19.09.2013 onwards.

10. Para 14 to 16 – Direction of Secretary, Forum of Regulators (FOR)

"14. In the context of the above concern, in view of the delays in appointing all Members of the Commission or filling up all the posts in the Commissions, we are afraid that the institutional vacuum would cause delay the vital decisions to be taken by the Commission which will result in the defeat of the object of the Act, 2003.

15. Hence, we are constrained to advise the Ministry of Power to take note of this issue and take suitable steps as repeated failure to implement an important reform legislation will erode the pace of the Reforms in the implementation of the provisions of the Act.

16. Therefore, we direct the Secretary, Forum of Regulators to forward a copy of this order to the Secretary, Ministry of Power, Government of India for emergent suitable action with the appointing authorities of the respective States for taking timely action for

appointment of the Members/Chairperson of the State Commissions by filling up the vacancies without any delay. "

Response of FOR Secretariat

As directed by Hon'ble Tribunal, FOR Secretariat forwarded the copy of the order dated 02.12.2013 to Secretary, Ministry of Power, Government of India for emergent suitable action with the appointing authorities of the respective States for timely action for appointment of the Members/Chairperson of the State Commissions by filling up the vacancies without any delay. A copy of FOR Secretariat's letter No 15/7(3)/2012-FOR/CERC dated 27.12.2013 is enclosed.