

**BEFORE THE MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION
SHILLONG**

In the matter of:

Petition for amendment of Meghalaya State Electricity Regulatory Commission (Multi Year Tariff)
Regulations 2014.

And

In the matter of

Meghalaya Energy Corporation Limited, Lumjingshai, Shillong, Meghalaya.

CORAM

Shri WMS Pariat, IAS (Retd), Chairman

Date of Order: 14 .08.2017

ORDER

The Petitioner MeECL on 23.12.2016 filed its Petition for amendment of Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations 2014, and, in particular, for amendment of:

Regulation 4.2 (a)	:	Time Period for Mid-term Review
12	:	Classification of O&M expenses as controllable factor
83	:	Achievement of AT&C Losses Targets
90	:	Recovery of Fuel and Power Purchase Price adjustment

The Commission invited objections from stakeholders on the above and also conducted a public hearing at the Commission Office on 16th June, 2017. The names of the stakeholders who had attended the public hearing is at Annexure 1

The Regulations proposed for amendment by MeECL are as follows:

1. Amendment of Reg 4(2)(a) : Time Period for Mid-term Review of Business Plan

(a) Submissions by MeECL: To review the said Regulations and provide for the filing of the midterm review petition by the 21st month of the Control period “

(b) COMMISSION’S ANALYSIS AND OBSERVATIONS

It is noted that the second proviso to Regulation 4.2(a) reads as under

(b)(i) “Provided further that a Mid-term Review of the Business Plan may be sought by the Generation Company, Transmission Licensee and Distribution Licensee through an application filed three)3) months prior to the filing of the petition for truing up for second year of the Control Period and the Tariff Determination for the third year of the Control Period.”

(b)(ii) A perusal of the Regulations would show that the second proviso to Reg 4.2(a) , which is reiterated in the proviso to Reg 8.1 , provides that a midterm review of the Business Plan may be sought by the Generation /Transmission/ Distribution licensee through an application which is to be filed three months prior to the specified date of filing petition for truing up for the second year of the Control Period. The Regulations provide only for one mid-term review of the Business Plan, which is to be filed at the point of time mentioned above. This Review of the Business Plan is different from a truing up exercise, as provided for under Regulation 11. Normally, occasion does not arise for the Business Plan to be reviewed in MYT regimes having a 3 year Control Period, as distinct from those with a Five Year control period. It can be seen that the petition prays for review of the Regulations and “provide for the midterm review petition by the 21st month of the Control period”, vis-a-vis the present position, which necessitates the petition to be filed at the 18th month of the MYT period. The request to delay the filing of the Review petition of the Business Plan from 18 months(as per Regulation at present, to 21 months, prima facie seems to contradict the comment of the petitioner that “...it is essential that the Midterm review exercise must be taken up at the earliest.,,,,” as at Para 2.1.2 of the petition .

(b) (iii) Filing of the review petition three months before the petition for tariff determination for the third year of the Control Period is reasonable, the main reason being that the Commission is given adequate time for due diligence, and that its orders thereon would be available to the licensees before the petition for the tariff determination for the 3rd year of the Control period is submitted. Submission of the petition for review of the Business Plan together with the tariff petition for the 3rd year of the control period would not be beneficial to the licensee, and would not serve any useful purpose.

(b) (iv) In view of the facts mentioned above, the Commission is of the view that the existing provision is based on practical considerations, and that it also does not create any difficulty to the Licensee. The Commission therefore does not find any merit in the issue. The issue is accordingly rejected.

2. Amendment of Reg 12.1 (j) and Regulation – 12.:2(g): Classification of variations in Operation and Maintenance Expenses as Un-controllable Factor.

