



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

Review Petition No. 1 of 2010

IN THE MATTER OF:

Fixation of Electricity Tariff fixed
by the Regulatory Commission
w.e.f. 1st day of December, 2009.

AND IN THE MATTER OF:

The Byrnihat Industries Association **Petitioner**

AND

The Meghalaya State Electricity Board **Respondent**

Present : **Shri. P.J. Bazeley, Chairman MSERC.**

Dates of Hearing : **27.01.2010 & 17.02.2010**

Date of Order : **24.02.2010**

ORDER

01. The instant proceedings arise from the Review Petition dated 10.01.2010 filed by the Petitioners. In so far as they are concerned, their main grievances when summarized are –

1. that the Respondent (MeSEB) has not yet implemented the Tariff(D) Order dated 10.09.2009 for 2008-09 but continues to collect revenue at a higher rate fixed under an earlier Tariff Order dated 30.09.2008 which has been superseded;
2. that the Respondent has thus collected an excess of more than Rs.50.00 crores during the period 01.10.2008 to December, 2009;
and

3. that in the impugned order dated 30.11.2009 the previous year's surplus revenue has not been taken into account.
02. Against the above grievances the reliefs prayed for by the Petitioner in brief are that the Commission review the matter, and –
 - (a) direct the Respondent to stop collecting tariff fixed under the tariff order dated 30.09.2008 and to implement the Tariff (D) Order dated 10.09.2009; and
 - (b) fix a new tariff rate for the year 2009-10 effective from 01.10.2009 on the basis of the audited figures of 2008-09, after adjusting the surplus revenue collected by the Respondent during the previous year.
 03. Taking the instant Review Petition on record on 12.01.2009 the Commission on the same day issued notice on the Respondent directing that counter affidavit, if any, be filed within 25.01.2010. The Respondent was also directed to submit a copy of the Audited Statement of Accounts for the year 2008-09, and the matter was fixed for 27.01.2010 for hearing.
 04. On 25.01.2010, the Respondent submitted counter-affidavit in response, which when summarised states as follows -
 - i. that the Respondent on 23.10.2009, has filed an Appeal Petition before the Hon'ble Appellate Tribunal for Electricity, New Delhi against the Tariff Order dated 10.09.2009 passed by the Hon'ble Commission, and the disposal of which is pending;
 - ii. that pending disposal of the said Appeal by the Hon'ble Appellate Tribunal, the quantum of revenue collectable cannot be ascertained; and
 - iii. that even as disposal of the Appeal is pending Petitioner has been making only part payments against electricity bills raised by the Respondent. Therefore, Respondent avers that the allegation that excess revenue of more than Rs.50.00 crores has been collected from 01.10.2008 to December 2009 is not true.
 05. On 27.01.2010, Shri D.P.Wahlang, IAS, Member Finance along with other officials representing the Respondent appeared and made oral submissions. Shri Wahlang reiterated the submissions contained in the Counter Affidavit dated 25.01.2010. Copy of the Respondent's counter-affidavit was furnished to the Petitioner for reply and the matter was fixed for 17.02.2010 for further hearing and disposal. On 17.02.2010 Petitioner filed reply dated 16.02.2010.



06. During the hearing on 27.01.2010 the Commission asked Shri D.P.Wahlang as to whether the said Appeal Petition stated to have been filed on 23.10.2009 had resulted in any stay order from the Appellate Tribunal, to which Shri D.P Wahlang specifically replied and stated that the Hon'ble Appellate Tribunal had not granted any stay order in the matter.
07. In their reply of 16.02.2010, Petitioner repeated the submissions made in their original Review Petition of 10.01.2010. An extra point they have brought in relates to the Review Tariff Order dated 29.01.2010 passed by this Commission revising the ARR for 2009-10 to Rs.400.55 crores. Petitioner contended that the revised ARR was based on unaudited figures of MeSEB causing a hike in tariff rates. For the record, this order of 29.01.2010 was passed by the Commission to rectify a factual error, etc., noticed when MeSEB filed a Review Petition dated 22.12.2009.
08. In the hearing on 17.02.2010, Petitioner was represented by learned counsel Shri Devaraj Sahu and the Respondent by the Additional Chief Engineer (Commercial), Shri C.Kharkrang. Both parties made their oral submissions.
09. Shri C Kharkrang admitted that the Respondent had not implemented the Commission's Tariff(D) Order dated 10.09.2009 for reason that an Appeal against the said Order had been filed before the Hon'ble Appellate Tribunal for Electricity (APTEL) and that the matter was yet to be heard and disposed of. He also stated that till date APTEL had not stayed the Commission's Order dated 10.09.2009, a position which Shri. D.P. Wahlang had also earlier stated on 27.01.2010 when he was heard.
10. Shri C.Kharkrang continued and stated that while Respondent had not given effect to the Commission's Tariff Order dated 10.09.2010, the consuming industrial member units of the Petitioner located at Byrnihat were making only part payment of electricity bills raised at rates fixed under the Tariff (D) Order dated 30.09.2008. He denied having collected excess revenue as alleged by the Petitioner. He further stated that, in any case, settlement of any balance amounts due would be adjusted in future billings when the Appeal was finally disposed of by the Appellate Tribunal.
11. After careful consideration of all facts on record, the Commission observes and orders as follows.
 - (a) Respondent MeSEB stated that it had filed an appeal petition before APTEL. Except for the statement so made, no copy of it was ever placed or produced before this Commission whose very orders were challenged. Be that as it may, mere filing of an appeal is not a valid ground for by-passing the order dated 10.09.2009 with regard to



collection of revenue at rates as fixed. When an appellate authority has not granted any stay of an impugned order (in the instant case the Commission's Order dated 10.09.2009), it is contrary to law on the part of the appellant (here the Respondent MeSEB) not to abide by and implement the impugned order. Under the provisions of the Electricity Act, 2003, non implementation of the Commissions' orders could entail liability specified by sections 142 & 146 thereof. The Commission, therefore, directs the Respondent to comply with the Commission's Tariff (D) Order dated 10.09.2009.

- (b) The Commission has noted the contention of the Respondent in para 9 (i) of their affidavit-in-response dated 22.01.2010 that, inter alia, "the fixation of tariff depends upon the estimated ARR after truing up the Accounts of preceding years. Truing up exercise has to be necessarily taken up against each ARR approved by the Commission wherein any excess or shortfall of trued ARR over the approved ARR is adjusted in the subsequent tariff order. However, for each time the accounts are trued up, the tariff may not be revised with retrospective effect. This is because the consumer base of distribution utilities in general is of the order of 10 to 50 lakh consumers and retrospective revision of bills for such a large member of consumers, every time the accounts are trued up is not possible. Retrospective revision of bills will also entail revision of all the monthly commercial data and correction of the Statement of Accounts 2008-09". The aforesaid contention has merit. Therefore, let the ARR of the accounting year 2008-09 be finally trued up on the basis of the Audited Statement of Accounts for that year, and the C & AG's Audit Report thereon, as soon as it is received from the Respondent. Consequently, Revenue deficit or Revenue surplus in the trued-up ARR for the accounting year 2008-09, will be adjusted while working out and fixing the ARR of the perspective year 2010-11.
- (c) As regards the prayer of the Petitioner for re-fixation of the 2009-10 tariff, whether from 01.10.2009, the Commission, in the light of what has been discussed, sees no merit in the prayer, which is hence rejected.

Given under the Hand and Seal of the Meghalaya State Electricity Regulatory Commission, this the 24th day of February, 2010 at Shillong.

**(P.J. Bazeley)
Chairman**