(a)Submission by MeECL: (a) .The Licensee has prayed to classify the variation on operation and Maintenance expenses as “Uncontrollable” and to amend Reg 12 of the Regulations as follows:

“For the purpose of these Regulations, the term ‘uncontrollable factors ‘, comprise the following factors, which were beyond the control of the applicant and could not be mitigated by the applicant:-

- a)
- b).....
- j) Pay revision of employees of the licensee “

Further, the MeECL has sought for inclusion of a new provision , i.e. Reg 12(2) (g) , which would read as follows “ Variation in Operation and Maintenance expenses , except for the factors stated at Reg 12.1 above “

(b) COMMISSION’S OBSERVATIONS AND ANALYSIS:

The licensee has quoted the provisions of various Regulations relating to other Regulatory Commissions, and also judgments by the APTEL and the Hon’ble Supreme Court, in support of its petition for amendment. However, a perusal of the Regulations/ Judgments shows not

only that the claim of the licensee is not substantiated by these quoted Regulations/Orders , but in fact seems to have been specifically negated. To illustrate:

- (b)(i) Jharkhand (terms and Conditions for determination of Distribution Tariff) Regulations 2010. It is seen that Reg 5.29, which has been quoted in the petition specifies that “**terminal**” liabilities of employees is Uncontrollable. Claims arising from Pay Revision etc. as claimed by the petitioner find no mention in this provision, and they are not deemed to be terminal. To the contrary, It may , in fact be seen that, in the entry prior to this, it is specifically indicated that O&M expenses (excluding terminal benefits of employees) are Controllable. It is seen that even the present petition of MeECL itself indicates , that in the Jharkhand Regulations, Note 2 under Regulation 6 specifies that “ Any variation due to changes recommended by the Pay Commission etc will be considered separately by the Commission. “ In so far as the Regulations of UP and J&K SERC’s are concerned, it may be seen that the regulations do not speak of such expenditure for salaries etc being Uncontrollable, but that such expenditure should be excluded from the normal expenditure trajectory.
- (b) (ii)The petition also has quoted several judgments/ orders of SERC’s, of the APTEL and even one judgment of the Hon’ble Supreme Court, in support of its petition. The Commission has perused the said judgment/orders and it is seen that nowhere do these orders/judgments speak of O&M for pay and salaries being considered an Uncontrollable item of expenditure for automatic pass through in the Tariff. It can be seen that most of them relate to cases where the pay revision implications are allowed, as true-up subsequently. The Commission therefore holds that a case for treating financial implications against pay Commission Arrears as Uncontrollable expenditure and as automatic pass through in the Tariff has not been made out by the petitioner.
- (b) (iii) The Commission therefore sees no ground for amendment of the Regulations as prayed for by the petitioner, and accordingly rejects the same. Expenditure arising from the Pay Commissions recommendations, when implemented, will be justified when backed by audited accounts and due diligence.

3. Amendment of Regulation 83: Penalty for non-achievement of AT&C trajectories:

- (a) **Submission by MeECL:** : The petitioner has prayed for amendment of Reg 83 for the purpose of removal of the provisions by which the Commission is enabled to impose penalty of either 3% or 1.5 % , as provided thereunder, on occasions when overall AT&C loss trajectory is not achieved as required.

The petitioner has also quoted relevant provisions prevailing in the SERC Regulations of some states, to indicate that these states do not impose any penalty on the licensees, apart from passing through ½ or 1/3 of the loss to the consumers, as per respective Regulations.

(b) COMMISSION’S ANALYSIS AND OBSERVATIONS :

- (i) In the context of this State, the Commission attaches a very high priority to the need for the licensee to reduce the Technical and Commercial losses which have been increasing the burden to the consumer and contributing to the deteriorating financial parameters of the licensee over the years. The Commission has during the past years issued various directions on the matter of reduction of Technical and Commercial losses, but the licensee has not succeeded in its attempts so far, and there has been a further deterioration in Transmission and Distribution losses over the years.
- (ii) The licensee had earlier submitted two separate petitions on this very same matter before the Hon’ble APTEL, (Appeal No 74 of 2015 and Appeal No 102 of 2015) which was

pleased to order, vide its orders dated 19/7/17, in both the abovementioned cases , as follows “ Hence we do not find any infirmity in the penalty proposed by the State Commission on non-fulfilment of AT&C loss reduction target”

- (iii) It is also relevant to mention that the licensee has recently, on the 9/3/17, signed a Tripartite agreement with the Government of India and the Government of Meghalaya under UDAY scheme, wherein the licensee has committed to bring down the AT&C losses from 36.50 % in 2015-16 to 32.51% in 2016-17, then to 27.50% in 2017-18, and 21.50% in 2018-19 and to 15% in 2019-20.
- (iv) Given the facts mentioned above, the Commission holds that the Licensee would need to be both incentivised and dis-incentivised to ensure that the losses are brought down to acceptable levels. With focused and sustained effort, the licensee will be able to achieve the target/trajectory fixed for AT&C loss.
- (v) Hence the Commission is of the considered view that the levy of penalty on the licensee as per existing provisions is justified, and that no amendment of the Regulation is advisable at the present juncture. The issue is accordingly rejected.

4. Amendment of Regulation – 90: Fuel and Power Purchase Adjustment

- a. Petition by the MeECL:** . The petitioner has prayed for amendment of Reg 90.4, and for doing away with the provisions of submitting a separate petition to the Commission, before it can apply the FPPPA formula for recovery or refund to the beneficiaries / consumers.

The relevant provisions of Reg 90 read as follows:

“Reg 90.1 The commission shall allow the recovery or refund, as the case may be, of additional charge for adjustment of tariff on account of change in fuel related costs of electricity generation and purchase of electricity.

90.2: The additional charge for adjustment shall be recovered or refunded, as the case may be, on a quarterly basis: and shall be taken as per actuals of the last three months.

90.3: The generating company or licensee shall put forth a formula for such recovery or refund in their tariff petition for approval of the Commission.

90.4 : The generating company or licensee shall determine such charge , in accordance with the formula under sub- regulation 90.3 above , and after getting the approval of the (Commission) recover or refund of the same, as the case may be, from their respective beneficiaries/ consumers.

90.5 The generating company or licensee shall send a detailed calculation of such charge quarterly to the Commission for scrutiny and approval“

b. COMMISSION’S ANALYSIS AND OBSERVATIONS:

- (i) Pointed attention of the MeECL is drawn to the judgment in APTEL Appeal No 97 of 2015 dated 6th October 2016 wherein the MePDCL had filed an appeal against the MSERC order dated 23/1/2015 relating to FPPPA for the MePDCL. The APTEL, in its detailed judgment, passed clear orders on the very same issues which have again been raised in the present petition. It is not understood as to how issues which have been settled by the APTEL in the Appeal filed by MePDCL can again be raised before the MSERC at the present juncture, which is contrary to the provisions of law. While it is given that the matter under Appeal arose out of orders passed by this Commission under the Tariff Regulations 2011, yet the points raised in this present petition are the same points which have been finally settled by the APTEL in its order.

- (ii) Certain relevant portions of the APTEL order are cited hereunder: Para xiii of the APTEL order dated 6/10/16 states “Considering the provisions of the Tariff regulations 2011 and subsequent directions issued under various orders by the State Commission regarding FPPPA adjustment, **as well as the provisions of the MYT 2014**, we find that the State Commission has duly identified the mechanism of FPPPA recovery and dealt with the matter in accordance with the provisions of the Tariff Regulations 2011 and hence we are not in agreement with the argument of the Appellant that the State Commission has not followed the process identified under Tariff Regulations 2011.”
- (iii) The APTEL has in its order also decided in favour of the MSERC that there is in place a specific formula for recovery of FPPPA, as required u/s 62(4) of the Electricity Act, 2003; that the Commission has not acted contrary to the principle laid down by APTEL in its judgment dated 11/11/11 in OP No 1 of 2011; that the Commission was not in error by reason of failing to consider the simplified formula proposed by MePDCL; that the Commission had not erred in rejecting the FPPPA surcharge as sought by the MePDCL; and that the Commission had not erred when linking the recovery of FPPPA adjustment of the licensee with the audited accounts of the previous years.
- (iv) Since the APTEL has, in its order, has held that “**We are of the considered opinion that there is no merit in the present appeal, and the appeal is hereby dismissed**“. This Commission views this petition as superfluous, and that it does not meet the regulatory requirement. Hence the issue stands rejected. The Licensee may file the FPPPA formula along with the tariff petition, which will be examined by the Commission as per Regulations.
5. In view of the observations and findings of the Commission as elaborated in this order, the Commission considers that no case has been made to amend the Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulations 2014 as prayed for, and the **petition of the MeECL stands rejected**.
6. A copy of the order may be sent to the petitioner, and may also be uploaded in the website of the Commission.

(WMS Pariat)
Chairman, MSERC